



## **Agricultural Marketing Service**

### **7 CFR Part 800**

**[Doc. No. AMS-FGIS-24-0027]**

**RIN 0581-AE31**

### **Formulas for Calculating Hourly and Unit Fees for FGIS Services**

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

**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS), Federal Grain Inspection Service (FGIS or Service) is amending its user fee regulations to establish standardized formulas the agency will use to calculate hourly and unit fees. The changes allow FGIS to charge reasonable fees sufficient to cover the costs of providing official services and re-establish a 3-to 6-month operating reserve, as required by the United States Grain Standards Act (USGSA). This final rule also makes specified conforming changes and minor technical changes to correct two typographical errors.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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**SUPPLEMENTARY INFORMATION:** This final rule supersedes the provisions of the interim final rule titled “Fees for Official Inspection and Weighing Services under the United States Grain Standards Act,” and all associated rulemakings, and amends FGIS’s user fee regulations to establish new formulas to calculate hourly and unit fees. The new formulas, which are similar to the standardized formulas used in other AMS user-fee

funded grading programs, amend the regulations at 7 CFR 800.71. The formulas will enable the agency to sustain operations and comply with the USGSA, which requires FGIS to charge fees sufficient to cover the costs of the official services it provides and to adjust fees annually in order to maintain an operating reserve of not less than 3 and not more than 6 months. Prospective customers can find FGIS's fee schedules posted on AMS's public website at: <https://www.ams.usda.gov/about-ams/fgis-program-directives>.

## **COMMENT REVIEW**

An interim final rule concerning user fees for grain inspection and weighing services was published in the *Federal Register* on June 6, 2024 (89 FR 48257). The interim final rule was effective on July 8, 2024. A proposed rule concerning fee formulas by which FGIS would calculate future grain inspection and weighing fees was published October 8, 2024 (89 FR 81396). Copies of the interim rule and proposed rule were sent via email to FGIS stakeholders. The interim rule and proposed rule were also made available through the internet by AMS via <https://www.regulations.gov>. AMS provided a 30-day comment period, ending July 8, 2024, to give interested persons an opportunity to respond to the interim final rule, and a 45-day comment period, ending November 22, 2024, to give interested persons an opportunity to respond to the proposed rule.

FGIS received one comment to the proposed rule jointly submitted by two trade organizations. One of the trade organizations represents grain, feed, processing, exporting, and other grain handling companies who collectively operate over 8,000 facilities. The other trade association represents private and publicly owned companies and farmer-owned cooperatives that are involved in, and provide services to, the agri-bulk products international trading industry.

### *Proposed Rule for Calculating Hourly Rates and Unit Fees*

Two trade associations expressed support for the proposed rule fee formulas in a joint comment. Their comment urged FGIS to maintain transparency regarding the

calculation data and to regularly share this information with industry stakeholders. By increasing the flow of information, the comment conveyed that stakeholders can collaborate more effectively with FGIS to discover additional solutions that meet current market rates and requirements. The comment reiterated, similar to feedback on FGIS's interim final rule that revised its user fees, that significant increases in fees paid by industry are unsustainable. Concern was expressed that there is too little transparency in the existing calculation process, which makes it "difficult for both the FGIS and [stakeholders] to budget and plan for services provided. User fees should be predictable and market-based to provide enough funding and properly reflect the work performed." The comment also suggested that FGIS uncouple hourly fee calculations from the existing five-year rolling average calculation used for tonnage fees.

FGIS agrees with the comment. The formulas adopted in this final rule will ensure greater transparency regarding the calculation of hourly rates for industry participants, as well as help mitigate large, one-time increases. This final rule also separates the calculation of hourly rates from the five-year rolling average calculation for tonnage fees.

After consideration of all relevant material presented in the comment and other available information, FGIS has determined that it is appropriate to finalize the proposed rule, as published in the *Federal Register* on October 8, 2024 (89 FR 81396), without change.

## **CONFORMING REGULATORY CHANGES**

In an interim rule published in the June 6, 2024, edition of the *Federal Register* (89 FR 48257), FGIS established revised fees for the remainder of 2024 (and until new fees are established using the formulas in this final rule). To implement the revised fees, the interim rule imposed a stay on §§ 800.71 and 800.72(b). To amend these sections, this rulemaking lifts the stay imposed on them by the interim rule.

This rule also makes certain conforming changes in 7 CFR part 800. Specifically, this rule restores references to §§ 800.71 and 800.72 that were amended by the interim rule. In order to implement revised fees for 2024, the interim rule replaced references to § 800.71, which was stayed, with references to a newly added temporary section, § 800.74. Because § 800.72(b) was also stayed, the interim rule replaced a reference to that section in § 800.73(d) with a reference to §§ 800.72(a) and 800.74. As this final rule revises § 800.71 to incorporate the formulas, these internal substitutions are no longer needed. Accordingly, this rule replaces references to § 800.74 with references to § 800.71 in §§ 800.34, 800.36, 800.156(d)(5), and 800.197(b)(3). This rule also replaces the reference to §§ 800.72(a) and 800.74 in § 800.73(d) with a reference to § 800.72. Finally, because the changes to § 800.71 will render § 800.74 obsolete, this rule also removes that section.

#### **TECHNICAL CORRECTIONS**

This rule also corrects two typographical errors—a reference to 5 U.S.C. 6103 and a reference to Executive Order 10358—in the definition of *Holiday* in 7 CFR 800.0—Meaning of terms. These corrections do not create new or amend existing requirements or interpretations.

#### **REQUIRED REGULATORY ANALYSES**

##### **Executive Orders 12866, 13563, and 14094**

This rule is being issued in conformance with Executive Order 12866, “Regulatory Planning and Review,” Executive Order 13563, “Improving Regulation and Regulatory Review,” and Executive Order 14094, “Modernizing Regulatory Review.” Executive Orders 12866 and 13563 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, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means.

The Office of Management and Budget (OMB) has designated this rule as not significant under Executive Orders 12866, 13563, and 14094. Accordingly, OMB has not reviewed this rule under those orders. Since grain export volume can vary significantly from year to year, estimating the impact of future fee changes can be difficult. FGIS recognizes the need to provide predictability to the industry for inspection and weighing fees. The statutory requirement to maintain an operating reserve between 3 to 6 months of operating expenses ensures that FGIS can adequately cover its costs without imposing an undue burden on its customers.

FGIS regularly reviews its user-fee financed programs to determine whether the fees charged for performing official inspection and weighing services adequately cover the costs of providing those services. Due to limitations in the current regulations (7 CFR 800.71(b)(3)), which permit fee increases of no more than 5 percent per year, combined with four years of rate decreases, and noneconomic factors that led to the 2020-2023 period having highest inflation in more than 40 years,<sup>1</sup> FGIS faced an operating deficit that was forecasted to grow without corrective action.

This rule revises the formulas under which FGIS adjusts fees annually to ensure stability of the program. The rule will also ensure that FGIS complies with the USGSA, which requires the agency to charge fees sufficient to cover its costs and maintain a 3- to

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<sup>1</sup> For example, the Consumer Price Index (CPI) Calculator (<https://data.bls.gov/cgi-bin/cpicalc.pl>) shows prices up 20 percent between January 2020 and February 2024, and up 31 percent between January 2016 and February 2024.

6-month operating reserve. FGIS will continue to seek out cost-saving measures and implement appropriate changes to reduce its costs to provide alternatives to fee increases.

This rule is unlikely to have an annual effect of \$200 million or more or adversely affect the economy. FGIS has operated at a net loss for five consecutive years, and even with the maximum fee increases permitted under the current regulations, the agency has been unable to reduce the deficits and rebuild the operating reserve. While FGIS's interim final rule, published previously in the *Federal Register* (89 FR 48257), addresses the agency's current deficit, this rule seeks to prevent additional deficits in future years by revising FGIS's user fee regulations to enable more accurate calculation of its costs and greater flexibility in future rate changes.

FGIS believes that the U.S. grain industry will be best served by revising the regulation at 7 CFR 800.71, which addresses the calculation of fees for official inspection and weighing services performed by FGIS in the U.S. and Canada. The industry is already familiar with the annual process for evaluating and updating fees and anticipates the changes in this rule. This rule allows FGIS to continue providing mandatory and voluntary grain inspection services that facilitate international and domestic trade. This rule also allows FGIS to adjust fees in the future in response to unforeseeable climate, logistical, and market conditions, and to maintain required operating reserves.

### **Regulatory Flexibility Analysis**

Under the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-12), FGIS has considered the economic impact of this final rule on small entities. Accordingly, FGIS has prepared this regulatory flexibility analysis. 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.

The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS). This final rule will affect customers of FGIS's official inspection and weighing services in the domestic and export grain markets (NAICS code 115114). Current guidance from the SBA provides a revenue cutoff at \$34 million to differentiate large and small firms in this industry. Fees for the program which apply to this industry are provided on the FGIS website.

Under the USGSA, all grain exported from the United States must be officially inspected and weighed, with few exceptions. FGIS provides mandatory inspection and weighing services at 29 export facilities in the United States. Five delegated State agencies provide mandatory inspection and weighing services at 20 facilities. All of these facilities are owned by multinational corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the SBA.

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 and 800.31 define a foreign commerce grain business as the business of regularly buying, handling, weighing, or transporting grain for sale in foreign commerce totaling 15,000 metric tons or more during the preceding or current calendar year. Currently, there are 174 businesses registered to export grain, most of which are not small businesses.

Although most exporters are not small businesses, most users of FGIS's official inspection and weighing services (which include domestic grain businesses as well as exporters) meet the SBA requirements for small entities. Data on user fee receipts from FGIS for the past 5 years, plus 2024 through February, show a total of 2,123 different accounts over this time, though many firms are represented by multiple accounts. For the

purpose of this regulatory flexibility analysis, FGIS will consider accounts as representing establishments, with multiple establishments associated with larger firms.

FGIS identified a total of 31 large firms, as defined by the SBA firm size classification of receipts in excess of \$34 million. FGIS also identified the total number of establishments affiliated with the 31 large firms to be 133. With a total number of establishments of 2,123, this means 1,990, or 94 percent, of the establishments that paid fees to FGIS over the 2019-2024 period are small businesses according to the SBA definition.

Table 1 shows that while only 6 percent of the firms are considered large, in total they have contributed the vast majority of the fees paid to the program. In each of the five previous years, and for the year 2024 to date, the 31 large firms paid between 86 and 90 percent of all FGIS fees, with an average of 89 percent. The remaining 1,990 establishments paid on average 11 percent of total fees.

**Table 1. FGIS Billed Accounts Summary Table for Regulatory Flexibility Analysis by Small Business Administration Size Classification**

Fiscal Year	All Firms	Large Firms		Small Firms	
	Total Fees Paid	Total Fees Paid	Share Paid	Total Fees Paid	Share Paid
2019	\$32,314,848	\$27,694,899	86%	\$4,619,949	14%
2020	\$30,746,015	\$27,386,467	89%	\$3,359,547	11%
2021	\$34,320,110	\$30,693,195	89%	\$3,626,915	11%
2022	\$31,663,547	\$28,183,027	89%	\$3,480,520	11%
2023	\$27,734,760	\$25,069,234	90%	\$2,665,526	10%
Oct 2023- Feb 2024	\$10,702,712	\$9,679,943	90%	\$1,022,769	10%
Grand Total	\$167,481,991	\$148,706,765	89%	\$18,775,226	11%

The amendments to FGIS’s user fee regulations will not change the relative burden of fees on small businesses. The provisions of this final rule will apply equally to all entities. In addition, use of standardized user-fee rate calculations will benefit all inspection applicants, regardless of size, as fees will more closely reflect the current costs of inspections, and the fee calculation process will be more transparent. Through its

annual review, FGIS will be able to monitor the financial status of the grain inspection and weighing program to determine whether further adjustments are necessary. Finally, this final rule will not impose additional reporting, record keeping, or other compliance requirements on small entities. FGIS has not identified any other Federal rules which may duplicate, overlap, or conflict with this final rule.

### **Executive Order 12988**

This final rule has been reviewed under Executive Order 12988—Civil Justice Reform. It is not intended to have retroactive effect. Section 18 of the USGSA (7 U.S.C. 87g) provides that no State or subdivision thereof may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this final rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

### **Executive Order 13175**

This final rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. FGIS has determined that this final rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

### **Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801-808), the Office of Information and Regulatory Affairs designated this final rule as not a major rule, as defined by 5 U.S.C. 804(2).

## **E-Government Act**

USDA is committed to complying with the provisions of the E-Government Act (44 U.S.C. 3601-3616) by promoting 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.

## **Paperwork Reduction Act**

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large FGIS customers. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), FGIS reports and forms are periodically reviewed to reduce information collection requirements and duplication.

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

Administrative practice and procedure, Conflict of interests, Exports, Freedom of information, Grains, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service 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.

#### **§ 800.0 [Amended]**

2. In § 800.0, in paragraph (b), in the definition of “Holiday”, remove the text “Under section 610 and Executive Order No. 10357” and add, in its place, the text “Under section 6103 and Executive Order 10358”.

#### **§ 800.34 [Amended]**

3. In § 800.34, in the first sentence, remove the citation “§ 800.74” and add, in its place, the citation “§ 800.71”.

**§ 800.36 [Amended]**

4. In § 800.36, in the last sentence, remove the citation “§ 800.74” and add, in its place, the citation “§ 800.71”.

5. Amend § 800.71 by lifting the stay and revising the section to read as follows:

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

(a) *Official inspection and weighing services.* The fees described for Direct Service in paragraph (a)(1) of this section apply to official inspection and weighing services performed by the Service in the U.S. and Canada. The fees described for Supervision in 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) *Direct Service—Fees for official inspection and weighing services performed by the Service in the United States and Canada.* For each calendar year, the Service will calculate Direct Service fees as provided in paragraphs (b) and (c) of this section. The Service will publish a notice in the *Federal Register* and post Direct Service fees on its public website.

(2) *Supervision—Fees for supervision of official inspection and weighing services performed by delegated States and designated agencies in the United States.* The Service will assess a Supervision fee per metric ton of domestic U.S. grain shipments inspected or weighed, or both, including land carrier shipments to Canada and Mexico. For each

calendar year, the Service will calculate Supervision fees as provided in paragraph (d) of this section. The Service will publish a notice in the *Federal Register* and post the Supervision fees on its public website.

(b) *Annual review of tonnage fees.* For each calendar year, the Service will review and adjust fees included in this section and publish fees each year according to the following:

(1) *Tonnage fees.* Tonnage fees for Direct Service in paragraph (a)(1) of this section will consist of the national tonnage fee and local tonnage fees and the Service will calculate and round the fee to the nearest \$0.001 per metric ton. All outbound grain officially inspected and/or weighed by the Field Offices 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) [Reserved]

(c) *Annual review of hourly and unit fees.* The Service will calculate the rate for program services, per hour per program employee using the following formulas:

(1) *Regular rate.* The total direct pay of program personnel performing grading, weighing, laboratory services, and equipment testing divided by the total direct hours for the previous year, which is then multiplied by the next year's percentage cost-of-living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses will be added to the cost of providing the service through the operating rate or the travel will be billed separately.

(2) *Overtime rate.* The total direct pay of program personnel performing grading, weighing, laboratory services, and equipment testing divided by the total direct hours for the previous year, which is then multiplied by the next year's percentage cost-of-living increase and then multiplied by 1.5, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses will be added to the cost of providing the service through the operating rate or the travel will be billed separately.

(3) *Holiday rate.* The total direct pay of program personnel performing grading, weighing, laboratory services, and equipment testing divided by the total direct hours for the previous year, which is then multiplied by the next year's percentage cost-of-living increase and then multiplied by 2, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses will be added to the cost of providing the service through the operating rate or the travel will be billed separately.

(4) *Benefits rate, operating rate, and allowance for bad debt rate.* For each calendar year, based on previous fiscal year costs, the Service will calculate the benefits rate, operating rate, and allowance for bad debt rate as follows:

(i) *Benefits rate.* The total direct benefits costs of program personnel performing grading, weighing, laboratory services, and equipment testing divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost-of-living increase.

(ii) *Operating rate.* The total operating costs of program personnel performing grading, weighing, laboratory services, and equipment testing divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(iii) *Allowance for bad debt rate.* The total allowance for bad debt for personnel performing grading, weighing, laboratory services, and equipment testing divided by total hours (regular, overtime, and holiday) worked.

(5) *Cost of living and inflation factors.* The Service will use the most recent economic factors released by the Office of Management and Budget for budget development purposes to derive the cost-of-living expenses and percentage of inflation factors used in the formulas in this section.

(6) *Operating reserve adjustment.* The Service will review the operating reserve at the end of each fiscal year and adjust the fees as needed to ensure an operating reserve of 3 to 6 months of expenses. This adjustment is included in the calculation for operating cost.

(d) *Annual review of Supervision fees.* Fees for Supervision in paragraph (a)(2) of this section will be set according to the following:

(1) *Supervision tonnage fee.* The supervision tonnage fee is the sum of the prior fiscal year program costs plus an operating reserve adjustment divided by the average yearly tons of domestic U.S. grain shipments inspected or weighed, or both, 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 Service will suspend the collection of supervision tonnage fees for 1 calendar year.

(2) *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.

(e) *Periodic review.* The Service will periodically review and adjust all Direct Service and Supervision fees 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 paragraphs (b) through (d) of this section.

(f) *Miscellaneous fees for other services.* For each calendar year, the Service will review fees included in this section and publish fees in the *Federal Register* and on its public website.

(1) *Registration certificates and renewals.* The fee for registration certificates and renewals will be published annually in the *Federal Register* and on the Service's public website, and the Service will calculate the fee using the noncontract hourly rate published pursuant to paragraph (a)(1) of this section multiplied by 5. If you operate a business that buys, handles, weighs, or transports grain for sale in foreign commerce, or you are in a control relationship 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 Service's public website. The Service will calculate the fee using the cost of publication plus 1 hour at the noncontract hourly rate. If submitting an application to amend a designation, the published fee must be paid.

6. In § 800.72:

- a. Lift the stay on paragraph (b); and
- b. Revise paragraph (b).

The revision reads as follows:

**§ 800.72 Explanation of additional service fees for services performed in the United States only.**

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(b) In addition to a 2-hour minimum charge for service on Saturdays, Sundays, and holidays, an additional charge will be assessed when the revenue from the services in § 800.71(a)(1) does not equal or exceed what would have been collected at the applicable hourly rate. The additional charge will be the difference between the actual unit fee revenue and the hourly fee revenue. Hours accrued for travel and standby time shall apply in determining the hours for the minimum fee.

**§ 800.73 [Amended]**

7. In § 800.73, in paragraph (d), remove the citation “§§ 800.72(a) and 800.74” and add, in its place, the citation “§ 800.72”.

**§ 800.74 [Removed]**

8. Remove § 800.74.

**§ 800.156 [Amended]**

9. In § 800.156, in paragraph (d)(5), in the last sentence, remove the citation “§ 800.74” and add, in its place, the citation “§ 800.71”.

**§ 800.197 [Amended]**

10. In § 800.197, in paragraph (b)(3), remove the citation “§ 800.74” and add, in its place, the citation “§ 800.71”.

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