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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Parts 800 and 801

RIN 0580-AA62

Official Testing Service for Corn Oil, Protein, and Starch

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

ACTION: Interim rule with request for comment.

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SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is extending the use of the currently approved near-infrared spectroscopy (NIRS) analyzers in its official inspection program to include testing of corn for oil, protein, and starch content. GIPSA is incorporating by reference the Corn Refiners Association Method A-20, Starch method, into the regulations and will use it as the chemical reference method for determining the starch content in corn. To recover the cost of providing this service, GIPSA is establishing a fee identical to the fees already established for other near-infrared spectroscopy measurements (wheat protein and soybean oil and protein). GIPSA is offering this service to meet a market demand for reliable official testing procedures created by anticipated increases in high-oil corn (HOC) production.

DATES: This interim rule is effective July 1, 1998. To be assured of consideration, written comments must be filed before July 30, 1998.

The incorporation by reference of Analysis for Starch in Corn, Method A-20, 2nd revision, April 15, 1986, Standard Analytical Methods of the Member Companies of the Corn Refiners Association, Inc., listed in the rule is approved by the Director of the Federal Register as of July 1, 1998.

ADDRESSES: Written comments must be sent to Sharon Vassiliades, GIPSA, USDA, STOP 3649, Washington, DC 20250-3649; FAX to (202) 720-4628; or e-mail svassili@gipsadc.usda.gov.

All comments received will be made available for public inspection in Room 0623, USDA South Building, 1400 Independence Avenue, SW, Washington, DC, during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: John Giler, GIPSA, USDA, Room 1661-S, STOP 3632, Washington, DC, 20250-3632; telephone (202) 720-0252; or E-mail jgiler@gipsadc.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12988

This interim 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 State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

#### Effect on Small Entities

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

This rule establishes tolerances to expand the use of currently approved near-infrared spectroscopy analyzers to test corn for oil, protein, and starch content and to establish a fee identical to the fees already established for wheat protein and soybean oil and protein testing services. Currently, near-infrared spectroscopy analyzers are being used to determine protein in wheat and protein and oil in soybean in both domestic and export markets. There are 57 official agencies (49 private entities, 8 States) designated by GIPSA to perform official grain inspection services. In addition, there are 8 delegated States. Most of the agencies could be considered small entities under Small Business Administration criteria.

The extent to which these agencies will choose to provide this service is difficult to quantify because GIPSA is offering this service on a request basis and locations where service is requested infrequently may make arrangements with a neighboring agency to provide the service (7 CFR 800.196(g)(1)). GIPSA believes that offering this service would have a beneficial effect on those agencies electing to provide the service.

For the 1998 crop year, the U.S. Feed Grains Council's production information estimated that approximately 1,250,000 acres were planted in high-oil corn, of which 40 to 50 percent is under contract. Currently, producers, grain handlers, exporters, and feedlot operators rely primarily on private laboratories to determine percent oil, protein, and starch in corn. Many of the producers, grain handlers, exporters, and feedlot operators may be considered small entities under Small Business criteria. Further, grain handlers and exporters are using this information to determine value and premiums. The extent to which these entities will request the official testing of corn for oil, protein, and starch or the impact of offering this service is difficult to quantify. GIPSA believes that corn producers, feedlot operators, grain handlers, and exporters will rely on the official system to provide reliable testing procedures and accurate results that the market can rely on to negotiate price, value, and premium.

Fees will be charged for these official services. The fees charged by GIPSA will be \$1.50 per test when the test is performed at the applicant's facility, \$8.00 per test if the test is performed elsewhere, and \$15.75 for an appeal. These fees are the same as fees charged for similar tests and their impact on applicants for services will vary depending upon usage since these tests are on a request basis.

#### Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995, the recordkeeping and reporting burden imposed by Parts 800 and 801 was previously approved by OMB under control number 0580-0013 and will not be affected by this rule.

## Background

In its 1996-97 report, Value-Enhanced Corn Quality Report, dated April 1997, the U.S. Feed Grains Council estimated that value-enhanced corn (VEC) was produced on 2.3 to 2.8 million acres (representing 3.2 to 3.8 percent of the U.S. harvested acreage). VEC includes waxy corn, high-lysine and other essential amino acid corn, hard endosperm corn, popcorn, sweet corn, white corn, and high-oil corn. The report projects the U.S. acreage of VEC to remain essentially unchanged, with the exception of high-oil corn, which is considered the fastest growing VEC produced in the marketplace. The report stated that more than 1 million acres of high-oil corn is projected for the 1998 crop year (up from virtually none in 1993), is expected to more than double (2.5 million acres) in 1999, and to reach 3 million acres by 2000. High-oil corn will continue to be a significant part of the VEC produced and traded in the marketplace.

High-oil corn is used by livestock feeders to replace animal fat previously added to livestock rations and to help the animals gain weight more quickly. U.S. No. 2 corn typically averages less than 4.5 percent oil content, while high-oil corn can contain up to 8.0 percent. At this time, depending on the oil content, high-oil corn premiums range from 5 to 24 cents per bushel. High-oil corn is almost exclusively grown through contracts with livestock feeders or companies that will export the grain.

For several years, high-oil corn processors and producers have expressed an interest in having corn officially analyzed for oil, protein, and starch content. GIPSA's goal is to provide the corn industry with accurate results that the market can rely on to negotiate price, value, and premium.

GIPSA investigated a near-infrared spectroscopy (NIRS) calibration for use with currently approved near-infrared transmittance (NIRT) analyzers using 92 corn samples representing oil, protein, and starch ranges of 4.0 to 8.5 percent, 8.0 to 12.0 percent, and 64 to 72 percent (dry basis), respectively. Calibration performance data were statistically analyzed for the sample set. The standard deviation of differences (SDD) between near-infrared spectroscopy oil values and official solvent oil extraction reference results, was 0.44. A comparison of NIRT analyzer protein values and official combustion nitrogen analyzer reference results yielded an SDD of 0.40. The SDD between near-infrared spectroscopy analyzer starch predictions and reference values obtained using Corn Refiners Association Method A-20, was 2.20. GIPSA has determined that this level of accuracy is commensurate with prospective official customer needs. To further assure the performance of the NIRT analyzer for corn measurements, GIPSA is establishing the maintenance tolerances for corn oil content at  $\pm 0.20$  percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the FGIS solvent oil extraction method; for protein content at  $\pm 0.30$  percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23; and for starch content at  $\pm 0.35$  percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Starch method, Corn Refiners Association Method A-20.

This rule incorporates by reference the Corn Refiners Association

Method A-20, Starch method, into the regulations. GIPSA will use the Starch method as the chemical reference method for determining the starch content in corn.

GIPSA is announcing the implementation of corn oil, protein, and starch testing services as an official criterion effective July 1, 1998. Upon a request for service, official inspection personnel will determine corn oil, protein, and starch under the authority of the USGSA. Percent oil, protein, and starch will be reported to the nearest tenth percent on a dry matter basis (zero moisture basis) unless another moisture basis is requested.

GIPSA is required to collect fees for providing official testing service to cover, as nearly as practicable, GIPSA's costs for performing the service, including related administrative and supervisory costs. Testing procedures and time necessary to determine oil, protein, and starch in corn using the approved NIRT analyzers are the same as those required for NIRT wheat protein or NIRT soybean oil and protein determinations. Therefore, GIPSA has decided to collect fees identical to the fees established for NIRT wheat protein or NIRT soybean oil and protein testing services. These fees will be \$1.50 per test when the service is performed at an applicant's facility in an onsite FGIS laboratory; \$8.00 per test when an original inspection service is performed at a location other than an applicant's facility in an FGIS laboratory; and \$15.75 per test when an appeal inspection service is performed at a location other than an applicant's facility in an FGIS laboratory.

GIPSA is revising Sec. 800.71 to establish fees for corn oil, protein, and starch testing services.

GIPSA is also revising Sec. 801.7 to establish tolerances for corn oil, protein, and starch analyzers.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is unnecessary and contrary to public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) this rule merely expands utilization of currently approved technology to offer additional services to the industry and establishes tolerances for that service; (2) the corn market year begins July 1, 1998, and the service should be in effect to allow its use at the beginning of the marketing year; and (3) this rule provides a 30-day opportunity for comment and all written comments timely received will be considered prior to finalization of the rule.

A 30-day comment period is deemed appropriate because the corn market year begins on July 1, 1998, and this rule should be made final as soon as possible during the beginning of the 1998 year.

List of Subjects in 7 CFR Parts 800 and 801

Grains, Incorporation by reference.

For the reasons set out in the preamble, 7 CFR Parts 800 and 801 are 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(2) (i through x) and adding (xi) and revising Table 2(1)(v) and (2)(ii) in Schedule A of paragraph (a) 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.--\* \* \*

(2) * * *	
(i) Aflatoxin (other than Thin Layer Chromatography).....	\$8.50
(ii) Aflatoxin (Thin Layer Chromatography method).....	20.00
(iii) Corn oil, protein, and starch (one or any combination)..	1.50
(iv) Soybean protein and oil (one or both).....	1.50
(v) Wheat protein (per test).....	1.50
(vi) Sunflower oil (per test).....	1.50
(vii) Vomitoxin (qualitative).....	7.50
(viii) Vomitoxin (quantitative).....	12.50
(ix) Waxy corn (per test).....	1.50
(x) Fees for other tests not listed above will be based on the lowest noncontract hourly rates.....	
(xi) Other services	
(a) Class Y Weighing (per carrier)	
(1) Truck/container.....	.30
(2) Railcar.....	1.25
(3) Barge.....	2.50

\* \* \* \* \*

Table 2.--\* \* \*

(1) * * *	
(v) Additional tests (excludes sampling)	
(a) Aflatoxin (per test--other than TLC method).....	\$25.50
(b) Aflatoxin (per test--TLC method).....	101.50
(c) Corn oil, protein, and starch (one or any combination)	8.00
(d) Soybean protein and oil (one or both).....	8.00
(e) Wheat protein (per test).....	8.00
(f) Sunflower oil (per test).....	8.00
(g) Vomitoxin (qualitative).....	26.00
(h) Vomitoxin (quantitative).....	31.00
(i) Waxy corn (per test).....	9.25
(j) Canola (per test--00 dip test).....	9.25
(k) Pesticide Residue Testing \3\.....	
(1) Routine Compounds (per sample).....	200.00
(2) Special Compounds (per service representative).....	100.00
(1) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(2) * * *	
(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) Corn oil, protein, and starch (one or any combination)	15.75
(d) Soybean protein and oil (one or both).....	15.75
(e) Wheat protein (per test).....	15.75

(f) Sunflower oil (per test).....	15.75
(g) Vomitoxin (per test--qualitative).....	36.00
(h) Vomitoxin (per test--quantitative).....	41.00
(i) Vomitoxin (per test--HPLC Board Appeal).....	128.00
(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.	
*          *          *          *          *	

\*          \*          \*          \*          \*  
\3\ If performed outside of normal business, 1\1/2\ times the applicable  
unit fee will be charged.

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PART 801--[AMENDED]

3. The authority for Part 801 continues to read:

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

4. Section 801.7 is revised to read as follows:

Sec. 801.7 Reference methods and tolerances for near-infrared  
spectroscopy (NIRS) analyzers.

(a) Reference methods. (1) The chemical reference protein determinations used to reference and calibrate official NIRS instruments shall be performed in accordance with ``Comparison of Kjeldahl Method for Determination of Crude Protein in Cereal Grains and Oilseeds with Generic Combustion Method: Collaborative Study,' ' July/August 1993, Ronald Bicsak, Journal of AOAC International Vol. 76, No. 4, 1993, and subsequently approved by the AOAC International as the Combustion method, AOAC International Method 992.23. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Director, Technical Services Division, Federal Grain Inspection Service, 10383 North Executive Hills Blvd., Kansas City, MO 64153-1394. Copies may be inspected at the above address or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, Suite 700, Washington, DC 20408.

(2) The chemical reference starch determination used to reference and calibrate official NIRS instruments shall be performed in accordance with the Corn Refiners Association Method A-20, Analysis for Starch in Corn, Second revision, April 15, 1986, Standard Analytical Methods of the Member Companies of the Corn Refiners Association, Inc. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Director, Technical Services Division, Federal Grain Inspection Service, 10383 North Executive Hills Blvd., Kansas City, MO 64153-1394. Copies may be inspected at the above address or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, Suite 700, Washington, DC 20408.

(b) Tolerances (1) NIRS wheat protein analyzers. The maintenance tolerances for the NIRS analyzers used in performing official inspections for determination of wheat protein content shall be <plus-minus>0.15 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23.

(2) NIRS soybean oil and protein analyzers. The maintenance tolerances for the NIRS analyzers used in performing official inspections for determination of soybean oil shall be <plus-minus>0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the FGIS solvent oil extraction method; and for determination of protein content shall be <plus-minus>0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23.

(3) NIRS corn oil, protein, and starch analyzers. The maintenance tolerances for the NIRS analyzers used in performing official inspections for determination of corn oil shall be <plus-minus>0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the FGIS solvent oil extraction method; for determination of protein content shall be <plus-minus>0.30 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23; and for determination of starch content shall be <plus-minus>0.35 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Starch method, Corn Refiners Association Method A-20.

Dated: June 19, 1998.

David R. Shipman,  
Acting Administrator, Grain Inspection, Packers and Stockyards  
Administration.

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