

# Proposed Rules

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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 312, 322, 350, 362, 381, 590, and 592

[Docket No. FSIS-2009-0026]

RIN 0583-AD41

#### Electronic Export Application and Certification Charge; Flexibility in the Requirements for Export Inspection Marks, Devices, and Certificates; Egg Products Export Certification

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

**ACTION:** Proposed rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to amend the meat and poultry inspection regulations to provide for an electronic export application and certification system. The electronic export application and certification system will be a component of the Agency's Public Health Information System (PHIS). The export component of PHIS will be available as an alternative to the paper-based application and certification process. FSIS is proposing to charge users for the use of the proposed system. FSIS is proposing to establish a formula for calculating the fee. FSIS intends to publish notice of the fee, using the formula, in the **Federal Register** on an annual basis. FSIS is also proposing to provide flexibility in the requirements for official export inspection marks, devices, and certificates. In addition, FSIS is proposing to amend the egg product export regulations that parallel the meat and poultry product export regulations.

**DATES:** Submit comments on or before March 23, 2012.

**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, Patriots Plaza 3, 1400 Independence Avenue SW., Room 8-163A, Mailstop 3782, Washington, DC 20250-3700.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2009-0026. 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 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.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ron Jones, Assistant Administrator, Office of International Affairs, FSIS, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 3143, Washington, DC 20250-3700, (202) 720-3473.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601-695) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451-470) provide for the export and certification of meat and poultry products. The Federal meat and poultry products inspection regulations require exporters to apply for official export certificates to ship federally inspected and passed meat and poultry products to foreign countries (9 CFR 322.2 and 381.105). The Federal meat and poultry products inspection regulations also contain specific requirements for the official marking of exported products, for the devices for marking shipping containers, and for the official export certificate (9 CFR 312.8, 322.1, 322.2, 381.104, 381.105, and 381.106).

The Agricultural Marketing Act (AMA) provides the Secretary of

Agriculture with the authority to collect fees "as will be reasonable and as nearly as may be to cover the cost of the service rendered, to the end that agricultural products may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product which they desire" (7 U.S.C 1622(h)).

Under the authority of the AMA, the meat and poultry regulations provide that FSIS may make certifications regarding exported meat and poultry products meeting conditions or standards that are not imposed, or that are in addition to those imposed, by the meat and poultry regulations, the FMIA, or the PPIA. Under 9 CFR 350.3(b), 350.7, 362.2(b), and 362.5, FSIS collects fees from establishments and facilities that request certification service that is in addition to the basic export certification of wholesomeness. FSIS is now proposing to establish a fee for utilizing a new electronic export application and certification system. The system will be a service FSIS will provide to exporters that will enable them to submit, track, and manage export applications and certificates more efficiently and effectively than is possible under the current system.

The Egg Products Inspection Act (EPIA) (21 U.S.C. 1031-1056) does not set forth specific provisions for the export of egg products, and FSIS's egg products inspection regulations do not include requirements for exported egg products. As discussed below, FSIS is proposing egg products regulations to parallel the meat and poultry requirements, including a provision for inspectors to make certifications that egg products for export meet conditions or standards that are not imposed, or that are in addition to those that may be imposed, by the egg products regulations under the EPIA.

#### Export Application and Certification Process

Under 9 CFR 322.2(a) and 381.105(a), exporters of meat and poultry products may apply for an export certificate. The Application for Export Certificate (FSIS Form 9060-6) is available from inspection personnel, or exporters can submit a computer-generated (paper) copy. The poultry products regulations, in addition to requiring an application for an export certificate, provide for an "upon request" certification. The "upon

request” certification provides that an inspector will complete the application based on information supplied by the poultry exporter.

FSIS inspection personnel review the completed export application to verify that the information is correct and that it is signed. After inspection personnel reinspect product that is intended for export (9 CFR 322.2 and 381.105), they sign the application certifying that the product was examined in accordance with Agency policy.

As provided in 9 CFR 322.1(a) and 381.105(a), each shipping container is marked with the official export stamp bearing the serial number on the export certificate. Both 9 CFR 312.8(a) and 381.104 provide for an official device to apply the official export stamp. After the export application has been signed, inspection personnel provide the establishment with the official export stamp to mark product destined for export. After the shipping containers are marked, inspection personnel secure the stamp and sign the completed Meat and Poultry Export Certificate of Wholesomeness (FSIS Form 9060–5). The Meat and Poultry Export Certificate of Wholesomeness provides certification that the meat or poultry product originated from animals that received ante-mortem and post-mortem inspection and were found to be wholesome and fit for human consumption.

Both 9 CFR 312.8 and 381.106 provide that the export certificate is a paper certificate form for signature by a program employee or inspector, bearing a letterhead and the seal of the United States Department of Agriculture, and a serial number.

The regulations also require that the export certificate be issued in triplicate for meat products and in duplicate for poultry products. The meat and poultry products inspection regulations include specific requirements for where and to whom the original, duplicate, and triplicate are to be distributed (9 CFR 322.2 (d), (e), and (f), and 381.105(b) and (c)).

### **The Public Health Information System (PHIS)**

FSIS is implementing the Public Health Information System (PHIS), a computerized, Web-based inspection information system. The PHIS will integrate and automate the Agency’s paper-based business processes into one comprehensive and fully automated data-driven inspection system. The PHIS will significantly improve the Agency’s efforts to collect, consolidate, and analyze data in order to improve public health. The PHIS includes an

export component that will streamline and automate the export application and certification process.

The PHIS export component will enable exporters to electronically submit, track, and manage export applications and certificates. For example, exporters will be able to access their online account to submit applications, delay the issuance of a certificate, cancel pending applications and certificates, and apply for replacement or “in lieu of” certificates. Exporters that submit paper applications will not be able to submit, track, or manage their applications and certificates in this manner. FSIS inspection personnel will be able to access the PHIS to electronically approve export applications and certificates.

FSIS will consider any data and the electronic records (applications and certifications) submitted and processed through the PHIS equivalent to paper records. Export certifications transmitted electronically are official.

To access and use the PHIS export component, exporters will need to register for an USDA eAuthentication account with Level 2 access. An eAuthentication account enables individuals within and outside of the USDA to obtain user-identification accounts to access a wide range of USDA applications through the Internet. The Level 2 access will provide users the ability to conduct official electronic business transactions. To register for a Level 2 eAuthentication account, the user will need to have access to the Internet and a valid email address. To learn more about eAuthentication and how to register for an account, visit <http://www.eauth.egov.usda.gov/>.

The Agency plans to provide exporters with more specific, detailed information on how to access the PHIS to submit export applications and manage export certificates. The Agency intends to provide exporters with assistance and technical support in obtaining Level 2 eAuthentication access and in accessing and navigating the PHIS export component. Any information concerning the implementation of the PHIS export component will be posted on the Agency’s Web site at [www.fsis.usda.gov](http://www.fsis.usda.gov).

When developing, procuring, maintaining, or using electronic and information technology (EIT), Federal agencies are required by Section 508(a)(1)(a) of the Rehabilitation Act of 1973 (29 U.S.C. 794(d)) to ensure that the EIT is accessible to people with disabilities, including employees and members of the public. The PHIS will meet these requirements.

### **Proposed Amendments**

#### *Export Applications and Certificates*

The meat and poultry regulations provide for a paper-based export application and certification process. To facilitate the use of the PHIS export component, FSIS is proposing to amend the meat and poultry regulations to provide for the electronic submission, approval, and issuance of export applications and certificates. The Agency is proposing that applications for export certificates may be either paper-based or electronic.

FSIS is proposing these amendments to facilitate the electronic processing of export applications and certificates. The Agency is not proposing to require that exporters submit export applications electronically through the PHIS export component. Under this proposed rule, exporters would have the option to submit export applications electronically or continue to use the paper-based application process. The proposed change for use of the electronic system is discussed below.

FSIS meat and poultry products inspection regulations require exporters to apply for an export certificate and specify that FSIS inspectors provide poultry export certification of any inspected and passed poultry product “upon request” (9 CFR 381.105(a)). The “upon request” certification contemplates that an inspector will complete the application form based on information supplied by the poultry exporter.

The “upon request” provision is obsolete, however, and no longer reflects poultry export application practices. The exporter fills out most, if not all, poultry products export applications. In addition, the “upon request” provision will not be an option for submitting on-line export certification applications under the PHIS. Therefore, the Agency is proposing to delete the phrase “upon request” in 9 CFR 381.105(a). Because exporters typically do not request that the inspector complete the poultry products export application, this change in the regulations should place little, if any, burden on exporters.

FSIS is also proposing to delete the export certificate requirements in 9 CFR 312.8(b) and 381.106. These regulations contain specific certificate requirements, e.g., signature by a program employee and bearing a letterhead and the official seal of the U.S. Department of Agriculture. The Meat and Poultry Export Certificate of Wholesomeness is an approved FSIS Form (9060–5), generated by the Agency and issued by FSIS inspection

personnel. Through FSIS Directive 9000.1, Revision 1, the Agency provides instructions to inspection personnel concerning the approval of export applications (FSIS Form 9060–6) and issuance of certificates. Therefore, FSIS does not need to include specifications for the export certificate and instructions for its issuance in the regulations.

FSIS is also proposing to amend 9 CFR 322.2 and 381.105 to delete references to “triplicate” and “duplicate” forms. The Agency is proposing to allow “copies” of the export certificate to be distributed to the required parties and to accompany the product. In addition, FSIS is proposing to delete the provisions in 9 CFR 322.2(d) for filing a copy of the export certificate with Customs within four (4) business days of the clearance of the vessel at the time of filing the complete manifest. The filing of the export certificate with Customs is a Department of Homeland Security, Customs and Border Protection, requirement (19 CFR 4.75(b)) and need not be included in FSIS regulations.

FSIS is also proposing to amend the meat and poultry export regulations to organize and make parallel, to the extent possible, the regulatory requirement language for meat and poultry products. Under the proposed rule, differences will remain between the meat and poultry export regulations because the provisions for lard or similar edible product (proposed 9 CFR 322.1(b)) do not apply to poultry. Also, the FMIA provides that FSIS will file one copy of the export certificate, that one copy will be delivered to the owner or shipper, and that one copy will be delivered to the chief officer of the vessel on which the shipment shall be made (21 U.S.C. 618). Proposed 9 CFR 322.2 (c), (d), and (e) reflect those statutory requirements. Because the PPIA does not include such requirements, FSIS is not proposing to include them in this rule. Under circumstances specified in the regulations, exporters of meat products may request inspection personnel to issue certificates for export of product of official establishments not under their supervision (9 CFR 322.2(h)). The poultry export regulations do not provide for this option, but FSIS provides for this in practice in poultry products. Therefore, FSIS is proposing poultry product export regulations consistent with the meat export regulations to reflect this practice (proposed 9 CFR 381.106(e)).

#### **Export Inspection Marks and Devices**

As discussed above, FSIS’s regulations require meat and poultry

products exporters to apply for an export certificate. After the export application is approved, inspection personnel provide the export stamp and authorize the establishment to mark products destined for export. The serial number on the export stamp must correspond to the serial number on the export certificate signed by inspection personnel (9 CFR 312.8(a) and 381.104).

FSIS is proposing to amend 9 CFR 312.8(a) and 381.104 to provide an alternative method of identifying and marking containers of product destined for export. This proposed flexibility would permit exporters to mark product containers with a unique identifier. Under the proposal, the unique identifier must link the exported product to the export certificate issued by inspection personnel. The Agency is proposing this flexibility in the marking of shipping containers because of the technological advancements that have been made since the export marking and devices regulations were initially promulgated. By providing flexibility to the official export stamp and how it can be applied to products, the time between production and shipping can be shortened, reducing the storage and other associated costs to the industry.

#### **Egg Products Export Regulations**

As previously discussed, the EPIA does not set forth specific provisions for the export of egg products, and the FSIS egg products inspection regulations do not include requirements for exported egg products. The egg products inspection regulations provide that, upon request, an inspector may issue an egg product inspection and grading certificate. The exporter can present the certificate to foreign countries as certification that egg products were inspected and passed and are wholesome and fit for human consumption (9 CFR 590.402).

The EPIA authorizes FSIS to regulate egg products for the purpose of preventing and eliminating burdens upon interstate and foreign commerce (21 U.S.C. 1031). Because almost all foreign countries require export certification for imported egg products, FSIS is proposing to amend the egg products export regulations under 21 U.S.C 1043 to add export application and certification requirements in 9 CFR 590.407, “Export certification and marking of containers with export inspection mark.” This proposed section parallels, to the extent possible, the export requirements in the meat and poultry regulations that provide for the application, certification, and marking of product destined for export. This proposed export certification will

provide the basic egg products export certificate required by foreign countries. Exporters that submit paper-based applications for the basic egg products export certification will not be charged for the certificate.

FSIS is proposing to add 9 CFR 592.20(d) to provide that export certifications that products meet conditions or standards that are not imposed, or that are in addition to those imposed by the egg products regulations, will be subject to a charge as a reimbursable service. The proposed provisions are consistent with the 9 CFR 350.3(b) and 362.2(b), which are discussed in the following paragraph.

#### **Charge for Electronic Export Application and Certification Process**

As discussed above, under the authority of the AMA, the meat and poultry inspection regulations provide that when exporters request certification that is in addition to the basic export certification of wholesomeness required by regulation, FSIS charges and collects fees from establishments and facilities that request this service (9 CFR 350.3(b), 350.7, 362.2(b), and 362.5). Exporters request additional certifications to meet requirement imposed by the importing foreign countries.

The PHIS’s export component will provide new service options to exporters enabling them to electronically submit, track, and manage their export applications and certificates. Therefore, the Agency is proposing to charge exporters that utilize the PHIS export component a fee for recovering the Agency’s costs for providing the electronic export application and certification service. The proposed fee is for application for the basic export certificate. Any additional certifications that are imposed by the importing foreign country will be charged as a certification service, as provided by 9 CFR 350.3(b) and 362.2(b) for meat and poultry products, and, as discussed above, is proposed for egg products in 9 CFR 592.20(d). These additional export certifications are charged at the appropriate basetime, overtime, or holiday rate, depending on when the certification service is provided. The basic export certification, if provided outside of an inspector’s normal shift is also charged at the appropriate rate (overtime or holiday).

To calculate the appropriate fee for providing the electronic export application and certification service, the Agency is proposing to establish the following formula for assessing its costs: The labor costs (*i.e.*, direct inspection labor cost for inspection personnel +

technical support provided to users of the export component + export library maintenance), + the Information

Technology (IT) costs (i.e., on-going operations + maintenance of the system cost + eAuthentication cost), divided by

the number of export applications (see below).  
*PHIS Export Application Fee:*

**Labor Costs (Direct Inspection Labor Cost + Technical Support Cost + Export Library Maintenance Cost) + IT Costs (On-going Operations and Maintenance + eAuthentication)**

**# Export Applications**

If the FSIS adopts this proposal, it will calculate the fee on an annual basis, and the updated fees will apply at the start of each calendar year. Should this rule become final, FSIS will announce the fee and the effective date in the preamble of the final rule. In addition, FSIS will publish notice of the fee, using the formula in the final rule, in the **Federal Register** approximately 30 days prior to the start of each new calendar year.

For purposes of this proposed rule, FSIS has calculated the fees based on the 2012 basetime rates published on December 23, 2011 (76 FR 80326) and the Agency's best estimates for on-going operations and maintenance. FSIS has also estimated the number of export

applications that it is likely to receive. For the final rule and subsequent calendar year calculations, FSIS expects that it will obtain more precise data, from documents and other sources, to calculate the actual fee.

The proposed calendar year 2012 PHIS Export Application Fee is based on the following costs, rates, and best available data:

- Direct inspection personnel labor costs at the 2012 basetime rate (\$54.24/hour), at an estimated 15 minutes (\$54.24/4 or \$13.56) per application (\$13.56 \* 235,121), is \$3,188,204.70.
- The cost of providing technical support, which includes service desk support, is \$500,000.
- The 2012 annual cost for funding two full time employees (average salary

to provide export library functions is approximately \$200,000.

- The on-going operations and maintenance costs, including improvements and necessary repairs to keep the system responsive to user's needs, is \$2,675,000.

- The cost of providing and supporting eAuthentication, the system for accessing the PHIS, is currently \$0. However, this cost may increase in future years.

- The estimated number of yearly export applications, determined using the Agency's Performance Based Inspection System, is 235,121.

*The calculation of the 2012 Export Application Fee is:*

$$\frac{[(\$3,188,204.70) + (\$500,000) + \$200,000] + [(\$2,675,000)] + (\$0)}{235,121}$$

235,121

Based on the above calculation, FSIS is proposing \$27.91 as the calendar year 2012 PHIS Export Application Fee. Exporters would be charged the \$27.91 fee for submitting an export application, and the fee will be assessed regardless of whether an export certificate is issued.

**Executive Order 12988**

This proposed rule has been reviewed under the Executive Order 12988, Civil Justice Reform. Under this proposed rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no retroactive proceedings will be required before parties may file suit in court challenging this rule.

**Executive Orders 12866 and 13563, and the Regulatory Flexibility Act**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been reviewed under Executive Order (E.O.) 12866. It has been determined to be significant, but not economically significant, under section 3(f) of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

FSIS is proposing changes to the meat and poultry regulations to provide for an electronic export application and certification system. The use of the proposed electronic export application system will be voluntary. FSIS is proposing to charge exporters that choose to utilize the system \$27.91 per application submitted. Automating the export application and certification process will facilitate the exportation of U.S. meat, poultry, and egg products by streamlining and automating the processes that are in use while ensuring that foreign regulatory requirements are met. In addition, FSIS is proposing to

add export application and certification requirements to the egg products regulations that parallel the meat and poultry regulations. Currently, exporters are issued an inspection and grading certificate.

**Cost of the Proposed Action**

If this proposed rule is adopted, and the cost basis does not change, the direct cost to exporters of \$27.91 per export application would be approximately \$6.6 million per year, if they all choose to file electronically. The indirect costs under this proposed rule would be the Internet service and the acquisition of or upgrading a current computer system to one that would be compatible with the PHIS and meet digital standards developed by the National Institute of Standards and Technology, American Standards Institute, and the International Organization for Standardization. These indirect costs are indeterminable. However, the total cost to an exporter would depend on the number of electronic applications processed. An exporter that processes only a few applications per year would not likely

experience a significant economic impact.

There are no direct costs associated with obtaining the Level 2 eAuthentication access needed to use the PHIS.

Exporters that do not submit applications electronically through the PHIS and request export certification that the product meets conditions or standards that are not imposed, or that are in addition to those imposed by regulations, would continue to pay for the reimbursable services (9 CFR 350.7, 362.5, and 592.500).

The total annual paperwork burden to egg exporters to fill out the paper-based export application is \$123,333 per year for a total of 3,333<sup>1</sup> hours a year. The average exporter burden would be 16.7 hours, and \$617 per exporter. There is no annual paperwork burden to meat and poultry exporters since they are currently filling out the export application.

#### Expected Benefits of the Proposed Rule

The proposed electronic export application and certification system, is expected to reduce the exporter and inspection personnel workload and paperwork burden by eliminating the physical handling and processing of applications and certificates. The reduction in workload and paperwork burden is based on the greater efficiency of processing applications electronically and the number of applications filed electronically. Quantifiable reductions are indeterminate at this time.

The PHIS export component facilitates the electronic government-to-government exchange of export applications and certifications, which will assist in the resolution of allegations of fraudulent transactions, such as false alterations and reproductions. The PHIS is designed to ensure authenticity, integrity, and confidentiality. The Level 2 eAuthentication provides exporters with the ability to conduct official electronic transactions with the USDA through the Internet. Exporters will be provided a more efficient and effective application and certification process.

An indirect benefit of automating the export application and certification system is that there will be an automatic, electronic recordkeeping of the number and types of exporters, the types of products exported to various countries, and the number of applications and certificates issued.

<sup>1</sup> Hours are derived from estimates of 200 for the number of exporters, 100 for the number of responses per exporter, and 10 minutes to complete and submit an application.

There is no recordkeeping burden to exporters because all transactions will be electronically recorded, and the data will be retrieved in real time. The electronic export system will provide a seamless, integrated, and streamlined approach to processing applications and certificates. It is expected that any potential general problems can be resolved electronically before the product arrives at the port, and as a result the products will likely move through ports faster. Thus, storage costs will be reduced or eliminated during the time it would take to resolve any application or certification issues, and the product will reach its destination more quickly. The cost savings of moving products faster and reducing storage costs are a function of the value of the goods and the amount of the reduction of the period of time in storage; with higher valued goods and greater reductions in storage period, these cost savings will increase. The value of goods and the reduction in storage time are variables that are not known to FSIS. The Agency is seeking comments on these and other potential benefits of the electronic export application and certification system.

For all exporters that submit the applications electronically, there will be additional unquantifiable benefits because PHIS automates the verification of eligibility and accuracy of certifications needed, and will speed up the process for these establishments. Even exporters who use the paper-based system will benefit from the PHIS export component. FSIS will enter the application into the PHIS, and the FSIS verifications activities regarding eligibility and accuracy of certifications will be automated. The certification will be made per specifications of the foreign government (e.g., paper, electronic, or digital image).

Proposing egg product export regulations provides the same export requirements across all products regulated by FSIS, and consistency in the export application and certification process. Currently, upon request, inspection and grading certificates are issued for exported egg products. This proposed rule provides the exported egg products certification that is required by most foreign countries. Consistent export requirements for meat, poultry, and egg products increase administrative efficiency, provide clarity, and allow egg products exporters to benefit from the new electronic export certification system.

#### FSIS Budgetary Effects

FSIS cannot predict how many exporters will choose to submit

electronic export applications through the export component of PHIS. When exporters choose to submit an application, they will be charged \$27.91. Assuming that the number of yearly export certificates remains at approximately 235,121, the revenues generated from this new fee will be approximately \$6.6 million each year.

#### Regulatory Flexibility Analysis

The FSIS Administrator has determined that this proposed rule would not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The proposed changes will affect those entities in the United States that export meat, poultry, and egg products to foreign countries. There are 6,099 meat and poultry establishments that could possibly be affected by this proposed rule since all are eligible to export. Of this number, there are about 2,616 small federally inspected establishments (with more than 10 but less than 500 employees) and 3,103 very small establishments (with fewer than 10 employees) based on HACCP Classification.<sup>2</sup> Therefore, a total of 5,719 small and very small establishments could be possibly affected by this rule.

For the meat and poultry industries, small and very small exporters, like large exporters, would incur the \$27.91 fee only if they file their export application electronically. If they choose to submit the paper application, they will bear no additional cost compared to now. If exporters submit their applications electronically, the average annual cost from this rule would be \$1,075.95 per exporter (235,121 export applications per year/ 6,099 meat and poultry establishments \* \$27.91 per application). For egg product exporters, FSIS expects the number of applications submitted to be 20,000.<sup>3</sup> Using the \$27.91 fee, the cost per exporter would be \$2,791. If small establishments require fewer applications, then the cost per small establishment is even lower. Therefore, the Agency believes that the proposed rule will not have a significant economic impact on a substantial number of small entities.

In making its determination, the Agency considered two alternatives: (1) The status quo (only paper-based export applications) and (2) require exporters to submit electronic export applications and charge an application fee for the service. The status quo alternative was

<sup>2</sup> Establishment numbers from FSIS's Performance Based Inspection System, June 2011.

<sup>3</sup> See Footnote 1, page 21.

rejected, because electronic export applications are necessary to implement the PHIS export component. Without the electronic export application alternative, exporters will not reap the benefits of the PHIS's export component.

The second alternative, to make the electronic export application mandatory and charging a fee, was rejected because export certificates are a regulatory requirement, and the paper-based application process (at no charge) must be available to exporters. The proposed rule would provide for both the paper-based and electronic export application process, which will minimize the impact on small entities because it will allow them, as well as other exporters, to continue using the paper-based application process. To make electronic export applications mandatory would have a significant impact on a substantial number of small entities, because the \$27.91 fee would increase the cost of exporting and may be a disadvantage to small entities because they will not have the option to continue to submit paper-based applications. However, small entities may choose to utilize the electronic system because it offers the ability to electronically track and manage the application and certification process. The \$27.91 fee would have to be absorbed by the small entities or passed along to their customers, which could negatively impact their bottom line if a large percentage of their business is exports because they are priced out of the market.

#### 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 located at [http://www.fsis.usda.gov/regulations\\_&\\_policies/Proposed\\_Rules/index.asp](http://www.fsis.usda.gov/regulations_&_policies/Proposed_Rules/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 groups, consumer interest groups, 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 electronic 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/](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.

#### Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements included in this proposed rule (for egg products on the Application for Export Certificate, FSIS Form 9060–6) have been submitted for approval to OMB as part of the Public Health Information System (PHIS) information collection request.

#### 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 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

#### USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's Target Center at (202) 720-2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250-9410 or call (202) 720-5964 (voice and TTY). USDA is an equal opportunity provider and employer.

#### List of Subjects

9 CFR Part 312

Official Marks, Devices and Certificates.

9 CFR Part 322

Exports.

9 CFR Part 350

Special Services Relating to Meat and Other Products.

9 CFR Part 362

Voluntary Poultry Inspection Regulations.

9 CFR Part 381

Poultry Products Inspection Regulations.

9 CFR Part 590

Inspection of Eggs and Egg Products (Egg Products Inspection Act).

9 CFR Part 592

Voluntary Inspection of Egg Products.

For the reasons set forth in the preamble, FSIS proposes to amend 9 CFR chapter III as follows:

#### PART 312—OFFICIAL MARKS, DEVICES AND CERTIFICATES

1. The authority citation for Part 312 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Revise § 312.8 to read as follows:

#### § 312.8 Export inspection marks.

The export inspection mark required in § 322.1 must be either a mark that contains a unique identifier that corresponds to the export certificate or an official mark with the following form:<sup>1</sup>



<sup>1</sup> The number "529893" is given as an example only. The number on the mark will correspond to the export certificate.

**PART 322—EXPORTS**

3. The authority citation for Part 322 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

4. Revise § 322.1 to read as follows:

**§ 322.1 Marking products for export.**

(a) When authorized by inspection personnel, establishments must mark the outside container of any inspected and passed product for export, except ship stores, small quantities exclusively for the personal use of the consignee and not for sale or distribution, and shipments by and for the U.S. Armed Forces, with an export inspection mark as shown in § 312.8 of this subchapter.

(b) When authorized by inspection personnel, establishments must mark each tank car of inspected and passed lard or similar edible product, and each door of each railroad car or other closed means of conveyance, containing inspected and passed loose product shipped directly to a foreign country, with an export inspection mark as shown in § 312.8 of this subchapter.

5. Revise § 322.2 to read as follows:

**§ 322.2 Export certification.**

(a) Exporters must apply for export certification of inspected and passed products shipped to any foreign country. Exporters may apply for an export certificate using a paper or electronic application. FSIS will assess exporters that submit an electronic application the charge in § 350.7(e).

(b) FSIS will issue only one certificate for each consignment, except in the case of error in the certificate or loss of the certificate originally issued. A request for a replacement or an in lieu of paper certificate, except in the case of a lost certificate, must be accompanied by the original paper certificate. The new certificate will carry the following statement: “Issued in lieu of \_\_\_\_\_”, with the numbers of the certificates that have been superseded.

(c) FSIS will deliver a copy of the certificate to the shipper or exporter. The shipper or exporter may furnish the copy of the certificate to the consignee for purposes of affecting the entry of product into the foreign country of destination.

(d) The shipper or exporter must deliver a copy of the certificate to the agent of the railroad or other carrier that transports the consignment from the United States otherwise than by water, or to the chief officer of the vessel on which the export shipment is made, or to the vessel's agent. The copy must be used only by such carrier and only for the purpose of affecting the

transportation of the consignment certified.

(e) FSIS will retain a copy of the certificate.

(f) Exporters may request inspection personnel to issue certificates for export consignments of product of official establishments not under their supervision, provided the consignments are first identified as having been “U.S. inspected and passed,” are found to be neither adulterated nor misbranded, and are marked as required by § 322.1.

**PART 350—SPECIAL SERVICES RELATING TO MEAT AND OTHER PRODUCTS**

6. The authority citation for Part 350 continues to read as follows:

**Authority:** 7 U.S.C. 1622, 1624; 7 CFR 2.17, 2.55.

7. In § 350.7 add paragraphs (e), (f), and (g) to read as follows:

**§ 350.7 Fees and Charges.**

\* \* \* \* \*

(e) Exporters that submit electronic export certificate applications will be charged a fee per application submitted.

(f) For each calendar year, FSIS will calculate the electronic export certificate application fee, using the following formula: Labor Costs (Direct Inspection Labor Cost + Technical Support Cost + Export Library Maintenance Cost) + Information Technology Costs (On-going operations Cost + Maintenance Cost + eAuthentication Cost), divided by the number of export applications.

(g) FSIS will publish notice of the electronic export certificate application fee annually in the **Federal Register**.

**PART 362—VOLUNTARY POULTRY INSPECTION REGULATIONS**

8. The authority citation for part 362 continues to read as follows:

**Authority:** 7 U.S.C 1622; 7 CFR 2.18(g) and (i) and 2.53.

9. In § 362.5, add paragraphs(e), (f), and (g) to read as follows:

**§ 362.5 Fees and charges.**

\* \* \* \* \*

(e) Exporters that submit electronic export certificate applications will be charged a fee per application submitted.

(f) For each calendar year, FSIS will calculate the electronic export certificate application fee, using the following formula: Labor Costs (Direct Inspection Labor Cost + Technical Support Cost + Export Library Maintenance Cost) + Information Technology Costs (On-going operations Cost + Maintenance Cost +

eAuthentication Cost), divided by the number of export applications.

(g) FSIS will publish notice of the electronic export certificate application fee annually in the **Federal Register**.

**PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS**

10. The authority citation for Part 381 continues to read as follows:

**Authority:** 7 U.S.C. 138F, 450, 21 U.S.C., 451–470, 7 CFR 2.7, 2.18, 2.53.

11. Revise § 381.104 to read as follows:

**§ 381.104 Export inspection marks.**

The export inspection mark required in § 381.105 must be either a mark that contains a unique identifier that corresponds to the export certificate or an official mark with the following form:<sup>1</sup>



12. Revise § 381.105 to read as follows:

**§ 381.105 Marking products for export.**

When authorized by inspection personnel, establishments must mark the outside container of any inspected and passed product for export, except ship stores, small quantities exclusively for the personal use of the consignee and not for sale or distribution, and shipments by and for the U.S. Armed Forces, with an export inspection mark as shown in § 381.104 of this subchapter.

13. Revise § 381.106 to read as follows:

**§ 381.106 Export certification.**

(a) Exporters must apply for export certification of inspected and passed products to any foreign country. Exporters may apply for an export certificate using a paper or electronic application. FSIS will assess exporters that submit an electronic application the charge in § 362.5(e).

(b) FSIS will issue only one certificate for each consignment, except in the case of error in the certificate or loss of the certificate originally issued. A request

<sup>1</sup> The number “529893” is given as an example only. The number on the mark will correspond to the export certificate.

for a replacement or in lieu of paper certificate, except in the case of a lost certificate, must be accompanied by the original paper certificate. The new certificate will carry the following statement: "Issued in lieu of \_\_\_\_", with the numbers of the certificates that have been superseded.

(c) FSIS will deliver a copy of the certificate to the person who requested such certificate or his agent. Such persons may duplicate the certificate as required in connection with the exportation of the product.

(d) FSIS will retain a copy of the certificate.

(e) Exporters may request inspection personnel to issue certificates for export consignments of product of official establishments not under their supervision, provided the consignments are first identified as having been "U.S. inspected and passed," are found to be neither adulterated nor misbranded, and are marked as required by § 381.105.

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

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

*Authority:* 21 U.S.C. 1031–1056.

15. Add § 590.407 to read as follows:

##### **§ 590.407 Export certification and marking of containers with export inspection mark.**

(a) Exporters must apply for export certification of inspected and passed products shipped to any foreign country. Exporters may apply for an export certificate using a paper or electronic application. FSIS will assess exporters that submit an electronic application the charge in § 592.500(d).

(b) FSIS will issue only one certificate for each consignment, except in the case of error in the certificate or loss of the certificate originally issued. A request for a replacement or in lieu of paper certificate, except in the case of a lost certificate, must be accompanied by the original paper certificate. The new certificate will carry the following statement: "Issued in lieu of \_\_\_\_", with the numbers of the certificates that have been superseded.

(c) FSIS will deliver a copy of the export certificate to the person who requested such certificate or his agent. Such persons may duplicate the certificate as required in connection with the exportation of the product.

(d) FSIS will retain a copy of the certificate.

(e) When authorized by inspection personnel, establishments must mark the outside container of any inspected and passed egg products destined for

export, except ship stores, small quantities exclusively for the personal use of the consignee and not for sale or distribution, and shipments by and for the U.S. Armed Forces, with a mark that contains a unique identifier that corresponds to the export certificate or an export inspection mark with the following form:<sup>1</sup>



(f) Exporters may request inspection personnel to issue certificates for export consignments of product of official establishments not under their supervision, provided the consignments are first identified as having been "U.S. inspected and passed," are found to be neither adulterated nor misbranded, and are marked as required by paragraph (e) of this section.

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

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

*Authority:* 7 U.S.C. 1621–1627.

17. In § 592.20 add paragraph (d) to read as follows:

\* \* \* \* \*

(d) Export certification. Upon application, by any person intending to export any egg product, inspectors may make certifications regarding products for human food purposes, to be exported, as meeting conditions or standards that are not imposed or are in addition to those imposed by the regulations in the part and the laws under which such regulations were issued.

17. Revise § 592.500 paragraph (a) and add paragraphs (d), (e), and (f) as follows:

##### **§ 592.500 Payment of fees and charges.**

(a) Fees and charges for voluntary base time rate, overtime inspection service, holiday inspection service, and electronic export applications shall be paid by the interested party making the application for such service, in accordance with the applicable provisions of this section and § 592.510 through § 592.530, both inclusive. If so

<sup>1</sup> The number "529893" is given as an example only. The number on the export certificate will correspond to the export certificate.

required by the inspection personnel, such fees and charges shall be paid in advance.

\* \* \* \* \*

(d) Exporters that submit electronic export certificate applications will be charged a fee per application submitted.

(e) For each calendar year, FSIS will calculate the electronic export certificate application fee, using the following formula: Labor Costs (Direct Inspection Labor Cost + Technical Support Cost + Export Library Maintenance Cost) + Information Technology Costs (On-going operations Cost + Maintenance Cost + eAuthentication Cost), divided by the number of export applications.

(f) FSIS will publish notice of the electronic export certificate application fee annually in the **Federal Register**.

Done at Washington, DC, on January 11, 2012.

**Alfred V. Almanza,**  
*Administrator.*

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**BILLING CODE 3410-DM-P**

#### **FEDERAL DEPOSIT INSURANCE CORPORATION**

##### **12 CFR Part 325, Subpart C RIN 3064-AD91**

##### **Annual Stress Test**

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Proposed rule with request for public comment.

**SUMMARY:** The Federal Deposit Insurance Corporation (the "Corporation" or "FDIC") requests comment on this proposed rule that implements the requirements in Section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") regarding stress tests ("proposed rule"). This proposed rule would implement section 165(i)(2) by requiring state nonmember banks and state savings associations supervised by the Corporation with total consolidated assets of more than \$10 billion to conduct annual stress tests in accordance with the proposed rule, report the results of such stress tests to the Corporation and the Board of Governors of the Federal Reserve System ("Board") at such time and in such a form containing the information required by the Corporation, and publish a summary of the results of the required stress tests.

**DATES:** Comments should be received on or before March 23, 2012.