



April 1, 2003

02-034P
02-034P-2
Rhona Applebaum

FSIS Docket Clerk
Docket #02-034P
Room 112, Cotton Annex
300 12th Street, SW
Washington, DC 20250-3700

NATIONAL
FOOD
PROCESSORS
ASSOCIATION

**[Docket No. 02-034P] Changes in Fees for Meat, Poultry, and Egg Products Inspection Services; - Calendar Year (CY) 2003
68 Federal Register 8858; February 26, 2003**

Dear Ms. Riley:

The National Food Processors Association (NFPA) is the voice of the \$500 billion food processing industry on scientific and public policy issues involving food safety, food security, nutrition, technical and regulatory matters and consumer affairs. NFPA's three scientific centers, its scientists and professional staff represent food industry interests on government and regulatory affairs and provide research, technical services, education, communications and crisis management support for the association's U.S. and international members. NFPA members produce processed and packaged fruit, vegetable, and grain products, meat, poultry, and seafood products, snacks, drinks and juices, or provide supplies and services to food manufacturers. NFPA strongly advocates for risk-based allocation of limited government inspection resources.

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GENERAL COMMENTS

NFPA recognizes that FSIS has statutory authority to recover the costs of certain voluntary inspection services as well as inspection service provided to inspected meat and poultry establishments on holidays and during overtime. However, NFPA believes that the Agency has inadequately assessed the economic impact of the very substantial proposed increase in FSIS fees for overtime and holiday inspection services.

In fact, we believe that the need to reimburse the government for mandatory inspection, in general, and the substantial proposed increase, in particular, could have an adverse impact on meat and poultry industry productivity.

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In this regard, NFPA finds it unfortunate that FSIS has not moved more quickly to implement a system for risk-based allocation of inspection resources, especially for further processing operations. Such a system would allow firms to set their production levels to meet the demand for their products without having to consider whether or not the revenues from additional increments of production will justify the expense of overtime inspection service. For these and other reasons, NFPA strongly objects to the proposed 12.7% increase in fees for overtime and holiday inspection services.

SPECIFIC COMMENTS

Contrary to the Agency's Assertion, the Increase for Overtime and Holiday Inspection Service Is Well Beyond What the Industry Would Anticipate for Inflation and Wage Increases

The preamble states that "(T)he costs that industry would experience by the rise in fees are similar to other increases that the industry faces because of inflation and wage increases." We disagree with this statement. The 12.7% proposed increase in overtime and holiday inspection fees substantially exceeds any industry expectations for inflation and wage increases. According to the US Department of Labor, the rate of inflation for 2002 (Consumer Price Index, for all items) was 1.6%. We believe that projected industry wage increases are in the range of 2-4 %.

FSIS Has Not Considered the Incremental Cost Per Pound for Mandatory Overtime and Holiday Inspection

Based on costs experience in recent years, FSIS is proposing to increase the cost of voluntary inspection and certification services by 2.3% and to reduce the cost for voluntary laboratory services by nearly 10%. As noted above, the proposed fee increase for mandatory overtime and holiday inspection services, from \$44.40 to \$50.04 per hour, amounts to 12.7 %.

The preamble to the proposal says the incremental cost (\$18 million) for overtime and holiday inspection is only \$0.0002/pound. However, that figure is spread over an industry total of 85 billion pounds of meat and poultry slaughtered and eggs inspected annually. We believe that FSIS should have considered the incremental cost per pound of product manufactured under mandatory overtime and holiday inspection rather than all inspected products.

More Information Is Needed to Fully Assess the Economic Impact of the Proposed Increases

In order to assess the economic impact of the proposed increase, we request information on the following questions:

1. Of the \$18 million in proposed additional fees for 2003: a) how much is attributable to mandatory overtime and holiday inspection service; b) how much is for voluntary inspection and certification services; c) how much is for voluntary laboratory services?
2. What is the cost (increased and total) for overtime and holiday inspection services per pound of meat or poultry produced during overtime and on holidays?

Results of NFPA Questionnaire

In an effort to gather information of this type, NFPA recently queried its members for information that might be helpful to the Agency. We received 15 responses, representing 26 FSIS-inspected establishments. The 26 establishments incurred overtime costs of over \$1.75 million in 2002. For 10 responses that represented individual establishments that included pounds of product manufactured during overtime as well as the costs incurred for overtime inspection, the cost per pound ranged from \$0.0002 to \$0.1142.

Automatic Fee Increases for Mandatory Inspection Eliminate any Pressure to Optimize the Use of Limited Inspection Resources

NFPA continues to believe that the annual FSIS request for a fee increase for inspection services has become so routine that apparently minimal effort is expended in preparing the analysis to support the need for fee increases, leaving an inadequate basis for public comment. Furthermore, it allows the Agency to habitually postpone definitive action on risk-based inspection coverage that could limit or virtually eliminate the need to provide and consequently to collect the fees for overtime and holiday inspection services covered by the proposed increases. We therefore urge the Agency to expedite its consideration of other options to address funding needs for the meat and poultry inspection program.

Industry Costs for Mandatory Overtime and Holiday Inspection Services Could Be Dramatically Reduced If FSIS Would Fulfill Its Oft-Stated Goal of Risk-Based Inspection

With all meat and poultry establishments operating under the pathogen reduction/ HACCP regulation for more than three years and with many factors exerting pressure on the Federal budget, we believe the Agency should go beyond the annual ritual and clearly focus on the big picture of inspection resource allocation, of which overtime and holiday inspection service is a

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small part. NFPA recognizes that the Agency has been exploring this matter for many years, but urges the Agency to expeditiously take steps to maximize the efficient use of its limited inspection resources.

FSIS Should Seriously Consider All Options That Maintain or Enhance Food Safety While Minimizing Costs for Inspection Borne by the Public and the Industry

While the Agency, quite appropriately, is devoting considerable effort to test HACCP-based inspection models for slaughter operations and continues to explore options for in-distribution inspection, we are concerned that opportunities for expeditious change in inspection of certain further processing operations are taking much longer than necessary.

Continuing to allocate inspection resources for processing operations in the same manner as in the past is unsupportable scientifically or otherwise. Most NFPA members who are subject to the regulatory jurisdiction of FSIS conduct further processing rather than slaughter operations. Most of those members also manufacture products regulated by the FDA. NFPA has long argued that there is no scientific justification for the extreme disparity of inspectional oversight provided by FDA and FSIS for essentially identical processing operations. As noted below, we believe the Agency's intensive and expensive inspectional coverage of processing operations yields no obvious public health benefit in comparison with virtually identical processing operations inspected by FDA.

Canning operations and frozen food operations are two prime examples of the unfortunate and unnecessary differences. Canned vegetable soup and frozen vegetarian lasagna entrées are inspected by FDA no more frequently than once a year. Yet if these products, produced on the same production lines, by the same people, using the same procedures, are formulated to include a small amount of previously FSIS-inspected meat, the resulting vegetable beef soup and frozen meat lasagna fall under the regulatory purview of FSIS and are subject to the daily inspection mandate. There are absolutely no public health considerations that justify this level of inspection. As a public health regulatory Agency, we fail to understand why FSIS does not recognize this fact and take steps to minimize this extremely ineffective and inefficient use of limited inspection resources.

HACCP Sets a Solid Foundation for More Efficient Allocation of Inspection Resources

The disparity noted above is even more untenable with the implementation of mandatory HACCP by the meat and poultry industry. The Agency's move to HACCP has clarified the roles of the industry and the Agency. The industry is responsible for assuring the safety of their products and the Agency is responsible for verifying that the industry is assuming its responsibility. HACCP regulations require establishments to maintain records to document their

adherence to SSOPs

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and the HACCP plan. The Agency is making extensive use of its new Consumer Safety Officers to take a more detailed look at SSOPs and HACCP plans and their supporting documentation, which is leading to improvements in many cases.

We believe that the HACCP-based inspection system, which incorporates this shift of responsibility from the Agency to the industry, obviates the need for continuous surveillance of most processing operations by an on-site inspector. Under current regulations, the Agency has available prompt and severe remedies, including suspension or withdrawal of inspection and the ability to retain or detain products, which can be invoked against establishments that fail to meet their regulatory obligations. We are disappointed that the Agency continues to fail to take advantage of the significant opportunities for more efficient inspection allocation that HACCP presents.

NFPA Believes That Now, Rather Than Later, FSIS Should Be Seriously Considering the Elimination of Overtime and Holiday Inspection Fees for Further Processing Establishments That Are Operating Under Mandatory HACCP

More than five years ago, the Agency acknowledged in a document circulated to the National Advisory Committee on Meat and Poultry Inspection (NACMPI) that due to constraints imposed by having to operate within rigidly defined shifts and by having to pay for overtime inspection outside of normal shifts of operation, "...many establishments are less productive than they might otherwise be." Indeed, some establishments routinely incur inspection overtime costs in excess of \$10,000 per month. It is also a fact that such fees add to the cost of doing business, which makes domestic plants less competitive than foreign processors who are not subject to those fees. In response to the Agency document, a subcommittee of the NACMPI recommended that under a risk-based inspection system there would be no need for continuation of the concept of shifts of inspection coverage or for the assessment of inspection overtime fees.

In its proposed FY 2001 budget, the Administration proposed to follow through on this concept by moving to "daily unscheduled" inspection of processing operations. Unfortunately, that rational approach that would have lifted from processing operations the burden of overtime and holiday inspection fees while maintaining food safety has been abandoned by the Agency in favor of a plan to exact even more user fees from meat and poultry establishments for all inspection provided beyond a single shift of production.

NFPA has previously noted that the Agency has ample current authority to visit processing plants even less frequently than daily. In fact, as noted in another discussion paper distributed during a June, 1997 public meeting on HACCP-Based Meat and Poultry Inspection Concepts, the Agency during one two-week period in June of 1996 did not conduct daily visits to nearly 7 percent (394

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plants) of approximately 7,000 processing establishments. Situations requiring immediate attention at other plants, temporary staffing shortages and other unanticipated events led Agency officials to conclude that assignment of inspection personnel to other plants or operations was of a higher priority than for the plants that were not visited. We are not aware that any problems were caused by the inability of the Agency to visit these plants every day.

It is conceivable that an abundance of caution following the tragic events of September 11, 2001 may have contributed to Agency reluctance to change the status quo for processing inspection at that time. However, it should be clear by now that the new food security assignments being performed by FSIS field staff could be readily accomplished under a "daily unscheduled" inspection framework.

CONCLUSION

In summary, NFPA believes that FSIS has inadequately assessed the economic impact of the very substantial proposed increase in fees for overtime and holiday inspection services. NFPA regrets that the Agency has not followed through on its commitment to risk-based allocation of inspection resources, which we believe will eventually reduce or eliminate the need to provide or to recover costs for overtime and holiday inspection services for most processing operations.

Sincerely,



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Executive Vice President for Scientific Affairs and
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