

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register** that will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required under Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to September 10, 2001; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21

U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.18 [Amended]

2. In § 94.18, paragraph (a)(1) is amended by adding, in alphabetical order, the word "Japan,".

Done in Washington, DC, this 10th day of October 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 97-001TF]

RIN 0583-AC35

Elimination of Requirements for Partial Quality Control Programs; Certification of Scales

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its regulations governing the certification for accuracy of scales used in federally inspected meat and poultry establishments. Under the final rule, official establishments may rely on State or local certification or data from documented procedures that demonstrate compliance with the National Institute of Standards and Technology Handbook 44. This final rule addresses an issue raised after publication of the May 30, 2000, final rule "Elimination of Requirements for Partial Quality Control (PQC) Programs," by clarifying that establishments may rely on data from documented procedures, and that FSIS will verify establishment compliance with regulations on the accuracy of scales based on data maintained by the establishments.

EFFECTIVE DATE: This final rule is effective November 15, 2001.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700; (202) 720-5627, fax number (202) 690-0486.

SUPPLEMENTARY INFORMATION:

Background

On May 30, 2000, FSIS published the final rule "Elimination of Requirements for Partial Quality Control Programs" (65 FR 34381). The final rule, which became effective August 28, 2000, removed from the Federal meat and poultry products inspection regulations the remaining requirements pertaining to partial quality control (PQC) programs. A PQC program, as distinguished from a total quality control (TQC) system, controls a single product, operation, or part of an operation in a meat or poultry establishment. A TQC system controls all products and processes in an establishment. The final rule removed the design requirements for PQC programs and the requirements for establishments to have PQC programs for certain products or processes. The final rule was intended to make the regulations more consistent with the Pathogen Reduction (PR)/Hazard Analysis and Critical Control Points (HACCP) regulations and to give federally inspected establishments greater flexibility to adopt new technologies and methods that will improve food safety and other consumer protections.

Status of Establishment PQC Programs

After publication of the final rule, some establishments asked the Agency whether they could continue to use their PQC programs, including PQC programs for net weight. Some persons who contacted the Agency asked specifically about the status of PQC programs that control net weight. Some establishments believed that, if such programs were rescinded, their products would be subject to lot inspection by FSIS. FSIS answered that the final rule does not rescind PQC programs for net weight. Establishments can continue to use PQC programs for net weight, and the Agency will verify their compliance with net weight requirements based on data from such programs.

Others asked whether the Agency would recognize TQC system data or PQC net weight program data regarding the testing of scales. They referred to the fact that the final rule removes the requirement for an establishment to have a total quality control (TQC) system provision for net weight or a partial quality control (PQC) program for net weight control in lieu of displaying, on or near its scales, a valid certification from a State or local weights and measures authority or from

a State-registered or -licensed scale repair firm or person (9 CFR 317.21(b), 381.121d(b), as amended).

With respect to the amended regulations on the testing of scales (9 CFR 317.21(b), 381.121d(b)), the May 30 final rule required that there be a certification of accuracy from State or local authorities or from a State-registered or -licensed repair firm or person. The preamble to the final rule also stated that establishments could continue to maintain the scale-checking provisions in their QC programs and systems (65 FR 34385). The final rule did not say whether the Agency, in the course of its verification activities, would accept the scale checking data generated by TQC systems or PQC programs. The inference that could be made from the May 30 final rule was that the only documentation of the accuracy of scales that FSIS would accept is a certification of accuracy by State or local authorities or by a State-registered or licensed repair firm or person.

FSIS notes that the other regulations on accuracy and testing of scales (9 CFR 317.20, 317.21(a), 381.121c, 381.121d(a)) continue in force. FSIS also notes that, when evaluating TQC and PQC net weight program provisions for testing scales, FSIS has always expected the systems and programs to ensure compliance with the regulations and the requirements of National Institute of Standards and Technology (NIST) Handbook 44. When evaluating data and information from TQC systems, PQC programs, or other documented procedures relating to the accuracy of scales, the Agency will continue to expect the data to reflect compliance or non-compliance with the Handbook 44 requirements.

On September 18, 2000, FSIS therefore proposed to amend the May 30 final rule to clarify that establishments could provide alternative documentation that scales meet the requirements of NIST Handbook 44 and the other regulatory requirements for accuracy and testing of scales, in lieu of State or local certification of scales (65 FR 56262). Such documentation could be data or information generated by a TQC system or PQC program or records of tests conducted in accordance with NIST Handbook 44 requirements or other requirements of the regulations.

Comments Received

FSIS received comments on the proposal from a trade association representing food processors, two officials of the union representing FSIS food inspectors, and an engineer employed by a food equipment

manufacturer. The trade association supported the proposal because it would give official establishments the flexibility to use data from TQC systems or PQC programs to ensure compliance with net weight regulations.

Two officials of the union that represents FSIS food inspectors opposed the proposal on the grounds that: (1) it would remove scale certification requirements; (2) it would result in product adulteration by chemicals and food ingredients in amounts greater than regulations permit; (3) the proposal falsely claimed that "HACCP programs" could control scale certification; and (4) Handbook 44 is an unenforceable guideline.

The Agency responds to these points as follows: (1) Under the proposal, scale certification requirements would be essentially the same as they were from the time when the current net weight regulations were promulgated until the May 30, 2000, final rule. Before the final rule, which became effective August 28, 2000, establishments were able to use data from PQC programs or TQC systems to ensure compliance of scales with net weight regulations. This meant that the scales had to be in compliance with Handbook 44 specifications.

(2) The scale certification provisions addressed by the proposal are intended to help ensure the compliance of meat and poultry products with net weight requirements. The accuracy of scales helps to ensure the accuracy of product net weight statements. The chemical and food ingredient example does not support the commenters' point because food ingredient or chemical restrictions are typically expressed as percentages of products or product formulations. That means that if the same scale were used to weigh the meat and other ingredients of a product, there would still be compliance with the restricted ingredient regulations.

(3) The proposal didn't discuss the use of HACCP plans to control scale accuracy. It did state that establishments could implement PQC programs that were "not in conflict" with HACCP plans (65 FR 56262).

(4) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," is incorporated by reference in the net weight regulations. The requirement for scales to be tested at least once a year in accordance with Handbook 44 (9 CFR 317.21(a), 381.121d(a)) has been in effect since 1991 and is not a subject of this rulemaking.

The equipment company engineer also objected to the use of NIST Handbook 44 criteria as inappropriate

for determining the accuracy of scales used in official establishments. This commenter stated that the Handbook 44 criteria conflict with NIST Handbook 130 requirements regarding variations from net quantity declarations on packaged commodities.

FSIS notes that Handbook 130, "Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Engine Quality," is not directly applicable to net weight determinations for meat and poultry products and is not incorporated by reference into the FSIS regulations. NIST Handbook 133, "Checking the Net Contents of Packaged Goods," including the provisions for maximum allowable variation in net weight, applies specifically to FSIS-regulated products and is incorporated by reference in the FSIS regulations governing procedures for determining net weight compliance (9 CFR 317.19, 381.121b) for those products. No changes respecting these requirements were envisioned in the proposal. Further, the comment was not relevant to the proposal because the proposal was not intended to address the criteria for determining the accuracy of scales, but only the form of documentation of that accuracy.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not "significant" within the meaning of Executive Order 12866. This rulemaking is not expected to impose any new costs on the regulated industry or on other sectors of the economy.

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities. Most of the entities that will be affected by this final rule are small business establishments, under Small Business Administration criteria (500 or fewer employees). This final rule will permit establishments to use data from documented procedures to demonstrate that their scales comply with the requirements of NIST Handbook 44, in lieu of certification by State or local authorities or State-licensed repair services or persons. The documented procedures may include TQC systems or PQC programs for net weight. Approximately 240 establishments that operate TQC systems and several hundred establishments that have PQC programs for net weight can continue to use those systems and programs that control the accuracy of scales. In other words, establishments will not have to change their practices for ensuring the accuracy of their scales to comply with this rule. The effect of this final rule on

the affected establishments will therefore not be significant.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking or packaging requirements on federally inspected meat and meat products or poultry products that are in addition to, or different than, those imposed under the FMIA and PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat or poultry products that are misbranded or adulterated under the FMIA or PPIA. States and local jurisdictions also may exercise concurrent jurisdiction, for the same purpose, over imported meat and poultry products that are not at an official establishment after the entry of such imported articles into the United States.

This final rule is not intended to have retroactive effect.

There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

Additional Public Notification

Public awareness of all stages of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce it and provide copies of this **Federal Register** publication in the weekly FSIS Constituent Update. FSIS communicates the Constituent Update by fax to over 300 organizations and individuals and makes it available on line through the FSIS web page located at <http://www.fsis.usda.gov>. The update provides information on FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other information that could affect or would be of interest to the Agency's constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer

interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, readers of this document may fax their requests to the Congressional and Public Affairs Office, at (202) 720-5704.

List of Subjects

9 CFR Part 317

Meat inspection, Reporting and recordkeeping requirements.

9 CFR Part 381

Poultry and poultry products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, FSIS is amending 9 CFR, chapter III, the Federal meat and poultry inspection regulations, 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.

2. Paragraph (b) of § 317.21 is revised as follows:

§ 317.21 Scales; testing of.

(a) * * *

(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.

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.

4. Paragraph (b) of § 381.121d is revised as follows:

§ 381.121d Scales; testing of.

(a) * * *

(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.

Done at Washington, DC, on October 10, 2001.

Thomas J. Billy,
Administrator.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AG77

List of Approved Spent Fuel Storage Casks: NAC-UMS Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the NAC-UMS Universal Storage System listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 2 to Certificate of Compliance Number 1015. Amendment No. 2 will add miscellaneous spent fuel related components to the approved contents list for the NAC-UMS Universal Storage System and change the required actions in response to a failure of the cask heat removal system. Several other minor administrative changes will be made, which are discussed in Section 12 of the Safety Evaluation Report. Specific changes will be made to Technical Specifications (TS) to permit the storage of these components and the other requested changes. Changes will also be made to Conditions 1b and 6 of the Certificate of Compliance.

DATES: The final rule is effective December 31, 2001, unless significant adverse comments are received by November 15, 2001. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-