

final rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this final rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

Background

On February 28, 2003, GIPSA proposed in the **Federal Register** (68 FR 9589) to increase fees for official inspection and weighing services performed under the USGSA (7 U.S.C. 71 *et seq.*) by approximately 4.1 percent. The USGSA authorizes GIPSA to provide 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. The current USGSA fees were published in the **Federal Register** on March 21, 2002 (67 FR 13084), and became effective on April 22, 2002.

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. GIPSA has and will

continue to seek out cost-saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Retained earnings balances are adjusted to reflect prior year revenue and obligations realized in the year reported. In FY 2000, GIPSA's operating costs were \$24,146,428 with revenue of \$23,150,188 that resulted in a negative margin of \$996,240 and a negative reserve balance of \$938,147. In FY 2001, GIPSA's operating costs were \$25,670,126 with revenue of \$23,977,240 that resulted in a negative margin of \$1,692,886 and a negative reserve balance of \$2,572,080. In FY 2002, GIPSA's operating costs were \$25,898,341 with revenue of \$25,317,296 that resulted in a negative margin of \$581,045 and a negative reserve balance of \$3,339,097. The current reserve negative balance of \$3,339,097 is well below the desired 3-month reserve of approximately \$6 million. Employee salaries and benefits are major program costs that account for

approximately 84 percent of GIPSA's total operating budget. The salary increase that became effective in January 2003 averages 4.1 percent for GIPSA employees. Overall, program costs are estimated to increase by approximately \$685,000. GIPSA recognizes that retained earnings are well below the desired level and that this final action will not have a major impact on improving its financial position. As a result, GIPSA has been reviewing its overall fee structure. Changes that will address this structure will be considered in the near future and will be proposed as appropriate. GIPSA remains committed to providing the most cost-effective services possible to the grain industry while maintaining program quality and integrity.

GIPSA has reviewed the financial position of the inspection and weighing program based on the increased salary and benefit costs, along with the projected FY 2003 workload of 78 million metric tons. Based on the review, GIPSA has concluded that an approximate 4.1 percent salary increase will have to be recovered through increases in fees.

The current hourly fees are:

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime	Holidays
1-year contract .....	\$28.60	\$31.20	\$40.40	\$48.60
6-month contract .....	31.60	33.40	42.80	56.00
3-month contract .....	36.00	37.20	46.60	58.00
Noncontract .....	41.80	44.00	53.40	65.40

GIPSA has also identified certain unit fees, for services not performed at an applicant's facility, that contain direct labor costs and would require a fee increase. Further, GIPSA has identified those costs associated with salaries and benefits that are covered by the administrative metric tonnage fee. The 4.1 percent cost-of-living increase to salaries and benefits covered by the administrative tonnage fee results in an overall increase of an average of 4.1 percent to the administrative tonnage fee.

Comment Review

GIPSA received a comment from two grain trade associations in response to the proposed rulemaking published February 28, 2003, in the **Federal Register** at (68 FR 9589). The trade associations stated that they consist of 1,000 grain, feed, processing, and grain-related companies, 70 percent of which are small entities. The commentors did not support the proposed rule. A

summary of the comments and GIPSA's response is as follows:

The commentors opposed the fee increase and suggested that the Agency scale back the amount of the increase substantially; that the true cost of living has not increased nearly as much as the proposed fee increase nor is the proposed fee increase in line with the economic realities in the private sector. The commentors further stated that over the past few years, the Agency implemented a series of fee increases to recoup costs and stave off more significant difficulties. However, despite these infusions of cash, the Agency's financial condition continues to deteriorate. In addition, the fee increases have become problematic for many users, particularly those engaged in export trade. They urged GIPSA to develop a multi-year budget for the next three to five years that would forecast anticipated changes in agency fees for official services, based upon: (1) OMB's projected Federal personnel and non-

pay cost increases through 2008 as published in the March 14, 2003, **Federal Register**; (2) anticipated revenue to replenish each Trust Fund account, along with implemented cost controls, to achieve the Agency's stated objective of a three-month operating reserve in each account; and (3) projected changes in the method of assessing fees, *e.g.*, local, GIPSA specific, and national tonnage fees.

Finally, the commentors stated that the multi-year budget for the next three to five years should describe management efforts to control costs and improve operating efficiencies, along with a critical evaluation of each program funded by user fees to determine which should be continued, scaled back, or terminated.

GIPSA offers the following response: Federal pay increases represent a significant part of FGIS user fee costs. GIPSA, over the past several years, proposed and finalized fee increases, on an annual basis, to reflect the costs of