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 [Proposed Rules]
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 DEPARTMENT OF AGRICULTURE
 Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800
 RIN 05800-AA59

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) is proposing an approximate 2.9 percent increase in certain service fees for official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. The proposed increase covers hourly rates and certain unit rates on tests performed at other than an applicant's facility. The proposed increase is designed to generate additional revenue required to recover operational costs created by cost-of-living increases to Federal salaries in fiscal year 1998.

DATES: Written comments must be submitted on or before May 26, 1998.

ADDRESSES: Written comments must be submitted to George Wollam, USDA,

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GIPSA, ART, Stop 3649, Washington, D.C. 20250-3649, or FAX them to (202) 720-4628. All comments received will be made available for public inspection during regular business hours in Room 0623, South Building, USDA, 1400 Independence Avenue, SW, Washington, D.C. 20250-3649 (7 CFR 1.27(b)). Comments may also be sent by electronic mail or Internet to: gwollam@gipsadc.usda.gov.

FOR FURTHER INFORMATION CONTACT: George Wollam at above address or telephone (202) 720-0292.

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 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 Act. Otherwise, this proposed 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 proposed rule.

Effects on Small Entities

James R. Baker, 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.). Most users of GIPSA inspection and weighing services do not meet the requirements for small entities. GIPSA is required by statute to make services available and to recover costs of providing such services, as nearly as practicable.

The proposed fee revision is primarily applicable 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 GIPSA 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. Some users of the service who request non-mandatory official inspection and weighing services (most of which represent appeals) at other than export locations could be considered small entities. However, this fee increase merely reflects the cost-of-living increases in Federal salaries for hourly and certain unit fees.

In fiscal year 1997, GIPSA's obligations were \$22,972,026 with revenue of \$21,527,695, resulting in a loss of \$1,444,331 and retained earnings of negative \$419,417. In fiscal year 1998, as of January 31, GIPSA's obligations were \$8,116,935 with revenue of \$8,170,327 and retained earnings of negative \$374,608. GIPSA cannot absorb the 2.9 percent increase in salary costs with the existing deficit in retained earnings. Additionally, GIPSA will continue to monitor its costs to improve operating efficiencies, and adopt cost saving measures, where possible and practicable.

The approximate 2.9 percent proposed increase in fees would not have a significant impact on either small or large entities. GIPSA estimates an annual increase of \$509,000 in revenue based on a work volume of 74,045,472 metric tons, the equivalent to fiscal year 1997.

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

The proposed 2.9 percent fee increase generates additional revenue required to recover operational costs created by a January 1998 cost-of-living increase to Federal salaries. The average salary increase for GIPSA employees in calendar year 1998 is approximately 2.9 percent. This proposed action is being taken to ensure that the service fees charged by GIPSA generate adequate revenue to cover the additional cost created by the January 1998 Federal salary increase.

The current USGSA fees covering hourly rates and certain unit rates on tests performed at other than an applicant's facility were published in the Federal Register on June 11, 1997 (62 FR 31701), and became effective on June 15, 1997. They will appear in the 1998 edition of 7 CFR 800.71, Schedule A, Fees for Official Inspection and Weighing Services Performed in the United States. The hourly fees covered by this proposal generate revenue to cover the basic salary, benefits, and leave for those employees providing direct service delivery. GIPSA has also identified certain unit fees, for services not performed at an applicant's facility, that contain direct labor costs. This proposal increases those unit fees based on a 2.9 percent increase to the labor cost of each unit. Other associated costs, including overhead, are collected through additional fees contained in the published fee schedule and are not included under this proposal.

The amount of revenue collected as a result of this proposal is a direct function of the work volume. GIPSA estimates an annual increase of \$509,000 in revenue based on a work volume of 74,045,472 metric tons, the equivalent to fiscal year 1997. If GIPSA foregoes this adjustment, GIPSA will incur a net loss equivalent to 2.9 percent for every hour worked by an employee providing direct service delivery.

In fiscal year 1997, GIPSA's obligations were \$22,972,026 with revenue of \$21,527,695, resulting in a loss of \$1,444,331 and retained earnings of negative \$419,417. In fiscal year 1998, as of January 31, GIPSA's obligations were \$8,116,935 with revenue of \$8,170,327 and retained earnings of negative \$374,608. GIPSA cannot afford to absorb an additional \$509,000 loss due to the 2.9 percent increase in salary costs with the existing deficit in retained earnings. Additionally, GIPSA will continue to monitor its costs to improve operating efficiencies and adopt cost saving measures, where possible and practicable.

Proposed Action

GIPSA proposes to apply an approximate 2.9 percent increase to those hourly and certain unit rates in 7 CFR 800.71, Table 1--Fees for Official Services Performed at an Applicant's Facility in an Onsite GIPSA Laboratory; Table 2--Services Performed at Other Than an Applicant's Facility in a GIPSA Laboratory; and Table 3, Miscellaneous Services.

In reviewing the fee schedule to identify fees that would require an approximate 2.9 percent increase, GIPSA has identified several fees that

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under the current fee schedule are at levels that would not require any change. Accordingly, these fees would remain the same at this time.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grains.

For the reasons set out in the preamble, 7 CFR Part 800 is proposed to be revised 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. In Sec. 800.71 Paragraph(s), Schedule A is revised to read as follows:

Sec. 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	Holidays
\2\				
(1) Inspection and Weighing Services Hourly Rates (per service representative)				
1-year contract.....	\$24.40	\$26.40	\$34.40	\$41.40
6-month contract.....	26.80	28.60	36.60	47.80
3-month contract.....	30.60	31.60	39.80	49.40
Noncontract.....	35.40	37.40	45.40	55.80

(2) Additional Tests (cost per test, assessed in addition to the hourly rate) \3\

(i) Aflatoxin (other than Thin Layer Chromatography).....	\$8.50
(ii) Aflatoxin (Thin Layer Chromatography method).....	20.00
(iii) Soybean protein and oil (one or both).....	1.50
(iv) Wheat protein (per test).....	1.50
(v) Sunflower oil (per test).....	1.50
(vi) Vomitoxin (qualitative).....	7.50
(vii) Vomitoxin (quantitative).....	12.50
(viii) Waxy corn (per test).....	1.50
(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 (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) 7,000,000+.....	.0023

- \1\ Fees apply 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).
- \2\ Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.
- \3\ Appeal and reinspection services will be assessed the same fee as the original inspection service.
- \4\ The administrative fee is assessed on an accumulated basis beginning at the start of the Service's fiscal year (October 1 each year).

Table 2.-- Services Performed at Other Than an Applicant's Facility in an FGIS Laboratory \1\ \2\

(1) Original Inspection and Weighing (Class X) Services	
(i) Sampling only (use hourly rates from Table 1)	
(ii) Stationary lots (sampling, grade/factor, & checkloading)	
(a) Truck/trailer/container (per carrier).....	\$18.00
(b) Railcar (per carrier).....	27.50
(c) Barge (per carrier).....	174.25
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT).....	0.02
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier).....	9.75
(b) Railcar (per carrier).....	19.00
(c) Barge (per carrier).....	108.00
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT).....	
0.02	
(iv) Other services	
(a) Submitted sample (per sample--grade and factor)	10.50
(b) Warehouseman inspection (per sample).....	17.50
(c) Factor only (per factor--maximum 2 factors)....	4.50
(d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundredweight if not previously assessed) (CWT)...	0.02
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	
11.50	
(f) Class X Weighing (per hour per service representative).....	46.40
(v) Additional tests (excludes sampling)	
(a) Aflatoxin (per test--other than TLC method)....	25.50
(b) Aflatoxin (per test--TLC method).....	101.50
(c) Soybean protein and oil (one or both).....	8.00
(d) Wheat protein (per test).....	8.00
(e) Sunflower oil (per test).....	8.00
(f) Vomitoxin (qualitative).....	26.00
(g) Vomitoxin (quantitative).....	31.00
(h) Waxy corn (per test).....	9.25
(i) Canola (per test--00 dip test).....	9.25
(j) Pesticide Residue Testing \3\	
(1) Routine Compounds (per sample).....	200.00
(2) Special Compounds (per service representative).....	100.00
(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).....	
75.25	
(a) Factor only (per factor--max 2 factors).....	39.00

(b) Sampling service for Appeals additional (hourly rates from Table 1).....
(ii) Additional tests (assessed in addition to all other applicable fees)	
(a) Aflatoxin (per test, other than TLC).....	25.75
(b) Aflatoxin (TLC).....	111.00
(c) Soybean protein and oil (one or both).....	15.75
(d) Wheat protein (per test).....	15.75
(e) Sunflower oil (per test).....	15.75
(f) Vomitoxin (per test--qualitative).....	36.00
(g) Vomitoxin (per test--quantitative).....	41.00
(h) Vomitoxin (per test--HPLC Board Appeal).....	128.00
(i) Pesticide Residue Testing \3\.....	
(1) Routine Compounds (per sample).....	200.00
(2) Special Compounds (per service representative)	100.00
(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)	67.40
(3) Stowage examination (service-on-request) \3\	
(i) Ship (per stowage space) (minimum \$250 per ship)...	50.00
(ii) Subsequent ship examinations (same as original) (minimum \$150 per ship).....
(iii) Barge (per examination).....	40.00
(iv) All other carriers (per examination).....	15.00

\1\ Fees apply 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).	
\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 Sec. 800.72 (b).	
\3\ If performed outside of normal business, 1\1/2\ times the applicable unit fee will be charged.	
\4\ If, at the request of the Service, a file sample is located and forwarded by the Agency for an official agency, the Agency may, upon request, be reimbursed at the rate of \$2.50 per sample by the Service.	

Table 3.--Miscellaneous Services \1\

(1) Grain grading seminars (per hour per service representative) \2\.....	\$46.40
(2) Certification of diverter-type mechanical samplers (per hour per service representative) \2\.....	46.40
(3) Special weighing services (per hour per service representative) \2\.....	
(i) Scale testing and certification.....	46.40
(ii) Evaluation of weighing and material handling systems.....	46.40
(iii) NTEP Prototype evaluation (other than Railroad Track Scales).....	46.40
(iv) NTEP Prototype evaluation of Railroad Track Scales (plus usage fee per day for test car).....	100.00
(v) Mass standards calibration and reverification.....	46.40
(vi) Special projects.....	46.40
(4) Foreign travel (per day per service representative)....	430.00
(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)....	2.50
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(7) Divided-lot certificates (per certificate).....	1.50
(8) Extra copies of certificates (per certificate).....	1.50
(9) Faxing (per page).....	1.50
(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 \$46.40 per hour.	

\2\ Regular business hours-Monday thru Friday-service provided at other
than regular hours charged at the applicable overtime hourly rate.

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Dated: March 20, 1998.

James R. Baker,

Administrator.

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