

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

#### 9 CFR Parts 317 and 381

[Docket No. 94-012F]

#### Incorporation by Reference; Updating of Text; Net Weight Labeling of Meat and Poultry Products

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to update references to the National Institute of Standards and Technology (NIST) Handbook 133, "Checking the Net Contents of Packaged Goods" and NIST Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Measuring Devices." A 1994 edition of NIST Handbook 44 was published in October 1993 and four supplements to NIST Handbook 133 were published in September 1990, October 1991, October 1992, and October 1994, subsequent to their incorporation by reference in certain sections of the Federal meat and poultry products inspection regulations. FSIS is amending the provisions in its regulations that reference the publications to reflect the most recent edition of NIST Handbook 44 and the supplements to NIST Handbook 133.

**DATES:** This rule will be effective on May 8, 1995 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before April 10, 1995.

**ADDRESSES:** Adverse comments or notice of intent to submit adverse comments should be sent in triplicate to Regulations Development, Policy, Evaluation and Planning Staff, Attention: Diane Moore, FSIS Docket

Clerk, Food Safety and Inspection Service, Room 3171, South Agriculture Building, U.S. Department of Agriculture, Washington, DC 20250. Comments should reference Docket No. 94-012F. All comments will be available for public inspection from 8:30 a.m. to 1 p.m. and 2 p.m. to 4:30 p.m., Monday through Friday, in Room 3171, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Dr. Paula M. Cohen, Director, Regulations Development, Policy, Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720-7164.

#### SUPPLEMENTARY INFORMATION:

##### Background

Title 1 of the Code of Federal Regulations (1 CFR Part 51) requires that an Agency seeking approval of a change to a publication that is approved for incorporation by reference in the Code of Federal Regulations publish a notice of the change in the **Federal Register** and amend the Code of Federal Regulations. The Agency must also ensure that a copy of the amendment or revision is on file at the Office of the Federal Register and notify the Director of the Federal Register in writing that the change is being made.

Accordingly, FSIS has reviewed the most recent publications, NIST Handbook 44 and supplements to NIST Handbook 133, pertaining to meat and meat food products and poultry and poultry products and FSIS' regulations that reference the Handbooks.

The following is a summary of the changes to NIST Handbooks 44 and 133 applicable to meat and poultry products.

##### NIST Handbook 44

The changes to the General Scales Codes of NIST Handbook 44 from 1990 through 1993 primarily recognize new features and capabilities of scales. These changes have the effect of giving scale manufacturers more flexibility in scale design and the ability to incorporate features that better meet the needs of the users. Although NIST Handbook 44 addresses a wide range of scales, the following summary describes the most significant changes to the Handbook as it applies to scales used to weigh meat

and poultry products produced in meat and poultry establishments.

The most significant change is recognition of the use of electronic forms of audit trails to provide security to scale adjustments rather than requiring the use of a physical security seal to indicate when access to metrological parameters has occurred. Another change allows scales to incorporate an "initial zero-setting mechanism." The mechanism allows different types of scale platforms to be used while continuing to allow the scale to weigh to capacity. Marking requirements have been combined into a table format to make them more understandable and easily referenced. Additionally, automatic and semi-automatic calibration of scales using an internal calibration weight are permitted provided the calibration mechanism or the calibration process do not facilitate inaccurate adjustments to the scale. Finally, tolerances for scales manufactured before 1986 have been consolidated, in table format, for easy reference.

##### NIST Handbook 133

The changes to NIST Handbook 133 pertaining to meat and poultry products are primarily for clarification and consistency with the meat and poultry products inspection regulations. The following is a summary of the more significant changes to NIST Handbook 133 pertaining to meat and poultry products. The remaining changes were strictly editorial.

1. The definition of "used tare" and "dried used tare" were made consistent with procedures for meat and poultry products that permit drying in a microwave oven.

2. A reference to product for which no gray area has yet been determined was added.

3. The reference to bacon with free-flowing liquid as "subquality" was deleted.

4. Group 5 Lower Limits for Individual Weights was changed to 1 percent of labeled weight. The lower limit of 1.5 ounces for the largest weight of 160 ounces in Group 4 is equivalent to 0.94 percent of the labeled weight. A fixed lower limit of 2 ounces (or 4 ounces, depending upon the scale being used) in Group 5 (with labeled weight of 160 ounces and up) is too small as a percentage of the labeled weights. For example, a lower limit of 2 ounces for

a labeled weight of 50 pounds is equivalent to 0.25 percent of the labeled weights.

5. Revisions were made to indicate that packaging materials must be cleaned before weighing tare and to specify a zero gray area for bacon packages with no free-flowing liquid inside as well as packages with no absorbent material.

6. Revisions were made to establish a definition of "fresh poultry" for net weight determinations and to clarify that the gray area should only be applied to raw, fresh poultry in retail packages when wet tare tests are conducted.

7. Revisions were made to specify procedures for cleaning tare materials and to add a paragraph on the repackaging of packages opened for tare determination.

8. A paragraph was added on procedures to follow when there is no free-flowing liquid or absorbent material in contact with the product.

9. A paragraph was expanded to include testing of bacon, sausage, or luncheon meats with no free-flowing liquid or absorbent tare material.

10. Revisions were made to reflect changes to the Category A sampling plans and to correct addresses and telephone numbers of FSIS regional offices.

Copies of the 1994 Edition of the NIST Handbook 44, NIST Handbook 133, and supplements to NIST Handbook 133 issued in September 1990, October 1991, October 1992, and October 1994, are on file at the Office of the Federal Register. Copies of the publications and supplements may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

#### Effective Date

We are publishing this rule without prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**. Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

#### Executive Order 12866

This rule has been determined not to be significant for purposes of Executive Order 12866 and therefore has not been

reviewed by the Office of Management and Budget.

#### Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Effect on Small Entities

The Administrator, FSIS, has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

#### List of Subjects

##### 9 CFR 317

Incorporation by reference, Meat inspection, Net weight.

##### 9 CFR 381

Incorporation by reference, Poultry products inspection, Net weight.

For the reasons set out in the preamble, 9 CFR parts 317 and 381 are amended as set forth below.

#### PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for Part 317 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.19 is amended by revising the first sentence of paragraph (a) and by adding a new paragraph (c) to read as follows:

##### § 317.19 Definitions and procedures for determining net weight compliance.

(a) For the purpose of §§ 317.18 through 317.22 of this part, the reasonable variations allowed, definitions, and procedures to be used in determining net weight and net weight compliance are described in the National Institute of Standards and Technology (NIST) Handbook 133, "Checking the Net Contents of Packaged Goods," Third Edition, September 1988, and Supplements 1, 2, 3, and 4 dated September 1990, October 1991, October 1992, and October 1994, respectively, which are incorporated by reference, with the exception of the NIST Handbook 133 and Supplements 1, 3, and 4 requirements listed in paragraphs (b) and (c) of this section. \* \* \*

(b) \* \* \*

(c) The following requirements of Supplement 1, dated September 1990,

Supplement 3, dated October 1992, and Supplement 4, dated 1994, of NIST Handbook 133 are not incorporated by reference.

#### Supplement 1

##### Chapter 2 General Considerations

##### 2.13.1. Polyethylene Sheeting and Film

##### 2.13.2. Textiles

##### 2.13.3. Mulch

##### Chapter 3 Methods of Test for Packages Labeled by Weight

##### 3.11.4. Exhausting the Aerosol Container

##### Chapter 4 Methods of Test for Packages Labeled by Volume

##### 4.6.4. Method D: Determining the Net Contents of Compressed Gas in Cylinders

##### 4.7. Milk

##### 4.16. Fresh Oysters Labeled by Volume

##### Chapter 5 Methods of Test for Packages Labeled by Count, Length, Area, Thickness, or Combinations of Quantities

##### 5.4. Polyethylene Sheeting

#### Supplement 3

##### Chapter 3 Methods of Test for Packages Labeled by Weight

##### 3.17. Flour and Dry Pet Food

##### Chapter 5 Methods of Test for Packages Labeled by Count, Length, Area, Thickness, or Combination of Quantities

##### 5.4. Polyethylene Sheeting

##### 5.5. Paper Plates

##### 5.8. Baler Twine

#### Appendix A. Forms and Worksheets

#### Supplement 4

##### 3.11 Aerosol Packages

##### 3.11.1 Equipment

##### 3.11.2 Preparation for Test

##### 3.11.3 The Determination of Net Contents: Part 1

##### 3.11.4 Exhausting the Aerosol Container

##### 3.11.5 The Determination of Net Contents: Part 2

#### Appendix A. Report Forms

3. Section 317.20(a) is amended by revising the second sentence to read as follows:

##### § 317.20 Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection.

(a) \* \* \* Such scales shall meet the applicable requirements contained in National Institute of Standards and Technology Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing

and Measuring Devices," 1994 Edition, October 1993, which is incorporated by reference. \* \* \*

\* \* \* \* \*

## PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

4. The authority citation for part 381 continues to read as follows:

**Authority:** 7 U.S.C. 450; 21 U.S.C. 451-470; 7 CFR 2.17, 2.55.

5. Section 381.121b is amended by revising the first sentence of paragraph (a) and adding a new paragraph (c) to read as follows:

### § 381.121b Definitions and procedures for determining net weight compliance.

(a) For the purpose of § 381.121b of this part, the reasonable variations allowed, definitions, and procedures to be used in determining net weight and net weight compliance are described in the National Institute of Standards and Technology (NIST) Handbook 133, "Checking the Net Contents of Packaged Goods," Third Edition, September 1988, and Supplements 1, 2, 3, and 4 dated September 1990, October 1991, October 1992, and October 1994, respectively, which are incorporated by reference, with the exception of the NIST Handbook 133 and Supplements 1 and 3 requirements listed in paragraphs (b) and (c) of this section. \* \* \*

(b) \* \* \*

(c) The following requirements of Supplement 1 dated September 1990, Supplement 3 dated October 1992, and Supplement 4 dated October 1994, of NIST Handbook 133 are not incorporated by reference.

#### Supplement 1

#### Chapter 2 General Considerations

- 2.13.1. Polyethylene Sheeting and Film
- 2.13.2. Textiles
- 2.13.3. Mulch

#### Chapter 3 Methods of Test for Packages Labeled by Weight

- 3.11.4. Exhausting the Aerosol Container

#### Chapter 4 Methods of Test for Packages Labeled by Volume

- 4.6.4. Method D: Determining the Net Contents of Compressed Gas in Cylinders
- 4.7. Milk
- 4.16. Fresh Oysters Labeled by Volume

#### Chapter 5 Methods of Test for Packages Labeled by Count, Length, Area, Thickness, or Combinations of Quantities

- 5.4. Polyethylene Sheeting

#### Supplement 3

#### Chapter 3 Methods of Test for Packages Labeled by Weight

- 3.17. Flour and Dry Pet Food

#### Chapter 5 Methods of Test for Packages Labeled by Count, Length, Area, Thickness, or Combinations of Quantities

- 5.4. Polyethylene Sheeting
- 5.5. Paper Plates
- 5.8. Baler Twine

#### Appendix A. Forms and Worksheets

#### Supplement 4

- 3.11 Aerosol Packages
  - 3.11.1 Equipment
  - 3.11.2 Preparation for Test
  - 3.11.3 The Determination of Net Contents: Part 1
  - 3.11.4 Exhausting the Aerosol Container
  - 3.11.5 The Determination of Net Contents: Part 2

#### Appendix A. Report Forms

6. Section 381.121c(a) is amended by revising the second sentence to read as follows:

### § 381.121c Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection.

(a) \* \* \* Such scales shall meet the applicable requirements contained in National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," 1994 Edition, October 1993, which is incorporated by reference. \* \* \*

\* \* \* \* \*

Done at Washington, DC, on: February 14, 1995.

**Michael R. Taylor,**

*Acting Under Secretary for Food Safety.*

[FR Doc. 95-4500 Filed 3-8-95; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### 31 CFR Part 500

### Foreign Assets Control Regulations; Unblocking of Vietnamese Assets

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the claims settlement agreement entered into on January 28, 1995, between the Government of the United States and the Government of the Socialist

Republic of Vietnam, the Office of Foreign Assets Control is unblocking assets in which Vietnam or a national thereof has an interest, blocked pursuant to the Foreign Assets Control Regulations.

**EFFECTIVE DATE:** March 6, 1995.

**FOR FURTHER INFORMATION CONTACT:** Steven I. Pinter, Chief of Licensing (tel.: 202/622-2480), or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

#### SUPPLEMENTARY INFORMATION:

#### Electronic Availability

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#### Background

On February 3, 1994, President Clinton lifted the trade embargo against Vietnam and authorized new financial and other transactions with Vietnam and its nationals. Property blocked as of February 3, 1994, because of an interest therein of Vietnam or its nationals, however, remained blocked pending a claims settlement agreement between the two countries. On January 28, 1995, an agreement was reached between the United States Government and the Government of the Socialist Republic of Vietnam, in which Vietnam agreed to pay \$208.5 million in settlement of outstanding U.S. private and government claims, and providing that the remaining Vietnamese property be unblocked. Accordingly, this rule amends the Foreign Assets Control Regulations, 31 CFR part 500 ("FACR"), to unblock assets held in the name of the Vietnamese Government or a national thereof on February 3, 1994.

Because the FACR involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601-612, does not apply.

#### List of Subjects in 31 CFR Part 500

Administrative practice and procedure, Banks, Banking, Blocking of assets, Cambodia, Exports, Fines and penalties, Finance, Foreign investment in the United States, Foreign trade,