

Rules and Regulations

Federal Register

Vol. 65, No. 196

Tuesday, October 10, 2000

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 391 and 590

[Docket No. 00-025F]

RIN 0583-AC74

Increases in Fees for Meat, Poultry, and Egg Products Inspection Services—Fiscal Year (FY) 2001

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is increasing the fees that it charges meat and poultry establishments, egg products plants, importers, and exporters for providing voluntary inspection services, overtime and holiday inspection services, identification services, certification services, and laboratory services. These increases in fees reflect the national and locality pay raise for Federal employees (proposed 3.7 percent effective January 2001) and inflation. The Agency will make the increases in fees effective October 8, 2000. At this time, FSIS is not proposing to amend the fee for the Accredited Laboratory Program.

EFFECTIVE DATE: October 8, 2000.

FOR FURTHER INFORMATION CONTACT: For information concerning policy issues, contact Daniel Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex, 300 12th Street, SW, Washington, DC 20250-3700, (202) 720-5627, fax number (202) 690-0486.

For information concerning fee development, contact Michael B. Zimmerer, Director, Financial Management Division, Office of Management, FSIS, U.S. Department of

Agriculture, Room 2130-S, 1400 Independence Avenue, SW., Washington, DC 20250-3700, (202) 720-3552.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) provide for mandatory Federal inspection of meat and poultry slaughter and processing at official establishments and of egg products at official plants. FSIS bears the cost of mandatory inspection. Establishments and plants pay for inspection services performed on holidays or on an overtime basis.

In addition, under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), FSIS provides a range of voluntary inspection, certification, and identification services to assist in the orderly marketing of various animal products and byproducts. These services include the certification of technical animal fats and the inspection of exotic animal products, such as antelope and elk. FSIS is required to recover the costs of voluntary inspection, certification, and identification services.

Under the Agricultural Marketing Act of 1946, FSIS also provides certain voluntary laboratory services that establishments and others may request the Agency to perform. Laboratory services are provided for four types of analytic testing: microbiological testing, residue chemistry tests, food composition tests, and pathology testing. FSIS must recover these costs.

Every year FSIS reviews the fees that it charges for providing overtime and holiday inspection services; voluntary inspection, identification, and certification services; and laboratory services. The Agency performs a cost analysis to determine whether the fees that it has established are adequate to recover the costs that it incurs in providing these services. In the Agency's analysis of projected costs for October 1, 2000 to September 30, 2001, the Agency has identified increases in the costs of these nonmandatory inspection services due specifically to the national and locality pay raise for Federal employees (proposed 3.7

percent effective January 2001) and inflation.

FSIS calculated the new fees by adding the projected increase in salaries and inflation for FY 2000 and FY 2001 to the actual cost of the services in FY 1999. The Agency calculated inflation to be 1.55% for FY 2000 and 1.90% for FY 2001. The Agency considered the costs that it will incur because of the pay raise in January 2001 and averaged its pay costs out over the entire FY 2001.

FSIS did not use the fees currently charged as a base for calculating the new fees for FY 2001 because the current fees are based on estimates of costs to the Agency for FY 1999 and FY 2000. The Agency now knows the actual cost of inspection services for FY 1999 and used the actual costs in calculating the new fees.

The current and new fees are listed by type of service in Table 1.

TABLE 1.—CURRENT AND NEW FEES—PER HOUR PER EMPLOYEE—BY TYPE OF SERVICE

Service	Previous rate	New rate
Base time	\$37.88	\$38.44
Overtime & holiday	39.76	41.00
Laboratory	58.52	60.04

The differing fee increase for each type of service is the result of the different amount that it costs FSIS to provide these three types of services. The differences in costs stem from various factors including different salary levels of the program employees who perform the services. See Table 2.

TABLE 2.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES

Base Time:	
Actual FY 1999 cost	\$35.52
Inflation and salary increases	2.91
Adjustment for divisibility by quarter hours01
Total	\$38.44
Overtime and Holiday Inspection Services:	
Actual FY 1999 cost	\$37.88
Inflation and salary increases	3.10
Adjustment for divisibility by quarter hours02
Total	\$41.00

TABLE 2.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES—Continued

Laboratory Services:	
Actual FY 1999 cost	\$55.50
Inflation and salary increases	4.54
Total	\$60.04

An increase in fees for egg products overtime and holiday inspection services recently became effective on July 30, 2000. However, FSIS is publishing a new fee because the Agency has moved to a FY basis for reviewing fees and is charging the same fee for meat, poultry, and egg products overtime and holiday inspection services. FSIS calculated the new fees based on the presumption that they would become effective at the beginning of FY 2001.

FSIS is exploring the possibility of proposing a three to five year plan of fee rate adjustments based on estimates of cost escalation.

The Agency must recover the actual cost of voluntary inspection services covered by this rule. These fee increases are essential to continued sound financial management of the Agency's costs. FSIS announces in its July 24, 2000 proposed rule (65 FR 45545) that it intended to implement the fee increases provided for in this final rule effective October 8. The Agency believes adequate notice has been given to affected parties. Accordingly, the Administrator has determined that these amendments should be effective less than 30 days after publication in the **Federal Register**. Therefore, the increases in fees will be effective October 8, 2000.

Proposed Rule and Comments

On July 24, 2000 FSIS published a proposed rule (65 FR 45545) increase the fees it charges for meat, poultry, and egg products voluntary inspection services. FSIS provided 30 days for public comment, ending on August 23, 2000.

The Agency received two comments from industry organizations opposing the increase in fees. The Agency addresses their specific objections.

Comment: The commenter stated that the fees increases, though moderate, are unnecessary because just one year ago FSIS imposed a 12.5% increase in voluntary program base rates and a 9% increase in overtime and holiday inspection services rates. Furthermore, these new rates are being proposed at a time when FSIS appropriations are at a

record high and HACCP—which is supposed to result in inspection cost savings—has been implemented.

Response: The Agency did increase inspection fees for meat and poultry in a final rule published last December 28, 1999 [64 FR 72492] and more recently for egg products overtime and holiday inspection services in a final rule published on July 20, 2000 [65 FR 44948]. The actual percentage of increases last December was 2.3% for base time meat and poultry voluntary inspection, 7.93% increase for meat and poultry overtime and holiday inspection services, and 15.02% increase for meat and poultry laboratory services. However, the new increase in fees represents the raise in inspection costs since the promulgation of the two previous fee increases.

FSIS appropriations do not cover voluntary inspection services or overtime and holiday inspection services. Any cost savings that might be realized through more effective use of inspection resources in HACCP do not translate into lower expenses for voluntary inspection services or overtime and holiday inspection services.

Comment: The commenter takes exception to FSIS exploring the possibility of proposing a three to five year plan of rate adjustments when the Agency should be realizing inspection cost savings.

Response: FSIS is merely announcing that it is exploring the possibility of proposing a three to five year plan of rate adjustments. The Agency would not introduce such a plan without formally proposing it through rulemaking procedures.

Comment: The commenter maintains that the Agency should reconsider its proposed increase in fees after addressing global issues like inspection resource allocation.

Response: The allocation of inspection resources does not have a direct effect on the cost of holiday and overtime inspection services or voluntary inspection services.

Comment: The commenter suggests that the Agency should provide a detailed explanation of its proposed fee increases to allow for meaningful comment.

Response: The agency believes that it has presented adequate information to explain how the new increases in fees were arrived at.

Summary of the Final Rule

FSIS is amending 9 CFR 391.2 to increase the base time fee for providing meat and poultry voluntary inspection, identification, and certification services

from \$37.88 per hour per employee to \$38.44 per hour per program employee. FSIS is also amending §§ 391.3, 590.126, and 590.128(a) to increase the rate for providing meat, poultry, and egg products overtime and holiday inspection services from \$39.76 per hour per employee to \$41.00 per hour per employee. In addition, FSIS is amending § 391.4 to increase the rate for laboratory services from \$58.52 per hour per employee to \$60.04 per hour per employee.

Executive Order 12866 and Regulatory Flexibility Act

Because this final rule has been determined to be not significant, the Office of Management and Budget (OMB) did not review it under Executive Order 12866.

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

Small establishments and plants should not be affected adversely by the increases in fees because the new fee increases provided for reflect only a small increase in the costs currently borne by those entities that choose to use certain inspection services. These inspection services are generally sought by larger establishments and plants because of larger production volume, greater complexity and diversity in the products they produce, and the need for on-time delivery of large volumes of product by their clients—generally large commercial or institutional establishments.

Moreover, smaller establishments and plants are unlikely to use a significant amount of overtime and holiday inspection services. Establishments and plants that seek FSIS services are likely to have calculated that the incremental costs of overtime and holiday inspection services would be less than the incremental expected benefits of additional revenues they would realize from additional production.

Economic Effects

Under the new fees, the Agency expects to collect an estimated \$106.2 million in revenues for FY 2001, compared to \$103 million under the current fee structure.

The costs that industry would experience by the raise in fees are similar to other increases the industry faces due to inflation and wage increases.

The total volume of meat and poultry slaughtered under Federal inspection in 1998 was about 81 billion pounds. The

total volume of U.S. egg product production in 1998 was about 3.2 billion pounds. The increase in cost per pound of product associated with these proposed fees increases is \$.00004. Even in competitive industries like meat, poultry, and egg products, this amount of increase in costs would have an insignificant impact on profits and prices.

The industry is likely to pass through a significant portion of the fee increase to consumers because of the inelastic nature of the demand curve facing these firms. Research has shown that consumers are unlikely to reduce demand significantly for meat and poultry products, including egg products, when prices increase. Huang estimates that demand would fall by .36 percent for a one percent increase in price (Huang, Kao S., A Complete System of U.S. Demand for Food, USDA/ERS Technical Bulletin No. 1821, 1993, p.24). Because of the inelastic nature of demand and the competitive nature of the industry, individual firms are not likely to experience any change in market share to response to an increase in inspection fees.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule: (1) Preempts 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. However, the administrative procedures specified in 9 CFR 306.5, 381.35, and 590.320 through 590.370, respectively, must be exhausted before any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under FMIA, PPIA, or EPIA.

Additional Public Notification

Public awareness of all segments 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 and provide copies of this **Federal Register** publication in the *FSIS Constituent Update*. FSIS provides a weekly *FSIS Constituent Update* via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at <http://www.fsis.usda.gov>. The update is used to provide information regarding FSIS policies, procedures, regulations,

Federal Register notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience than would be otherwise possible. For more information or to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720-5704.

List of Subjects

9 CFR Part 391

Fees and charges, Government employees, Meat inspection, Poultry products.

9 CFR Part 590

Eggs and egg products, Exports, Food labeling, Imports.

For the reasons set forth in the preamble, FSIS is amending 9 CFR chapter III as follows:

PART 391—FEES AND CHARGES FOR INSPECTION AND LABORATORY ACCREDITATION

1. The authority citation for part 391 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 394, 1622 and 1624; 21 U.S.C. 451 *et. seq.*; 21 U.S.C. 601-695; 7 CFR 2.18 and 2.53.

2. Sections 391.2, 391.3, and 391.4 are revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 is \$38.44 per hour per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5 and 381.38 is \$41.00 per hour per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 is \$60.44 per hour per program employee.

PART 590—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

3. The authority citation for part 590 continues to read as follows:

Authority: 21 U.S.C. 1031-1056.

4. Section 590.126 is revised to read as follows:

§ 590.126 Overtime inspection service.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of \$41.00.

5. In § 590.128, paragraph (a) is revised to read as follows:

§ 590.128 Holiday inspection service.

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of \$41.00.

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Done at Washington, DC, on: October 3, 2000.

Thomas J. Billy,
Administrator.

[FR Doc. 00-25945 Filed 10-4-00; 3:37 pm]

BILLING CODE 3410-DM-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563b and 575

[No. 2000-56]

RIN 1550-AB24

Repurchases of Stock by Recently Converted Savings Associations, Mutual Holding Company Dividend Waivers, Gramm-Leach-Bliley Act Changes

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Interim final rule; extension of comment period.

SUMMARY: The Office of Thrift Supervision (OTS) is extending the