

Proposed Rules

Federal Register
Vol. 66, No. 200
Tuesday, October 16, 2001

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. 01-019P]

RIN 0583-AC89

Increases in Fees for Meat, Poultry, and Egg Products Inspection Services—Fiscal Year (FY) 2002

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to increase the fees that it charges meat and poultry establishments, egg products plants, importers, and exporters for providing voluntary inspection services, overtime and holiday inspection services, identification services, certification services, and laboratory services. These increases in fees reflect the national and locality pay raise for Federal employees (proposed 3.6 percent increase effective January 2002) and inflation. At this time, FSIS is not proposing to amend the fee for the Accredited Laboratory Program. To raise the fees for voluntary egg products inspection (base time) and overtime and holiday voluntary inspection activities, the Agency is proposing to add part 592 to the CFR for voluntary egg products inspection. At this time, FSIS is proposing only to include the fees in this new part. Further, the Agency is proposing to amend the heading of Subchapter I of Chapter III of the CFR by deleting the word “Act” so the heading reads “Egg Products Inspection” because voluntary inspection of egg products is performed under the Agricultural Marketing Act (AMA).

DATES: The Agency must receive comments by November 15, 2001.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, Docket 100-019P, U.S.

Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250-3700. All comments submitted in response to this proposal will be available for public inspection in the Docket Clerk’s Office between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning policy issues, contact Daniel Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex, 300 12th Street, SW., Washington, DC 20250-3700, (202) 720-5627, fax number (202) 690-0486.

For information concerning fees, contact Michael B. Zimmerer, Director, Financial Management Division, Office of Management, FSIS, U.S. Department of Agriculture, 5601 Sunnyside Avenue, Mail Drop 5262 Beltsville, MD 20705, (301) 504-5885.

SUPPLEMENTARY INFORMATION

Background

The Federal Meat Inspection Act (FMIA)(21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA)(21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) provide for mandatory Federal inspection of livestock and poultry slaughter at official establishments, and meat and poultry processing at official establishments and of egg products processing at official plants. FSIS bears the cost of mandatory inspection. Establishments and plants pay for inspection services performed on holidays or on an overtime basis.

In addition, under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*) (AMA), FSIS provides a range of voluntary inspection, certification, and identification services to assist in the orderly marketing of various animal products and byproducts. These services include the certification of technical animal fats and the inspection of exotic animal products, such as antelope and elk. FSIS is required to recover the costs of voluntary inspection, certification, and identification services.

Under the AMA, FSIS also provides certain voluntary laboratory services that establishments and others may request the Agency to perform. Laboratory services are provided for four types of analytic testing: microbiological testing, residue chemistry tests, food composition tests, and pathology testing. FSIS must recover these costs.

Every year FSIS reviews the fees that it charges for providing overtime and holiday inspection services; voluntary inspection, identification, and certification services; and laboratory services. The Agency performs a cost analysis to determine whether the fees that it has established are adequate to recover the costs that it incurs in providing these services. In the Agency’s analysis of projected costs for October 1, 2001 to September 30, 2002, the Agency has identified increases in the costs of these nonmandatory inspection services due specifically to the national and locality pay raise for Federal employees (proposed 3.6 percent increase effective January 2002) and inflation.

FSIS calculated the proposed fees by adding the projected increase in salaries and inflation for FY 2001 and FY 2002 to the actual cost of the services in FY 2000. The Agency calculated inflation to be 2.0% for FY 2001 and 2.0% for FY 2002. The Agency considered the costs that it will incur because of the pay raise in January 2002 and averaged its pay costs out over the entire FY 2002.

FSIS did not use the fees currently charged as a base for calculating the proposed fees for FY 2002 because the current fees are based on estimates of costs to the Agency for FY 2001 and FY 2002. The Agency now knows the actual cost of inspection services for FY 2000 and used the actual costs in calculating the proposed fees.

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

TABLE 1.—CURRENT AND PROPOSED FEES—PER HOUR PER EMPLOYEE—BY TYPE OF SERVICE EXCEPT FOR VOLUNTARY INSPECTION OF EGG PRODUCTS

Service	Previous rate	Proposed rate
Base time	\$38.44	\$42.64
Overtime & holiday ...	41.00	44.40

TABLE 1.—CURRENT AND PROPOSED FEES—PER HOUR PER EMPLOYEE—BY TYPE OF SERVICE EXCEPT FOR VOLUNTARY INSPECTION OF EGG PRODUCTS—Continued

Service	Previous rate	Proposed rate
Laboratory	60.04	68.32

The differing proposed fee increase for each type of service is the result of the different amount that it costs FSIS to provide these three types of services. The differences in costs stem from various factors, including different salary levels of the program employees who perform the services. See Table 2.

TABLE 2.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES

Base time	
Actual FY 2000 cost	\$39.67
Inflation and salary increases ...	2.95
Adjustment for divisibility by quarter hours	.02
Total	42.64
Overtime and Holiday Inspection Services	
Actual FY 2000 cost	41.32
Inflation and salary increases ...	3.07
Adjustment for divisibility by quarter hours	.01
Total	44.40
Laboratory Services	
Actual FY 2000 cost	63.59
Inflation and salary increases ...	4.73
Total	68.32

FSIS is also proposing to raise the fees for its voluntary inspection of egg products for base time, which are currently set forth in § 55.510(b) of Title 7 of the Code of Federal Regulations (CFR), from \$33.64 to \$42.64 per hour per program employee and for overtime and holiday inspection which is currently set forth in section 55.510(c) of Title 7 of the CFR from \$35.52 to \$44.40 per hour per program employee. The differing proposed fees for basetime services and for holidays and overtime services is due to the different amount that it costs FSIS to provide those services. These differences in cost stem from various factors, which include, the differing salary levels of the program employees who perform the services. These fees have not been changed in six years. Additionally, in conjunction with the proposed fee increase for the voluntary inspection of egg products, FSIS is proposing provisions which

delineate what types of services would be considered to be overtime or holiday work.

When the regulations governing the mandatory inspection of egg products were transferred to Title 9 of the Code of Federal Regulations (CFR) on December 31, 1998 (63 FR 72352), the regulations governing the voluntary inspection of egg products were not also transferred. FSIS, however, does perform voluntary inspection of egg products, and certain other products, under the AMA. The Agency is now proposing to add part 592 to title 9 of the CFR which will contain the fees for basetime and overtime and holiday voluntary inspection of egg products, as well as an explanation of what services are considered to be overtime and holiday work. Further, the Agency is proposing to amend the heading of Subchapter I of Chapter III of the CFR by deleting the word "Act" so the heading will be "Egg Products Inspection."

At this time, FSIS is only proposing to include the base time fee scheme and the overtime and holiday fee scheme for the voluntary inspection of egg products that is done on other than a continuous resident basis in Part 592 of Title 9 of the CFR. In a separate rulemaking, the Agency will propose to include other provisions of the voluntary egg products inspection regulations in title 9 of the CFR. FSIS will coordinate this effort with AMS.

The Agency must recover the actual cost of voluntary inspection services covered by this 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 in October 2001. To expeditiously make this rulemaking effective so that the increased costs can be recovered in a timely fashion, and because the Agency has previously announced (65 FR 60093) that it would be reviewing these fees on a FY basis, the Administrator has determined that 30 days for public comment is sufficient.

Executive Order 12866 and Regulatory Flexibility Act

Because this final rule has been determined to be not significant, the Office of Management and Budget (OMB) did not review it under Executive Order 12866.

The Administrator, FSIS, has determined that this final 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.

Small establishments and plants should not be affected adversely by the increases in fees because the new fee increases provided, in general, for reflect only a small increase in the costs currently borne by those entities that choose to use certain inspection services. Moreover, smaller establishments and plants are unlikely to use a significant amount of overtime and holiday inspection services. The inspection services for which fee increases are proposed are generally used by larger establishments and plants because of their larger production volume, the greater complexity and diversity of the products that they produce, and the need of their clients (large commercial or institutional establishments) for on-time delivery of large volumes of product.

Establishments and plants that seek FSIS services are likely to have calculated that the incremental costs of overtime and holiday inspection services would be less than the incremental expected benefits of additional revenues that they would realize from additional production.

Economic Effects

As a result of the proposed fees, the Agency expects to collect an estimated \$101 million in revenues for FY 2002, compared to \$94 million under the current fee structure. The costs that industry would experience by the raise in fees are similar to other increases that the industry faces because of inflation and wage increases.

The total volume of meat and poultry slaughtered under Federal inspection in 2000 was about 82 billion pounds (Livestock, Dairy, Meat, and Poultry Outlook Report, Economic Research Service, USDA, March 28, 2001). The total volume of U.S. egg product production in 2000 was about 2.3 billion pounds (2001 Agriculture Statistics, USDA). The increase in cost per pound of product associated with the proposed fees increases is, in general, \$.00008. Even in competitive industries like meat, poultry, and egg products, this amount of increase in costs would have an insignificant impact on profits and prices.

The industry is likely to pass through a significant portion of the proposed fee increases to consumers because of the inelastic nature of the demand curve facing these firms. Research has shown that consumers are unlikely to reduce demand significantly for meat and poultry products, including egg products, when prices increase. Huang estimates that demand would fall by .36 percent for a one percent increase in price (Huang, Kao S., A Complete

System of U.S. Demand for Food. USDA/ERS Technical Bulletin No 1821, 1993, p. 24). Because of the inelastic nature of demand and the competitive nature of the industry, individual firms are not likely to experience any change in market share in response to an increase in inspection fees.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5, 381.35, and 590.300 through 590.370, respectively, must be exhausted before any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA, PPIA, or EPIA.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this proposed rule, FSIS will announce and provide copies of this **Federal Register** publication in the *FSIS Constituent Update*. FSIS provides a weekly *FSIS Constituent Update* via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at <http://www.fsis.usda.gov>. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience than would be otherwise possible. For more information, or to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720-5704.

List of Subjects

9 CFR Part 391

Fees and charges, Government employees, Meat inspection, Poultry products.

9 CFR Part 590

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

9 CFR Part 592

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

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

PART 391—FEES AND CHARGES FOR INSPECTION AND LABORATORY ACCREDITATION

1. The authority citation for part 391 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 394, 1622 and 1624; 21 U.S.C. 451 *et. seq.*; 21 U.S.C. 601-695; 7 CFR 2.18 and 2.53.

2. Sections 391.2, 391.3, and 391.4 are revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 is \$42.64 per hour per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5 and 381.38 is \$44.40 per hour per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 is \$68.32 per hour per program employee.

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

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

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

4. 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 \$44.40.

5. 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 \$44.40.

* * * * *

6. Revise the heading of Subchapter I to read as follows:

SUBCHAPTER I—EGG PRODUCTS INSPECTION

7. Add part 592 to Subchapter I to read as follows:

PART 592—VOLUNTARY INSPECTION OF EGG PRODUCTS

Sec.

592.1 Scope and Purpose.

592.2 Base time rate.

593.3 Overtime rate.

593.4 Holiday rate.

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

§ 592.1 Scope and Purpose.

The fees that shall be charged for, and collected by the Food Safety and Inspection Service for the voluntary base time, overtime, and holiday time inspection services of egg products as provided by FSIS on other than a continuous resident basis shall be at the applicable rates and on the basis set forth in §§ 592.2 through 592.4 below, in lieu of that for such services set forth in 7 CFR Part 55. The fees and charges for such services shall be paid by check, draft, or money order to the Food Safety and Inspection Service.

§ 592.2 Base time rate.

The base time rate for voluntary inspection services of egg products is \$42.64 per hour per program employee.

§ 592.3 Overtime rate.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay the Agency for

such overtime at an hourly rate of \$44.40.

§ 592.4 Holiday rate.

When an official plant requires voluntary inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of \$44.40.

* * * * *

Done at Washington, DC, on October 10, 2001.

Thomas J. Billy,
Administrator.

[FR Doc. 01-25923 Filed 10-15-01; 8:45 am]

BILLING CODE 3410-DM-P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20 and 50

RIN 3150-AG89

Entombment Options for Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering an amendment to its regulations that would clarify the use of entombment for power reactors. The NRC has determined that entombment of power reactors is a technically viable decommissioning alternative and can be accomplished safely. Current regulations governing decommissioning and license termination require that decommissioning be completed within 60 years of permanent cessation of operations. Completion of decommissioning beyond 60 years will be approved by the NRC only when necessary to protect public health and safety. The regulations also establish dose criteria for license termination that includes a provision that permits license termination under restricted and unrestricted release conditions. This advance notice of proposed rulemaking invites early input from affected parties and the public on the issues surrounding the feasibility of entombment.

DATES: The comment period expires December 31, 2001. Comments received after this date will be considered if it is

practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: The Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. You may also provide comments via the NRC's interactive rulemaking Web site (<http://ruleforum.llnl.gov>). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415-5905; e-mail CAG@nrc.gov.

The NRC maintains an Agency wide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/NRC/ADAMS/index.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Frank Cardile, telephone (301) 415-6185, e-mail fpc@nrc.gov, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

Background

A. Current Rulemakings Related to Decommissioning and License Termination

Current requirements pertaining to decommissioning are contained in 10 CFR part 50. Specific requirements on decommissioning alternatives were published June 27, 1988 (53 FR 24018). These provisions state that the Commission will terminate a license if it determines that the decommissioning has been performed in accordance with an approved decommissioning plan and that terminal radiation surveys and associated documentation demonstrate that the facility and site are suitable for release for unrestricted release. The Supplementary Information (SI) to the 1988 rule defined three broad decommissioning alternatives: DECON, SAFSTOR, and ENTOMB. The term ENTOMB was defined as the alternative,

in which radioactive contaminants are encased in a structurally long-lived material, such as concrete; the entombed structure is appropriately maintained; and surveillance is continued until the radioactivity decays to a level permitting termination of the license with unrestricted release.

Currently, 10 CFR 50.82(a)(3) requires that decommissioning be completed within 60 years of permanent cessation of operations, and completion of decommissioning beyond 60 years be approved by the NRC only when necessary to protect public health and safety. The factors that will be considered by the Commission in evaluating an alternative that provides for the completion of decommissioning beyond 60 years of permanent cessation of operation include unavailability of waste disposal capacity and other site-specific factors affecting the licensee's capability to carry out decommissioning, including the presence of other nuclear facilities at the site. In addition, the 1988 rule was structured so that use of any decommissioning option would result in termination of the license for unrestricted use. These requirements tended to favor the use of DECON and SAFSTOR. However, as noted in the SI for the June 27, 1988, final rule, the ENTOMB alternative was not specifically precluded because it was recognized that it might be an allowable alternative in protecting public health and safety.

In 1997, the Commission amended its regulations to establish dose criteria for license terminations. These provisions appear in 10 CFR Part 20, Subpart E, and include a provision that permits license termination under restricted release conditions. Under a restricted release, the dose to the average member of the critical group must not exceed 0.25 mSv/yr (25 mrem/yr) total effective dose equivalent (TEDE) and be as low as reasonably achievable (ALARA) with the restrictions in place, and, if the restrictions were no longer in effect, the dose due to residual radioactivity could not exceed 1 mSv/yr (100 mrem/yr) (or 5 mSv/yr (500 mrem/yr), if additional conditions are met) TEDE and is ALARA. These caps were chosen to provide a safety net in the highly unlikely event that the restrictions failed.

B. Discussion of the Concept of Entombment

Entombment is an alternative method for decommissioning a power reactor that ultimately results in termination of the license. Before the start of entombment, the reactor permanently