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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA59

Fees for Official Inspection and Official Weighing Services

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

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is implementing an increase of approximately 2.9 percent 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 increase covers hourly rates and certain unit rates on tests performed at other than an applicant's facility. The 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.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: George Wollam, USDA, GIPSA, ART, Stop 3649, Washington, D.C. 20250–3649, telephone (202) 720–0292, or FAX (202) 720–4628. Electronic mail or Internet to: gwollam@fgisdc.usda.gov.

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 final 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 § 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 final rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this final rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to 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.*). Many 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 final 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 April 30, GIPSA's obligations were $13,658,981 with revenue of $13,454,057 and retained earnings of negative $254,728. 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 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

On March 27, 1998, GIPSA published in the **Federal Register** (63 FR 14840) a proposal to increase by approximately 2.9 percent certain fees it charges for official inspection and weighing services.

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 2.9 percent fee increase will generate 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 final action is being taken to ensure that 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 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 final rule will 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 final rule 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 final rule.

The amount of revenue collected as a result of this final rule 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 April 30, GIPSA's obligations were $13,658,981 with revenue of $13,454,057 and retained earnings of negative $254,728. 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.

Comment Review

GIPSA received two comments, one from an industry exporter and the other from an industry trade association representing grain, feed, and processing companies during the 60-day comment period. One commenter opposed the proposed increase. This commenter raised several concerns, including that the fees charged by GIPSA are spiraling upward out of control; that they had no other option but to use our service since inspection and weighing services on export grain are mandatory; and that private business were not allowed to compete with GIPSA in providing official services, noting that the service GIPSA provides is a totally non-competitive service.

The second commenter did not oppose the fee increase, but indicated that it was disappointed that GIPSA was again proposing to increase user fees for official services. The commenter indicated that GIPSA must begin to anticipate the yearly salary increases and take action that will offset their effects by implementing cost cutting measures, improving productivity, or a combination of both. The commenter stated that it remained concerned about the continued financial deterioration in the official inspection system, the continued losses, the depleted operating reserve, and weak imports. The commenter reiterated its view that GIPSA should not rely on fee increases as the primary tool to reverse the declining financial condition of the inspection and weighing programs and it went on to state that the Agency should continue its efforts to significantly and quickly reduce costs and increase productivity. The commenter stated that GIPSA should review its operating structure to determine and identify cost savings efficiencies as discussed in the comment.

The proposed fee increase, a cost-of-living increase, covers the hourly rate and certain unit fees on tests performed at other than an applicant's facility. These fees cover only the basic salary, benefit, and leave costs associated with those employees directly providing service to the applicant. The hourly cost to the industry is directly related to the number of employees required to perform service at any particular facility.

GIPSA continually monitors its overall costs and has implemented numerous cost cutting measures. GIPSA has streamlined, restructured, and reorganized to respond to changes in marketing practices and industry structure. Restructuring efforts have focused on streamlining headquarters and administrative operations and consolidating the field structure into fewer, but better staffed and equipped offices. Other associated costs, including overhead, are collected through other published fees. Any increases to those fees would be addressed through separate rulemaking.

Given the status of the inspection and weighing programs in terms of costs, revenues, and operating reserves, we believe that these fee changes are the most responsible and reasonable action that can be taken at this time in the administration of these programs. The Agency has embarked upon cost savings initiatives, including reductions-in-force over the past several years. These efforts will continue to play a central role in GIPSA's efforts to reduce costs. At the same time, we do note that some costs, such as salary increases, require close attention and become more significant and compelling when the Agency's financial condition is such that operating reserves are depleted. The USGSA explicitly identifies the structure and makeup of the Federal, State and private agency relationship for performance of official services. The Act also requires GIPSA to charge and collect reasonable fees for performing official inspection and weighing services. We believe that GIPSA should continue to work closely with the FGIS Advisory Committee and the industry itself in order to provide the most cost efficient and productive program services possible.

It is found that 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: (1) Projected exports and the associated requests for official services for such grain are projected to decrease in the coming months due to seasonal and other adjustments; (2) given the current level of the operating reserve, the fee increase should be implemented as soon as possible; and (3) the effective date coincides with the beginning of a billing cycle.

Final Action

GIPSA is applying 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, 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 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, paragraph (a), Schedule A is revised 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	$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	0.0923
(c) 1,500,001–2,000,000	0.0473
(d) 2,000,001–5,000,000	0.0360
(e) 5,000,001–7,000,000	0.0192
(f) 7,000,000+	0.0023

[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 § 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

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

(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 § 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 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)	46.40 100.00
(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
(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.

* * * * *

Dated: June 5, 1998.

James R. Baker,

Administrator.

[FR Doc. 98–15751 Filed 6–15–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. FV98–922–1 IFR]

Apricots Grown in Designated Counties in Washington; Revision in Container Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the container requirements currently prescribed under the Washington apricot marketing order. The marketing order regulates the handling of apricots grown in designated counties in Washington and is administered locally by the Washington Apricot Marketing Committee (Committee). This rule removes the requirement to use a top pad when apricots are packed loose in closed containers that weigh not less than 24 pounds. This revision will allow handlers greater flexibility in determining the need for a top pad depending on apricot variety or container dimensions. This change is expected to increase returns to producers and to improve the quality of apricots available to consumers.

DATES: Effective June 17, 1998. Comments received by August 17, 1998 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 132 and Marketing Order No. 922 (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule revises the order's container regulations by removing the requirement to use a top pad when apricots are packed loose in closed containers that weigh not less than 24 pounds. A top pad is a pad made of various materials, typically paper, which is placed on top of fruit packed in a closed container. This change will allow handlers greater flexibility in determining the need for a top pad depending on apricot variety or container dimensions. This change is expected to increase returns to producers and handlers, and to improve the quality of apricots available to consumers.

Section 922.52 of the order provides authority for container regulations and section 922.53 allows the modification, suspension, or termination of the container regulations. The container regulations are prescribed in section 922.306. Paragraph (a)(4) of that section currently requires handlers to use a top pad when apricots are packed loose in closed containers that weigh not less than 24 pounds.

At its May 14, 1998, meeting the Committee unanimously recommended removing the requirement requiring mandatory use of a top pad in apricots packed loose in closed containers weighing not less than 24 pounds. This requirement for a top pad was intended to protect apricots from bouncing and bruising during transportation to market. However, some varieties of apricots, typically the newer and larger varieties, are often damaged from rubbing against a top pad. The Committee believed that some varieties of apricots, typically the older and smaller varieties, still derive benefit from the use of a top pad. Therefore, the Committee believed that handlers should have the flexibility to determine whether or not to use a top pad in these closed containers depending on apricot variety or container dimensions. Currently, the container regulations require the use of a top pad regardless of the apricot variety or the dimensions of the closed container. This rule provides handlers greater flexibility to use different packaging techniques for different varieties, and to develop new packaging techniques that do not require a top pad. This rule also provides handlers greater flexibility to use containers with different dimensions because some containers may not have sufficient space for a top pad. This change is expected to increase returns to producers and handlers because of the elimination of the cost of a top pad (ranging in cost from 4 cents per pad for paper to 25 cents per pad for foam) and to improve the quality of apricots available to consumers because of decreased fruit damage during transit. The removal of the requirement requiring mandatory use of a top pad for apricots packed loose in closed containers weighing not less than 24