

Rules and Regulations

Federal Register

Vol. 70, No. 165

Friday, August 26, 2005

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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1207

Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or "the Board") is publishing final regulations that adopt previously published interim regulations revising 5 CFR part 1207. These final regulations are necessary to reconcile the Board's regulations with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, and to clarify the procedures for processing those complaints filed against the Board that allege discrimination on the basis of disability during the Board's adjudication of a related employee appeal.

DATES: This rule is effective August 26, 2005.

FOR FURTHER INFORMATION CONTACT: Bentley M. Roberts, Jr., Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653-7200; fax: (202) 653-7130; or e-mail: mspb@mspb.gov.

SUPPLEMENTARY INFORMATION: On May 9, 2005, the Board published amendments to 5 CFR part 1207 as an interim rule with request for comments (70 FR 24293). The Board received no comments during the 60 days allowed for receipt of public comments. This final rule makes no changes to the previously published interim rule. See 70 FR 24293 for additional information concerning the Board's revision of 5 CFR 1207.

Accordingly, the Board adopts the interim rule published at 70 FR 24293

on May 9, 2005, as a final rule effective August 26, 2005.

Bentley M. Roberts, Jr.,
Clerk of the Board.

[FR Doc. 05-17050 Filed 8-25-05; 8:45 am]

BILLING CODE 7400-01-P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580-AA88

Fees Assessed by the Service

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 amending the regulation regarding fees assessed to delegated States and designated official agencies, hereafter known as official agencies, authorized by GIPSA to provide official inspection and weighing services to the U.S. grain industry. The fee adjustment is necessary to collect sufficient revenue to cover the current and future cost of supervising the performance of the official agencies.

Current supervision fees are charged to official agencies on a unit basis and represent an average rate of approximately 0.8 cent per metric ton of grain inspected or weighed by the official agencies. The final supervision fee increases the rate to a 1.1 cents per metric ton charge. Official agencies include the cost of GIPSA's supervision fee as part of the fee they charge their customers for grain services. The current average cost for services provided by official agencies is 21 cents per metric ton. Increasing the supervision fee by approximately 0.3 cent per metric ton will minimally increase the total cost of inspection and weighing services to the grain industry.

DATES: Effective October 1, 2005.

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, telephone (202) 720-0228 at USDA, GIPSA, Room 2409, 1400 Independence Avenue, SW., Washington, DC 20250-3630; Fax

Number (202) 720-1015; E-mail address David.M.Orr@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The United States Grain Standards Act (USGSA) (7 U.S.C. 71 *et seq.*) authorizes GIPSA to supervise grain inspection and weighing services provided by official agencies and to charge and collect reasonable fees to cover the cost of such supervision. These fees are charged by official agencies to their customers (grain industry) as part of the overall fee charged for inspection and weighing services. Supervision fees collected by GIPSA cover, as nearly as practicable, the program and administrative costs of supervising official agencies. The current supervision fees were published in the **Federal Register** on May 13, 2004 (69 FR 26476), and became effective June 14, 2004. This action adjusted only the supervision fee charged to delegated States for the inspection and weighing of export grain shipments. All other supervision fees remained unchanged. The fee for export grain shipments was changed from a unit fee of \$49.20 per inspection to 1.6 cents per metric ton.

The fees unchanged by the June 14, 2004, action were last amended in September 23, 1985, as published in the **Federal Register** (50 FR 38503) and became effective on October 1, 1985. At that time, supervision fees were lowered an average 40 percent due to the accumulation of a \$4.5 million reserve in retained earnings. The fee rates established on October 1, 1985, were set at a level so that the program operated at a net loss in order to reduce the operating reserves on a planned gradual basis. During the 19 year span from 1985 to 2004, GIPSA has gradually reduced the retained earnings in this program and has reached a point where an adjustment is needed to cover current and future program costs. In FY 2004, the official agency supervision program operating costs totaled \$2,606,826, while revenue amounted to \$1,527,713, a negative margin of \$1,079,113. The retained earnings balance was \$867,191 at the end of FY 2004. GIPSA projects the official agency supervision program deficit to continue at a comparable rate, and estimates that at the end of FY 2006, the program's retained earnings will be negative \$1.1 million.

GIPSA regularly reviews its user-fee-financed programs under the USGSA (7 U.S.C. 71 *et seq.*) to determine if the fees are adequate. GIPSA recognizes the need to reduce inspection and weighing supervision costs as much as possible before increasing fees and therefore has taken action through the years to minimize costs. GIPSA plans to reduce costs by initiating a transition to a central monitoring program. This action, scheduled for implementation in FY 2008, should reduce overall operating expenses an estimated \$1.2 million or 43 percent. Implementing the central monitoring process, coupled with a new supervision fee, will assist GIPSA in reaching an adequate 3-month retained earnings balance.

GIPSA completed a review of the official agency inspection and weighing programs and determined it was necessary to propose a change in the manner in which it collects user fees and to increase fees in order to recover the retained earnings to their desired 3-month level. On March 21, 2005, GIPSA proposed in the **Federal Register** (70 FR 13411) to amend the fees to recover the costs associated with administering the official agency supervision program. This action would maintain GIPSA's financial stability to assure continued inspection and weighing services to the grain industry, which will further facilitate the sound and orderly marketing of grain in domestic and export markets.

The current supervision fee is assessed on a unit or carrier basis and does not necessarily reflect the amount of grain inspected and weighed. GIPSA believes assessing supervision fees proportionate to the weight of grain inspected and/or weighed is a reasonable approach. This process was implemented for the supervision of export grain inspected and weighed by Delegated States in the changes effective June 14, 2004 (69 FR 26476). Therefore, GIPSA proposed charging all supervision fees based on a per metric ton basis.

In FY 2004, customers of official agencies, the grain industry, paid an estimated \$39 million or 21 cents per metric ton for official inspection and weighing services on an estimated 187 million metric tons of grain. Of the \$39 million paid for services, \$1,527,713 (3.92 percent or 0.82 cents per metric ton) represented GIPSA collected supervision fees. GIPSA's actual program costs for FY 2004 were \$2,606,826 or 1.39 cents per metric ton which resulted in a net loss of approximately 0.57 cents per metric ton.

To minimize the impact of a fee increase, GIPSA proposed supervision

fee rates that would collect sufficient revenue over time to cover operating expenses, while striving to create a 3-month operating reserve by FY 2014. The cost of living projections used in calculating future salary, benefits, and all other non-salary expenses out to FY 2014 were supplied by the Office of Management and Budget (OMB) as set forth in their **Federal Register** publication (69 FR 26900) on May 14, 2004. In projecting revenue to FY 2014, GIPSA used a 5 year average of the total tons inspected and/or weighed by official agencies. GIPSA will evaluate the financial status of the supervision of the grain inspection and weighing program on a continuous basis to determine if it is meeting the goal of obtaining a 3-month operating reserve by FY 2014, and to determine if other adjustments are necessary.

GIPSA proposed to gradually replenish the reserve rather than sharply increase supervision fees in the short term to immediately replenish the retained earnings. GIPSA proposed a change in the supervision fees and a change in the methodology for assessing supervision fees to official agencies. Section 800.71 of the regulations provides that the fees shown in Schedule C apply to official inspection and weighing services performed by delegated States and designated agencies in the United States, except for those State agencies that are delegated additional responsibilities by GIPSA. These States are assessed annual charges as noted in the State's Delegation of Authority document. GIPSA has a long-standing agreement with the State of Washington whereby the State pays GIPSA for direct local costs along with their portion of the national administrative costs. The financial data and information used to develop the fees for Schedule C did not include the costs and tonnage associated with the State of Washington since the State is charged for their direct local costs and their share of the national administrative costs as established by the agreement.

GIPSA projected that the new fees should be implemented no later than FY 2007 and projected costs to FY 2014 to develop the new fees for Schedule C. GIPSA projections are based on an average total inspection and weighing tonnage of 170 million metric tons per year.

GIPSA determined that if the new fees are implemented by FY 2007 and the goal is to replenish the retained earnings and 3-month operating reserve by FY 2014, then GIPSA will need to collect approximately \$1.9 million per year from FY 2007 through FY 2014 to

achieve this goal. GIPSA concluded that a 1.1 cents per metric ton fee would generate approximately \$1.9 million per year based on an average annual service volume of 170 million metric tons. This new fee would generate sufficient funds to rebuild the retained earnings to its desired 3-month level by FY 2014. GIPSA will continue to monitor and evaluate the program to ensure the goal is achieved.

GIPSA also proposed to change the method to assess supervision fees to the official agencies. GIPSA has historically charged supervision fees based on the type of carrier serviced and further charged supervision fees based on the kinds and levels of services received. GIPSA proposed to charge the 1.1 cents per metric ton supervision fees based on the total tonnage of grain officially inspected and/or weighed by official agencies. GIPSA proposed to utilize a standard metric ton conversion rate for submitted samples and specific carriers serviced in order to calculate and assess the supervision fees to the official agencies. The following table illustrates the standard metric ton conversion rate that GIPSA will use to assess the total tons serviced by the official agencies.

| Carrier/service | Estimated metric tons |
|-------------------------------|-----------------------|
| Truck | 19.39 |
| Submitted Sample | 19.39 |
| Container | 20.04 |
| Railcar | 103.42 |
| Midwest Barge | 1,292.74 |
| Pacific Northwest Barge | 2,267.96 |

GIPSA determined that ships will be assessed the 1.1 cents per metric ton supervision fee based on the actual certified weight for the ship.

The change in supervision fees would increase the average current fee rate by approximately 0.3 cent per metric ton. This additional increase should minimally affect the amount an applicant (grain industry) pays for service.

Comment Review

GIPSA received comments in response to the proposed rulemaking published March 21, 2005, in the **Federal Register** (70 FR 13411). One comment indicated that GIPSA should streamline its operations and reduce staff before imposing a fee increase. As discussed earlier in this document, GIPSA recognizes the need to reduce inspection and weighing costs as much as possible before increasing fees and has taken action through the years to minimize costs. However, the fee adjustment is necessary to collect sufficient revenue to cover the current

and future costs of supervising the performance of official agencies. A second response did not respond to the proposed action. Consequently, GIPSA is implementing the fee changes as they were proposed.

Executive Orders 12866 and 12988

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the OMB. 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 Sec. 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 rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act and Government Paperwork Elimination Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements included in this rule has been approved by the OMB under control number 0580-0013.

GIPSA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Regulatory Flexibility Act Certification

GIPSA has determined that this rule does 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 the majority of applicants (grain industry) that apply for these official services, and are subjected to GIPSA supervision fees, do not meet the requirements for small entities. This rule will affect entities engaged in shipping grain to and from points within the United States and exporting grain from the United States. GIPSA estimates there are approximately 9,500 off-farm storage facilities and 18 export elevators in the United States that could receive services from delegated States or designated agencies. Official services are available from 7 delegated States and 49 designated agencies. For

clarification, any and all grain that is exported from the U.S. export port locations must, as required by the USGSA, be inspected and/or weighed. These services are either performed by GIPSA or delegated States. Further, some grain exported from interior locations may also require inspection and/or weighing services unless the services are waived as provided in section 800.18 of the regulations. These services are provided by designated agencies. The USGSA does not require inspection or weighing services for grain marketed within the U.S. Consequently, these services are permissive and may be performed by official agencies. The USGSA (7 U.S.C. 71 *et seq.*) authorizes GIPSA to provide supervision of 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.

GIPSA realizes that any increase in supervision fees will be charged by official agencies to the users (grain industry) of the official grain inspection and weighing system.

Although, the overall effect of this rule will be passed on to the users of official grain inspection and weighing services, mostly large corporations, David R. Shipman, Acting Administrator, GIPSA, has determined that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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. In § 800.71, paragraph(a), Schedule C is amended by removing Tables 1 and 2 and adding introductory text in their place to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

SCHEDULE C—FEES FOR FGIS SUPERVISION OF OFFICIAL INSPECTION AND WEIGHING SERVICES PERFORMED BY DELEGATED STATES AND/OR

DESIGNATED AGENCIES IN THE UNITED STATES.

The supervision fee is charged at \$0.011 per metric ton inspected and/or weighed.

* * * * *

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 05-16952 Filed 8-25-05; 8:45 am]

BILLING CODE 3410-EN-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV05-984-1 IFR]

Walnuts Grown in California; Suspension of Provision Regarding Eligibility of Walnut Marketing Board Members

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends a provision of the walnut marketing order (order) pertaining to eligibility of members to serve on the Walnut Marketing Board (Board). The order regulates the handling of walnuts grown in California, and the Board is responsible for local administration of the order. This action is an interim measure to address a change in industry structure affecting cooperative marketing association related positions. This will allow the Board to continue to represent the industry's interests while the order is amended to reflect the change in industry structure. The Board unanimously recommended a suspension action by mail balloting in early July, 2005.

DATES: Effective August 29, 2005; comments received by October 25, 2005 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposal to: Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, E-mail: moab.docketclerk@usda.gov, or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during