

Rules and Regulations

Federal Register

Vol. 71, No. 9

Friday, January 13, 2006

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations; Interpretations of Statutory and Regulatory Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: In an interim rule published in the **Federal Register** on December 21, 1998, the Federal Crop Insurance Corporation (FCIC) amended the General Administrative Regulations by adding a new subpart X to implement the statutory mandates of section 533 of the Agricultural Research, Extension, and Education Reform Act of 1998 (1998 Research Act). The rule provided procedures for responding to requests for final agency determinations regarding any provision of the Federal Crop Insurance Act (Act) or any regulation promulgated thereunder. The interim rule was made final on September 16, 1999. This correction is needed to correct the facsimile number and electronic mail address provided for requester submissions for final agency determinations.

DATES: This rule is effective January 13, 2006.

FOR FURTHER INFORMATION CONTACT: Heyward Baker, Director, Risk Management Services Division, Risk Management Agency, United States Department of Agriculture, Stop Code 0803, 1400 Independence Avenue, SW., Washington, DC 20250-0803, telephone (202) 720-4232.

SUPPLEMENTARY INFORMATION:

List of Subjects in 7 CFR Part 400

General administrative regulations; Interpretations of statutory and regulatory provisions.

Need for Correction

■ As currently published, 7 CFR 400.767 contains outdated contact information. Accordingly, 7 CFR part 400 is corrected by making the following amendment:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart X—Interpretations of Statutory and Regulatory Provisions

■ 1. The authority citation for 7 CFR part 400 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

■ 2. Amend § 400.767 by revising paragraph (a)(1) to read as follows:

§ 400.767 Requester obligations.

* * * * *

(a) * * *

(1) Be submitted:

(i) In writing by certified mail, to the Associate Administrator, Risk Management Agency, United States Department of Agriculture, Stop Code 0801, 1400 Independence Avenue, SW., Washington, DC 20250-0801;

(ii) By facsimile at (202) 690-3604; or

(iii) By electronic mail at RMA.Mail@rma.usda.gov;

* * * * *

Signed in Washington, DC, on January 4, 2006.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 06-269 Filed 1-12-06; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 391, 590, and 592

[Docket No. 03-027F; FDMS Docket Number FSIS-2005-0025]

RIN 0583-AD12

Changes in Fees for Meat, Poultry, and Egg Products Inspection Services—Fiscal Years 2006–2008

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is changing

the fees that it charges meat and poultry establishments, egg products plants, importers, and exporters for providing voluntary inspection, identification, and certification services; overtime and holiday inspection services; and laboratory services. The Agency is raising these fees to reflect, among other factors, national and locality pay increases for Federal employees and inflation. In the past, FSIS has amended its regulations on an annual basis. With this regulation, FSIS is providing for three annual fee increases. This will provide the meat, poultry, and egg industries with more timely cost information. The Agency is also increasing the annual fee for its Accredited Laboratory Program.

DATES: Effective February 13, 2006.

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

SUPPLEMENTARY INFORMATION:

Background

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

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

byproducts. These services include the certification of technical animal fats and the inspection of exotic animal products, such as antelope and elk. FSIS is required to recover the costs of the voluntary inspection, certification and identification services it provides.

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

FSIS also accredits non-Federal analytical laboratories under its Accredited Laboratory Program; such accreditation allows labs to conduct analyses of official meat and poultry samples. The Food, Agriculture, Conservation, and Trade Act of 1990, as amended, mandates that laboratory accreditation fees cover the costs of the Accredited Laboratory Program. This same Act mandates an annual payment of an accreditation fee on the anniversary date of each accreditation.

Every year FSIS reviews the fees that it charges for providing overtime and holiday inspection services; voluntary inspection, identification and certification services; laboratory services; and laboratory accreditation. The Agency performs a cost analysis to determine whether the fees that it has established are adequate to recover the costs that it incurs in providing these services. In the past, FSIS has amended its regulations on an annual basis to change the fees it charges. Because of the length of the rulemaking process, the fiscal year has partially elapsed by the time the Agency publishes a final rule to amend its fees. As a result, the Agency is unable to recover the full cost of voluntary inspection, identification and certification services, overtime and holiday inspection services, laboratory services, and laboratory accreditation in a timely manner.

With this rulemaking, the Agency will amend its regulations to provide for three annual fee increases in one action.

These increases are based on criteria established by the Agency to determine the needed fee increases on a multi-year basis. The Agency will continue to perform a yearly cost analysis to determine whether the fees established are adequate to recover the costs of the provided services. The Agency will initiate another rulemaking to adjust any fee established if, as a result of the cost analysis, the Agency determines that a fee established either will exceed the Agency's costs to provide a service or does not adequately cover the Agency's costs of providing the services. In the Agency's analysis of projected costs set forth in Tables 2 through 4, the agency has identified the bases for the increases in the cost of voluntary base time inspection, certification and identification services, overtime and holiday inspection services, and laboratory services for fiscal year 2006 through fiscal year 2008. FSIS, in July 2005, had proposed fee increases for FYs 2005 through 2008. Since FY 2005 has passed, this rule addresses fees only for FYs 2006 through 2008.

The Agency is increasing the annual fee for participants in the Accredited Laboratory Program from the current \$1,500 to the figures listed in Table 5 for FY 2006 through FY 2008 because the program costs for this service has increased and will continue to increase, and because previously accumulated funds that have been used to pay for accredited laboratory program costs have decreased. The reasons for the increases in the laboratory accreditation fees are more fully discussed below in the section entitled "Economic Effects of Accredited Laboratory Program."

FSIS calculated its actual costs for fiscal years 2004 and 2005 and its projected increases in salaries and inflation in fiscal years 2006 through 2008. The following estimates are based on the Office of Management and Budget's Presidential Economic Assumptions for FY 2005 and the out years that were available at the time the proposed rule was published. The average pay raise for Federal employees in 2004 and 2005, which reflects both national cost of living increases and locality differentials, was 4.1 percent

effective January 2004 and 3.5% effective January 2005. The average combined national and locality pay raise is estimated to be 2.3% for fiscal years 2006, 2007, and 2008. Inflation for fiscal year 2005 was 2.0%. Inflation for fiscal year 2006 is estimated to be 2.0%. Inflation for fiscal year 2007 is estimated to be 2.1%. Inflation for fiscal year 2008 is estimated to be 2.1%. The Agency will initiate another rulemaking to adjust any fee established, if estimated increases for pay and inflation do not adequately cover the Agency's costs of providing the services.

The cost of providing inspection services includes both direct and overhead costs. Overhead costs include the cost of support activities such as program and agency overhead costs. Overhead expenditures are allocated across the agency for each direct hour of inspection. Direct costs include the cost of salaries, employee benefits, and travel. Because of improvements in accessing data from the accounting system, the Agency has been able to estimate the employee benefits ascribable to overtime work and has included these in the fee calculations.

Section 10703 of the 2002 Farm Bill authorized the Secretary of Agriculture to set the hourly rate of compensation for FSIS employees exempt from the Fair Labor Standards Act (i.e. veterinarians) that work in establishments subject to the FMIA and PPIA at one and one-half times the employee's hourly rate of base pay. FSIS has adjusted its overtime fees to reflect these costs. Previously, veterinarians were limited to the time and a half rate paid to employees at grade level GS-10, step 1.

The current and future fees for holiday, overtime, and voluntary inspection services and for laboratory services are listed by type of service in Table 1. The first increase, from the current rate to the 2006 rate, is larger than the subsequent increases because this is the first rate increase since June 29, 2003. Therefore, it includes the increases in salaries and inflation that have occurred since that date.

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

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

The differing proposed fee increases for each aforementioned type of service

are the result of the different amounts that it costs FSIS to provide these three

types of services. The differences in costs stem from various factors,

including the different salary levels of the program employees who perform the services. See Table 2 through Table 4.

TABLE 2.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2006

Base Time	
Actual 2002 Salaries	\$23.02
2003 Pay Raise (4.1%) = Actual 2002 Salaries $\times$ 0.041	0.94
Calendar 2004 Pay Raise (4.1%) paid in FY 2004 = (Actual 2002 Salaries + 2003 Pay Raise) $\times$ 0.041	0.98
FY 2005 Pay Adjustment = (Actual 2002 Salaries + 2003 Pay Raise + Calendar 2004 Pay Raise) $\times$ 0.035 $\times$.075	0.65
FY 2006 Pay Adjustment = FY2005 salaries $\times$ 0.023	0.59
Benefits	6.58
Travel and Operating Costs	2.12
Program Overhead	4.49
Agency Overhead	7.06
Allowance for Bad Debt	0.45
FY 2005 Inflation (2.0%) = [Current Rate (\$43.64) + Adjustment for FY 2004 Inflation and Pay Increases (\$1.76) – Actual 2002 Salaries (\$23.02) + 2003 Pay Raise (\$0.94) + Calendar 2004 Pay Raise (\$0.98)] $\times$ 0.02	0.49
FY 2006 Inflation (2.0%) = [FY 2005 Base Time Rate (\$46.78) – FY 2005 Salaries (\$25.60)] $\times$ 0.02	0.42
Total	47.79
Overtime and Holiday Inspection Services	
Actual 2002 Salaries	30.72
2003 Pay Raise (4.1%) = Actual 2002 Salaries $\times$ 0.041	1.26
Calendar 2004 Pay Raise (4.1%) paid in FY 2004 = (Actual 2002 Salaries + 2003 Pay Raise) $\times$ 0.041	1.31
FY 2005 Pay Adjustment = (Actual 2002 Salaries + 2003 Pay Raise + Calendar 2004 Pay Raise) $\times$ 0.035 $\times$ 0.75	0.87
FY 2006 Pay Adjustment = FY 2005 salaries $\times$ 0.023	0.79
Benefits	2.05
Time and a Half	2.78
Travel and Operating Costs	2.12
Program Overhead	5.32
Agency Overhead	7.74
Allowance for Bad Debt	0.51
FY 2005 Inflation (2.0%) = [Current Rate (\$50.04) + Adjustment for FY 2004 Inflation and Pay Increases (\$3.44) – Actual 2002 Salaries (\$30.72) + 2003 Pay Raise (\$1.26) + Calendar 2004 Pay Raise (\$1.31)] $\times$ 0.02	0.51
FY 2006 Inflation (2.0%) = [FY 2005 Base Time Rate (\$55.19) – FY 2005 Salaries (\$34.16)] $\times$ 0.02	0.42
Total	56.40
Laboratory Services	
Actual 2002 Salaries	24.71
2003 Pay Raise (4.1%) = Actual 2002 Salaries $\times$ 0.041	1.01
Calendar 2004 Pay Raise (4.1%) paid in FY 2004 = (Actual 2002 Salaries + 2003 Pay Raise) $\times$ 0.041	1.05
FY 2005 Pay Adjustment = (Actual 2002 Salaries + 2003 Pay Raise + Calendar 2004 Pay Raise) $\times$ 0.035 $\times$ 0.75	0.70
FY 2006 Pay Adjustment = FY 2005 salaries $\times$ 0.023	0.63
Benefits	6.72
Travel and Operating Costs	8.28
Program Overhead	14.82
Agency Overhead	7.64
Allowance for Bad Debt	0.65
FY 2005 Inflation (2.0%) = [Current Rate (\$61.80) + Adjustment for FY 2004 Inflation and Pay Increases (\$2.82) – Actual 2002 Salaries (\$24.71) + 2003 Pay Raise (\$1.01) + Calendar 2004 Pay Raise (\$1.05)] $\times$ 0.02	0.84
FY 2006 Inflation (2.0%) = [FY 2005 Base Time Rate (\$66.42) – FY 2005 Salaries (\$27.47)] $\times$ 0.02	0.78
Total	67.83

TABLE 3.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2007

Base Time	
FY 2006 Salaries = 2005 Salaries [Actual 2002 Salaries (\$23.02) + 2003 Pay Raise (\$0.94) + Calendar 2004 Pay Raise (\$0.98) + 2005 Pay Adjustment (\$0.65)] + 2006 Pay Adjustment	\$26.18
FY 2007 Pay Adjustment = FY 2006 salaries × 0.023	0.60
Benefits	6.58
Travel and Operating Costs	2.12
Program Overhead	4.49
Agency Overhead	7.06
Allowance for Bad Debt	0.45
FY 2005 Inflation	0.49
FY 2006 Inflation	0.42
FY 2007 Inflation (2.1%) = [FY 2006 Base Time Rate (\$47.80) – FY 2006 Salaries (\$26.18)] × 0.021	0.45
Total	48.84
Overtime and Holiday Inspection Services	
FY 2006 Salaries = 2005 Salaries [Actual 2002 Salaries (\$30.72) + 2003 Pay Raise (\$1.26) + Calendar 2004 Pay Raise (\$1.31) + 2005 Pay Adjustment (\$0.87)] + 2006 Pay Adjustment	34.95
FY 2007 Pay Adjustment = FY 2006 salaries × 0.023	0.80
Benefits	2.05
Time and a Half	2.78
Travel and Operating Costs	2.12
Program Overhead	5.32
Agency Overhead	7.74
Allowance for Bad Debt	0.51
FY 2005 Inflation	0.51
FY 2006 Inflation	0.42
FY 2007 Inflation (2.1%) = [FY 2006 Base Time Rate (\$56.40) – FY 2006 Salaries (\$34.95)] × 0.021	0.45
Total	57.65
Laboratory Services	
FY 2006 Salaries = 2005 Salaries [Actual 2002 Salaries (\$24.71) + 2003 Pay Raise (\$1.01) + Calendar 2004 Pay Raise (\$1.05) + 2005 Pay Adjustment (\$0.70)] + 2006 Pay Adjustment	28.10
FY 2007 Pay Adjustment = FY 2006 salaries × 0.023	0.65
Benefits	6.72
Travel and Operating Costs	8.28
Program Overhead	14.82
Agency Overhead	7.64
Allowance for Bad Debt	0.65
FY 2005 Inflation	0.84
FY 2006 Inflation	0.78
FY 2007 Inflation (2.1%) = [FY 2006 Base Time Rate (\$67.84) – FY 2006 Salaries (\$28.11)] × 0.021	0.83
Total	69.31

TABLE 4.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2008

Base Time	
FY 2007 Salaries = 2006 Salaries + 2007 Pay Adjustment	\$26.79
FY 2008 Pay Adjustment = FY 2007 salaries × 0.023	0.62
Benefits	6.58
Travel and Operating Costs	2.12
Program Overhead	4.49
Agency Overhead	7.06
Allowance for Bad Debt	0.45
FY 2005 Inflation	0.49
FY 2006 Inflation	0.42
FY 2007 Inflation	0.45
FY 2008 Inflation (2.1%) = [FY 2007 Base Time Rate (\$48.84) – FY 2007 Salaries (\$26.79)] × 0.021	0.46
Total	49.93
Overtime and Holiday Inspection Services	
FY 2007 Salaries = 2006 Salaries + 2007 Pay Adjustment	35.75
FY 2008 Pay Adjustment = FY 2007 salaries × 0.023	0.82
Benefits	2.05
Time and a Half	2.78

TABLE 4.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES FOR FY 2008—Continued

Travel and Operating Costs	2.12
Program Overhead	5.32
Agency Overhead	7.74
Allowance for Bad Debt	0.51
FY 2005 Inflation	0.51
FY 2006 Inflation	0.42
FY 2007 Inflation	0.45
FY 2008 Inflation (2.1%) = [FY 2007 Base Time Rate (\$57.65) – FY 2007 Salaries (\$35.75)] × 0.021	0.46
Total	58.93
Laboratory Services	
FY 2007 Salaries = 2006 Salaries + 2007 Pay Adjustment	28.75
FY 2008 Pay Adjustment = FY 2007 salaries × 0.023	0.66
Benefits	6.72
Travel and Operating Costs	8.28
Program Overhead	14.82
Agency Overhead	7.64
Allowance for Bad Debt	0.65
FY 2005 Inflation	0.84
FY 2006 Inflation	0.78
FY 2007 Inflation	0.83
FY 2008 Inflation (2.1%) = [FY 2007 Base Time Rate (\$69.32) – FY 2007 Salaries (\$28.76)] × 0.021	0.85
Total	70.82

TABLE 5.—CALCULATIONS FOR ACCREDITED LABORATORY FEES FY 2006–2008

	FY 2006	FY 2007	FY 2008
Estimated Income	\$442,389	\$547,121	\$593,521
Expense Estimates	545,268	579,100	609,188
New Accreditation Fee	4,000	4,500	4,500

The Agency must recover the actual cost of services covered by this rule. These fee increases are essential for the continued sound financial management of the Agency's costs. FSIS announced in its July 20, 2005 proposed rule [70 FR 41635] the same fee changes provided in this final rule, except for laboratory accreditation, for which the fees have been reduced in this final rule. Thus, adequate notice has been given to affected parties.

These amendments will be effective 30 days after publication of this final rule in the **Federal Register**.

Proposed Rule and Comments

FSIS published a proposed rule on July 20, 2005 (70 FR 41635), stating that it was proposing changing fees for inspection services and laboratory accreditation for FYs 2005 through 2008. The Office of the Federal Register published an editorial correction on August 16, 2005 (70 FR 48238). The agency provided for a 30 day comment period, ending August 18, 2005. Since the proposed fees were not finalized during FY 2005 we are now finalizing fees for only FYs 2006 through 2008.

FSIS received 4 comments on the proposed accredited laboratory fee

changes. FSIS also received 5 comments on the proposed inspection fee changes.

Accredited Lab Fee

Comment: All five comments on the Accredited Laboratory Program fee noted that the accreditation fee increase is very large, and all stated that the increase is a financial hardship on small laboratories. Several commenters stated that this fee increase will cause some laboratories to close. Several commenters also stated that the Accredited Laboratory Program fee increase will cause some small labs to not maintain their accreditation.

Response: FSIS stated in the proposed rule that the increase in the accredited laboratory fee was necessary because program costs have increased and will continue to increase, because previously accumulated funds that have been used to pay program costs have decreased and because of the costs of contracting out check samples, previously done in-house. FSIS recognized that the fee increase likely would cause some accredited laboratories to re-evaluate their participation in this voluntary program. FSIS stated that it anticipated that the accredited laboratory fee increase would result in some small laboratories not renewing their

accreditation because it would no longer be cost effective for them to participate.

FSIS has, however, re-evaluated its proposed laboratory accreditation fees and estimated costs and its income from the Accredited Laboratory Program in light of the time that has passed since the fees and estimates were first prepared and thereafter, published in the proposal and has reduced the fees from those proposed, as indicated in Table 5.

Comment: One commenter suggested that FSIS and AMS combine their accreditation programs because the types of samples are identical.

Response: The services provided by the various agencies address matters appropriate to their respective missions. The rates that each agency charges for the services it provides must conform to its particular statutory authority, regulations, and administrative structure and requirements. FSIS must assess accreditation fees in a manner that is consistent with its current regulations and statutory mandate.

Comment: One commenter suggested that FSIS accept ISO 17025 certification in lieu of FSIS accreditation.

Response: International Standards Organization (ISO) accreditation is a third-party evaluation of laboratory

quality and capability. FSIS laboratories are themselves ISO accredited. FSIS does consider the applicable scope of a non-Federal laboratory's ISO accreditation when evaluating results supplied by such laboratories. The FSIS accredited laboratory program is a separate program established by regulation. ISO accreditation requires, but does not provide, proficiency testing. Such testing is a cornerstone of the FSIS program. Thus, there are differences between the two programs.

Comment: One commenter suggested that FSIS allow the fee to be paid in installments over the year.

Response: FSIS recognizes that a fee paid in installments might ease the burden on small laboratories. However, fees paid in installments could also increase administrative costs and further contribute to increases in fees. Permitting fees to be paid in installments, even as an option, would require a change in the current regulations for the program through a separate notice and comment rule-making. Nonetheless, FSIS will consider this comment along with other comments when it develops a proposed rule, which the agency hopes to publish in the near future, to amend parts of the accredited laboratory regulations.

Comment: One commenter requested that the fees not be increased for non-Federal Laboratories.

Response: The accredited laboratory program is a program only for non-Federal laboratories. In the time since the fee was last set on June 29, 2003, for the Accredited Laboratory Program, the reserve that provided a portion of the program's funding has been depleted, and costs to administer the program have increased. FSIS is required by statute to recover the costs of administering the accredited laboratory program and is, therefore, obligated to set the fees at a level that will meet that statutory mandate.

Overtime, Holiday and Voluntary Inspection Fees

Comment: Two commenters stated that the costs per pound of product for holiday and overtime inspection services to small and very small establishments are greater than the per pound costs to large establishments, and that small establishments cannot absorb these costs as easily as larger establishments.

Response: FSIS recognizes that the production quantities at some small and very small establishments are less than those of large establishments. FSIS also understands that at some small or very small establishments the cost per pound of product as a result of overtime fees

will be higher than at a large establishment. However, FSIS also believes that no establishment, regardless of size, will choose to operate during overtime periods or on a holiday unless that establishment believes that it is cost effective to do so.

Comment: Two commenters opposed establishing fees for regular inspection.

Response: FSIS does not have the authority under the FMIA, the PPIA, or the EPIA to charge fees to recover the costs of inspection done during non-overtime and non-holiday time periods. Therefore, FSIS does not have any plans to establish fees for regular inspection.

Comment: Three commenters suggested that FSIS consider whether changes in the regulatory environment as a result of HACCP have resulted in improved productivity, and whether more efficient inspection would result in reduced inspection fees.

Response: Any cost savings that might be realized through more effective use of inspection resources in HACCP does not translate into lower expenses for overtime, holiday, or voluntary inspection services.

Comment: Two commenters expressed concern that establishing fees for several years at a time reduces public participation in FSIS' regulatory activities and creates the possibility that the agency will not readjust rates if costs are not in line with estimated future rates.

Response: The changes to overtime, holiday, and voluntary inspection fees are based on changes in the annual average wage increase for Federal employees and the inflation rate estimated by the Office of Management and Budget in its Presidential Economic Assumptions for FY 2005 and the out years. The OMB estimates of changes to federal salaries are projected for only 1 year at a time; FSIS has based all out year rates on best estimates. The OMB estimated inflation rates for 3 years; FSIS used best estimates for rates beyond that 3-year period.

FSIS is prohibited from setting fees at a level above that needed to recover costs and is required to set fees at a level that will recover its costs. FSIS will reassess the established fee rates on an annual basis and initiate a rulemaking to revise the fees should the Agency determine that the established rates either will exceed the Agency's costs to provide overtime, holiday, and voluntary inspection services or will not be adequate to cover the estimated expenses for the year. FSIS encourages all interested parties to monitor the semi-annual regulatory agenda to determine when FSIS initiates these actions. Petitions are also a vehicle

available to members of the public who believe that FSIS is not abiding by its obligation to neither overcharge nor undercharge establishments for overtime, holiday and voluntary inspection services.

Comment: One commenter asked FSIS to clarify whether the amended fees for fiscal year 2005 will be retroactive.

Response: FSIS is not making the rates for fiscal year 2005 retroactive. FSIS proposed a rate for 2005 anticipating that the rule would be promulgated during fiscal year 2005. This rule was not promulgated prior to the end of fiscal year 2005, and FSIS will not collect any additional holiday, overtime, or voluntary inspection fees retroactively.

Comment: Two commenters raised questions about FSIS' inspection structure, such as the timing of tours of duty for FSIS inspectors, the use of overtime, and changes to inspection as a result of HACCP.

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

Comment: One commenter suggested that by establishing fees on a multi-year basis, FSIS does not have any incentive to control costs.

Response: The costs that determine the level at which overtime, holiday, and voluntary inspection fees are set are not within FSIS' ability to control. Federal salaries, salary increases, employee benefit packages, the rate at which travel expenses are reimbursed, and inflation rates are the factors that comprise much of the proposed inspection rates. These factors are all established on a government-wide basis and are beyond FSIS' ability to control.

Comment: One commenter stated that a proposal to provide for four changes at one time is a marked change from previous years when the agency only proposed program fees for the upcoming year.

Response: FSIS as far back as July, 2000 (65 FR 45545) stated that it was exploring the possibility of proposing a three to five year plan of fee rate adjustment based on estimates of cost escalation. FSIS acknowledges that the proposing of fees for multiple years, rather than yearly, is a departure from its past practices. However, as FSIS stated in its proposal, its practice of amending fees on a yearly basis has in the past led to the Agency being unable to recover the full cost of the services it provides because the fiscal year has partially elapsed by the time the Agency publishes a final rule to amend its fees due to the length of the rulemaking process. To avoid this problem, FSIS

has now decided to amend its fees at one time for multiple years.

Comment: One commenter expressed concern that the agency is proposing fees to cover program costs associated with inflation, wages, and overhead four years in advance of realization of the actual costs.

Response: The fact that FSIS is establishing fees for multiple years in advance of the realization of actual costs should not be a concern. FSIS stated in the proposed rule that the proposed fees were based on estimates, that the Agency would review these fees on an annual basis and would adjust them, if necessary, to ensure that the fee ultimately set for a given year reflected the actual costs to the Agency to provide a service.

Executive Order 12866 and Regulatory Flexibility Act

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

The Administrator, FSIS, has determined that this rule would not have a significant economic impact, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), on a substantial number of small entities. The inspection services provided under these fees are voluntary. Establishments and plants requesting these services are likely to have calculated that the revenues generated from additional production will exceed the incremental costs of the services. Similarly, laboratories will determine whether the additional revenue for services that require accreditation will exceed the costs of becoming accredited.

Economic Effects of Inspection and Laboratory Service Fees

As a result of the new base time, holiday and overtime, and laboratory service fees, the Agency expects to collect an estimated \$136 million, \$144 million, and \$153 million in years 2006, 2007, and 2008 respectively, or a total of \$433 million over the next three years to cover the cost of voluntary certification, identification, and inspection services; overtime and holiday inspection services; and laboratory services for meat, poultry, and egg products. By enacting a three year fee increase instead of a single year fee increase, the Agency is streamlining the rulemaking process to help ensure that the fee increases are effective at the beginning of each fiscal year. During the next three years, food safety will be maintained at the establishments affected by this rule as the Agency provides the services. The increased

fees will cover inflation and national and locality pay raises but will not support any new budgetary initiative. The costs that industry would experience by the raise in fees are similar to other increases that the industry would experience because of inflation and wage increases.

The total volume of meat and poultry slaughtered under Federal inspection in 2002 was about 85.7 billion pounds (Livestock, Dairy, Meat, and Poultry Outlook Report, Economic Research Service, USDA, July 17, 2003). The increase in cost per pound of product associated with the proposed fee increases is, in general, \$.0002. Even in competitive industries like meat, poultry, and egg products, this amount of increase in costs would have an insignificant impact on profits and prices.

Even though this increase in fees is negligible, the industry is likely to pass along a significant portion of the fee increases to consumers because of the inelastic nature of the demand curve facing consumers. Research has shown that consumers are unlikely to reduce demand significantly for meat, poultry, and egg products, when prices increase. Huang estimates that demand would fall by .36 percent for a one percent increase in price (Huang, Kao S., *A Complete System for Demand for Food*. USDA/ ERS Technical Bulletin No. 1821, 1993, p. 24). Because of the inelastic nature of demand and the competitive nature of the industry, individual firms are not likely to experience any change in market share in response to an increase in inspection fees.

Economic Effects of Accredited Laboratory Program

As a result of the new Accredited Laboratory Program fees, the Agency expects to collect \$442,389 in FY 2006, \$547,121 in FY 2007, and \$593,521 in FY 2008. The Accredited Laboratory Program is required to recover its operational costs through the fees required to be paid. The adjustments to the fees charged are designed to recover FSIS' costs for providing accreditation services, which include the maintenance of an adequate reserve. The amount of the accreditation fee established for each year is based on the number of expected new and renewal accreditations, the anticipated costs directly related to the accreditation process, and the estimated reserve from the previous year. The fees established are based on FSIS' best projections of what it will cost the Agency to provide accredited laboratory services in fiscal years 2006 through 2008.

The fee increases are necessary because the level of the program's reserve surplus that has in the past been used to offset the cost of the program has decreased below a one-year operating-cost level. A large portion of the fee increases are attributable to the contracting out of check samples, a task previously done in-house. As a result, FSIS needs to raise the fees it charges to offset the amount it no longer has from the reserve to carry out the program. FSIS also needs to raise its fees to cover its increased direct overhead costs, including those for salary increases, employee benefits, inflation, and bad debt, and to maintain an adequate operating reserve.

FSIS believes that it needs a yearly reserve of approximately \$250,000 to maintain the program's continuity. This amount of reserve funds is needed to cover the contractual costs that the Accredited Laboratory Program must pay at the beginning of each fiscal year and to cover salaries and other operating expenses during the first two to three months of the fiscal year. Less than 5% of the program's income is received during the first two months of a fiscal year. Approximately 75% of the program's income is received in late December and early January; the remainder of the program's income is received about evenly across the rest of the fiscal year.

Maintaining an adequate reserve therefore is essential for the Accredited Laboratory Program to be fully functional during the first quarter of any fiscal year. The amount of FSIS' reserve funds is taken into account when FSIS determines what its expenses will be for each year and in determining what its projected income will be for the next year. The current reserve is lower than what is ideally needed to ensure the continuity of the program. Therefore, FSIS has incorporated an increase in the reserve amount into its fee structure with the aim of achieving the ideal reserve amount by FY09.

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

FSIS has addressed the comments it received about the proposed Accredited Laboratory Program fee increases. Since the issuance of the proposal, FSIS has re-evaluated its proposed laboratory accreditation fees and its estimation of the costs of the Accredited Laboratory

Program and the income it will have to carry out the program. Time has passed since the fees and estimates were first prepared and published in the proposal, and the current fiscal status of the program has changed. FSIS has incorporated certain additional cost-cutting measures in its Accredited Laboratory Program and has realized other savings since the proposal was published. As a result, the agency has modified its fee structure as indicated in Table 5. While the initial increase for FY06 to \$4000, from the current fee of \$1500, is still substantial, it is substantially less than the fee of \$5200 proposed for FY06. The fee being established for FY07 and FY08 of \$4500 is also substantially lower than the proposed fee of \$5400 for FY07 and the proposed fee of \$5600 for FY08. FSIS anticipates, based on its revised cost and income estimates, that the new fees will move the Accredited Laboratory Program to a sound financial footing.

Paperwork Reduction Act

This rule does not contain any new information collection or record keeping requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Unfunded Mandate Analysis

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

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This 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 except as discussed below. The administrative procedures specified in 9 CFR 306.5, 381.35, and 590.300 through 590.370, respectively, must be exhausted before any judicial challenge may be made of the application of the provisions of the proposed rule, as set forth in the aforementioned sections.

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 rule, FSIS will announce it online through the FSIS Web Page at http://www.fsis.usda.gov/regulations_&_policies/2006_Interim_&_Final_Rules_Index/index.asp.

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

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update is also available on the FSIS Web page. Through the Listserv and Web page,

FSIS is able to provide information to a much broader, more diverse audience.

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

List of Subjects

9 CFR Part 391

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

9 CFR Part 590

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

9 CFR Part 592

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

■ For the reasons set forth in the preamble, FSIS amends 9 CFR Chapter III as follows:

PART 391—FEES AND CHARGES FOR INSPECTION AND LABORATORY ACCREDITATION

■ 1. The authority citation for part 391 is revised to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 1622, 1627 and 2219a; 21 U.S.C. 451 *et seq.*; 21 U.S.C. 601–695; 7 CFR 2.18 and 2.53.

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

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 is \$47.79 per hour per program employee in fiscal year 2006, \$48.84 per hour per program employee in fiscal year 2007, and \$49.93 per hour per program employee in fiscal year 2008.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5 and 381.38 is \$56.40 per hour per program employee in fiscal year 2006, \$57.65 per hour per program employee in fiscal year 2007, and \$58.93 per hour per program employee in fiscal year 2008.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 is \$67.83 per hour per program employee in fiscal year 2006, \$69.31 per hour per program employee in fiscal year 2007, and \$70.82 per hour per program employee in fiscal year 2008.

■ 3. In § 391.5, paragraph (a) is revised to read as follows:

§ 391.5 Laboratory accreditation fee.

(a) The annual fee for the initial accreditation and maintenance of accreditation provided pursuant to §§ 318.21 and 381.153 shall be \$4,000.00 for fiscal year 2006; \$4,500.00 for fiscal year 2007; and \$4,500.00 for fiscal year 2008.

* * * * *

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

■ 4. The authority citation for part 590 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

■ 5. Section 590.126 is revised to read as follows:

§ 590.126 Overtime inspection service.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of \$56.40 per hour per program employee in fiscal year 2006, \$57.65 per hour per program employee in fiscal year 2007, and \$58.93 per hour per program employee in fiscal year 2008.

■ 6. In § 590.128, paragraph (a) is revised to read as follows:

§ 590.128 Holiday inspection service.

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request that the inspector in charge furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of \$56.40 per hour per program employee in fiscal year 2006, \$57.65 per hour per program employee in fiscal year 2007, and \$58.93 per hour per program employee in fiscal year 2008.

* * * * *

PART 592—VOLUNTARY INSPECTION OF EGG PRODUCTS

■ 7. The authority citation for part 592 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 8. Sections 592.510, 592.520 and 592.530 are revised to read as follows:

§ 592.510 Base time rate.

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

§ 592.520 Overtime rate.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspection program personnel of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of \$56.40 per hour per program employee in fiscal year 2006, \$57.65 per hour per program employee in fiscal year 2007, and \$58.93 per hour per program employee in fiscal year 2008.

§ 592.530 Holiday rate.

When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request that the inspector in charge furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of \$56.40 per hour per program employee in fiscal year 2006, \$57.65 per hour per program employee in fiscal year 2007, and \$58.93 per hour per program employee in fiscal year 2008.

Done in Washington, DC, on January 10, 2006.

Bryce Quick,

Deputy Administrator.

[FR Doc. 06–321 Filed 1–12–06; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 23**

[Docket No. CE238, Special Condition 23–178–SC]

Special Conditions; The New Piper Aircraft, Inc.; PA–44–180; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to The New Piper Aircraft, Inc., Vero Beach, Florida, for a type design change for the PA–44–180 airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays Model 700–00006–XXX(), manufactured by Avidyne Corporation, Inc. for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is January 6, 2006. Comments must be received on or before February 13, 2006.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE238, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE238. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and