

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-AA81

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 to increase certain fees by approximately 4.1 percent; *i.e.*, contract and noncontract hourly rates, certain unit rates, and the administrative tonnage fee increases. These fees apply only to official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. These increases are needed to cover increased operational costs resulting from the approximate 4.1 percent January 2003 Federal pay increase. GIPSA anticipates the increase in the user fees will generate approximately \$685,000 in additional revenue.

DATES: March 31, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Written comments must be submitted to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647-S, Washington, DC 20250-3604, or faxed to (202) 690-2755. Comments may also be sent by E-mail to: comments.gipsa@usda.gov. Please state that your comments refer to RIN No. 0580-AA81. Comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

David Orr, Director, Field Management Division, at his E-mail address:

David.M.Orr@usda.gov, or telephone him at (202) 720-0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Regulatory Flexibility Act, and the Paperwork Reduction Act

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.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, it has been 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.*).

GIPSA regularly reviews its user-fee-financed programs under the United States Grain Standards Act (7 U.S.C. 71 *et seq.*) to determine if the fees are adequate. GIPSA has and will continue to seek out cost-saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Retained earnings balances are adjusted to reflect prior year revenue and obligations realized in the year reported. In Fiscal Year (FY) 2000, GIPSA's operating costs were \$24,146,428 with revenue of \$23,150,188 that resulted in a negative margin of \$996,240 and a negative reserve balance of \$938,147. In FY 2001, GIPSA's operating costs were \$25,670,126 with revenue of \$23,977,240 that resulted in a negative margin of \$1,692,886 and a negative reserve balance of \$2,572,080. Using the most recent data available, GIPSA's FY 2002 operating costs were \$23,812,292 with revenue of \$23,322,247 that resulted in a negative margin of \$490,045. The current reserve negative balance of \$3,318,041 is well below the desired 3-month reserve of approximately \$6 million. GIPSA recognizes the fact that retained earnings are well below the desired level. This proposed action will not have a major impact on improving GIPSA's financial position. GIPSA has been reviewing the fees and will

propose changes that will address this deficit in the near future.

Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. The anticipated general and locality salary increase that averages 4.1 percent for GIPSA employees, effective January 2003, will increase GIPSA's costs by approximately \$685,000.

GIPSA has reviewed the financial position of the inspection and weighing program based on the anticipated increased salary and benefit costs, along with the projected FY 2003 workload of 78 million metric tons. Based on the review, GIPSA has concluded that an approximate 4.1 percent increase will have to be recovered through increases in fees.

The proposed fee increase primarily applies to entities engaged in the export of grain. Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA on a fee basis at 32 export facilities. All of these facilities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities established by the Small Business Administration.

Some entities that request nonmandatory official inspection and weighing services at other than export locations could be considered small entities. The impact on these small businesses is similar to any other business; that is, an average 4.1 percent increase in the cost of official inspection and weighing services. This proposed increase should not significantly affect any business requesting official inspection and weighing services. Furthermore, any of these small businesses that wish to avoid the fee increase may elect to do so by using an alternative source for inspection and weighing services. Such a decision should not prevent the business from marketing its products.

There would be no additional reporting or recordkeeping requirements imposed by this action. 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. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this proposed rule.

Executive Order 12988

This proposed 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 proposed rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this proposed rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Proposed Action

The USGSA (7 U.S.C. 71 *et seq.*) authorizes GIPSA to provide official grain inspection and weighing services and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory

costs. The current USGSA fees were published in the **Federal Register** on March 21, 2002 (67 FR 13084), and became effective on April 22, 2002.

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost-saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Retained earnings balances are adjusted to reflect prior year revenue and obligations realized in the year reported. In FY 2000, GIPSA's operating costs were \$24,146,428 with revenue of \$23,150,188 that resulted in a negative margin of \$96,240 and a negative reserve balance of \$938,147. In FY 2001, GIPSA's operating costs were \$25,670,126 with revenue of \$23,977,240 that resulted in a negative margin of \$1,692,886 and a negative reserve balance of \$2,572,080. Using the most recent data available, GIPSA's FY 2002 operating costs were \$23,812,292 with revenue of \$23,322,247 that resulted in a negative margin of \$490,045. The current reserve negative balance of \$3,318,041 is well below the

desired 3-month reserve of approximately \$6 million. Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. The salary increase that GIPSA anticipates becoming effective in January 2003 averages 4.1 percent for GIPSA employees. Overall, program costs are estimated to increase by approximately \$685,000. GIPSA recognizes that retained earnings are well below the desired level and that this proposed action will not have a major impact on improving its financial position. As a result, GIPSA has been reviewing its overall fee structure. Changes that will address this structure will be considered in the near future and will be proposed as appropriate. GIPSA remains committed to providing the most cost-effective services possible to the grain industry while maintaining program quality and integrity.

GIPSA has reviewed the financial position of the inspection and weighing program based on the anticipated increased salary and benefit costs, along with the projected FY 2003 workload of 78 million metric tons. Based on the review, GIPSA has concluded that an approximate 4.1 percent increase will have to be recovered through increases in fees.

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	\$28.60	\$31.20	\$40.40	\$48.60
6-month contract	31.60	33.40	42.80	56.00
3-month contract	36.00	37.20	46.60	58.00
Noncontract	41.80	44.00	53.40	65.40

GIPSA has also identified certain unit fees, for services not performed at an applicant's facility, that contain direct labor costs and would require a fee increase. Further, GIPSA has identified those costs associated with salaries and benefits that are covered by the administrative metric tonnage fee. The anticipated 4.1 percent cost-of-living increase to salaries and benefits covered by the administrative tonnage fee results in an overall increase of an average of 4.1 percent to the administrative tonnage fee. Accordingly, GIPSA is proposing an approximate 4.1 percent increase to certain hourly rates, certain unit rates, and the administrative tonnage fee in 7 CFR 800.71, 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.

This proposed rule provides a 30-day period for interested persons to comment. This comment period is deemed appropriate because the anticipated Federal pay increase is scheduled to become effective on January 1, 2003, and grain export volume and associated requests for official services for such grain are projected to further decrease in the coming months due to seasonal and other adjustments. Accordingly, given the current level of the operating reserve, it would be necessary to implement any fee increase that may result from this rulemaking as soon as possible.

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 amended by revising Schedule A in paragraph (a) 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
 [(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 Overtime ²	Holidays
1-year contract	\$29.80	\$32.60	\$42.10	\$50.60
6-month contract	33.00	34.80	44.60	58.40
3-month contract	37.00	38.80	48.60	60.40
Noncontract	43.60	45.80	55.60	68.00
(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)				12.50
(viii) Vomitoxin (quantitative)				18.50
(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/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				\$0.1199
(b) 1,000,001–1,500,000				0.1094
(c) 1,500,001–2,000,000				0.0591
(d) 2,000,001–5,000,000				0.0437
(e) 5,000,001–7,000,000				0.0239
(f) 7,000,001 +				0.0109

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 § 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)	\$19.80
(b) Railcar (per carrier)	29.50
(c) Barge (per carrier)	187.50
(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)	9.95
(b) Railcar (per carrier)	19.25
(c) Barge (per carrier)	110.00
(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)	11.80
(b) Warehouseman inspection (per sample)	20.00
(c) Factor only (per factor—maximum 2 factors)	5.30
(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)	13.00
(f) Class X Weighing (per hour per service representative)	57.40
(v) Additional tests (excludes sampling)	
(a) Aflatoxin (per test—other than TLC method)	29.80
(b) Aflatoxin (per test—TLC method)	113.00
(c) Corn oil, protein, and starch (one or any combination)	9.00
(d) Soybean protein and oil (one or both)	9.00
(e) Wheat protein (per test)	9.00
(f) Sunflower oil (per test)	9.00
(g) Vomitoxin (qualitative)	31.00
(h) Vomitoxin (quantitative)	38.50

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY^{1,2}—Continued

(i) Waxy corn (per test)	10.30
(j) Canola (per test—00 dip test)	10.30
(k) Pesticide Residue Testing ³ .	
(1) Routine Compounds (per sample)	216.00
(2) Special Compounds (per service representative)	114.00
(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)	
(a) Factor only (per factor—max 2 factors)	82.00
(b) Sampling service for Appeals additional (hourly rates from Table 1)	43.00
(ii) Additional tests (assessed in addition to all other applicable fees)	
(a) Aflatoxin (per test, other than TLC)	30.00
(b) Aflatoxin (TLC)	120.00
(c) Corn oil, protein, and starch (one or any combination)	17.20
(d) Soybean protein and oil (one or both)	17.20
(e) Wheat protein (per test)	17.20
(f) Sunflower oil (per test)	17.20
(g) Vomitoxin (per test—qualitative)	41.00
(h) Vomitoxin (per test—quantitative)	46.00
(i) Vomitoxin (per test—HPLC Board Appeal)	140.00
(j) Pesticide Residue Testing ³ .	
(1) Routine Compounds (per sample)	216.00
(2) Special Compounds (per service representative)	114.00
(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)	82.60
(3) Stowage examination (service-on-request) ³	
(i) Ship (per stowage space) (Minimum \$255.00 per ship)	51.00
(ii) Subsequent ship examinations (same as original) (Minimum \$153.00 per ship)	
(iii) Barge (per examination)	41.00
(iv) All other carriers (per examination)	16.00

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 § 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 \$2.65 per sample by the Service.

TABLE 3.—MISCELLANEOUS SERVICES¹

(1) Grain grading seminars (per hour per service representative) ²	\$57.40
(2) Certification of diverter-type mechanical samplers (per hour per service representative) ²	57.40
(3) Special weighing services (per hour per service representative) ²	
(i) Scale testing and certification	57.40
(ii) Evaluation of weighing and material handling systems	57.40
(iii) NTEP Prototype evaluation (other than Railroad Track Scales)	57.40
(iv) NTEP Prototype evaluation of Railroad Track Scales (plus usage fee per day for test car)	110.00
(v) Mass standards calibration and reverification	57.40
(vi) Special projects	57.40
(4) Foreign travel (per day per service representative)	510.00
(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)	2.65
(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 \$57.40 per hour.

² Regular business hours—Monday through Friday—service provided at other than regular hours charged at the applicable overtime hourly rate.

Dated: February 24, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03-4688 Filed 2-27-03; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580-AA82

Fees for Rice Inspection Services

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

ACTION: Proposed rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing an approximate 4.1 percent increase in fees for all hourly rates and certain unit rates for inspection services performed under the Agricultural Marketing Act (AMA) of 1946 in the rice inspection program. These increases are needed to cover increased operational costs resulting from the January 2003 Federal pay increase.

DATES: Written comments must be submitted on or before March 31, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Written comments must be submitted to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647, Washington, DC 20250-3604, or faxed to (202) 690-2755. Comments may also be sent by electronic mail or Internet to: comments.gipsa@usda.gov. All comments should make reference to the date and page number of this issue of the **Federal Register** and will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, at his E-mail address: David.M.Orr@usda.gov, or telephone him at (202) 720-0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, the Regulatory Flexibility Act, and the Paperwork Reduction Act

This proposed 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.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act,

Donna Reifschneider, 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.*).

GIPSA regularly reviews its user-fee programs to determine if the fees are adequate and continues to seek cost-saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. An anticipated January 2003 general and locality salary increase that averages 4.1 percent for all GIPSA employees will increase program costs in the rice inspection program.

The existing fee schedule for GIPSA's rice inspection program will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Fees for this program are in Tables 1 and 2 of 7 CFR 868.91. In Fiscal Year (FY) 2000, operating costs in the rice program were \$4,034,964 with revenue of \$4,837,116 that resulted in a positive margin of \$802,152 and a positive reserve of \$406,359. In FY 2001, operating costs in the rice program were \$3,842,326 with revenue of \$4,102,960 that resulted in a positive margin of \$260,634 and a positive reserve of \$611,654. Using the most recent data available, GIPSA's FY 2002 operating costs were \$3,382,574 with revenue of \$3,385,121 that resulted in a positive margin of \$2,547. The current positive reserve balance of \$311,596 is well below the desired 3-month reserve of approximately \$1 million.

GIPSA has reviewed the financial position of our rice inspection program based on the anticipated increased salary and benefit costs, along with the projected FY 2003 workload. Even though the financial status of the rice inspection program has improved, GIPSA has concluded that it cannot absorb the increased costs caused by the anticipated 4.1 percent salary increase with the small positive reserve balance. This fee increase will collect an estimated \$155,500 in additional revenues in the rice program based on the projected FY 2003 work volume of 3.4 million metric tons.

This fee increase applies primarily to GIPSA customers that produce, process, and market rice for the domestic and international markets. There are approximately 550 such customers located primarily in Arkansas, Louisiana, and Texas. Many of these

customers meet the criteria for small entities established by the Small Business Administration criteria for small businesses. Even though the fees are being increased, the proposed increase will not be excessive (4.1 percent) and should not significantly affect those entities. Those entities are under no obligation to use GIPSA's service and, therefore, any decision on their part to discontinue the use of service should not prevent them from marketing their products.

There will be no additional reporting or record keeping requirements imposed by this proposed action. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 35), the information collection and record keeping requirements in Part 868 have been previously approved by the Office of Management and Budget under control number 0580-0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this proposed rule.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed action is not intended to have a retroactive effect. This proposed action will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Proposed Action

The current rice fees were published in the **Federal Register** on April 4, 2001 (66 FR 17775), and became effective on May 4, 2001. Under the provisions of the AMA (7 U.S.C. 1621, *et seq.*), rice inspection services are provided upon request and GIPSA must collect a fee from the customer to cover the cost of providing such services. 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, cover the costs of the services rendered. These fees cover the GIPSA administrative and supervisory costs for the performance of official services, including personnel compensation and benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

The existing fee schedule for GIPSA's rice inspection program will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Fees for this program are in Tables 1 and 2 of 7 CFR 868.91. In FY 2000, operating costs in