

entertain a petition for enforcement from an aggrieved employee who is not a party only if the employee seeks and is granted party status as a permissive intervenor under § 1201.34(c) of this part. The employee must file a motion to intervene at the time of filing the petition for enforcement. The petition for enforcement must describe specifically why the petitioner believes there is noncompliance and in what way the petitioner is aggrieved by the noncompliance. The motion to intervene will be considered in accordance with § 1201.34(c) of this part.

(2) Under § 1201.33(c) of this part, a nonparty witness who has obtained an order from a judge that his or her employing agency provide the witness with official time may petition the Board for enforcement of the order.

(3) Under § 1201.55(d) of this part, a nonparty witness or other individual who has obtained a protective order from a judge during the course of a Board proceeding for protection from harassment may petition the Board for enforcement of the order.

(4) A petition for enforcement under paragraph (c)(1), (c)(2), or (c)(3) of this section must be filed promptly with the regional or field office that issued the order or, if the order was issued by the Board, with the Clerk of the Board. The petitioner must serve a copy of the petition on each party or the party's representative. If the petition is filed under paragraph (c)(1) of this section, the motion to intervene must be filed and served with the petition.

Dated: September 12, 1997.

**Robert E. Taylor,**  
Clerk of the Board.

[FR Doc. 97-24750 Filed 9-17-97; 8:45 am]

BILLING CODE 7400-01-U

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### 5 CFR Part 1605

#### Correction of Administrative Errors

**AGENCY:** Federal Retirement Thrift Investment Board.

**ACTION:** Final rule; amendment.

**SUMMARY:** The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing an amendment to final rules on correction of administrative errors affecting Thrift Savings Plan (TSP) accounts. The effect of the amendment will be that earnings on contributions made to the TSP by a person who is ineligible to participate will be returned to that person and not

used to offset TSP administrative expenses.

**EFFECTIVE DATE:** This amendment is effective December 27, 1996.

**FOR FURTHER INFORMATION CONTACT:** John J. O'Meara, (202) 942-1661.

**SUPPLEMENTARY INFORMATION:** A final rule governing the correction of administrative errors affecting Thrift Savings Plan accounts was published in the **Federal Register** on December 27, 1996 (61 FR 68464). That rule revised the final regulations that were published in the **Federal Register** on December 4, 1987 (52 FR 46314). In both sets of regulations the Board provided that when an individual who was not eligible to participate in the TSP nevertheless contributed funds to the TSP, the individual's contributions would be returned, but the earnings on those contributions would be forfeited and used to pay administrative expenses of the TSP. Upon review of this matter, the Board has decided that in promulgating this regulation insufficient emphasis was placed on the ineligible participant's equitable claim to these earnings.

For this reason, § 1605.9(a)(1) of the error correction regulations is being amended to provide that these earnings will be paid to the ineligible participant. Because the equity interest in these earnings by the ineligible participant is so substantial, this amendment is being given retroactive effect to the effective date (December 27, 1996) of the current error correction regulations.

#### Regulatory Flexibility Act

I certify that this amendment will not have a significant economic impact on a substantial number of small entities. It will only affect Thrift Savings Plan participants.

#### Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

#### Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, section 201, Public Law 104-4, 109 Stat. 48, 64, the effect of these regulations on State, local, and tribal governments, and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by any State, local, and tribal governments in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64-65, is not required.

#### Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), the Board submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before the publication of this rule in today's **Federal Register**. This rule is not a major rule as defined in section 804(2).

#### List of Subjects in 5 CFR Part 1605

Administrative practice and procedure, Employee benefit plans, Government employees, Pensions, Retirement.

**Roger W. Mehle,**

*Executive Director, Federal Retirement Thrift Investment Board.*

For the reasons set forth in the preamble, part 1605 of chapter VI of title 5 of the Code of Federal Regulations is amended as follows:

#### PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

1. The authority citation for Part 1605 continues to read as follows:

**Authority:** 5 U.S.C. 8351 and 8474.

2. Section 1605.9 is amended by revising the second sentence of paragraph (a)(1) to read as follows:

#### § 1605.9 Miscellaneous provisions.

(a)(1) \* \* \* In that case, the earnings will be removed from the account and paid to the ineligible participant. \* \* \*

[FR Doc. 97-24760 Filed 9-17-97; 8:45 am]

BILLING CODE 6760-01-U

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### 7 CFR Part 800

RIN 0580-AA56

#### Fees for Official Inspection and Official Weighing Services

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

**ACTION:** Final rule.

**SUMMARY:** The Grain Inspection, Packers and Stockyards Administration (GIPSA) is implementing, effective October 1, 1997, a 12.5-percent increase in the administrative service fee for official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. The fee

adjustment is necessary to cover indirect field office and headquarters operational costs and to maintain a 3-month operational reserve. GIPSA is also deleting from the fee schedule the unit fees for submitted samples and factor only analysis performed online at an applicant's facility.

**EFFECTIVE DATE:** October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** George Wollam, USDA, GIPSA, at (202) 720-4628.

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Order 12866**

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.

##### **Executive Order 12988**

This 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 Section 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 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 which must be exhausted prior to any judicial challenge to provisions of this rule.

##### **Effects on Small Entities**

James R. Baker, Administrator, GIPSA, has determined that this 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.*). 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.

The fee revision applies to entities engaged in the export of grain. Under provisions of the USGSA, most grain exported from U.S. export port locations must be officially inspected and weighed. Mandatory inspection and weighing services are provided by FGIS on a fee basis at 37 export facilities. All of the export facilities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities as defined under the Regulatory Flexibility Act and the regulations issued thereunder. A 3-

percent increase in hourly and certain unit fees went into effect June 15, 1997, and will recover the increased operational costs caused by mandated cost-of-living increases to Federal salaries. That increase is anticipated to generate \$218,100 in additional revenue, bringing to \$22.21 million the projected total revenue for fiscal year 1997. This 12.5-percent increase in the administrative fee is designed to generate sufficient revenue to cover indirect costs associated with field office and headquarters operations and to maintain the retained earnings at a 3-month operating reserve for the inspection and weighing program. Additional revenue estimated for fiscal year 1998 is projected to be \$440,000 at an 85.6 million metric ton level. The 12.5-percent increase will not have a significant economic impact on small entities.

##### **Information Collection and Recordkeeping Requirements**

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements contained in Part 800 have been previously approved by the Office of Management and Budget under control number 0580-0013.

##### **Background**

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

Effective October 1, 1996, GIPSA changed the methodology it uses for fees charged for its inspection and weighing services. The current fee structure for these services consists of three basic components: (1) An hourly rate charged to recover the direct labor costs of providing service; (2) a unit test or service rate; and (3) a per metric ton administrative charge to recover the indirect costs, such as salaries and benefits for office management and support staff and rent, incurred both at field offices and headquarters. Fees charged in the first two components of the structure were increased by approximately 3 percent effective June 15, 1997 (62 FR 31701, June 11, 1997, corrected at 62 FR 34342, June 25, 1997), to cover increased costs due to mandated Federal cost-of-living increases. At that time, GIPSA noted that a further adjustment of fees, including an adjustment to the administrative fee to recover the

indirect costs of field offices and headquarters and to replenish the operating reserve, would be addressed in future rulemaking.

The current USGSA administrative fee was published in the August 22, 1996, **Federal Register** (61 FR 43301) and became effective on October 1, 1996. The per metric ton administrative charge recovers the indirect costs and administrative costs of FGIS field offices and headquarters such as the salaries and benefits for office management and support staff, Departmental charges, Animal and Plant Health Inspection Service and Agricultural Marketing Service charges, management of computers and software, utilities, and rent. The 3-percent increase that became effective June 15, 1997, was intended to recover only increases to the salaries of service personnel responsible for inspection and weighing of grain. The administrative fee is assessed on all outbound grain inspected and/or weighed at an applicant's facility.

Six levels of fees exist, 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 is assessed in addition to the hourly rate. At the beginning of each fiscal year (October 1), all applicants pay the same per metric-ton-fee. Once a level has been reached, the fee for additional metric tons is reduced until the maximum volume is reached.

##### **ADMINISTRATIVE FEES**

Metric tons	Current fees	Proposed fees
1-1,000,000 .....	\$0.090	\$0.1013
1,000,000-1,500,000 .....	.082	.0923
1,500,001-2,000,000 .....	.042	.0473
2,000,001-5,000,000 .....	.032	.0360
5,000,001-7,000,000 .....	.017	.0192
7,000,000 + .....	.002	.0023

This 12.5-percent increase in the administrative fee is designed to generate additional revenue to cover the indirect costs associated with field office and headquarters operations and maintain the retained earnings at a 3-month operating reserve for the inspection and weighing program.

GIPSA estimates collecting \$22.2 million in revenue for fiscal year 1997 under the current fee schedule. This is \$1 million less than the \$23.2 million estimated cost of operations for fiscal year 1997. Similar losses have occurred for the past 3 years, with \$753,000 in

fiscal year 1994; \$630,000 in fiscal year 1995; and \$1,273,000 in fiscal year 1996. These losses resulted in a retained earning balance of only \$922,000 at the beginning of fiscal year 1997, significantly below a desired 3-month operating reserve of \$6 million.

Indirect costs for the inspection and weighing program are estimated at \$4.68 million, or 20 percent of the total \$23.2 obligation for the program. Because of a downturn in metric tons exported, the current administrative fee will generate only an estimated \$3.5 million for fiscal year 1997, resulting in an estimated loss of \$1.18 million. The administrative fee must be increased to ensure sufficient revenue is collected to recover indirect costs for an average export volume year. This will permit any excess revenue collected during high volume years, such as 89.9 million metric tons in fiscal year 1996, to offset low volume years such as this year, estimated at 76 million metric tons.

The current administrative fee generates an estimated \$4.09 million at the 5-year average export volume of 85.6 million metric tons. The 12.5-percent increase will generate an estimated \$4.53 million at the 85.6 million metric ton level, or increase actual revenue by \$440,000, or 10.75 percent.

#### Comment Review

A proposed rule was published in the **Federal Register** on July 18, 1997, (62 FR 38488). GIPSA received five comments from trade associations and industry representatives during the 30-day comment period. All five commentors opposed the 12.5-percent increase.

In general, the commentors recommended that GIPSA initiate action to reduce administrative costs prior to any fee increase and that fee increases should not be used as the primary tool to reverse declining financial conditions. GIPSA agrees that all efforts should be taken to control administrative costs before proposing fee increases. This has been done in the past and GIPSA will continue to contain costs, as practicable, in the future.

The administrative fee implemented on October 1, 1996, was designed to collect sufficient revenue to recover fiscal year 1993 indirect costs which were \$4.09 million. Since fiscal year 1993, the Agency has experienced an estimated \$1.7 million increase in indirect costs primarily due to Federal pay increases, coupled with a redistribution of indirect costs associated with headquarters operations beginning in fiscal year 1995. GIPSA has reduced its indirect costs by \$1.1 million by staff reductions,

consolidating financial management into the Department's Animal and Plant Health Inspection Service, and reducing the number of field locations from 31 to 23.

Despite the Agency's aggressive cost containment efforts, indirect costs have increased \$590,000 over the \$4.09 million fiscal year 1993 base and must be recovered. The suggestions by several commentors that overhead (indirect costs) be further reduced in general or by specific percentages, is not practical at this time. GIPSA has and will continue to reduce costs as is appropriate and cost effective where feasible.

While the fee increase generally addresses cost recovery by GIPSA for original inspection and weighing services performed at export locations, several commentors suggested that these costs be passed on to all users of GIPSA services. In addition, commentors stated that the proposed fee increase would adversely impact on the competitive position of U.S. grain exports. Further, references were made that increased costs associated with export operations would be passed on to other industry members, including farmers, with one commentor indicating that the fees would have an economic impact on small entities as defined in the Regulatory Flexibility Act.

With regard to expanding the base for cost recovery to all users of GIPSA's services, GIPSA has gone to great lengths to identify specific costs associated with the vast number of different customers we serve. This has allowed us to develop separate fee schedules that specifically address services to these unique customers. This process has worked well and GIPSA sees no need to change it based on the suggestions.

An exporters' ability to compete in the international market place is influenced by many factors, not just the cost of inspection and weighing services. All inspection and weighing costs, regardless of where they are incurred in the marketing chain, i.e., farmer to exporter, are just one item used to determine the overall cost of a product. The additional \$440,000 in fees, when spread over the total volume of grain traded in both the domestic and export markets, will not create a significant impact.

Several commentors questioned whether the fees and the expenses upon which they are based were reasonable under the USGSA. GIPSA has reviewed this issue and determined that the proposed fees and expenses are consistent and reasonable under the provisions of the USGSA.

One commentor suggested that the projected revenue from the proposed fee increase did not represent an across the board 12.5-percent increase and should be \$510,000 instead of the stated \$440,000. They apparently based this on a straightline projection of 12.5 percent of total cost. They further questioned how the proposed increase will offset the projected \$1.18 million loss.

In order to calculate additional revenue for the administrative fee, one must first consider the existing fee structure. With the administrative fee decreasing as the number of metric tons increases and the volume of grain handled by export elevators varies, the estimated revenue collected from a 12.5 percent fee increase cannot be determined using a straightline projection. As stated in the proposal, an increase of 12.5 percent will generate an estimated \$4.53 million at the 85.6 million metric ton level, or increase actual revenue by \$440,000, or 10.75 percent.

Also, as stated in the proposal, GIPSA expected to collect only \$3.5 million in administrative fees in fiscal year 1997. With projected costs at \$4.68 million, there is a \$1.18 million shortfall. The current fees are set to collect \$4.09 million at 85.6 million tons. As stated in the proposal, the proposed fee level is designed to collect \$4.53 million at an export volume of 85.6 million metric tons. Consequently, a revenue shortfall such as \$1.18 million in 1997 with exports at 76 million metric tons will be offset by increased revenue during high-volume years such as 89.9 million metric tons in 1996. GIPSA is setting its fees at a reasonable level based on a 5-year level of exports.

One commentor suggested that GIPSA make previously recommended program changes prior to proposing fee increases. The commentor had recommended the suggested program changes during GIPSA's overall review of existing regulations. The suggested program changes are being considered and will be addressed in a separate rulemaking, as appropriate.

GIPSA has and will continuously monitor and adjust its resources to obtain optimum utilization of its personnel, in both direct and indirect areas, prior to proposing fee increases. However, as previously stated, GIPSA must recover its expenses for providing services and maintenance of a 3-month operating reserve and therefore must do so by implementing a 12.5-percent increase in the administrative fees.

No comments were received in response to the proposal to delete Table I (3)(ii), fees for submitted samples and

factor only analysis performed online at an applicant's facility.

### Final Action

Effective October 1, 1997, the Agency will apply a 12.5-percent increase to Administrative Fees in 7 CFR 800.71, Table 1 (3), and will delete fees for Additional Service (assessed in addition to all other fees) in Table 1 (3)(ii).

Good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because an October 1, 1997, effective date corresponds to the beginning of the 1998 fiscal year and the start of a new accounting cycle.

### 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 Table 1(3) in Schedule A of 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 <sup>1</sup>

	*	*	*	*	*
(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) <sup>4</sup>					
(a) 1–1,000,000 .....					\$0.1013
(b) 1,000,001–1,500,000 .....					.0923
(c) 1,500,001–2,000,000 .....					.0473
(d) 2,000,001–5,000,000 .....					.0360
(e) 5,000,001–7,000,000 .....					.0192
(f) 7,000,001 + .....					.0023

<sup>1</sup> Fees 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 (a).

<sup>4</sup> The administrative fee is assessed on an accumulated basis beginning at the start of the Service's fiscal year (October 1 each year).

\* \* \* \* \*

Dated: September 12, 1997.

**James R. Baker,**  
Administrator.

[FR Doc. 97-24814 Filed 9-17-97; 8:45 am]

BILLING CODE 3410-EN-P

### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Food and Drug Administration

#### 21 CFR Part 510

#### New Animal Drugs; Change of Sponsor Address

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for K. C. Pharmacal, Inc.

**EFFECTIVE DATE:** September 18, 1997.

**FOR FURTHER INFORMATION CONTACT:** Judith O'Haro, Center for Veterinary Medicine (HFV-6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-3664.

**SUPPLEMENTARY INFORMATION:** K. C. Pharmacal, Inc., 1310 Atlantic, P.O. Box 7496, North Kansas City, MO 64116, has informed FDA of a change of sponsor address to K. C. Pharmacal, Inc., 8345 Melrose Dr., Lenexa, KS 66214. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor address.

### List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

### PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the sponsor address for "K. C. Pharmacal, Inc." and in the table in paragraph (c)(2) in the entry for "038782" by revising the sponsor address to read as follows:

#### § 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

Firm name and address	Drug labeler code
* * *	* * *
K. C. Pharmacal, Inc., 8345 Melrose Dr., Lenexa, KS 66214 .....	038782
* * *	* * *

(2) \* \* \*