

§ 29.1135 Rule 29.

Any lot of tobacco containing 25 percent or more of an adjacent group, which otherwise meets the specifications of a grade shall be treated as a special factor grade by placing the special factor "M" preceding the grademark.

4. In § 29.1181, the first sentence in the paragraph immediately following table "13 Grades on Nondescript", is revised to read as follows:

§ 29.1181 Summary of standard grades.

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Special factors "U" (unsound), "W" (doubtful-keeping order), "S" (strip), and "M" (mixed) may be applied to all grades. * * *

Dated: July 6, 1995.

Lon Hatamiya,

Administrator.

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Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580-AA27

Fees for Beltsville Commodity Testing Laboratory Services

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

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), a program of the Grain Inspection, Packers and Stockyards Administration (GIPSA), is increasing service fees charged by the FGIS Commodity Testing Laboratory at Beltsville, Maryland, under authority of the Agricultural Marketing Act (AMA) of 1946. FGIS is also establishing a test and unit fee for vomitoxin testing at the Laboratory

These revisions are necessary to cover, as nearly as practicable, the projected operating costs, including related supervisory and administrative costs, for commodity laboratory testing services.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT:

George Wollam, USDA-GIPSA, Room 0623-South Building, 1400 Independence Avenue, SW, Washington, DC 20090-6454, telephone (202) 720-0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This increase in the service fees is necessary to recover operating losses at the Beltsville Commodity Testing Laboratory. These fees were increased on August 1, 1984, (49 FR 26547) and due to increases in the operating costs, it is not being covered by revenue. The overall cost of operating the laboratory increased between FY 92 and 93 by more than 8 percent. This cost increase occurred simultaneously with a more than 17 percent downturn in revenue due to fewer service requests. Revenue of \$1,035,411 did not cover the operating cost of \$1,190,700 for FY 93, resulting in a 1-year operating loss of \$155,289. Given FY 93 volume, the fee increase will generate revenue of \$1,394,577 or an increase of \$359,166.

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.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This final rule will not pre-empt 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 provisions of this rule.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the previously approved information collection and recordkeeping requirements concerning applications for inspection services, including official commodity laboratory testing services, have been approved by the Office of Management and Budget under control number 0580-0013.

Background

On November 3, 1994, FGIS proposed in the **Federal Register** (59 FR 55067) to increase fees charged for Beltsville Commodity Testing Laboratory Services and establish a test and unit fee for vomitoxin testing at the Laboratory.

The fees for commodity laboratory testing services were last increased August 1, 1984, (49 FR 26547). Subsequent adjustments were made on April 17, 1991, (56 FR 15483), adding several new laboratory test services and consolidating others for clarity and efficiency. Currently, these fees appear in section 868.90, Table 4 of the regulations (7 CFR 868.90, Table 4).

FGIS is adding a vomitoxin laboratory testing service to the current list of fees, 7 CFR 868.90, Table 4. The new test is required to accommodate frequent grain and food industry requests. In addition, changes are made to Table 4 concerning the *Tilletia controversa kuhn* (TCK) laboratory test services. Currently, section 868.90, Table 4 provides for a *Tilletia controversa kuhn* (TCK) test for \$25.20. While the proposed rule effected this test and fee in Table 4, it did not separate the TCK testing service to specify quantitative and qualitative testing. This final rule changes Table 4 to specify both a qualitative and quantitative TCK testing service. The qualitative test remains at \$25.20 while the quantitative test fee will be \$76.00. This will recover, as nearly as practicable, projected operating costs.

FGIS continually strives to contain operating costs through program efficiencies and streamlining. In fiscal year 1992, FGIS took specific action to reduce chemical disposal costs by implementing new technology. FGIS further enhanced laboratory procedures to improve overall efficiency. While these changes proved successful in reducing certain costs, the overall cost of operating the laboratory increased between FY 92 and 93 by more than 8 percentum. This cost increase occurred simultaneously with a more than 17 percentum downturn in revenue due to fewer service requests. Revenue of \$1,035,441 did not cover the operating cost of \$1,190,700 for fiscal year 1993, resulting in a 1-year operating loss of \$155,289.

Given fiscal year 1993 volume, the proposed fee increase will generate revenue of \$1,394,577 or an increase of \$359,166.

Comment Review

FGIS received one comment during the 30-day comment period. That comment was from a grain processing trade association. It recognized the need for a fee increase after 10 years without an increase and applauded initiatives taken to contain operating costs through program efficiencies and streamlining. It further suggested that the Beltsville Commodity Testing Laboratory be consolidated with and moved to the FGIS Technical Center (QARD) in

Kansas City, Missouri, in order to reduce ongoing operating expenses while enhancing the efficiency and timeliness of testing service.

It also requested further information regarding cost and revenue figures, including both historical and projected, before commenting on the reasonableness of the specific proposals. However, FGIS published in the proposed rule all cost and revenue information necessary for the purpose of increasing fees.

With regard to the suggestion that the Beltsville Commodity Testing Laboratory be consolidated with and moved to QARD was not germane to the proposed rule but will be considered if appropriate.

Based on all available information including the comment received, FGIS is increasing the fees charged at the Beltsville Commodity Testing Laboratory and making additional changes to Table 4 a provided in this action.

Final Action

Section 203(h) of the AMA (7 U.S.C. 1622(h)) provides for the establishment and collection of fees that are reasonable, and as nearly as practicable, to cover the costs of the services rendered. These fees cover the FGIS administrative and supervisory costs for the performance of official services. FGIS costs include personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

Section 868.90, Table 4 (as currently shown in section 868.90, Table 4 of the regulations) is revised to provide for the increase in laboratory commodity testing fees and the addition of the vomitoxin laboratory testing and changes to the Tilletia controversa kuhn (TCK) testing as outlined in the background. Pesticide residue testing (Carbon Tetrachloride, Methyl Bromide and Ethylene Dibromide) is deleted because it is no longer conducted at the Beltsville Commodity Testing Laboratory. Such testing is provided for under the United States Grain Standards Act (7 U.S.C. 71 et seq.)

The increased fees for laboratory tests are: Aflatoxin test (other than TLC or Minicolumn), Aflatoxin (TLC), Aflatoxin (Minicolumn), Appearance and Odor, Ash, Bacteria count, Baking test (cookies), Bostwick (uncooked/cook test/dispersibility), Brix, Calcium, Carotenoid Color, Cold test (oil), Cooking test (other than corn soy blend), Crude fat, Crude fiber, Dough handling (baking), E. coli, Falling number, Fat (acid hydrolysis), Fat-stability (A.O.M.),

Flash point (point and closed up), Free fatty acid, Hydrogen ion activity (pH), Iron enrichment, Linolenic acid (fatty acid profile), Lovibond color, Moisture, Moisture and volatile matter, Performance test (prepared bakery mix), Peroxide value, Phosphorus, Popcorn kernels (total defects), Popping ratio/value popcorn, Potassium bromate, Protein, Salmonella, Salt or sodium content, Sanitation (light filth), Sieve test, Smoke point, Solid fat index, Unsaponifiable matter, Urease activity, Visual exam (hops pellet), Visual exam (insoluble impurities, oils, and shortening), Visual exam (pasta), Visual exam (processed grain products), Vitamin enrichment, and Water activity.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agriculture commodities.

For the reasons set out in the preamble, 7 CFR Part 868 is amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 et seq.)

2. Section 868.90 is amended by revising paragraphs (a), (b) and (c) and Table 4 and the undesignated centerhead above paragraph (a) to read as follows:

§ 868.90 Fees for certain Federal inspection services.

* * * * *

Table 3 * * *

Fees for Official Laboratory Test Services Performed at the GIPSA Commodity Testing Laboratory at Beltsville, Maryland

For Processed Agricultural Products

(a) In addition to the fees, if any, for sampling or other requested service, a fee will be assessed for each laboratory test (original, retest, or appeal) as follows:

TABLE 4.—LABORATORY FEES 1

Laboratory tests	Fees
(1) Alpha monoglycerides	\$18.00
(2) Aflatoxin test (other than TLC or Minicolumn method)	22.50
(3) Aflatoxin (TLC)	48.00
(4) Aflatoxin (Minicolumn method) .	25.00
(5) Appearance & odor	3.00
(6) Ash	8.50
(7) Bacteria count	10.00
(8) Baking test (cookies)	28.00
(9) Bostwick (cooked)	12.60

TABLE 4.—LABORATORY FEES 1—
Continued

Laboratory tests	Fees
(10) Bostwick (uncooked/cook test/dispersibility)	6.50
(11) Brix	8.00
(12) Calcium	12.50
(13) Carotenoid color	12.50
(14) Cold test (oil)	10.00
(15) Color test (syrups)	6.50
(16) Cooking test (other than corn soy blend)	7.00
(17) Crude fat	10.00
(18) Crude fiber	13.00
(19) Dough handling (baking)	8.50
(20) E. coli	19.00
(21) Falling number	12.00
(22) Fat (acid hydrolysis)	14.00
(23) Fat stability (A.O.M.)	27.00
(24) Flash point (open & close cup) .	14.00
(25) Free fatty acid	12.00
(26) Hydrogen ion activity (ph)	9.50
(27) Iron enrichment	15.00
(28) Iodine number/value	9.50
(29) Linolenic acid (fatty acid profile)	50.00
(30) Lipid phosphorous	47.00
(31) Lovibond color	10.00
(32) Margarine (nonfat solids)	23.60
(33) Moisture	6.00
(34) Moisture average (crackers)	4.00
(35) Moisture & volatile matter	8.50
(36) Performance test (prepared bakery mix)	32.00
(37) Peroxide value	13.50
(38) Phosphorus	14.00
(39) Popcorn kernels (total defects) .	19.00
(40) Popping ratio/value popcorn	19.00
(41) Potassium bromate	20.00
(42) Protein	7.50
(43) Rope spore count	31.50
(44) Salmonella	40.00
(45) Salt or sodium content	12.50
(46) Sanitation (filth light)	24.00
(47) Sieve test	5.00
(48) Smoke point	22.00
(49) Solid fat index	85.00
(50) Specific volume (bread)	21.80
(51) Staphylococcus aureus	24.50
(52) Texture	6.50
(53) Tilletia controversa kuhn (TCK) (Qualitative)	25.20
(54) Tilletia controversa kuhn (TCK) (Quantitative)	76.00
(55) Unsaponifiable matter	25.00
(56) Urease activity	12.50
(57) Visual exam (hops pellet)	7.50
(58) Visual exam (insoluble impurities, oils & shortening)	5.00
(59) Visual exam (pasta)	10.50
(60) Visual exam (processed grain products)	12.00
(61) Visual exam (total foreign material other than cereal grains)	6.50
(62) Vitamin enrichment	7.00
(63) Vomitoxin (TLC)	40.00
(64) Vomitoxin (Qualitative)	30.00
(65) Vomitoxin (Quantitative)	40.00
(66) Water activity	20.00
(67) Wiley melting point	12.50

TABLE 4.—LABORATORY FEES ¹—
Continued

Laboratory tests	Fees
(68) Other laboratory tests	2

¹When laboratory test service is provided for GIPSA by a private laboratory, the applicant will be assessed a fee which, as nearly as practicable, covers the costs to GIPSA for the service provided.

²Fees for other laboratory tests not referenced above will be based on the noncontract hourly rate listed in Table 1.

(b) If a requested test is to be reported on a specified moisture basis, a fee for a moisture test will also be assessed.

(c) Laboratory tests referenced in Table 4 will be charged at the applicable laboratory fee listed in Table 4 when performed at field locations other than at the applicant's facility.

David R. Shipman,

Acting Deputy Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95-16819 Filed 7-12-95; 8:45 am]

BILLING CODE 3410-EN-M

7 CFR Part 868

United States Standards for Beans

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

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is revising the United States Standards for Beans. Specifically, FGIS is eliminating the factor "clean-cut weevil-bored beans" from the grade requirements for the class Blackeye beans and changing the grade limits for the factors "total defects," "blistered, wrinkled and/or broken beans," and "splits" for the class Baby Lima beans. FGIS is changing the standards to facilitate the marketing of beans.

EFFECTIVE DATE: August 1, 1995.

FOR FURTHER INFORMATION CONTACT:

George Wollam, GIPSA-FGIS, USDA, Room 0623 South Building, P.O. Box 96454, Washington, DC, 20090-6454; telephone (202) 720-0292; FAX (202) 720-4628.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Department is issuing this rule in conformance with Executive Order 12866.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action 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. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

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 because those persons who apply the standards and most users of the inspection service do not meet the requirements of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements in Part 868 have been approved previously by OMB and assigned OMB No. 0580-0013.

Review of Standards

On February 24, 1995, FGIS proposed in the **Federal Register** (60 FR 10336) to revise the United States Standards for Beans. Specifically, FGIS proposed eliminating the factor "clean-cut weevil-bored beans" from the grade requirement for the class Blackeye beans and that "clean-cut weevil-bored beans" be considered as "worm-cut" or "insect damaged" beans. FGIS also proposed changing the grade limits for the factors "total defects," "blistered, wrinkled and/or broken beans," and "splits" for the class Baby Lima beans to coincide with the grade limits for similar factors in other classes of beans.

Interested parties were invited to participate in the rulemaking process by

submitting written comments and/or recommendations regarding the official standards. During the 90-day comment period, one written comment was received from a California bean industry group. This group pointed out that there was a typographical error in the Baby Lima bean grade chart. The factor "splits" was erroneously included as part of the factor "total defects;" "splits" is a separate grading factor in this class of beans. Accordingly, the proposed changes to the standards for Blackeye and Baby Lima beans are adopted as a final rule without change, and the grade chart for Baby Lima beans will be corrected to remove the factor "splits" (SP) from being included in the factor "total defects."

Final Action

Based on current market needs and other available information, FGIS is revising:

1. Section 68.134 by eliminating the grading factor "clean-cut weevil-bored" and by eliminating footnote 2 which states that "Beans with more than 0.5 percent clean-cut weevil-bored beans are graded U.S. Sample grade." Footnotes that are presently numbered 3 and 4 are proposed to be renumbered 2 and 3, respectively.

2. Section 68.140 by changing the grading limits for the factors "total defects," "blistered, wrinkled, and/or broken beans," and "splits" to 2.0, 4.0, and 6.0 percent for U.S. Nos. 1, 2, and 3, respectively.

List of Subjects in 7 CFR Part 868

Administrative practice and procedures, Agricultural commodities, Beans.

For reasons set forth in the preamble, 7 CFR Part 868 is amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for Part 868 continues to read as follows:

Authority: Secs. 202-208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

2. Section 868.134 is revised to read as follows:

§ 868.134 Grades and grade requirements for the class Blackeye beans.