

Rules and Regulations

Federal Register

Vol. 65, No. 62

Thursday, March 30, 2000

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

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

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580-AA69

Fees for Official Inspection and Official Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is increasing fees by approximately 2.4 percent for all hourly rates, certain unit rates, and the administrative tonnage fee. These fees apply to official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. These increases are needed to cover increased operational costs resulting from the approximate 4.8 percent mandated January 2000 Federal pay increase.

EFFECTIVE DATE: May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Dave Orr, Director, Field Management Division, at his E-mail address: Dorr@gipsadc.usda.gov, or telephone him at (202) 720-0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Regulatory Flexibility Act, and the Paperwork Reduction Act

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, James R. Baker, Administrator, GIPSA,

has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost-saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. In fiscal year (FY) 1998, GIPSA's operating costs were \$23,021,166 with revenue of \$21,776,323, resulting in a loss of \$1,244,843 and a reserve balance of \$55,862. In FY 1999, GIPSA's operating costs were \$22,883,063 with revenue of \$22,971,204 that resulted in a positive margin of \$88,141. As of December 31, 1999, GIPSA's FY 2000 operating costs were \$6,066,322 with revenue of \$6,333,381 that resulted in a positive margin of \$267,059. Even with the positive margins for FY 1999 and thus far for FY 2000, the reserve balance was \$569,669, below the desired 3-month operating reserve of approximately \$5.7 million.

Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. A general and locality salary increase that averages 4.8 percent for GIPSA employees, effective January 2000, will increase program costs by approximately \$691,613.

We have reviewed the financial position of our inspection and weighing program based on the increased salary and benefit costs, along with the projected FY 2000 workload. Based on the review, we have concluded that nearly half of the projected \$691,613 salary increase can be absorbed through existing program efficiencies. Therefore, the other half needs to be covered through an increase in fees that will collect an estimated \$390,000 in additional revenues.

The fee increase primarily applies to entities engaged in the export of grain. Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by

GIPSA on a fee basis at 37 export facilities. All of these facilities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities established by the Small Business Administration.

Some entities who request nonmandatory official inspection and weighing services at other than export locations could be considered small entities. The impact on these small businesses is similar to any other business; that is, an average 2.4 percent increase in the cost of official inspection and weighing services. This nominal increase should not significantly affect any business requesting official inspection and weighing services. Furthermore, any of these businesses that wish to avoid the fee increase may elect to do so by using an alternative source for inspection and weighing services. Such a decision should not prevent the business from marketing its products.

There would be no additional reporting or record keeping requirements imposed by this action. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and record keeping requirements in Part 800 have been previously approved by the Office of Management and Budget under control number 0580-0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this final rule.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in § 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this final rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

Background

On January 3, 2000, GIPSA proposed in the **Federal Register** (65 FR 75) to increase fees for official inspection and

weighing services performed under the USGSA by approximately 2.4 percent. The USGSA (7 U.S.C. 71 *et seq.*) authorizes GIPSA to provide official grain inspection and weighing services and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory costs. The current USGSA fees were published in the **Federal Register** on December 23, 1998 (63 FR 70990), and became effective on February 1, 1999. A correction to the minimum fees for stowage examinations was published in the **Federal Register** and became effective on February 11, 1999 (64 FR 6783).

GIPSA regularly reviews its user-fee financed programs to determine if the fees are adequate. While GIPSA continues to explore ways to reduce its costs, the existing fee schedule will not

generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. In FY 1998, GIPSA's operating costs were \$23,021,166 with revenue of \$21,776,323, resulting in a loss of \$1,244,843 and a reserve balance of \$55,862. In FY 1999, GIPSA's operating costs were \$22,883,063 with revenue of \$22,971,204, resulting in a positive margin of \$88,141. As of December 31, 1999, GIPSA's FY 2000 operating costs were \$6,066,322 with revenue of \$6,333,381 that resulted in a positive margin of \$267,059. Even with the positive margins for FY 1999 and thus far for FY 2000, the reserve balance was \$569,669, below the desired 3-month operating reserve of approximately \$5.7 million.

Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. The January 2000

general and locality salary increase that averages 4.8 percent for GIPSA employees will increase program costs by an estimated \$691,613. Based on a review of projected FY 2000 workload and operating costs, the Agency has determined that approximately half of the projected \$691,613 salary increase can be absorbed through existing program efficiencies. The other half needs to be covered through an increase in fees that will collect an estimated \$390,000 in additional revenues.

The hourly fees covered by this rule will generate revenue to cover the basic salary, benefits, and leave for those employees providing direct service delivery. Other associated costs, including nonsalary related overhead, are collected through other fees contained in the fee schedule and are at levels that would not require any change under this rule.

The current hourly fees are:

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime	Holidays
1-year contract	\$25.20	\$27.20	\$35.40	\$42.60
6-month contract	27.60	29.40	37.60	49.40
3-month contract	31.60	32.60	41.00	51.00
Noncontract	36.60	38.60	46.80	57.60

GIPSA has also identified certain unit fees, for services not performed at an applicant's facility, that contain direct labor costs and would require a fee increase. Further, GIPSA has identified those costs associated with salaries and benefits that are covered by the administrative metric tonnage fee. The 2.4 percent cost-of-living increase to salaries and benefits covered by the administrative tonnage fee results in an average overall increase of 2.4 percent to the administrative tonnage fee.

Comment Review

GIPSA received two comments during the 60-day comment period. The comments came from two grain trade associations. Both associations generally supported the proposed rule; however, each one encouraged the Agency to seek ways to streamline operations in an effort to reduce costs. One commentator suggested that GIPSA strive to reduce overall staffing, thereby reducing the impact of future cost-of-living raises. The commentator further suggested that GIPSA set a goal for administrative and supervisory costs not to exceed 20 percent of the total cost of service. Finally, one association suggested the fee increases only be applied to the hourly rates and certain unit rates and

not to the administrative tonnage fee. This, in the association's view, would serve as a financial incentive to automate the inspection and weighing services at export facilities.

GIPSA has and will continue to explore ways to reduce costs. Current program improvements have enabled the Agency to avoid passing the full 4.8 percent salary increase on to its customers through increased fees. Similar efforts will continue in the future, including the introduction of new technology that improves program efficiencies and reduces staffing needs.

The Agency's efforts to reduce the number of employees providing service has been a direct result of program initiatives designed to streamline operations at export elevators. The Agency has and will continue to explore ways to streamline these operations. Over the past several years, automated material handling systems have been introduced at export locations. These systems have reduced the number of employees needed to perform service. Other efforts currently underway, including inspection automation and automation of specific administrative functions, will provide more timely and efficient service. These initiatives not only address future costs of providing

service, but are designed to help improve the operational efficiencies of export facilities, thereby reducing the overall exporters' costs.

Increasing only the hourly and unit fees fails to address the increased supervision and administrative salary costs covered by the administrative tonnage fee. The recommendation to establish a 20 percent cap on supervision and administrative costs reflects a strong desire to control costs. The USGSA has had a 40 percent cap since FY 1985. Since that time, the Agency has operated well below that level and will continue to establish appropriate goals and objectives to address future supervision and administrative costs.

Efforts to contain and reduce these costs have and will continue to be taken. However, these efforts will not adequately cover the increased salary costs incurred by the pay raise. GIPSA, therefore, must increase all hourly fees, certain unit fees, and the administrative tonnage fee by 2.4 percent in order to recover the increased supervision administrative costs.

Final Action

Accordingly, GIPSA is applying an approximate 2.4 percent increase to

those hourly rates, certain unit rates, and the administrative tonnage fee, as proposed, in 7 CFR 800.71. Table 1—Fees for Official Services Performed at an Applicant's Facility in an Onsite GIPSA Laboratory; Table 2—Services Performed at Other Than an Applicant's Facility in a GIPSA Laboratory; and Table 3, Miscellaneous Services.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure; Grain.

For the reasons set out in the preamble, 7 CFR Part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.71 is amended by revising Schedule A in paragraph (a) to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States.

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY ¹

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and Overtime ²	Holidays
(1) Inspection and Weighing Services Hourly Rates (per service representative)				
1-year contract	\$25.80	\$28.00	\$36.40	\$43.60
6-month contract	28.40	30.20	38.60	50.60
3-month contract	32.40	33.40	42.00	52.20
Noncontract	37.60	39.60	48.00	59.00
(2) Additional Tests (cost per test, assessed in addition to the hourly rate) ³				
(i) Aflatoxin (other than Thin Layer Chromatography)				\$8.50
(ii) Aflatoxin (Thin Layer Chromatography method)				20.00
(iii) Corn oil, protein, and starch (one or any combination)				1.50
(iv) Soybean protein and oil (one or both)				1.50
(v) Wheat protein (per test)				1.50
(vi) Sunflower oil (per test)				1.50
(vii) Vomitoxin (qualitative)				7.50
(viii) Vomitoxin (quantitative)				12.50
(ix) Waxy corn (per test)				1.50
(x) Fees for other tests not listed above will be based on the lowest noncontract hourly rate.				
(xi) Other services				
(a) Class Y Weighing (per carrier)				
(1) Truck/container30
(2) Railcar				1.25
(3) Barge				2.50
(3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier).				
(i) All outbound carriers (per-metric-ton) ⁴				
(a) 1–1,000,000				\$0.1038
(b) 1,000,001–1,500,000				0.0947
(c) 1,500,001–2,000,000				0.0512
(d) 2,000,001–5,000,000				0.0379
(e) 5,000,001–7,000,000				0.0205
(f) 7,000,001+				0.0092

¹ Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

² Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

³ Appeal and reinspection services will be assessed the same fee as the original inspection service.

⁴ The administrative fee is assessed on an accumulated basis beginning at the start of the Service's fiscal year (October 1 each year).

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY ^{1 2}

(1) Original Inspection and Weighing (Class X) Services	
(i) Sampling only (use hourly rates from Table 1)	
(ii) Stationary lots (sampling, grade/factor, & checkloading)	
(a) Truck/trailer/container (per carrier)	\$18.50
(b) Railcar (per carrier)	28.30
(c) Barge (per carrier)	178.50
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier)	9.85
(b) Railcar (per carrier)	19.10
(c) Barge (per carrier)	108.10
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iv) Other services	
(a) Submitted sample (per sample—grade and factor)	10.90

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY ^{1 2}—Continued

(b) Warehouseman inspection (per sample)	18.00
(c) Factor only (per factor—maximum 2 factors)	4.70
(d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.02
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	11.90
(f) Class X Weighing (per hour per service representative)	49.20
(v) Additional tests (excludes sampling)	
(a) Aflatoxin (per test—other than TLC method)	26.30
(b) Aflatoxin (per test—TLC method)	104.00
(c) Corn oil, protein, and starch (one or any combination)	8.30
(d) Soybean protein and oil (one or both)	8.30
(e) Wheat protein (per test)	8.30
(f) Sunflower oil (per test)	8.30
(g) Vomitoxin (qualitative)	26.70
(h) Vomitoxin (quantitative)	31.80
(i) Waxy corn (per test)	9.60
(j) Canola (per test—00 dip test)	9.60
(k) Pesticide Residue Testing ³	
(1) Routine Compounds (per sample)	204.80
(2) Special Compounds (per service representative)	102.40
(l) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(2) Appeal inspection and review of weighing service. ⁴	
(i) Board Appeals and Appeals (grade and factor)	78.50
(a) Factor only (per factor—max 2 factors)	40.60
(b) Sampling service for Appeals additional (hourly rates from Table 1)	
(ii) Additional tests (assessed in addition to all other applicable fees)	
(a) Aflatoxin (per test, other than TLC)	26.30
(b) Aflatoxin (TLC)	104.00
(c) Corn oil, protein, and starch (one or any combination)	16.20
(d) Soybean protein and oil (one or both)	16.20
(e) Wheat protein (per test)	16.20
(f) Sunflower oil (per test)	16.20
(g) Vomitoxin (per test—qualitative)	37.00
(h) Vomitoxin (per test—quantitative)	42.10
(i) Vomitoxin (per test—HPLC Board Appeal)	131.10
(j) Pesticide Residue Testing ³	
(1) Routine Compounds (per sample)	204.80
(2) Special Compounds (per service representative)	102.40
(k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(iii) Review of weighing (per hour per service representative)	71.40
(3) Stowage examination (service-on-request) ³	
(i) Ship (per stowage space) (minimum \$252.50 per ship)	50.50
(ii) Subsequent ship examinations (same as original) (minimum \$151.50 per ship)	
(iii) Barge (per examination)	40.50
(iv) All other carriers (per examination)	15.50

¹ Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

² An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72 (b).

³ If performed outside of normal business, 1½ times the applicable unit fee will be charged.

⁴ If, at the request of the Service, a file sample is located and forwarded by the Agency for an official agency, the Agency may, upon request, be reimbursed at the rate of \$2.50 per sample by the Service.

TABLE 3.— MISCELLANEOUS SERVICES ¹

(1) Grain grading seminars (per hour per service representative) ²	\$49.20
(2) Certification of diverter-type mechanical samplers (per hour per service representative) ²	49.20
(3) Special weighing services (per hour per service representative) ²	
(i) Scale testing and certification	49.20
(ii) Evaluation of weighing and material handling systems	49.20
(iii) NTEP Prototype evaluation (other than Railroad Track Scales)	49.20
(iv) NTEP Prototype evaluation of Railroad Track Scales (plus usage fee per day for test car)	49.20
(v) Mass standards calibration and reverification	110.00
(vi) Special projects	49.20
(4) Foreign travel (per day per service representative)	445.40
(5) Online customized data EGIS service	
(i) One data file per week for 1 year	500.00
(ii) One data file per month for 1 year	300.00
(6) Samples provided to interested parties (per sample)	2.50
(7) Divided-lot certificates (per certificate)	1.50
(8) Extra copies of certificates (per certificate)	1.50
(9) Faxing (per page)	1.50

TABLE 3.— MISCELLANEOUS SERVICES¹—Continued

(10) Special mailing (actual cost)

(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1)

¹ Any requested service that is not listed will be performed at \$49.20 per hour.² Regular business hours—Monday through Friday—service provided at other than regular hours charged at the applicable overtime hourly rate.

* * * * *

Date: March 21, 2000.

James R. Baker,*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 00-7880 Filed 3-29-00; 8:45 am]

BILLING CODE 3410-EN-U

DEPARTMENT OF AGRICULTURE**Grain Inspection, Packers and Stockyards Administration****7 CFR Part 868****RIN: 0580-AA70****Fees for Rice Inspection****AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.**ACTION:** Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is increasing fees by approximately 4.8 percent for all hourly rates and certain unit rates. The fees apply to federal rice inspection performed under the Agricultural Marketing Act (AMA) of 1946. These increases are needed to cover increased operational costs resulting from the mandated January 2000 Federal pay increase.

EFFECTIVE DATE: May 1, 2000.**FOR FURTHER INFORMATION CONTACT:**

Dave Orr, Director, Field Management Division, at his E-mail address: Dorr@gipsadc.usda.gov, or telephone him at (202) 720-0228.

SUPPLEMENTARY INFORMATION:**Executive Order 12866, Regulatory Flexibility Act, and the Paperwork Reduction Act**

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, James R. Baker, Administrator, GIPSA, has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee-financed programs to determine if the

fees are adequate. GIPSA has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. In fiscal year (FY) 1998, GIPSA's operating costs were \$3,820,820 with revenue of \$4,011,446, resulting in a positive margin of \$190,626 and a negative reserve balance of \$895,584. In FY 1999, GIPSA's operating costs were \$4,105,564 with revenue of \$4,412,131 that resulted in a positive margin of \$306,567 and a negative reserve balance of \$508,628. As of December 31, 1999, GIPSA's FY 2000 operating costs were \$1,246,614 with revenue of \$1,429,461 that resulted in a positive margin of \$182,847 and a negative reserve of \$168,447.

Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. A general and locality salary increase that averages 4.8 percent for GIPSA employees, effective January 2000, will increase program costs. This salary adjustment will increase GIPSA's costs by approximately \$135,000, based on the projected FY 2000 work volume of 3.9 million metric tons.

We have reviewed the financial position of our rice inspection program based on the increased salary and benefit costs, along with the projected FY 2000 workload. Based on that review, we have concluded that we cannot absorb the increased costs due to the FY 2000 Federal salary increase with the current negative reserve balance. This fee increase will collect an estimated \$138,000 in additional revenues.

This fee increase primarily applies to GIPSA customers that produce, process, and market rice for the domestic and international markets. There are approximately 550 such customers located primarily in the States of Arkansas, Louisiana, and Texas. Many of these customers meet the criteria for small entities established by the Small Business Administration criteria for small businesses. Even though the fees

are being increased, the increase will not be excessive (4.8 percent) and should not significantly affect those entities. Those entities are under no obligation to use our service and, therefore, any decision on their part to discontinue the use of our service should not prevent them from marketing their products.

There will be no additional reporting or record keeping requirements imposed by this action. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and record keeping requirements in Part 868 have been previously approved by the Office of Management and Budget under control number 0580-0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this rule.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Background

On January 3, 2000, GIPSA proposed in the **Federal Register** (65 FR 78) to increase fees for official rice inspection services performed under the AMA by approximately 4.8 percent. Under the provisions of the AMA of 1946 (7 U.S.C. 1621, *et seq.*), rice inspection services are provided upon request and GIPSA must collect a fee from the customer to cover the cost of providing such services. Section 203 (h) of the AMA (7 U.S.C. 1622(h)) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. These fees cover the GIPSA administrative and supervisory costs for the performance of official services, including personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.