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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

[Docket No. FGIS–2000–002b]

RIN: 0580–AA74

Fees for Commodity and Rice Inspection Services

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

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is implementing an approximate 3.7 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 commodity and rice inspection programs. These increases are needed to cover increased operational costs resulting from the mandated January 2001 Federal pay increase. This final rule reflects a change made to the Rice program's contract hourly rate from the rate that appeared in the proposed rule.

EFFECTIVE DATE: May 4, 2001.

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

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866, the 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 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. A January 2001 general and locality salary increase that averages 3.7 percent for all GIPSA employees will increase program costs in both the commodity and the rice inspection programs.

1. Commodity Inspection Program

The commodity inspection program consists of two different programs, i.e., graded commodities and processed commodities. Current fees for these programs are in Tables 1 and 2 of 7 CFR 868.90. These programs serve two different markets: The graded commodity market is made up of producers and processors of edible beans, peas, and lentils. The processed commodity market consists of processors and shippers of products such as wheat flour, soybean meal, vegetable oil, and corn meal. USDA's Farm Service Agency (FSA) implemented program changes during FY 2000 that eliminated requirements for end-item and vessel loading observation inspections for processed commodities. Program changes, including personnel adjustments, have been implemented to begin offsetting operating costs due to the loss of the FSA program inspections. Additional cost-cutting measures will continue in FY 2001. Even with these cost-saving measures, the commodity inspection program will continue to lose funds. In FY 1999, operating costs in the commodity inspection program were $5,951,852 with revenue of $7,190,879 that resulted in a positive margin of $1,239,027 and a positive reserve balance of $1,764,140. In FY 2000, operating costs were $5,206,585 with revenue of $5,402,686 that resulted in a positive margin of $196,101 and a positive reserve of $2,062,849. However, in the last two months of FY 2000, since all FSA program changes were implemented, we received $579,274 in revenue and $745,125 in costs that resulted in a $165,851 negative margin. The salary adjustment will increase GIPSA's costs in the commodity inspection program by approximately $95,000. The current positive margin and reserve balance will not continue due to the loss of processed commodity inspection and the remaining programs in the commodity inspection program cannot absorb the 3.7 percent salary increase even with the planned cost-cutting measures.

The fee increase for our graded commodities program applies primarily to GIPSA customers that produce, process, and market graded commodities for the domestic and international markets. There are approximately 156 such customers located primarily in the States of North Dakota, South Dakota, Oregon, Kansas, Colorado, Montana, Texas, Michigan, Nebraska, Minnesota, Washington, Idaho, and California. 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 increase will not be excessive (3.7 percent) and should not significantly affect those entities. Those entities are under no obligation to use our service and, therefore, any decision on their part to discontinue the use of our service should not prevent them from marketing their products.

2. 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 FY 1999, GIPSA's operating costs in its rice inspection program were $4,105,564 with revenue of $4,412,131 that resulted in a positive margin of $306,567 and a negative reserve balance of $395,793. In 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. The current positive reserve balance is well below the desired 3-month reserve of approximately $1 million.

We have reviewed the financial position of our rice inspection program based on the increased salary and benefit costs, along with the projected FY 2001 workload. Even though the financial status of the rice inspection program has improved, we have concluded that we cannot absorb the increased costs caused by the 3.7 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 2001 work volume of 3.9 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 the States of 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 increase will not be excessive (3.7 percent) and should not significantly affect those entities. Those entities are under no obligation to use our service and, therefore, any decision on their part to discontinue the use of our service should not prevent them from marketing their products.

There will be no additional reporting or record keeping requirements imposed by this 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 rule.

B. 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. This 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 rule.

C. Background

In the November 3, 2000, **Federal Register** (65 FR 66189) GIPSA proposed an approximate 3.7 percent increase in fees for commodity and rice inspection services performed under the Agricultural Marketing Act of 1946. Under the provisions of the AMA (7 U.S.C. 1621, *et seq.*), commodity and 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 commodity inspection fees were last amended on December 18, 1996, and became effective February 18, 1997 (61 FR 66533). The rice inspection fees were last amended on March 30, 2000, and became effective May 1, 2000 (65 FR 16787). These fees were to cover, as nearly as practicable, the level of operating costs as projected for FY 1997 and FY 2000, respectively. GIPSA continually monitors its cost, revenue, and operating reserve levels to ensure that there are sufficient resources for operations. During FY 1998, GIPSA implemented cost-saving measures in the rice program in an effort to provide more cost-effective services. The purpose of these measures was to reduce operating costs in order to reduce the negative retained earnings in this program. The cost containment measures included employee buyouts and better cross utilization of personnel between programs.

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate and continues to seek out cost-saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases.

1. Commodity Inspection Program

The commodity inspection program consists of two different programs, graded and processed commodities. Fees for these programs can be found in 7 CFR 868.90 (a), Tables 1 and 2. These programs serve two different markets with different applicants. The graded commodity market is made up of producers and processors of edible beans, peas, and lentils. The processed commodity market consists of processors and shippers of products such as wheat flour, soybean meal, vegetable oil, and corn meal. USDA's Farm Service Agency (FSA) implemented program changes during FY 2000 that has resulted in a 96 percent reduction in processed commodity inspections. The processed commodity inspection program represents approximately 86 percent of all revenue and 62 percent of the cost. Initial program changes, including personnel adjustments, have been implemented to begin offsetting the lost revenue and reduce operating costs. Additional cost-cutting measures will continue in FY 2001. Even with these cost-saving measures, the commodity inspection program will continue to lose funds. In FY 1999, operating costs in the commodity inspection program were $5,951,852 with revenue of $7,190,879 that resulted in a positive margin of $1,239,027 and a positive reserve balance of $1,764,140. In FY 2000, operating costs were $5,206,585 with revenue of $5,402,686 that resulted in a positive margin of $196,101 and a positive reserve of $2,062,849. However, $579,274 in revenue and $745,125 in costs, for the last two months of FY 2000, since all FSA program changes have been implemented, has resulted in a $165,851 negative margin. The salary adjustment will increase GIPSA's costs in the commodity inspection program by approximately $95,000. The current positive margin and reserve balance will not continue due to the loss of processed commodity inspection and the remaining programs in the commodity inspection program cannot absorb the 3.7 percent salary increase even with the planned cost-cutting measures.

The costs associated with salaries and benefits are recovered by the hourly rates for personnel performing direct service. Other associated costs, including non-salary related overhead, are collected through other fees contained in the fee schedule and are at levels that do not require any change. GIPSA is increasing fees by 3.7 percent to the hourly rates and certain unit rates in 7 CFR 868.90, (a) Table 1—Hourly Rates (Fees for Inspection of Commodities Other Than Rice). Currently, the regular workday hourly rate is $33.00, while Saturday, Sunday, and Holidays are $42.50. The other current unit rates are:

Miscellaneous Processed Commodities: (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):	
(i) Ship (per stowage space) (minimum $250 per ship)	50.00
(ii) Subsequent ship examination (same as original) (minimum $150 per ship)	
(iii) Barge (per examination)	40.00
(iv) All other carriers (per examination)	15.00

2. 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 7 CFR 868.91, Tables 1 and 2. In FY 1999, GIPSA's operating costs in the rice program were $4,105,564 with revenue of $4,412,131 that resulted in a positive margin of $306,567 and a negative reserve balance of $395,793. In 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. The current positive reserve balance is well below the desired 3-month reserve of approximately $1 million.

We have reviewed the financial position of our rice inspection program based on the increased salary and benefit costs, along with the projected FY 2001 workload. Even though the financial status of our rice inspection program has improved, we have concluded that with the small positive reserve balance we cannot absorb the increased costs caused by the 3.7 percent salary increase. This fee increase will collect an estimated $155,500 in additional revenues in the rice program based on the projected FY 2001 work volume of 3.9 million metric tons.

In 7 CFR 868.91, Table 1—Hourly Rates/Unit Rate Per CWT and Table 2—Unit Rates, currently the regular workday contract and noncontract fees are $42.80 and $52.40, respectively, while the nonregular workday contract and noncontract fees are $59.60 and $72.40, respectively. The unit rate per hundredweight for export port services is currently $0.052 per hundredweight. The rice current unit rates are:

Service	Rough rice	Brown rice for processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$34.50	$29.80	$21.20
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	26.75	26.75	
(b) All other factors (per factor)	12.70	12.70	12.70
Total oil and free fatty acid		42.00	42.00
Interpretive line samples:			
(a) Milling degree (per set)			89.20
(b) Parboiled light (per sample)			22.35
Extra copies of certificates (per copy)	3.00	3.00	3.00

D. Comment Review

GIPSA received one comment in response to the proposed rulemaking published November 3, 2000, at 65 FR 66189. The commenter stated that the fees for providing regular commodity and rice inspection services were being increased by 4.47 percent and 4.67 percent, respectively, while other rates were being increased at close to the projected 3.75 percent needed to cover the mandated salary increase. The commenter raised a concern because of this apparent disparity in rate increases and recommended prior to implementing any fee adjustment, the Agency should offer a coherent business rationale for the rate adjustment disparity.

The comment was received after the closing date for comments to be received. Nonetheless, GIPSA reviewed the proposed fee increases and concluded that the Rice program's contract hourly fee was too high by $0.20. Accordingly, GIPSA has reduced the Rice program's contract hourly rate to $44.60.

E. Final 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 service rendered. These fees cover the GIPSA costs, including administrative and supervisory costs, for the performance of official services, including personnel compensation, personnel benefits, travel, rent, communication, utilities, contractual services, supplies, and equipment.

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 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. In § 868.90, paragraph (a) 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	$34.20
Saturday, Sunday, and Holidays	44.40
Miscellaneous Processed Commodities: [2]	
(1) Additional Tests (cost per test, assessed in addition to the hourly rate):	
(i) Aflatoxin Test (Thin Layer Chromatography)	51.40
(ii) Falling Number	12.50
(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)	23.00
(ii) Other than field run (per lot or sample)	13.75
(iii) Factor analysis (per factor)	5.65
(2) Additional Tests—Unit Rates (Hops): (i) Lot or sample (per lot or sample)	29.30
(3) Additional Tests—Unit Rates (Nongraded Nonprocessed Commodities): (i) Factor analysis (per factor)	5.65
(4) Stowage Examination (service-on-request) [4] (i) Ship (per stowage space) (minimum $252.50 per ship)	50.50
(ii) Subsequent ship examinations (same as original) (minimum $151.50 per ship)	
(iii) Barge (per examination)	40.50
(iv) All other carriers (per examination)	15.50

[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 the Commodity Testing Laboratory.

[3] Faxed and extra copies of certificates will be charged at $1.50 per copy.

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

3. Section 868.91 is revised to read as follows:

* * * * *

§ 868.91 Fees for certain Federal rice inspection services.

The fees shown in Tables 1 and 2 apply to Federal rice inspection services.

TABLE 1.—HOURLY RATES/UNIT RATE PER CWT

[Fees for federal rice inspection services]

Service [1]	Regular Workday (Monday–Saturday)	Nonregular workday (Sunday–holiday)
Contract (per hour per Service representative)	$44.60	$61.80
Noncontract (per hour per Service representative)	54.30	75.00
Export Port Services (per hundredweight) [2]	.054	.054

[1] Original and appeal inspection services include: Sampling, grading, weighing, and other services requested by the applicant when performed at the applicant's facility.

[2] Services performed at export port locations on lots at rest.

TABLE 2.—UNIT RATES

Service [1, 3]	Rough rice	Brown rice for processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$34.80	$30.00	$21.50
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	27.00	27.00	....
(b) All other factors (per factor)	12.90	12.90	12.90
Total oil and free fatty acid	....	42.60	42.60
Interpretive line samples: [2]			
(a) Milling degree (per set)	....	....	91.00
(b) Parboiled light (per sample)	....	....	22.60
Extra copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or in combination at other than at the applicant's facility.

[2] Interpretive line samples may be purchased from the U.S. Department of Agriculture, GIPSA, FGIS, Technical Services Division, 10383 N. Ambassador Drive, Kansas City, Missouri 64153–1394. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Director, Field Management Division, USDA, GIPSA, FGIS, 1400 Independence Avenue, SW, STOP 3630, Washington, D.C. 20250–3630. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor ''Parboiled Light'' rice.

[3] Fees for other services not referenced in table 2 will be based on the noncontract hourly rate listed in § 868.90, table 1.

Dated: March 28, 2001.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 01–8146 Filed 4–3–01; 8:45 am]

BILLING CODE 3410–EN–P

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1040]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule; request for comments.

SUMMARY: The Board is adopting an interim final rule amending Regulation B, which implements the Equal Credit Opportunity Act, to establish uniform standards for the electronic delivery of disclosures required by the act and regulation. The rule provides guidance on the timing and delivery of electronic disclosures to ensure that applicants have adequate opportunity to access and retain required information. (Similar rules are being adopted under other consumer financial services regulations administered by the Board.) Under the rule, creditors may deliver disclosures electronically if they obtain applicants' affirmative consent in accordance with the Electronic Signatures in Global and National Commerce Act. In addition, the regulation is revised to allow creditors to provide disclosures in foreign languages. The rule is being adopted as an interim rule to allow for additional public comment.

DATES: The interim rule is effective March 30, 2001; however, to allow time for any necessary operational changes, the mandatory compliance date is October 1, 2001. Comments must be received by June 1, 2001.

ADDRESSES: Comments, which should refer to Docket No. R–1040, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 or mailed electronically to *regs.comments@federalreserve.gov.* Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 in the Board's Martin Building between 9:00 a.m. and 5:00 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR part 261.

FOR FURTHER INFORMATION CONTACT: Natalie E. Taylor or John C. Wood, Counsel, or Minh–Duc Le, Attorney, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 *et seq.*, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Board's Regulation B (12 CFR part 202) implements the act.

The ECOA and Regulation B require that some disclosures be provided in writing, presuming that creditors provide paper documents. Under the Electronic Signatures in Global and National Commerce Act (E-Sign Act), however, electronic documents and signatures have the same validity as paper documents and handwritten signatures.

Board Proposals Regarding Electronic Disclosures

Over the past few years, the Board has published several interim rules and proposals regarding the electronic delivery of disclosures. In 1996, after a comprehensive review of Regulation E (Electronic Fund Transfers), the Board proposed to amend the regulation to permit financial institutions to provide disclosures by sending them electronically (61 FR 19696, May 2, 1996). Based on comments received on the 1996 proposal, on March 25, 1998, the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14528) and similar proposals under Regulation B (63 FR 14552) and other financial services regulations administered by the Board. The 1998 interim rule and proposed rules were similar to the 1996 proposed rule under Regulation E.

The 1998 proposals and interim rule allowed depository institutions, creditors, lessors, and others to provide disclosures electronically if the consumer agreed, with few other requirements. For ease of reference, this background section uses the terms ''institutions'' and ''consumers.''

Industry commenters generally supported the Board's 1998 proposals and interim rule, but many of them sought specific revisions and additional guidance on how to comply with the disclosure requirements in certain transactions and circumstances. In particular, they expressed concern that the rule did not specify a uniform method for establishing that an ''agreement'' was reached for sending disclosures electronically. Consumer advocates, on the other hand, generally opposed the 1998 proposals and the interim rule. They believed that consumer protections in the proposals were inadequate, especially in connection with transactions that are typically consummated in person (such as automobile loans and leases, home-secured loans, and door-to-door credit sales).

September 1999 Proposals

In response to comments received on the 1998 proposals, the Board published revised regulatory proposals in September 1999 under Regulations B, E, M, Z, and DD (64 FR 49688, 49699, 49713, 49722 and 49740, respectively, September 14, 1999) (collectively, the ''1999 proposals''), and an interim rule under Regulation DD (64 FR 49846). The interim rule under Regulation DD allowed depository institutions to deliver disclosures on periodic statements electronically if the consumer agrees.

Generally, the 1999 proposals required institutions to use a standardized form containing specific information about the electronic delivery of disclosures so that consumers could make informed decisions about whether to receive disclosures electronically. If the