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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: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), a program of the Grain Inspection, Packers and Stockyards Administration (GIPSA), is increasing the fees for processed commodity analytical services performed under the Agricultural Marketing Act (AMA) of 1946 and removing certain tests from the fee schedule. These changes are needed to cover rising fixed costs and increased operational costs resulting from the mandated January 2003 Federal pay increase. GIPSA anticipates that this increase in user fees will generate approximately \$135,000 in additional yearly revenue.

EFFECTIVE DATE: February 12, 2004.

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 the 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 final 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 Fiscal Year (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 \$240,000 a year and an estimated testing workload of approximately 1,700 samples per year. These revisions are designed 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 FY 1999, the number of samples tested was 16,377, which generated \$1,475,579 in revenue; in FY 2000, 12,872 samples were tested, with revenue of \$1,212,215; in FY 2001, 3,620 samples were tested, with revenue of \$219,033; and in FY 2002, 1755 samples were tested, with revenue of \$104,380. The changes to the fee schedule 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 are not excessive and should not significantly affect those entities. It is estimated that there will be nine entities affected. 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 new fee schedule.

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 record keeping requirements in part 800 have been previously approved by OMB under control number 0580-0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this rule.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It 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.

Background

On July 18, 2003, GIPSA proposed in the **Federal Register** (68 FR 42644) to increase fees for processed commodity analytical services performed under the AMA and remove certain tests from the fee schedule. Under the provisions of the AMA (7 U.S.C. 1621, *et seq.*), GIPSA provides official processed commodity testing services upon request and collects reasonable fees from the customers for performing these services. Section 203(h) of the AMA (7 U.S.C. 1622(h)) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. These fees cover the GIPSA administrative and supervisory costs for the performance of

official testing services, including personnel compensation and benefits, travel, rent, communication, utilities, contractual services, supplies, and equipment.

The processed commodity testing services fees were last amended on April 4, 2001, and became effective May 4, 2001 (66 FR 17775). These fees were to cover, as nearly as practicable, the level of operating costs as projected for FY 2001 and FY 2002, respectively. GIPSA continually monitors its cost, revenue, and operating reserve levels to ensure that there are sufficient resources for operations. Further, GIPSA has implemented cost-saving measures in the processed commodity program in an effort to provide more cost-effective services. The cost containment measures included a reduction in full-time commodity testing laboratory personnel and increased cross utilization of personnel from other GIPSA programs.

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate and continues 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 previous fee schedule did not generate sufficient revenues to cover program costs. Using the most recent data available, GIPSA's FY 2002 operating costs for this 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 its processed commodity testing program. Based on this review, GIPSA has concluded that it needs to generate \$135,000 in additional yearly revenue to recover program costs.

Comment Review

GIPSA did not receive any comments in response to the proposed rulemaking published on July 18, 2003, at 68 FR 42644.

Final Action

Section 203(h) of the AMA (7 U.S.C. 1622(h)) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. These fees cover the GIPSA administrative and supervisory costs for the performance of official testing services, including personnel compensation and benefits, travel, rent, communication, utilities,

contractual services, supplies, and equipment.

Accordingly, GIPSA is revising the fees for processed commodity analytical services performed under the AMA in 7 CFR 868.90, paragraph (d), Table 2—Fees for Laboratory Test Services.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

■ For reasons set out in the preamble, 7 CFR Part 868 is amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

■ 1. The authority citation for part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621, *et. seq.*)

■ 2. Section 868.90, paragraph (d) is revised to read as follows:

868.90 Fees for certain Federal inspection services.

* * * * *

(d) Laboratory tests referenced in table 2 of this section will be charged at the applicable laboratory fee.

TABLE 2.—FEES FOR LABORATORY TEST SERVICES¹

Laboratory tests	Fees
(1) Aflatoxin (Quantitative—HPLC)	\$182.00
(2) Aflatoxin (Quantitative—Test Kit)	87.00
(3) Aflatoxin (Qualitative—Test Kit)	47.00
(4) Appearance and odor	7.00
(5) Ash	17.00
(6) Brix	16.00
(7) Calcium	27.00
(8) Carotenoid Color	27.00
(9) Cold test (oil)	20.00
(10) Color test (syrups)	13.00
(11) Cooking tests (pasta)	13.00
(12) Crude fat	20.00
(13) Crude fiber	27.00
(14) Falling number	24.00
(15) Free fatty acid	24.00
(16) Insoluble impurities (oils and shortenings)	9.00
(17) Iron enrichment	30.00
(18) Lovibond color	20.00
(19) Moisture	13.00
(20) Moisture and volatile matter	17.00
(21) Oxidative stability index (OSI)	54.00
(22) Peroxide Value	27.00
(23) Popping ratio	38.00
(24) Protein	16.00
(25) Sanitation (light filth)	47.00
(26) Sieve test	11.00
(27) Smoke Point	43.00
(28) Solid fat index	168.00
(29) Visual exam	22.00
(30) Vomitoxin (Qualitative—Test Kit)	61.00
(31) Vomitoxin (Quantitative—Test Kit)	81.00
(32) Other laboratory analytical services (per hour per service representative)	67.00

¹ When laboratory tests/services are provided for GIPSA by a private laboratory, the applicant will be assessed a fee, which, as nearly as practicable, covers the costs to GIPSA for the service provided.

Donna Reifschneider,
*Administrator, Grain Inspection, Packers and
 Stockyards Administration.*
 [FR Doc. 04-569 Filed 1-12-04; 8:45 am]
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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 7

[Docket No. 04-03]

RIN 1557-AC78

Bank Activities and Operations

AGENCY: Office of the Comptroller of the
 Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller
 of the Currency (OCC) is publishing its
 final rule amending its visitorial powers
 regulation in order to clarify issues that
 have arisen in connection with the
 scope of the OCC's visitorial powers.

EFFECTIVE DATE: February 12, 2004.

FOR FURTHER INFORMATION CONTACT: For
 questions concerning the final rule,
 contact Andra Shuster, Counsel, or
 Mark Tenhundfeld, Assistant Director,
 Legislative and Regulatory Activities
 Division, (202) 874-5090.

SUPPLEMENTARY INFORMATION: On
 February 7, 2003, the OCC published a
 notice of proposed rulemaking in the
Federal Register (68 FR 6363) to
 implement the American
 Homeownership and Economic
 Opportunity Act of 2000 (AHEOA) and
 clarify our visitorial powers regulation
 (NPRM). In addition, we proposed to
 amend parts 5, 7, 9, and 34 of our
 regulations for other purposes and to
 make various technical changes to
 correct citations or footnote numbering.

On December 17, 2003, the OCC
 published a final rule that addressed all
 of the foregoing parts of the proposal
 except visitorial powers (68 FR 70122).
 This final rule relates solely to the
 visitorial powers proposal (proposal).

The OCC received 55 comments on
 the NPRM. Of these, 53 comments
 addressed the visitorial powers
 proposal. These comments included
 three from national banks, one from an
 operating subsidiary of a national bank,
 six from bank holding companies, five
 from banking trade associations, two
 from bank membership organizations,
 one from a community group
 association, two from non-profit
 consumer groups, one from a state bank
 supervisors' association, 30 from state

bank supervisors' offices, one from a
 securities administrators' membership
 organization, and one from a law
 enforcement association.

While many of the commenters
 supported the proposal, some were
 opposed, and many offered suggestions
 for changes. For the reasons discussed
 later in this preamble, we have adopted
 the visitorial powers provisions of the
 NPRM with certain modifications also
 described later.

A. Background

Current 12 CFR 7.4000(a) provides
 that only the OCC or an authorized
 representative of the OCC may exercise
 visitorial powers with respect to
 national banks, subject to exceptions
 provided in Federal law. Section
 7.4000(a) goes on to define the
 regulatory, supervisory, and
 enforcement actions included within
 our visitorial powers, while § 7.4000(b)
 sets out several exceptions to our
 exclusive authority that are created by
 Federal law.¹

These provisions interpret and
 implement 12 U.S.C. 484. Paragraph (a)
 of that section states—

No national bank shall be subject to any
 visitorial powers except as authorized by
 Federal law, vested in the courts of justice or
 such as shall be, or have been exercised or
 directed by Congress or by either House
 thereof or by any committee of Congress or
 of either House duly authorized.

Paragraph (b) of the statute then permits
 lawfully authorized state auditors or
 examiners to review a national bank's
 records "solely to ensure compliance
 with applicable State unclaimed
 property or escheat laws upon
 reasonable cause to believe that the
 bank has failed to comply with such
 laws."

In recent years, various questions
 have arisen with respect to the scope of
 the OCC's visitorial powers over
 national banks. In general, the questions
 fall into two broad categories: First,
 what activities conducted by a national
 bank are subject to the OCC's *exclusive*
 visitorial powers? Second, what is the
 meaning of certain exceptions to the
 OCC's exclusive visitorial powers that
 are provided in the statute, specifically
 the exception for visitorial powers
 "vested in the courts of justice?"

The NPRM invited comments on
 proposed amendments to § 7.4000 to
 clarify the application of section 484 to
 both areas.

¹ Paragraph (c) of 12 CFR 7.4000 clarifies that the
 OCC owns reports of examination and addresses a
 bank's obligations with respect to these reports.
 This paragraph is unaffected by this rulemaking.

B. Description of the Proposal

The proposal contained two types of
 changes to § 7.4000. First, we proposed
 to add a new paragraph (3) to § 7.4000(a)
 that identifies the scope of the activities
 of national banks for which the OCC's
 visitorial powers are exclusive, pursuant
 to section 484. The proposal provided
 that the OCC has exclusive visitorial
 authority over national bank activities
 that are permissible under Federal law
 or regulation or OCC issuance or
 interpretation, including how those
 activities are conducted. Second, we
 proposed to revise § 7.4000(b) to clarify
 the OCC's interpretation of the "vested
 in the courts of justice" exception. The
 proposal provided that national banks
 are subject to the visitorial power
 inherently vested in courts and that the
 "vested in the courts of justice"
 exception did not create or expand any
 authority of states or other governmental
 entities to regulate or supervise national
 banks. As we will discuss in greater
 detail later in this preamble, both of
 these changes serve to clarify that
 Federal law commits the supervision of
 national banks' Federally-authorized
 banking business exclusively to the
 OCC, (except where Federal law
 provides otherwise), and does not
 apportion that responsibility among the
 OCC and the states; and that state
 authorities may not achieve indirectly
 by resort to judicial actions what section
 484 prohibits them from achieving
 directly through state regulatory or
 supervisory mechanisms. The proposal
 also added an exception in proposed
 new § 7.4000(b)(vi) recognizing that
 functional regulators may exercise the
 authority over national banks conferred
 by the Gramm-Leach-Bliley Act
 (GLBA).²

C. Overview of Comments Received

Many commenters supported the
 proposal, noting that the clarification of
 the visitorial powers regulations would
 be helpful. One commenter said that
 subjecting national banks' Federally-
 authorized activities to state regulation
 would be inconsistent with the
 purposes of the National Bank Act.
 Others noted that additional layers of
 state supervision would have the effect
 of making the operations of national
 banks less efficient and more costly.
 Commenters also stated that they
 supported the proposal's clarification of

² Pub. L. 106-102, 113 Stat. 1338 (Nov. 12, 1999).
 For example, section 301 of the GLBA (codified at
 15 U.S.C. 6711) provides that national banks'
 insurance activities are functionally regulated by
 the states, subject to the applicability of state law
 provisions in section 104 of that law (codified at 15
 U.S.C. 6701). *Id.* at section 301, 113 Stat. at 1407,
 codified at 15 U.S.C. 6711.