

# 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](mailto: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](mailto: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

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 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 existing fee schedule will 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. 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 4.1 percent January 2003 Federal pay increase. Therefore, GIPSA proposes to revise section 868.90, paragraph (d), Table 2—Fees for Laboratory Test Services, to: (1) Increase the fees for laboratory testing services. These laboratory tests are: Ash, Brix, Calcium, Carotenoid Color, Cold test (oil), Color test (syrops), Cooking tests (pasta), Crude fat, Crude fiber, Falling number, Free fatty acid, Insoluble impurities (oils and shortenings), Iron enrichment, Lovibond color, Moisture, Moisture and volatile matter, Peroxide Value, Popping ratio, Protein, Sanitation (light filth), Sieve test, Smoke point, Solid fat index, Visual exam, Vomitoxin (Qualitative—Test Kit), and Vomitoxin (Quantitative—Test Kit); (2) establish new fees for new testing services: Aflatoxin (Quantitative—HPLC), Aflatoxin (Quantitative—Test Kit), Aflatoxin (Qualitative Test Kit) and Oxidative stability index (OSI); (3) eliminate references and fees for testing services that are no longer requested on a routine basis. These tests are: Alpha monoglycerides, Aflatoxin test (other than TLC or minicolumn method), Aflatoxin (TLC), Aflatoxin (Minicolumn method), Bacteria, count, Baking tests (cookies), Bostwick (cooked), Bostwick (uncooked/cook test/dispersibility), Dough handling (baking), E. coli, Fat (acid hydrolysis), Fat-Stability (A.O.M), Flash point (open and closed cup), Hydrogen ion activity—pH, Iodine number/value, Linolenic acid (Fatty acid profile), Lipid phosphorus, Margarine (nonfat solids), Moisture Average(crackers), Performance test (prepared bakery mix), Phosphorus, Popcorn kernels (total defects),

Potassium bromate, Rope spore count, Salmonella, Salt or Sodium content, Specific volume (bread), Staphylococcus aureus, Texture, Tilletia controversa kuhn (TCK)(Qualitative), Tilletia controversa kuhn (TCK)(Quantitative), Unsaponifiable (matter), Urease activity, Visual exam (hop pellet), Visual exam (insoluble impurities, oils and shortenings), Visual exam (pasta), Visual exam (processed grain products), Visual exam (total foreign material other than cereal grains), Vitamin enrichment, Vomitoxin (TLC), Water activity, and Wiley melting point.

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.

#### 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 proposed to be 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 when performed at field locations other than at the applicant's facility.

TABLE 2.—FEES FOR LABORATORY TEST SERVICES<sup>1</sup>

| 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 (syrops) .....              | 13.00    |
| (11) Cooking tests (pasta) .....            | 13.00    |
| (12) Crude fat .....                        | 20.00    |
| (13) Crude fiber .....                      | 27.00    |

TABLE 2.—FEES FOR LABORATORY TEST SERVICES<sup>1</sup>—Continued

| Laboratory tests                                                                      | Fees   |
|---------------------------------------------------------------------------------------|--------|
| (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  |

<sup>1</sup> 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.

Dated: July 15, 2003.

**Donna Reifschneider,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 03–18265 Filed 7–17–03; 8:45 am]

BILLING CODE 3410–EN–P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

RIN 3150–AH–20

### List of Approved Spent Fuel Storage Casks: NAC–MPC Revision

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the NAC International, Inc., Multipurpose Canister cask system listing within the “List of Approved Spent Fuel Storage Casks” to include Amendment No. 3 to the Certificate of Compliance (CoC). This amendment would incorporate changes in support of the Yankee Nuclear Power Station (Yankee Rowe) fuel loading campaign and make corrections to the Connecticut Yankee technical specifications. Specifically, the amendment would incorporate fuel enrichment tolerances; incorporate fuel assemblies with up to 20 damaged fuel rods, recaged assemblies, the Yankee Rowe damaged fuel can, and assembly weights up to 432 kilograms (950 pounds); revise the average surface dose rate limits for the concrete cask; incorporate administrative changes in

the American Society of Mechanical Engineers (ASME) Code Alternatives; correct the Connecticut Yankee tables for fuel assembly limits and intact fuel assembly characteristics; and incorporate editorial and administrative changes in the CoC.

**DATES:** Comments on the proposed rule must be received on or before August 18, 2003.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH20) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public, in their entirety, on the NRC rulemaking website. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC’s rulemaking website at <http://ruleforum.llnl.gov>. Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; email [cag@nrc.gov](mailto:cag@nrc.gov).

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC’s Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking website at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC’s Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC’s Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC’s public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to [pdrr@nrc.gov](mailto:pdrr@nrc.gov). An electronic copy of the proposed Certificate of Compliance (CoC), Technical Specifications (TS), and preliminary safety evaluation report (SER) can be found under ADAMS Accession Nos. ML031330790, ML031340571, and ML031330792, respectively.

**FOR FURTHER INFORMATION CONTACT:** Jayne M. McCausland, telephone (301) 415–6219, e-mail, [jmm2@nrc.gov](mailto:jmm2@nrc.gov) of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.