

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

Federal Crop Insurance Corporation

7 CFR Parts 435 and 457

Tobacco (Quota Plan) Crop Insurance Regulations; and Common Crop Insurance Regulations; Quota Tobacco Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of quota tobacco. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current tobacco (quota plan) crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current tobacco (quota plan) crop insurance regulation to the 1997 and prior crop years.

EFFECTIVE DATES: Written comments and opinions on this proposed rule will be accepted until close of business June 12, 1997 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Insurance Management Specialist, Research and Development Division, Product Development Branch, FCIC, at the Kansas City, MO, address listed above, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget has determined this rule to be exempt for the purposes of Executive Order No. 12866 and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

The amendments set forth in this proposed rule do not contain additional information collections that require clearance by OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is "Multiple Peril Crop Insurance." The information to be collected includes a crop insurance application and acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of quota tobacco that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

FCIC is requesting comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the

Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured must also annually certify to the previous years production if adequate records are available to support the certification. The producer must maintain the

production records to support the certified information for at least three years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This proposed rule has been reviewed in accordance with Executive Order No. 12988. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.156, Quota Tobacco Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring quota tobacco

found at 7 CFR part 435 Tobacco (Quota Plan). FCIC also proposes to amend 7 CFR part 435 to limit its effect to the 1997 and prior crop years. FCIC also proposes to amend 7 CFR part 435 to limit its effect to the 1997 and prior crop years.

This rule makes minor editorial and format changes to improve the Tobacco (Quota Plan) Crop Insurance Regulation's compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring quota tobacco as follows:

1. The Late Planting Agreement Option (LPAO) has been discontinued because the final planting date is late enough to allow anyone with tobacco plants to timely transplant them and the reduction in guarantee under the LPAO is not sufficient to cover the increased risks of a shorter growing season.

2. Section 1—Add definitions for terms "adequate stand," "amount of insurance," "approved yield," "days," "discount variety," "FSA," "fair market value," "final planting date," "good farming practices," "insured poundage quota," "irrigated practice," "planted acreage," "pound," "practical to replant," "production guarantee," "replanting," "tobacco bed," "USDA," and "written agreement" for clarification. The definition of "harvest" was revised to remove the requirement that 20 percent of the production guarantee per acre for the unit of the tobacco had to be cut per acre from the unit in order for the unit to be considered harvested. Since the harvest incentive of 35 percent of the guarantee has been deleted, this provision is no longer necessary. Added the definition of "hydroponic plants" to identify seedlings grown in a liquid nutrient solution.

3. Section 3—Delete the six cents per pound warehouse charge deduction for the purpose of determining the amount of insurance. This provides the producer the full value of the tobacco sold without the warehouse charge. It also allows the use of gross sales to establish the value of production to count without the warehouse charge deduction. Allow the use of actual production history to determine the approved yield for insurance purposes. The most accurate determination of the yield for the unit uses insured's records of production.

4. Section 4—Change the contract date from December 31 to November 30 in order to maintain an adequate time period between this date and the earliest cancellation date.

5. Section 5—Change the cancellation and termination dates from April 15 to

March 15. This conforms to a statutory change that moved spring planted crop sales closing dates 30 days earlier.

6. Section 6(a)—Clarify that insurance coverage will only apply to the effective poundage marketing quota as defined in these regulations.

7. Section 6(b)(c)—Require that a copy of any written lease agreement between the landlord and tenant be provided to the insurance provider. This will allow the farm's effective poundage marketing quota to be distributed between two or more insureds based on a written lease agreement between the landlord and the insured. This provision was added because the present method of distributing the farm's effective marketing quota between two or more insureds does not provide equitable treatment for all insureds.

8. Section 8(d)—Clarify that any acreage damaged prior to the final planting date must be replanted unless replanting is not practical.

9. Section 10(c)(d)—Clarify that insects and plant disease are insurable causes of loss, but they are not insurable causes of loss if damage was due to insufficient or improper application of pest or disease control measures.

10. Section 12(g)—Add a provision for a requirement that once the insurance provider agrees that any current year's or carryover tobacco has no market value, the insured must destroy it. This provision eliminates the adjustment of next year's quota when the crop is still saleable at the time of the loss. It also eliminates the opportunity to falsely report carryover and current year's tobacco as of no value to increase indemnity payments. This provision is consistent with FSA's requirement that tobacco having no value must be destroyed.

11. Section 13—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover the procedures for and duration of written agreements.

List of Subjects in 7 CFR Parts 435 and 457

Crop insurance, Quota tobacco, Tobacco (quota plan) crop insurance regulations. Proposed Rule

Accordingly, for reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 435 and 457, as follows:

PART 435—TOBACCO (QUOTA PLAN) CROP INSURANCE REGULATIONS FOR THE 1985 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 435 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. The part heading is revised to read as set forth above.

3. The subpart heading "Subpart—Regulations for the 1985 through 1997 Crop Years" is removed.

4. Section 435.7 is amended by revising the introductory text of paragraph (d) to read as follows:

* * * * *

(d) The application for the 1985 and subsequent crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Tobacco (Quota Plan) Insurance Policy for the 1985 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

4. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

5. Section 457.156 is added to read as follows:

§ 457.156 Quota tobacco crop insurance provisions.

The Quota Tobacco Crop Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Quota Tobacco Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these Crop Provisions, and the Special Provisions; the Special Provisions will control these Crop Provisions and the Basic Provisions; and these Crop Provisions will control the Basic Provisions.

1. Definitions

Amount of insurance. The dollar amount determined by multiplying the insured poundage quota by the current year's support price.

Approved yield. The yield calculated in accordance with 7 CFR part 400, subpart G.

Carryover tobacco. Any tobacco produced on the FSA Farm Serial Number in previous years that remained unsold at the end of the most recent marketing year.

County. In lieu of the provisions of section 1 (Definitions) of the Basic Provisions (§ 457.8), county is defined as the county or other political subdivision of a state shown on your accepted application including any land identified by an FSA Farm Serial Number for such county but physically located in another county.

Days. Calendar days.

Discount variety. Tobacco defined as such under the provisions of the United States Department of Agriculture tobacco price support program.

Effective poundage marketing quota. The farm marketing quota as established and recorded by the FSA office for the county plus any additional poundage you intend to produce for each unit in that crop year, minus the amount of any carryover tobacco.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Fair market value. The current year's tobacco growing season average price for the applicable type of tobacco obtained from the sale of the tobacco through market other than an auction warehouse.

Farm yield. The yield per acre used by FSA to establish the effective poundage marketing quota for a FSA Farm Serial Number, unless we have established a yield for that FSA Farm Serial Number in the actuarial table.

Final planting date. The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the amount of insurance, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. Cutting and removing all insured tobacco from the field in which it was grown.

Hydroponic plants. Seedlings grown in liquid nutrient solutions.

Insured poundage quota. The lesser of:

(1) the product (in pounds) obtained by multiplying the effective poundage marketing quota for the FSA Farm Serial Number by your selected coverage level; or

(2) the farm yield or approved yield, as applicable multiplied by the insured acres and by your selected coverage level.

Market price. The previous years' season average price published by National Agricultural Statistics Service for the applicable type of tobacco in the area.

Marketing year. The marketing year published by National Agricultural Statistics Service for the applicable type of tobacco in the area.

Planted acreage. Land in which tobacco seedlings, including hydroponic plants, have been transplanted by hand or machine from the tobacco bed to the field.

Pound. Sixteen ounces avoirdupois.

Practical to replant. In lieu of the definition of "Practical to replant" contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the

insured crop, based on factors, including but not limited to moisture availability, condition of the field, time to crop maturity, and marketing window, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the final planting date.

Replanting. Performing the cultural practices necessary to replace the tobacco plant, and then replacing the tobacco plant in the insured acreage with the expectation of growing a successful crop.

Support price. The average price per pound for the type of tobacco as announced by the USDA under its tobacco price support program.

Tobacco bed. An area protected from adverse weather, in which tobacco seeds are sown and seedlings are grown until transplanted into the tobacco field by hand or machine.

Unit. In lieu of the provision of section 1 (Definition) of the Basic Provisions (§ 457.8), a unit is all insurable acreage of an insurable type of tobacco in the county in which you have an insured share on the date of planting for the crop year and which is identified by a single FSA Farm Serial Number at the time insurance first attaches under these provisions for the crop year.

USDA. United States Department of Agriculture.

Written agreement. A written document that alters designated terms of this policy in accordance with section 13.

2. Unit Division

A unit will be determined in accordance with the definition of unit contained in section 1 of these Crop Provisions and may not be subdivided on any basis, unless specified by the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In lieu of section 3(c) (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you will only be required to file an annual production report to us if required by the Special Provisions to establish an approved yield in lieu of the farm yield or yield shown by us on the actuarial table. If required by the Special Provisions, you must file an annual production report in accordance with section 3(c) (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Common Crop Insurance Policy (§ 457.8).

4. Contract Changes.

In accordance with section 4 (Contract Changes) in the Basic Provisions (§ 457.8), the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are March 15.

6. Report of Acreage

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8):

(a) You must report the effective poundage marketing quota, any additional poundage that you intend to produce for each unit in the crop year, and the quantity of carryover tobacco on hand at the time the acreage report is submitted. Once submitted, you may not revise the acreage report.

(b) You must provide a copy of any written lease agreement between you and any landlord or tenant showing the amount of the effective poundage marketing quota allocated to you. The total amount of the effective poundage marketing quota allocated to all persons holding a share may not differ from the effective poundage marketing quota designation made to FSA. The written lease agreement must:

(1) Identify all other persons sharing in the effective poundage marketing quota; and
(2) Be submitted to your local office by the acreage reporting date.

(c) In the event of a loss, if the written lease agreement has been submitted timely, we will distribute the effective poundage marketing quota in accordance with the terms of the written lease agreement. If the written lease agreement is not submitted timely, we will prorate the effective poundage marketing quota across the FSA Farm Serial Number to all insured and uninsured persons based on planted acres within the FSA Farm Serial Number.

7. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be one or more of tobacco types designated in the Special Provisions, in which you have a share, that you elect to insure, and for which a premium rate is provided by the actuarial table.

(b) The effective poundage marketing quota may not include any tobacco that would be subject to a marketing quota penalty under USDA Tobacco Marketing Quota Regulations.

(c) Unless otherwise provided by the actuarial table, for any crop year in which USDA does not promulgate Tobacco Marketing Quota Regulations, the effective poundage marketing quota will be the pounds obtained by multiplying the applicable approved yield per acre by the lower of the reported or insured acreage on the unit.

8. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), we will not insure any acreage:

(a) Planted to a discount variety;
(b) Planted to a tobacco type for which no premium rate is provided by the actuarial table;

(c) Planted in any manner other than as provided in the definition of "planted acreage" in section 1 of these Crop Provisions (Such acreage is not insurable unless otherwise provided by the Special Provisions or by written agreement); or

(d) Damaged before the final planting date to the extent that the majority of producers in the area would normally not further care for the crop, unless such crop is replanted or we agree that replanting is not practical.

9. Insurance Period

In accordance with the provisions of section 11 (Insurance Period) of the Basic

Provisions (§ 457.8), insurance ceases the earliest of:

- (a) Destruction of the tobacco;
- (b) Weighing-in at the tobacco warehouse;
- (c) Removal of the tobacco from the field where grown except for curing, grading, packing, or immediate delivery to the tobacco warehouse; or
- (d) The February 28 immediately following the normal harvest period.

10. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

- (a) Adverse weather conditions;
- (b) Fire;
- (c) Insects, but not damage due to insufficient or improper application of pest control measures;
- (d) Plant disease, but not damage due to insufficient or improper application of disease control measures;
- (e) Wildlife;
- (f) Earthquake;
- (g) Volcanic eruption; or
- (h) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period.

11. Duties In The Event of Damage or Loss

In accordance with the requirements of section 14 (Duties In The Event of Damage or Loss) of the Basic Provisions (§ 457.8), any representative samples we may require of each unharvested tobacco type must be at least 5 feet wide and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

- (1) Multiplying the insured poundage quota by the current year's support price;
- (2) Subtracting the value of the total production to be counted in (see section 12(c)) from the amount of insurance in section 12(b)(1); and
- (3) Multiplying the result in section 12(b)(2) by your share;
- (c) The value of the total production to count (pounds of production that is appraised or harvested multiplied by the applicable price) for all insurable acreage on the unit will include:

- (1) All appraised production as follows:
 - (i) Not less than the amount of insurance per insured acre for the unit for any acreage:
 - (A) That is abandoned;
 - (B) Put to another use without our consent;
 - (C) That is damaged solely by uninsured causes; or
 - (D) For which you fail to provide acceptable production records;
 - (ii) Production lost due to uninsured causes;

(iii) Potential production on unharvested insured acreage that you intend to put to another use with our consent, if you and we agree on the appraised amount of production multiplied by the current year's support price. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may consent to allow you to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals multiplied by the current year's support price from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count multiplied by the current year's support price); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal multiplied by the current year's support price if additional damage occurs and the crop is not harvested;

(iv) If a current year's support price is not in effect, appraised production will be valued at the market price;

(2) All harvested production from insurable acreage multiplied by:

- (i) Gross sale receipts for the tobacco sold on a warehouse floor;
- (ii) Fair market value for tobacco sold other than on the warehouse floor; and
- (iii) Fair market value for tobacco not sold.
- (d) Mature tobacco production that is damaged by insurable causes will be adjusted for quality, based on the USDA Official Standard Grades, Burley Tobacco, U.S. Type 31, and will receive a price based on the following:

- (1) Gross sale receipts for the tobacco sold on a warehouse floor;
- (2) Fair market value for tobacco sold other than on the warehouse floor; and
- (3) Fair market value for tobacco not sold.
- (e) Production that is damaged by uninsured causes will not be adjusted for quality, but will receive a price based on the current year's support price.

(f) To enable us to determine the fair market value of tobacco not sold through auction warehouses, you must give us the opportunity to inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed; failure to provide us the opportunity to inspect such tobacco may result in rejection of any claim for indemnity.

(g) If we consider the best offer you receive for such tobacco to be inadequate, we may obtain additional offers on your behalf.

(h) Once we agree that any carryover or current year's tobacco has no market value due to insured causes, you must destroy it. If you refuse to destroy the tobacco with no value, we will determine the value and count it as production to count.

13. Written Agreements

Terms of this policy which are specifically designated for the use of written agreements may be altered by written agreement in accordance with the following:

- (a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 13(e);
- (b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;
- (c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;
- (d) Each written agreement will only be valid for one year (if the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and
- (e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on May 7, 1997.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance
Corporation.

[FR Doc. 97-12436 Filed 5-12-97; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580-AA52

Fees for Official Inspection and Official Weighing Services

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

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing an approximate 3 percent increase in certain of its service fees for official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. The proposed increase covers hourly rates and certain unit rates on tests performed at other than an applicant's facility. The proposed increase is designed to generate additional revenue required to recover operational costs created by

mandated cost-of-living increases to Federal salaries in fiscal year 1997.

DATE: Written comments must be submitted on or before May 28, 1997.

ADDRESSES: Written comments must be submitted to George Wollam, USDA, GIPSA, ART, Stop 3649, Washington, D.C. 20250-3649, or FAX them to (202) 720-4628. All comments received will be made available for public inspection during regular business hours in Room 0623, South Building, USDA, 1400 Independence Avenue, SW, Washington, D.C. 20250-3649 (7 CFR 1.27 (b)). Comments may also be sent by electronic mail or Internet to: gwollam@fgis.usda.gov.

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

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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in § 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed 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 proposed rule.

Effects on Small Entities

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.*). 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 proposed fee revision is primarily applicable 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. Some users of the service who request non-mandatory official inspection and weighing services at other than export locations could be considered small entities. However, this fee increase merely reflects the cost-of-living increases in Federal salaries for hourly and certain unit fees. The approximate 3-percent proposed increase in fees would not have a significant impact on either small or large entities. Additional revenue estimated for fiscal year 1997 are projected to be \$218,100 for a total of \$22.218 million in revenue projected for fiscal year 1997.

Information Collection and Recordkeeping Requirements

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

Background

The USGSA requires FGIS 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.

The proposed approximate 3-percent increase in fees is designed to generate additional revenue required to recover operational costs created by mandated cost-of-living increases to Federal salaries for GIPSA employees in fiscal year 1997. The average salary increase for GIPSA employees in fiscal year 1997 is approximately 3 percent. The proposed action is being taken immediately to increase fiscal year 1997 revenue to cover, in part, projected fiscal year 1997 operational costs.

The current USGSA fees and were published in the **Federal Register** on August 22, 1996 (61 FR 43301), and became effective on October 1, 1996. They will appear in the 1997 edition of 7 CFR 800.71, Schedule A, Fees for Official Inspection and Weighing Services Performed in the United States. The current fee schedule is projected to