

## SUBCHAPTER D—FOOD SAFETY AND INSPECTION SERVICE ADMINISTRATIVE PROVISIONS

### PART 390—FREEDOM OF INFORMATION AND PUBLIC INFORMATION

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AUTHORITY: 5 U.S.C. 301, 552; 7 CFR 1.3, 2.7.

SOURCE: 64 FR 43903, Aug. 12, 1999, unless otherwise noted.

#### § 390.1 Scope and purpose.

This part is issued pursuant to the Freedom of Information Act (FOIA) as amended (5 U.S.C. 552), and in accordance with the directives of the Department of Agriculture regulations in part 1, subpart A, of Title 7. The availability of records, including electronic records created on or after November 1, 1996, of the Food Safety and Inspection Service (FSIS), and the procedures by which the public may request such information, will be governed by the FOIA and by the Department regulations as implemented and supplemented by the regulations in this part.

#### § 390.2 Published materials.

FSIS rules and regulations relating to its regulatory responsibilities and administrative procedures are published and made available to the public in the FEDERAL REGISTER and codified in chapter III, title 9, of the Code of Federal Regulations. FSIS also issues numerous publications relating to Agency programs, which implement the laws listed in the Delegation of Authority, 7 CFR 2.15(a). Most of these publications are available free from the USDA Publications Division, Office of Governmental and Public Affairs, or at established rates from the Superintendent of Documents, U.S. Govern-

ment Printing Office, Washington, 20402-9328.

#### § 390.3 Indexes, reference guide, and handbook.

(a) Pursuant to the regulations in 7 CFR 1.4(c), FSIS will maintain and make available for public inspection and copying an index providing identifying information regarding the materials required to be published or made available under the Freedom of Information Act (5 U.S.C. 552(a)(2)). The Agency will make the index available by computer telecommunications by December 31, 1999. Quarterly publication of the index is unnecessary and impractical, since the material is voluminous and does not change often enough to justify the expense of quarterly publication. The Agency will provide copies of any index, upon request, at a cost not to exceed direct cost of duplication.

(b) FSIS is responsible for preparing reference material or a guide for requesting records or information from the Agency. This guide also will include an index of all major information systems and a description of major information and record locator systems.

(c) FSIS will prepare a handbook for obtaining information from the Agency. The handbook will be available on paper and through electronic means, and will discuss how the public can use it to access Agency FOIA annual reports. Similarly, the annual reports will refer to the handbook and how to obtain it.

#### § 390.4 Facilities for inspection and copying.

Facilities for public inspection and copying of the material described in §§ 390.2 and 390.3 of this part will be provided by FSIS pursuant to 7 CFR 1.5(a) in a reading area, on business days between the hours of 8:30 a.m. and 4:30 p.m., upon request to the Freedom of Information Coordinator or designee at the following address:

Freedom of Information Act Coordinator (FOIA), Food Safety and Inspection Service, Department of Agriculture, Washington, DC 20250-3700

**§ 390.5 Request for records.**

(a) The FOIA Coordinator of FSIS is authorized to receive requests and to exercise authority under 7 CFR 1.3(a) to—

(1) Make determinations to grant or deny such requests,

(2) Extend the 20-day deadline,

(3) Make discretionary releases of exempt records, except where disclosure is specifically prohibited by Executive Order, statute, and applicable regulations,

(4) Consider expedited processing when appropriate,

(5) Make determinations regarding the charging of fees pursuant to the established schedule, and

(6) Determine the applicability of 7 CFR 1.5 to requests for records.

(b) Requests for FSIS records or information will be made in writing in accordance with 7 CFR 1.5 and submitted to the FSIS Freedom of Information Act Coordinator at the following address:

Freedom of Information Act Coordinator (FOIA Request), Food Safety and Inspection Service, Department of Agriculture, Washington, DC 20250-3700

The submitter will identify each record with reasonable specificity as prescribed in 7 CFR 1.3. All requests to inspect or obtain copies of any record or to obtain a fee waiver must be submitted in writing.

(c) In exercising authority under 7 CFR 1.3(a)(3) to grant and deny requests, the Coordinator or designee will comply with subsection (b) of the Freedom of Information Act (5 U.S.C. 552(b)), as amended, which requires that any reasonably segregated portion of a document will be provided to a person requesting the document after deletion of any portions within the scope of the request for which an exemption is being claimed under the Act. Therefore, unless the disclosable and nondisclosable portions are so inextricably linked that it is not reasonably possible to separate them, the document will be released with the nondisclosable portions deleted. The

Coordinator or designee may exercise discretion as limited by 7 CFR 1.15 to release the entire document or make only a minimum number of deletions. If portions of a document in electronic format have been redacted, the Agency must indicate, on the released portion of the document, the amount of information that has been deleted from a record, unless that indication would harm an interest protected by an applicable exemption.

**§ 390.6 Fee schedule.**

Department regulations provide for a schedule of reasonable standard charges for document search and duplication. See 7 CFR 1.17. Fees to be charged are in 7 CFR part 1, subpart A, appendix A.

**§ 390.7 Appeals.**

(a) If the request for information or for a waiver of search or duplication is denied, in whole or in part, the FOIA Coordinator or designee will explain in the letter of response the grounds for any denial of access and offer the requester an opportunity to file an administrative appeal, pursuant to 7 CFR 1.3(a)(4). The appeal should be filed in writing within 45 days of the date of denial (departmental regulations, 7 CFR 1.14) and addressed as follows:

Administrator, Food Safety and Inspection Service (FOIA Appeals), Department of Agriculture, Washington, DC 20250-3700

(b) The FSIS Administrator is authorized under 7 CFR 1.3(a)(4) to extend the 20-day deadline, make discretionary releases, and make determinations regarding the charging of fees.

**§ 390.8 Agency response to requests.**

(a) The response to Freedom of Information requests and appeals by officials named in §§ 390.5 and 390.7 of this part shall be governed by and made in accordance with 7 CFR 1.7 and the regulations in this part.

(b) If requests for records and information are received by field offices, the field office will immediately notify the FOIA Coordinator or designee by telephone and transmit the request to the FOIA office. In rare instances, the FOIA Coordinator or designee will authorize a release of the requested

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records to the field office receiving the request. The request will be considered as having been received on the date of arrival in the office of the Coordinator or designee. Any person whose request for records has been granted may inspect and copy the records (or copies) at the office listed in §390.4 of this part in accordance with the provisions of that section and with §390.6. Copies also may be obtained by mail.

**§390.9 Communications with State and other Federal government agencies.**

(a) The Administrator of the Food Safety and Inspection Service (FSIS), or designee, may authorize the disclosure of distribution lists (records that show where and when product was shipped) obtained from a firm recalling products, or incorporated into agency-prepared records, to State and other Federal government agencies to verify the removal of the recalled product, provided that:

(1) The State agency has provided both a written statement establishing its authority to protect confidential distribution lists from public disclosure and a written commitment not to disclose any information provided by FSIS, without the written permission of the submitter of the information or written confirmation by FSIS that the information no longer has confidential status. Federal government agencies must provide a written commitment not to disclose the information and to refer any request for distribution lists to FSIS for response; and

(2) The Administrator of FSIS or designee determines that disclosure would be in the interest of public health.

(b) This provision does not authorize the disclosure to State or other Federal government agencies of trade secret information, unless otherwise provided by law or pursuant to an express

written authorization provided by the submitter of the information.

(c) Information disclosed under this section is not a disclosure of information to the public. Disclosures made under this section do not waive any FOIA exemption protection.

[67 FR 20013, Apr. 24, 2002]

**PART 391—FEES AND CHARGES FOR INSPECTION SERVICES AND LABORATORY ACCREDITATION**

Sec.

- 391.1 Scope and purpose.
- 391.2 Base time rate.
- 391.3 Overtime and holiday rate.
- 391.4 Laboratory service rate.
- 391.5 Laboratory accreditation fees.

AUTHORITY: 7 U.S.C. 138f; 7 U.S.C. 394, 1622, 1624; 21 U.S.C. 451 *et seq.*; 21 U.S.C. 601–695; 7 CFR 2.17 (g) and (i), 2.55.

**§391.1 Scope and purpose.**

Fees shall be charged by the Agency for certain specified inspection services provided on a holiday, on an overtime basis, and/or which are voluntary inspection services.

[54 FR 6390, Feb. 10, 1989]

**§391.2 Base time rate.**

The base time rate for inspection services provided pursuant to §§350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 is \$43.64 per hour per program employee.

[68 FR 37956, June 26, 2003]

**§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 \$50.04 per hour per program employee.

[68 FR 37956, June 26, 2003]

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**§ 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 \$61.80 per hour per program employee.

[68 FR 37956, June 26, 2003]

**§ 391.5 Laboratory accreditation fees.**

(a) The annual fee for the initial accreditation and maintenance of accreditation provided pursuant to §§ 318.21

and 381.153 shall be \$1,500 per accreditation.

(b) Laboratories that request special onsite inspections shall pay FSIS the actual cost of reasonable travel and other expenses necessary to perform the unscheduled or non-routine onsite inspections.

[58 FR 65269, Dec. 13, 1993 as amended at 59 FR 66449, Dec 27, 1994; 64 FR 19868, Apr. 23, 1999]