§ 624.10 Floodplain easements.

(a) *General.* Notwithstanding any limitations found in this part, NRCS may purchase floodplain easements as an emergency measure. NRCS will only purchase easements from landowners on a voluntary basis.

(b) *Floodplain easements.* (1) Floodplain easements established under this part shall be:

(i) Held by the United States, through the Secretary of Agriculture;

(ii) Administered by NRCS or its designee; and

(iii) Perpetual in duration;

(2) *Eligible land.* NRCS may determine that land is eligible under this section if:

(i) The floodplain lands were damaged by flooding within the last 12 months or have been subject to flood damage at least twice within the previous 10 years; or

(ii) Other lands within the floodplain that would contribute to the restoration of the flood storage and flow, erosion control, or that would improve the practical management of the easement; or,

(iii) Lands that would be inundated or adversely impacted as a result of a dam breach.

(3) *Ineligible land.* NRCS may determine that land is ineligible under this section if:

(i) Implementation of restoration practices would be futile due to on-site or off-site conditions;

(ii) The land is subject to an existing easement or deed restriction that provides sufficient protection or restoration of the floodplain's functions and values; or

(iii) The purchase of an easement would not meet the purposes of this part.

(4) *Compensation for easements.* A landowner will receive the lesser of the three following values as an easement payment:

(i) A geographic rate established by the NRCS State conservationist, if one has been established;

(ii) A value based on a market appraisal analysis for agricultural uses or assessment for agricultural land; or

(iii) The landowner's offer, if one has been made.

(5) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment that is offered by NRCS. The easement payment may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement. By voluntarily participation in the program, a landowner waives any claim to additional compensation under EWP based on fair market value.

(6) NRCS may provide up to 100 percent of the restoration and enhancement costs of the easement. NRCS may enter into an agreement to ensure that identified practices are implemented. NRCS, the landowner, or other designee may implement identified practices. Restoration and enhancement efforts may include both structural and non-structural practices. An easement acquired under this part shall provide NRCS with the full authority to restore, protect, manage, maintain, and enhance the functions and values of the floodplain.

(7) The landowner shall:

(i) Comply with the terms of the easement;

(ii) Comply with all terms and conditions of any associated agreement; and,

(iii) Convey title to the easement that is acceptable to NRCS and warrant that the easement is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by NRCS.

(8) Structures, including buildings, within the floodplain easement may be demolished and removed, or relocated outside the 100-year floodplain.

(c) *Easement modifications.* (1) After an easement has been recorded, no modification will be made in the easement except by mutual agreement with the Chief and the landowner.

(2) Approved modifications will be made only in an amended easement which is duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation.

(3) The Chief may approve modifications to facilitate the practical administration and management of the easement area or the program so long as the modification will not adversely affect the functions and values for which the easement was acquired.

(4) Modifications must result in equal or greater environmental and economic values to the United States.

(d) *Enforcement.* (1) In the event of a violation of an easement, the violator shall be given reasonable notice and an opportunity to correct the violation within 30 days of the date of the notice, or such additional time as NRCS may allow.

(2) Notwithstanding paragraph (c)(1) of this section, NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of NRCS when such actions are deemed necessary to protect important floodplain functions and values or other rights of the United States under the easement. The landowner shall be liable for any costs incurred by the United States as a result of the landowner's negligence or failure to comply with easement or agreement obligations.

(3) In addition to any and all legal and equitable remedies as may be available to the United States under applicable law, NRCS may withhold any easement and cost-share payments owing to landowners at any time there is a material breach of the easement covenants or any associated agreements. Such withheld funds may be used to offset costs incurred by the United States, in any remedial actions, or retained as damages pursuant to court order or settlement agreement.

(4) NRCS shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

(5) On the violation of the terms or conditions of the easement or related agreement, the easement shall remain in force, and NRCS may require the landowner to refund all or part of any payments received by the landowner under this Part, together with interest thereon as determined appropriate by NRCS.

(6) All the general penal statutes relating to crimes and offenses against the United States shall apply in the administration of floodplain easements acquired under this part.

§ 624.11 Waivers.

To the extent allowed by law, the NRCS Deputy Chief for Programs may waive any provision of these regulations.

Signed in Washington, DC on October 29, 2003.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 03–28793 Filed 11–18–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA80

Fees for Official Inspection and Official Weighing Services

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

ACTION: Proposed rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) proposes several changes to the fee schedule for official inspection and weighing services performed under the authority of the United States Grain Standards Act (USGSA), as amended. The USGSA provides the authority to charge and collect reasonable fees to cover the cost of performing official services. These fees also cover the costs associated with administrative and supervisory activities related to official services.

After a review of the financial status of GIPSA, including a comparison of the costs and revenues associated with official services, and administrative and supervisory activities; GIPSA is proposing changes to the fee schedule. These proposed changes include eliminating provisions for the 3-month and 6-month contracts; increasing the 1-year contract hourly rate by approximately 20 percent and the non-contract hourly rate by 47 percent; increasing hourly rates for services not performed at an applicant's facility by approximately 11.5 percent; increasing unit fees for additional tests provided by GIPSA; eliminating the 6-level administrative tonnage fee and replacing it with regional administrative tonnage fees; eliminating the unit fee charged to delegated States for export ships and replacing it with a tonnage fee; increasing hourly fees for special weighing services by approximately 30 percent above the non-contract hourly rate; and establishing a $500 usage fee per facility when the GIPSA test car is used to test track scales.

These proposed changes are needed to replenish the retained earnings accounts and to maintain a 3-month operating reserve. Further, maintaining GIPSA's financial stability will assure continued inspection and weighing services to the grain industry which will further facilitate the sound and orderly marketing of grain in domestic and export markets.

DATES: Written comments must be submitted on or before January 20, 2004.

ADDRESSES: Interested persons are encouraged to submit comments via electronic mail or Internet to *comments.gipsa@usda.gov.* Hardcopy written comments may be sent to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604, or fax to (202) 690–2755. All comments should make reference to the date and page number of this issue of the **Federal Register**, and will be available for public inspection in the above office during regular business hours (7 CFR 1.27 (b)).

Commentors should also send a copy of any comments that concern information collection and recordkeeping requirements to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for GIPSA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, e-mail address: *David.M.Orr@usda.gov,* telephone (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Background

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

GIPSA adopted its current fee structure (61 FR 43301) effective October 1, 1996, for services provided by GIPSA employees. This fee structure change was needed because advances in technology had allowed exporters to improve operational efficiencies, which, in turn, had reduced the number of GIPSA personnel required to service certain facilities. The fee structure was changed from primarily using hourly fees to recover costs to a method that uses a mix of hourly and unit fees for its inspection and weighing services. Direct service costs are recovered through hourly fees charged for employees providing the inspection and weighing services. Administrative costs are recovered by a tonnage fee applied to grain inspected and weighed as shipments from an export facility. Export grain companies are paying for direct labor costs and pay a share of the local and national administrative costs.

Since implementing the fees in 1996, GIPSA has adjusted hourly fees to correspond with annual Federal pay increases.

This action is necessary since employee payroll costs account for approximately 84 percent of GIPSA's total operating budget. The current USGSA fees were published in the **Federal Register** on June 2, 2003, (68 FR 32623) and became effective on July 2, 2003.

GIPSA regularly reviews its programs to determine if the fees are adequate. Since implementing the fees in 1996, GIPSA has only experienced one year where the revenues exceeded the costs. Annual losses have been between $1 million to $1.7 million since 1996 except for the one positive year GIPSA revenue exceeded the costs by $88,000.

GIPSA recognizes the need to reduce inspection and weighing costs as much as possible before increasing fees. Therefore, GIPSA has taken action through the years to minimize payroll costs. These actions include utilizing employee buyouts to remove high-salaried, senior employees from the active employment list; taking advantage of employee attrition to reduce total staff by not hiring to fill vacant positions; hiring and scheduling more part-time and intermittent employees to better manage staff costs during fluctuating work periods; and reducing the amount of paid overtime via creative scheduling processes. Although GIPSA has observed a 14 percent reduction in paid hours and has reduced overtime pay by 2 percent, this is not enough to avoid continued financial losses.

GIPSA has completed a review of the grain inspection and weighing programs and has determined it is necessary to amend the fees in order to replenish the retained earnings accounts and to maintain a 3-month operating reserve. The proposed changes are targeted to recover employee costs directly related to services provided and to recover the costs associated with administering and supervising the grain inspection and weighing programs. Maintaining GIPSA's financial stability will assure continued inspection and weighing services to the grain industry which will further facilitate the sound and orderly marketing of grain in domestic and export markets.

To minimize the impact of a fee increase, GIPSA has decided to propose fee rates that collect sufficient revenue to immediately cover operating expenses, while striving to create a 3-month operating reserve by FY 2010. These proposed fees are designed to collect sufficient annual revenue through FY 2007, to achieve an average estimated positive $1,000,000 balance annually based on an inspection volume of 80 MMT per year. The cost of living projections used in calculating future salary and benefits out to FY 2007 were supplied by OMB as set forth in their **Federal Register** publication (68 FR 12388) on March 14, 2003. GIPSA will evaluate the financial status of the grain inspection and weighing program on a continuous basis to determine if it is meeting the goal of obtaining a 3-month operating reserve by FY 2010 and to determine if other adjustments are necessary. While GIPSA may not fully replenish its 3-month reserve until FY 2010, it is critical that action is taken to start to replenish it. GIPSA proposes to gradually replenish a reserve rather than sharply increase fees in the short term to immediately replenish it. GIPSA welcomes all comments regarding the proposed action and encourages the public to submit comments regarding alternatives to the fee structure that would accelerate the replenishment of the retained earnings account and the 3-month operating reserve.

Proposed Action

GIPSA is proposing changes to the fee schedule to collect fees to recover the cost of services and to recover the administrative and supervisory costs related to these services. The proposed changes include (1) eliminating provisions for the 3-month and 6-month contracts; (2) increasing the 1-year contract hourly rate by approximately 20 percent and the non-contract hourly rate by 47 percent; (3) increasing hourly rates for services not performed at an applicant's facility by approximately 11.5 percent; (4) increasing unit fees for additional tests provided by GIPSA; (5) eliminating the 6-level administrative tonnage fee and replacing it with regional administrative tonnage fees; (6) eliminating the unit fee charged to delegated States for export ships and replacing it with a tonnage fee; (7) increasing hourly fees for special weighing services by approximately 30 percent above the non-contract hourly rate; and (8) establishing a $500 usage fee per facility when the GIPSA test car is used to test track scales.

Contract and Hourly Rates. GIPSA has determined the hourly rates for services performed at export facilities by GIPSA employees do not cover total salary and benefits costs. Despite implementing changes to correspond to annual Federal pay increases totaling 30 percent over the years; salary and benefit costs have increased 36 percent due to increased employee benefit costs, longevity pay and locality pay. Increased employee cost (salaries and benefits) is not the only reason the hourly fees are not covering the costs of services at the export market.

When GIPSA established the hourly rates in 1996, certain assumptions were made to establish those rates. Those assumptions included the historic volume of grain moving through the export facilities, the number of hours needed to load that volume of grain, and the anticipated non-revenue producing time experienced by our employees. Hourly fees, both contract rate and non-contract rate, were established based on these assumptions. These assumptions, however, have not held true over the years due to the changes in grain marketing.

Grain marketing strategies and shortfalls in expected export volume have also had a negative effect on GIPSA's revenue. Since 1996, some grain exporting facilities have automated their material handling systems which requires fewer inspection and weighing personnel to provide service and makes the elevator more efficient. This improved efficiency has triggered a shift in locations where grain is loaded.

Since grain marketing strategies have shifted the movement of grain at the export market, GIPSA needs to re-evaluate the hourly rates charged at these facilities.

GIPSA established a 3-month and 6-month contract rate for facilities that had fluctuating workloads; however, GIPSA had only one 3-month contract and one 6-month contract during FY 2002 and had none of these contracts in FY 2003. GIPSA has learned through the years of contracting that it is extremely difficult to accurately project an employees non-revenue producing time when utilizing 3-month and 6-month contracts. Therefore, GIPSA has decided it is best to provide service with either a one-year contract or with the non-contract rate. Therefore, GIPSA plans to abolish provisions for the 3-month and 6-month contracts.

GIPSA conducted a detailed, port-by-port evaluation of its costs and revenue streams for both contract and non-contract employees. GIPSA found that payroll increases caused by grade increases, longevity pay, and locality pay have exceeded the cost-of-living increases that GIPSA has charged annually. Further, GIPSA found that changes in grain distribution have increased non-revenue periods for certain workers. The evaluation showed the actual level of revenue-producing time likely to be expected from contract and non-contract workers. Based on its evaluation, GIPSA has determined that to adequately cover service costs and start to replenish its reserves, it is necessary to increase the annual contract rate by approximately 20 percent and to increase the non-contract hourly rate by approximately 47 percent in order to recover the costs of the pool.

GIPSA also charges hourly fees for services performed at other than export facilities. These fees are designed to recover GIPSA employee salary and benefits costs along with a portion of administrative and supervisory costs. Again, despite fee increases to accommodate the annual Federal pay increases, the current fees do not sufficiently cover costs. Like the employee costs at export, employee service costs and employee administrative costs have increased due to increased employee benefit costs, increases in payroll caused by longevity pay, and increases in payroll due to locality pay. Costs not related to employees have also increased. These local and national administrative costs include rent, communications, utilities, and other administrative support services. Based on its evaluation, GIPSA identified the costs and determined these hourly rates need to increase by approximately 11.5 percent to recover the additional costs.

Unit Fees. In addition to hourly fees, GIPSA also charges unit fees for additional services. These unit fees are charged in addition to the hourly rate when the services are provided at an applicant's facility in an onsite laboratory. These unit fees are based on the cost of equipment and supplies needed to conduct the test. GIPSA also charges unit fees for services performed at other than an applicant's facility in a GIPSA laboratory and for some miscellaneous services. These unit fees are designed to recover the direct costs of the services (salary, equipment, and supplies) along with administrative and supervisory costs. GIPSA has not made any adjustments to the unit fees for services provided at an applicant's facility in an onsite laboratory since the fees were first promulgated in 1996. Due to the increased costs for providing services, GIPSA proposes to adjust the unit fees in section 800.71 to reflect these costs.

As GIPSA updates these unit fees, it also provides GIPSA a chance to remove obsolete services from the list. At one time, GIPSA offered aflatoxin tests using the thin-layer chromatography (TLC) method. GIPSA discontinued the use of this test in 1998 because of the hazardous chemical materials required to conduct the test and rapid test kits were available for field use which were safer and less expensive. GIPSA is removing the method from the fee schedule since this test is no longer available. The unit fee for aflatoxin will recover the costs of the quick test kits currently used at field offices.

Administrative Tonnage Fee. GIPSA also utilizes a 6-level tonnage fee designed to recover the local and national administrative and supervisory costs which are not covered by unit fees and hourly fees assessed at other than export facilities. This fee is only charged to facilities in the United States that have export grain inspected by GIPSA.

The 6-level administrative tonnage fee is designed to reduce fees as the inspection volume increases. These fees have also been adjusted through the years to reflect the annual Federal pay raises. The following table illustrates how the fee levels are structured and indicates what was originally implemented in 1996 and what is current for the same levels.

ADMINISTRATIVE TONNAGE FEES

Metric ton ranges	1996 fees ($ per metric ton)	Current fees ($ per metric ton)
1–1,000,000	0.090	0.1199
1,000,001–1,500,000	0.082	0.1094
1,500,001–2,000,000	0.042	0.0591
2,000,001–5,000,000	0.032	0.0437
5,000,001–7,000,000	0.017	0.0239
7,000,001 +	0.002	0.0109

When GIPSA introduced the 6-level tonnage fee in 1996, the World Agricultural Outlook Board projected grain exports to increase 2.5 percent annually, and reach 131 MMT by 2001. With this in mind, GIPSA decided to use 85 MMT as the target level for setting fees. This would be the breakeven point. GIPSA could expect to recover costs if billable tonnage were 85 MMT or more. Conversely, costs would exceed the revenues if billable tonnage were less than 85 MMT. Since 1996, GIPSA had only one year where the billable tonnage reached the 85 MMT mark at 85.2 MMT. Although GIPSA recovered the costs that year, the other years had losses between $1 million and $1.7 million. The decision to use 85 MMT as the breakeven basis for the administrative tonnage fee has contributed to the revenue shortfall.

Other changes in market practices further reduced revenue collected. Exports handled by the New Orleans Field Office facilities increased from 72 percent of the total tons serviced by GIPSA in FY 1996 to 78.6 percent in FY 2002. During the same period, the League City Field Office export tonnage decreased from 13 to 12 percent and the Portland Field Office volume declined from 10 to 7 percent. In addition, the Baltimore Field Office was closed due to no volume in FY 2002. These market shifts resulted in less revenue being collected per metric ton than originally predicted since the shift in New Orleans resulted in more tons loaded at a lower per-ton cost due to the 6-level fee structure. Export volume increased and the revenue per ton decreased.

GIPSA's analysis of the financial information for the 6-level administrative tonnage fee shows the revenues from it are not recovering the costs. To better recover field office administrative and supervisory costs in today's export grain marketing environment, GIPSA analyzed three potential changes to the current administrative tonnage fee: Alternative 1: Specific field office tonnage fees; Alternative 2: A flat rate national administrative tonnage fee; and Alternative 3: Increasing the current 6-level tonnage fee by 27 percent. The analysis used actual FY 2002 costs, revenue, and volume of export grain inspected by GIPSA.

The specific field office tonnage fee (Alternative 1) was designed to recover local overhead costs and a part of the national administrative costs. Local administrative costs were divided by the tonnage observed by that field office to determine the cost per ton needed by the field office to cover expenses. National administrative costs were divided by the total export tons serviced by GIPSA at all field offices to determine the cost per ton needed to recover administrative costs at headquarters. The sum of the two per ton costs (local and national) was used to establish a specific field office tonnage fee. GIPSA determined the use of specific field office tonnage fees resulted in each field office collecting sufficient revenue to cover local administrative costs as well as headquarters administrative costs.

A flat rate national administrative tonnage fee (Alternative 2) was designed to recover total administrative costs but not necessarily each field office collecting revenues to recover the local costs. This tonnage fee was calculated by dividing GIPSA's total administrative costs (field offices and headquarters) by the total tons of U.S. export grain serviced by GIPSA. GIPSA determined the flat rate national administrative tonnage fee would collect the revenues to recover the total administrative costs but only the New Orleans Field Office received revenue to recover the field office administrative costs. All other field offices did not recover their local administrative costs.

GIPSA determined if increasing the current 6-level tonnage fee was to become a viable option, those fees would have to be increased by 27 percent (Alternative 3). Although all the field offices collected revenues to recover the total administrative costs of GIPSA; not all field offices collected revenue to offset their individual office costs. GIPSA is also concerned that shifting market trends may make the 6-level tonnage fee unreliable since the revenues are dependent on the volume of grain handled by each facility.

After considering these alternatives, GIPSA proposes adopting the specific field office administrative tonnage fee structure (Alternative 1). Under this fee structure, local export facilities financially support their field office administrative costs and every ton of grain exported from field office service areas is assessed an identical fee to cover headquarters costs. This will ensure that headquarters costs are collected regardless of where the grain is exported. This proposed tonnage fee also puts each field office in an independent financial position and encourages customers to work directly with each field office to continue the implementation of grain handling efficiencies while raising the awareness of local administrative and supervisory costs. This action should foster the further development and implementation of grain handling efficiencies by grain companies to reduce the cost of GIPSA services. Also, this process makes administrative and supervisory costs more transparent to the industry.

GIPSA developed the new administrative tonnage fees by projecting GIPSA costs to the FY 2007 level and assuming GIPSA billable tonnage will be 80 MMT. GIPSA determined the field office tonnage rates would be $0.167 per ton for elevators serviced by the League City Field Office, $0.067 per ton for elevators serviced by the New Orleans Field Office, $0.136 per ton for elevators serviced by the Portland Field Office, and $0.184 for elevators serviced by the Toledo Field Office.

When GIPSA implemented the administrative tonnage fees, it also provided for a monthly payment of administrative fees to level out the payments over the year based on the expected tonnage handled by a facility. This provision, located in section 800.73 (e) of the regulations, was used to level out the tonnage rates over a year instead of paying in incremental levels. GIPSA reviewed the need to preserve this regulation and determined it was no longer needed. Proposing specific field office tonnage rates that will not change due to increased volume does not require a monthly payment program to level the costs. Further, the provision for the monthly payment process has not been used by industry. Therefore, GIPSA is proposing to remove this provision from the regulations.

Delegated State Ship Fees. GIPSA also oversees the activities of delegated States and designated agencies that provide official services on behalf of GIPSA. To support this activity, GIPSA also charges a supervision fee to the agencies to recover this cost. The current fees for the supervision of inspection and weighing services performed by the agencies were published in the **Federal Register** on September 23, 1985, (50 FR 28303), and became effective on October 1, 1985. GIPSA currently assesses a $49.20 fee for every ship inspected by a delegated State. This fee is then passed on to the exporter by the delegated State.

As GIPSA evaluated the administrative and supervisory fees needed to cover field office and national administrative and supervisory costs, GIPSA also considered the contribution of revenue collected from official agencies to cover the costs of administration and supervision of their programs. GIPSA initiated this review by determining the total administrative and supervisory costs of overseeing the official agencies ($2,330,343) and the total number of metric tons inspected by official agencies in both the domestic and export markets (150,650,608 metric tons) to determine the overall cost per ton needed to cover these administrative and supervisory costs. This resulted in a need to collect $0.016 per metric ton.

In FY 2002, delegated States inspected 37,586,754 metric tons of grain (655 ships) and GIPSA collected $32,226 in revenues from the $49.20 per ship fee. This makes the current ship fee equivalent to $0.00086 per metric ton. This is short of the $0.016 per metric ton GIPSA calculated as needed to recover costs. Since the current ship fee is contributing very little to recover the costs of administration and supervision of the delegation and designation program, GIPSA plans to change this fee from a unit fee to a tonnage fee. The tonnage fee would be set at $0.016 per ton since this is what GIPSA calculated as the amount needed to recover costs.

GIPSA proposes to change the fees shown in 7 CFR 800.71, Schedule C-Fees for FGIS Supervision of Official Inspection and Weighing Services Performed by Delegated States and/or Designated Agencies in the United States by removing the $49.20 unit fee for ships and replacing it with the $0.016 per ton fee which GIPSA determined is needed to help recover the cost of administration and supervision of the official agency program.

Special Weighing Services. GIPSA also provides special weighing services to the grain industry and other industries requiring accurate weights. These services include scale testing and certification, evaluations of weighing and material handling systems used to automate weighing functions, National Type Evaluation Program scale evaluations, mass standards calibration and reverification services, and special weighing projects. GIPSA provides these services through scale specialists located at certain field offices and in headquarters.

Scale specialists are highly specialized individuals who are trained in scale operation and the operation of test equipment. Scale specialists are in a different job classification and grade level than inspectors or weighers because of their unique responsibility. Consequently, they are classified at a higher grade level. On average, scale specialist costs are 30 percent higher than the cost of agricultural commodity graders. Therefore, GIPSA needs to set the hourly fee for special weighing services at a level approximately 30 percent higher than the fee established for non-contract services.

GIPSA also owns and operates five railroad test cars that are used to test and calibrate railroad master scales and commercial track scales. The National Bureau of Standards (NBS) master scale testing program transferred to GIPSA in 1980 under an agreement between NBS, the Association of American Railroads (AAR), and then, the Federal Grain Inspection Service. Under this agreement, GIPSA is responsible for maintaining the master scale in Chicago and annual testing and calibration of other railroad master scales located throughout the United States.

GIPSA's railroad track scale testing program is funded by the service agreement with AAR and by revenues collected from non-AAR customers. The railroad track scale testing program costs have exceeded revenue for the last several years by approximately $25,000 per year. This is due to hourly fees not fully recovering the cost of the service representative and an increase in the cost of maintaining the aging test cars and other equipment used in the program. Consequently, the total funding and revenue are not meeting the cost of the program.

Although the test cars GIPSA uses in this program are properly maintained to provide an accurate service, more frequent repair services are needed due to the age of the test cars. This is increasing the cost of the program. Eventually, GIPSA will need to replace test cars in order to continue providing this valuable service to the railroad industry. GIPSA had solicited bids to build a new car; however, the initial bid cost was in excess of $200,000 and GIPSA did not have the funds to cover that cost. To collect the funds needed to maintain and replace test cars, GIPSA proposes to implement a user fee of $500 per facility when the test car is used to test commercial track scales. Implementing a specific fee for the use of the test cars will assure that only those companies that use the test cars are contributing towards the expenses directly related to the test cars. These expenses include both the maintenance of the test cars and costs associated with the replacement of the test cars.

GIPSA has determined that applying a $500 service fee to the 50 locations serviced by GIPSA for using the GIPSA test car, in addition to the hourly fee for the service representative, should raise sufficient funds to recover the annual loses of $25,000. GIPSA, by recovering this annual financial loss, will be able to maintain the test cars in good repair and initiate retained earnings to contribute towards the purchase of new test cars in the future. GIPSA will not apply the $500 usage fee to the AAR scales tested under the agreement since AAR's costs are covered through the service agreement.

In summary, GIPSA is authorized by the USGSA to charge and collect reasonable fees for performing official inspection and weighing services. The fees are to cover, as nearly as practicable, GIPSA's costs for performing inspection and weighing services, including related administrative and supervisory costs. GIPSA has determined the current fees are not recovering these costs despite efforts to reduce these costs over the years.

Accordingly, GIPSA is proposing changes to the fee schedule. These proposed changes include (1) eliminating provisions for the 3-month and 6-month contracts; (2) increasing the 1-year contract hourly rate by approximately 20 percent and the non-contract hourly rate by 47 percent; (3) increasing hourly rates for services not performed at an applicant's facility by approximately 11.5 percent; (4) increasing unit fees for additional tests provided by GIPSA; (5) eliminating the 6-level administrative tonnage fee and replacing it with regional administrative tonnage fees; (6) eliminating the unit fee charged to delegated States for export ships and replacing it with a tonnage fee; (7) increasing hourly fees for special weighing services by approximately 30 percent above the non-contract hourly rate; and (8) establishing a $500 usage fee per facility when the GIPSA test car is used to test track scales.

These proposed changes should generate additional average annual revenues as noted in the following table.

Changes to fee schedule	FY02 revenue	Projected annual revenue	Projected annual revenue increase
Eliminating 3-month and 6-month contracts	$31,063	$0	$(31,063)
Increasing 1-year contract and non-contract hourly rates	16,220,331	18,515,129	2,294,798
Increasing hourly rates not at facility	13,886	16,928	3,042
Increasing unit fees for testing services	677,854	930,110	252,256
Substituting regional tonnage fee for 6-level administrative fee	4,845,464	6,905,679	2,060,215
Substituting tonnage fee for unit fees on delegated State ship inspections	32,226	601,388	569,162
Increasing hourly fees for special weighing services	426,195	519,552	93,357
Establishing test car usage fee	0	25,000	25,000
Totals	22,247,019	27,513,786	5,266,767

These proposed changes are needed to restore the retained earnings accounts and to maintain a 3-month operating reserve. GIPSA has projected that the proposed changes to the fee schedule should gradually replenish the retained earnings account and the 3-month operating reserve. The following table illustrates how gradually restoring the fund is projected over time.

PROJECTED FINANCIAL POSITION FOR GIPSA

	FY 03	FY 04	FY 05	FY 06	FY 07
Shortfall in Retained Earnings	$1,945,000	$1,573,000	$−926,000	$−2,705,000	$−3,740,000
3-Month Operating Reserve	6,475,000	6,680,000	6,853,000	7,034,000	7,219,000
Total Need	8,420,000	8,253,000	5,927,000	4,329,000	3,479,000

GIPSA will evaluate the financial status of the grain inspection and weighing program every six months to determine if it is meeting the goal of obtaining a 3-month operating reserve by fiscal year 2010. Using the projected information in the above table, GIPSA will assess if the revenue collection trend is comparable to the financial objectives of the table. GIPSA would consider further adjusting the fees if it becomes apparent that GIPSA's goal to restore the retained earnings accounts and to obtain a 3-month operating reserve is not achievable by fiscal year 2010.

Maintaining GIPSA's financial stability will assure continued inspection and weighing services to the grain industry which will further facilitate the sound and orderly marketing of grain in domestic and export markets.

Executive Orders 12866 and 12988

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB). GIPSA has prepared a Regulatory Impact Assessment (RIA) consisting of a statement of the need for the proposed action, an examination of alternative approaches, and an analysis of the benefits and costs.

Need for Proposed Action. The USGSA requires GIPSA to charge and collect reasonable fees for performing official inspection and weighing services. The fees are to cover, as nearly as practicable, GIPSA's costs for performing inspection and weighing services, including related administrative and supervisory costs.

GIPSA changed the inspection and weighing fees in 1996 (61 FR 43301) from using predominately hourly fees to the current method of using a mixture of hourly fees, unit fees, and tonnage fees. Hourly fees are designed to recover the salary and benefit costs for those employees (pool) that perform work at an export grain elevator. Unit fees are designed to recover the costs of tests along with administrative and supervisory costs. Tonnage fees are designed to recover local and national administrative and supervisory costs.

GIPSA implemented the new fees expecting exports to increase. Export volume is a critical condition since GIPSA determined a minimum of 85 million metric tons (MMT) of billable tonnage was needed to break even. Since implementing the fees in 1996, GIPSA has only experienced one year where the revenues exceeded the costs. That year the billable tonnage reached 85 MMT. The other years had billable tonnage below the 85 MMT target and costs exceeded the revenues in those years due to the changes in grain marketing. Annual losses have been between $1 million to $1.7 million since 1996; except for the one positive year GIPSA revenue exceeded the costs by $88,000.

The continued financial deficits prompted GIPSA to initiate a detailed analysis of the user fees and operating costs to determine why revenues were not supporting the costs and to determine what action was needed. At the same time, it must be recognized that the U.S. grain market is very dynamic and constantly changing which makes it difficult to precisely predict and project long-term market trends. Transportation costs, grain handling costs, global pricing, environmental conditions, crop quality conditions, phytosanitary issues, and crop production are some of the issues that influence the changing grain market.

Since implementing the fees in 1996, GIPSA has adjusted hourly fees to correspond with annual Federal pay increases. This action is necessary since employee payroll costs account for approximately 84 percent of GIPSA's total operating budget. Although these fee adjustments were made through the years, GIPSA costs continue to exceed its revenues.

GIPSA recognizes the need to reduce inspection and weighing costs as much as possible before increasing fees. Therefore, GIPSA has taken action through the years to minimize payroll costs. These actions include utilizing employee buyouts to remove high-salaried, senior employees from the active employment list; taking advantage of employee attrition to reduce total staff by not hiring to fill vacant positions; hiring and scheduling more part-time and intermittent employees to better manage staff costs during fluctuating work periods; and reducing the amount of paid overtime via creative scheduling processes. Although GIPSA has observed a 14 percent reduction in paid hours and has reduced overtime pay by 2 percent, this is not enough to avoid continued financial losses.

GIPSA's financial review detected where the program losses were occurring. GIPSA has determined the hourly fees for services performed at the export elevator are not recovering the full cost of the pool. The base salary and benefits for the pool have increased beyond the annual Federal pay increase adjustments. Locality pay was not factored into the yearly cost-of-living increases nor was longevity pay increases. When the current fee was first established in 1996, the base contract hourly fee was based on a GS–9, step 5 pay level which was the average pay level for the pool. Today the average pool pay level is a GS–9, step 8. This equates to an average additional annual salary cost of $3,500 per GS–9 inspector. Locality pay may also increase this cost by an additional 9 percent to 18 percent depending on the geographic location of the employee.

Benefits paid to employees have also increased. In FY 1996, employee benefit costs averaged 19 percent. Since that time, overall benefit costs have increased 6 percent and now average 25 percent. Many factors have led to this increase. Health and life insurance premiums have increased along with Office of Worker's Compensation Program (OWCP) costs. GIPSA pays all OWCP costs since the government is self insured. Since FY 1996, some employees have converted to the new Federal Employees Retirement System (FERS) and all new employees are in FERS. The FERS is patterned after a typical retirement system used by non-Federal companies in that the employer must pay into social security and matches contributions into a 401(k) plan.

Grain marketing strategies and export volume have also had a negative effect on GIPSA's revenue. Since FY 1996, some grain exporting facilities have automated their material handling systems which requires fewer inspection and weighing personnel to provide service and makes the elevator more efficient. This improved efficiency has triggered a shift in locations where export grain is loaded. For example, the New Orleans Field Office facilities increased their export capacity from 72 percent of the total tons serviced by GIPSA in FY 1996 to 78.6 percent in FY 2002. During the same timeframe, the League City Field Office export tonnage decreased from 13 to 12 percent and the Portland Field Office volume declined from 10 to 7 percent. These market shifts resulted in less revenue being collected per metric ton than originally planned because of the 6-level administrative tonnage fee. The New Orleans Field Office exports average revenue was $0.048 per ton in 2002 while League City average revenue was $0.090 per ton and Portland's average revenue was $0.098 per ton. GIPSA estimates this shift in grain movements resulted in a revenue loss of approximately $660,000. Further, billable tonnage is not reaching the 85 MMT targeted in the 1996 fee schedules as the break even point. Therefore, revenue predictions based on billable tonnage were higher than what was actually billed.

GIPSA has evaluated the administrative tonnage fee and determined it is not recovering its share of local and national administrative and supervisory costs because of increased employee costs not related to annual pay increases, shifting grain exports to lower revenue per ton markets, and exports not reaching the 85 MMT mark to break even. Local and national costs such as rent, communications, utilities, and other administrative support services have also increased since 1996. Adjustments to the fees during the years have not compensated for these cost increases.

As GIPSA reviewed its financial status, it also concluded that unit fees are not recovering the cost of providing the service, supervision fees charged to delegated States for ships are not sufficient compared to the quantity of grain that is inspected and weighed, and the track scale testing program is not producing the revenue needed to maintain the testing program.

GIPSA charges unit fees for additional services provided at an applicant's facility in an onsite GIPSA laboratory. These unit fees are charged in addition to the hourly rate. These unit fees are designed to recover the costs of the equipment and supplies needed to provide the service. GIPSA has not made any adjustments to these unit fees since they were first promulgated in 1996.

Currently, GIPSA assesses $49.20 per ship to delegated States for providing official inspection and weighing services. This fee is collected to recover administrative and supervision costs of the official agencies. GIPSA has determined the delegated States should be contributing $0.016 per ton towards administrative and supervisory costs. However, the $49.20 per ship fee is only recovering an amount equivalent to $0.00086 per ton.

GIPSA also provides special weighing services to the industry. These services include scale testing and certification, evaluations of weighing and material handling systems, National Type Evaluation Program scale evaluations, mass standards calibration and reverification services, and special weighing projects. GIPSA provides these services through scale specialists located at certain field offices and in headquarters. Scale specialists are in a different job classification and grade level than inspectors or weighers because of their unique responsibility. Consequently, they are classified at a higher grade level. On average, scale specialist costs are 30 percent higher than the cost of agricultural commodity graders. Therefore, GIPSA needs to set the hourly fee for special weighing services at a level approximately 30 percent higher than the fee established for non-contract services.

The track scale testing program also uses special weighing equipment (test cars) to test track scales. These cars require maintenance and need to be replaced in the future. To assist in recovering the costs associated with these railcars, GIPSA would charge a $500 unit fee each time the car is used at a facility.

GIPSA has concluded that despite efforts to reduce the cost of services, including administrative and supervisory activities, the revenues collected from the current user fees are less than the costs associated with these services. Consequently, GIPSA must re-evaluate the design and application of user fees to recover the costs of providing service in order to place the agency in a sound financial status. GIPSA is statutorily required to charge fees to cover the cost of service. To do this, GIPSA has projected the potential costs out to FY 2007 and plans to replenish the operating reserve fund back to its 3-month level by FY 2010. The cost of living projections used in calculating future salary and benefits were supplied by OMB as published in the **Federal Register** (68 FR 12388) on March 14, 2003. Additionally, GIPSA is also adjusting the projected billable tonnage to set full cost recovery from 85 MMT to 80 MMT. GIPSA believes that this revised projection is necessary because annual billable tonnage has averaged near 80 MMT from 1996 to 2002. The 80 MMT does not include export grain shipments serviced by delegated States, land carrier exports to Mexico and Canada serviced by designated agencies, small shipments exported under the 15,000 metric ton exemption program, or other export shipments not requiring Federal services.

GIPSA has determined that this action is needed to recover the costs of providing services and to maintain a professional workforce to inspect and weigh grain for the grain industry. In doing so, GIPSA will continue to facilitate the orderly marketing of grain in the domestic and export markets.

Alternatives. Various methods were considered by which the objectives of the rule could be accomplished. GIPSA thoroughly evaluated the method of structuring fees prior to the implementation of the last major fee schedule revision in 1996. GIPSA determined at that time that the combination of hourly fees and unit fees provided customers with the information they need to determine the costs of specific inspection and weighing services because the fees are more specific.

The design and implementation of the administrative tonnage fee to recover local and national administrative and supervisory costs is another important component of this proposal. GIPSA evaluated and compared three different alternatives for charging administrative tonnage fees: Alternative 1: Establishing an administrative tonnage fee specific to each field office, Alternative 2: Establishing a fixed rate national administrative tonnage fee, or Alternative 3: Increasing the current 6-level administrative tonnage rates by 27 percent.

GIPSA analyzed the various alternatives in relation to each field office area because each field office is unique when considering the number of employees, the number and types of elevators serviced, and the volume of grain exported from that area. Fiscal Year 2002 information for each field office was used to analyze and compare the expected revenues for the various alternatives because the information is the most current and is indicative of recent marketing trends. This information was used to detail the cost recovery by each field office.

Table 1 indicates the 5 GIPSA export field offices (the Baltimore office was closed in November 2002), the number of elevators in each field office area, the number of metric tons inspected, the amount of revenue collected from the tonnage fee for each field office, the field office administrative cost related to tonnage revenue, the headquarters administrative cost related to tonnage revenue, the amount of both the field office and headquarters administrative cost, and the amount each field office was deficient. Table 1 demonstrates that some offices did not cover their individual administrative and supervisory costs *i.e.*, Baltimore, Portland, and Toledo) and all failed to cover the total administrative and supervisory costs of the combined field office and headquarters cost as a result of the employee cost increases and the changes in grain marketing.

TABLE 1.—ACTUAL ADMINISTRATIVE METRIC TONNAGE FEES AND COSTS (FY 2002 DATA)

Field office	No. elev.	FY2002 tons inspected	FY 2002 ton revenue	Field office admin. cost	F/O portion of H.Q. admin. cost [1]	Total F/O & H.Q. admin. cost	Amt. short for cost recovery
Baltimore	3	876,586	$110,952	$120,717	$38,394	$159,112	$(48,160)
League City	7	10,071,370	905,972	880,749	441,126	1,321,875	(415,904)
New Orleans	13	64,622,607	3,126,212	778,759	2,830,470	3,609,229	(483,017)
Portland	3	4,142,092	406,895	416,166	181,424	597,589	(190,695)
Toledo	6	2,555,750	295,433	353,006	111,942	464,948	(169,514)
Total	32	82,268,405	4,845,464	2,549,397	3,603,356	6,152,753	(1,307,290)

[1] Headquarters cost portion per field office calculated by dividing the total amount of headquarters cost by the total number of metric tons inspected. That amount ($0.0438 per ton) was then multiplied by the number of tons inspected by each field office.

Table 2 indicates the average revenue per ton collected by each office, the component amounts of administrative and supervisory revenues per ton needed to meet field office and headquarters costs, and the estimated cost per metric ton calculated for each alternative. There are differences in the actual average revenue collected per ton in each office for FY 2002. This ranges from $0.048 per ton in New Orleans to $0.127 per ton in Baltimore. These differences are due to the 6-level administrative tonnage fee which decreases the amount per ton collected as the total tonnage increases. Under Alternative 3, these differences in revenue collected from each field office would continue because the current 6-level administrative tonnage fee would remain in effect.

TABLE 2.—ADMINISTRATIVE TONNAGE FEE COMPARISON (FY 2002 DATA)

Field office	Actual FY02 revenue per ton	Dollars per ton needed to recover F/O & H.Q. costs per ton		Dollars per ton needed to recover total overhead		
		F/O	H.Q. [1]	Alternative 1 regional per ton total overhead	Alternative 2 one admin. fee per ton	Alternative 3 increase ranges fee ton by 27%
Baltimore	$0.127	$0.138	$0.044	$0.182	$0.075	$0.162
League City	0.090	0.087	0.044	0.131	0.075	0.115

TABLE 2.—ADMINISTRATIVE TONNAGE FEE COMPARISON (FY 2002 DATA)—Continued

Field office	Actual FY02 revenue per ton	Dollars per ton needed to recover F/O & H.Q. costs per ton		Dollars per ton needed to recover total overhead		
		F/O	H.Q. [1]	Alternative 1 regional per ton total overhead	Alternative 2 one admin. fee per ton	Alternative 3 increase ranges fee ton by 27%
New Orleans	0.048	0.012	0.044	0.056	0.075	0.062
Portland	0.098	0.100	0.044	0.144	0.075	0.126
Toledo	0.116	0.139	0.044	0.183	0.075	0.149

[1] $0.0438 rounded to $0.044.

The administrative and supervisory cost attributed to headquarters in Table 2 is $0.044 (rounded from $0.0438) per metric ton inspected. This amount is determined by dividing the amount of headquarters cost ($3,603,356 from Table 1) by the number of total metric tons inspected (82,268,405 tons from Table 1). The administrative cost of each office is determined by dividing the offices administrative cost (from Table 1) by the number of metric tons inspected by each office (from Table 1).

In Table 2, establishing an administrative tonnage fee specific to each field office (Alternative 1) is arrived at by combining the calculated field office tonnage rate with the headquarters tonnage rate. This results in the unique field office tonnage rate required to cover the entire field office administrative costs and the field office portion of the national administrative cost. Establishing a fixed rate national administrative tonnage fee (Alternative 2) tonnage rates is arrived at by taking the total administrative costs (all field office costs plus headquarters costs) divided by the total billable tonnage. This results in a single tonnage fee that is applicable to all GIPSA customers. Increasing the current 6-level administrative tonnage fee (Alternative 3) is arrived at by taking the current tonnage rate tables and increasing them by 27 percent. The 27 percent increase is what GIPSA determined the shortage was in the revenue to the costs.

Table 3 shows the projected administrative tonnage revenues based on the tonnage fees from Table 2. The projected information shows all offices collect sufficient revenues to cover the local administrative and supervisory costs as well as the headquarters cost when the regional tonnage fees are used (Alternative 1). The other alternatives cover the total cost of administration and supervision; however, some offices do not collect the revenues needed to support the field office costs and some do not cover the total of the field office cost combined with a portion of the headquarters administrative cost as a result of the employee cost increases and the changes in grain marketing.

TABLE 3.—ADMINISTRATIVE TONNAGE FEE REVENUE COMPARISON (FY 2002 DATA)

Field office	FY02 ton	Total needed F/O & H.Q. administrative cost	Alternative 1 regional per ton revenue	Alternative 2 one admin. fee per ton revenue	Alternative 3 increase ranges ton fee by 27% revenue
Baltimore	876,586	$159,112	$159,112	$65,569	$142,019
League City	10,071,370	1,321,875	1,321,875	753,339	1,159,644
New Orleans	64,622,607	3,609,229	3,610,173	4,833,775	4,006,405
Portland	4,142,092	597,589	597,589	309,829	520,826
Toledo	2,555,750	464,948	467,039	191,170	380,394
Total	82,268,405	6,152,753	6,155,789	6,153,682	6,209,288

All alternatives collect the targeted amount needed to fully fund both field and headquarters overhead in total. GIPSA believes each field office should collect sufficient revenue from customers to support the local field office administrative and supervisory costs in addition to their share of the national administrative and supervisory costs. This would put each field office in an independent financial position and would encourage customers to work directly with each field office and headquarters to continue the implementation of grain handling efficiencies while raising the awareness of local administrative and supervisory costs.

The national administrative fee approach (Alternative 2) relies heavily on the New Orleans Field Office to support the administrative and supervisory costs of the other offices. The alternative to increase the current 6-level tonnage fee structure by 27 percent (Alternative 3) results in the same situation. After a complete evaluation, GIPSA believes the regional tonnage method (Alternative 1) is the best approach to collect revenues for these costs. Under Alternative 1, users of the service would be paying their share of the local costs of operating and maintaining a field office in their port area. GIPSA proposes to establish new administrative tonnage fees based on the concept of Alternative 1. These tonnage fees are calculated to recover the projected increases in administrative and supervisory costs related to employee costs as determined by the OMB estimates and based on a minimum 80 MMT of billable tonnage.

Table 4 lists the expected tonnage and the expected administrative and supervisory costs for field offices and headquarters projected out to FY 2007. This information was then used to determine the specific field office tonnage rate needed to recover field office costs and the tonnage rate needed to recover the headquarters cost. The field office tonnage rate in Table 4 was arrived at by dividing the projected field office cost by the projected tonnage.

TABLE 4.—PROJECTED ADMINISTRATIVE METRIC TONNAGE FEES AND COSTS (FY 2007 PROJECTION)

Field office	No. elev.	Projected tons inspected	Projected F/O admin. cost	Projected admin. tonnage fee for field offices [1]	Projected total F/O & H.Q. admin. cost
Baltimore	Field office was closed and elevators and costs redistributed to other field offices.				
League City	7	9,130,000	1,048,000	$0.115	$1,522,760
New Orleans	14	63,330,000	946,000	0.015	4,239,160
Portland	3	5,335,000	447,000	0.084	724,420
Toledo	8	2,253,000	296,000	0.131	413,156
Total	32	80,048,000	2,737,000	([2])	

[1] The projected fees for some locations are lower than or equal to those of FY 2002. This is due to changes in expected export volumes, redistribution of workload and costs due to the closing of the Baltimore Field Office, and certain one-time costs.

[2] The projected fee needed to recover the headquarters cost ($0.052) was calculated by dividing the total amount of headquarters cost ($4,154,000) by the total number of metric tons inspected.

Table 5 combines the field office tonnage rates with the headquarters tonnage rates to calculate the specific field office tonnage rate that would be proposed. The projected tonnage rate was used to calculate the projected revenue for each field office by multiplying the projected tons for each field office by the specific field office rate. The projected revenue for each office was compared to the projected total costs (field office and headquarters) for each field office (from Table 4) to determine if each field office collected sufficient revenues to cover their costs.

TABLE 5.—PROJECTED COSTS AND REVENUES COLLECTED BY FIELD OFFICE (FY 2007 PROJECTION)

Field office	Projected tons inspected	Projected administrative tonnage fee		Projected fees and revenue		
		F/O	H.Q.	Projected tonnage fee ($/ton) [1]	Projected revenue ($)	Projected cost/revenue balance ($)
League City	9,130,000	0.115	0.052	0.167	1,524,710	1,950
New Orleans	63,330,000	0.015	0.052	0.067	4,243,110	3,950
Portland	5,335,000	0.084	0.052	0.136	725,560	1,140
Toledo	2,253,000	0.131	0.052	0.183	412,299	(857)
Total	80,048,000				6,905,679	

[1] The projected fees for some locations are lower than or equal to those of FY 2002. This is due to changes in expected export volumes, redistribution of workload and costs due to the closing of the Baltimore Field Office, and certain one-time costs.

Table 5 demonstrates that the projected tonnage fees produce revenues to cover, as nearly as practicable, overall costs for each field office. The Toledo Field Office calculated tonnage rate, however, does not cover their costs. Therefore, GIPSA increased their rate by one-tenth of a cent per ton to fully recover their costs.

As GIPSA evaluated the administrative and supervisory fees needed to cover field office and national administrative and supervisory costs, GIPSA also considered the contribution of revenue collected from official agencies to cover the costs of administration and supervision of their programs. GIPSA initiated this review by determining the total administrative and supervisory costs of overseeing the official agencies ($2,330,343) and the total number of metric tons inspected by official agencies in both the domestic and export markets (150,650,608 metric tons) to determine the overall cost per ton needed to cover these administrative and supervisory costs. This resulted in $0.016 per metric ton to cover administration and supervision of official agencies.

Currently, GIPSA assesses $49.20 per ship to delegated States for providing official inspection and weighing services. This fee is then passed on to the exporter by the delegated State. In FY 2002, delegated States exported 37,586,754 metric tons of grain (655 ships) and GIPSA collected $32,226 in revenues from the $49.20 per ship fee. This makes the current ship fee equivalent to $0.00086 per metric ton. This is far less than the $0.016 per metric ton GIPSA calculated was needed to recover costs. Since the current ship fee is contributing very little to recover the costs of administration and supervision of the delegation and designation program, GIPSA plans to change this fee from a unit fee to a tonnage fee. The tonnage fee would be set at $0.016 per ton since this is what GIPSA calculated as the amount needed to recover costs.

Summary of Benefits. This proposal would allow GIPSA to collect revenues from our customers to support direct service costs along with the administrative and supervisory costs of providing these services. The revenues collected from this proposal would provide GIPSA the resources needed to replenish the retained earnings account to a 3-month operating reserve. This proposed increase in fees is needed to recover the costs of providing service and to provide the financial foundation for GIPSA to maintain a highly skilled and professional work force to inspect and weigh grain. The proposed action would also foster further development of grain handling efficiencies implemented by grain companies. This would further reduce the cost of GIPSA services by reducing the number of employees needed to provide service.

These combined actions would assist GIPSA in fulfilling its mission to facilitate the marketing of grain in domestic and export markets by assuring continued inspection and weighing services to the grain industry.

User fees promote the internalization of the real cost of providing inspection and weighing services in consumer transaction decisions. User fees also achieve savings in Government expenditures, and, therefore, reduce the tax support necessary for the system to operate at a given level. These tax funds can then be used in other programs or to reduce taxes overall and, thus, diminish the efficiency losses associated with the generation of taxes (deadweight loss plus collection costs). The revision of user fees helps ensure that the user fees adequately reflect the cost of performing the services over time.

Summary of Costs. GIPSA has determined that the total cost to the grain industry to implement the proposed changes will be approximately $5,266,767 per year. This represents an approximate 21 percent increase in revenues or an average increase of 6.5 cents per ton. These calculations are based on the assumptions that the projected OMB employee costs for continued annual Federal pay increases will increase a total of 17.38 percent from FY 2002 to FY 2007 and GIPSA will collect revenue from a minimum of 80 MMT per year which was used to establish the tonnage fee. GIPSA would collect this additional revenue by (1) increasing the 1-year contract hourly rate by approximately 20 percent and the non-contract hourly rate by 47 percent and eliminating provisions for the 3-month and 6-month contracts; (2) increasing hourly rates for services not performed at an applicant's facility by approximately 11.5 percent; (3) increasing unit fees for additional tests provided by GIPSA; (4) eliminating the 6-level administrative tonnage fee and replacing it with regional administrative tonnage fees; (5) eliminating the unit fee charged to delegated States for export ships and replacing it with a tonnage fee; (6) increasing hourly fees for special weighing services by approximately 30 percent above the non-contract hourly rate; and (7) establishing a $500 usage fee per facility when the GIPSA test car is used to test track scales.

This proposed 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 Sec. 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this proposed rule would 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 provisions of this rule.

Paperwork Reduction Act and Government Paperwork Elimination Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for GIPSA, Washington, DC 20503. Please state that your comments refer to GIPSA Fees for Official Inspection and Official Weighing Services. Please send a copy of your comments to: (1) Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

The proposed rule would require applicants to complete Form FGIS–4, Application and Agreement for Contract Services, if they intend to enter into a one-year contract service agreement with GIPSA.

We are soliciting comments from the public concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this action is estimated to average 0.33 hours per response.

Respondents: Export grain companies.

Estimated annual number of respondents: 18.

Estimated annual number of responses per respondent: 4.00.

Estimated annual number of responses: 72.

Estimated total annual burden on respondents: 23.76 hours.

Copies of this information collection can be obtained from Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.

GIPSA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Civil Rights Review

In promulgating this regulation, GIPSA considered the potential civil rights implications on minorities, women, or persons with disabilities and prepared a Civil Rights Impact Analysis to ensure that no person or group shall be discriminated against on the basis of race, color, sex, national origin, religion, age disability, or marital or family status. GIPSA has considered potential civil rights implications of this proposed rule on minorities, women, or persons with disabilities to ensure that no person or group will be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or familial status. The proposed rule will apply in the same manner to all persons and groups whose activities are regulated, regardless of race, gender, national origin, or disability. Information indicates that the proposal will have no effect on protected populations.

Regulatory Flexibility Act Certification

GIPSA has determined that this proposed 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.*). 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

GIPSA adopted its current fee structure (61 FR 43301) effective October 1, 1996, for services provided by GIPSA employees. This fee structure change was needed because advances in technology had allowed exporters to improve operational efficiencies, which, in turn, had reduced the number of GIPSA personnel required to service certain facilities. The fee structure was changed from primarily using hourly fees to recover costs to a method that uses a mix of hourly and unit fees for its inspection and weighing services. Direct service costs are recovered through hourly fees charged for employees providing the inspection and weighing services. Administrative costs are recovered by a tonnage fee applied to grain inspected and weighed as shipments from an export facility. Export grain companies are paying for direct labor costs and pay a share of the local and national administrative costs.

Since implementing the fees in 1996, GIPSA has adjusted hourly fees to correspond with annual Federal pay increases. This action is necessary since employee payroll costs account for approximately 84 percent of GIPSA's total operating budget. The current USGSA fees were published in the **Federal Register** on June 2, 2003, (68 FR 32623) and became effective on July 2, 2003.

GIPSA regularly reviews its programs to determine if the fees are adequate. Since implementing the fees in 1996, GIPSA has only experienced one year where the revenues exceeded the costs. Annual losses have been between $1 million to $1.7 million since 1996 except for the one positive year GIPSA revenue exceeded the costs by $88,000.

GIPSA recognizes the need to reduce inspection and weighing costs as much as possible before increasing fees. Therefore, GIPSA has taken action through the years to minimize payroll costs. These actions include utilizing employee buyouts to remove high-salaried, senior employees from the active employment list; taking advantage of employee attrition to reduce total staff by not hiring to fill vacant positions; hiring and scheduling more part-time and intermittent employees to better manage staff costs during fluctuating work periods; and reducing the amount of paid overtime via creative scheduling processes. Although GIPSA has observed a 14 percent reduction in paid hours and has reduced overtime pay by 2 percent, this is not enough to avoid continued financial losses.

GIPSA has completed a review of the grain inspection and weighing programs and has determined it is necessary to amend the fees in order to replenish the retained earnings accounts and to maintain a 3-month operating reserve. The proposed changes are targeted to recover employee costs directly related to services provided and to recover the costs associated with administering and supervising the grain inspection and weighing programs. Maintaining GIPSA's financial stability will assure continued inspection and weighing services to the grain industry which will further facilitate the sound and orderly marketing of grain in domestic and export markets.

To minimize the impact of a fee increase, GIPSA has decided to propose fee rates that collect sufficient revenue to immediately cover operating expenses, while striving to create a 3-month operating reserve by FY 2010. These proposed fees are designed to collect sufficient annual revenue through FY 2007, to achieve an average estimated positive $1,000,000 balance annually based on an inspection volume of 80 MMT per year. The cost of living projections used in calculating future salary and benefits out to FY 2007 were supplied by OMB as set forth in their Federal Register publication (68 FR 12388) on March 14, 2003. GIPSA will evaluate the financial status of the grain inspection and weighing program on a continuous basis to determine if it is meeting the goal of obtaining a 3-month operating reserve by FY 2010 and to determine if other adjustments are necessary.

Under the provisions of the United States Grain Standards Act, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA at 32 export facilities and by delegated States at 19 export facilities. All of these facilities are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the Small Business Administration. Further, the regulations are applied equally to all entities.

The USGSA (7 U.S.C. 87f–1) requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those individuals who handle, weigh, or transport grain for sale in foreign commerce must also register. The USGSA regulations (7 CFR 800.30) define a foreign commerce grain business as persons who regularly engage in buying for sale, handling, weighing, or transporting grain totaling 15,000 metric tons or more during the preceding or current calendar year. At present, there are 90 registrants registered to export grain. While most of the 90 registrants are large businesses, we assume that some may be small.

GIPSA also provides nonmandatory inspection and weighing services at other than export locations. Approximately 75 different applicants receive nonmandatory inspection services each year and approximately 50 different locations receive track scale tests as a miscellaneous service each year. While most of these applicants are large businesses, we assume that the proposed increases should not significantly affect many small businesses requesting these official services. Furthermore, any of these applicants that wish to avoid the fee increase may do so by using an alternative source for these services. Such a decision should not prevent the business from marketing its product or conducting business as usual.

GIPSA has determined that the total cost to the grain industry to implement the proposed changes will be approximately $5,266,767 per year. This represents an approximate 21 percent increase in revenues or an average increase of 6.5 cents per ton. These calculations are based on the assumptions that the projected OMB employee costs for continued annual Federal pay increases will increase a total of 17.38 percent from FY 2002 to FY 2007 and GIPSA will collect revenue from a minimum of 80 MMT per year which was used to establish the tonnage fee.

Most users of the official inspection and weighing services do not meet the requirements for small entities. Further, GIPSA is required by statute to make services available and to recover, as nearly as practicable, the costs of providing such services. Additionally, GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this proposed rule. Therefore, Donna Reifschneider, Administrator, GIPSA, has determined that this proposed 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.*).

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 proposed to be 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 paragraph (a), Schedule A and

Tables 1 and 2 in Schedule C 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 ($ per hour)	36.00	37.60	43.00	64.00
Noncontract ($ per hour)	64.00	64.00	64.00	64.00

(2) Additional Tests (cost per test, assessed in addition to the hourly rate) [3]	
(i) Aflatoxin (rapid test kit method)	$10.00
(ii) Corn oil, protein, and starch (one or any combination)	2.25
(iii) Soybean protein and oil (one or both)	2.25
(iv) Wheat protein (per test)	2.25
(v) Sunflower oil (per test)	2.25
(vi) Vomitoxin (qualitative)	12.50
(vii) Vomitoxin (quantitative)	18.50
(viii) Waxy corn (per test)	2.25
(ix) Fees for other tests not listed above will be based on the lowest noncontract hourly rate.	
(x) Other services	
(a) Class Y Weighing (per carrier)	
(1) Truck/container	.30
(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 serviced by the specific field office (per-metric ton).	
(a) League City	$0.167
(b) New Orleans	$0.067
(c) Portland	$0.136
(d) Toledo	$0.184

[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.

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: [1 2]	
(i) Sampling only (use hourly rates from Table 1).	
(ii) Stationary lots (sampling, grade/factor, & checkloading):	
(a) Truck/trailer/container (per carrier)	$20.00
(b) Railcar (per carrier)	29.70
(c) Barge (per carrier)	187.50
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.04
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier)	12.00
(b) Railcar (per carrier)	25.00
(c) Barge (per carrier)	128.10
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.04
(iv) Other services:	
(a) Submitted sample (per sample—grade and factor)	12.00
(b) Warehouseman inspection (per sample)	21.00
(c) Factor only (per factor—maximum 2 factors)	5.70
(d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundredweight if not previously assessed)(CWT)	0.04
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	13.00
(f) Class X Weighing (per hour per service representative)	64.00
(v) Additional tests (excludes sampling):	
(a) Aflatoxin (rapid test kit method)	30.00
(b) Corn oil, protein, and starch (one or any combination)	10.00
(c) Soybean protein and oil (one or both)	10.00
(d) Wheat protein (per test)	10.00
(e) Sunflower oil (per test)	10.00
(f) Vomitoxin (qualitative)	31.00
(g) Vomitoxin (quantitative)	38.50
(h) Waxy corn (per test)	10.00

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY.[1 2]—Continued

(i) Canola (per test—00 dip test)	10.00
(j) Pesticide Residue Testing:[3]	
(1) Routine Compounds (per sample)	216.00
(2) Special Compounds (per service representative)	115.00
(k) 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)	82.00
(a) Factor only (per factor—max 2 factors)	43.00
(b) Sampling service for Appeals additional (hourly rates from Table 1)	
(ii) Additional tests (assessed in addition to all other applicable fees):	
(a) Aflatoxin (rapid test kit method)	30.00
(b) Corn oil, protein, and starch (one or any combination)	17.70
(c) Soybean protein and oil (one or both)	17.70
(d) Wheat protein (per test)	17.70
(e) Sunflower oil (per test)	17.70
(f) Vomitoxin (per test—qualitative)	41.00
(g) Vomitoxin (per test—quantitative)	47.00
(h) Vomitoxin (per test—HPLC Board Appeal)	141.00
(i) Pesticide Residue Testing:[3]	
(1) Routine Compounds (per sample)	216.00
(2) Special Compounds (per service representative)	115.00
(j) 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)	82.60
(3) Stowage examination (service-on-request):[3]	
(i) Ship (per stowage space) (minimum $255.00 per ship)	51.00
(ii) Subsequent ship examinations (same as original) (minimum $153.00 per ship)..	
(iii) Barge (per examination)	41.00
(iv) All other carriers (per examination)	16.00

[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, the Agency may, upon request, be reimbursed at the rate of $2.65 per sample by the Service.

TABLE 3.—MISCELLANEOUS SERVICES[1]

(1) Grain grading seminars (per hour per service representative)[2]	$64.00
(2) Certification of diverter-type mechanical samplers (per hour per service representative)[2]	64.00
(3) Special weighing services (per hour per service representative)[2]	
(i) Scale testing and certification	83.20
(ii) Scale testing and certification of railroad track scales	83.20
(iii) Evaluation of weighing and material handling systems	83.20
(iv) NTEP Prototype evaluation (other than Railroad Track Scales)	83.20
(v) NTEP Prototype evaluation of Railroad Track Scale	83.20
(vi) Use of GIPSA railroad track scale test equipment per facility for each requested service. (Track scales tested under the Association of American Railroads agreement are exempt.)	500.00
(vii) Mass standards calibration and reverification	83.20
(viii) Special projects	83.20
(4) Foreign travel (per day per service representative)	510.00
(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)	3.00
(7) Divided-lot certificates (per certificate)	1.75
(8) Extra copies of certificates (per certificate)	1.75
(9) Faxing (per page)	1.75
(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 $64.00 per hour.
[2] Regular business hours—Monday through Friday—service provided at other than regular hours charged at the applicable overtime hourly rate.

* * * * *

Schedule C—Fees for FGIS Supervision of Official Inspection and Weighing Services Performed by Delegated States and/or Designated Agencies in the United States[1]

TABLE 1

Inspection services (bulk or sacked grain)	Official inspection or reinspection services
(1) Official sample-lot inspection service (white certificate):	
(i) For official grade and official factor determinations:	
(a) Truck or trailer (per inspection) [2]	$0.30
(b) Boxcar or hopper car (per inspection) [2]	0.95
(c) Barge (per inspection) [2]	6.15
(d) Ship (per metric ton) [3]	0.016
All other lots (per inspection) [2 4]	0.30
(ii) For official factor or official criteria determinations:	
(a) Factor determination (per inspection) (maximum 2 factors) [5]	0.20
(b) Official criteria [2 6]	0.20
(2) Stowage examination certificates:	
(i) Ship (per stowage certificate)	3.00
(ii) Other carriers (per stowage certificate)	0.20
(3) Warehouseman's sample-lot inspection service (yellow certificate) or submitted sample inspection service (pink certificate):	
(i) For official grade and official factor determination (per inspection)	0.30
(ii) For official factor or official criteria determinations:	
(a) Factor determination (per inspection) (maximum 2 factors) [5]	0.20
(b) Official criteria [2 6]	0.20
(4) Reinspection services:	
(i) Truck, boxcar, hopper car, barge, ship, warehouseman's sample-lot, submitted sample, factor determination, and all other lots (per sample inspected)	0.30
(ii) Official criteria [2 6]	0.20

Note: The footnotes for table 1 are shown at the end of table 2.

TABLE 2

Official services (bulk or sacked grain)	Official weighing services	
	(Class X)	(Class Y)
Official weighing services:		
(i) Truck or trailer (per carrier)	$0.30	$0.20
(ii) Boxcar or hopper car (per carrier)	.95	.25
(iii) Barge (per carrier)	6.15	1.55
(iv) Ship [3 7]	0.016/metric ton	12.30/ship
(v) All other lots (per lot or part lot) [4]	.30	.20

[1] The fees include the cost of supervision functions performed by the Service for official inspection and weighing services performed by delegated States and/or designated agencies.
[2] A fee shall be assessed for each carrier or sample inspected if a combined lot certificate is issued or a uniform loading plan is used to determine grade.
[3] A fee shall be assessed per ship regardless of the number of lots or sublots loaded at a specific service point. A fee shall not be assessed for divided-lot certificates.
[4] Inspection services for all other lots include, but are not limited to, sampling service, condition examinations, and examination of grain in bins and containers. For weighing services, all other lots include, but are not limited to, seavans, and inhouse bin transfers.
[5] Fees shall be assessed for a maximum of two factors. If more than two factors are determined, fees are assessed at rates in table 1 (1)(i) or (3)(i) above, as applicable, based on carrier or type sample represented.
[6] Official criteria includes, but is not limited to, protein and oil analyses. A fee shall be assessed for each sample tested.
[7] A Class Y ship fee shall be assessed for shipments destined for domestic markets only.

* * * * *

§ 800.73 [Amended]

3. Section 800.73, paragraph (e) is removed; paragraph (f) is redesignated as (e); paragraph (g) is redesignated as (f).

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–28831 Filed 11–18–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16342; Airspace Docket No. 03–AAL–15]

Proposed Establishment of Class E Airspace; Southeast, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace over Southeast, AK in support of a lower altitude Instrument Flight Rules (IFR) route structure. The FAA, under the Capstone program, is using technology developed to take advantage of the benefits of the Global Positioning System (GPS) and the Wide Area Augmentation System (WAAS) to enhance safety for aircraft utilizing IFR and Visual Flight Rules (VFR) operations. With the support of the Alaska Aviation Industry Council, the Capstone demonstration program that has utilized GPS/WAAS technology successfully in the Yukon-Kuskokwim Delta area is being extended into