

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