

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580-AA40

Fees for Official Inspection and Official Weighing Services

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

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), of the Grain Inspection, Packers and Stockyards Administration (GIPSA), is proposing a change in the way it collects user fees for official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. Currently, FGIS assesses fees on an hourly basis. The proposed fee structure establishes fees for specific services using hourly rates and/or unit fees. This structure will provide customers with information to better assess the cost of specific services and allow FGIS to pass savings (in the form of fewer billable hours) to customers who invest in operational efficiencies. The proposed fee structure does include a 4 percent increase to recover salary increases.

DATE: Comments must be received on or before January 29, 1996.

ADDRESSES: Written comments must be submitted to George Wollam, USDA, GIPSA, Room 0623 South Building, P.O. Box 96454, Washington, DC 20090-6454, 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, DC 20090-6454 (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, at above address or 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.

The proposed change in the way user fees are collected will provide customers with information to better assess the costs of specific inspection services because the fees will be more service specific than under the current hourly rate. Further, it will allow savings to be passed on to users of the service who invest in operational efficiencies. Currently, applicants choose only those services they want, but individual service costs are supported by the hourly rate without segregation. Fiscal year 1993 financial and volume data were used in developing the proposed fee structure. While certain fees are increased and new fees are established, the revenue generated using the fiscal year 1993 data is equivalent to the \$23,192,178 collected that year.

The proposed fee structure does include a 4 percent increase to recover salary increases since 1993 and would have generated sufficient revenue to cover costs for fiscal year 1994 and the anticipated costs for fiscal year 1995. For information, fiscal year 1994 revenues were \$20,662,062 with obligations of \$21,415,400. For the first half of fiscal year 1995, revenues were \$11,691,695 with obligations of \$12,027,624. Obligations include buy out costs, along with costs associated with office consolidations.

Presently, users of the inspection service are charged on an hourly basis. This hourly rate includes the salary and benefits for each service representative providing the service as well as a portion of overhead and program support costs. The overall cost of a wide variety of services, e.g., grading, weighing, wheat protein measurement, soybean protein and oil measurement, and aflatoxin detection, are averaged together and recovered through an hourly service rate. Under the proposed system, customers will be charged a lower base hourly rate plus a unit fee to cover the cost of the specific service they request such as wheat protein. Overhead and program support costs will be recovered through a per-metric-

ton volume fee assessed on all grain loaded from a facility.

This rule may have an economic impact on infrequent users of the service. FGIS incurs difficulty balancing costs and revenue in some locations where customers desire local FGIS service capability but use the service infrequently. The proposed fee schedule is designed to shift the cost of non-revenue producing time to those users responsible for incurring it. Consequently, infrequent users of the service may find the net effect of the proposed hourly fees and per-metric-ton administrative fee increases their total per-metric-ton cost for inspection service. Conversely, highly efficient and/or high-volume users of the service may realize a decrease in their per-metric-ton cost for inspection service, due to the reduced contract hourly rate, and the use of an administrative fee to cover overhead and program support expenses. Additional information provided in an impact assessment will be provided upon request.

James R. Baker, Administrator, GIPSA, has determined that this proposed action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, 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 proposed 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 provisions of this rule.

Regulatory Flexibility Act Certification

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.*) because most users of the official inspection and weighing services do not meet the requirements for small entities. FGIS is required by

statute to make services available and to recover costs of providing such services as nearly as practicable.

Information Collection and Recordkeeping Requirements

The requirement to collect information included in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). The additional requirement results from FGIS providing an opportunity for the service customers to pay the proposed administrative costs in 12 equal payments. Comments on the collection of information should be sent to the Office of Management and Budget, Attn.: Desk Officer for the Department of Agriculture, Office of Information and Regulatory Affairs, Washington, DC 20224.

The additional collection of information is required by FGIS to provide the necessary information to collect and assess fees. FGIS, under the USGSA, is required to recover the cost of providing inspection and weighing services through the assessment of fees on the requestor of the services. The respondents are users of FGIS inspection and weighing services.

The estimated annual increase in reporting burden is 14.4 hours.

The estimated annual burden per respondent is .43 hours.

The estimated number of respondents is 12.

The estimated annual frequency of responses is 4 times per year.

Background

The USGSA requires FGIS to charge and collect reasonable fees for performing official inspection and weighing services. The fees are to cover, as nearly as practicable, FGIS's costs for performing these services, including related administrative and supervisory costs.

The current USGSA fees became effective on May 20, 1991 (56 FR 15803). They appear in 7 CFR 800.71, Schedule A, Fees for Official Inspection, Weighing, and Appeal Inspection Services Performed in the United States. FGIS currently provides service on an hourly basis with provisions for contract and noncontract rates. Hourly fees provide cost recovery for all direct and indirect costs.

Over the years, technology has expanded the variety of testing services available at local service points and has reduced the number of service representatives required to provide service, especially export inspection

and weighing service. These changes have enabled FGIS to provide improved and expanded services while maintaining a relatively constant cost to the grain industry when viewed as a cost per-metric-ton of grain exported. However, this trend toward increased services and fewer billable hours due to advances in technology makes it increasingly difficult to recover costs using an hourly rate basis.

The intent of the proposed change in the manner of fee collection is (1) to permit customers to realize more directly the costs of services requested and (2) to compensate FGIS for the imbalance between costs and revenue created due to technology, enabling a reduction in FGIS' direct costs and the corresponding billable hours at a greater rate than the reduction of indirect costs.

Proposed Action

FGIS proposes to: 1. Withdraw the Interim Final Rule: Fees for Official Inspection and Weighing Service published January 8, 1993 (58 FR 3213) and placed on indefinite hold pending review of need on January 23, 1993 (58 FR 5255).

2. Revise § 800.71, Schedule A—Fees for Official Inspection, Weighing, and Appeal Inspection Services Performed in the United States. Instead of one schedule covering all services, three tables are being proposed. The proposed tables are: Table 1, "Fees for Official Services Performed at an Applicant's Facility in an Onsite FGIS Laboratory;" Table 2, "Services Performed at Other Than an Applicant's Facility in an FGIS Laboratory;" and Table 3, "Miscellaneous Services."

Schedule A, Table 1. This table covers all services performed onsite at an applicant's facility and continues the existing provision for using contract and noncontract hourly rates. The hourly rates were calculated to include only those costs directly related to labor and do not include overhead. The current 1 year contract will be retained, but provisions have been included for 3- and 6-month contracts. FGIS will evaluate the use of 3- and 6-month contracts after 1 year to determine if they shall be continued. The rate differences between 1-year, 6-month, and 3-month contracts reflect the predicted costs associated with increased staff production under a contract.

1. *Hourly Rates.* The proposed new hourly rates will be divided into four categories related to how FGIS employees are paid: regular time (6 a.m. to 6 p.m.), 10 percent night differential (6 p.m. to 6 a.m.), overtime at 1-1/2 the regular hourly rate (for applicant-caused

or requested overtime), and holiday rates at double the regular hourly rate (all hourly rates other than those of regular time are calculated using only the average base hourly rate, this does not include personnel benefits).

2. *Additional Tests.* Additional unit fees are being proposed for certain tests such as Aflatoxin, Vomitoxin, Soybean protein and/or oil, Sunflower oil, Wheat protein, Waxy corn, and Class Y weighing. These fees will recover additional costs incurred such as testing materials, equipment, and hazardous waste disposal which are not recovered through the hourly fee or administrative fee.

3. *Administrative Fee.* A per metric ton administrative charge is being proposed to recover the indirect costs of FGIS field offices and headquarters such as the salaries and benefits for office management and support staff, and rent. This charge will be assessed on all *outbound* grain inspected and/or weighed at an applicant's facility. Six levels of fees are being proposed ranging from 1 metric ton or less to over 7,000,001 metric tons with fees decreasing as the number of metric tons inspected increases. The charge will be assessed in addition to the base hourly rate. At the beginning of each fiscal year (October 1), all applicants will pay the same per-metric-ton fee. Once a level has been reached, the fee for additional metric tons will be reduced until the maximum volume level is reached. Inspections performed on grain that cannot be captured as part of the metric ton charge will have a unit fee assessed in addition to the hourly rate to recover overhead costs. Inspections such as submitted samples, factor only and sacked grain are included.

Schedule A, Table 2, covers fees for inspection and weighing services where FGIS does not have an onsite laboratory at an applicant's facility. The fees proposed in this table are a mixture of hourly rates and unit fees. They cover a vast array of specific services presently provided under the current hourly rates. The hourly rates applied in Table 2 will be the appropriate rates from Table 1 unless specific hourly rates are identified. Unit fees cover the time required to perform the service plus a portion for overhead. The types of service provided under these fees include: inspection for grade and factor for specific carriers probe sampled or sampled online, additional services and testing (i.e., individual tests), Board appeals and appeals, weighing (Class X and Y), and stowage examinations.

Schedule A, Table 3, provides fees to cover a variety of services not included in the previous tables. As with Table 2,

the proposed change in the fee structure from an hourly fee that recovers all costs to a service-specific fee structure requires a listing of specific services currently funded by the hourly rate. These service-specific fees will be a mixture of hourly rates and unit fees and will apply to: Grain Grading Seminars, Certification of Diverter Samplers, Special Weighing Services: Scale Testing and Certification, Evaluation of Weighing and Material Handling Systems, National Type Evaluation Program (NTEP) Prototype Evaluation, NTEP Prototype Evaluation of Railroad Track Scales, Mass Standards Calibration and Reverification, Special Projects, Foreign Travel, On Line Customized Data Export Grain Information System (EGIS) Service, Samples Provided to Interested Parties, Divided-Lot Certificates, Extra Copies of Certificates, Faxing, Special Mailing, and Preparing Certificates Onsite.

Further, FGIS is proposing to establish a unit fee to recover expenses

incurred when FGIS employees are requested to provide consulting services outside the United States. Currently, there is no fee for recovering costs of salary, travel, per diem, and related costs which is not related to an official service provided on a shipment of grain at the time of export from the United States. For example, an exporter may ask for an FGIS microbiologist to consult with microbiologists in an importing country to resolve a dispute on the presence of grain fungi; or a USDA cooperator may request an FGIS inspector to conduct training for inspectors in an importing country.

FGIS is also proposing corresponding changes to §§ 800.72 and 800.73 of the regulations to further clarify the application of fees covered in Schedule A. Specifically, service provided under Schedule A will cover service provided within 25 miles of the employee's assigned duty point. Travel, per diem, and other related costs will be assessed for providing service beyond the 25-mile limit. A minimum fee will be

established for services identified in Table 2 performed outside of normal business hours Monday through Friday.

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 proposed to be 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 revised to read as follows:

§ 800.71 Fees assessed by the Service.

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 Laboratory¹

(1) Inspection and Weighing Services

HOURLY RATES

[Per Service Representative]

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and over-time ²	Holidays
1-year contract	\$23.00	\$24.80	\$32.40	\$39.00
6-month contract	25.00	26.80	34.40	43.60
3-month contract	28.00	29.80	37.40	46.60
Noncontract	33.00	35.00	42.80	52.60
(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) 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/container30
(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				0.090
(b) 1,000,001—1,500,000				0.082
(c) 1,500,001—2,000,000				0.042
(d) 2,000,001—5,000,000				0.032
(e) 5,000,001—7,000,000				0.017
(f) 7,000,001—				0.002

- (ii) Additional services (assessed in addition to all other fees)³
 - (a) Submitted sample (per sample—grade and factor) 1.50
 - (b) Submitted sample—Factor only (per factor) 0.70

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 (1).

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)	\$17.60
(b) Railcar (per carrier)	27.00
(c) Barge (per carrier)	173.60
(d) Sacked grain (per hour per service representative plus an administrative fee per hundred weight)	0.02 CWT
(iii) Lots sampled online during loading (sampling charge under (i) above plus):	
(a) Truck/trailer container (per carrier)	9.40
(b) Railcar (per carrier)	18.80
(c) Barge (per carrier)	107.60
(d) Sacked grain (per hour per service representative plus an administrative fee per hundred weight)	0.02 CWT
(iv) Other services	
(a) Submitted sample (per sample—grade and factor)	10.00
(b) Warehouseman inspection (per sample)	17.00
(c) Factor only (per factor—maximum 2 factors)	4.10
(d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundred weight if not previously assessed)	0.02 CWT
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	11.00
(f) Class X Weighing (per hour per service representative)	43.60
(v) Additional tests (excludes sampling)	
(a) Aflatoxin (per test—other than TLC method)	25.00
(b) Aflatoxin (per test—TLC method)	100.50
(c) Soybean protein and oil (one or both)	7.80
(d) Wheat protein (per test)	7.80
(e) Sunflower oil (per test)	7.80
(f) Vomitoxin (qualitative)	25.00
(g) Vomitoxin (quantitative)	30.00
(h) Waxy corn (per test)	9.00
(i) Canola (per test—00 dip test)	9.00
(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	
(2) Appeal inspection and review of weighing service. ⁴	
(i) Board Appeals and Appeals (grade and factor)	74.60
(a) Factor only (per factor—max 2 factors)	38.00
(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)	25.00
(b) Aflatoxin (TLC)	110.00
(c) Soybean protein and oil (one or both)	15.30
(d) Wheat protein (per test)	15.30
(e) Sunflower oil (per test)	15.30
(f) Vomitoxin (per test—qualitative)	35.00
(g) Vomitoxin (per test—quantitative)	40.00
(h) Vomitoxin (per test—HPLC Board Appeal)	125.70
(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)	63.50
(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 are found in § 800.72 (1).
- 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 (2).
- 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 3}

(1) Grain grading seminars (per hour per service representative)	\$43.60
(2) Certification of diverter-type mechanical samplers (per hour per service representative)	43.60
(3) Special weighing services (per hour per service representative)	
(i) Scale testing and certification	43.60
(ii) Evaluation of weighing and material handling systems	43.60
(iii) NTEP Prototype evaluation (other than Railroad Track Scales)	43.60
(iv) NTEP Prototype evaluation of Railroad Track Scales (plus usage fee per day for test car)	43.60
	100.00
(v) Mass standards calibration and reverification	43.60
(vi) Special projects	43.60
(4) Foreign travel (per day per service representative)	416.00
(5) On line 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 \$43.60 per hour.
² Regular business hours-Monday thru Friday-service provided at other than regular hours charged at the applicable overtime hourly rate.

3. Section 800.72 is revised to read as follows:

§ 800.72 Explanation of additional service fees for services performed in the United States only.

(a) When transportation of the service representative to the service location (at other than a specified duty point) is more than 25 miles from an FGIS office, the actual transportation cost in addition to the applicable hourly rate for each service representative will be assessed from the FGIS office to the service point and return. When commercial modes of transportation (e.g., airplanes) are required, the actual expense incurred for the round-trip travel will be assessed. When services are provided to more than one applicant, the travel and other related charges will be prorated between applicants.

(b) In addition to a 2-hour minimum charge for service on Saturdays, Sundays, and holidays, an additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not equal or exceed what would have been collected at the applicable hourly rate. The additional charge will be the difference between the actual unit fee revenue and the hourly fee revenue. Hours accrued for travel and standby time shall apply in

determining the hours for the minimum fee.

4. Section 800.73 is revised to read as follows:

§ 800.73 Computation and payment of service fees; general fee information.

(a) *Computing hourly rates.* The applicable hourly rate will be assessed in quarter hour increments for:

(1) Travel from the FGIS field office or assigned duty station to the service point and return;

(2) The performance of the requested service, less mealtime.

(b) *Application of fees when service is delayed or dismissed by the applicant.* The applicable hourly rate will be assessed for the entire period of scheduled service when:

(1) Service has been requested at a specified location;

(2) A service representative is on duty and ready to provide service but is unable to do so because of a delay not caused by the Service; and

(3) FGIS officials determine that the service representative cannot be utilized to provide service elsewhere without cost to the Service.

(c) *Application of fees when an application for service is withdrawn or dismissed.* The applicable hourly rate will be assessed to the applicant for the entire period of scheduled service if the

request is withdrawn or dismissed after the service representative departs for the service point, or if the service request is not canceled by 2 p.m., local time, the business day preceding the date of scheduled service. However, the applicable hourly rate will not be assessed to the applicant if FGIS officials determine that the service representative can be utilized elsewhere or released without cost to the Service.

(d) *To whom fees are assessed.* Fees for inspection, weighing, and related services performed by service representatives, including additional fees as provided in § 800.72, shall be assessed to and paid by the applicant for the service.

(e) *Monthly payment of administrative fee.* At the option of the applicant, an agreement for 12 equal monthly payments may be entered into for payment of the administrative fee. These monthly payments will be based on the previous fiscal year's volume applied to the current year's administrative fee schedule. If the volume of grain inspected is more than the amount of grain agreed upon at the beginning of the fiscal year, at the point the agreed upon volume is exceeded, the current year's administrative fee schedule shall apply to the remaining amount of grain for the rest of the fiscal

year. If the volume of grain inspected is less than the agreed upon amount, any excess monies paid to the Service shall be applied to the next fiscal year's administrative fee unless a request for a refund is made by the applicant.

(f) *Advance payment.* As necessary, the Administrator may require that fees shall be paid in advance of the performance of the requested service. Any fees paid in excess of the amount due shall be used to offset future billings, unless a request for a refund is made by the applicant.

(g) *Form of payment.* Bills for fees assessed under the regulations for official services performed by FGIS shall be paid by check, draft, or money order, payable to the U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration.

Dated: November 22, 1995.

James R. Baker,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95-29115 Filed 11-29-95; 8:45 am]

BILLING CODE 3410-EN-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 185 and 186

[FAP 4H5710/P636; FRL-4983-5]

RIN 2070-AC18

Deltamethrin; Food and Feed Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish food and feed additive regulations for residues of the pyrethroid deltamethrin in or on food and feed items as a result of use in food- and feed-handling establishments. Roussel Uclaf Corp. requested these regulations pursuant to Federal Food, Drug and Cosmetic Act (FFDCA) that would establish the maximum permissible levels for residues of the pesticide in or on certain food and feed items.

DATES: Comments, identified by the document control number [PP4H5710/P636], must be received on or before January 2, 1996.

ADDRESSES: Submit written comments by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921

Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any parts or all of that information as "Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures as set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the above address, from 8 a.m. through 4:30 p.m., Monday through Friday, excluding legal holidays. Comments and data may also be submitted by sending electronic mail (e-mail) to:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 4H5710/P636]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of February 8, 1995 (60 FR 7541), which announced that, Roussel Uclaf Corp., 95 Chestnut Ridge Rd., P.O. Box 30, Montvale, NJ 07645, had submitted pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 348, a food additive petition, FAP 4H5710, that proposed amending 40 CFR part 185 by establishing a food additive regulation to permit residues of the insecticide deltamethrin [(1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (*S*)-*alpha*-cyano-3-phenoxybenzyl ester] in or on food as a result of use in food-

handling establishments at 0.02 part per million (ppm). On March 20, 1995, Roussel Uclaf Corp. submitted a request to amend 40 CFR part 186 by proposing a feed additive regulation to permit residues of the insecticide deltamethrin in or on feed items as a result of use in feed-handling establishment at 0.02 ppm.

The scientific data submitted in the petitions and other relevant material have been evaluated. The toxicological and metabolism data and analytical methods for enforcement purposes considered in support of these tolerances include the following:

1. Chronic 2-year feeding in dogs with a systemic NOEL greater than 40 ppm (highest doses treated (HDT)).

2. A 24-month chronic feeding/carcinogenicity study in rats with a systemic NOEL of 20 ppm (1 mg/kg/day) and LEL of 50 ppm (2.5 mg/kg/day based on decreased body weight. No carcinogenic effects were observed in this study.

3. Mutagenicity tests include an Ames assay, a structural chromosomal aberration assay in Chinese hamster ovary (CHO) cells, and an unscheduled DNA synthesis assay in rat hepatocyte. All tests were negative for genotoxicity.

4. A metabolism study in rats demonstrates that deltamethrin is relatively well absorbed. Urine and fecal excretions were almost complete at 48 hours post dose.

5. An oral development toxicity study in rats with a developmental NOEL of 11 mg/kg/day (highest dose tested). The maternal NOEL was 3.3 mg/kg/day with the LEL of 7 mg/kg/day based on one death and excessive salivation. An oral developmental toxicity study in rabbits with a maternal NOEL of 10 mg/kg/day and a maternal LEL of 25 mg/kg/day based on decreased defecation. The developmental NOEL was 25 mg/kg/day with a developmental LEL of 100 mg/kg/day based on statistically significant trend for an increase in fetal incidence of unossification of pubic and tail bones.

6. A three-generation reproduction study in rats noted no parental effects. NOEL greater than 50 ppm.

A chronic dietary exposure/risk assessment was performed for deltamethrin using a reference dose (RfD) of 0.01 mg/kg bwt/day based on a NOEL 1.00 mg/kg bwt/day from the 2-year rat feeding study with an uncertainty factor of 100. The end-point effect of concern was decreased body weight. The Theoretical Maximum Residue Contribution (TMRC) from established tolerances utilizes 3.7% of the RfD for the U.S. population and 2.3% of the RfD for the subpopulation