

Done in Washington, DC, this 14th day of July 2000.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 590

[Docket No. 99-012F]

RIN 0583-AC71

Fee Increase for Egg Products Inspection—Year 2000

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 egg product plants for providing overtime and holiday inspection services. These fee increases reflect the total cost of inspection, including the national and locality pay raise for Federal employees, inflation, applicable overhead costs, and other inspection costs.

EFFECTIVE DATE: July 30, 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, (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, (202) 720-3552.

SUPPLEMENTARY INFORMATION:

Background

The Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*) provides for the inspection of egg products by Federal inspectors at official plants. Federal inspection protects the health and welfare of consumers by ensuring that egg products are wholesome, not adulterated, and properly labeled and packaged.

The Agricultural Marketing Service (AMS) was responsible for

administering the EPIA from its enactment in 1970 until 1995. At that time, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354; 7 U.S.C. 6981) delegated food safety responsibilities to the Under Secretary of Agriculture for Food Safety. The Department subsequently revised its regulations to transfer egg product inspection functions under the EPIA to FSIS. AMS retained only those functions related to their shell egg surveillance program. The regulations governing the inspection of eggs and egg products (9 CFR Part 590) were transferred to Part 9 of the Code of Federal Regulations on December 31, 1998 (63 FR 72352).

FSIS bears the cost of mandatory inspection. However, the EPIA specifies that plants pay for overtime and holiday inspection services (21 U.S.C. 1053). There has not been a change in overtime and holiday fees for egg products inspection services since the transfer of program functions from AMS to FSIS in May 1995. AMS established and implemented the current fees in November 1994. These fees reflect only the direct costs of inspection at that time and are insufficient to recover FSIS's current costs for delivery of inspection service.

In order to recover the full cost of inspection, FSIS is increasing its rates to charge overtime and holiday fees for egg products inspection services that are the same as overtime and holiday fees for meat and poultry inspection. The Agency is making the fees for meat, poultry, and egg inspection services the same because these services are indistinguishable from a cost standpoint. Although these fee increases are large, they reflect the total cost of inspection, including national and locality pay raises for Federal employees, inflation, applicable overhead costs, and other inspection costs. The current and new FSIS overtime and holiday inspection services fees for egg products plants are reported in Table 1.

TABLE 1.—CURRENT AND NEW FEES FOR OVERTIME AND HOLIDAY INSPECTION SERVICES FOR EGG PRODUCTS PLANTS

| Service (\$/hr.) | Current | New |
|------------------------------------|---------|-------|
| Overtime Inspection Services | 26.16 | 39.76 |
| Holiday Inspection Services | 17.44 | 39.76 |

Table 2 shows salary, overhead, and other inspection costs for Fiscal Year

(FY) 1998, and the projected added inflation and Federal pay increases for FY 1999 and FY 2000 used to obtain the total amount from which the new rates are derived. These costs are the total costs for meat, poultry, and egg products inspection services. Overhead costs are the indirect costs for administration and management associated with providing inspection services. Other inspection costs include direct costs for travel and laboratory support costs associated with inspection services.

TABLE 2.—COMPONENTS OF FEE INCREASE—AGENCY TOTAL INSPECTION COSTS

| Component | \$Thousand | Percent |
|--|----------------|------------|
| Direct Salaries | 57,242 | 56.86 |
| Inflation and Pay Increase | 7,951 | 7.90 |
| Overhead | 22,197 | 22.05 |
| Other Inspection Costs (Travel and Laboratory Support) | 13,282 | 13.19 |
| Total | 100,672 | 100 |

Beginning with the Federal fiscal year 2001, FSIS intends to annually review its fees for overtime and holiday egg products inspection services, as well as fees for meat and poultry inspection services, to allow for necessary adjustments on a fiscal year basis. The fiscal year approach is an accepted accounting principle that will facilitate more consistent and timely proposals to adjust both fees and assist the Agency and affected industry in planning for these fee adjustments. The Agency intends to explore the possibility of publishing a three to five year plan of fee rate adjustments based on estimates of cost escalation.

FSIS loses from \$80,000 to \$100,000 in revenue for every two-week period that the final rule is delayed in being published. To recover the increased costs in an expeditious manner, 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 July 30, 2000.

Proposed Rule and Comments

On March 3, 2000, FSIS published a proposed rule (65 FR 11486) to increase the fees that it charges egg products plants for providing overtime and holiday inspection services. FSIS initially provided 60 days for public comment, ending on May 2, 2000. In response to a request for more time to

comment to allow for the development of supporting data related to the impact of the proposed rule, FSIS extended the comment period for 30 days, until June 1, 2000. The Agency received no additional comments during the extended comment period.

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

Comment: Commenters opposed the increase in fees because it is a significant increase.

Response: The Agency agrees that the increase in overtime and holiday inspection fees for egg products inspection services is significant. However, as the Agency stated in the proposed rule, the Agency has not increased these fees for several years despite the escalation of the cost of performing inspection. FSIS is required to recover the full costs of overtime and holiday inspection services.

Comment: A commenter stated that the increase in fees would seriously damage the profitability of most egg processing firms operating on a contractual basis of sales with its customers for FY 2000.

Response: The commenter included no data to characterize the extent of the perceived impact. The increase in fees provided for by this final rule will not be effective until late in FY 2000. Therefore, any impact on the profitability of egg processing firms operating on a contractual basis of sales with its customers for FY 2000 should be minimized. Regardless, as was mentioned earlier, FSIS is required to recover the full costs of overtime and holiday inspection services.

Comment: One commenter asserted that nearly half of the fee is administrative expense, which, the commenter stated, is an unacceptable Federal administrative inefficiency.

Response: "Overhead" accounts for 22.05% of the cost of the fees and the "Other Inspection Costs" category makes up 13.19% of the cost of the fees. "Other Inspection Costs" include expenditures for travel and laboratory support, both of which are a necessary expense for inspection services.

Comment: A commenter disagreed with the Agency's assessment that the fee increases will amount to a \$0.0003 increase in cost per pound of product. The commenter calculated that costs per pound will be 33% greater than the Agency estimated.

Response: Since the commenter did not submit any data to verify or support its claim, the Agency has no reason to change its original estimate.

Comment: One commenter recommended phasing in the fee increases over a period of a minimum of three to five years.

Response: FSIS cannot phase-in the cost increase because it is obliged by law to recover the full cost of providing overtime and holiday inspection services. The Agency currently charges meat and poultry establishments the same fees for overtime and holiday inspection services that are being required for egg products plants by this rule. The Agency derived its new fee by considering costs for meat, poultry, and egg products inspection services.

Comment: A commenter stated that the yearly increase of costs of \$13,700 per firm, "would be devastating to many small, family-owned poultry operations."

Response: FSIS had estimated in the proposed rule that the proposed overtime and holiday inspection services fee increases would result in an increase in costs per firm of \$13,700 for FY 2000. The \$13,700 figure is an average cost estimate. As mentioned later in the preamble, small plants in the egg products industry will not be affected adversely by the fee increases because these increases represent only a small increase in the costs currently borne by those plants that elect to use overtime and holiday services. Some firms may not avail themselves of overtime or holiday inspection services or use them only a very limited basis. Therefore, their additional expenses would be negligible.

Summary of the Final Rule

FSIS is amending § 590.126 of 9 CFR to increase the fee for providing overtime inspection services from \$26.16 per hour per program employee to \$39.76 per hour per program employee. For holiday services, FSIS is amending § 590.128(a) to increase the fee from \$17.44 per hour per program employee to \$39.76 per hour per program employee.

The Agricultural Marketing Act of 1946, as amended, provides the authority for collection of fees approximately equal to the cost of voluntary egg grading programs. AMS retains the responsibility of changing the fees set out in the regulations governing the grading of eggs (7 CFR part 55). FSIS is amending 9 CFR 590.130 to delete the reference to regulations governing the collection of fees associated with the voluntary grading of eggs.

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 action will 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. There are 73 egg products firms, and all but 5 would be classified as small on the basis of the Small Business Administration size definitions (having under 100 employees in a stand-alone establishment or under 500 employees in an in-line establishment).

Small plants in the egg products industry will not be affected adversely by the fee increases provided for because these increases reflect only a small increase in the costs currently borne by those entities that elect to use overtime and holiday inspection services. These holiday and overtime inspection services are generally sought by plants with 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. Plants with smaller production are unlikely to use a significant amount of overtime and holiday inspection services. Plants seeking 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 would expect to collect nearly \$2.5 million in revenues in a year, compared to the \$1.5 million under current fees. The total volume of U.S. egg product production in 1998 was 3.2 billion pounds. The increase in cost per pound of product associated with the overtime and holiday fee increase is \$0.0003. Even in a competitive industry like egg products, this amount of increase in annual production costs, if firms choose to use the service, would have an insignificant impact on profits and prices. The increase in costs per firm would be about \$13,700. On average, this would not be a significant increase in annual production costs given the volume of production. Egg product

firms produce an average of 44.3 million pounds of product annually.

TABLE 3.—REVENUES FOR INSPECTION SERVICES [In thousands]

| Current | Proposed |
|---------------|----------|
| \$1,482 | \$2,460 |

The industry is also 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 significantly reduce demand 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 this inelastic nature of demand and the competitive nature of the industry, individual firms are not likely to experience any change in market share due to an increase in inspection fees.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This 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 590.320 through 590.370 must be exhausted prior to 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 the 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 proposed 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 in 9 CFR Part 590

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

For the reasons stated in the preamble, 9 CFR part 590 is amended as follows:

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

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

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

2. Sections 590.126 and 590.128(a) are 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 \$39.76.

§ 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 \$39.76.

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§ 590.130 [Amended]

3. Section 590.130 is amended by removing the last sentence of the section.

Done in Washington, DC, on: July 13, 2000. Thomas J. Billy, Administrator. [FR Doc. 00-18254 Filed 7-19-00; 8:45 am] BILLING CODE 3410-DM-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700 and 702

Prompt Corrective Action; Risk-Based Net Worth Requirement

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: In 1998, the Federal Credit Union Act was amended to require NCUA to adopt a system of prompt corrective action for federally-insured credit unions. As a separate component of that system, NCUA is required to define credit unions that are "complex" by reason of their portfolio of assets and liabilities and to develop a risk-based net worth requirement to apply to such credit unions in the "well capitalized" or "adequately capitalized" statutory net worth categories. The NCUA Board issued a proposed rule consisting of a three-step process for defining a "complex" credit union and for determining its risk-based net worth requirement under either of two methods. As revised to reflect public comments and to incorporate other improvements, the final rule narrows the definition of "complex" by minimum asset size and minimum risk-based net worth requirement; modifies the composition of certain risk portfolios; adjusts certain corresponding thresholds and risk weightings; and adds a risk mitigation credit.

DATES: Effective January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Technical: Herbert S. Yolles, Deputy Director, Office of Examination and Insurance, telephone 703/518-6360; Legal: Steven W. Widerman, Trial Attorney, Office of General Counsel, telephone 703/518-6557, at National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

SUPPLEMENTARY INFORMATION:

A. Background

1. The Credit Union Membership Access Act

On August 7, 1998, Congress enacted the Credit Union Membership Access Act, Pub. L. No. 105-219, 112 Stat. 913 (1998). Section 301 of the statute added a new section 216 to the Federal Credit