

# Proposed Rules

Federal Register

Vol. 70, No. 138

Wednesday, July 20, 2005

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. 03–027P]

RIN 0583–AD12

#### Changes in Fees for Meat, Poultry, and Egg Products Inspection Services—Fiscal Years 2005–2008

**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, identification and certification services, overtime and holiday inspection services, and laboratory services. The Agency is proposing to raise these fees to reflect, among other factors, national and locality pay increases for Federal employees and inflation. In the past, FSIS has amended its regulations on an annual basis. With this proposed regulation, FSIS is providing for four annual fee increases. This will provide the meat, poultry and egg industry with more timely cost information and will streamline the Agency's rulemaking process. The Agency is also proposing to increase the annual fee for its Accredited Laboratory Program.

**DATES:** The Agency must receive comments before August 19, 2005.

**ADDRESSES:** FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD-ROM's, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW, Room 102 Cotton Annex, Washington, DC 20250.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Electronic mail: [fsis.regulationscomments@fsis.usda.gov](mailto:fsis.regulationscomments@fsis.usda.gov). Follow the online instructions at that site for submitting comments. All submissions received must include the Agency name and docket number 03–027P.

All comments submitted in response to this proposal, as well as research and 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. The comments will also be posted on the Agency's Web site at [http://www.fsis.usda.gov/regulations/2005\\_Proposed\\_Rules\\_Index/](http://www.fsis.usda.gov/regulations/2005_Proposed_Rules_Index/).

**FOR FURTHER INFORMATION CONTACT:** For further information concerning policy issues contact Wanda Haxton, Program Analyst, Regulations and Petitions Policy Staff, Office of Policy, Program, and Employee Development, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700; telephone (202) 205–0299, fax (202) 690–0486.

For further information concerning fees contact Deborah Patrick, Director, Budget Division, Office of Management, FSIS, U.S. Department of Agriculture, 2154 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–3700; telephone (202) 720–3368, fax (202) 690–4155.

#### 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 meat and poultry processed at official establishments. The Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) provides for mandatory inspection of egg products processed at official plants. FSIS provides mandatory inspection services at official establishments and plants, and bears the cost of mandatory inspection provided during non-overtime and non-holiday hours of operation. Establishments and plants pay for inspection services

performed on holidays or on an overtime basis.

The Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621 *et seq.*), authorizes the provision of a variety of voluntary services. FSIS provides a range of voluntary inspection, certification, and identification services under the AMA 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 the voluntary inspection, certification and identification services it provides.

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 the costs of providing these services.

FSIS also accredits non-Federal analytical laboratories under its Accredited Laboratory Program; such accreditation allows labs 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.

Every year FSIS reviews the fees that it charges for providing overtime and holiday inspection services; voluntary inspection, identification and certification services; laboratory services and lab accreditation. 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 past, FSIS has amended its regulations on an annual basis to change the fees it charges. Because of the length of the rulemaking process, the fiscal year has partially elapsed by the time the Agency publishes a final rule to amend its fees. As a result, the Agency is unable to recover the full cost of voluntary inspection services, overtime and holiday inspection services,

laboratory services and laboratory accreditation fees in a timely manner.

With this rulemaking, FSIS is proposing to amend its regulations to provide for four annual fee increases in one rulemaking action. The Agency will continue to perform a yearly cost analyses to determine whether the fees are adequate to recover its costs. If the Agency determines that the fees established for any one year need to be adjusted, the Agency will initiate another rulemaking to correct that fiscal year's fees and readjust future year's fees. In the Agency's analysis of projected costs, set forth in Tables 2 through 5, the agency has identified the bases for the increases in the cost of voluntary base time inspection services, overtime and holiday inspection services, and laboratory services for fiscal year 2005 through fiscal year 2008.

The Agency is proposing to increase the annual fee for participants in the Accredited Laboratory Program from the current \$1500 to the figures listed in Table 6 because program costs have increased and will continue to increase and because previously accumulated funds that have been used to pay for program costs have decreased. The

reasons for the increases in the lab accreditation fees are more fully discussed below in the section entitled "Economic Effects of Inspection and Laboratory Service Fees".

FSIS calculated its projected increases in salaries and inflation in fiscal years 2005 through 2008. The average pay raise for Federal employees in 2004, which reflects both a national cost of living increase and locality differentials, was 4.1 percent effective January 2004. The average combined national and locality pay raise is estimated to be 3.5% for fiscal year 2005 and 2.3% for fiscal years 2006, 2007, and 2008. Inflation for fiscal year 2005 is estimated to be 2.0%. Inflation for fiscal year 2006 is estimated to be 2.0%. Inflation for fiscal year 2007 is estimated to be 2.1%. Inflation for fiscal year 2008 is estimated to be 2.1%. These estimates are based on the Office of Management and Budget's Presidential Economic Assumptions for FY 2005 and the out years.

The cost of providing inspection services includes both direct and overhead costs. Overhead costs include the cost of support activities such as program and agency overhead costs. Overhead expenditures are allocated

across the agency for each direct hour of inspection. Direct costs include the cost of salaries, employee benefits, and travel. Because of improvements in accessing data from the accounting system, the Agency had 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) that work 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 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.

The current and proposed fees are listed by type of service in Table 1. The first increase, from the current rate to the proposed 2005 rate, is larger than the subsequent increases because this is the first rate increase in 2 years. Therefore, it includes the increases in salaries and inflation that have occurred since the rate was last set in 2003.

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

Service	Current rate	Proposed rate 2005	Proposed rate 2006	Proposed rate 2007	Proposed rate 2008
Base time .....	\$43.64	\$46.78	\$47.79	\$48.84	\$49.93
Overtime & holiday .....	50.04	55.19	56.40	57.65	58.93
Laboratory .....	61.80	66.42	67.83	69.31	70.82

The differing proposed fee increases for each type of service are the result of the different amounts that it costs FSIS

to provide these three types of services. The differences in costs stem from various factors, including the different

salary levels of the program employees who perform the services. See Table 2 through Table 5.

TABLE 2.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2005

Base Time:	
Actual 2002 Salaries .....	\$23.02
2003 Pay Raise (4.1%) = Actual 2002 Salaries × 0.041 .....	0.94
Calendar 2004 Pay Raise (4.1%) paid in FY 2004 = (Actual 2002 Salaries + 2003 Pay Raise) × 0.041 .....	0.98
FY 2005 Pay Adjustment = (Actual 2002 Salaries + 2003 Pay Raise + Calendar 2004 Pay Raise) × 0.035 × .075 .....	0.65
Benefits .....	6.58
Travel and Operating Costs .....	2.12
Program Overhead .....	4.49
Agency Overhead .....	7.06
Allowance for Bad Debt .....	0.45
FY 2005 Inflation (2.0%) = [Current Rate (\$43.64) + Adjustment for FY 2004 Inflation and Pay Increases (\$1.76) – Actual 2002 Salaries (\$23.02) + 2003 Pay Raise (\$0.94) + Calendar 2004 Pay Raise (\$0.98)] × 0.02 .....	0.49
<b>Total .....</b>	<b>46.78</b>
Overtime and Holiday Inspection Services:	
Actual 2002 Salaries .....	30.72
2003 Pay Raise (4.1%) = Actual 2002 Salaries × 0.041 .....	1.26
Calendar 2004 Pay Raise (4.1%) paid in FY 2004 = (Actual 2002 Salaries + 2003 Pay Raise) × 0.041 .....	1.31
FY 2005 Pay Adjustment = (Actual 2002 Salaries + 2003 Pay Raise + Calendar 2004 Pay Raise) × 0.035 × 0.75 .....	0.87
Benefits .....	2.05
Time and a Half .....	2.78
Travel and Operating Costs .....	2.12

TABLE 2.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2005—Continued

Program Overhead .....	5.32
Agency Overhead .....	7.74
Allowance for Bad Debt .....	0.51
FY 2005 Inflation (2.0%) = [Current Rate (\$50.04) + Adjustment for FY 2004 Inflation and Pay Increases (\$3.44) – Actual 2002 Salaries (\$30.72) + 2003 Pay Raise (\$1.26) + Calendar 2004 Pay Raise (\$1.31)] × 0.02 .....	0.51
<b>Total .....</b>	<b>55.19</b>
<b>Laboratory Services:</b>	
Actual 2002 Salaries .....	24.71
2003 Pay Raise (4.1%) = Actual 2002 Salaries × 0.041 .....	1.01
Calendar 2004 Pay Raise (4.1%) paid in FY 2004 = (Actual 2002 Salaries + 2003 Pay Raise) × 0.041 .....	1.05
FY 2005 Pay Adjustment = (Actual 2002 Salaries + 2003 Pay Raise + Calendar 2004 Pay Raise) × 0.035 × 0.75 .....	0.70
Benefits .....	6.72
Travel and Operating Costs .....	8.28
Program Overhead .....	14.82
Agency Overhead .....	7.64
Allowance for Bad Debt .....	0.65
FY 2005 Inflation (2.0%) = [Current Rate (\$61.80) + Adjustment for FY 2004 Inflation and Pay Increases (\$2.82) – Actual 2002 Salaries (\$24.71) + 2003 Pay Raise (\$1.01) + Calendar 2004 Pay Raise (\$1.05)] × 0.02 .....	0.84
<b>Total .....</b>	<b>66.42</b>

TABLE 3.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2006

<b>Base Time:</b>	
FY 2005 Salaries = Actual 2002 Salaries (\$23.02) + 2003 Pay Raise (\$0.94) + Calendar 2004 Pay Raise (\$0.98) + 2005 Pay Adjustment (\$0.65) .....	\$25.59
FY 2006 Pay Adjustment = FY 2005 salaries × 0.023 .....	0.59
Benefits .....	6.58
Travel and Operating Costs .....	2.12
Program Overhead .....	4.49
Agency Overhead .....	7.06
Allowance for Bad Debt .....	0.45
FY 2005 Inflation .....	0.49
FY 2006 Inflation (2.0%) = [FY 2005 Base Time Rate (\$46.78) – FY 2005 Salaries (\$25.60)] × 0.02 .....	0.42
<b>Total .....</b>	<b>47.79</b>
<b>Overtime and Holiday Inspection Services:</b>	
FY 2005 Salaries = Actual 2002 Salaries (\$30.72) + 2003 Pay Raise (\$1.26) + Calendar 2004 Pay Raise (\$1.31) + 2005 Pay Adjustment (\$0.87) .....	34.16
FY 2006 Pay Adjustment = FY 2005 salaries × 0.023 .....	0.79
Benefits .....	2.05
Time and a Half .....	2.78
Travel and Operating Costs .....	2.12
Program Overhead .....	5.32
Agency Overhead .....	7.74
Allowance for Bad Debt .....	0.51
FY 2005 Inflation .....	0.51
FY 2006 Inflation (2.0%) = [FY 2005 Base Time Rate (\$55.19) – FY 2005 Salaries (\$34.16)] × 0.02 .....	0.42
<b>Total .....</b>	<b>56.40</b>
<b>Laboratory Services:</b>	
FY 2005 Salaries = Actual 2002 Salaries (\$24.71) + 2003 Pay Raise (\$1.01) + Calendar 2004 Pay Raise (\$1.05) + 2005 Pay Adjustment (\$0.70) .....	27.47
FY 2006 Pay Adjustment = FY 2005 salaries × 0.023 .....	0.63
Benefits .....	6.72
Travel and Operating Costs .....	8.28
Program Overhead .....	14.82
Agency Overhead .....	7.64
Allowance for Bad Debt .....	0.65
FY 2005 Inflation .....	0.84
FY 2006 Inflation (2.0%) = [FY 2005 Base Time Rate (\$66.42) – FY 2005 Salaries (\$27.47)] × 0.02 .....	0.78
<b>Total .....</b>	<b>67.83</b>

TABLE 4.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2007

<b>Base Time:</b>	
FY 2006 Salaries = 2005 Salaries + 2006 Pay Adjustment .....	\$26.18
FY 2007 Pay Adjustment = FY 2006 salaries × 0.023 .....	0.60
Benefits .....	6.58
Travel and Operating Costs .....	2.12

TABLE 4.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2007—Continued

Program Overhead .....	4.49
Agency Overhead .....	7.06
Allowance for Bad Debt .....	0.45
FY 2005 Inflation .....	0.49
FY 2006 Inflation .....	0.42
FY 2007 Inflation (2.1%) = [FY 2006 Base Time Rate (\$47.80) – FY 2006 Salaries (\$26.18)] × 0.021 .....	0.45
<b>Total .....</b>	<b>48.84</b>
<b>Overtime and Holiday Inspection Services:</b>	
FY 2006 Salaries = 2005 Salaries + 2006 Pay Adjustment .....	34.95
FY 2007 Pay Adjustment = FY 2006 salaries × 0.023 .....	0.80
Benefits .....	2.05
Time and a Half .....	2.78
Travel and Operating Costs .....	2.12
Program Overhead .....	5.32
Agency Overhead .....	7.74
Allowance for Bad Debt .....	0.51
FY 2005 Inflation .....	0.51
FY 2006 Inflation .....	0.42
FY 2007 Inflation (2.1%) = [FY 2006 Base Time Rate (\$56.40) – FY 2006 Salaries (\$34.95)] × 0.021 .....	0.45
<b>Total .....</b>	<b>57.65</b>
<b>Laboratory Services:</b>	
FY 2006 Salaries = 2005 Salaries + 2006 Pay Adjustment .....	28.10
FY 2007 Pay Adjustment = FY 2006 salaries × 0.023 .....	0.65
Benefits .....	6.72
Travel and Operating Costs .....	8.28
Program Overhead .....	14.82
Agency Overhead .....	7.64
Allowance for Bad Debt .....	0.65
FY 2005 Inflation .....	0.84
FY 2006 Inflation .....	0.78
FY 2007 Inflation (2.1%) = [FY 2006 Base Time Rate (\$67.84) – FY 2006 Salaries (\$28.11)] × 0.021 .....	0.83
<b>Total .....</b>	<b>\$69.31</b>

TABLE 5.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2008

<b>Base Time:</b>	
FY 2007 Salaries = 2006 Salaries + 2007 Pay Adjustment .....	\$26.79
FY 2008 Pay Adjustment = FY 2007 salaries × 0.023 .....	0.62
Benefits .....	6.58
Travel and Operating Costs .....	2.12
Program Overhead .....	4.49
Agency Overhead .....	7.06
Allowance for Bad Debt .....	0.45
FY 2005 Inflation .....	0.48
FY 2006 Inflation .....	0.42
FY 2007 Inflation .....	0.45
FY 2008 Inflation (2.1%) = [FY 2007 Base Time Rate (\$48.84) – FY 2007 Salaries (\$26.79)] × 0.021 .....	0.46
<b>Total .....</b>	<b>49.93</b>
<b>Overtime and Holiday Inspection Services:</b>	
FY 2007 Salaries = 2006 Salaries + 2007 Pay Adjustment .....	35.75
FY 2008 Pay Adjustment = FY 2007 salaries × 0.023 .....	0.82
Benefits .....	2.05
Time and a Half .....	2.78
Travel and Operating Costs .....	2.12
Program Overhead .....	5.32
Agency Overhead .....	7.74
Allowance for Bad Debt .....	0.51
FY 2005 Inflation .....	0.51
FY 2006 Inflation .....	0.42
FY 2007 Inflation .....	0.45
FY 2008 Inflation (2.1%) = [FY 2007 Base Time Rate (\$57.65) – FY 2007 Salaries (\$35.75)] × 0.021 .....	0.46
<b>Total .....</b>	<b>58.93</b>
<b>Laboratory Services:</b>	
FY 2007 Salaries = 2006 Salaries + 2007 Pay Adjustment .....	28.75
FY 2008 Pay Adjustment = FY 2007 salaries × 0.023 .....	0.66
Benefits .....	6.72
Travel and Operating Costs .....	.....
Program Overhead .....	14.82

TABLE 5.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2008—Continued

Agency Overhead .....	7.64
Allowance for Bad Debt .....	0.65
FY 2005 Inflation .....	0.84
FY 2006 Inflation .....	0.78
FY 2007 Inflation .....	0.83
FY 2008 Inflation (2.1%) = [FY 2007 Base Time Rate (\$69.32) – FY 2007 Salaries (\$28.76)] × 0.021 .....	0.85
<b>Total .....</b>	<b>70.82</b>

TABLE 6.—CALCULATIONS FOR ACCREDITED LABORATORY FEES FY 2005–2008

	Proposed FY 2005	Proposed FY 2006	Proposed FY 2007	Proposed FY 2008
Estimated Income .....	\$589,693	\$747,440	\$760,602	\$751,658
Expense Estimates .....	594,653	751,838	757,344	748,341
New Accreditation Fee .....	4,000	5,200	5,400	5,600

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 as timely a fashion as possible, and because the Agency has previously announced 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 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. Establishments and 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 which require accreditation will exceed the costs of becoming accredited.

#### Economic Effects of Inspection and Laboratory Service Fees

As a result of the new base time, holiday and overtime, and laboratory service fees, the Agency expects to collect an estimated \$131 million, \$136

million, \$144 million, and \$153 million in years 2005, 2006, 2007, and 2008 respectively, or a total of \$563 million over the next four years to cover the cost of voluntary certification, identification and inspection services, overtime and holiday inspection services, and laboratory services for meat and poultry. By proposing a 4 year fee increase instead of a single year fee increase, the Agency is streamlining the rulemaking process to help ensure that the fee increases are effective at the beginning of each fiscal year. During the next four 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 would experience by the raise in fees are similar to other increases that the industry would experience because of inflation and wage increases.

The total volume of meat and poultry slaughtered under Federal inspection in 2002 was about 85.7 billion pounds (Livestock, Dairy, Meat, and Poultry Outlook Report, Economic Research Service, USDA, July 17, 2003). The increase in cost per pound of product associated with the proposed fee 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 process.

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 and poultry, 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 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.

#### Economic Effects of Accredited Laboratory Program

As a result of the new Accredited Laboratory Program fees, the Agency expects to collect \$589,693 in FY 2005, \$747,440 in FY 2006, \$760,602 in FY 2007, and \$751,658 in FY 2008. The Accredited Laboratory Program is required to cover its operational costs through these fees. These adjustments are designed 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 best projections of what it will cost the Agency to provide these services in fiscal years 2005 through 2008.

The fee increases, beginning with a fiscal year 2005 increase of \$2,500, are necessary because the level of the program's reserve surplus has decreased below a one-year operating-cost level. The large increase in estimated expenses from FY 2005 to FY 2006 is due to the contracting out of check samples previously done in-house. As a result, FSIS needs to raise the fees it charges to offset the amount it no longer

has from the reserve to carry out the program. FSIS also needs to raise its fees 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. FSIS believes that it needs a yearly reserve of approximately \$250,000 to maintain the program's continuity. This amount of reserve funds is needed to cover the contractual costs that the Accredited Laboratory Program must pay at the beginning of each fiscal year, and 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 therefore is essential for the Accredited Laboratory Program to be fully functional during the first quarter of any fiscal year.

FSIS anticipates that some laboratories will determine that it is not cost effective to maintain accreditation. As a result, revenue estimates assume a 10% reduction in the number of participants for each fiscal year. While lower participation reduces costs, the costs are spread over fewer laboratories. The fees, consequently, increase despite lower costs.

#### 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.*

#### Unfunded Mandate Analysis

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly,

more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of \$100 million or more in any one year. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

#### 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 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 proposed rule, FSIS will announce it online through the FSIS Web Page at [http://www.fsis.usda.gov/Regulations\\_&\\_Policies/2005\\_Proposed\\_Rules\\_Index/index.asp](http://www.fsis.usda.gov/Regulations_&_Policies/2005_Proposed_Rules_Index/index.asp).

The Regulations.gov Website is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at <http://www.regulations.gov>.

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, recalls, and other

types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested 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, more diverse audience.

In addition, FSIS offers an electronic mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at [http://www.fsis.usda.gov/news\\_and\\_events/email\\_subscription/](http://www.fsis.usda.gov/news_and_events/email_subscription/) and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to protect their accounts with passwords.

#### 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 is revised to read as follows:

**Authority:** 7 U.S.C. 138f; 7 U.S.C. 1622, 1627 and 2219a; 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 \$46.78 per hour per program employee in fiscal year 2005, \$47.79 per hour per program employee in fiscal year 2006, \$48.84 per hour per program

employee in fiscal year 2007, and \$49.93 per hour per program employee in fiscal year 2008.

#### **§ 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 \$55.19 per hour per program employee in fiscal year 2005, \$56.40 per hour per program employee in fiscal year 2006, \$57.65 per hour per program employee in fiscal year 2007, and \$58.93 per hour per program employee in fiscal year 2008.

#### **§ 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 \$66.42 per hour per program employee in fiscal year 2005, \$67.83 per hour per program employee in fiscal year 2006, \$69.31 per hour per program employee in fiscal year 2007, and \$70.82 per hour per program employee in fiscal year 2008. 3. In § 391.5, paragraph (a) 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 §§ 318.21 and 381.153 shall be \$4,000.00 for fiscal year 2005; \$5,200.00 for fiscal year 2006; \$5,400.00 for fiscal year 2007; and \$5,600.00 for fiscal year 2008.

\* \* \* \* \*

### **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 \$55.19 per hour per program employee in fiscal year 2005, \$56.40 per hour per program employee in fiscal year 2006, \$57.65 per hour per program employee in fiscal year 2007, and \$58.93 per hour

per program employee in fiscal year 2008.

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 \$55.19 per hour per program employee in fiscal year 2005, \$56.40 per hour per program employee in fiscal year 2006, \$57.65 per hour per program employee in fiscal year 2007, and \$58.93 per hour per program employee in fiscal year 2008.

\* \* \* \* \*

### **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 592.510, 592.520 and 592.530 are revised to read as follows:

#### **§ 592.510 Base time rate.**

The base time rate for voluntary inspection services for egg products is \$46.78 per hour per program employee in fiscal year 2005, \$47.79 per hour per program employee in fiscal year 2006, \$48.84 per hour per program employee in fiscal year 2007, and \$49.93 per hour per program employee in fiscal year 2008.

#### **§ 592.520 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 inspection program personnel of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of \$55.07 per hour per program employee in fiscal year 2005, \$56.75 per hour per program employee in fiscal year 2006, \$58.54 per hour per program employee in fiscal year 2007, and \$60.43 per hour per program employee in fiscal year 2008.

#### **§ 592.530 Holiday rate.**

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 \$55.07 per hour per program employee in fiscal year 2005, \$56.75 per hour per program employee in fiscal year 2006, \$58.54 per hour per program employee in fiscal year 2007, and \$60.43 per hour per program employee in fiscal year 2008.

Done in Washington, DC, on: July 15, 2005.

**Barbara J. Masters,**

*Acting Administrator.*

[FR Doc. 05–14296 Filed 7–19–05; 8:45 am]

**BILLING CODE 3410-DM-P**

---

## **DEPARTMENT OF DEFENSE**

### **Department of the Army**

#### **32 CFR Part 631**

**RIN 0702-AA50**

### **Armed Forces Disciplinary Control Boards and Off-Installation Liaison and Operations**

**AGENCY:** Department of the Army, DoD.

**ACTION:** Proposed rule; Request for comments.

**SUMMARY:** The Department of the Army proposes to revise its part concerning armed forces disciplinary control boards and off-installation liaison and operations. The part prescribes uniform policies and procedures for the establishment, and operation of Armed Forces Disciplinary Control Boards, and off-installation liaison and operations.

**DATES:** Comments submitted to the address below on or before September 19, 2005 will be considered.

**ADDRESSES:** You may submit comments, identified by “32 CFR 631 and RIN 0702-AA50 in the subject line, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-Mail: [james.crumley@hqda-aoc.army.pentagon.mil](mailto:james.crumley@hqda-aoc.army.pentagon.mil). Include 32 CFR 631 and RIN 0702-AA50 in the subject line of the message.
- Mail: Headquarters, Department of the Army, Office of the Provost Marshal General, ATTN: DAPM-MPD-LE, 2800 Army Pentagon, Washington, DC 20310-2800.

**FOR FURTHER INFORMATION CONTACT:** James Crumley (703) 692-6721.

**SUPPLEMENTARY INFORMATION:**