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 DEPARTMENT OF AGRICULTURE
 Grain Inspection, Packers and Stockyards Administration
 7 CFR Part 800
 RIN 0580-AA66

Fees for Official Inspection and Weighing Services
 AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.
 ACTION: Final rule.

 SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is increasing fees for certain official inspection and weighing services it performs in the United States under the U.S. Grain Standards Act. This action is needed to recover increased operational costs resulting from the average 3.6 percent January 1999 cost-of-living increase to Federal salaries. The ``average 3.6 percent increase'' is a combination of a 3.1 percent across-the-board increase and increases in locality pay rates for Federal salaries. An average 3.6 percent increase is implemented for all hourly rates and certain unit rates on tests performed at both an applicant's facility and other than an applicant's facility. In addition, an average increase of 1.2 percent is implemented to recover the salary and benefits portion of the administrative tonnage fee.

EFFECTIVE DATE: February 1, 1999.

FOR FURTHER INFORMATION CONTACT: George Wollam, USDA, GIPSA, ART, 1400 Independence Avenue, SW, Stop 3649, Washington, DC 20250-3649, 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 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 rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this final rule.

Effects on Small Entities

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

These fee revisions are 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, these fee increases merely reflect the cost-of-living increases in Federal salaries for hourly, certain unit fees, and

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that portion of the administrative tonnage fee.

In fiscal year 1998, GIPSA's obligations were \$23,021,166 with revenue of \$21,776,323, resulting in a loss of \$1,244,843 and retained earnings of \$55,862. GIPSA cannot absorb the approximate 3.6 percent increase in salary costs with the existing retained earnings. Additionally, GIPSA will continue to monitor its costs to improve operating efficiencies, and adopt cost saving measures, where possible and practicable.

The increase in fees will not have a significant impact on either small or large entities. GIPSA estimates an annual increase of \$500,000 in revenue based on a work volume of 72,491,134 metric tons, the equivalent to fiscal year 1998.

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

On October 2, 1998, GIPSA published in the Federal Register (63 FR 52987) a proposal to increase certain fees it charges under the USGSA. 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 fee increases generate the additional revenue required to recover operational costs created by a January 1999 cost-of-living increase in Federal salaries. The average salary increase for GIPSA employees in calendar year 1999 is approximately 3.6 percent. This action is being taken to ensure that the service fees charged by GIPSA generate adequate revenue to cover the additional costs created by the January 1999 Federal salary increase.

The previous USGSA fees were published in the Federal Register on June 16, 1998 (63 FR 32713), and became effective on July 1, 1998. In addition, GIPSA published a revised fee schedule on June 30, 1998 (63 FR 35502), effective July 1, 1998, to establish fees for corn oil, protein, and starch testing services. The hourly fees covered by this rule will generate revenue to cover the basic salary, benefits, and leave for those employees providing direct service delivery. The current hourly fees are:

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime	Holidays
1-year contract.....	\$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

GIPSA has also identified certain unit fees, for services not performed at an applicant's facility, that contain direct labor costs. Further, GIPSA has identified those costs associated with salaries and benefits that are covered by the administrative metric tonnage fee. The 3.6 percent cost-of-living increase to salaries and benefits covered by the administrative tonnage fee results in an average overall increase of an average of 1.2 percent to the administrative tonnage fee. Other associated costs, including non-salary related overhead, are collected through the fees contained in the fee schedule and are not included under this rule.

The amount of revenue collected as a result of this rule is a direct function of the work volume. GIPSA estimates an increase of \$500,000 in revenue based on a work volume of 72,491,134 metric tons, the equivalent to fiscal year 1998. If GIPSA foregoes this adjustment, GIPSA will incur a net loss equivalent to approximately the 3.6 percent increase in salaries for every hour paid to an employee.

In fiscal year 1998, GIPSA's obligations were \$23,021,166 with revenue of \$21,776,323, resulting in a loss of \$1,244,843 and retained earnings of \$55,862. GIPSA cannot afford to absorb an additional \$500,000 loss due to the approximate 3.6 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.

Comment Review

GIPSA received four comments during the 60-day comment period. All four were in opposition to the fee increase. Two comments were from grain trade associations representing grain, feed and processing companies: one commented that it is not correct to conclude that cost of living increases in Federal salaries should be automatically passed on to users of the official system. This comment went on to state that the 3.6 percent increase in Federal salaries was an average increase nationally (national average cost-of-living adjustments with local pay differentials) and questioned whether the Agency would reach a 3.6 percent increase in salaries at export locations. The second comment opposed the proposed fee increase because the increase represented a continuation in the escalation of the cost of official services and because GIPSA was simply passing on increased costs to users of the official system without first relying on cost saving measures and improved efficiencies to offset the anticipated increase in Federal salaries. The comment stated that the impact of the increase would be felt primarily by exporters and that the fee increase would raise the cost of exporting U.S. grains and oilseeds. Both comments stressed that a variety of cost savings measures and other efficiencies should be undertaken by GIPSA, including terminating, reducing or consolidating current programs; continuing to reduce staff; accelerating efforts to automate official services; seeking ways to introduce more flexible work rules for official personnel; improving the quality and consistency of its services; and allocating more costs to others in the grain and oilseed sector that derive benefits from the official system.

Two comments were from individuals not associated with the grain industry. They commented that government's involvement in agriculture adds to the

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cost for agriculture operations. The comments went on to say that the increase in Federal salaries should not be paid for by the proposed fee increase, but should be created from sources of funds within the federal program. Some suggestions given were a reduction in force, reduction in travel and/or training, and reduction in procurement of major items.

GIPSA is required by the USGSA to recover its costs for providing inspection and weighing services by establishing reasonable fees to cover their estimated costs. The projection of a 3.6 percent increase in federal salaries is a national average of all salary and benefit increases. The ``average 3.6 percent increase'' is a combination of a 3.1 percent across-the-board increase and increases in locality pay rates for Federal salaries. This average represents a fair and reasonable percentage that is consistent with the provisions of the USGSA concerning the establishment of fees. Further, GIPSA has conducted numerous cost saving measures in the past few years, early retirements, field office consolidations, and reduction in travel and training. GIPSA will continue to monitor its costs to improve operating efficiencies, and adopt cost saving measures, where possible and practicable. Absorbing the approximate 3.6 percent salary increase is impractical considering the extremely low retained earnings of \$55,862. Savings derived from further efficiencies will be used to rebuild the retained earnings to a 3-month operating reserve or an estimated \$5.7 million.

Final Action

GIPSA is applying an approximate 3.6 percent increase to those hourly rates, certain unit rates, and an average 1.2 percent increase to the administrative tonnage fee 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 will require an approximate 3.6 percent increase, GIPSA has identified several fees that, under the current fee schedule, are at levels that will not require any change. Accordingly, these fees will remain the same at this time.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain.

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

PART 800--GENERAL REGULATIONS

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

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

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

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 \2\	Holidays
(1) Inspection and Weighing Services Hourly Rates (per service representative)				
1-year contract.....	\$25.20	\$27.20	\$35.40	\$42.60
6-month contract.....	27.60	29.40	37.60	49.40
3-month contract.....	31.60	32.60	41.00	51.00
Noncontract.....	36.60	38.60	46.80	57.60

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

(i) Aflatoxin (other than Thin Layer Chromatography)....	\$8.50
(ii) Aflatoxin (Thin Layer Chromatography method).....	20.00
(iii) Corn oil, protein, and starch (one or any combination).....	1.50
(iv) Soybean protein and oil (one or both).....	1.50
(v) Wheat protein (per test).....	1.50
(vi) Sunflower oil (per test).....	1.50
(vii) Vomitoxin (qualitative).....	7.50
(viii) Vomitoxin (quantitative).....	12.50
(ix) Waxy corn (per test).....	1.50
(x) Fees for other tests not listed above will be based on the lowest noncontract hourly rate.....	
(xi) Other services	
(a) Class Y Weighing (per carrier)	
(1) Truck/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.....	\$0.1014
(b) 1,000,001-1,500,000.....	0.0925
(c) 1,500,001-2,000,000.....	0.0500
(d) 2,000,001-5,000,000.....	0.0370
(e) 5,000,001-7,000,000.....	0.0200
(f) 7,000,000-.....	0.0090

\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 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).

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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).....	\$18.10
(b) Railcar (per carrier).....	27.60
(c) Barge (per carrier).....	174.35
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT).....	0.02
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier).....	9.85
(b) Railcar (per carrier).....	19.10
(c) Barge (per carrier).....	108.10
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT).....	0.02
(iv) Other services	
(a) Submitted sample (per sample--grade and factor).....	10.60
(b) Warehouseman inspection (per sample).....	17.60
(c) Factor only (per factor--maximum 2 factors).....	4.60
(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)...	11.60
(f) Class X Weighing (per hour per service representative).....	48.00
(v) Additional tests (excludes sampling)	
(a) Aflatoxin (per test--other than TLC method).....	25.60
(b) Aflatoxin (per test--TLC method).....	101.60
(c) Corn oil, protein, and starch (one or any combination).....	8.10
(d) Soybean protein and oil (one or both).....	8.10
(e) Wheat protein (per test).....	8.10
(f) Sunflower oil (per test).....	8.10
(g) Vomitoxin (qualitative).....	26.10
(h) Vomitoxin (quantitative).....	31.10
(i) Waxy corn (per test).....	9.35
(j) Canola (per test--00 dip test).....	9.35
(k) Pesticide Residue Testing \3\	
(1) Routine Compounds (per sample).....	200.00
(2) Special Compounds (per service representative).....	100.00
(l) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(2) Appeal inspection and review of weighing service.\4\	
(i) Board Appeals and Appeals (grade and factor)....	76.60
(a) Factor only (per factor--max 2 factors).....	39.60
(b) Sampling service for Appeals additional (hourly rates from Table 1)	
(ii) Additional tests (assessed in addition to all other applicable fees)	
(a) Aflatoxin (per test, other than TLC).....	25.85
(b) Aflatoxin (TLC).....	111.10
(c) Corn oil, protein, and starch (one or any combination).....	15.85
(d) Soybean protein and oil (one or both).....	15.85
(e) Wheat protein (per test).....	15.85
(f) Sunflower oil (per test).....	15.85
(g) Vomitoxin (per test--qualitative).....	36.10
(h) Vomitoxin (per test--quantitative).....	41.10
(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.	
(iii) Review of weighing (per hour per service representative).....	69.60
(3) Stowage examination (service-on-request) \3\ (i) Ship (per stowage space).....	50.50 (minimum \$275 per ship)
(ii) Subsequent ship examinations (same as original) (minimum \$175 per ship)	
(iii) Barge (per examination).....	40.50
(iv) All other carriers (per examination).....	15.50

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- \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 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.

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Table 3.--Miscellaneous Services \1\

(1) Grain grading seminars (per hour per service representative) \2\.....	\$48.00
(2) Certification of diverter-type mechanical samplers (per hour per service representative) \2\.....	48.00
(3) Special weighing services (per hour per service representative): \2\ (i) Scale testing and certification.....	48.00
(ii) Evaluation of weighing and material handling systems.....	48.00
(iii) NTEP Prototype evaluation (other than Railroad Track Scales).....	48.00
(iv) NTEP Prototype evaluation of Railroad Track Scales (plus usage fee per day for test car).....	48.00
(v) Mass standards calibration and reverification...	110.00
(vi) Special projects.....	48.00
(4) Foreign travel (per day per service representative).	435.00
(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
(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 \$48.00 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: December 17, 1998.
James R. Baker,
Administrator, Grain Inspection, Packers and Stockyards Administration.
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