

interest at a rate equal to the applicable Federal borrowing interest rate, as determined by the FSA Administrator.

Thirty days before the suspension period FSA will notify the borrower that the suspension of the shared appreciation agreement will end in the near future. This notification is separate and apart from the notification required by § 807 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (1999 Appropriations Act). Section 807 of the 1999 Appropriations Act requires FSA, beginning in fiscal year 2000, to send an FLP borrower notice of the provisions of the agreement not later than 12 months before the end of the term of a shared appreciation agreement. Under additional FSA procedures all borrowers whose agreements were due, even if the payment obligation is suspended, were notified of the agreements' provisions in the timeframe required by § 807. The requirement in this regulation that borrowers be notified 30 days before the end of the suspension is not intended to apply under § 807 of the 1999 Appropriations Act.

If the real estate is conveyed during the suspension period, the recapture amount plus any applicable interest will become immediately due and payable under the notice procedures explained in the notice to the borrowers.

#### List of Subjects in 7 CFR Part 1951

Accounting, Credit, Loan programs—agriculture.

Accordingly, 7 CFR part 1951 is amended as follows:

#### PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

#### Subpart S—Farmer Program Account Servicing Policies

2. Section 1951.914 is amended by revising the heading and introductory text of paragraph (b) and by adding paragraph (h) to read as follows:

##### § 1951.914 Servicing of accounts restructured under Primary Loan Service Program.

\* \* \* \* \*

(b) *Recapture under Shared Appreciation Agreements.* Except as provided in paragraph (h), recapture of any appreciation will take place at the

end of the term of the agreement, or sooner, if the following occurs: \* \* \*

##### (h) *Suspension of Recapture Payment Obligation under a Shared Appreciation Agreement.*

(1) A borrower may request from a Farm Loan Program (FLP) servicing official, a suspension of the obligation to pay the recapture amount under a shared appreciation agreement, if:

(i) The shared appreciation agreement recapture payment is now due but there has been no agreement to pay the recapture payment;

(ii) The 10 year term of the agreement ends on or before December 31, 2000;

(iii) The secured real estate has not yet been conveyed so that the entire amount of the shared appreciation agreement recapture payment is due;

(iv) The borrower has complied with the other terms of the agreement;

(v) The borrower certifies in writing that the borrower is not able to pay the recapture amount;

(vi) The agreement or the obligations thereunder have not been accelerated and there are pending servicing rights under this subpart still available to the borrower; and

(vii) The Agency's mortgage which secures the agreement remains in effect for a period not less than the suspension period under this paragraph plus 3 additional years or the Agency determines that the mortgage can be extended for an additional 3 years beyond the suspension period.

(2) A request for suspension of the obligation to pay the recapture amount must be submitted in writing to the FLP servicing official after the borrower has received notification of the recapture amount due by the later of:

(i) 30 days after the borrower has received notification of the recapture amount due; or

(ii) May 24, 1999.

(3) The term of the suspension of the obligation to pay the recapture amount is 1 year.

(4) A suspension may be renewed by the Agency at the request of a borrower in writing not more than twice. Prior to renewal of a suspension, the Agency will determine, based on a Farm and Home Plan, the portion of the recapture amount the borrower is still unable to pay, or obtain credit to pay, from any other source (including nonprogram loans from the Agency, in accordance with this part), the suspension will be limited to such an amount. The Agency must also determine that the conditions prescribed in paragraphs (h)(1)(i) through (h)(1)(vi) are still met.

(5) The amount of the recapture payment suspended will accrue interest

at a rate equal to the applicable rate of interest of Federal borrowing, as determined by the Agency.

(6) Thirty days before the end of the suspension period, the FLP Servicing Official shall inform the borrower by letter of the suspended amount, including accrued interest that is owed and the date such payment is due.

(7) At the end of the suspension period, the borrower will be obligated to pay the amount suspended, plus any accrued interest and the borrower will be so notified.

(8) If the real estate that is the subject of the shared appreciation agreement during the suspension period is conveyed, the suspended amount, plus any accrued interest shall become immediately due and payable by the borrower in accordance with the procedures established under paragraph (c), except that an appraisal is not required on the real estate.

Signed in Washington, DC, on April 20, 1999.

**August Schumacher, Jr.,**

*Under Secretary for Farm and Foreign Agricultural Services.*

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## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

#### 9 CFR Part 391

[Docket No. 98-052F]

RIN 0583-AC54

#### Fee Increase for Inspection Services

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

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is increasing the fees charged to meat and poultry establishments, plants, importers, and exporters for providing voluntary inspection, identification, and certification services; laboratory services; and overtime and holiday services. These fees are being increased in order to generate the additional revenue that FSIS is required to recover. Despite increased costs each year, these rates have not been adjusted since 1996.

FSIS is reducing the fee it charges for the Accredited Laboratory program. The Agency's analysis has identified decreased operational costs for this program. Accordingly, the Agency is reducing its fee.

**DATES:** Effective April 25, 1999.

**FOR FURTHER INFORMATION CONTACT:**

Michael B. Zimmerer, Director, Financial Management Division, Office of Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700, (202) 720-3552.

**SUPPLEMENTARY INFORMATION:****Background**

The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) provide for mandatory Federal inspection of the slaughter of certain livestock and poultry and of the processing of certain livestock and poultry products. The cost of this inspection (excluding such inspection performed on holidays or on an overtime basis) is borne by FSIS.

In addition to mandatory inspection, FSIS provides a range of voluntary inspection, certification, and identification services. Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), FSIS provides these 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. FSIS is required to recover the costs of voluntary inspection, certification, and identification services.

FSIS also provides certain voluntary laboratory services which establishments or others may request FSIS to perform. The cost of these services, which are provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), must be recovered by FSIS. Laboratory services are provided for four types of analytic testing. These are: microbiological testing, residue chemistry tests, food composition tests, and some pathology testing.

In 1998, FSIS reviewed the fees that it charged for providing voluntary inspection, identification, and certification services; laboratory services; and overtime and holiday services and performed a cost analysis to determine whether the fees it established were adequate to recover the costs that FSIS would incur in providing the services. As reflected in the proposed rule published on March 4, 1999, (64 FR 10402), FSIS has determined that the fees it currently charges are not adequate to recover the costs of providing the services.

Comments submitted in response to the proposed rule questioned why the base time fee for voluntary inspection, certification, and identification services and the fee for overtime and holiday services were being increased more than

FSIS' projected increased FY 1999 costs of 3.1% for Federal employees pay raises and 1.9% for inflation. Comments submitted also questioned why the base time fee, the overtime and holiday fee, and the laboratory service fee were not being raised the same percentage.

FSIS has not raised the fees that it charges for providing voluntary inspection, identification, and certification services, overtime and holiday services, and laboratory services since December 1996 (61 FR 65459; 62 FR 6111). The cost of providing these services has risen since that time. FSIS has been absorbing these increased costs in various ways. FSIS cannot continue to absorb these increased costs.

As discussed below in the Agency's response to comments, since the 1996 rate change, FSIS has experienced increased costs in providing voluntary inspection, identification, and certification services; laboratory services; and overtime and holiday services. These increased costs are attributable to the national and locality pay raises given to Federal employees each year, the increased travel and overhead costs each year, and other factors such as higher-salaried personnel certifying product during base time. These increased costs necessitate a 12.53% increase in base time costs, a 9.12% increase in overtime and holiday costs, and a 4.78% increase in laboratory services costs. The differing fee increase for each type of service is the result of the different amount it costs FSIS to provide these three types of services. As reflected in the response to comments, these differences in costs stem from various factors including the differing salary levels of the personnel who provide the services.

In its analysis of projected costs for FY 1999, FSIS has identified a decrease in the cost of operating the Accredited Laboratory Program (ALP). This projected decreased cost of \$1,000 per accreditation is based upon the difference in actual costs since the 1996 increase and projected costs. The decreased cost of accreditation is the result of a number of factors, including a projected decrease in accreditations sought and maintained, as well as more efficient operating practices by FSIS.

A full analysis of the economic impact of this rule was presented in the proposed rule (64 FR 10402).

**Proposed Rule and Comments**

On March 4, 1999, FSIS published a proposed rule at 64 FR 10402 to increase the fees that FSIS charges meat and poultry establishments, plants, importers, and exporters for providing

voluntary inspection, identification, and certification services; laboratory services; and overtime and holiday services. FSIS received 19 comments from the meat and poultry industries. All commenters were opposed to the proposal, objecting to the proposed fee increases for the affected inspection services. The commenters' specific concerns and the Agency's responses follow.

*Comment:* All commenters stated that the proposed raise of 12.53% and 9.12% in fees, respectively for base time and overtime/holiday time services, which appeared to be based upon an actual cost increase of 5.0% (3.1% for wages and 1.9% for overhead adjustments), was excessive. Most of the commenters stated that they were opposed to any rate increase in excess of 5.0%.

*Response:* The fee increases that FSIS proposed were not solely based upon FSIS' projected increased FY 1999 costs of 3.1% for wages and 1.9% for overhead. The last time FSIS increased reimbursable rates was in December of 1996 (61 FR 65459). FSIS is required to recover all of the costs associated with providing services in its voluntary inspection programs (i.e. voluntary inspection, identification, and certification services and overtime and holiday services). New rates were not proposed in 1997 and 1998 because of major reorganizations within the Agency and other factors, even though all Federal employees received pay raises, and travel and overhead costs increased in each of those years. This resulted in the industry being underbilled in each of these years and the Agency not recovering the full costs it incurred in operating its voluntary programs.

Since FY 1996, all Federal employees have received across the board average salary increases as follows: January, 1997—3.0%; January, 1998—2.8%; and January, 1999—3.6%. The compounded annual effect of all 3 years of salary increases total 9.7%. The compounded effect calculates the increase in a given year on top of the previous years' increases. That is, for every dollar earned by a Federal employee in 1996, he now is earning almost 10 cent more in 1999. Specifically, each dollar earned by a Federal employee in 1996, because of salary raises, increased to \$1.03 in 1997 (a 3% increase), \$1.06 in 1998 (a 2.8% increase) and \$1.10 in 1999 (a 3.6% increase).

Additionally, there were other factors that were taken into account in determining the increased rate of 12.53% and 9.12% for base and overtime/holiday time services, respectively, beyond the calculated

9.7% increased salary amount for Federal employees. For base time, an additional 3.37% increase was added to the 9.16% compounded salary cost increase (estimated in mid-1998) to provide for the fact that base time services are performed by higher salaried employees doing certification of product for exports, instead of lower salaried employees in previous years, plus the projected inflated travel and overhead costs. The proposed increase of 9.12% for overtime/holiday services is less than the compounded effect of the 3 years of Federal pay raises (9.7%) by the amount of .58% due to the fact that when the proposed rate increases were originally calculated in mid-1998, the projected pay increase for January 1999 was calculated at the anticipated 3.1%, instead of the later approved actual raise of 3.6% that occurred.

Commenters were not opposed to the proposed increase cost for laboratory services. The increase of 4.78% for laboratory service fees is due to increased efficiencies in the laboratories, which in turn keep down operating costs. Operating costs constitute a significant portion of the fee for laboratory services. Operating costs have been kept in check over the last three years.

The fees being finalized reflect the difference between the last fee change in 1996 and projected costs incurred by FSIS for FY 1999. If those fees were recalculated to reflect all actual costs through FY 1999, they would probably increase. However, the Agency has decided to finalize the fee rates it proposed. It will make appropriate adjustments in a new proposal it expects to publish in late 1999 regarding the fees that need to be charged for the inspection programs it operates. This new proposal will reflect the Federal pay raise and inflation rate for travel and overhead costs anticipated for January 2000, and any other relevant factors.

*Comment:* Two commenters stated that in the proposed rule, there is an attempt to rationalize that small establishments would not be affected adversely. Some commenters stated that the rule will have a detrimental effect on small establishments trying to develop a growing market. Additionally, some commenters stated that some small establishments are not selling directly to consumers, but instead are selling to food service or retail establishments. Therefore, these commenters indicated that it was highly unlikely that the excessive cost increases being proposed could be passed through, especially in today's

low inflation or even deflationary environment.

*Response:* FSIS does not have data on specific small establishments that sell their products directly to food service or retail establishments. Therefore, FSIS could not estimate the economic impact of the proposed fee increase on small establishments who engaged in this type of business, i.e., the potential impact of the increase in prices on their sales or the price elasticity. Price elasticity is the percentage change in demand for a product associated with a one percent change in its price. FSIS relied on the overall elasticity of demand for the product, i.e., responsiveness or sensitivity of demand to changes in prices of the product sold by all establishments. FSIS would welcome specific data on this issue for considering future adjustments. However, it must be understood that FSIS is required to recover the full costs of operating its voluntary programs.

*Comment:* Four commenters said that the increase in fees does not take into consideration the cooperative certification programs of the Agricultural Marketing Service, USDA, such as the Certified Angus Beef or the Certified American Lamb program.

*Response:* The certification services provided by other agencies and the rates that other agencies charge for the services that they provide has no impact upon the fees charged by FSIS.

*Comment:* Some commenters raised issues about FSIS inspection structure and the possible operation of HACCP plants outside normal inspection hours without the requirement for overtime inspection.

*Response:* These issues are not within the scope of this rulemaking and, thus, are not being addressed in this docket.

Accordingly, FSIS is amending § 391.2 to increase the base time rate for providing voluntary inspection, identification, and certification services from \$32.88 per hour, per program employee, to \$37.00 per hour, per program employee. FSIS is amending § 391.3 to increase the rate for providing overtime and holiday services from \$33.76 per hour, per program employee, to \$36.84 per hour, per program employee. FSIS is also amending § 391.4 to increase the rate for laboratory services from \$48.56 per hour, per program employee to \$50.88 per hour, per program employee. Further, FSIS is amending § 391.5 to reduce the fee charged for accreditations and renewals from \$2,500 per accreditation, to \$1,500 per accreditation per year.

To recover the increased costs in an expeditious manner, the Administrator has determined that these amendments

should be effective on the first day of the pay period (Sunday) after publication of this rule. Therefore, the effective date for this rule is April 25, 1999.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The fee increases for voluntary inspection, identification, and certification services, laboratory services, and overtime and holiday inspection services are the result of increases in the salaries of Federal employees established by Congress under the Federal Employees Pay Comparability Act of 1990. The increase also includes projected increased travel costs and overhead costs due to inflation, higher-salaried employees working more base time than overtime, and various other factors.

The Administrator, Food Safety and Inspection Services, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected livestock and poultry products that are in addition to, or different than, those imposed under the FMIA and PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over livestock and poultry products that are outside official establishments for the purpose of preventing the distribution of livestock and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States.

State or local laws, regulations, or policies are preempted by the Agricultural Marketing Act of 1946, as amended, if they present irreconcilable conflict with the provisions of this rule under the Agricultural Marketing Act of 1946, as amended.

Administrative proceedings will not be required before parties may file suit

in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 of the FMIA and PPIA regulations, respectively, must be exhausted prior to 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 or PPIA.

#### List of Subjects in 9 CFR Part 391

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

For the reasons set out in the preamble, part 391 of title 9 of the Code of Federal Regulations is amended as follows:

#### PART 391—FEES AND CHARGES FOR INSPECTION SERVICES 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, 391.4 and paragraph (a) in § 391.5 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 shall be \$37.00 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 shall be \$36.84 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 shall be \$50.88 per hour, per program employee.

##### § 391.5 Laboratory accreditation fees.

(a) The annual fee for the initial accreditation and maintenance of accreditation provided pursuant to §§ 318.21 and 381.153 shall be \$1,500 per accreditation.

\* \* \* \* \*

Done in Washington, DC on: April 20, 1999.

**Thomas J. Billy,**  
Administrator.

[FR Doc. 99–10239 Filed 4–20–99; 3:49 pm]

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#### NUCLEAR REGULATORY COMMISSION

##### 10 CFR Part 55

RIN 3150–AF62

##### Initial Licensed Operator Examination Requirements

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to allow nuclear power facility licensees to prepare, proctor, and grade the required written examinations and to prepare the required operating tests that the NRC uses to evaluate the competence of individuals applying for operator licenses at those plants. The amendment requires facility licensees that elect to prepare the examinations to prepare the examinations in accordance with NRC operator licensing examination standards for power reactors; establish, implement, and maintain procedures to control examination security and integrity; submit, upon approval by an authorized representative of the facility licensee, each examination and test to the NRC for review and approval; and proctor and grade the written examinations upon NRC approval. In making this final rule change, the NRC will continue to administer (i.e., manage and oversee) the initial operator licensing examination process by: Developing the generic fundamentals examinations (which are also proctored by facility licensees); reviewing and approving the facility-developed, site-specific written examinations and operating tests; and independently conducting and grading both the dynamic simulator and walk-through portions of the operating test, which is considered the most performance-based aspect of the licensing process and permits the NRC to evaluate the operator and senior operator applicants' competence under normal and abnormal plant conditions. The amendment preserves the NRC's authority to prepare the examinations and tests in lieu of licensees and to exercise its discretion and reject a power reactor facility licensee's determination to prepare, proctor, and grade the written examinations and prepare the operating tests. The Commission is concerned with examination integrity; therefore, the amendment will also revise the regulations to ensure that applicants, licensees, and facility licensees understand the scope of the regulation.

**EFFECTIVE DATE:** This final rule is effective on October 20, 1999.

**FOR FURTHER INFORMATION CONTACT:** Siegfried Guenther, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1056; e-mail: sxg@nrc.gov.

##### SUPPLEMENTARY INFORMATION:

##### Background

Section 107 of the Atomic Energy Act (AEA) of 1954, as amended, requires the NRC to determine the qualifications of individuals applying for an operator's license, to prescribe uniform conditions for licensing these individuals, and to issue licenses as appropriate. Pursuant to the AEA, 10 CFR Part 55 requires an applicant for an operator license to pass an examination that satisfies the basic content requirements specified in the regulation. The licensing examination consists of the following parts: (1) A written generic fundamentals examination (covering reactor theory, thermodynamics, and components) that license applicants have to pass as a prerequisite for taking the site-specific examination; (2) a site-specific written examination covering plant systems, emergency and abnormal plant procedures, and plant-wide generic knowledge and abilities; and (3) a site-specific operating test consisting of three categories, including a crew-based, dynamic simulator performance demonstration, an individual, task-based walk-through covering control room and in-plant systems, and various plant administrative requirements. Although neither the AEA nor Part 55 specifies who must prepare, proctor, or grade these examinations, the NRC has traditionally performed those tasks itself or through its contract examiners. The NRC and its contract examiners have used the guidance in NUREG–1021, "Operator Licensing Examination Standards for Power Reactors," once titled "Operator Licensing Examiner Standards," to prepare the initial operator licensing examinations. This document has been revised as experience has been acquired in preparing the examinations. The current version is designated Revision 8.<sup>1</sup>

In accordance with 10 CFR 170.12(i), the NRC's staff and contractual costs are recovered from facility licensees that receive examination services. In Fiscal

<sup>1</sup> Copies are available for inspection or copying for a fee from the NRC Public Document Room (PDR) at 2120 L Street NW, Washington, DC 20555–0001; the PDR's mailing address is Mail Stop LL–6; telephone is 202–634–3273; fax is 202–634–3343. Revision 8 of NUREG–1021 is also available for downloading from the internet at <http://www.nrc.gov>.