

Authority: 7 U.S.C. 499a–499t.

■ 2. In § 46.46, paragraph (e)(2) is revised, paragraphs (e)(3) and (4) are redesignated as paragraphs (e)(4) and (5), and a new paragraph (e)(3) is added as follows:

§ 46.46 Statutory trust.

* * * * *

(e) * * *

(2) The maximum time for payment for a shipment to which a seller, supplier, or agent can agree, prior to the transaction, and still be eligible for benefits under the trust is 30 days after receipt and acceptance of the commodities as defined in § 46.2(dd) and paragraph (a)(1) of this section.

(3) If there is a default in payment as defined in § 46.46(a)(3), the seller, supplier, or agent who has met the eligibility requirements of paragraphs (e)(1) and (2) of this section will not forfeit eligibility under the trust by agreeing in any manner to a schedule for payment of the past due amount or by accepting a partial payment.

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Dated: April 5, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 391, 590, and 592

[FDMS Docket Number FSIS–2006–0025]

RIN 0583–AD40

New Formulas for Calculating the Basetime, Overtime, Holiday, and Laboratory Services Rates; Rate Changes Based on the Formulas; and Increased Fees for the Accredited Laboratory Program.

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its regulations to establish formulas for calculating the rates that it charges meat and poultry establishments, egg products plants, and importers and exporters for providing voluntary, overtime, and holiday inspection, and identification, certification, and laboratory services. The 2011 basetime, overtime, holiday, and laboratory services rates in this final rule will be

applied on the effective date. For future years, FSIS will use the formulas established to calculate the annual rates. FSIS will publish the rates annually in **Federal Register** notices prior to the start of each calendar year and will apply them on the first FSIS pay period at the beginning of the calendar year. The Agency is also increasing the codified flat annual fee for its Accredited Laboratory Program for FY 2012 and FY 2013.

DATES: This final rule is effective May 22, 2011.

FOR FURTHER INFORMATION CONTACT: For further information concerning policy issues contact Rachel Edelstein, Director, Policy Issuances Division, Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, Room 6065 South Building, 1400 Independence Ave., SW., Washington, DC 20250–3700; telephone (202) 720–0399, fax (202) 690–0486.

For further information concerning fees contact Michele Torrusio, Director, Budget Division, Office of Management, FSIS, U.S. Department of Agriculture, Room 2159 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700; telephone (202) 720–8700, 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 of 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 bears the cost of mandatory inspection provided during non-overtime and non-holiday hours of operation. Official establishments and official egg products plants pay for inspection services performed on holidays or on an overtime basis.

Under the Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621 *et seq.*), 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 products. The AMA provides that FSIS may assess and collect fees to recover the costs of the

voluntary inspection, certification, and identification services it provides.

Also under the AMA, FSIS 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. Again, the AMA provides that FSIS may collect fees to recover the costs of providing these services.

FSIS also accredits non-Federal analytical laboratories under its Accredited Laboratory Program. Such accreditation allows laboratories 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.

Proposed Rule

On October 8, 2009, FSIS published a proposed rule to amend its regulations to establish formulas for calculating the rates it charges meat and poultry establishments, egg products plants, and importers and exporters for providing voluntary, overtime, and holiday inspection, and identification, certification, and laboratory services (74 FR 51800). FSIS also proposed to keep the annual fee for its Accredited Laboratory Program at \$4,500 for FY 2009, 2010 and 2011, and increase it to \$5,000 for FY 2012 and FY 2013 (74 FR 51802).

As FSIS explained in the proposed rule, historically, the Agency amended its regulations annually to change the rates and fees. However, because the rulemaking process is lengthy, the fiscal year repeatedly would partially elapse before the Agency could publish a final rule to amend its rates and fees. As a result, the Agency was unable to recover the full cost of the services it provided.

To address the delays in recovering the cost of services, in January 2006, FSIS amended its regulations to provide for multiple annual rate and fee increases in one action (71 FR 2135). With this rulemaking, the rates and fees for 2006–2008 were increased and FSIS established criteria for determining the rate and fee increases on a multi-year basis. While this solution enabled the Agency to increase rates and fees each year, estimates used to establish the annual rates and fees were imprecise and have left the Agency collecting too little, and thus, not fully recovering its

costs. Because of the duration of the rulemaking process, rate increases have not been available until approximately three-fourths of the way into the fiscal year. This has resulted in a considerable monetary loss for FSIS.

In 2009, the Agency performed a cost analysis using actual FY 2008 data. On the basis of that analysis, the October 2009 proposed rule set forth the various rates FSIS projected it needed to charge in order to recover its costs. FSIS developed proposed formulas in consultation with a private accounting firm to determine the rates for FY 2010 and future years. FSIS also proposed raising its fees for the Accredited Laboratory Program to cover its increased direct overhead costs, including salary increases, employee benefits, inflation, and bad debt, and to maintain an adequate operating reserve.

Final Rule

In this final rule, FSIS is amending its regulations to codify, with modifications, the proposed formulas for calculating and establishing the rates for basetime, overtime, holiday, and laboratory services set forth in the proposed rule. FSIS has also made changes to the proposed regulatory text to correct inadvertent inconsistencies in terminology. For example, the preamble to the proposed rule referred to “fees” for the basetime, overtime, holiday, and laboratory services rates. In this preamble, FSIS is consistently using the term “rate” for the basetime, overtime, holiday, and laboratory services rates, and “fee” for the laboratory accreditation fee.

In the proposed rule, the Agency stated that the basetime, overtime, holiday, and laboratory services rates would be determined “For each fiscal year and based on previous fiscal year’s actual costs and hours” (proposed 9 CFR 391.2(a), 391.3, 391.4(a), 590.126, 590.128, 592.510(a), 592.520, 592.530). Because of the time necessary to obtain previous fiscal year data and to calculate the formulas, in this final rule FSIS is specifying that the rates will be determined for each calendar year, as opposed to for “each fiscal year,” based on the previous fiscal year’s (ending on September 30) actual costs and hours data, except for the cost of living and inflation percentages. FSIS is also specifying that the cost of living and inflation percentages included in the formulas will be based on economic assumptions for the calendar year in which the rates will apply.

The proposed provisions for the “overhead rate” (9 CFR 391.2(b)(3) and 592.510(b)(3)) stated that the rate is based on the “average information

technology (IT) costs from the previous two years in the Public Health Data Communication Infrastructure System Fund.” The Agency proposed the two year average because of excessively high 2007 IT costs. However, in this final rule, to maintain consistency with the timeframes used in the other rate calculations, the Agency is amending 9 CFR 391.2(b)(3) and 592.510(b)(3) to refer to the “information technology costs from the previous fiscal year.” In addition, the preamble discussion of the overhead rate stated that the rate included “provision for the operating balance”. This language was not included in the proposed codified text. This final rule corrects the codified text to include the addition of the provision for the operating balance.

The proposed regulatory text for the “benefits” and “travel and operating rates” (9 CFR 391.2(b)(1) and (2), and 592.510(b)(1) and (2)) did not specify that the applicable costs would be divided by the applicable hours. The proposed regulatory text did not clearly state that the percentage of the cost of living increase (for the basetime, overtime, holiday, laboratory services, and benefits rate) and the percentage of inflation (for the travel and operating and overhead rates) adjustments are added to the quotients of pay divided by hours in the rate formulas. However, FSIS did provide examples in the preamble which indicated that costs would be divided by the hours, and demonstrated how the percent of cost of living and inflation are calculated, then added in the formulas to determine the appropriate rates. In this final rule, the regulatory text has been modified to clearly state that applicable costs would be divided by applicable hours and the cost of living and inflation percentage adjustments are added to the quotients in the formulas to determine the rates.

The proposed rule’s discussion of the “Proposed Formulas” (FR 74 51801) and the codified text (9 CFR 391.2(a), 391.3(a) and (b), 391.4(a), 590.126, 590.128, 592.510(a), 592.520, and 592.530) used the terms “regular hours” and “hours worked” interchangeably. In this final rule, the Agency is amending the codified text to use consistently the term “regular hours.” The term “regular hours” refers to the hours during regular working time (not including holiday or overtime hours) that are associated with on-site food product inspection.

In addition, the proposed rule’s preamble (74 FR 51801) and codified text included the term “salaries paid” (9 CFR 391.2(a), 391.3(a) and (b), 391.4(a), 590.126, 590.128, 592.510(a), 592.520, and 592.530). In this final rule, for clarity, the term “salaries paid” is being

replaced by “regular direct pay” because this is the pay for “regular hours.”

FSIS intends to announce future annual rate changes, using the formulas in this final rule, in **Federal Register** notices approximately 30 days prior to the start of each new calendar year. FSIS will apply the new rates at the start of the first FSIS pay period each new calendar year. The 2011 rates in this final rule will be applied starting May 22, 2011, the first pay period 30 days after the publication of the rule.

This final rule adopts the proposed fees for the accredited laboratory program. FSIS will propose changes to the laboratory accreditation fees in future rulemakings when necessary.

Recalculated Rates

The rates published in the October 2009 proposed rule were calculated using the best data and economic analyses available at the time. These rates were based upon actual FY 2008 data. The proposed rule stated that the rates would be based on the previous year’s actual costs and hours. Fiscal Year 2010 ended on September 30, 2010, and the Agency’s FY 2010 actual cost data are now available. In addition, since the publication of the proposed rule, the Office of Management and Budget (OMB) released updated projected economic assumptions, “Analytical Perspectives, Budget of the United States Government, Fiscal Year 2011.” The economic assumptions in the “Economic and Budget Analyses” section, http://www.whitehouse.gov/sites/default/files/omb/budget/fy2011/assets/econ_analyses.pdf include the projected overall average civilian Federal pay raises and locality pay adjustments for future calendar years.

Therefore, the rates for 2011 in this final rule have been recalculated based on the previous fiscal year costs and hours (FY 2010), the calendar year percentage of cost of living increase and inflation (calendar year 2011), and, as discussed above, the IT costs from the previous fiscal year (FY 2010). Table 1 lists the recalculated 2011 rates and the projected 2012 rates, Table 2 lists the rates FSIS currently assesses, and Table 3 lists the rates from the October 2009 proposed rule.

TABLE 1—2011 ADJUSTED RATE (PER HOUR PER EMPLOYEE) BY TYPE OF SERVICE

Service	2011 rate (estimates rounded to reflect billable quarters)	Projected 2012 rate (estimates rounded to reflect billable quarters)
Basetime	\$53.92	\$54.68
Overtime	67.52	68.64

TABLE 1—2011 ADJUSTED RATE (PER HOUR PER EMPLOYEE) BY TYPE OF SERVICE—Continued

Service	2011 rate (estimates rounded to reflect billable quarters)	Projected 2012 rate (estimates rounded to reflect billable quarters)
Holiday	\$81.08	\$82.28
Laboratory	67.08	68.04

TABLE 2—CURRENT RATES (PER HOUR PER EMPLOYEE) BY TYPE OF SERVICE

Service	Current rate
Basetime	\$49.93
Overtime & holiday	58.93
Laboratory	70.82

TABLE 3—OCTOBER 2009 PROPOSED RATES (PER HOUR PER EMPLOYEE) BY TYPE OF SERVICE

Service	Estimates rounded to reflect billable quarters		
	2010 rate	Projected rate 2011	Projected rate 2012
Basetime	\$51.36	\$52.84	\$54.64
Overtime	64.88	66.84	68.84
Holiday	78.44	80.84	83.32
Laboratory	65.08	67.04	69.08

The “travel and operating rate” and the “overhead rate” used in the proposed rule calculations were inadvertently transposed. In this final rule, the Agency has corrected this error in all of the preamble calculations below that include “travel and operating rate” or “overhead rate.”

Formulas for the Basetime, Overtime, Holiday, and Laboratory Services Rates

FSIS is amending its regulations to provide the following formulas for the basetime, overtime, holiday, and laboratory services rates. The rates provided in Table 1, “2011 ADJUSTED RATE (PER HOUR PER EMPLOYEE) BY TYPE OF SERVICE” are based on calculations using unrounded numbers for the components, e.g., benefits, travel and operating, and overhead. The calculations provided below are for illustration and the components of the rates may not appear to be rounded correctly. However, the final rates are rounded correctly. In addition, all of the final rates have been rounded to make the amount divisible by the quarter hour (15 minutes). Fifteen minutes is the minimum charge for the services covered by these rates.

FSIS is amending 9 CFR 391.2 and 592.510 to establish the following formula to calculate the basetime rate per hour per program employee:

Basetime Rate = The quotient of dividing the Office of Field Operations (OFO) plus Office of International Affairs (OIA) inspection program personnel’s previous fiscal year’s regular direct pay by the previous fiscal year’s regular hours, plus the quotient

multiplied by the calendar year’s percentage of cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2011 basetime rate per hour per program employee is:

[FY 2010 OFO and OIA Regular Direct Pay divided by the previous fiscal year’s Regular Hours (\$406,663,564/15,164,875)] = \$26.82 + (\$26.82 * 1.4% (calendar year 2011 Cost of Living Increase)) = \$27.20 + \$8.30 (benefits rate) + \$.89 (travel and operating rate) + \$17.52 (overhead rate) + \$.01 (bad debt allowance rate) = \$53.92.

Following the discussion of the “Laboratory Services Rate” is an explanation of how the benefits rate, travel and operating rate, overhead rate, and bad debt allowance rate were calculated.

FSIS is amending 9 CFR 391.3, 590.126, 590.128, 592.520, and 592.530, to establish the following formulas for overtime and holiday rates per hour per program employee:

Overtime Rate = The quotient of dividing the Office of Field Operations (OFO) plus Office of International Affairs (OIA) inspection program personnel’s previous fiscal year’s regular direct pay by the previous fiscal year’s regular hours, plus the quotient multiplied by the calendar year’s percentage of cost of living increase, multiplied by 1.5, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2011 overtime rate per hour per program employee is:

[FY 2010 OFO and OIA Regular Direct Pay divided by previous fiscal year’s Regular Hours (\$406,663,564/15,164,875)] = \$26.82 + (\$26.82 * 1.4% (calendar year 2011 Cost of Living Increase)) = \$27.20 * 1.5 = \$40.79 + \$8.30 (benefits rate) + \$.89 (travel and operating rate) + \$17.52 (overhead rate) + \$.01 (bad debt allowance rate) = \$67.52.

Holiday Rate = The quotient of dividing the Office of Field Operations (OFO) plus Office of International Affairs (OIA) inspection program personnel’s previous fiscal year’s regular direct pay by the previous fiscal year’s regular hours, plus the quotient multiplied by the calendar year’s percentage of cost of living increase, multiplied by 2, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2011 holiday rate per hour per program employee calculation is:

[FY 2010 OFO and OIA Regular Direct Pay divided by Regular Hours (\$406,663,564/15,164,875)] = \$26.82 + (\$26.82 * 1.4% (calendar year 2011 Cost of Living Increase)) = \$27.20 * 2 = \$54.39 + \$8.30 (benefits rate) + \$.89 (travel and operating rate) + \$17.52 (overhead rate) + \$.01 (bad debt allowance rate) = \$81.11 (rounded to \$81.08).

FSIS is amending 9 CFR 391.4, to establish the following formula for the

laboratory services rate per hour per program employee:

Laboratory Services Rate = The quotient of dividing the Office of Public Health Science (OPHS) previous fiscal year's regular direct pay by the OPHS previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2011 laboratory services rate per hour per program employee is:

$$[\text{FY 2010 OPHS Regular Direct Pay} / \text{OPHS Regular hours } (\$21,012,082 / 527,975)] = \$39.80 + (\$39.80 * 1.4\% \text{ (calendar year 2011 Cost of Living Increase)}) = \$40.36 + \$8.30 \text{ (benefits rate)} + \$8.99 \text{ (travel and operating rate)} + \$17.52 \text{ (overhead rate)} + \$0.01 \text{ (bad debt allowance rate)} = \$67.08.$$

Formulas for the Benefits, Travel and Operating, Overhead, and Allowance for Bad Debt Rates

FSIS is amending 391.2 and 592.510 to provide the formulas for calculating the Benefits, Travel and Operating, Overhead, and Allowance for Bad Debt Rates. These rates are components of the basetime, overtime, holiday, and laboratory services rates formulas.

Benefits Rate: The quotient of dividing the previous fiscal year's direct benefits costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus the quotient multiplied by the calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan basic and matching contributions.

The calculation for the 2011 benefits rate per hour per program employee is:

$$[\text{FY 2010 Direct Benefits} / (\text{Total Regular hours} + \text{Total Overtime hours} + \text{Total Holiday hours}) (\$140,660,995 / 17,171,053)] = \$8.19 + (\$8.19 * 1.4\% \text{ (calendar year 2011 Cost of Living Increase)}) = \$8.30.$$

Travel and Operating Rate: The quotient of dividing the previous fiscal year's total direct travel and operating costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus the quotient multiplied by the calendar year's percentage of inflation.

The calculation for the 2011 travel and operating rate per hour per program employee is:

$$[\text{FY 2010 Total Direct Travel and Operating Costs} / (\text{Total Regular hours} + \text{Total Overtime hours} + \text{Total Holiday$$

hours) (\$15,090,489/17,171,053)] = \$.88 + (\$.88 * 1.2% (2011 Inflation)) = \$.89.

Overhead Rate: The quotient of dividing the previous fiscal year's indirect costs plus the previous fiscal year's information technology (IT) costs in the Public Health Data Communication Infrastructure System Fund plus the previous fiscal year's Office of Management Program cost in the Reimbursable and Voluntary Funds plus the provision for the operating balance less any Greenbook costs (i.e., costs of USDA support services prorated to the service component for which fees are charged) that are not related to food inspection by the previous fiscal year's total hours (regular, overtime, and holiday) worked across all funds, plus the quotient multiplied by the calendar year's percentage of inflation.

The calculation for the 2011 overhead rate per hour per program employee is:

$$[\text{FY 2010 Total Overhead} / (\text{Total Regular hours} + \text{Total Overtime hours} + \text{Total Holiday hours}) (\$337,861,367 / 19,521,571)] = \$17.31 + (\$17.31 * 1.2\% \text{ (2011 Inflation)}) = \$17.52.$$

Allowance for Bad Debt Rate = Previous fiscal year's total allowance for bad debt (for example, debt owed that is not paid in full by plants and establishments that declare bankruptcy) divided by previous fiscal year's total hours (regular, overtime, and holiday) worked.

The 2011 calculation for bad debt rate per hour per program employee is:

$$[\text{FY 2010 Total Bad Debt} / (\text{Total Regular hours} + \text{Total Overtime hours} + \text{Total Holiday hours}) (\$222,481 / 19,521,571)] = \$0.01.$$

Laboratory Accreditation Fee

Consistent with the proposed rule, FSIS is also amending 9 CFR 391.5 to keep the laboratory accreditation fee at \$4,500.00 for fiscal year 2011 and to increase it to \$5,000.00 beginning in fiscal year 2012. FSIS will propose changes to the laboratory accreditation fees through future rulemakings when necessary.

As discussed in the proposed rule (74 FR 51802), FSIS needs to raise the fee for this program 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. Furthermore, FSIS must maintain a "carryover" amount each year as a reserve to cover the contractual costs that the Accredited Laboratory Program must pay at the beginning of each fiscal year. The increases are also necessary 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 is therefore essential for the Accredited Laboratory Program to be fully functional during the first quarter of any fiscal year.

Responses to Comments

FSIS received seven comments in response to the proposed rule. The commenters included meat trade associations, private citizens, and a meat processor.

Most commenters acknowledged that codified formulas in the regulations for these rates would afford the Agency the ability to raise rates based on pay increases for Federal employees and inflation.

Comments: One comment from a meat processor expressed concern that the first-year overtime rate increase is above the rate of inflation and above the wage based increase in the commenter's geographical area. Another comment from a trade association expressed concern that the overtime rate for the first year is approximately a 10% increase.

Response: The existing basetime, overtime, holiday, and laboratory services rates have not increased for more than three years, since October 1, 2007. FSIS developed the current overtime rate in 2005, using an estimated Annual General Increase (AGI) of 2.3% per year for 2006–2008. The actual AGI during 2006–2008 averaged 2.9%. The Agency absorbed the difference between the projected and actual increase, including the costs of benefits that have increased at an average of 4.6% each year. In addition, the rates established in the 2006 final rule are still being used in calendar year 2010. The higher rates are necessary because of increased salary costs across several years and current overhead costs.

Comments: One meat processor and two trade associations opposed the methodology of adding travel, benefits, overhead, and bad debt costs to the overtime and holiday inspection rates and stated that the proposed formulas were not clear.

Response: The methodology of adding travel, benefits, overhead and bad debts costs to overtime and holiday inspection rates has been used to establish the rates for previous years. FSIS has always been reimbursed by industry for the salary

and overhead costs for both overtime work and work on Federal holidays. Contrary to one commenter's concern, the calculations do not multiply travel, benefits, overhead, and bad debt costs by 1.5 and 2.0 for overtime and holiday rates, respectively. As illustrated in the calculations, these costs are added to the adjusted salary amounts for overtime and holiday pay.

The Agency contracted with a large world-wide accounting firm to ensure that the methodology for the fee calculations was sound and without flaws. The accounting firm's analysis of the methodology was performed in accordance with the "Standards for Consulting Services," established by the American Institute of Certified Public Accountants. Consistent with the proposed rule, the final rule specifies all cost components used to calculate the rates. In this final rule, the Agency has clarified and made consistent the terminology used in the proposal.

Comments: One trade association encouraged the Agency to acknowledge the impact that the holiday rate change would have on small and very small meat processors. Another trade association expressed concern that the overtime fee increase would disproportionately affect small and medium sized businesses that are not able to run two shifts but rely on overtime to meet consumer demand.

Response: Overtime and holiday inspection services are generally sought by the 370 large establishments and plants that have a large production volume of approximately 162,500,000 pounds of product per year. These establishments have greater complexity and diversity in the products they produce than the 5,140 small and very small Federal establishments whose low production volume averages 1,400,000 pounds of product per year.¹ Establishments or plants with lower production volume are unlikely to use a significant amount of overtime and holiday inspection services, except on those occasions when demand exceeds supply for their products. In addition, the costs that industry would incur as a result of the increase in rates are similar to other increases that the industry faces because of inflation and wage increases.

Comments: One meat processor opposed the holiday inspection service

rate because establishments do not recognize the same holidays as the Federal government.

Response: FSIS follows the schedule of Federal holidays identified by the Office of Personnel Management, as well as any additional Federal holidays authorized by the President. FSIS has no authority to mandate which days will be "holidays" for establishments or plants. When an establishment chooses to remain open and requires reimbursable inspection services from FSIS on a Federal holiday, then FSIS must pay its inspection workforce accordingly. FSIS inspectors are paid double time for holiday work. Therefore, consistent with the proposed rule, the final rule provides a holiday rate of two times the employee's hourly rate of base pay.

Comments: Three trade associations expressed concern regarding how the Agency assesses overtime inspection rates. They contend that, because establishments are required to operate under Hazard Analysis Critical Control Point (HACCP) systems, processing establishments should be able to freely operate at any appropriate time, with FSIS providing a level of inspection to fit accordingly. The commenters believe this would negate the need for overtime inspection.

Response: This rule establishes the rate for overtime inspection service. The commenters' concern relates to a separate issue that is whether HACCP systems in plants should permit plants to freely operate at any time without being assessed "overtime fees." Sections 9 CFR 307.4(c), 381.37(c), and 590.124 provide that official establishments shall be provided inspection service, without charge, for up to 8 consecutive hours per shift during the workweek. The regulations also provide that the workweek is 5 consecutive days. Inspection service provided outside of these bounds is, by definition, overtime service.

Comment: One trade association questioned the 30-day comment period for the proposed rule and stated that the comment period should have been longer.

Response: The Agency must recover the actual cost of these inspection services for its continued sound financial management. To expeditiously solicit comments on the proposed rule and make the rulemaking effective so that FSIS's costs can be recovered as quickly as possible, the Administrator determined that 30 days for public comment was sufficient. A 30-day comment period is not uncommon when the Agency needs timely responses. For example, the July 2005 proposed rule "Changes in Fees for

Meat, Poultry, and Egg Products Inspection Services Fiscal Years 2005–2008," solicited comments within 30 days (70 FR 41635).

Executive Order 12866 and Final Regulatory Flexibility Act

This final rule was reviewed by the Office of Management and Budget under Executive Order 12866 and was determined to be significant. The proposed rule was determined to be not significant.

This final rule establishes the formulas FSIS will use to calculate the rates that it charges meat and poultry establishments, egg products plants, and importers and exporters for providing voluntary inspection, identification and certification services, overtime and holiday inspection services, and laboratory services. This final rule also increases the annual fee that FSIS assesses for its Accredited Laboratory Program for FY 2012 and FY 2013. This rule is necessary to ensure that FSIS recovers its cost of providing these voluntary inspection and laboratory accreditation services.

Economic Effects of New Fees

By codifying formulas to calculate future annual rates, the Agency will streamline the rulemaking process to help ensure that the new rates are effective at the beginning of each calendar year. The rates will be determined for each calendar year, based on the previous fiscal year's (ending on September 30) actual costs and hours data, and the upcoming year's projected cost of living and inflation percentages. The new rates will be adjusted to reflect inflation and federal pay raises but will not support any new budgetary initiatives. If rates increase, the costs that industry will experience are similar to other increases that the industry will experience because of inflation and wage increases.

The total volume of meat and poultry slaughtered under Federal inspection in 2009 was about 90.9 billion pounds (2009–8 Livestock, Dairy, Meat, and Poultry Outlook Report, Economic Research Service, USDA). The total volume in egg product production in 2009 was about 2.6 billion pounds (2009 National Agricultural Statistical Service, USDA). The increase in cost per pound of product associated with the new rates is, in general, \$.002. Even in competitive industries such as meat, poultry, and egg products, this amount of increase in costs would have an insignificant impact on profits and processes.

Even though the increases in the basetime, overtime, and holiday rates

¹ Establishment numbers obtained from USDA FSIS Performance Based Inspection System (PBIS) and represent all Federal & Talmadge-Aiken (State excluded), Active & Inactive (Withdrawn excluded) establishments. Volume data obtained from USDA FSIS PBIS, the Animal Disposition Reporting System, and USDA Economic Research Service Food Availability (Per Capital) Data System.

are negligible, the industry is likely to pass along a significant portion of the rate 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 quantity demanded of meat, poultry, and egg products 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.

Table 4 (below) represents the revenues the Agency collected in FY 2009 and FY 2010, and the projected revenues for FY 2011 and FY 2012. For basetime, overtime, holiday, and laboratory services, the Agency collected \$146.5 million in FY 2009 and \$148.9 million in FY 2010, and based on the new rate structure, is projecting to collect \$164.2 million in FY 2011, and \$171.9 million in FY 2012.

For the Accredited Laboratory Program, the Agency collected \$317,250 in FY 2009 and \$293,000 in FY 2010. The fee will increase from \$4,500 (the current rate) to \$5,000 per entity in FY 2012. The Agency expects to collect approximately \$270,000 in FY 2011, and \$300,000 in FY 2012.

The total revenue amounts for the basetime, overtime, holiday, and laboratory services rates with the Accredited Lab Fees for FY 2009 and FY 2010 (actual amounts), and FY 2011 and FY 2012 (projected amounts) are shown in Table 4 (below).

TABLE 4—TOTAL AMOUNT COLLECTED BY THE AGENCY

Service	Actual FY 2009 amounts	Actual FY 2010 amounts	Projected FY 2011 amounts based on rate increase January 1, 2011	Projected FY2012 amounts based on rate increase January 1, 2012
Basetime Rate	\$ 7,300,000	\$ 6,900,000	\$ 7,409,000	\$ 7,629,000
Overtime (OT)/Holiday Rate(H) ²	126,400,000 (OT) 12,800,000 (H)	131,100,000 (OT) 10,900,000 (H)	N/A	N/A
Overtime Rate	N/A	N/A	145,536,000	149,025,000
Holiday Rate	N/A	N/A	11,250,000	15,222,000
Laboratory Services Rate	530	178	500	500
Accredited Lab Fee	317,250	293,000	270,000	300,000
Grand Total	146,817,780	149,193,178	164,465,500	172,176,500

Final Regulatory Flexibility Analysis

The FSIS Administrator certifies that, for the purposes of the Regulatory Flexibility Act (5 U.S.C. 601–602), the final rule will not have a significant impact on a substantial number of small entities in the United States. As explained further below, while this action will affect a substantial number of small entities, the action will likely not have a significant effect on these small entities.

Objective of the Final Rule

The changes in this final rule will affect those entities in the United States that slaughter or process meat, poultry, and egg products for consumption. There are about 2,320 small federally inspected establishments (with more than 10 but less than 500 employees) and 2,720 very small establishments (with fewer than 10 employees) based on HACCP Classification. Therefore, a total of 5,040 small and very small establishments (or 83 percent of the establishments) could be possibly affected by this rule. These small and very small establishments are categorized in the following North

American Industry Classification System (NAICS) codes: 311611—Animal (except Poultry) Slaughtering; 311612—Meat Processed from Carcasses; 311613—Rendering and Meat Byproduct Processing; 311615—Poultry Processing; and 311999—All other Miscellaneous Food Manufacturing (Egg products). These codes can be found in The U.S. Small Business Administration Table of Small Business Size Standards Matched to the NAICS³ as modified by the Office of Management and Budget in 2007 (effective August 22, 2008). The size threshold for these industries is 500 employees. All establishments that have 500 or fewer employees are considered small.

These small and very small establishments like the 1,031 large establishments would incur the rates from 2011–2012 and in perpetuity only if they incur voluntary inspection, overtime and holiday inspection services, identification and certification services, or laboratory services.

³ The size standards are for the most part expressed in either millions of dollars or number of employees. A size standard is the largest that a business can be and still qualify as a small business for Federal Government programs.

Significant Alternatives Considered

Alternative 1: Amend the regulations to publish the basetime, overtime, holiday, and laboratory services rates and laboratory accreditation fees on a multiple year basis (current approach).

Under this alternative, the Agency would continue to publish proposed and final rules to establish rates and fees for multiple consecutive years. However, the projected rates and fees are based on economic factors, such as inflation and cost of living, and other factors such as employee benefits and travel and operating costs, that change on a yearly basis. While this solution has enabled the Agency to increase rates and fees on a multiple year basis, the estimates used to establish the annual rates and fees were imprecise and have left the Agency collecting too little, and thus, not fully recovering its costs. Therefore, the Agency rejects this alternative because it would continue to create unnecessary uncertainty and inflexibility to update fees based on economic conditions.

Alternative 2: Amend the regulations to update the rates and fees on an annual basis.

Under this alternative, the Agency would amend its regulations annually to update the rates and fees using current

² Overtime and Holiday Rates were the same for FY 2009 and 2010.

data and economic factors. This alternative was used prior to the current approach of establishing the rates and fees on a multiple year basis (Alternative 1). However, because the rulemaking process is lengthy, the fiscal year repeatedly elapsed before the Agency could publish the final rule to amend the rates and fees. As a result, the Agency was unable to recover its full costs. This action would be the least costly to small entities because they would not pay the adjusted rates and fees until they were published, which would in effect cause a shortfall in the Agency's budget. Therefore, the Agency rejects this alternative.

Alternative 3: Establish formulas for calculating rates and publish the rates in a **Federal Register** Notice prior to the start of the calendar year.

Under this alternative, FSIS would establish formulas for calculating rates that it charges for basetime, overtime, holiday, and laboratory services, and publish the rates annually in a **Federal Register** Notice prior to the start of each calendar year. The Agency would continue to publish the laboratory accreditation fees on an as needed basis. This action would enable the Agency to recover its costs for providing voluntary inspection, overtime and holiday inspection services, identification and certification services, and laboratory services on a yearly basis, and would notify small entities of the new rates prior to the beginning of the calendar year, so that the entities can budget for these new fees. Therefore, the Agency has selected this alternative.

Estimating the Impact on Small and Very Small Entities

As discussed in the Economic Effects of New Fees section, in 2009, there was a total volume of 90.9 billion pounds slaughtered of meat and poultry and 2.6 billion pounds of egg products processed. According to the FSIS Animal Disposition Reporting System, in 2009 the 5,040 small and very small Federal establishments' production volume averaged 1,400,000 pounds of product per year, or a total of 7.1 billion pounds per year or approximately 7 percent of the total production.

In FY 2009, there were a total of 146,000 hours charged from voluntary inspection (basetime) service, 2.1 million hours charged from reimbursable overtime, 218,000 hours charged from holiday inspection services, and 7 hours charged for laboratory services.⁴ There are not enough data to definitively determine

the number of these hours that were incurred by small and very small entities, and therefore their direct cost as a result of this rule. However, if we used the 7 percent from the total production and apply it to the hours, small and very small entities would incur 147,000 hours out of 2.1 million hours of reimbursable overtime and 15,300 hours of holiday inspection services, and at a rate of \$58.93, per hour (2009 rate), the total cost will be \$9.6 million ((15,300 + 147,000) * \$58.93), compared to \$127 million for large entities.

For the voluntary inspection (basetime), if we used the 7 percent from the total production and apply it to the hours, small and very small entities would incur 10,200 hours out of 146,000 hours and at a rate of \$49.93, the total cost would be \$510,000 dollars compared to \$6.8 million for the large entities. Dividing the total cost of \$10.1 million (\$9.6 million plus \$510,000) by 5,040 small and very small entities would incur a cost of an average of \$2,000 per small and very small entity.

Likewise, if we apply the 2011 rates, the 5,040 small and very small entities would incur a cost of \$10.5 million (155,800 hours * \$67.52) for overtime, \$787,000 (9,712 hours * \$81.08) for holiday, and \$528,000 (9,800 hours * \$53.92) for voluntary services (basetime). The total cost incurred by small and very small entities for the 2011 year would be \$11.8 million (\$10.5 million plus \$787,000 plus \$528,000) or \$2,341 (\$11.8 million/5,040 entities) per entity.

Comparing the average cost of \$2,000 per small and very small entity (2009) to \$2,341 per entity (2011 rate), the total increase in fees and impact of the final rule on small and very small entities would be about \$341 per entity.

The Accredited Laboratory program has a total of 60 labs⁵ participating, of which an estimated 40 labs are considered small. The Accredited Lab fee for each lab will increase by \$500, from \$4,500 in FY 2011 to \$5,000 in FY 2012. This fee is necessary to have a carry over amount each year as a reserve 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. Without this fee, the Agency would not have enough funds to cover the cost incurred during this period. The laboratory fee is a mandatory cost of doing business with

FSIS and without the FSIS accreditation the labs would not be permitted to analyze official meat and poultry samples for establishments. These small entities would likely recover this cost by passing it along to the establishments, who pay for their services.

Therefore, the Agency believes that the final rule will not have a significant economic impact on a substantial number of small entities, whether establishments or laboratories.

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.*

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Has no retroactive effect; and (2) 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 may be made of the application of the provisions of the final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA, PPIA, or EPIA.

Executive Order 13175

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

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 located at

⁴ There are estimated to be no small entities applying for laboratory services.

⁵ Four of the labs are the states of Illinois, Iowa, Louisiana, and Minnesota Department of Agriculture Laboratories.

http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Publications_&_Related_Documents/index.asp.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, Federal Register notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.

Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Nondiscrimination Statement

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

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

List of Subjects

9 CFR Part 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. 138d; 7 U.S.C. 1622, 1627 and 2219a 21 U.S.C. 451 *et seq.*; 21 U.S.C. 601–695;

■ 2. Section 391.2 is revised to read as follows:

§ 391.2 Basetime rate.

(a) For each calendar year, FSIS will calculate the basetime rate for inspection services, per hour per program employee, provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 of this chapter, using the following formula: The quotient of dividing the Office of Field Operations plus Office of International Affairs inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

(b) FSIS will calculate the benefits, travel and operating, overhead, and allowance for bad debt rate components of the basetime rate, using the following formulas:

(1) *Benefits rate.* The quotient of dividing the previous fiscal year's direct benefits costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus the quotient multiplied by the calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan basic and matching contributions.

(2) *Travel and operating rate.* The quotient of dividing the previous fiscal year's total direct travel and operating costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus the quotient multiplied by the calendar year's percentage of inflation.

(3) *Overhead rate.* The quotient of dividing the previous fiscal year's indirect costs plus the previous fiscal

year's information technology (IT) costs in the Public Health Data Communication Infrastructure System Fund plus the previous fiscal year's Office of Management Program cost in the Reimbursable and Voluntary Funds plus the provision for the operating balance less any Greenbook costs (i.e., costs of USDA support services prorated to the service component for which the fees are charged) that are not related to food inspection, by the previous fiscal year's total hours (regular, overtime, and holiday) worked across all funds, plus the quotient multiplied by the calendar year's percentage of inflation.

(4) *Allowance for bad debt rate.*

Previous fiscal year's allowance for bad debt (for example, debt owed that is not paid in full by plants and establishments that declare bankruptcy) divided by the previous fiscal year's total hours (regular, overtime, and holiday) worked.

(c) The calendar year's cost of living increases and percentage of inflation factors used in the formulas in this section are based on the Office of Management and Budget's Presidential Economic Assumptions.

■ 3. Section 391.3 is revised to read as follows:

§ 391.3 Overtime and holiday rates.

For each calendar year, FSIS will calculate the overtime and holiday rates, per hour per program employee, provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5, and 381.38 of this chapter, using the following formulas:

(a) *Overtime rate.* The quotient of dividing the Office of Field Operations plus Office of International Affairs inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase, multiplied by 1.5, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

(b) *Holiday rate.* The quotient of dividing the Office of Field Operations plus Office of International Affairs inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase, multiplied by 2, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

(c) FSIS will calculate the benefits rate, the travel and operating rate, the overhead rate, and the allowance for bad debt rate using the formulas set forth in

§ 391.2(b), and the cost of living increases and percentage of inflation factors set forth in § 391.2(c).

■ 4. Section 391.4 is revised to read as follows:

§ 391.4 Laboratory services rate.

(a) For each calendar year, FSIS will calculate the laboratory services rate, per hour per program employee, provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 of this chapter, using the following formula: The quotient of dividing the Office of Public Health Science (OPHS) previous fiscal year's regular direct pay by OPHS previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

(b) FSIS will calculate the benefits rate, the travel and operating rate, the overhead rate, and the allowance for bad debt rate using the formulas set forth in § 391.2(b), and the cost of living increases and percentage of inflation factors set forth in § 391.2(c).

■ 5. Paragraph (a) of § 391.5 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 § 439.5 of this chapter shall be \$4,500.00 for fiscal year 2011; and \$5,000.00 for fiscal years 2012 and 2013.

* * * * *

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

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

Authority: 21 U.S.C. 1031–1056.

■ 7. In § 590.126, remove the second sentence and add three sentences in its place to read as follows:

§ 590.126 Overtime inspection service.

* * * The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay for such overtime. For each calendar year, FSIS will calculate the overtime rate for inspection service, per hour per program employee, using the following formula: The quotient of dividing the Office of Field Operations plus Office of International Affairs inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's

percentage of cost of living increase, multiplied by 1.5, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate. FSIS calculates the benefits rate, the travel and operating rate, the overhead rate, and the allowance for bad debt rate using the formulas set forth in § 592.510(b) and the cost of living increases and percentage of inflation factors set forth in § 592.510(c) of this chapter.

■ 8. In § 590.128(a), remove the second sentence and add three sentences in its place to read as follows:

§ 590.128 Holiday inspection service.

(a) * * * 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 the hourly rate. For each calendar year, FSIS calculates the holiday rate for inspection service, per hour per program employee, using the following formula: The quotient of dividing the Office of Field Operations plus Office of International Affairs inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase, multiplied by 2, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate. FSIS will calculate the benefits rate, the travel and operating rate, the overhead rate, and the allowance for bad debt rate using the formulas set forth in § 592.510(b), and the cost of living increases and percentage of inflation factors set forth in § 592.510(c) of this chapter.

* * * * *

PART 592—VOLUNTARY INSPECTION OF EGG PRODUCTS

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

Authority: 7 U.S.C. 1621–1627.

■ 10. Section 592.510 is revised to read as follows:

§ 592.510 Basetime rate.

(a) For each calendar year, FSIS will calculate the basetime rate for inspection services, per hour per program employee, using the following formula: The quotient of dividing the Office of Field Operations plus Office of International Affairs inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's

percentage of cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

(b) FSIS will calculate the benefits, travel and operating, overhead, and allowance for bad debt rate components of the basetime rate, using the following formulas:

(1) *Benefits rate.* The quotient of dividing the previous fiscal year's direct benefits costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus the quotient multiplied by the calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan basic and matching contributions.

(2) *Travel and operating rate.* The quotient of dividing the previous fiscal year's total direct travel and operating costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus the quotient multiplied by the calendar year's percentage of inflation.

(3) *Overhead rate.* The quotient of dividing the previous fiscal year's indirect costs plus the previous fiscal year's information technology (IT) costs in the Public Health Data Communication Infrastructure System Fund plus the previous fiscal year's Office of Management Program cost in the Reimbursable and Voluntary Funds plus the provision for the operating balance less any Greenbook costs (i.e., costs of USDA support services prorated to the service component for which fees are charged) that are not related to food inspection, by the previous fiscal year's total hours (regular, overtime, and holiday) worked across all funds, plus the quotient multiplied by the calendar year's percentage of inflation.

(4) *Allowance for bad debt rate.* Previous fiscal year's allowance for bad debt (for example, debt owed that is not paid in full by plants and establishments that declare bankruptcy) divided by the previous fiscal year's total hours (regular, overtime, and holiday) worked.

(c) The calendar year's cost of living increases and percentage of inflation factors used in the formulas in this section are based on the Office of Management and Budget's Presidential Economic Assumptions.

■ 11. In § 592.520, remove the second sentence and add three sentences in its place to read as follows:

§ 592.520 Overtime rate.

* * * The official plant must give reasonable advance notice to the inspector of any overtime service

necessary. For each calendar year, FSIS will calculate the overtime rate for inspection service, per hour per program employee, using the following formula: The quotient of dividing the Office of Field Operations plus Office of International Affairs inspection program personnel's previous fiscal year's regular direct pay by previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase multiplied by 1.5, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate. FSIS calculates the benefits rate, the travel and operating rate, the overhead rate, and the allowance for bad debt using the formulas set forth in § 592.510(b), and the cost of living increases and percentage of inflation factors set forth in § 592.510(c).

■ 12. In § 592.530, remove the second sentence and add three sentences in its place to read as follows:

§ 592.530 Holiday rate.

* * * The official plant must, in advance of such holiday work, request that the inspector in charge furnish inspection services during such period and must pay the Agency for such holiday work at the hourly rate. For each calendar year, FSIS will calculate the holiday rate for inspection service, per hour per program employee, using the following formula: The quotient of dividing the Office of Field Operations plus Office of International Affairs inspection program personnel's previous fiscal year's regular direct pay by previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase, multiplied by 2, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate. FSIS calculates the benefits rate, the travel and operating rate, the overhead rate, and the allowance for bad debt using the formulas set forth in § 592.510(b), and the cost of living increases and percentage of inflation factors set forth in § 592.510(c).

Done in Washington, DC, on April 7, 2011.

Alfred V. Almanza,
Administrator.

[FR Doc. 2011-8699 Filed 4-11-11; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2011-0233; Directorate Identifier 98-ANE-10-AD; Amendment 39-16660; AD 2011-08-10]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce plc (RR) RB211-Trent 768-60 and Trent 772-60 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding an existing airworthiness directive (AD) for RR RB211-Trent 700 series turbofan engines. That AD currently requires, for the step aside gearbox (SAGB), repositioning of the oil metering jet up into the oil distributor within the bevel gearshaft, followed by initial and repetitive visual inspections of the magnetic chip detector (MCD). Since we issued that AD, RR has demonstrated that the repositioning of the oil metering jet eliminates the need for the repetitive inspections. This AD changes the applicability from RB211-Trent 700 series turbofan engines, to RB211-Trent 768-60 and Trent 772-60 turbofan engines. This AD also eliminates the visual inspections of the MCD from the AD requirements. This AD was prompted by RR demonstrating that the repositioning of the oil metering jet eliminates the need for the repetitive inspections, by the need to correct the AD applicability, and by the need to eliminate the visual inspections of the MCD. We are issuing this AD to prevent in-flight engine shutdowns caused by SAGB driving bevel gearshaft ball bearing failure.

DATES: This AD is effective April 27, 2011.

The Director of the Federal Register previously approved the incorporation by reference of a certain publication listed in this AD as of October 1, 1998 (63 FR 49416, September 16, 1998).

We must receive any comments on this AD by May 27, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; telephone 44 1332 242424; fax 44 1332 249936; *e-mail:* tech.help@rolls-royce.com. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone 781-238-7143; fax 781-238-7199; *e-mail:* alan.strom@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

On September 8, 1998, we issued AD 98-19-12, Amendment 39-10754 (63 FR 49416, September 16, 1998), for RR RB211-Trent 700 series turbofan engines. That AD requires, for the SAGB, repositioning of the oil metering jet up into the oil distributor within the bevel gearshaft, followed by initial and repetitive visual inspections of the MCD. That AD resulted from reports of uncommanded engine shutdowns caused by failure of the SAGB driving bevel gearshaft ball bearing due to oil starvation. We issued that AD to prevent in-flight engine shutdowns caused by SAGB driving bevel gearshaft ball bearing failure.

Actions Since AD Was Issued

Since we issued AD 98-19-12, RR has demonstrated that the repositioning of the oil metering jet eliminates the need for the repetitive inspections. Also, since we issued that AD, Rolls Royce put into service, its RB211-Trent 772B-