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Agricultural Marketing Service

7 CFR Part 800

[Doc. No. AMS-FGIS-20-0001]

RIN 0581-AD94

Fees for Supervision of Official Inspection and Weighing Services Performed by Delegated States and/or Designated Agencies, Miscellaneous Fees for Other Services, and Removal of Specific Fee References

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) invites comments on a proposal to implement a standardized formula model for calculating Federal Grain Inspection Service (FGIS) supervision fees. The proposed change would enable FGIS to adjust supervision fees annually in order to maintain an appropriate operating reserve as required by the United States Grain Standards Act (USGSA). As with other AMS fee-based programs, AMS would publish annual FGIS fee updates in the **Federal Register** and post updated fee schedules on its website. The proposed rule would also eliminate or revise certain registration and duplication fees charged by FGIS.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. All comments must be submitted through the Federal e-rulemaking portal at <http://www.regulations.gov> and should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the record and will be made available to

the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Denise Ruggles, FGIS Executive Program Analyst, AMS, USDA; Telephone: (816) 659-8406; Email: Denise.M.Ruggles@usda.gov.

SUPPLEMENTARY INFORMATION: The USGSA (7 U.S.C. 71 *et seq.*) authorizes FGIS, a program area within AMS, to supervise grain inspection and weighing services provided by official agencies and to charge and collect reasonable fees to cover the cost of such supervision. These fees are charged by official agencies to their customers (grain industry) as part of the overall fee charged for inspection and weighing services. Supervision fees collected by FGIS cover, as nearly as practicable, the program and administrative costs of supervising official agencies.

FGIS regularly reviews its user-fee financed programs under USGSA to determine whether the fees are adequate and appropriate operating reserve fund levels are maintained. On July 1, 2016, following such a review (81 FR 41790; June 28, 2016), FGIS suspended the assessment of fees for supervision of official inspection and weighing services performed by delegated States and/or designated agencies to reduce the operating reserve. This suspension ended on December 31, 2020. FGIS's operating reserve at that time was adequate to cover 3 to 6 months' operating expenses as required, but the program will need to resume assessment of tonnage fees to cover the ongoing costs of supervision.

Based on the review, FGIS proposes to move to a standardized formula model for annual fee adjustments to recover the costs associated with administering the official agency supervision program. This action would maintain FGIS's financial stability to assure continued inspection and weighing services to the grain industry, which would

further facilitate the sound and orderly marketing of grain in domestic and export markets. FGIS believes this approach would be acceptable to the grain industry.

The fees for supervising official agencies were last revised in 2005 (70 FR 50149; August 26, 2005). The fee schedule at 7 CFR 800.71(a)(2) (Schedule B) has not been changed since then. Currently, the FGIS fee for supervision of official agencies is set at \$0.011 per metric ton of domestic U.S. grain shipments inspected and/or weighed, including land carrier shipments to Canada or Mexico.

Financial data for the supervision of official agencies program for fiscal years (FY) 2016 through 2020 is reviewed in Table 1.

Table 1: Supervision of Official Agencies Financial Analysis
(Millions of Dollars) *

	FY 16	FY 17	FY 18	FY 19	FY 20
Revenue	\$1.91	\$0.00	\$0.00	\$0.00	\$0.00
Obligations	\$1.43	\$1.78	\$1.88	\$1.55	\$1.81
Annual Surplus or (Deficit)	\$0.47	(\$1.78)	(\$1.88)	(\$1.55)	(\$1.81)
Operating Reserve – running balance	\$8.73	\$6.95	\$5.08	\$3.53	\$1.73

*Figures may not sum due to rounding and adjustments of prior year obligations.

As illustrated by Table 1, while revenues have been suspended since July 2016, FGIS obligations have generally increased due to inflation and cost of living adjustments. The exception was in FY19, when the accounts of the former Grain Inspection, Packers and Stockyards Administration (GIPSA), which included FGIS, were merged with AMS, along with the close-out of obligations. As explained above, the current fee structure generated a recurring annual operating surplus for several years, resulting in a decision to suspend the collection of the fees in 2016 that would gradually reduce the operating reserves to meet AMS’s target of maintaining funds to cover 3 to 6 months’ expenses. Monthly costs to operate the supervision of official agencies in FY 2020 were \$151,000. Thus, AMS would consider an operating reserve of between \$0.45 million and \$0.91 million (3 and 6 times the monthly operating cost, respectively) at the end of FY 2020 to

be appropriate. At the end of FY 2020, the operating reserve balance was \$1.73 million, enough to cover eleven and one half months of expenses.

To prevent accumulating a reserve balance beyond the targeted amount (3 to 6 times the monthly operating cost), AMS proposes to adopt a standardized formula for calculating user fees for each calendar year (CY). AMS expects that reducing fees in the proposed manner would gradually reduce the balance in the reserve fund, while also allowing FGIS to continue making strategic operational expenditures to meet industry expectations and achieve United States Department of Agriculture (USDA) goals.

Calculations

This proposal calculates the supervision tonnage fee using the prior year's actual costs and average yearly tonnage of domestic U.S. grain shipments inspected and/or weighed, including land carrier shipments to Canada and Mexico during the previous 5 fiscal years.

As a result, we are proposing to add new § 800.71(b)(2)(i) and (ii) to include the following formulas for calculating fee rates for CY 2021 and succeeding years.

Operating Reserve Adjustment. FGIS would divide the total prior year supervision costs by 2 to determine the 6-months operating reserve goal. From that value, FGIS would subtract the FY operating reserve ending balance to obtain the operating reserve adjustment for determining the supervision tonnage fee.

Supervision tonnage fee. FGIS would add the total prior year supervision costs and the operating reserve adjustment, then divide the result by the previous 5-year average tonnage. If the calculated fee is zero or a negative value, FGIS would suspend collection of supervision tonnage fees for the next calendar year.

In addition to implementing a new formula for calculating supervision tonnage fees, this proposal would also revise:

- Section 801.71(a)(2) – Schedule B –to remove the currently specified fee and provide that annual supervision fees would be as published on the AMS website.
- The introductory text of § 801.71(b) – Annual review of fees – to convey that weighing and inspection fees, as well as supervision fees, would be recalculated annually.
- Section 801.71(b)(1) to clarify that the tonnage fees calculated in that section pertain only to FGIS inspection and weighing (Schedule A) fees.
- Section 801.71(b) by redesignating paragraph (b)(2) as paragraph (b)(3) and adding a new paragraph (b)(2) that outlines the supervision fee calculations, as described earlier.

Miscellaneous fees for other services

In addition to the above changes related to supervision fees, AMS proposes to make the following changes to other fee requirements in § 801.71(d).

The proposed rule would remove the introductory text of § 801.71(d)(1)(i) – Registration certificates and renewals, and would consolidate paragraphs (d)(1)(i)(A) and (B) of that section, which currently provide flat fees for registering business operations that buy, handle, weigh, or transport grain for sale in foreign commerce or for such businesses that are also in a control relationship with respect to a business that buys, handles, weighs, or transports grain for sale in interstate commerce. Currently, the registration fee for the former is \$135, and the registration fee for the latter is \$270. The proposed rule would combine the two charges into one. AMS proposes to calculate the export registration fee using the following formula and adjust the fees annually, as necessary.

Registration certificates and renewals. FGIS would multiply § 800.71(a) Table 1 of Schedule A noncontract hourly rate by quantity of five. The fee covers FGIS personnel

costs to review applications, monitor annually, publication costs, and administrative expenses.

AMS would publish the annual rate in the **Federal Register** and on the AMS website. The anticipated consolidated fee for calendar year 2021 is estimated to be \$300 using current published fees.

The proposed rule would remove § 800.71(d)(1)(ii), which provides charges for providing extra copies of registration certificates, as the certificates are now provided electronically for printing by the applicant.

The proposed rule would revise § 800.71(d)(2) to remove the provision of a flat fee for applications to amend an official agency designation and would instead calculate the rate using the following formula. The rate will be adjusted annually and published on the AMS website.

Designation amendments. FGIS will calculate the rate using **Federal Register** publication rate for 3 columns, plus 1 hour of noncontract hourly rate from § 800.71(a) Table 1 of Schedule A. The fee covers FGIS personnel costs, administrative expenses, and **Federal Register** publication costs.

The current rate is \$75 per application; AMS estimates the fee would be \$510 for calendar year 2021 using current published fees. AMS typically receives only one or two requests each year, so the overall cost to official agencies is not expected to be significant. AMS proposes to review the costs to process and publish designation amendments and adjust the fees annually, as necessary.

Finally, the proposed rule would remove §800.71(d)(3), which provides a flat application fee for operating a scale testing organization. FGIS hasn't approved such an organization in the past 5 years. Now States that operate as scale testing organizations, in addition to FGIS, provide service in areas that are not in reasonably close proximity to FGIS duty stations. Scale operators pay far less in travel costs by obtaining services

provided by their local State scale testing organizations on behalf of FGIS. Additionally, this increases FGIS efficiency by reducing staff travel and allowing their deployment to other mission duties.

Executive Orders 12866 and 13563

Executive Orders 12866 – Regulatory Planning and Review, and 13563 – Improving Regulation and Regulatory Review, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, harmonizing rules, and promoting flexibility. This proposed rule does not meet the criteria of a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

AMS considered several alternatives to the changes in this proposed rule, including reinstating the current fee or applying a standardized formula using 1 year of supervision tonnage versus the 5-year supervision tonnage average. Ultimately, AMS determined that the proposed approach of recalculating the fee each year using a standard formula based on a 5-year supervision tonnage average would provide savings to the industry when the operating reserve balance exceeds FGIS's goal and would limit large fee increases following years where supervision tonnage volumes are significantly less. AMS expects the proposed changes to benefit the grain industry by adjusting supervision fee as needed annually to reflect actual expenses related to grain inspections supervision and maintaining appropriate operating reserve balances. AMS does not expect the proposed rule to provide any environmental, public health, or safety benefits. AMS has not identified any costs related to this proposed action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988 – Civil Justice Reform. This proposed rule is not intended to have retroactive effect. The USGSA provides in Sec. 87g that no State or subdivision thereof may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposed rule. No administrative proceedings would be required before parties could file suit in court challenging the provisions of this proposed rule.

Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 – 602), AMS has considered the economic impact of this proposed action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

This proposed rule sets the fees for three different FGIS functions: (1) fees for FGIS Supervision, (2) fees for registration certificates and renewals for exporters of grain, and (3) fees for amending the designation of official agencies.

AMS has determined that this proposed rule does not have a significant economic impact on a substantial number of small entities, because most applicants (grain industry) that apply for these official services and are subjected to AMS supervision fees, do not meet the requirements for small entities. This proposed rule will affect entities engaged in shipping grain to and from points within the United States and exporting grain from the United States to Canada and Mexico. There are approximately 9,500 off-farm storage facilities in the United States that could receive grain services from delegated States or designated agencies. AMS estimates 25 percent of these users would be considered small

businesses based on criteria established by the Small Business Administration (13 CFR 121.201) (SBA) to differentiate between large and small business entities. SBA uses the North American Industry Classification System (NAICS) to categorize various industry businesses. SBA defines small grain farmers, NAICS codes 424510 and 493130, as those whose annual receipts do not exceed \$750,000 and no more than 500 employees.

With respect to fees for supervision, those fees are a minor amount compared to the total value of the grain shipments. The carrier types shipped by small entities are submitted samples and trucks with a standardized weight of 23.95 metric tons and railcars with a standardized weight of 99.79 metric tons. Supervision fees assessed on these carriers at the current published rate are \$0.26 per truck with a 2020 corn market year value of \$2,700, and \$1.10 per railcar with a 2020 corn market year value of \$12,600.

The registration certificates and renewal fee applies to persons engaged in the business of buying grain for sale in foreign commerce, and in the business of handling, weighing, or transporting of grain for sale in foreign commerce. Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services were provided by AMS and official agencies on a fee basis for 73 registered exporters in CY 2019. Seventy-seven of the currently registered entities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities established by the SBA. In 2019, approximately 11 small exporters registered with FGIS, and in 2020 approximately 7 small exporters registered with FGIS. As explained, with the estimated calculation of the registration fees for 2021 at \$300, FGIS believes the registration fees would have a minor effect on the small number of small business that register with FGIS.

Finally, the designation amendment applies to an official agency requesting a modification to its designation within the five-year designation period. AMS has 42

designated States and agencies, and thirteen of these designated agencies meet the criteria for small entities established by the SBA. As explained earlier, the estimated designation amendment fee for 2021 would be \$510. FGIS believes the designation amendment fee would have a minor impact on small businesses, since it typically receives no more than two modification requests per year.

Proposed adoption of standardized AMS user-fee rate calculations for 2021 and beyond would benefit all inspection applicants, regardless of size, as fees would more closely reflect the current cost of inspections, and the fee calculation process would be more transparent. Through its annual review, AMS would be able to monitor the financial status of the grain supervision program to determine whether further adjustments are necessary.

AMS has determined this proposed rule would not have a significant economic impact on a substantial number of entities as defined under the RFA because fewer than half the applicants for grain inspection services meet the definition of small entities.

Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Paperwork Reduction Act and E-Government Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and record keeping requirements of the supervision of official agencies program have previously been approved by OMB under control number 0580-0013. No additional reporting, record keeping, or other compliance requirements would be imposed as a result of this proposed rule.

AMS is committed to complying with the E-Government Act (44 U.S.C. 3601 *et seq.*), 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, Grain.

For the reasons set forth in the preamble, AMS proposes to amend 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.

§ 800.71 [Amended]

2. Amend § 800.71 by:

- a. Revising paragraph (a)(2);
- b. Revising the introductory text in paragraph (b);
- c. Revising the first sentence in paragraph (b)(1);
- d. Redesignating paragraph (b)(2) as paragraph (b)(3);
- e. Adding new paragraph (b)(2); and
- f. Revising paragraph (d).

The revisions and addition read as follows:

§ 800.71 Fees assessed by the Service.

(a) ***

(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 will be assessed per metric ton of domestic U.S. grain shipments inspected and/or weighed, including land carrier shipments to Canada and Mexico. For each calendar year, FGIS will calculate Schedule B fees as defined in paragraph (b) of this section. FGIS will publish a notice in the Federal Register and post Schedule B fees on the Agency's public website.

(b) *Annual review of fees.* For each calendar year, starting with 2021, the Service will review the fees of this section and publish fees each year according to the following:

(1) *Tonnage fees.* Tonnage fees in Schedule A in paragraph (a)(1) of this section 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. * * *

(2) *Supervision fee.* Supervision fee in Schedule B in paragraph (a)(2) of this section will be set according to the following:

(i) *Operating reserve adjustment.* The operating reserve adjustment is the supervision program costs for the previous fiscal year divided by 2 less the end of previous fiscal year operating reserve balance.

(ii) *Supervision tonnage fee.* The supervision tonnage fee is the sum of the prior fiscal year program costs plus operating reserve adjustment divided by the average yearly tons of domestic U.S. grain shipments inspected and/or weighed, including land carrier shipments to Canada and Mexico during the previous 5 fiscal years. If the calculated value is zero or a negative value, the collection of supervision tonnage fees will be suspended for one calendar year.

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(d) *Miscellaneous fees for other services.* For each calendar year, the Service will review the fees of this section and publish fees in the Federal Register and on the AMS website.

(1) *Registration certificates and renewals.* The fee for registration certificates and renewals will be published annually in the Federal Register and on the Agency's public website, and will be based upon the noncontract hourly rate multiplied by five. If you operate a business that buys, handles, weighs, transports grain for sale in foreign commerce, or 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 complete an application and pay the published fee.

(2) *Designation amendments.* The fee for amending designations will be published annually in the Federal Register and on the Agency's public website. The fee will be based upon the cost of publication plus one hour at the noncontract hourly rate. If you submit an application to amend a designation, you must pay the published fee.

Bruce Summers,
Administrator,
Agricultural Marketing Service.

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