

WSR 21-24-073

EXPEDITED RULES

DEPARTMENT OF AGRICULTURE

[Filed November 30, 2021, 11:32 a.m.]

Title of Rule and Other Identifying Information: Chapter 16-240 WAC, WSDA grain inspection program—Definitions, standards and fees. In response to a requirement set by the United States Department of Agriculture's (USDA) Federal Grain Inspection Service (FGIS), the department is proposing the following amendments to this chapter that clarify language regarding invoicing of the administrative and supervision fees charged by FGIS:

- Updating the title of WAC 16-240-039 for clarity;
- Replacing all references to "Grain Inspection, Packers and Stockyards Administration (GIPSA)" with "Agricultural Marketing Service (AMS)" to reflect a recent restructuring by USDA; and
- Replacing subsections (1) and (2) of WAC 16-240-039 with new language received from FGIS to add transparency to stakeholders.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule amendment replaces all references to the federal GIPSA with the Agricultural Marketing Service (AMS) to reflect a recent restructuring within USDA. The amendment also replaces existing rule language with language provided by USDA-AMS-FGIS pertaining to federal oversight fees that the grain inspection program collects on behalf of USDA. The new language will provide transparency to the program's customers related to federal fees the program collects and passes through to USDA.

Reasons Supporting Proposal: The Washington state department of agriculture's (WSDA) grain inspection program facilitates trade in domestic and international markets by providing unbiased, third-party sampling, weighing, quality testing, grade inspection, and phytosanitary services under an official delegation by the USDA-GIPSA-FGIS. USDA recently restructured and moved FGIS under AMS. The department is updating all references to GIPSA with AMS to reflect this change.

In addition, USDA-AMS-FGIS has notified all delegates that they need to update their rule language to reflect required language provided by FGIS pertaining to federal administrative and supervision fees. WSDA is required to collect these federal oversight fees when providing services and provide them to USDA-AMS-FGIS. The new language also requires WSDA to identify USDA-AMS-FGIS fees as a separate line item on invoices. Updated rule language has to be provided to USDA-AMS-FGIS by February 15, 2022.

Statutory Authority for Adoption: RCW 22.09.020.

Statute Being Implemented: Chapter 22.09 RCW.

Rule is necessary because of federal law, 7 CFR § 800.70(e), § 800.0(b), § 800.195(f), FGIS Directive 9180.74.

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting: Reanna McNamara, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1997; Implementation and Enforcement: Philip Garcia, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1921.

This notice meets the following criteria to use the expedited adoption process for these rules:

Relates only to internal governmental operations that are not subject to violation by a person.

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed amendments clarify the rule language, as is required by USDA, without changing the effect of the rule. The amendment also relates only to internal governmental operations, specifically how the department invoices fees charged by FGIS and is not subject to violation by a person. This proposed amendment, therefore, meets the criteria for expedited adoption.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gloriann Robinson, Agency Rules Coordinator, WSDA, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, email wsdarulescomments@agr.wa.gov, AND RECEIVED BY January 31, 2022.

November 30, 2021
Jessica Allenton
Assistant Director

OTS-3482.1

AMENDATORY SECTION (Amending WSR 17-19-051, filed 9/13/17, effective 10/14/17)

WAC 16-240-010 Definitions. "**Business day**" means Monday through Friday, excluding state holidays.

"AMS, FGIS" means the United States Department of Agriculture, Agricultural Marketing Service, Federal Grain Inspection Service.

"Department" means the Washington state department of agriculture.

"Federal fiscal year" means October 1st through September 30th for ((GIPSA)) USDA, AMS, FGIS.

"Fee" means any charge made by the department for:

- (1) Inspecting and handling any commodity; or
- (2) Any service related to weighing or storing grains or commodities.

"Fiscal year" means July 1st through June 30th for the state of Washington.

(~~"GIPSA, FGIS" means the United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service.~~)

"Metric ton" means two thousand two hundred four and six-tenths pounds.

"Minimum operating fund balance" or **"MOFB"** means six months of grain inspection program operating expenses to ensure stable service delivery, meet future needs, and protect against financial instability. The factors that the department considers when setting the annual

MOFB under WAC 16-240-043 include the projected program staff salary and benefits; costs of the program's goods and services, including transportation; costs associated with the department's administrative support of the program; and any additional costs associated with program oversight by USDA/FGIS.

"Official commercial inspection services" means a contractual agreement between the applicant and the department for services specified by the applicant that will be provided at an applicant's facility.

"Revenue minimum" means the amount of revenue that must be collected by the department to offset expenses. In order to act as an official inspection agency under the United States Grain Standards Act and the Agricultural Marketing Act of 1946, the program must collect revenue to offset expenses. The grain inspection program is supported entirely by the fees it generates from the services it provides as required by RCW 22.09.790. The circumstances under which charges occur to collect the revenue minimum are stated in WAC 16-240-038.

"Service point" means the Washington state department of agriculture offices and surrounding service areas authorized by the Federal Grain Inspection Service to provide sampling, inspecting, weighing, and certification services.

"Shift" means an established period of staffing for up to twelve hours at transloading facilities or up to eight hours at export port or domestic service point locations. Service requests in excess of the established period would require requesting an additional shift. Any work beyond the established shift period constitutes an additional shift.

"Unstaffed export locations" means a facility that does not have a permanent staffing request in place for day, night, swing, or graveyard shifts.

"USDA" means the United States Department of Agriculture.

[Statutory Authority: RCW 22.09.020 and chapter 34.05 RCW. WSR 17-19-051, § 16-240-010, filed 9/13/17, effective 10/14/17; WSR 16-12-076, § 16-240-010, filed 5/27/16, effective 7/1/16. Statutory Authority: RCW 15.17.050, 2012 2nd sp.s. c 7, and chapter 34.05 RCW. WSR 12-21-064, § 16-240-010, filed 10/17/12, effective 11/17/12. Statutory Authority: 2003 1st sp.s. c 25 § 309(2); RCW 22.09.790, chapter 34.05 RCW and The United States Department of Agriculture has oversight of fees charged under the Federal Grain Inspection, Packers and Stockyards Administration. WSR 05-11-058, § 16-240-010, filed 5/17/05, effective 6/17/05.]

AMENDATORY SECTION (Amending WSR 17-19-051, filed 9/13/17, effective 10/14/17)

WAC 16-240-039 USDA, ((GIPSA)) AMS, FGIS administrative and supervision fees. The United States Department of Agriculture (USDA), ((Grain Inspection, Packers and Stockyards Administration)) Agricultural Marketing Service (AMS), Federal Grain Inspection Service (FGIS) charges a per metric ton administrative and supervision fee for export and other grain handled by facilities in the Washington state department of agriculture service area.

(1) ((Washington state department of agriculture will invoice and collect GIPSA's administrative fee at the current GIPSA tonnage calcu-

lation or charge on behalf of GIPSA and will pass through the fee to GIPSA, FGIS.

~~(2) Washington state department of agriculture will charge the federal fiscal year administrative fee established by GIPSA, FGIS under the guidelines established by GIPSA for collecting the fee.)~~ FGIS administrative tonnage fees. In addition to all other applicable fees, FGIS administrative tonnage fees for export grain shipments inspected and/or weighed, excluding land carrier shipments to Canada and Mexico, will be assessed at the current per metric ton rate identified in FGIS Directive 9180.74 Service Fees and Billing Codes, Attachment 1. Invoices will identify assessed administrative tonnage fees as separate line items per applicable carrier/unit type.

(2) FGIS supervision fees. In addition to all other applicable fees, FGIS supervision fees for domestic U.S. grain shipments inspected and/or weighed, including land carrier shipments to Canada and Mexico, will be assessed at the current per metric ton rate identified in FGIS Directive 9180.74 Service Fees and Billing Codes, Attachment 2. Invoices will identify assessed supervision fees as separate line items per applicable carrier/unit type.

[Statutory Authority: RCW 22.09.020 and chapter 34.05 RCW. WSR 17-19-051, § 16-240-039, filed 9/13/17, effective 10/14/17; WSR 16-12-076, § 16-240-039, filed 5/27/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 17-19-051, filed 9/13/17, effective 10/14/17)

WAC 16-240-044 ((GIPSA)) USDA, AMS, FGIS scale authorization.

The United States Department of Agriculture, (~~Grain Inspection, Packers and Stockyards Administration~~) Agricultural Marketing Service, Federal Grain Inspection Service (USDA, ((GIPSA)) AMS, FGIS) has delegated official scale testing and scale authorization authority to the department.

(1) The ((GIPSA)) USDA, AMS, FGIS scale authorization fee established in WAC 16-240-060, per hour, per employee is charged when ((GIPSA)) USDA, AMS, FGIS scale authorization services are performed.

(2) In addition to the hourly ((GIPSA)) USDA, AMS, FGIS scale authorization fee; the department may charge travel time at the scale authorization hourly rate, mileage beyond (~~ten~~) 10 miles from the scale specialist's assigned office location, per diem, or overtime, if applicable.

(3) All scales in Washington state under USDA, ((GIPSA)) AMS, FGIS jurisdiction must comply with the following testing requirements:

(a) Scales must be tested and certified for accuracy at least twice each year by an authorized Washington state department of agriculture scale specialist or a USDA, ((GIPSA)) AMS, FGIS scale specialist.

(b) When tested by the department or by USDA, ((GIPSA)) AMS, FGIS, a seal must be placed on the scales. This seal must be dated and must indicate approval or rejection.

(c) When scales are tested, copies of the test report must be:

(i) Forwarded to USDA, ((GIPSA)) AMS, FGIS;

(ii) Maintained by the department; and

(iii) Maintained at the facility where the scale is located.

(4) The scale authorization fee is charged in one-half hour increments.

[Statutory Authority: RCW 22.09.020 and chapter 34.05 RCW. WSR 17-19-051, § 16-240-044, filed 9/13/17, effective 10/14/17; WSR 16-12-076, § 16-240-044, filed 5/27/16, effective 7/1/16. Statutory Authority: 2003 1st sp.s. c 25 § 309(2); RCW 22.09.790, chapter 34.05 RCW and The United States Department of Agriculture has oversight of fees charged under the Federal Grain Inspection, Packers and Stockyards Administration. WSR 05-11-058, § 16-240-044, filed 5/17/05, effective 6/17/05.]

AMENDATORY SECTION (Amending WSR 17-19-051, filed 9/13/17, effective 10/14/17)

WAC 16-240-052 Fees for stowage examination. (1) The following rules apply for fees for stowage examination services on vessels or ocean-going barges.

(a) At anchor stowage examination services will be conducted at the convenience of the designated grain inspection office during daylight hours under safe working and weather conditions.

(b) The applicant is responsible for securing licensed tug or water taxi to provide safe transportation to and from the anchor point.

(c) Two vessel or ship's agent representatives will accompany each WSDA inspector performing stowage examination services.

(d) In addition to the fee in USGSA Table 8 under WAC 16-240-070 (2)(b), the department may charge, as applicable, the following fees:

((■)) • WAC 16-240-048 (rates outside of established business hours);

((■)) • WAC 16-240-050 (travel, mileage beyond ten miles, per diem);

((■)) • WAC 16-240-054 (service cancellation fee).

(2) The following rules apply for fees for other stowage examination services:

(a) Fees for stowage examination services will not be charged when official sampling and inspection occurs at the time of loading or when official check loading is performed, unless the applicant requests an official stowage examination certificate.

(b) The stowage examination requirement associated with service at the time of loading may be waived in accordance with ((GIPSA)) US-DA, AMS, FGIS Directive 9020.1, available from United States Department of Agriculture, ((Grain Inspection, Packers and Stockyards Administration)) Agricultural Marketing Service, Federal Grain Inspection Service.

(c) The applicant is responsible for assuring stowage space is readily accessible to inspection personnel.

[Statutory Authority: RCW 22.09.020 and chapter 34.05 RCW. WSR 17-19-051, § 16-240-052, filed 9/13/17, effective 10/14/17. Statutory Authority: 2003 1st sp.s. c 25 § 309(2); RCW 22.09.790, chapter 34.05 RCW and The United States Department of Agriculture has oversight of fees charged under the Federal Grain Inspection, Packers and Stockyards Administration. WSR 05-11-058, § 16-240-052, filed 5/17/05, effective 6/17/05.]

AMENDATORY SECTION (Amending WSR 17-19-051, filed 9/13/17, effective 10/14/17)

WAC 16-240-060 WSDA grain program hourly rates, fees and cancellation fees. USGSA—AMA—WSDA Table 1 contains fees for ((GIPSA)) US-DA, AMS, FGIS scale authorization, straight-time hourly rate, overtime hourly rate, and service cancellation fees for services performed under the United States Grain Standards Act, the Agricultural Marketing Act of 1946, and Washington state rule.

**USGSA—AMA—WSDA Table 1
WSDA Grain Program Hourly Rates, Fees and
Cancellation Fees**

1. Scale authorization fee, per hour, per employee	\$56.00
2. Straight-time rate, per hour, per employee	\$56.00
3. Overtime rate established under WAC 16-240-048, per hour, per employee	\$28.00
4. Service cancellation fee, per employee	\$200.00

[Statutory Authority: RCW 22.09.020 and chapter 34.05 RCW. WSR 17-19-051, § 16-240-060, filed 9/13/17, effective 10/14/17; WSR 16-12-076, § 16-240-060, filed 5/27/16, effective 7/1/16. Statutory Authority: RCW 15.17.050, 2012 2nd sp.s. c 7, and chapter 34.05 RCW. WSR 12-21-064, § 16-240-060, filed 10/17/12, effective 11/17/12. Statutory Authority: 2003 1st sp.s. c 25 § 309(2); RCW 22.09.790, chapter 34.05 RCW and The United States Department of Agriculture has oversight of fees charged under the Federal Grain Inspection, Packers and Stockyards Administration. WSR 05-11-058, § 16-240-060, filed 5/17/05, effective 6/17/05.]