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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: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is increasing 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.

EFFECTIVE DATE: July 2, 2003.

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 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.*).

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. In FY 2002, GIPSA's operating costs were $25,898,341 with revenue of $25,317,296 that resulted in a negative margin of $581,045 and a negative reserve balance of $3,339,097. The current reserve negative balance of $3,339,097 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 final 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 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 salary increase will have to be recovered through increases in fees.

This 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 33 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 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 final rule.

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 that must be exhausted prior to any judicial challenge to the provisions of this final rule.

Background

On February 28, 2003, GIPSA proposed in the **Federal Register** (68 FR 9589) to increase fees for official inspection and weighing services performed under the USGSA (7 U.S.C. 71 *et seq.*) by approximately 4.1 percent. The USGSA 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 $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. In FY 2002, GIPSA's operating costs were $25,898,341 with revenue of $25,317,296 that resulted in a negative margin of $581,045 and a negative reserve balance of $3,339,097. The current reserve negative balance of $3,339,097 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 became 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 final 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 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 salary 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 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.

Comment Review

GIPSA received a comment from two grain trade associations in response to the proposed rulemaking published February 28, 2003, in the **Federal Register** at (68 FR 9589). The trade associations stated that they consist of 1,000 grain, feed, processing, and grain-related companies, 70 percent of which are small entities. The commentors did not support the proposed rule. A summary of the comments and GIPSA's response is as follows:

The commentors opposed the fee increase and suggested that the Agency scale back the amount of the increase substantially; that the true cost of living has not increased nearly as much as the proposed fee increase nor is the proposed fee increase in line with the economic realities in the private sector. The commentors further stated that over the past few years, the Agency implemented a series of fee increases to recoup costs and stave off more significant difficulties. However, despite these infusions of cash, the Agency's financial condition continues to deteriorate. In addition, the fee increases have become problematic for many users, particularly those engaged in export trade. They urged GIPSA to develop a multi-year budget for the next three to five years that would forecast anticipated changes in agency fees for official services, based upon: (1) OMB's projected Federal personnel and non-pay cost increases through 2008 as published in the March 14, 2003, **Federal Register**; (2) anticipated revenue to replenish each Trust Fund account, along with implemented cost controls, to achieve the Agency's stated objective of a three-month operating reserve in each account; and (3) projected changes in the method of assessing fees, *e.g.*, local, GIPSA specific, and national tonnage fees.

Finally, the commentors stated that the multi-year budget for the next three to five years should describe management efforts to control costs and improve operating efficiencies, along with a critical evaluation of each program funded by user fees to determine which should be continued, scaled back, or terminated.

GIPSA offers the following response: Federal pay increases represent a significant part of FGIS user fee costs. GIPSA, over the past several years, proposed and finalized fee increases, on an annual basis, to reflect the costs of

Federal pay increases. It is common practice for user fee programs in the Department to adjust their user fees to reflect these increases. Adjusting fees in this manner is consistent with the provisions of the United States Grain Standards Act and is reasonable, given the current state of reserve balances for FGIS programs. However, over the past several years, GIPSA has been discussing with the grain industry a number of changes to the fee schedules, including restructuring them, to better address the financial condition of the agency. Such discussions have included, to one extent or another, the recommendations offered by the trade associations in their comments or other alternatives. While GIPSA continues to purse this process, it is important that the agency finalize the proposed fees as soon as possible to cover the costs of the 2003 Federal pay increase on the FGIS user fee program.

Final Action

Accordingly, GIPSA is increasing, by approximately 4.1 percent, 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.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure; Grain.

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

PART 800—GENERAL REGULATIONS

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

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

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

§ 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	$42.00	$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/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	$0.1199
(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

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

(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
(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 SERVICES [1]

(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)	57.40 110.00

TABLE 3.—MISCELLANEOUS SERVICES [1]—Continued

(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: May 28, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–13679 Filed 5–30–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1700

RIN 2550–AA27

Organization and Functions

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is revising its regulation that describes the Agency's organization and functions. Specifically, OFHEO is revising sections in the regulation that describe and display the Agency's official seal and logo. The logo is the official symbol representing OFHEO and is displayed on correspondence, selected documents, and signage of the Agency.

In promulgating this rule, OFHEO finds that notice and public comment are not necessary. Section 553(b)(3)(A) of title 5, United States Code, provides that when regulations involve matters of agency organization, procedure or practice, the Agency may publish regulations in final form. In addition, OFHEO finds, in accordance with 5 U.S.C. 553(d), that a delayed effective date is unnecessary. Accordingly, these regulations are effective upon publication.

EFFECTIVE DATE: The final rule is effective June 2, 2003.

FOR FURTHER INFORMATION CONTACT: Christine C. Dion, Associate General Counsel, telephone (202) 414–3838 (not a toll-free number), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Discussion of the Final Regulation

This final rule informs the public about changes to the official symbol of OFHEO.

Background on OFHEO

OFHEO was established as an independent entity within the Department of Housing and Urban Development by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act) (title XIII of Pub. L. 102–550, 12 U.S.C. 4501 *et seq.*). OFHEO's primary mission is ensuring the capital adequacy and financial safety and soundness of Fannie Mae and Freddie Mac (collectively, the Enterprises).

OFHEO began operating when its first employee, the first director, took office on June 1, 1993. The Agency was built from the ground up. It had to acquire staff and address hundreds of administrative issues involved in establishing an agency infrastructure. OFHEO needed to procure office space, equipment, computers, telecommunications, and other logistical support for the lawyers, economists, examiners and administrative personnel who would carry out the duties of the Agency.

In its early years, OFHEO's experienced staff worked to develop an in-depth understanding of the operations of the Enterprises. OFHEO grew from a one-person agency into a strong and well-rounded regulator, fully capable of meeting its regulatory responsibilities.

While the Agency was being built, it was still obligated to fulfill its mission of regulating two extremely large and enormously complex financial institutions. OFHEO now has all the key elements of a strong, thorough oversight program in place: Capital Standards, Examinations, and Research.

As required by the 1992 Act, OFHEO established minimum and risk-based capital standards as part of its role as a safety and soundness regulator. These capital requirements are intended to ensure that both Enterprises continue to operate and perform their crucial roles in the secondary mortgage market, keeping constant the flow of funds to mortgage lenders and prospective American homeowners.

In addition to its quarterly release with respect to the minimum capital requirement, OFHEO has adopted a risk-based capital standard that is unique among financial regulators. Unlike ratio-based capital rules, OFHEO's standard is based on a 10-year stress test. A stress test measures risk in the context of a company's overall portfolio, including the company's risk management activities. While companies often use stress tests for internal risk management, and rating agencies use stress tests to rate companies and securities, OFHEO is among the first of the financial institutions regulators to use a comprehensive stress test to determine capital adequacy.

In addition to developing a strong, rigorous risk-based capital standard, OFHEO has an annual risk-based examination program that is an integral part of a system designed to ensure the ongoing safety and soundness of the Enterprises. OFHEO's comprehensive risk-based examinations apply a consistent set of standards to assess and evaluate each Enterprise's financial condition, business operations, and internal controls. These standards remain consistent from year-to-year and are appropriately updated to reflect enhancements in regulatory best practice, developments in risk management or market practices, and innovations at either Enterprise.