

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

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580-AA84

Fees for Processed Commodity Analytical Services

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

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), a program of the Grain Inspection, Packers and Stockyards Administration (GIPSA), is proposing to increase fees for the analytical testing of processed commodities and remove certain tests from the fee schedule for services that are no longer requested. These tests apply only to official processed commodity testing services performed under the Agricultural Marketing Act of 1946. These changes are needed to generate revenue sufficient to cover, as nearly as practicable, rising fixed costs and the 4.1 percent January 2003 Federal pay increase.

GIPSA anticipates that the increase in user fees will generate approximately \$135,000 in additional revenue.

DATES: Written comments must be filed before September 16, 2003.

ADDRESSES: Interested persons are invited to submit comments concerning this proposal. Written comments must be submitted to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647-S, Washington, DC 20250-3604, or faxed to (202) 690-2755. Comments may also be sent by e-mail to: H.Tess.Butler@usda.gov.

All comments received will be made available for public inspection in the above office during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Steven Tanner, Director, Technical Services Division, at his e-mail address:

Steven.N.Tanner@usda.gov or telephone him at (816) 891-0401.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, 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 Office of Management and Budget (OMB).

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, Donna Reifschneider, 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.*).

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. Additionally, GIPSA has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to new or increased fees. However, even with these efforts, GIPSA has determined that its existing fee schedule will not generate sufficient revenues to cover program costs for providing processed commodity testing services. Further revenue losses are projected if adjustments to the existing fee schedule are not made. In FY 2002, GIPSA's operating costs for the processed commodity testing program were \$233,707 with revenue of \$104,380 that resulted in a negative margin of \$129,327.

GIPSA has reviewed the financial position of the processed commodity testing program and concluded that \$135,000 in additional yearly revenue is needed to fully recover operating costs. This is based on projected program costs of approximately of \$240,000 a year and an estimated testing workload of approximately 1,700 samples per year. These changes are needed to generate revenue sufficient to cover, as nearly as practicable, operational costs resulting from a steep decline in requests for services and the associated loss of revenue and increased operational costs resulting from the mandated 4.1 percent January 2003 Federal pay increase. In Fiscal Year 1999, the number of samples tested was 16,377, with a revenue of \$1,475,579; in FY 2000, 12,872 samples

and \$1,212,215; in FY 2001, 3,620 samples and \$219,033 in revenue; in FY 2002, 1,755 samples and \$104,380 in revenue.

The proposed rule will increase the fees charged to businesses for voluntary processed commodity analytical services and generate approximately \$135,000 in additional revenue. Some of these businesses, which consist of processors and shippers of products such as wheat flour, vegetable oil, and corn meal, may meet the criteria for small entities established by the Small Business Administration criteria for small businesses. Even so, the new fees should not significantly affect those entities. It is estimated that there will be approximately nine entities effected. Further, those entities are under no obligation to use GIPSA services and, therefore, any decision on their part to discontinue the use of this service should not prevent them from marketing their products. Due to the decline in demand of the processed commodity analytical testing services, GIPSA will conduct another analysis of the demand for this program's services, including all costs and revenues generated specific to the program, one year after operating under the proposed fee increase.

There will be no additional reporting or record keeping requirements imposed by this action. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 35), the information collection and recordkeeping requirements in Part 868 have been previously approved by OMB under control number 0580-0012. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this rule.

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. This action will not preempt any State or local laws, regulations, or policies, unless they present an 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.

Proposed Action

The Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621, *et seq.*) authorizes GIPSA to provide official processed commodity testing services and to collect reasonable fees for