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DEPARTMENT OF AGRICULTURE

**Grain Inspection, Packers and Stockyards Administration** 7 CFR Part 800

RIN 0580-AA56

Fees for Official Inspection and Official Weighing Services

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

ACTION: Final rule.

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SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is implementing, effective October 1, 1997, a 12.5-percent increase in the administrative service fee for official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. The fee

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adjustment is necessary to cover indirect field office and headquarters operational costs and to maintain a 3-month operational reserve. GIPSA is also deleting from the fee schedule the unit fees for submitted samples and factor only analysis performed online at an applicant's facility.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: George Wollam, USDA, GIPSA, at (202) 720-4628.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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.

Executive Order 12988

This 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 Section 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 rule will not preempt any State or local laws, **regulations**, or policies unless they present irreconcilable conflict with this proposed rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to provisions of this rule.

Effects on Small Entities

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.). Most users of the official inspection and weighing

services do not meet the requirements for small entities. FGIS is required by statute to make services available and to recover costs of providing such services, as nearly as practicable.

The fee revision applies to entities engaged in the export of grain. Under provisions of the USGSA, most grain exported from U.S. export port locations must be officially inspected and weighed. Mandatory inspection and weighing services are provided by FGIS on a fee basis at 37 export facilities. All of the export facilities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities as defined under the Regulatory Flexibility Act and the **regulations** issued thereunder. A 3-percent increase in hourly and certain unit fees went into effect June 15, 1997, and will recover the increased operational costs caused by mandated cost-of-living increases to Federal salaries. That increase is anticipated to generate \$218,100 in additional revenue, bringing to \$22.21 million the projected total revenue for fiscal year 1997. This 12.5-percent increase in the administrative fee is designed to generate sufficient revenue to cover indirect costs associated with field office and headquarters operations and to maintain the retained earnings at a 3-month operating reserve for the inspection and weighing program. Additional revenue estimated for fiscal year 1998 is projected to be \$440,000 at an 85.6 million metric ton level. The 12.5-percent increase will not have a significant economic impact on small entities.

#### Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements contained in Part 800 have been previously approved by the Office of Management and Budget under control number 0580-0013.

#### Background

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, FGIS' costs for performing these services, including related administrative and supervisory costs.

Effective October 1, 1996, GIPSA changed the methodology it uses for fees charged for its inspection and weighing services. The current fee structure for these services consists of three basic components: (1) An hourly rate charged to recover the direct labor costs of providing service; (2) a unit test or service rate; and (3) a per metric ton administrative charge to recover the indirect costs, such as salaries and benefits for office management and support staff and rent, incurred both at field offices and headquarters. Fees charged in the first two components of the structure were increased by approximately 3 percent effective June 15, 1997 (62 FR 31701, June 11, 1997, corrected at 62 FR 34342, June 25, 1997), to cover increased costs due to mandated Federal cost-of-living increases. At that time, GIPSA noted that a further adjustment of fees, including an adjustment to the administrative fee to recover the indirect costs of field offices and headquarters and to replenish the operating reserve, would be addressed in future rulemaking.

The current USGSA administrative fee was published in the August 22, 1996, Federal Register (61 FR 43301) and became effective on October 1, 1996. The per metric ton administrative charge recovers the indirect costs and administrative costs of FGIS field offices and headquarters such as the salaries and benefits for office management and support staff, Departmental charges, Animal and Plant Health

Inspection Service and Agricultural Marketing Service charges, management of computers and software, utilities, and rent. The 3-percent increase that became effective June 15, 1997, was intended to recover only increases to the salaries of service personnel responsible for inspection and weighing of grain. The administrative fee is assessed on all outbound grain inspected and/or weighed at an applicant's facility.

Six levels of fees exist, ranging from 1 metric ton or less to over 7,000,001 metric tons, with fees decreasing as the number of metric tons inspected increases. The charge is assessed in addition to the hourly rate. At the beginning of each fiscal year (October 1), all applicants pay the same per metric-ton-fee. Once a level has been reached, the fee for additional metric tons is reduced until the maximum volume is reached.

#### Administrative Fees

Metric tons	Current fees	Proposed fees
1-1,000,000.....	\$0.090	\$0.1013
1,000,000-1,500,000.....	.082	.0923
1,500,001-2,000,000.....	.042	.0473
2,000,001-5,000,000.....	.032	.0360
5,000,001-7,000,000.....	.017	.0192
7,000,000 +.....	.002	.0023

This 12.5-percent increase in the administrative fee is designed to generate additional revenue to cover the indirect costs associated with field office and headquarters operations and maintain the retained earnings at a 3-month operating reserve for the inspection and weighing program.

GIPSA estimates collecting \$22.2 million in revenue for fiscal year 1997 under the current fee schedule. This is \$1 million less than the \$23.2 million estimated cost of operations for fiscal year 1997. Similar losses have occurred for the past 3 years, with \$753,000 in

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fiscal year 1994; \$630,000 in fiscal year 1995; and \$1,273,000 in fiscal year 1996. These losses resulted in a retained earning balance of only \$922,000 at the beginning of fiscal year 1997, significantly below a desired 3-month operating reserve of \$6 million.

Indirect costs for the inspection and weighing program are estimated at \$4.68 million, or 20 percent of the total \$23.2 obligation for the program. Because of a downturn in metric tons exported, the current administrative fee will generate only an estimated \$3.5 million for fiscal year 1997, resulting in an estimated loss of \$1.18 million. The administrative fee must be increased to ensure sufficient revenue is collected to recover indirect costs for an average export volume year. This will permit any excess revenue collected during high volume years, such as 89.9 million metric tons in fiscal year 1996, to offset low volume years such as this year, estimated at 76 million metric tons.

The current administrative fee generates an estimated \$4.09 million at the 5-year average export volume of 85.6 million metric tons. The 12.5-percent increase will generate an estimated \$4.53 million at the 85.6 million metric ton level, or increase actual revenue by \$440,000, or 10.75 percent.

## Comment Review

A proposed rule was published in the Federal Register on July 18, 1997, (62 FR 38488). GIPSA received five comments from trade associations and industry representatives during the 30-day comment period. All five commentors opposed the 12.5-percent increase.

In general, the commentors recommended that GIPSA initiate action to reduce administrative costs prior to any fee increase and that fee increases should not be used as the primary tool to reverse declining financial conditions. GIPSA agrees that all efforts should be taken to control administrative costs before proposing fee increases. This has been done in the past and GIPSA will continue to contain costs, as practicable, in the future.

The administrative fee implemented on October 1, 1996, was designed to collect sufficient revenue to recover fiscal year 1993 indirect costs which were \$4.09 million. Since fiscal year 1993, the Agency has experienced an estimated \$1.7 million increase in indirect costs primarily due to Federal pay increases, coupled with a redistribution of indirect costs associated with headquarters operations beginning in fiscal year 1995. GIPSA has reduced its indirect costs by \$1.1 million by staff reductions, consolidating financial management into the Department's Animal and Plant Health Inspection Service, and reducing the number of field locations from 31 to 23.

Despite the Agency's aggressive cost containment efforts, indirect costs have increased \$590,000 over the \$4.09 million fiscal year 1993 base and must be recovered. The suggestions by several commentors that overhead (indirect costs) be further reduced in general or by specific percentages, is not practical at this time. GIPSA has and will continue to reduce costs as is appropriate and cost effective where feasible.

While the fee increase generally addresses cost recovery by GIPSA for original inspection and weighing services performed at export locations, several commentors suggested that these costs be passed on to all users of GIPSA services. In addition, commentors stated that the proposed fee increase would adversely impact on the competitive position of U.S. grain exports. Further, references were made that increased costs associated with export operations would be passed on to other industry members, including farmers, with one commentor indicating that the fees would have an economic impact on small entities as defined in the Regulatory Flexibility Act.

With regard to expanding the base for cost recovery to all users of GIPSA's services, GIPSA has gone to great lengths to identify specific costs associated with the vast number of different customers we serve. This has allowed us to develop separate fee schedules that specifically address services to these unique customers. This process has worked well and GIPSA sees no need to change it based on the suggestions.

An exporters' ability to compete in the international market place is influenced by many factors, not just the cost of inspection and weighing services. All inspection and weighing costs, regardless of where they are incurred in the marketing chain, i.e., farmer to exporter, are just one item used to determine the overall cost of a product. The additional \$440,000 in fees, when spread over the total volume of grain traded in both the domestic and export markets, will not create a significant impact.

Several commentors questioned whether the fees and the expenses upon which they are based were reasonable under the USGSA. GIPSA has reviewed this issue and determined that the proposed fees and expenses are consistent and reasonable under the provisions of the USGSA.

One commentor suggested that the projected revenue from the proposed fee increase did not represent an across the board 12.5-

percent increase and should be \$510,000 instead of the stated \$440,000. They apparently based this on a straightline projection of 12.5 percent of total cost. They further questioned how the proposed increase will offset the projected \$1.18 million loss.

In order to calculate additional revenue for the administrative fee, one must first consider the existing fee structure. With the administrative fee decreasing as the number of metric tons increases and the volume of grain handled by export elevators varies, the estimated revenue collected from a 12.5 percent fee increase cannot be determined using a straightline projection. As stated in the proposal, an increase of 12.5 percent will generate an estimated \$4.53 million at the 85.6 million metric ton level, or increase actual revenue by \$440,000, or 10.75 percent.

Also, as stated in the proposal, GIPSA expected to collect only \$3.5 million in administrative fees in fiscal year 1997. With projected costs at \$4.68 million, there is a \$1.18 million shortfall. The current fees are set to collect \$4.09 million at 85.6 million tons. As stated in the proposal, the proposed fee level is designed to collect \$4.53 million at an export volume of 85.6 million metric tons. Consequently, a revenue shortfall such as \$1.18 million in 1997 with exports at 76 million metric tons will be offset by increased revenue during high-volume years such as 89.9 million metric tons in 1996. GIPSA is setting its fees at a reasonable level based on a 5-year level of exports.

One commentor suggested that GIPSA make previously recommended program changes prior to proposing fee increases. The commentor had recommended the suggested program changes during GIPSA's overall review of existing **regulations**. The suggested program changes are being considered and will be addressed in a separate rulemaking, as appropriate.

GIPSA has and will continuously monitor and adjust its resources to obtain optimum utilization of its personnel, in both direct and indirect areas, prior to proposing fee increases. However, as previously stated, GIPSA must recover its expenses for providing services and maintenance of a 3-month operating reserve and therefore must do so by implementing a 12.5-percent increase in the administrative fees.

No comments were received in response to the proposal to delete Table I (3)(ii), fees for submitted samples and

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factor only analysis performed online at an applicant's facility.

#### Final Action

Effective October 1, 1997, the Agency will apply a 12.5-percent increase to Administrative Fees in 7 CFR 800.71, Table 1 (3), and will delete fees for Additional Service (assessed in addition to all other fees) in Table 1 (3)(ii).

Good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because an October 1, 1997, effective date corresponds to the beginning of the 1998 fiscal year and the start of a new accounting cycle.

#### 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 Table 1(3) in Schedule A of paragraph (a) to read as follows:

Sec. 800.71 Fees assessed by the Service.

(a)

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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\

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(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).

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(i) All outbound carriers (per-metric-ton) \4\	
(a) 1-1,000,000.....	\$0.1013
(b) 1,000,001-1,500,000.....	.0923
(c) 1,500,001-2,000,000.....	.0473
(d) 2,000,001-5,000,000.....	.0360
(e) 5,000,001-7,000,000.....	.0192
(f) 7,000,001 +.....	.0023
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\1\ Fees for original inspection and weighing, reinspection, and appeal inspection service 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 Sec. 800.72 (a).

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

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Dated: September 12, 1997.

James R. Baker,  
Administrator.

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