

# Proposed Rules

Federal Register

Vol. 71, No. 59

Tuesday, March 28, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

#### 9 CFR Parts 317, 381, and 442

[Docket No. 04–041P; FDMS Docket Number FSIS–2005–0032]

RIN #0583–AD17

#### Determining Net Weight Compliance for Meat and Poultry Products

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

**ACTION:** Proposed rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations in order that they reference the revised version of the National Institute of Standards and Technology (NIST) Handbook 133 that contains standards for determining the reasonable variations allowed for the declared net weight on labels of immediate containers of meat and poultry products; the procedures to be used to determine the net weight and net weight compliance of meat and poultry products; and related definitions. The Agency also is proposing to consolidate the separate net weight regulations for meat and poultry products in a new CFR part, applicable to both meat and poultry products.

**DATES:** Submit comments by May 30, 2006.

**ADDRESSES:** FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. FSIS prefers to receive comments through the Federal eRulemaking Portal. Go to <http://www.regulations.gov> and, in the “Search for Open Regulations”

box, select “Food Safety and Inspection Service” from the agency drop-down menu, then click on “Submit.” In the Docket ID column, select FDMS Docket Number FSIS–2005–0032 to submit or view public comments and to view supporting and related materials available electronically.

- Mail, including floppy disks or CD-ROM’s, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

- Electronic mail: [fsis.regulationscomments@fsis.usda.gov](mailto:fsis.regulationscomments@fsis.usda.gov).

All submissions received by mail or electronic mail must include the Agency name and docket number 04–041P. All comments submitted in response to this proposal, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. Comments will also be posted on the Agency’s Web site at [http://www.fsis.usda.gov/regulations\\_&\\_policies/2006\\_Proposed\\_Rules\\_Index/index.asp](http://www.fsis.usda.gov/regulations_&_policies/2006_Proposed_Rules_Index/index.asp).

#### FOR FURTHER INFORMATION CONTACT:

Robert C. Post, PhD, Director, Labeling and Consumer Protection Staff, Office of Policy, Program, and Employee Development, FSIS, by telephone at (202) 205–0279 or by fax at (202) 205–3625.

#### SUPPLEMENTARY INFORMATION:

##### Background

FSIS administers the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601–695), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451–470), and the regulations that implement these Acts. The FMIA and the PPIA require that packages of meat and poultry products bear an accurate statement of the quantity of their contents in terms of weight, measure, or numerical count (21 U.S.C. 601(n)(5) and 453(b)(5)). The FMIA and PPIA also provide the Secretary of Agriculture with the authority to prescribe standards of fill of containers for such articles (21 U.S.C. 607(c)(2), 457 (b)(2)) that are not inconsistent with any standards established under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301–392). In implementing regulations, FSIS

has elected to enforce these provisions of the Acts through the adoption of the NIST standards established for determining compliance with the net weight contents statement of packaged goods that are enumerated in NIST Handbook 133. Consequently, FSIS has incorporated, by reference, the appropriate NIST standards in the Federal meat and poultry inspection regulations.

NIST was established by Congress in 1988 to assist industry in the development of technology to improve product quality, to modernize manufacturing processes, to ensure product reliability, and to facilitate rapid commercialization of products based on new scientific discoveries. NIST’s basic functions include developing, maintaining, and retaining custody of the national standards of measurement and providing the means and methods for comparing standards used in science, engineering, manufacturing, commerce, industry, and education with the standards adopted or recognized by the Federal Government.

NIST Handbook 133 is a procedural guide for compliance testing of net content statements on packaged goods. FSIS has elected to make mandatory the NIST standards in Handbook 133 regarding the determination of the reasonable variations allowed from the declared net weight on labels of immediate containers of meat and poultry products, the procedures to be used to determine net weight and net weight compliance for meat and poultry products, and related definitions. Consequently, FSIS currently incorporates, by reference, the NIST standards from Handbook 133 in its meat and poultry inspection regulations (9 CFR parts 317.18 through 317.22 and 381.121a through 381.121e respectively). In January 2002, NIST issued a revised Handbook 133. Therefore, it is necessary for FSIS to amend the meat and poultry inspection regulations to incorporate by reference the revised NIST Handbook 133 and the standards set forth in it regarding the determination of the reasonable variations allowed, definitions, and procedures used to determine net weight, and net weight compliance of packaged goods. The standards in revised Handbook 133 that are being proposed to be incorporated by

reference in FSIS' meat and poultry inspection regulations remain substantively unchanged from those currently incorporated by reference in FSIS' regulations.

FSIS is also proposing to consolidate the separate net weight regulations for meat and poultry products in a new CFR part 442 that will be applicable to both meat and poultry products. Therefore, FSIS is proposing to move the provisions in §§ 317.18 through 317.22 and the provisions in §§ 381.121a through 381.121e to new part 442. Sections 317.20 and 381.121c incorporate NIST Handbook 44 by reference. Therefore, FSIS is proposing to move the provisions that incorporate NIST Handbook 44 by reference to new CFR part 442. FSIS is proposing to incorporate the same version of Handbook 44 that is currently incorporated by reference in the regulations: "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 1999 Edition, November 1988.

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no retroactive proceedings will be required before parties may file suit in court challenging this rule.

#### Executive Order 12866 and the Regulatory Flexibility Act

This proposed rule has been determined to be not significant and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

There are no costs associated with this proposal. The intent of this proposed rule is to amend the meat and poultry inspection regulations to incorporate by reference the standards in revised Handbook 133, which are not substantively changed from those in the version of Handbook 133 that is currently reflected in FSIS' meat and poultry inspection regulations regarding the procedures to be used to determine the net weight of, and net weight compliance for, meat and poultry products. In addition, FSIS is proposing to consolidate its meat and poultry net weight regulations into a new part 442 which will be applicable to both meat and poultry products.

FSIS has made an initial determination that this proposed rule would 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 *et seq.*). The proposed rule reflects the recent changes in the NIST Handbook 133 standards for determining net weight compliance for meat and poultry products.

#### Paperwork Reduction Act

This proposed rule has been reviewed under the Paperwork Reduction Act and imposes no new paperwork or record-keeping requirements. The information collection was approved under OMB number 0583-0094. This proposed rule contains no other paperwork requirements.

#### Government Paperwork Elimination Act (GPEA)

FSIS is committed to compliance with the GPEA, which requires Government agencies, in general, to provide the public the option of communicating electronically with the government to the maximum extent possible. The Agency will ensure that all forms used by the establishments are made available electronically.

#### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this proposed rule, FSIS will announce it on-line through the FSIS Web page located at [http://www.fsis.usda.gov/regulations\\_&\\_policies/2006\\_Proposed\\_Rules\\_Index/index.asp](http://www.fsis.usda.gov/regulations_&_policies/2006_Proposed_Rules_Index/index.asp).

The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at <http://www.regulations.gov/>.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is

communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at [http://www.fsis.usda.gov/news\\_and\\_events/email\\_subscription/](http://www.fsis.usda.gov/news_and_events/email_subscription/) and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

#### List of Subjects

##### 9 CFR Part 317

Food labeling, Meat inspection.

##### 9 CFR Part 381

Food labeling, Poultry and poultry products.

##### 9 CFR Part 424

Food labeling, Incorporation by reference, Meat inspection, Poultry and poultry products.

For the reasons discussed in the preamble, FSIS proposes to amend 9 CFR Chapter III as follows:

#### 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 2.18, 2.53.

##### §§ 317.18 through 317.22 [Removed and Reserved].

2. Remove and reserve §§ 317.18 through 317.22.

#### PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

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

**Authority:** 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

##### §§ 381.121a through 381.121e [Removed and Reserved].

4. Remove and reserve §§ 381.121a through 381.121e.

**Subchapter E—Regulatory Requirements Under the Federal Meat Inspection Act and the Poultry Products Inspection Act**

5. Subchapter E is amended by adding a new part 442 to read as follows:

**PART 442—QUANTITY OF CONTENTS LABELING AND PROCEDURES AND REQUIREMENTS FOR ACCURATE WEIGHTS**

Sec.

- 442.1 Quantity of contents labeling
- 442.2 Definitions and procedures for determining net weight compliance
- 442.3 Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection
- 442.4 Testing of scales
- 442.5 Handling of failed product

**Authority:** 21 U.S.C. 451–470, 601–695; 7 CFR 2.18, 2.53.

**§ 442.1 Quantity of contents labeling.**

This part prescribes the procedures to be followed for determining net weight compliance and prescribes the reasonable variations allowed from the declared net weight on the labels of immediate containers of products in accordance with 9 CFR 317.2(c)(4), 317.2(h), and 381.121.

**§ 442.2 Definitions and procedures for determining net weight compliance.**

(a) For the purpose of § 442.1 of this part, the reasonable variations allowed, the definitions, and the procedures to be used in determining net weight and net weight compliance are presented in the National Institute of Standards and Technology (NIST) Handbook 133, “Checking the Net Contents of Packaged Goods,” Fourth Edition, January 2002, which is incorporated by reference. Those provisions are considered mandatory requirements. This incorporation was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. (These materials are incorporated as they exist on the date of approval.) A notice of any change in the Handbook cited herein will be published in the **Federal Register**. Copies may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The incorporation information also is available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, NW., suite 700, Washington, DC 20408.

(b) The following NIST Handbook 133 requirements are not incorporated by reference.

Chapter 2—Basic Test Procedure—Gravimetric Testing

2.4 Borax

Chapter 3—Test Procedures—For Packages Labeled by Volume

- 3.5 Mayonnaise and Salad Dressing
- 3.7 Pressed and Blown Glass Tumblers and Stemware
- 3.8 Volumetric Test Procedures for Paint, Varnish, and Lacquers—Non Aerosol
- 3.9 Testing Viscous Materials—Such as Caulking Compounds and Pastes
- 3.10 Peat Moss
- 3.11 Mulch and Soils Labeled by Volume
- 3.12 Ice Cream Novelties
- 3.13 Fresh Oysters Labeled by Volume
- 3.14 Determining the Net Contents of Compressed Gas Cylinders
- 3.15 Volumetric Test Procedures for Packaged Firewood with a Labeled Volume of 133 L (4 Cu Ft) or Less
- 3.16 Boxed Firewood
- 3.17 Crosshatched Firewood
- 3.18 Bundles and Bags of Firewood

Chapter 4—Test Procedures—Packages Labeled by Count, Linear Measure, Area, Thickness, and Combinations of Quantities

- 4.5 Paper Plates and Sanitary Paper Products
- 4.6 Special Test Requirements for Packages Labeled by Linear or Square Measure (Area)
- 4.7 Polyethylene sheeting
- 4.8 Packages Labeled by Linear or Square (Area) Measure
- 4.9 Bailer Twine—Test Procedure for Length
- 4.10 Procedure for Checking the Area Measurement of Chamois

**§ 442.3 Scale requirements for accurate weights, repairs, adjustments, and replacements after inspection.**

(a) All scales used to weigh meat and poultry products sold or otherwise distributed in commerce in federally inspected meat and poultry establishments will be installed, maintained, and operated in a manner that ensures accurate weights. 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,” 1999 Edition, November 1988, which is incorporated by reference. This incorporation was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. (These materials are incorporated as they exist on the date of approval.) A notice of any change in the Handbook cited here will be published in the **Federal Register**. Copies may be purchased from the Superintendent of Documents,

Government Printing Office, Washington, DC 20402. The incorporation information also is available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, NW., suite 700, Washington, DC 20408.

(b) All scales used to weigh meat or poultry products sold or otherwise distributed in commerce or in States designated under section 301(c) of the Federal Meat Inspection Act and section 5(c) of the Poultry Products Inspection Act shall be of sufficient capacity to weigh the entire unit or package.

(c) No scale will be used at a federally inspected establishment to weigh meat or poultry products unless it has been found upon test and inspection, as specified in NIST Handbook 44 to provide accurate weight. If a scale is inspected or tested and found to be inaccurate, or if any repairs, adjustments, or replacements are made to a scale, it shall not be used until it has been reinspected and retested by a USDA official, or a State or local government weights and measures official, or a State registered or licensed scale repair firm or person, and it must meet all accuracy requirements as specified in NIST Handbook 44. If a USDA inspector has put a “Retain” tag on a scale, the tag can only be removed by a USDA inspector. As long as the tag is on the scale, it shall not be used.

**§ 442.4 Testing of scales.**

(a) The operator of each official establishment that weighs meat or poultry food products will cause such scales to be tested for accuracy in accordance with the technical requirements of NIST Handbook 44, at least once during the calendar year. In cases where the scales are found not to maintain accuracy between tests, more frequent tests may be required and monitored by an authorized USDA program official.

(b) The operator of each official establishment shall display on or near each scale a valid certification of the scale’s accuracy from a State or local government’s weights and measures authority or from a State registered or licensed scale repair firm or person, or shall have alternative documented procedures showing that the scale has been tested for accuracy in accordance with the requirements of NIST Handbook 44.

**§ 442.5 Handling of failed product.**

Any lot of product that is found to be out of compliance with net weight requirements upon testing in accordance with the methods prescribed

in § 442.2 of this subchapter shall be handled as follows;

(a) A lot tested in an official establishment and found not to comply with net weight requirements may be reprocessed and must be reweighed and remarked to satisfy the net weight requirements of this section in accordance with the requirements of this part.

(b) A lot tested outside an official establishment and found not to comply with net weight requirements must be reweighed and remarked with a proper net weight statement, provided that such reweighing and remarking will not deface, cover, or destroy any other marking or labeling required under this subchapter and the net quantity of contents is shown with the same prominence as the most conspicuous feature of a label.

Done in Washington, DC, on March 22, 2006.

**Barbara J. Masters,**  
*Administrator.*

[FR Doc. E6-4420 Filed 3-27-06; 8:45 am]

BILLING CODE 3410-DM-P

## FARM CREDIT ADMINISTRATION

### 12 CFR Parts 611, 612, 613, and 614

RIN 3052-AC15

#### **Organization; Standards of Conduct and Referral of Known or Suspected Criminal Violations; Eligibility and Scope of Financing; Loan Policies and Operations; Regulatory Burden**

**AGENCY:** Farm Credit Administration (FCA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule is intended to reduce regulatory burden on the Farm Credit System (FCS or System) by repealing or revising five regulations. The proposed rule would also correct outdated and erroneous cross-references in two regulations. These revisions provide System banks and associations with greater flexibility concerning stock ownership of service corporations, employee reporting under standards of conduct rules, domestic lending to cooperatives, and real property evaluations for certain loans.

**DATES:** Please send your comments to us by May 30, 2006.

**ADDRESSES:** Comments may be sent by electronic mail to [regcomm@fca.gov](mailto:regcomm@fca.gov), through the Pending Regulations section of our Web site at <http://www.fca.gov> or through the Government-wide <http://www.regulations.gov> portal. You may also send written comments to Gary K.

Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 or by fax to (703) 734-5784.

You may review copies of all comments we receive at our office in McLean, Virginia or from our Web site at <http://www.fca.gov>. Once you are in the Web site, select "Legal Info," and then select "Public Comments." We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove electronic-mail addresses to help reduce Internet spam.

#### **FOR FURTHER INFORMATION CONTACT:**

Jacqueline R. Melvin, Associate Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4414, TTY (703) 883-4434; or

Howard Rubin, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On May 16, 2003, we published a notice in the **Federal Register** at 68 FR 26551 that invited the public to identify existing regulations and policies that impose unnecessary burdens on the FCS. We specifically asked for comments on those regulations and policies that are ineffective, duplicate other governmental requirements, or impose burdens that are greater than the benefits received. We took this action in our continuing effort to improve the regulatory environment so the System can better serve farmers, ranchers, aquatic producers and harvesters, cooperatives, and other rural residents.

We received 19 comment letters: 11 from System associations, five from Farm Credit banks, one from the Farm Credit Council on behalf of its membership, one from CoBank, ACB's Northeast Farm Credit Regional Council, and one from a private citizen. In response, we are proposing to: (1) Revise and clarify who may own stock in an FCS service corporation; (2) expand the time for a newly hired employee to report matters to an institution's standards of conduct official; (3) eliminate the 10-percent limit on dividends in determining the eligibility of a cooperative to borrow from a System lender under title III of the Farm Credit Act of 1971, as amended (Act); (4) eliminate the

requirement for a Uniform Standards of Professional Appraisal Practices (USPAP) compliant real property appraisal for business loans between \$250,000 and \$1 million that are not otherwise exempt under our rules; and (5) repeal an outdated and obsolete regulation on bankers' acceptance financing. We are also proposing to correct three cross-reference errors affecting two regulations governing title III lending.

Contemporaneously with this proposed rule, we are publishing a notice in the **Federal Register** explaining how we addressed, or will address, all remaining comments we received.

#### **II. Analysis of Changes and Comments by Section**

##### *Section 611.1135—Incorporation of Service Corporations*

Section 4.25 of the Act, provides that any System bank or association, or two or more such institutions, may organize a federally chartered corporation for the purpose of performing functions and services for or on behalf of the organizing institutions. Current § 611.1135(a) provides that "[a]ll Farm Credit banks and associations are eligible to become stockholders in your service corporation." A bank commented that:

The existing requirement that each bank or association be eligible to become a stockholder of each 4.25 service corporation is not required by the Act and may limit the usefulness of these corporations to FCS institutions that might wish to organize them.

We agree that the Act does not require that "each" service corporation must make its stock available to "each" System bank and association. To clarify, we are proposing to amend the relevant sentence of § 611.1135(b) to read:

Your service corporation may issue voting and non-voting stock to one or more Farm Credit banks and associations.

This should clarify that while each bank and association has the statutory authority to organize (and own stock in) section 4.25 service corporation, each service corporation is not required to offer stock to every System bank and association.

##### *Section 612.2155—Employee Reporting*

Existing § 612.2155(d) provides:

A newly hired employee shall report matters required to be reported in paragraphs (a), (b), and (c) of this section to the Standards of Conduct Official within 30 days after accepting an offer for employment and thereafter shall comply with the requirements of this section.

CoBank, ACB stated that: