

Comment: More information is needed to fully assess the economic impact of the proposed increases.

Response: The Agency believes it has presented adequate information to explain the assessment of the economic impact of the fee increases.

Comment: Automatic fee increases for mandatory inspection eliminate any pressure to optimize the use of limited inspection services.

Response: FSIS appropriations do not cover voluntary inspection services or overtime and holiday inspection services. The Agency is required by statute to recover the full cost of voluntary and overtime and holiday inspection services.

Comment: FSIS should fulfill its goal of implementing risk-based inspection and eliminate fees for overtime and holiday inspection.

Response: FSIS is moving toward a more risk-based allocation of inspection resources. However, a risk-based inspection approach does not mean the elimination of holiday and overtime inspection fees. These fees are required by statute.

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 will 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.

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

Economic Effects

As a result of the new fees, the Agency expects to collect an estimated \$119 million in revenues for 2003, compared to \$101 million under the previous fee structure. The costs that industry will 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 2001 was about 83 billion pounds (Livestock, Dairy, Meat, and Poultry Outlook Report, Economic Research Service, USDA, August 15, 2002). The total volume of U.S. egg product

production in 2001 was about 2.319 billion pounds (2002 Agriculture Statistics, USDA). The increase in cost per pound of product associated with the new fees increases is, in general, \$.0002. Even in competitive industries like meat, poultry, and egg products, this amount of increase in costs would have an insignificant impact on profits and prices.

The industry is likely to pass through a significant portion of the new 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final 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 final rule, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. 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, public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv 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 the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience than would otherwise be possible.

For more information contact the Congressional and Public Affairs Office, at (202) 720-9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at <http://www.fsis.usda.gov/oa/update/update.htm>. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

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 is amending 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:

Sec.
391.2 Base time rate.
391.3 Overtime and holiday rate.
391.4 Laboratory service rate.

§ 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 \$43.64 per hour per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant