

# Proposed Rules

Federal Register

Vol. 68, No. 38

Wednesday, February 26, 2003

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 391, 590, and 592

[Docket No. 02-034P]

RIN 0583-AC94

#### Changes in Fees for Meat, Poultry, and Egg Products Inspection Services—Calendar Year (CY) 2003

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

**ACTION:** Proposed rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to change 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. The Agency is proposing to raise the fees for voluntary base time and holiday and overtime inspection services. These increases in fees reflect, among other factors, the national and locality pay raise for Federal employees (proposed 4.1 percent increase effective January 2003) and inflation. FSIS is also proposing to decrease the fee for laboratory services because of greater efficiencies realized. The Agency is also proposing to decrease the annual fee for the Accredited Laboratory Program from \$1,500.00 to \$1,000.00.

**DATES:** The Agency must receive comments by March 28, 2003.

**ADDRESSES:** Submit one original and two copies of written comments to FSIS Docket Clerk, Docket #02-034P, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250-3700. All comments submitted in response to this proposal will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m.,

Monday through Friday, except Federal holidays.

**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 fees, contact Raymond M. Saunders, Director, Budget Division, Office of Management, FSIS, U.S. Department of Agriculture, 2158 South Building, 1400 Independence Avenue, SW, Washington, DC 20250-3700, (202) 720-3367, fax (202)690-4155.

#### 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 livestock and poultry slaughter at official establishments, and meat and poultry processing at official establishments and of egg products processing 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.*)(AMA), 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 AMA, 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.

Non-Federal analytical laboratories are qualified under the Accredited Laboratory Program to conduct analyses of official meat and poultry samples. The Food, Agriculture, Conservation, and Trade Act of 1990, as amended, mandates laboratory accreditation fees that cover the costs of the Accredited Laboratory Program. The same Act mandates annual payment on the anniversary date of each accreditation.

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 January 12, 2003 to January 10, 2004, the Agency has identified increases in the costs of voluntary base time inspection services and overtime and holiday inspection services. FSIS has also identified decreases in the costs of laboratory services because of greater efficiencies. The Agency is also proposing to decrease the annual fee for participants in the Accredited Laboratory Program from \$1,500.00 to \$1,000.00 because of a surplus of accumulated funds.

FSIS calculated the proposed fees by adding the projected increase in salaries and inflation for 2003 to the actual cost of the services in 2002. The national and locality pay raise for Federal employees is proposed to be a 4.1 percent increase effective January 2003. The Agency calculated inflation to be 2.1% for 2003. Section 10703 of the 2002 Farm bill authorizes the Secretary of Agriculture to set the hourly rate of compensation for FSIS employees exempt from Fair Labor Standards Act (*i.e.*, veterinarians) working in establishments subject to the FMIA and PPIA at one and one-half times the employee's hourly rate of base pay. FSIS has adjusted the overtime fees to cover true time-and-a-half for all in-plant employees doing overtime work. Previously, veterinarians were limited to the time-and-a-half rate paid to employees at grade level GS-10, step 1. Finally, because of improvements in accessing data from the accounting

system, the Agency has been able to estimate the employee benefits ascribable to overtime work and included these in the fee calculation. These costs were formerly included in the base rate.

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

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

Service	Previous rate	Proposed rate
Base time .....	\$42.64	\$43.64
Overtime & holiday .....	44.40	50.04
Laboratory .....	68.32	61.80

The differing proposed 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

<b>Base Time:</b>	
Actual CY 2002 cost .....	\$22.54
Pay raise (4.1%) .....	0.92
Benefits .....	6.10
Travel, operating & lab costs, & inflation .....	2.26
Program overhead .....	4.27
Agency overhead .....	7.03
Allowance for bad debt .....	0.52
<b>Total .....</b>	<b>\$43.64</b>
<b>Overtime and Holiday Inspection Services:</b>	
Actual CY 2002 cost .....	30.10
Time & a half for veterinarians .....	2.73
Pay raise (4.1%) .....	1.35
Benefits .....	1.71
Travel, operating & lab costs, & inflation .....	2.26
Program overhead .....	4.27
Agency overhead .....	7.03
Allowance for bad debt .....	0.60
Adjustment for divisibility into quarter hours .....	(0.01)
<b>Total .....</b>	<b>50.04</b>
<b>Laboratory Services:</b>	
FY 2001 hourly salaries & benefits .....	32.05
Pay raises in 2002 & 2003 .....	2.85
Travel & operating costs for 2002 & 2003 .....	5.72
Program overhead .....	14.13
Agency overhead .....	6.32
Allowance for bad debt .....	0.74
Adjustment for divisibility by quarter hours .....	(0.01)

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

Total .....	61.80
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The Agency must recover the actual cost of voluntary inspection services covered by this proposed rule. These fee increases are essential for the continued sound financial management of the Agency's costs. FSIS plans to make the final rule effective as soon as possible. To expeditiously make this rulemaking effective so that the increased costs can be recovered in a timely fashion, and because the Agency has previously announced (65 FR 60093) that it would be reviewing these fees on an annual basis, the Administrator has determined that 30 days for public comment is sufficient.

**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 proposed 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.

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 that they would realize from additional production.

**Economic Effects**

As a result of the proposed fees, the Agency expects to collect an estimated \$119 million in revenues for 2003, compared to \$101 million under the current fee structure. The costs that industry would experience by the raise in fees are similar to other increases that the industry faces because of inflation and wage increases.

The total volume of meat and poultry slaughtered under Federal inspection in 2001 was about 83 billion pounds (Livestock, Dairy, Meat, and Poultry Outlook Report, Economic Research Service, USDA, August 15, 2002). The total volume of U.S. egg product production in 2001 was about 2.319 billion pounds (2002 Agriculture Statistics, USDA). The increase in cost per pound of product associated with the proposed fees increases is, in general, \$.0002. 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 proposed fee increases 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 in response to an increase in inspection fees.

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed 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 590.300 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 the 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 proposed rule, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. 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 Listserv

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 the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience than would otherwise be possible.

For more information contact the Congressional and Public Affairs Office, at (202) 720-9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at <http://www.fsis.usda.gov/oa/update/update.htm>. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

#### 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.

##### 9 CFR Part 592

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

For the reasons set forth in the preamble, FSIS proposes to amend 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 \$43.64 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 \$50.04 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 \$61.80 per hour per program employee.

3. In § 391.5, paragraph (a) is revised to read as follows:

##### § 391.5 Laboratory accreditation fees.

(a) The annual fee for the initial accreditation and maintenance of accreditation provided pursuant to §§ 318.21 and 381.153 shall be \$1,000 per accreditation.

\* \* \* \* \*

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

4. The authority citation for Part 590 continues to read as follows:

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

5. 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 \$50.04.

6. 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 \$50.04.

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#### PART 592—VOLUNTARY INSPECTION OF EGG PRODUCTS

7. The authority citation for Part 592 continues to read as follows:

**Authority:** 7 U.S.C. 1621-1627.

8. Sections 592.2, 592.3, and 592.4 are revised to read as follows:

##### § 592.2 Base time rate.

The base time rate for voluntary inspection services of egg products is \$43.64 per hour per program employee.

##### § 592.3 Overtime rate.

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 \$50.04.

##### § 592.4 Holiday rate.

When an official plant requires voluntary 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 \$50.04.

Done at Washington, DC, on: February 20, 2003.

Linda M. Swacina,

Associate Administrator.

[FR Doc. 03-4393 Filed 2-25-03; 8:45 am]

BILLING CODE 3410-DM-P

#### NATIONAL CREDIT UNION ADMINISTRATION

##### 12 CFR Part 709

#### Treatment of Swap Agreements in Liquidation or Conservatorship

**AGENCY:** National Credit Union Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The National Credit Union Administration (NCUA) is proposing to amend its involuntary liquidation regulation to designate swap agreements (swaps) as qualified financial contracts (QFCs). Treatment of swaps as QFCs will limit swap counterparty exposure when a Federally-insured credit union is placed into involuntary liquidation or a conservatorship and thereby encourage entities to engage in swaps with Federally-insured credit unions. Treatment of swaps as QFCs will also help preserve market stability.

**DATES:** Comments must be received on or before March 28, 2003.

**ADDRESSES:** Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. You are encouraged to fax comments to (703) 518-6319 or e-mail comments to [regcomments@ncua.gov](mailto:regcomments@ncua.gov) instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

**FOR FURTHER INFORMATION CONTACT:** Paul Peterson, Staff Attorney, Office of