

Proposed Rules

Federal Register

Vol. 74, No. 194

Thursday, October 8, 2009

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

[FDMS Docket Number FSIS–2006–0025]

RIN 0583–AD40

Changes in Fees for Meat, Poultry, and Egg Products Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend its regulations to establish formulas for calculating the fees that it charges meat and poultry establishments, egg products plants, importers, and exporters for providing voluntary inspection, identification and certification services, overtime and holiday inspection services, and laboratory services. If the rule becomes effective, FSIS will calculate these fees based on the formulas. For future fiscal years, FSIS will calculate the fees on an annual basis and apply them at the start of the fiscal year. The Agency is also proposing to increase the codified flat annual fee for its Accredited Laboratory Program.

DATES: The Agency must receive comments by November 9, 2009.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by either 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. Go to <http://www.regulations.gov>. Follow the online instructions at that site for submitting comments.
- *Mail, including floppy disks or CD-ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, Room 2–2127, George Washington

Carver Center, 5601 Sunnyside Avenue, Mailstop 5474, Beltsville, MD 20705–5474.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2006–0025. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

Docket: For access to background documents or to comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

All comments submitted in response to this proposal, as well as 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.

FOR FURTHER INFORMATION CONTACT: For further information concerning policy issues contact Rachel Edelstein, Director, Policy Issuances Division, Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, Room 6065 South Building, 1400 Independence Ave, SW., Washington, DC 20250–3700; telephone (202) 720–0399, fax (202) 690–0486.

For further information concerning fees contact Deborah Patrick, Director, Budget Division, Office of Management, FSIS, U.S. Department of Agriculture, Room 2159 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700; telephone (202) 720–2912, fax (202) 720–5399.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) provide for mandatory Federal inspection of livestock and poultry slaughtered at official establishments and of meat and poultry processed at official establishments, respectively. The Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) provides for mandatory inspection of egg products processing at official plants. FSIS bears the cost of mandatory inspection provided during non-overtime and non-holiday hours of operation. Official

establishments and egg products plants pay for inspection services performed on holidays or on an overtime basis.

Under the Agricultural Marketing Act of 1946 (AMA), 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. The AMA provides that FSIS may prescribe the collection of fees to recover the costs of the voluntary inspection, certification, and identification services it provides.

Also under the AMA, FSIS 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. Again, the AMA provides that FSIS may collect fees to recover the costs of providing these services.

FSIS also accredits non-Federal analytical laboratories under its Accredited Laboratory Program. Such accreditation allows laboratories to conduct analyses of official meat and poultry samples. The Food, Agriculture, Conservation, and Trade Act of 1990, as amended, mandates that laboratory accreditation fees cover the costs of the Accredited Laboratory Program. This same Act mandates an annual payment of an accreditation fee on the anniversary date of each accreditation.

Historically, FSIS amended its regulations annually to change the fees it charges establishments for providing overtime and holiday inspection services; voluntary inspection, certification, and identification services; and laboratory services and accreditation. Because of the length of the rulemaking process, each year the fiscal year would partially elapse before the Agency could publish a final rule to amend its fees. As a result, the Agency was unable to recover the full cost of the services it provided, which represented a considerable fiscal loss to FSIS. In 2006, in an effort to address the delays that resulted from the rulemaking process, FSIS amended its regulations to provide for multiple annual fee

increases in one action (71 FR 2135). With the rulemaking to increase fees for 2006–2008, FSIS established criteria for determining the fee increases on a multi-year basis. While this solution enabled the Agency to collect an increased fee each year, estimates used to set out the annual rates were imprecise and may well have left the Agency collecting too little in fees to fully cover its costs. The difference between the established rate and current economic conditions will likely be small during the first year of a multi-year rule but could well become large during the later years.

The Agency performed a cost analysis in 2008 (at the same time that the new fees analysis was performed) to determine whether the fees established were adequate to recover the costs that it incurred in providing these services. On the basis of this analysis, FSIS determined the necessary fees for FY 2010 and established the proposed formulas to determine the fees for FY 2010 and subsequent fiscal years.

Proposed Formulas

With this rulemaking, FSIS is proposing to amend its regulations to codify formulas in 9 CFR parts 391, 590, and 592 that FSIS will use to calculate and apply annual fees starting with the effective date of this rule and for subsequent fiscal years. FSIS intends to announce the actual annual fees in **Federal Register** notices prior to the start of each fiscal year.

Salary, hours, and all rates used in the formulas will be based on the prior fiscal year's actual costs and hours. In 9 CFR 391.2 and 592.510, FSIS is proposing the following formula to calculate the base time rate per hour per program employee: *Base Time Rate* = Office of Field Operations (OFO) plus Office of International Affairs (OIA) inspection program personnel salaries paid divided by regular hours multiplied by the next year's percentage of cost of living increase (e.g., pay raise of 2.9% for ¼ of FY 2008 + 3.2% for ¾ of FY 2008), plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus an allowance for bad debt.

For the 2010 base time rate per hour per program employee, the calculation will look like this: [2008 Direct Pay divided by Total Direct Hours (\$447,373,444/17,417,642)] = \$25.69 * 2.175% (2009 Cost of Living) = \$26.25 * 3.125% (2010 Cost of Living) = \$27.07 + \$6.83 (benefits rate) + \$16.55 (travel and operating rate) + \$9.91 (overhead rate) + \$.02 (bad debt allowance rate) = \$51.38 (rounded to \$51.36; rounding is done to reflect billable quarters).

In 9 CFR 391.3, 590.126 and, 592.520 and 592.530, FSIS is proposing to establish the following formulas for overtime and holiday rates per hour per program employee: *Overtime* = Salary component of Base Time Rate (OFO plus OIA inspection program personnel salaries paid divided by regular hours multiplied by the next year's percentage of cost of living increase) multiplied by 1.5 plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus an allowance for bad debt.

For the 2010 overtime rate per hour per program employee, the calculation will look like this: \$27.07 * 1.5 (Time and one half) = \$40.60 + \$6.83 + \$16.55 + \$9.91 + \$.02 = \$64.91 (rounded to \$64.88).

Holiday Rate = Salary component of base time rate multiplied by 2, plus benefits rate, plus the travel and operating rate, plus the overhead rate, plus an allowance for bad debt.

For the 2010 holiday rate per hour per program employee, the calculation will look like this: \$27.07 * 2 (Double time) = \$54.14 + \$6.83 + \$16.55 + \$9.91 + \$.02 = \$78.44.

In 9 CFR 391.4, FSIS is proposing the following formula for the laboratory services rate per hour per program employee: *Laboratory Salary Rate* = Office of Public Health Science (OPHS) salaries paid divided by OPHS Hours worked, multiplied by the next calendar year's percentage cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus an allowance for bad debt.

For the 2010 holiday salary per hour per program employee, the calculation will look like this: [2008 Total OPHS Direct Pay/Total OPHS hours (21,312,832/550,424)] = \$38.72 * 2.175% (2009 Cost of Living) = \$39.56 * 3.125% (2010 Cost of Living) = \$40.80 + \$6.83 + \$16.55 + \$9.91 + \$.02 = \$65.11 (rounded to \$65.08).

The formulas are based on the prior fiscal year's actual costs and cost of living increases and percentage of inflation factors from the economic assumptions in the Office of Management and Budget (OMB) Memorandum M–08–13, "Update to Civilian Position Full Fringe Benefit Cost Factor, Federal Pay Raise Assumptions, and Inflation Factors used in OMB Circular A–76, Performance of Commercial Activities" Memorandum M–08–13, dated March 11, 2008, which is available at the following link: <http://www.whitehouse.gov/omb/assets/omb/memoranda/fy2008/m08-13.pdf>. Rather than codify a reference to OMB Memorandum M–08–13 in the proposed rule, FSIS intends to use the economic factors in the memo for calculating the

fees until new economic assumptions are issued in a new OMB Memorandum in the future.

As is proposed in §§ 391.2 and 592.510, FSIS intends to derive the components of proposed formulas, using previous fiscal year actual costs, as follows:

Benefits Rate: Direct benefits costs multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

For the 2010 benefits rate per hour per program employee, the calculation will look like this: [2008 Direct Benefits/ (Total Direct hours + Total OT hours + Total Holiday hours) (\$130,744,894/20,164,116)] = \$6.48 * 2.175% (2009 Cost of Living) = \$6.62 * 3.125% (2009 Cost of Living) = \$6.83.

Travel and Operating Rate: Total direct travel and operating costs multiplied by the percentage of inflation.

For the 2010 travel and operating rate per hour per program employee, the calculation will look like this: [2008 Total Direct Travel and Operating Costs/ (Total Direct hours + Total OT hours + Total Holiday hours) (17,489,892/20,164,116)] = \$.87 * 2.00% (2009 Inflation) = \$.89 * 2.00% (2010 Inflation) = \$.91.

Overhead Rate: All indirect costs plus the average information technology (IT) costs over the previous two years in the Public Health Data Communication Infrastructure System Fund plus the Office of Management Program cost in the Reimbursable and Voluntary Funds plus provision for the operating balance less any Greenbook costs (i.e., costs of USDA support services prorated to the service component for which fees are charged) that are not related to food inspection, divided by total direct hours (regular, overtime, and holiday) worked across all funds, multiplied by the percentage of inflation.

For the 2010 the overhead rate per hour per program employee, the calculation will look like this: [2008 Total Overhead/ (Total Direct hours + Total OT hours + Total Holiday hours) (320,820,057/20,164,116)] = \$15.91 * 2.00% (2009 Inflation) = \$16.23 * 2.00% (2010 Inflation) = \$16.55.

Allowance for Bad Debt Rate = Total allowance for bad debt (for plants and establishments that declare bankruptcy) divided by total direct hours (regular, overtime, and holiday) worked.

For the 2010 allowance for bad debt rate per hour per program employee, the calculation will look like this: [2008

Total Bad Debt/Total Direct hours + Total OT hours + Total Holiday hours) (\$325,481/20,164,116)] = \$.02 (for 2009 and after).

As is noted above, the proposed formulas reflect that the cost of providing inspection services includes both direct and overhead costs. Overhead costs include the cost of program and Agency activities that support the food inspection services provided by the industry. Overhead expenditures are allocated across the Agency for each direct hour of inspection. Direct costs include the cost of salaries, employee benefits, travel and operating costs. 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 has included these in the fee calculation.

Section 10703 of the 2002 Farm Bill authorized the Secretary of Agriculture to set the hourly rate of compensation for FSIS employees exempt from the Fair Labor Standards Act (*i.e.*, veterinarians) who work in establishments subject to the FMIA and PPIA at one and one-half times the employee's hourly rate of base pay. In FSIS's January 13, 2006, final rule on fees, FSIS adjusted its overtime fees to reflect these costs. Previously, veterinarians were limited to the time and a half rate paid to employees at grade level GS-10, step 1. This proposed rule continues to provide overtime rates at one and one-half times the employee's hourly rate of base pay.

In this rule, FSIS is proposing to differentiate the holiday rate from the overtime rate in future years in order to collect the full expenditure of providing services on holidays. FSIS inspectors are paid double time for holiday work, while the current overtime rate only accounts for time and a half. Therefore, FSIS is proposing a holiday rate of two

times the employee's hourly rate of base pay.

Laboratory Accreditation Fee

The Food, Agriculture, Conservation, and Trade Act of 1990, as amended, mandates that laboratory accreditation fees cover the costs of the Accredited Laboratory Program. This same Act mandates an annual payment of an accreditation fee on the anniversary date of each accreditation. Because these fees are fixed amounts and do not fluctuate with economic conditions, FSIS is not proposing a formula for these fees. FSIS will propose to change the codified laboratory accreditation fees through future rulemaking when necessary.

FSIS needs to raise its fees for the Accredited Laboratory Program to cover its increased direct overhead costs, including those for salary increases, employee benefits, inflation, and bad debt and to maintain an adequate operating reserve. Furthermore, FSIS must maintain a "carryover" amount each year as a reserve and uses it to cover the contractual costs that the Accredited Laboratory Program must pay at the beginning of each fiscal year. The proposed increases are also necessary to cover salaries and other operating expenses during the first two to three months of the fiscal year. Less than 5% of the program's income is received during the first two months of a fiscal year. Approximately 75% of the program's income is received in late December and early January; the remainder of the program's income is distributed about evenly across the rest of the fiscal year. Maintaining an adequate reserve is therefore essential for the Accredited Laboratory Program to be fully functional during the first quarter of any fiscal year.

FSIS is proposing to amend 9 CFR 391.5 to keep the laboratory accreditation fee at \$4,500 for FY 2009, 2010, and 2011 and increase it to \$5,000 for FY 2012 and FY 2013. These adjustments are necessary to recover

FSIS costs for providing these accreditation services, including maintaining an adequate reserve. The amount of the accreditation fee each year is based on the number of expected new and renewal accreditations, the anticipated costs directly related to the accreditation process, and the estimated reserve from previous years. These fees are set based on FSIS's best projections of what it will cost the Agency to provide these services in fiscal years 2010 through 2013.

Projected Fees

The differing proposed fee increases for each type of service are the result of the different amounts that it costs FSIS to provide these four types of services. The differences in costs stem from various factors, including the different salary levels of the program employees who perform the services.

In the Agency's analysis of projected costs, set forth in Table 2, the Agency has identified the bases for the fiscal year 2010 increases in the cost of voluntary base time inspection services, overtime and holiday inspection services, and laboratory services. FSIS calculated its projected increases in salaries and inflation in fiscal year 2010. The average pay raise for Federal employees in calendar year 2010, reflecting both a national cost of living increase and locality differentials, will be 2.9 percent for .25 of the fiscal year and 3.2 percent for .75 of the fiscal year. Inflation for fiscal year 2010 is projected to be 2 percent.

The estimates in the tables below are based on the Presidential Economic Assumptions for FY 2009 and the out years in the OMB Memorandum M-08-13. In Table 1, FSIS estimated fees for subsequent fiscal years based on previous fiscal year actual costs, projected inflation, and cost of living factors.

The current and proposed 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	Current rate 2008 & 2009
Base time	\$49.93
Overtime & holiday	58.93
Laboratory	70.82

Service	Proposed rate 2010	Projected rate 2011	Projected rate 2012
	(estimates rounded to reflect billable quarters)		
Base Time	\$51.36	\$52.84	\$54.64
Overtime	64.88	66.84	68.84
Holiday	78.44	80.84	83.32
Laboratory	65.08	67.04	69.08

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 an estimated \$51.36 per hour per program employee in fiscal year 2010, \$52.84 per hour per program employee in fiscal year 2011, and \$54.64 per hour per program employee in fiscal year 2012.

The overtime 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 an estimated \$64.88 per hour per program employee in fiscal year 2010, \$66.84 per hour per

program employee in fiscal year 2011, and \$68.84 per hour per program employee in fiscal year 2012.

The 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 an estimated hourly rate of \$78.44 per hour per program employee in fiscal year 2010, \$80.84 per hour per program employee in fiscal year 2011, and \$83.82 per hour per program employee in fiscal year 2012.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9,

352.5, 354.101, 355.12, and 362.5 is an estimated \$65.08 per hour per program employee in fiscal year 2010, \$67.04 per hour per program employee in fiscal year 2011, and \$69.08 in fiscal year 2012.

The projected fees for FY 2010, 2011, and 2012 may not be significantly different from current codified fees.

Table 2 summarizes the calculations for the different types of services for 2010. See Table 3 for the proposed Laboratory Accreditation Fees.

TABLE 2—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2010

	Actual costs per hour FY 2009	Cost of living allowance	Projected salary costs per hour FY 2010
Base Time:			
Actual 2009 Base Salary (Pay raise of 2.9% for .25 of FY + 3.2% for .75 of FY)	\$26.25	3.125%	\$27.07
Benefits	6.62	3.125%	6.83
		Inflation	
Overhead (Department, Agency, and Program, including IT costs)	16.23	2.0%	16.55
Travel/Operating Costs	0.89	2.0%	0.91
Bad Debt Allowance	0.02	0.02
Total Projected Costs	51.38
Overtime	39.37	3.125%	40.60
Holiday Pay	52.50	3.125%	54.14
Laboratory Fees	39.56	3.125%	40.80

* Similar benefits, overhead, travel/operating costs, and bad debt allowance for projected salary costs are also added to arrive to the totals shown in Table 1 for FY 2010 for overtime, holiday, and laboratory projected salary fees.

TABLE 3—CALCULATIONS FOR ACCREDITED LABORATORY FEES FY 2009–2013

	Estimated FY 2009	Proposed FY 2010	Proposed FY 2011	Proposed FY 2012	Proposed FY 2013
Estimated Income	\$364,500	\$382,500	\$382,500	\$405,000	\$425,000
Estimated Expenses	386,230	423,863	438,453	444,886	456,464
New Accreditation Fee	4,500	4,500	4,500	5,000	5,000

Executive Order 12866 and Regulatory Flexibility Act

Because this proposed rule has been determined to be not significant, the Office of Management and Budget (OMB) did not review it under EO 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. The inspection services provided under these proposed fees are voluntary. Meat and poultry establishments and egg products plants requesting these services are likely to have calculated that the revenues generated from additional production will exceed the incremental costs of the services. Similarly, laboratories will determine whether the additional revenue for services that require accreditation will exceed the costs of becoming accredited.

Economic Effects of New Fees

By proposing to codify formulas to calculate future increases in annual fees instead of proposing to codify actual fees, the Agency will streamline the rulemaking process to help ensure that the fee increases are effective at the beginning of each fiscal year. In subsequent years, food safety will be maintained at the establishments affected by this rule as the Agency provides the services. The increased fees will cover inflation and national and locality pay raises but will not support any new budgetary initiative. The costs that industry will experience by the raise in fees are similar to other increases that the industry will experience because of inflation and wage increases.

The total volume of meat and poultry slaughtered under Federal inspection in 2007 was about 91 billion pounds (2007 Livestock, Dairy, Meat, and Poultry Outlook Report, Economic Research Service, USDA). The total volume in egg product production in 2007 was about 2.8 billion pounds (2007 National Agricultural Statistical Service, USDA). The increase in cost per pound of product associated with the new increased fees is, in general, \$.0002. Even in competitive industries such as meat, poultry, and egg products, this amount of increase in costs would have an insignificant impact on profits and processes.

Even though this increase in fees is negligible, the industry is likely to pass along a significant portion of the proposed fee increases to consumers because of the inelastic nature of the

demand curve facing consumers. Research has shown that consumers are unlikely to reduce demand significantly for meat, poultry, and 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 for 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.

As a result of the new Accredited Laboratory Program fees, the Agency expects to collect about \$2 million over the next 5 years from 85 laboratories, an average of \$4,700 per entity per year.

Paperwork Reduction Act

This rule does not contain any new information collection or record keeping requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule: (1) Has no retroactive effect; and (2) 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 may be made of the application of the provisions of the 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 ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at <http://www.fsis.usda.gov/>

Regulations & Policies/2009 Proposed Rules Index/index.asp. FSIS will also 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, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at http://www.fsis.usda.gov/news_and_events/email_subscription/. 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 accounts.

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. 138d; 7 U.S.C. 1622, 1627 and 2219a; 21 U.S.C. 451 *et seq.*; 21 U.S.C 601–695;

2. Section 391.2 is revised to read as follows:

§ 391.2 Base time rate.

(a) For each fiscal year and based on the previous fiscal year's actual costs

and hours, FSIS calculates the base time rate for inspection services, per hour per program employee, provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 using the following formula: Office of Field Operations plus Office of International Affairs inspection program personnel salaries paid divided by regular hours multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus an allowance for bad debt.

(b) FSIS calculates the components of the base time rate, which are based on previous fiscal year's actual costs, using the following formulas:

(1) *Benefits Rate.* Direct benefits costs multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(2) *Travel and Operating Rate.* Total direct travel and operating costs multiplied by the percentage of inflation.

(3) *Overhead Rate.* All indirect costs plus the average information technology (IT) costs over the previous two years in the Public Health Data Communication Infrastructure System Fund plus the Office of Management Program cost in the Reimbursable and Voluntary Funds less any Greenbook costs (*i.e.*, costs of USDA support services prorated to the service component for which fees are charged) that are not related to food inspection, divided by total direct hours (regular, overtime, and holiday) worked across all funds, multiplied by the percentage of inflation.

(4) *Allowance for Bad Debt Rate.* Total allowance for bad debt (for plants and establishments that declare bankruptcy) divided by total direct hours (regular, overtime, and holiday) worked.

(c) The cost of living increases and percentage of inflation factors used in the formulas in this section are based on the Office of Management and Budget's Presidential Economic Assumptions.

3. Section 391.3 is revised to read as follows:

§ 391.3 Overtime and holiday rate.

For each fiscal year and based on the previous fiscal year's actual costs and hours, FSIS calculates the overtime and holiday rates, per hour per program employee, provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5, and 381.38 using the following formulas:

(a) *Overtime.* Office of Field Operations plus Office of International

Affairs inspection program personnel salaries paid divided by regular hours multiplied by the next year's percentage of cost of living increase multiplied by 1.5 plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus an allowance for bad debt.

(b) *Holiday Rate.* Office of Field Operations plus Office of International Affairs inspection program personnel salaries paid divided by regular hours multiplied by the next year's percentage of cost of living increase multiplied by 2, plus benefits rate, plus the travel and operating rate, plus the overhead rate, plus an allowance for bad debt.

(c) FSIS calculates the benefits rate, travel and operating rate, overhead rate, and allowance for bad debt using the formulas in § 391.2(b), and the cost of living increases and percentage of inflation factors in 391.2(c).

4. Section 391.4 is revised to read as follows:

§ 391.4 Laboratory services rate.

(a) For each fiscal year and based on the previous fiscal year's actual costs and hours, FSIS calculates the laboratory services rate, per hour per program employee, provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 will be calculated for future fiscal years using the following formula: Office of Public Health Science (OPHS) salaries paid divided by OPHS hours worked, multiplied by the next calendar year's percentage cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus an allowance for bad debt.

(b) FSIS calculates the benefits rate, the travel and operating rate, the overhead rate, and the allowance for bad debt using the formulas in 391.2(b), and the cost of living increases and percentage of inflation factors in 391.2(c).

5. Paragraph (a) of § 391.5 is revised to read as follows:

§ 391.5 Laboratory accreditation fee.

(a) The annual fee for the initial accreditation and maintenance of accreditation provided pursuant to § 439.5 shall be \$4,500.00 for fiscal years 2010 and 2011; and \$5,000.00 for fiscal years 2012 and 2013.

* * * * *

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

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

Authority: 21 U.S.C. 1031–1056.

7. In § 590.126, revise the second sentence to read as follows:

§ 590.126 Overtime inspection service.

* * * The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay for such overtime. For each fiscal year and based on previous fiscal year's actual costs and hours, FSIS calculates the overtime rate for inspection service, per hour per program employee, using the following formula: Office of Field Operations plus Office of International Affairs inspection program personnel salaries paid divided by regular hours multiplied by the next year's percentage of cost of living increase multiplied by 1.5 plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus an allowance for bad debt. FSIS calculates the benefits rate, travel and operating rate, overhead rate, and allowance for bad debt using the formulas in § 592.510(b) and the cost of living increases and percentage of inflation factors in § 592.510(c).

8. In § 590.128(a), revise the second sentence to read as follows:

§ 590.128 Holiday inspection service.

(a) * * * 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 the hourly rate. For each fiscal year and based on the previous year's actual costs and hours, FSIS calculates the holiday rate for inspection service, per hour per program employee, using the following formula: Office of Field Operations plus Office of International Affairs inspection program personnel salaries paid divided by regular hours multiplied by the next year's percentage of cost of living increase multiplied by 2, plus benefits rate, plus the travel and operating rate, plus the overhead rate, plus an allowance for bad debt. FSIS calculates the benefits rate, travel and operating rate, overhead rate, and allowance for bad debt using the formulas in § 592.510(b), and the cost of living increases and percentage of inflation factors in § 592.510(c).

* * * * *

PART 592—VOLUNTARY INSPECTION OF EGG PRODUCTS

9. The authority citation for part 592 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

10. Section 592.510 is revised to read as follows:

§ 592.510 Base time rate.

(a) For each fiscal year and based on the previous fiscal year's actual costs and hours, FSIS calculates the base time rate for inspection services, per hour per program employee, using the following formula: Office of Field Operations plus Office of International Affairs inspection program personnel salaries paid divided by regular hours multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus an allowance for bad debt.

(b) FSIS calculates the components of the base time rate (which are based on previous fiscal year's actual costs) using the following formulas:

(1) *Benefits Rate*: Direct benefits costs multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Saving Plan (TSP) retirement basic and matching contributions.

(2) *Travel and Operating Rate*: Total direct travel and operating costs multiplied by the percentage of inflation.

(3) *Overhead Rate*: All indirect costs plus the average information technology (IT) costs over the previous two years in the Public Health Data Communication Infrastructure System Fund plus the Office of Management Program cost in the Reimbursable and Voluntary Funds less any Greenbook costs (*i.e.*, costs of USDA support services prorated to the service component for which fees are charged) that are not related to food inspection, divided by total direct hours (regular, overtime, and holiday) worked across all funds, multiplied by the percentage of inflation.

(4) *Allowance for Bad Debt Rate*: Total allowance for bad debt (for plants and establishments that declare bankruptcy) divided by total direct hours (regular, overtime, and holiday) worked.

(c) The cost of living increases and percentage of inflation factors used in the formulas in this section are based on the Office of Management and Budget's Presidential Economic Assumptions.

12. In § 592.520, revise the second sentence to read as follows:

§ 592.520 Overtime rate.

* * * The official plant must give reasonable advance notice to the inspector of any overtime service necessary. For each fiscal year and based on the previous fiscal year's actual costs and hours, FSIS calculates the overtime rate for inspection service, per hour per program employee, using the following formula: Office of Field Operations plus Office of International

Affairs inspection program personnel salaries paid divided by regular hours multiplied by the next year's percentage of cost of living increase multiplied by 1.5 plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus an allowance for bad debt. FSIS calculates the benefits rate, travel and operating rate, overhead rate, and allowance for bad debt using the formulas in § 592.510(b), and the cost of living increases and percentage of inflation factors in § 592.510(b).

13. In 592.530, revise the second sentence to read as follows:

§ 592.530 Holiday rate.

* * * The official plant must, in advance of such holiday work, request that the inspector in charge furnish inspection service during such period and must pay the Agency for such holiday work at the hourly rate. For each fiscal year and based on the previous fiscal year's actual costs and hours, FSIS calculates the holiday rate for inspection service, per hour per program employee, using the following formula: Office of Field Operations plus Office of International Affairs inspection program personnel salaries paid divided by regular hours multiplied by the next year's percentage of cost of living increase multiplied by 2, plus benefits rate, plus the travel and operating rate, plus the overhead rate, plus an allowance for bad debt. FSIS calculates the benefits rate, travel and operating rate, overhead rate, and allowance for bad debt using the formulas in § 592.510(b), and the cost of living increases and percentage of inflation factors in § 592.510(b).

Done in Washington, DC, on October 5, 2009.

Alfred V. Almanza,
Administrator.

[FR Doc. E9-24283 Filed 10-7-09; 8:45 am]

BILLING CODE 3410-DM-P

FEDERAL RESERVE SYSTEM

[Regulation A; Docket No. R-1371]

12 CFR Part 201**Extensions of Credit by Federal Reserve Banks**

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board of Governors (Board) is publishing for public comment a proposed amendment to Regulation A that would provide a process by which the Federal Reserve

Bank of New York may determine the eligibility of credit rating agencies and the ratings they issue for use in the Term Asset-Backed Securities Loan Facility, which is maintained by the Federal Reserve Bank of New York and for which the Board has expressly set a particular credit rating requirement for collateral offered by the borrower. The proposed rule would not apply to discount window lending or other extensions of credit provided by the Federal Reserve System. In addition, the rule would only apply to asset-backed securities that are not backed by commercial real estate. This proposed amendment is designed to provide the Federal Reserve Bank of New York with a consistent framework for determining the eligibility of ratings issued by individual credit rating agencies when used in conjunction with a separate asset-level risk assessment process. The proposed amendment does not represent a change in the stance of monetary policy. The Board solicits comment on all aspects of the proposal, as well as specific aspects of the proposal as set out in the preamble.

DATES: Written comments on this notice of proposed rulemaking must be submitted on or before November 9, 2009.

ADDRESSES: You may submit comments, identified by Docket Number R-1371, by any of the following methods:

- *Agency Web site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

- *Fax:* (202) 452-3819 or (202) 452-3102.

- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>, as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.