



**DEPARTMENT OF AGRICULTURE**

**Grain Inspection, Packers and Stockyards Administration**

**7 CFR Part 800**

**RIN: 0580-AB24**

**Reauthorization of the United States Grain Standards Act**

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

**ACTION:** Final Rule

**SUMMARY:** The Department of Agriculture (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is revising existing regulations and adding new regulations under the United States Grain Standards Act (USGSA), as amended, in order to comply with amendments to the USGSA made by the Agriculture Reauthorizations Act of 2015. Specifically, this rulemaking eliminates mandatory barge weighing, removes the discretion for emergency waivers of inspection and weighing, revises GIPSA's fee structure, revises exceptions to official agency geographic boundaries, extends the length of licenses and designations, and imposes new requirements for delegated States.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Barry Gomoll, 202-720-8286.

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## **SUPPLEMENTARY INFORMATION:**

### **Overview**

On September 30, 2015, President Obama signed into law the Agriculture Reauthorizations Act of 2015, Public Law 114-54 (The Reauthorization Act). In addition to extending certain provisions of the USGSA (7 U.S.C. 71-87k) to 2020, the Reauthorization Act also made several changes to the existing law. Therefore, GIPSA issued a proposed rule in the Federal Register to amend 7 CFR part 800 to comply with the amendments made by the Reauthorization Act and solicited comments from interested parties (81 FR 3970).

Specifically, GIPSA proposed to:

- remove the requirement to officially weigh inbound barge shipments at export port locations (§ 800.15 and § 800.216);
- approve requests for waivers of official inspection and weighing requirements for export grain in “emergencies or other circumstances that would not impair the objectives of the [USGSA] whenever the parties to a contract for such shipment mutually agree to the waiver and documentation of such agreement is provided to the Secretary prior to shipment” (§ 800.18);
- base the portion of fees assessed on tonnage on the 5-year rolling average of export tonnage volume (§ 800.71);
- adjust fees annually to maintain a 3 to 6 month operating reserve for inspection and supervision services (§ 800.71);
- remove the provision that allows applicants to request service from an official agency outside an assigned geographic region after 90 days of nonuse of service (§ 800.117);

- waive the geographic boundaries established for official agencies between two adjacent official agencies if both official agencies agree in writing to the waiver (§ 800.117);
- without changing current termination dates, terminate inspection licenses every 5 years instead of every 3 years (§ 800.175);
- require delegated States to notify GIPSA of any intent to temporarily discontinue official inspection or weighing services at least 72 hours in advance, except in the case of a major disaster (§ 800.195);
- review delegated states every 5 years and certify that they comply with the requirements for delegation under the USGSA (§ 800.195);
- require designated official agencies to respond to concerns identified during GIPSA's consultations with customers as part of the renewal of a designation (§ 800.196); and
- extend the minimum length of designation for official agencies from 3 years to 5 years (§ 800.196).

## **Fees**

GIPSA last made changes to its fee schedule on May 1, 2013 (78 FR 22151-66). At that time, GIPSA determined that the existing fee schedule for inspection and weighing services would not generate sufficient revenue to adequately cover program costs through fiscal year 2017. To correct this problem and to build an operating reserve, GIPSA increased fees by 5 percent in fiscal year 2013 and an additional 2 percent for each successive year through fiscal year 2017.

In addition, GIPSA restructured its tonnage fees to more accurately reflect the administrative and supervisory costs at the national and local level. In order to establish an

equitable tonnage fee for all export tonnage utilizing the official system, GIPSA began assessing the national tonnage fee on all export grain inspected and/or weighed (excluding land carrier shipments to Canada and Mexico) by delegated States and designated agencies. GIPSA also shifted workers compensation costs from the national to the local level to fully reflect where those workers compensation costs originated.

Prior to the Reauthorization Act, GIPSA used projected future tonnage volumes as a basis to calculate tonnage fees. The Reauthorization Act amended the USGSA to require that tonnage fees be based on the five-year rolling average of export tonnage volumes. In order to comply with this new tonnage fee requirement, GIPSA proposed to adjust both the national and local tonnage fees on a yearly basis. GIPSA proposed that the national tonnage fee would be the national program administrative costs (the costs of management and support of official inspection and weighing) for the previous fiscal year divided by the average export tonnage for the previous 5 fiscal years. Also, the local tonnage fees would be the Field Office administrative costs (the costs of management, support, and maintenance of each Field Office) for the previous fiscal year divided by the average tonnage serviced by that Field Office for the previous 5 fiscal years.

The Reauthorization Act further requires adjustment of all of GIPSA's fees for the performance, supervision, and administration of official inspection and weighing services at least annually to maintain a 3 to 6 month operating reserve. Given that the number of requests for official inspection and weighing services varies with the amount of grain produced and exported from year to year, an operating reserve allows funding of operations in periods during which revenue may not equal or exceed costs. In order to maintain an appropriate level of operating reserve, GIPSA proposed to increase or decrease inspection

and weighing fees when the operating reserve is less than 3 times or more than 6 times monthly operating expenses. For each \$1 million that the operating reserve is below 3 months or above 6 months of the operating expenses, GIPSA would increase or decrease fees by 2 percent, respectively. GIPSA also proposed to set a 5 percent limit on changes to fees for service per calendar year. GIPSA's annual user fee revenue for performance, supervision, and administration of official inspection and weighing is approximately \$40 million. Therefore, an increase or decrease of 2 to 5 percent would approximately equal between \$0.8 and \$2 million annually.

In addition to these annual reviews of fees, GIPSA will continue to evaluate the financial status of the official inspection and weighing services to ensure that the revenue for each service covers the cost to GIPSA of providing that service. Also, GIPSA will continue to seek out cost saving measures and implement appropriate changes to reduce costs and minimize the need for fee increases.

This action is authorized under the USGSA (7 U.S.C. 79(j)), which provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered, including associated administrative and supervisory costs. The tonnage fees cover the GIPSA administrative and supervisory costs for the performance of GIPSA's official inspection and weighing services; including personnel compensation and benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

### **Exceptions to Geographic Boundaries**

The Reauthorization Act requires changes to GIPSA's exception program for official agencies to operate outside of their geographically assigned areas. Prior to the Reauthorization Act, the regulations provided for three types of exceptions: timely service,

nonuse of service for 90 consecutive days, and barge probe inspections. The Reauthorization Act amended the USGSA to eliminate the nonuse of service exception and add a provision for geographically adjacent agencies to provide service in each other's assigned geographic territories at an applicant's request if both agencies agree in writing. GIPSA proposed to revise the current regulations to comply with the changes to the USGSA by the Reauthorization Act.

GIPSA currently has 95 agreements for agencies to operate outside of their assigned territories and GIPSA will continue to honor those agreements. Under GIPSA's proposed rule, an agency would be permitted to provide service at a location in another adjacent agency's territory, provided that both agencies and the applicant for service submit an agreement in writing to GIPSA.

### **Delegations**

As required by the Reauthorization Act, GIPSA proposed to impose new requirements on State agencies that GIPSA delegates to perform export inspection and weighing services at export port locations under the USGSA. The Reauthorization Act requires the Secretary to certify that State agencies continue to meet statutory requirements. Accordingly, GIPSA will review each delegated state every 5 years to determine that it meets the criteria for delegation set forth in the USGSA. GIPSA proposed to implement a process mirroring the existing process that GIPSA uses to renew the designations of official agencies. The Reauthorization Act also requires that a delegated State must notify GIPSA in writing of any intent to discontinue providing official service at least 72 hours prior to discontinuation. GIPSA proposed to add this requirement to the section of the regulations concerning responsibilities of delegated States (7 CFR 800.195(f)).

## **Emergency waivers**

The Reauthorization Act amended the USGSA (7 U.S.C 77(a)(1)) to state, “The Secretary shall waive the foregoing requirement [that all grain exported from the U.S. be officially inspected and weighed] in emergency or other circumstances that would not impair the objectives of this chapter whenever the parties to a contract for such shipment mutually agree to the waiver and documentation of such agreement is provided to the Secretary prior to shipment.” This change to the USGSA substituted the word “shall” in place of the former word “may,” indicating that GIPSA no longer has discretion to approve waivers of official inspection and weighing requirements in emergencies. For this reason, GIPSA determined that it is important to clarify what constitutes an emergency.

In the proposed rule, GIPSA proposed to define the term “emergency” in 7 CFR 800.00 as “a situation outside the control of the Service or a delegated State that prevents prompt issuance of certificates in accordance with § 800.160(c).” The proposed rule linked the definition of “emergency” to the timely issuance of certificates. Upon further reflection, linking waivers to certification does not cover situations where no service is provided. Certificates would never be issued in circumstances where no official inspection or weighing occurs. Accordingly, GIPSA is revising the definition of “emergency” from the proposed rule to more closely tie emergency situations to the ability of GIPSA or a delegated State to provide official services in a timely manner when requested. The issuance of certificates, as described in 7 CFR 800.160(c), provides that a certificate must be issued by the close of business on the next business day after inspection or weighting. The proposed regulation incorporated that time period. Currently, 7 CFR 800.18(b)(6) provides a 24-hour period for granting a waiver for circumstances in which service is not available. Because GIPSA is no

longer linking emergency waivers with only the issuance of certificates in 800.160(c), GIPSA has decided to set the determination for emergency waivers based on this same time frame as 800.18(b)(6).

Timely service delivery ensures that GIPSA will continue to facilitate the marketing of cereals and oilseeds and issue certificates in accordance with the regulations. To that end, the emergency waiver provisions provide a mechanism for grain shipments to continue in a situation that prevents service delivery within 24 hours of the scheduled service time.

### **Comment Review**

GIPSA received nine comments in response to the proposed rule published January 25, 2016, in the Federal Register (81 FR 3970). One comment was a request for extension of the comment period, which GIPSA granted on February 24, 2016 (81 FR 9122). Two grain industry associations submitted a joint comment, which was supported by an additional submission from several other grain industry associations. Other comments were submitted by an association of official inspection agencies, a farm organization, a grain elevator operator, and two private individuals, one of whom submitted two separate comments. Two of the eight comments concerned quinoa and rice standards, commodities which are not covered under the USGSA and this rulemaking. All comments were supportive of the proposed rule, with some suggested changes to the proposed regulations. Suggestions are addressed below in the order they appear in the regulations.

#### *Emergency Waivers (7 CFR 800.0 and 18)*

Several commenters suggested changes to GIPSA's proposed definition of the term "emergency." The grain industry associations suggested that GIPSA remove the terms "outside of the control of the Service or a delegated State" from the definition. They felt this

would allow GIPSA to use excuses to avoid issuing emergency waivers. The farm organization commented that waivers of official inspection and weighing, even in emergency situations, could impair the objectives of the USGSA. They suggested that GIPSA define “emergency,” as narrowly as possible.

GIPSA notes that the intent of Congress in changing the language of the USGSA is to remove the Secretary’s discretionary authority to deny emergency waivers. But, GIPSA does not agree with the industry associations’ comment that GIPSA does not have the authority to define the term through the rulemaking process. Without a concrete definition, what constitutes an emergency is ambiguous and requires clarification.

For example, the industry associations’ suggestion that any situation that prevents service should constitute an emergency is far too broad. This suggestion makes possible “emergency” situations in cases where the applicant or other interested party could have otherwise taken steps to allow official inspection or weighing to occur. GIPSA does agree, however, with the industry associations’ comment that whether the situation is under the control of GIPSA should not matter for determining an emergency. But, GIPSA also agrees with the farm organization’s comment that excessive waivers could impair the USGSA as they allow grain to be exported from the U.S. without official inspection or weighing.

Therefore, GIPSA finds it important to define “emergency” in the regulations to prevent future confusion over what does and does not constitute an emergency. GIPSA is adopting a definition of “emergency” to describe situations outside of the control of the applicant for service, as defined in the regulations. Under this definition, applicants would still be responsible for complying with the requirements for obtaining official service listed in 7 CFR 800.46.

*Waivers for Other Circumstances (7 CFR 800.18)*

The industry associations and farm organization both addressed the issuance of waivers in circumstances other than emergencies. The industry associations point out that the language of the USGSA provides for mandatory waivers in instances other than emergencies for “other circumstances that would not impair the objectives of the USGSA when the buyer and seller agree to waive official inspection and weighing requirements.” The associations requested that GIPSA revise the language in 7 CFR 800.18(b)(7)(A) and (B) to be inclusive of this. The associations contend that waivers must be granted regardless of whether an “emergency” exists. The farm organization maintains that by allowing grain to ship without certification of quality or quantity, waivers impair the objectives of the USGSA and should not be granted in non-emergency situations

7 CFR 800.18 provides for two categories of waivers: 1) emergency and 2) other circumstances that do not impair the objectives of the USGSA. The Reauthorization Act removed GIPSA’s discretionary authority to approve such waivers but added to the second category the condition that the parties to a contract must mutually agree to the waiver and provide documentation to GIPSA. The proposed rule incorporated portions of this language in 7 CFR 800.18, but review of the comments showed that this interpretation would be misconstrued to connect “emergency waivers” with the “other circumstances” waivers.

In the Congressional findings and declaration of policy (7 U.S.C. 74), the objectives of the USGSA include “that grain may be marketed in an orderly and timely manner and that trading in grain may be facilitated” and “that the primary objective of the official United States standards for grain is to certify the quality of grain as accurately as practicable.”

GIPSA already provides for waivers in “other circumstances that would not impair objectives of [the USGSA]” in 7 CFR 800.18. GIPSA provides waivers for: elevators that ship fewer than 15,000 metric tons in a calendar year, grain exported for seeding purposes, grain shipped in bond, grain exported by rail or truck to Canada or Mexico, grain not sold by grade (7 U.S.C. 77 provides for this specific category of waiver), service not available, and high quality specialty grain shipped in containers. GIPSA has determined that these circumstances, as described in the regulations, do not impair the objectives of the USGSA and that granting them helps facilitate the marketing of U.S. grain. GIPSA has historically used the notice-and-comment process of the Federal Register to determine which circumstances do not impair the objectives of the USGSA. Soliciting public opinion is the best method for determining other classes of waivers that do not impair the objectives of the USGSA. GIPSA agrees with the farm organization that waivers run counter to the objective of certifying grain as accurately as practicable and that excessive waivers would lead to a loss of confidence in U.S. exports. Provided that parties reach mutual agreement and provide notice to GIPSA, the amended USGSA requires GIPSA to consider what other circumstances for waivers would not impair the objectives of the USGSA. Additional general regulation is not required. For these reasons, GIPSA is omitting the proposed sections 800.118(b)(7)(B) & (C) from the final rule and is not adding a new blanket category of waivers for situations in which the buyer and seller agree to waive official inspection or Class X weighing.

*Fees for Official Inspection and Weighing (7 CFR 800.71)*

The grain industry associations recommend that GIPSA use the midpoint of the 3 to 6 month reserve figure as the determination of when fees are to be adjusted. They suggest that fees should be raised or lowered based on whether they exceed or fall below 4.5 months

reserve. They agreed with GIPSA's proposal of 2 percent increase per \$1 million above or below the target amount, though they disagreed with GIPSA's proposal of a 5 percent limit per year on increases or decreases and suggested there be no limit.

GIPSA agrees with the recommendation of setting the trigger for adjusting fees at the midpoint of 4.5 months reserve. This target should better help GIPSA to maintain a 3 to 6 month operating reserve. GIPSA disagrees with the grain industry associations' suggestion that there be no limit. GIPSA believes that a yearly limit on fee increases and decreases is necessary to provide a more stable fee structure from year to year, which affects all sectors of the industry. While a large decrease would likely be welcomed by producers, marketers, and consumers, GIPSA believes that the possibility of a large increase in future years would be untenable to these same groups. In the April 15, 2013, fee rule (78 FR 22151), GIPSA increased fees by 5 percent in the first year and by 2 percent in each ensuing year, in order to minimize the impact of a large increase. GIPSA feels that the annual 5 percent cap follows this precedent of minimizing the impact of large fee changes. Moreover, if the monthly operating reserve falls outside the 3 to 6 month reserve by an amount that cannot be adjusted by the automatic corrections established in this regulation, then GIPSA will reconsider the fees through additional rulemaking.

The grain industry associations recommended that GIPSA suspend the fee for supervision of official agency inspection and weighing, which GIPSA has done with a notice in the June 28, 2016, edition of the Federal Register (81 FR 41790). Their recommendations for changes to fees for rice and commodity inspections fall outside the scope of this rulemaking.

The grain industry associations recommended that GIPSA perform annual reviews of all fees in Schedule A of 7 CFR 800.71 in order to keep them in balance with each other. GIPSA

currently conducts such a review approximately every five years. GIPSA proposed adding language to the regulations declaring its intent to continue periodic reviews. These reviews are intended to ensure that the fees for service are closely aligned with GIPSA's costs to provide these services. These reviews, along with departmental approval, comment solicitation, and comment review are often lengthy and costly processes. Because the automatic increases and decreases of all fees should maintain a 3 to 6 month operating reserve, GIPSA believes a complete review of fees every year would impose unnecessary time and money costs that would exceed any potential gain to stakeholders.

The grain industry associations recommended that GIPSA perform an annual review of expenses and work to bring those expenses down. They also mentioned that GIPSA should publish financial data for the preceding fiscal year by the beginning of the ensuing calendar year.

GIPSA is aware that the export grain industry is highly competitive and operates on slim margins. Accordingly, GIPSA takes measures to reduce costs whenever possible. In the recent past, GIPSA reduced cost by taking advantage of employee attrition to not fill positions after retirement, using intermittent and seasonal employees in export offices, and using alternative work schedules in order to reduce employee overtime hours. GIPSA publishes extensive financial data in its annual report to Congress. Additionally, GIPSA has made and will continue to make financial information available on its public website prior to the release of the annual report to Congress.

*Geographic Boundary Exceptions (7 CFR 800.117)*

The commenter representing an official inspection agency association recommended that GIPSA change the proposed language in 7 CFR 800.117(b)(3) to reflect the intent of

Congress to remove GIPSA's discretion to approve waivers of official agency boundaries based on signed agreements. They acknowledge that GIPSA must still be notified of such agreements and review the agreements for compliance with the USGSA. Another commenter expressed support for allowing such agreements between adjacent official agencies. Since the Reauthorization Act amended the USGSA to read that "the Secretary shall allow a designated official agency to cross boundary lines" if certain provisions are met (7 U.S.C. 79(f)(2)), GIPSA agrees with the recommendation and is changing the language contained in the proposed rule.

*Delegations (7 CFR 800.195)*

The grain industry association commenters recommended a few changes to GIPSA's proposed rule language concerning delegations of State agencies. They recommended that a delegated State must notify all affected export port locations and elevator operators, in addition to notifying GIPSA, 72 hours in advance of any intent to discontinue service. They also recommended including language requiring GIPSA to notify Congress within 24 hours of any disruption.

The Reauthorization Act only requires delegated States to notify GIPSA of any intent to discontinue service, while requiring GIPSA to "immediately take such actions as are necessary to address the disruption and resume inspections or weighings" (7 U.S.C. 77(d)(1)). Under such circumstances, it would fall on GIPSA to provide notification to customers. GIPSA declines to include language in the regulations concerning its requirement to notify Congress, as that is already required by the USGSA (7 U.S.C. 77(d)(2)) and inclusion in the regulations is unnecessary.

Additionally, the industry commenters recommended that the reviews of delegated States should start no later than September 30, 2016, and that funding for the reviews be derived solely from appropriated funds. GIPSA intends to conduct formal reviews for each of the five delegated States mirroring the existing process that GIPSA uses to renew the designations of official agencies. GIPSA intends to conduct the first review prior to September 30, 2016, and plans to conduct reviews for every State before certain provisions of the USGSA are set to expire on October 1, 2020. GIPSA finds that the inclusion of language in the regulations concerning the funding of delegation review through appropriated funds to be unnecessary. The USGSA only authorizes user fees to cover the costs incidental to official inspection and weighing and related supervision and administration activities (7 U.S.C. 79(j) and 7 U.S.C. 79a(l)). Appropriated funds are authorized to perform compliance activities (7 U.S.C. 87h), which includes delegation reviews.

### **Final Action**

Based on the above review of comments received in response to 81 FR 3970, GIPSA is amending the regulations of 7 CFR part 800 as outlined in the proposed rule, with exceptions noted in the comment review.

### **Executive Orders 12866 and 13563 and the Regulatory Flexibility Act**

The Office of Management and Budget has designated this rulemaking as not significant under Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulation Review.” Since grain export volume can vary significantly from year to year, estimating the impact in any future fee changes can be difficult. GIPSA recognizes the need to provide predictability to the industry for inspection and weighing fees. While not required by the Reauthorization Act, this rulemaking limits the

impact of a large annual change in fees by setting an annual cap of 5 percent for increases or decreases in inspection and weighing fees. The statutory requirement to maintain an operating reserve between 3 and 6 months of operating expenses ensures that GIPSA can adequately cover its costs without imposing an undue burden on its customers.

Currently, GIPSA regularly reviews its user-fee financed programs to determine if the fees charged for performing official inspection and weighing services adequately cover the cost of providing those services. This policy remains unchanged in this proposed regulation. GIPSA will continue to seek out cost saving measures and implement appropriate changes to reduce its costs to provide alternatives to fee increases.

This rulemaking is unlikely to have an annual effect of \$100 million or more or adversely affect the economy. The changes to the regulation in this rulemaking are a direct response to Congressional action. Also, under the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-12), GIPSA has considered the economic impact of this rulemaking on small entities. The purpose of the Regulatory Flexibility Act is to fit regulatory actions to the scale of businesses subject to such actions. This ensures that small businesses will not be unduly or disproportionately burdened. GIPSA is issuing this rulemaking solely because the Reauthorization Act amended the USGSA, which requires that the regulations be updated to reflect the changes made to the USGSA by the Reauthorization Act.

The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS). This rulemaking affects customers of GIPSA's official inspection and weighing services in the domestic and export grain markets (NAICS code 115114). Fees for that program are in Schedules A (Tables 1 -3) and B of section 800.71 of GIPSA's regulations (7 CFR 800.71).

Under the USGSA, all grain exported from the United States must be officially inspected and weighed. GIPSA provides mandatory inspection and weighing services at 45 export facilities in the United States and 7 facilities for U.S. grain transshipped through Canadian ports. Five delegated State agencies provide mandatory inspection and weighing services at 13 facilities. All of these facilities are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the SBA. Further, the provisions of this rulemaking apply equally to all entities. The USGSA requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those persons who handle, weigh, or transport grain for sale in foreign commerce must also register. The regulations found at 7 CFR 800.30 define a foreign commerce grain business as persons who regularly engage in buying for sale, handling, weighing, or transporting grain totaling 15,000 metric tons or more during the preceding or current calendar year. Currently, there are 108 businesses registered to export grain, most of which are not small businesses.

Most users of the official inspection and weighing services do not meet the SBA requirements for small entities. Further, GIPSA is required by statute to make services available to all applicants and to recover the costs of providing such services as nearly as practicable, while maintaining a 3 to 6 month operating reserve. There are no additional reporting, record keeping, or other compliance requirements imposed upon small entities as a result of this rulemaking. GIPSA has not identified any other federal rules which may duplicate, overlap, or conflict with this rulemaking. Because this rulemaking does not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not provided.

### **Executive Order 12988**

This rulemaking has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rulemaking does not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rulemaking. This rulemaking does not have retroactive effect.

### **Executive Order 13132**

This rulemaking has been reviewed under Executive Order 13132, “Federalism.” The policies in this rulemaking do not have any substantial direct effect on States, on the relationship between federal government and the States, or on the distribution of power and responsibilities among various levels of government, except as required by law. This rulemaking does not impose substantial direct compliance costs on State and local governments. Because States already retain records for their ordinary operations, § 800.195(g)(4) should not have a significant impact on State governments. Therefore, consultation with the States is not required.

### **Executive Order 13175**

This rulemaking has been reviewed under Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” To our knowledge, this rulemaking does not have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, GIPSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rulemaking are not expressly mandated by the Reauthorization Act.

### **Paperwork Reduction Act**

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the

information collection and record keeping requirements included in this rulemaking have been approved by the OMB under control number 0580-0013, which expires on January 31, 2018.

GIPSA is committed to complying 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 maximum extent possible.

### **E-Government Compliance**

GIPSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### **List of Subjects in 7 CFR Part 800**

Administrative practice and procedure, Exports, Grains, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, GIPSA amends 7 CFR part 800 as follows:

### **PART 800 - GENERAL REGULATIONS**

1. The authority citation for part 800 continues to read as follows:

Authority: 7 U.S.C. 71–87k.

2. In § 800.0, in paragraph (b), add in alphabetical order definitions for “Emergency”, “Field Office administrative costs”, “National program administrative costs”, “Operating expenses”, and “Operating reserve” to read as follows:

#### **§ 800.0 Meaning of terms.**

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(b) \*\*\*

*Emergency.* A situation that is outside the control of the applicant that prevents official inspection or weighing services within 24 hours of the scheduled service time.

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*Field Office administrative costs.* The costs of management, support, and maintenance of a Field Office, including, but not limited to, the management and administrative support personnel, rent, and utilities. This does not include any costs directly related to providing original or review inspection or weighing services.

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*National program administrative costs.* The costs of national management and support of official grain inspection and/or weighing. This does not include the Field Office administrative costs and any costs directly related to providing service.

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*Operating expenses.* The total costs to the Service to provide official grain inspection and/or weighing services.

*Operating reserve.* The amount of funds the Service has available to provide official grain inspection and/or weighing services.

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### **§ 800.15 [Amended]**

3. Amend § 800.15 by removing paragraph (b)(2) and redesignating paragraphs (b)(3) and (4) as (b)(2) and (3), respectively.

4. In § 800.18, revise paragraph (b)(7) to read as follows:

### **§ 800.18 Waivers of the official inspection and Class X weighing requirements.**

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(b) \*\*\*

(7) *Emergency waiver.* (i) Upon request, the requirements for official inspection or Class X weighing will be waived whenever the Service determines that an emergency exists that precludes official inspection or Class X weighing;

(ii) To qualify for an emergency waiver, the exporter or elevator operator must submit a timely written request to the Service for the emergency waiver and also comply with all conditions that the Service may require.

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5. Revise § 800.71 to read as follows.

**§ 800.71 Fees assessed by the Service.**

(a) *Official inspection and weighing services.* The fees shown in Schedule A of paragraph (a)(1) of this section apply to official inspection and weighing services performed by FGIS in the U.S. and Canada. The fees shown in Schedule B of paragraph (a)(2) of this section apply to official domestic inspection and weighing services performed by delegated States and designated agencies, including land carrier shipments to Canada and Mexico. The fees charged to delegated States by the Service are set forth in the State's Delegation of Authority document. Failure of a delegated State or designated agency to pay the appropriate fees to the Service within 30 days after becoming due will result in an automatic termination of the delegation or designation. The delegation or designation may be reinstated by the Service if fees that are due, plus interest and any further expenses incurred by the Service because of the termination, are paid within 60 days of the termination.

(1) Schedule A—Fees for official inspection and weighing services performed in the United States and Canada, effective October 1, 2015. Canada fees include the noncontract hourly rate, the Toledo Field Office tonnage fee, and the actual cost of travel.

**Table 1 of Schedule A—Fees for Official Services Performed at an Applicant's Facility in an Onsite FGIS Laboratory<sup>1</sup>**

	<b>Monday to Friday (6 a.m. to 6 p.m.)</b>	<b>Monday to Friday (6 p.m. to 6 a.m.)</b>	<b>Saturday, Sunday, and overtime<sup>2</sup></b>	<b>Holidays</b>
<b>(i) Inspection and Weighing Services</b>				
<b>Hourly Rates (per service representative):</b>				
1-year contract (\$ per hour)	\$40.20	\$42.10	\$48.20	\$71.40
Noncontract (\$ per hour)	71.40	71.40	71.40	71.40
<b>(ii) Additional Tests (cost per test, assessed in addition to the hourly rate):<sup>3</sup></b>				
(A) Aflatoxin (rapid test kit method)				11.40
(B) Aflatoxin (rapid test kit method-applicant provides kit) <sup>4</sup>				9.40
(C) All other Mycotoxins (rapid test kit method)				20.80
(D) All other Mycotoxins (rapid test kit method-applicant provides kit) <sup>4</sup>				18.80
(E) NIR or NMR Analysis (protein, oil, starch, etc.)				2.70
(F) Waxy corn (per test)				2.70
(G) Fees for other tests not listed above will be based on the lowest noncontract hourly rate				
(H) Other services				
<b>(I) Class Y Weighing (per carrier):</b>				
(i) Truck/container				0.70
(ii) Railcar				1.70
(iii) Barge				3.00
<b>(iii) Tonnage Fee (assessed in addition to all other applicable fees, only one tonnage fee will be assessed when inspection and weighing services are performed on the same carrier):</b>				

(A) All outbound carriers serviced by the specific Field Office (per-metric ton):	
(1) League City	0.192
(2) New Orleans	0.094
(3) Portland	0.191
(4) Toledo	0.306
(5) Delegated States <sup>5</sup>	0.061
(6) Designated Agencies <sup>5</sup>	0.061

<sup>1</sup>Fees apply to original inspection and weighing, re-inspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

<sup>2</sup>Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

<sup>3</sup>Appeal and re-inspection services will be assessed the same fee as the original inspection service.

<sup>4</sup>Applicant must provide the test kit, instrument hardware, calibration control, and all supplies required by the test kit manufacturer.

<sup>5</sup>Tonnage fee is assessed on export grain inspected and/or weighed, excluding land carrier shipments to Canada and Mexico.

**Table 2 of Schedule A—Services Performed at Other Than an Applicant's Facility in an FGIS Laboratory<sup>1,2</sup>**

(i) Original Inspection and Weighing (Class X) Services:	
(A) Sampling only (use hourly rates from Table 1 of this section)	
(B) Stationary lots (sampling, grade/factor, & checkloading):	
(1) Truck/trailer/container (per carrier)	\$22.50
(2) Railcar (per carrier)	33.30
(3) Barge (per carrier)	209.10
(4) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.08
(C) Lots sampled online during loading (sampling charge under (1)(i) of this table, plus):	
(1) Truck/trailer container (per carrier)	13.50

(2) Railcar (per carrier)	28.10
(3) Barge (per carrier)	143.00
(4) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.08
(D) Other services:	
(1) Submitted sample (per sample—grade and factor)	13.50
(2) Warehouseman inspection (per sample)	23.60
(3) Factor only (per factor—maximum 2 factors)	6.60
(4) Checkloading/condition examination (use hourly rates from Table 1 of this section, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.08
(5) Re-inspection (grade and factor only. Sampling service additional, item (1)(i) of this table)	14.60
(6) Class X Weighing (per hour per service representative)	71.40
(E) Additional tests (excludes sampling):	
(1) Aflatoxin (rapid test kit method)	33.60
(2) Aflatoxin (rapid test kit method-applicant provides kit) <sup>3</sup>	31.60
(3) All other Mycotoxins (rapid test kit method)	43.20
(4) All other Mycotoxins (rapid test kit method-applicant provides kit) <sup>3</sup>	41.20
(5) NIR or NMR Analysis (protein, oil, starch, etc.)	11.40
(6) Waxy corn (per test)	11.40
(7) Canola (per test-00 dip test)	11.40
(8) Pesticide Residue Testing: <sup>4</sup>	
(i) Routine Compounds (per sample)	240.90
(ii) Special Compounds (Subject to availability)	128.40
(9) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1 of this section.	
(ii) Appeal inspection and review of weighing service. <sup>5</sup>	
(A) Board Appeals and Appeals (grade and factor)	91.50
(1) Factor only (per factor—max 2 factors)	48.20
(2) Sampling service for Appeals additional (hourly rates	

from Table 1 of this section)	
(B) Additional tests (assessed in addition to all other applicable tests):	
(1) Aflatoxin (rapid test kit method)	33.60
(2) Aflatoxin (rapid test kit method-applicant provides kit) <sup>3</sup>	31.60
(3) All other Mycotoxins (rapid test kit method)	52.60
(4) All other Mycotoxins (rapid test kit method-applicant provides kit) <sup>3</sup>	50.60
(5) NIR or NMR Analysis (protein, oil, starch, etc.)	19.80
(6) Sunflower oil (per test)	19.80
(7) Mycotoxin (per test-HPLC)	157.30
(8) Pesticide Residue Testing: <sup>4</sup>	
(i) Routine Compounds (per sample)	240.90
(ii) Special Compounds (Subject to availability)	128.40
(9) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1 of this section.	
(C) Review of weighing (per hour per service representative)	92.30
(iii) Stowage examination (service-on-request): <sup>4</sup>	
(A) Ship (per stowage space) (minimum \$285.00 per ship)	57.00
(B) Subsequent ship examinations (same as original) (minimum \$171.00 per ship)	57.00
(C) Barge (per examination)	45.80
(D) All other carriers (per examination)	18.00

<sup>1</sup>Fees apply to original inspection and weighing, re-inspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

<sup>2</sup>An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72(b).

<sup>3</sup>Applicant must provide the test kit, instrument hardware, calibration control, and all supplies required by the test kit manufacturer.

<sup>4</sup>If performed outside of normal business, 1 1/2 times the applicable unit fee will be charged.

<sup>5</sup>If, at the request of the Service, a file sample is located and forwarded by the Agency, the Agency may, upon request, be reimbursed at the rate of \$3.50 per sample by the Service.

**Table 3 of Schedule A—Miscellaneous Services<sup>1</sup>**

(i) Grain grading seminars (per hour per service representative) <sup>2</sup>	\$71.40
(ii) Certification of diverter-type mechanical samplers (per hour per service representative) <sup>2</sup>	71.40
(iii) Special weighing services (per hour per service representative): <sup>2</sup>	
(A) Scale testing and certification	92.90
(B) Scale testing and certification of railroad track scales	92.90
(C) Evaluation of weighing and material handling systems	92.90
(D) NTEP Prototype evaluation (other than Railroad Track Scales)	92.90
(E) NTEP Prototype evaluation of Railroad Track Scale	92.90
(F) Use of GIPSA railroad track scale test equipment per facility for each requested service. (Track scales tested under the Association of American Railroads agreement are exempt.)	557.30
(G) Mass standards calibration and re-verification	92.90
(H) Special projects	92.90
(iv) Foreign travel (hourly fee) <sup>3</sup>	92.90
(v) Online customized data service:	
(A) One data file per week for 1 year	557.30
(B) One data file per month for 1 year	334.40
(vi) Samples provided to interested parties (per sample)	3.50
(vii) Divided-lot certificates (per certificate)	2.20
(viii) Extra copies of certificates (per certificate)	2.20
(ix) Faxing (per page)	2.20
(x) Special mailing	Actual Cost
(xi) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1).	

<sup>1</sup>Any requested service that is not listed will be performed at \$71.40 per hour.

<sup>2</sup>Regular business hours—Monday through Friday—service provided at other than regular business hours will be charged at 1 1/2 times the applicable hourly rate. (See the definition of “business day” in § 800.0(b))

<sup>3</sup>Foreign travel charged hourly fee of \$92.90 plus travel, per diem, and related expenditures.

(2) *Schedule B—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 charged by the Service is \$0.011 per metric ton of domestic U.S. grain shipments inspected and/or weighed, including land carrier shipments to Canada and Mexico.

(b) *Annual review of fees.* For each calendar year, starting with 2017, the Service will review the fees in Schedule A in paragraph (a)(1) of this section and publish fees effective January 1 of each year according to the following:

(1) *Tonnage fees.* Tonnage fees will consist of the national tonnage fee and local tonnage fees and will be calculated and rounded to the nearest \$0.001 per metric ton. All outbound grain officially inspected and/or weighed by the Field Offices in New Orleans, League City, Portland, and Toledo will be assessed the national tonnage fee plus the appropriate local tonnage fee. Export grain officially inspected and/or weighed by delegated States and official agencies, excluding land carrier shipments to Canada and Mexico, will be assessed the national tonnage fee only. The fees will be set according to the following:

(i) *National tonnage fee.* The national tonnage fee is the national program administrative costs for the previous fiscal year divided by the average yearly tons of export grain officially inspected and/or weighed by delegated States and designated agencies, excluding land carrier shipments to Canada and Mexico, and outbound grain officially inspected and/or weighed by the Service during the previous 5 fiscal years.

(ii) *Local tonnage fee.* The local tonnage fee is the Field Office administrative costs for the previous fiscal year divided by the average yearly tons of outbound grain officially inspected and/or weighed by the Field Office during the previous 5 fiscal years. The local tonnage fee is calculated individually for each Field Office.

(2) *Operating reserve.* In order to maintain an operating reserve not less than 3 and not more than 6 months, the Service will review the value of the operating reserve at the end of each fiscal year and adjust fees according to the following:

(i) *Less than 4.5 months.* If the operating reserve is less than 4.5 times the monthly operating expenses, the Service will increase all fees in Schedule A in paragraph (a)(1) of this section by 2 percent for each \$1,000,000, rounded down, that the operating reserve is less than 4.5 times the monthly operating expense, with a maximum increase of 5 percent annually. Except for fees based on tonnage or hundredweight, all fees will be rounded to the nearest \$0.10.

(ii) *Greater than 4.5 months.* If the operating reserve is greater than 4.5 times the monthly operating expenses, the Service will decrease all fees in Schedule A in paragraph (a)(1) of this section by 2 percent for each \$1,000,000, rounded down, that the operating reserve is greater than 4.5 times the monthly operating expense, with a maximum decrease of 5 percent annually. Except for fees based on tonnage or hundredweight, all fees will be rounded to the nearest \$0.10.

(c) *Periodic review.* The Service will periodically review and adjust all fees in Schedules A and B in paragraphs (a)(1) and (2) of this section, respectively, as necessary to ensure they reflect the true cost of providing and supervising official service. This process will incorporate any fee adjustments from paragraph (b) of this section.

(d) *Miscellaneous fees for other services—(1) Registration certificates and renewals.* (i) The nature of your business will determine the fees that your business must pay for registration certificates and renewals:

(A) If you operate a business that buys, handles, weighs, or transports grain for sale in foreign commerce, you must pay \$135.00.

(B) If you operate a business that buys, handles, weighs, or transports grain for sale in foreign commerce and you are also in a control relationship (see definition in section 17A(b)(2) of the Act) with respect to a business that buys, handles, weighs, or transports grain for sale in interstate commerce, you must pay \$270.00.

(ii) If you request extra copies of registration certificates, you must pay \$2.20 for each copy.

(2) *Designation amendments.* If you submit an application to amend a designation, you must pay \$75.00.

(3) *Scale testing organizations.* If you submit an application to operate as a scale testing organization, you must pay \$250.00.

#### **§ 800.72 [Amended]**

6. In § 800.72(b), remove the reference “§ 800.71” from the first sentence and add in its place the reference “§ 800.71(a)(1).”

7. Amend § 800.117 by removing paragraph (b)(2), redesignating paragraph (b)(3) as (b)(2), and adding a new paragraph (b)(3) to read as follows:

#### **§ 800.117 Who shall perform original services.**

\*\*\*\*\*

(b) \*\*\*

(3) *Written agreement.* If the assigned official agency agrees in writing with the adjacent official agency to waive the current geographic area restriction at the request of the applicant for service, the adjacent official agency may provide service at a particular location upon

providing written notice to the Service, and the Service determines that the written agreement conforms to the provisions in the Act.

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8. In § 800.175, revise paragraph (a) to read as follows:

**§ 800.175 Termination of licenses.**

(a) *Term of license.* Each license shall terminate in accordance with the termination date shown on the license and as specified in paragraph (b) of this section. The termination date for a license shall be no less than 5 years or more than 6 years after the issuance date for the initial license; thereafter, every 5 years. Upon request of a licensee and for good cause shown, the termination date may be advanced or delayed by the Administrator for a period not to exceed 60 days.

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9. In § 800.195, add paragraphs (f)(11) and (g)(4) to read as follows:

**§ 800.195 Delegations.**

\*\*\*\*\*

(f) \*\*\*

(11) *Notification to Secretary.* A delegated State shall notify the Secretary of its intention to temporarily discontinue official inspection and/or weighing services for any reason, except in the case of a major disaster. The delegated State must provide written notification to the Service no less than 72 hours in advance of the discontinuation date.

\*\*\*\*\*

(g) \*\*\*

(4) *Review.* At least once every 5 years, a delegated State shall submit to a review of its delegation by the Service in accordance with the criteria and procedures for delegation prescribed in section 7(e) of the Act, this section of the regulations, and the instructions. The Administrator may revoke the delegation of a State according to this subsection if the State fails to meet or comply with any of the criteria for delegation set forth in the Act, regulations, and instructions.

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10. In § 800.196, revise paragraphs (e)(2)(ii) and (iii), add paragraph (e)(2)(iv), and revise paragraph (h)(1)(i) to read as follows:

**§ 800.196 Designations.**

\*\*\*\*\*

(e) \*\*\*

(2) \*\*\*

(ii) The applicant meets the conditions and criteria specified in the Act and regulations;

(iii) The applicant is better able than any other applicant to provide official services; and

(iv) The applicant addresses concerns identified during consultations that the Service conducts with applicants for service to the satisfaction of the Service.

\*\*\*\*\*

(h) *Termination and renewal—(1) Every 5 years—(i) Termination.* A designation shall terminate at a time specified by the Administrator, but not later than 5 years after the effective date of the designation. A notice of termination shall be issued by the Service to a designated agency at least 120 calendar days in advance of the termination date. The notice shall provide instructions for requesting renewal of the designation. Failure to receive a

notice from the Service shall not exempt a designated agency from the responsibility of having its designation renewed on or before the specified termination date.

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11. In § 800.216, revise paragraph (c) to read as follows:

**§ 800.216 Activities that shall be monitored.**

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(c) *Grain handling activities.* Grain handling activities subject to monitoring for compliance with the Act include, but are not limited to:

- (1) Shipping export grain without inspection or weighing;
- (2) Violating any Federal law with respect to the handling, weighing, or inspection of grain;
- (3) Deceptively loading, handling, weighing, or sampling grain; and
- (4) Exporting grain without a certificate of registration.

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Larry Mitchell  
Administrator  
Grain Inspection, Packers and Stockyards Administration  
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