

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 868

RIN 0580-AA48

Fees for Commodity Inspection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.
ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), a program of the Grain Inspection, Packers and Stockyards Administration (GIPSA), is proposing to make the following changes to fees charged for inspection services for commodities, other than rice, performed under the Agricultural Marketing Act of 1946: Increase hourly and unit fees; charge actual travel and per diem costs; charge for sanitation inspections, pre-inspection conferences, and related services; establish hourly fees at time and one-half for service provided on Saturdays, Sundays, and Federal holidays; eliminate the provisions for entering into a contract for service; and change in the fee structure for stowage examinations from an hourly rate to a unit fee.

These revisions are designed to generate revenue sufficient to cover, as nearly as practicable, the projected operating costs, including related supervisory and administrative costs, for commodity inspection services rendered and to maintain an appropriate operating reserve.

DATES: Written comments must be submitted on or before August 7, 1996.

ADDRESSES: Written comments must be submitted to George Wollam, USDA-GIPSA-ART, Room 0623—South Building, 1400 Independence Avenue, SW., Washington, DC 20090-6454, or FAX (202) 720-4628. Comments may be sent by electronic mail or Internet to: gwollam@fgis.usda.gov.

All comments received will be available for public inspection during

regular business hours in Room 062—South Building, 1400 Independence Avenue, SW., Washington, DC (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam at the address above or by telephone at (202) 720-0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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 five changes being proposed are designed to generate revenue sufficient to recover the operating costs for commodity inspection services and to maintain an appropriate operating reserve. FGIS is proposing the following changes: (1) Increase in the hourly and unit fees for commodity inspection services, (2) begin charging actual travel costs for airlines, rental cars, etc. and per diem for travel beyond 25 miles of an official assigned duty location, (3) begin charging for sanitation inspections, pre-inspection conferences, and related services, (4) establish new hourly fees at time and one-half for service provided on Saturdays, Sundays, and Federal holidays, (5) eliminate the provisions for entering into a contract for service; and (6) change in the fee structure for stowage examinations from an hourly rate to a unit fee.

Fees for commodity inspection services were last increased on June 28, 1984 (49 FR 26547). For nearly 10 years, the 1984 fee schedule sufficiently recovered operating expenses and maintained a minimum 3-month operating reserve. However, by fiscal year (FY) 95, increased operating costs coupled with reductions in the number of services requested rendered the 1984 fee schedule inadequate for generating sufficient revenue to cover operating expenses. The operating reserve, which has been funding losses to the commodity inspection program for the past 4 years, was drawn down to the minimum 3-month operating reserve. Given these conditions, the Administrator of GIPSA determined that a fee necessary to meet rising costs and maintain an adequate reserve balance.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil

Justice Reform. It is not intended to have a retroactive effect, nor will this proposed rule preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. No administrative procedures 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 commodity inspection services do not meet the requirements for small entities. In addition, FGIS is required by statute to recover the costs of commodity inspection services, as nearly as practicable.

Information Collection and Record Keeping Requirements

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

Background

The commodity inspection fees were last amended effective June 28, 1984 (49 FR 26547). These fees were to cover, as nearly as practicable, the operating costs for the program. They presently appear in § 868.90, Tables 1 and 2, of the regulations (7 CFR 868.90, Tables 1 and 2).

The majority of processed commodity inspections performed under the Agricultural Marketing Act of 1946 are on purchases made by the Farm Service Agency (FSA) formerly Agricultural Soil Conservation Service. Historically, approximately 92 percent of the services performed have been for FSA purchases. Defense Personnel Support Center (DPSC) inspections account for approximately 2 percent of the inspections; the remaining 6 percent are performed under nongovernment contracts. Approximately 65 percent of graded commodity inspections are for government purchases, and the

remaining 35 percent are for commercial sales.

Several actions have caused a general decrease in the number of inspections performed for both graded and processed commodities. Beginning in FY 92, FSA commodity purchases began to decline as a result of the success of a market-oriented farm program that virtually eliminated government-owned commodity grain stocks and, in turn, the portion of processed commodities derived from these stocks. In addition, in FY 94, responsibility for inspecting many products for DPSC was transferred from FGIS to AMS.

Processed commodities comprise approximately 90 percent of the program's revenue. In FY 91, FGIS inspected 26,218 lots. By FY 92, the number of inspected lots dropped to 24,004; in FY 93, 17,494 lots were inspected; and FY 94 saw a slight increase to 19,664. In FY 95, however, the total again decreased to 15,065, or a 43 percent reduction from the number of lots inspected in FY 91. Corresponding decreases have also been experienced for graded commodities.

Revenue collected in FY 91 totaled \$6,562,940 and operating costs totaled \$5,987,299 for a positive margin of \$575,570. Revenue in FY 92 dropped to \$5,158,903 due to the decrease in inspections and resulted in a \$179,396 loss to the program. Losses were incurred in each of the following years: \$1,184,602 in FY 93, \$764,865 in FY 94, and \$1,456,944 in FY 95. At the same time, FGIS reduced operating costs for the program from \$5,987,370 in FY 91 to \$5,468,059 in FY 95.

FGIS maintains an operating reserve specifically to cover the cost of shutting down the program in case of an emergency. Agency policy is to maintain the reserve at a level equal to 3 months operating expenses. In FY 91, the reserve was \$4,942,934, which represented 10 months of operating costs. The loss of \$179,396 in FY 92 was covered by this reserve.

In FY 92, FGIS reviewed the program's operating reserve to determine if the fund was being maintained at an adequate level. The Agency determined that, while the level exceeded the three-month reserve minimum, it would not be prudent to decrease the reserve because of anticipated downturns in the number of service requests and the consequent need to cover program losses while restructuring the program.

Again in FY 93, the \$1,184,602 loss was covered by the reserve, which was drawn down to a year-end total of \$3,889,429. Even with the loss, the fund still represented an 8.5 month reserve.

By FY 94, the reserve had dropped to \$3,173,033, or the equivalent of 7 months' operating costs. The losses incurred in FY 95 reduced the margin to \$1,716,090, which is a 3.2 month reserve and represents the target level for the fund.

In FY 94, FGIS responded to the decline in services requests by initiating a field restructuring plan that continued into FY 95. During this time period, three field offices and one suboffice that were directly involved with providing services were closed and consolidated. This eliminated the cost of maintaining a field office and streamlined overall operations. On two separate occasions, retirement incentives (buyouts) were offered to employees which reduced the staffing levels in this program. Other personnel were transferred to field offices and redirected to other programs. In FY 91, approximately 103 staff years were devoted to this program. By FY 95, the staffing level had been reduced by 35 percent to 67 staff years. The FY 95 level of 15,065 services performed is expected to remain fairly constant in the future. Large numbers of service requests as seen in the late 1980s and early 1990s are not forecasted. However, further losses are projected if adjustments to the fee schedule are not made.

Due to reduced and sporadic FSA purchases, efficiencies gained through volume inspections have disappeared. Fluctuations in service demand have increased, even at locations that routinely requested service on a daily basis. These changes have impacted on FGIS' ability to maintain qualified staff at some locations and especially those that are large distances from a field office. In addition, there has been an increase in the proportion of inspections requested by facilities that may need service only one or two weeks per year. Many of these locations are far from field offices. The result is a great deal of long-distance travel from field offices to remote locations for one or two week jobs. Such travel has increased operating costs and, in some instances, has offset the savings gained through the restructuring.

The 1984 fee schedule was designed to recover all costs associated with performing commodity inspection service, including overtime, travel, per diem, and other related services. For nearly ten years, the 1984 fee schedule generated sufficient revenue to cover operating expenses. This was due, in large part, to continuously improved efficiencies in service delivery and strong market demand for inspection services. Although additional costs saving measures were implemented

during fiscal years 94 and 95, operating expenses and service demand have reached a level at which the 1984 fee schedule no longer generates sufficient revenue to cover costs of providing service.

Since FY 90, there has been a 40 percent decrease in the amount of commodity inspections requested. The commodity inspection program experienced a \$1,642,720 loss (revenue \$4,011,116 and cost \$5,468,059) during FY 95. The commodity program's retained earnings are currently \$1,476,487, a 3.8-month operating reserve. Further losses are projected if adjustments to the 1984 fee schedule are not made.

Proposed Action

Section 203 of the AMA (7 U.S.C. 1622) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. In accordance with this section, FGIS proposes the following changes to maintain the current commodity inspection program: (1) Increase hourly and unit fees; (2) charge actual travel and per diem costs; (3) charge for sanitation inspections, pre-inspection conferences, and related services; (4) establish hourly fees at time and one-half for service provided on Saturdays, Sundays, and Federal holidays; (5) eliminate the provisions for entering into a contract for service; and (6) change in the fee structure for stowage examinations from an hourly rate to a unit fee.

1. *Hourly Rates.* The proposed new hourly rates are divided into two categories: Regular Workday (Monday through Friday) and Nonregular Workday (Saturday, Sunday, and Holiday). Section 868.90, Tables 1 and 3, currently define Saturday as a Regular Workday. The revised Table 1 redefines a Nonregular Workday as a Saturday, Sunday, and Holiday and the hourly rate reflects time and one-half paid to employees. In addition, the two separate hourly rates for regular and nonregular workdays contained in Tables 1 and 3 are combined into one set of hourly rates in a revised Table 1 that covers all services.

Section 868.90, Tables 1 and 3, currently provide for reduced hourly fees for applicants who elect to enter into a contract with FGIS. No applicants have used this provision since it was introduced in 1984. Because the current trends of decreasing service requests and increasing demand fluctuations indicate less likelihood for applicants to use this provision in the future, it is eliminated.

The rate for a Regular Workday will increase to \$33.00 and Nonregular Workday will increase to \$42.80. These new hourly fees cover FGIS' administrative and supervisory costs for the performance of official services. These costs include personnel compensation and benefits, rent, communications, utilities, contractual services, supplies, and equipment.

2. *Unit Rates.* Section 868.90, Table 2 currently provides unit fees for the grading of beans, peas, lentils, hops, and other nongraded, nonprocessed commodities. These rates are increased and the current Table 2 is deleted and combined with proposal Table 1. The new unit rates cover FGIS' administrative and supervisory costs for performing the official service, including costs for personnel compensation and benefits, rent, communication, utilities, contractual services, supplies, and equipment.

3. *Travel and Per Diem.* FGIS is making changes to § 868.92 of the regulations concerning the application of fees covered in Table 1. Specifically, service, as provided under § 868.90,

Table 1, will include 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. Section 868.91, Table 1, Fees for certain Federal rice inspection services, remain unchanged; travel, per diem, and other related costs continue to be included in the hourly rate.

4. *Services Other Than Inspections.* FGIS is proposing a change in the fee structure for stowage examinations from an hourly fee that recovers all costs to a service-specific fee structure currently funded by the hourly rate. The service-specific fee will be a unit fee and will apply only to stowage examinations.

FGIS is revising Footnote 1 to include provisions for charging for sanitation examinations, pre-inspection conferences, and other related services for which FGIS does not currently charge.

5. *Fees for Laboratory Testing Services.* Fees For Laboratory Test Services, Table 4, Fees for Official Laboratory Test Services Performed At the FGIS Commodity Testing Laboratory

at Beltsville, Maryland, For Processed Agricultural Products is revised to read: Table 2—Commodity Testing Laboratory.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

For reasons set out in the preamble, 7 CFR part 868 is proposed to be 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 revised to read as follows:

§ 868.90 Fees for certain Federal inspection services.

(a) The fees shown in Table 1 apply to Federal Commodity Inspection Services specified below.

TABLE 1.—HOURLY RATES^{1 3}
[Fees for Inspection of Commodities Other Than Rice]

Hourly Rates (per service representative):	
Monday to Friday—\$33.00	
Saturday, Sunday, and Holidays—\$42.80	
Miscellaneous Processed Commodities²:	
(1) Additional Tests (cost per test, assessed in addition to the hourly rate):	
(i) Aflatoxin Test (Thin Layer Chromatography)	\$51.40
(ii) Falling Number	12.00
(iii) Aflatoxin Test Kit	7.50
Graded Commodities (Beans, Peas, Lentils, Hops, and Pulses):	
(1) Additional Tests—Unit Rates (Beans, Peas, Lentils):	
(i) Field run (per lot or sample)	22.70
(ii) Other than field run (per lot or sample)	13.50
(iii) Factor analysis (per factor)	5.50
(2) Additional Tests—Unit Rates (Hops)—(i) Lot or sample (per lot or sample)	29.00
(3) Additional Tests—Unit Rates (Nongraded Nonprocessed Commodities)—(i) Factor analysis (per factor)	5.50
(4) Stowage examination (service-on-request) ⁴ :	
(i) Ship (per stowage space)	50.00
	(minimum
	\$250 per ship)
(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 for original commodity inspection and appeal inspection services include, but are not limited to, sampling, grading, weighing, stowage examinations, pre-inspection conferences, sanitation inspections, and other services requested by the applicant and that are performed within 25 miles of the field office. Travel and related expenses (commercial transportation costs, mileage and per diem) will be assessed in addition to the hourly rate for service beyond the 25-mile limit. Refer to §§ 868.92, Explanation of service fees and additional fees for all other service fees except travel and per diem.

² When performed at a location other than at the commodity testing laboratory.

³ Faxed and extra copies of certificates will be charged at \$3.00 per copy.

⁴ If performed outside of normal business, 1½ times the applicable unit fee will be charged.

(b) 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) listed in Table 2.

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

(d) Laboratory tests referenced in Table 2 will be charged at the applicable laboratory fee when performed at field locations other than at the applicant's facility.

TABLE 2.—FEES FOR LABORATORY TEST SERVICES 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
(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) Livibond 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) (Qualitative)	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 & shortenings)	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 2.—FEES FOR LABORATORY TEST SERVICES ¹—Continued

Laboratory tests	Fees
(68) Other laboratory tests	(²)

¹ When 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.

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

3. Section 868.92 (a)(2) is revised to read as follows:

§ 868.92 Explanation of service fees and additional fees.

(a) * * *

(2) The cost of per diem, subsistence, mileage, or commercial transportation to perform the service for rice inspection only in § 868.91, Table 1, Fees for certain Federal rice inspection services. See § 868.90, Table 1, footnote 1 for Fees for Inspection of Commodities Other Than Rice.

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Dated: June 25, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96-16853 Filed 7-5-96; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-NM-247-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model CL-600-2B16 (CL-601-3A and -3R) and CL-600-2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL-600-2B16 and CL-600-2B19 series airplanes. This proposal would require a one-time inspection of the spring bungee assembly of the nose landing gear (NLG) to ensure proper torque of the collar and correct clearance between the collar and the body of the bungee, and replacement of the spring bungee assembly with a serviceable unit, if necessary. This proposal is prompted by reports of failure of the NLG to extend when the landing gear selector was placed in the "DOWN" position, and failure of the NLG doors to open when the NLG door

switch was set in the "SAFETY/DOOR OPEN" position; these conditions may have been caused by a reduced stroke of the spring bungee. The actions specified by the proposed AD are intended to prevent improper operation of the NLG door and consequent inability to extend the NLG due to a reduced stroke of the spring bungee.

DATES: Comments must be received by August 16, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-247-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York. **FOR FURTHER INFORMATION CONTACT:** Danko Kramar, Aerospace Engineer, Systems and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; telephone (516) 256-7509; fax (516) 568-2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained

in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-247-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-247-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Bombardier Model CL-600-2B16 (CL-601-3A and -3R), and CL-600-2B19 (Regional Jet Series 100) series airplanes. Transport Canada Aviation advises that it received reports indicating that, during flight of a Model CL-600-2B19 series airplane, the nose landing gear (NLG) did not extend when the landing gear selector was placed in the "DOWN" position. The NLG did extend following cycling of the selector valve. Transport Canada Aviation also advises that it received a report indicating that, during a pre-flight check of a Model CL-600-2B16 series airplane, the NLG doors did not open when the NLG door switch was set in the "SAFETY/DOOR OPEN" position. The cause of these occurrences has been attributed to a defective spring bungee assembly of the NLG door mechanism. Investigation revealed that the spring