



DEPARTMENT OF AGRICULTURE

7 CFR Part 800

[Doc. No. AMS-FGIS-18-0063]

Removal of Specific Fee Reference

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Direct final rule.

SUMMARY: The United States Grain Standards Act (USGSA) provides the Secretary with the authority to charge and collect reasonable fees to cover the costs of performing official services and the costs associated with managing the program. The USDA, on behalf of the Agricultural Marketing Service (AMS), is eliminating the published table of fees in the Code of Federal Regulations (CFR). Notice of changes to Schedule A Fees will be published in the Federal Register and AMS will make the fee schedule available on the Agency's public website.

DATES: This rule is effective [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless we receive written adverse comments or written notices of intent to submit adverse comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If we receive such comments or notices, we will publish a timely document in the **Federal Register** withdrawing the direct final rule.

ADDRESSES: Submit comments by any of the following methods:

- *Postal Mail:* Please send your comment addressed to Kendra Kline, AMS, USDA, 1400 Independence Avenue, SW, Room 2043-S, Washington, DC 20250-3614.

- *Hand Delivery or Courier:* Kendra Kline, AMS, USDA, 1400 Independence Avenue, SW, Room 2043-S, Washington, DC 20250-3614.
- *Internet:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

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

SUPPLEMENTARY INFORMATION: The USDA, on behalf of AMS, is removing the fee tables from the CFR. AMS calculates the tonnage fees according to the regulatory formula in § 800.71(b)(1). In 2015 Congress required Grain Inspection, Packers and Stockyards Administration (GIPSA) to adopt a method of calculation of export tonnage fees based upon “the rolling 5-year average of export tonnage volumes.” And, “[i]n order to maintain an operating reserve of not less than 3 and not more than 6 months, the Secretary shall adjust the fees described . . . not less frequently than annually.” Since 2016, the Federal Grain Inspection Service (FGIS) — currently a division of AMS — conducts a ministerial review of the amount of funds in the operating reserve at the end of the fiscal year to ensure that it has 4 ½ months of operating expenses as required by § 800.71(b)(2) of the regulations. If the operating reserve has more or less than 4 ½ months of operating expenses, then FGIS must adjust all its fees. For each \$1,000,000, rounded down, that the operating reserve varies from the target of 4 ½ months, FGIS adjusts all those fees by 2 percent. FGIS reduces the fees if the operating reserve exceeds the target and it increases the fees if the operating reserve does not meet target. The maximum annual increase or decrease in fees is 5 percent (7 CFR 800.71(b)(2)(i)-(ii)).

However, when creating the formula for fees FGIS administers, FGIS did not remove the published table of fees in the CFR. Under the prior fee publication and adjustment scheme, the agency allowed notice and comment on the fee table because it established the fees, and the fee table provided the ultimate public notice of the fees themselves.

Since the change to 7 CFR 800.71, FGIS no longer establishes fees through publication of the table in the CFR. The current method uses the regulatory formula in § 800.71(b)(1). Comment on the publication of the table in the Federal Register, therefore, does not have any impact on the statutorily mandated formula which is the basis of all the fees in the table. For this reason, annual publication of changes to the CFR of the fee table is unnecessary, because the adjustment of fees in 7 CFR 800.71 occurs by formula.

Also, the publication of the table in the Federal Register has provided the public with annual notice of the fees. While the publication of the table does provide this important function, FGIS believes there are less expensive but no less effective methods to provide public notice of the formula's required changes to the fees themselves. Annual publication changes to the table in the CFR unnecessarily increases the cost of administering the fees, and is inconsistent with administration priorities to be prudent and financially responsible in the expenditure of funds.

Accordingly, this table is being eliminated from the CFR. AMS will provide public notice of the change in fees through its publication of a notice in the *Federal Register* and posting the fees on its public website by January 1 of each year (7 CFR 800.71(b)(a)(1)). The agency expect that this method of notice of the ultimate fees is a non-controversial change in the manner that the agency publishes notice of the fees and therefore the agency does not expect adverse comment.

GIPSA / AMS Merger

GIPSA formerly fell within the mission area overseen by the Under Secretary for Marketing and Regulatory Programs (MRP), along with AMS. The Under Secretary for MRP's authority over GIPSA is further demonstrated by the published delegations of authority in part 2 of title 7 of the CFR. In 7 CFR 2.22(a)(3), the Secretary of Agriculture delegated to the Under Secretary for MRP authorities "related to grain inspection, packers and stockyards." In 7 CFR 2.81, the Under Secretary for MRP further delegated these authorities to the Administrator of GIPSA.

In a November 14, 2017 Secretary's Memorandum, the Secretary directed that the authorities at 7 CFR 2.81 be re-delegated to the Administrator of AMS, and that the delegations to the Administrator of GIPSA be revoked. These changes did not affect the existing delegations to the Under Secretary of MRP related to grain inspection, packers and stockyards at 7 CFR 2.22(a)(3).

Executive Orders 12866 and 13563

The Office of Management and Budget (OMB) has reviewed this regulatory action in accordance with the provisions of Executive Order 12866, Regulatory Planning and Review, and has determined that it does not meet the criteria for significant regulatory action. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs'" (April 5, 2017).

Direct Final Rule

No adverse comments are anticipated on the changes in this rule. Adverse comments suggest that the rule should not be adopted or that a change should be made to the rule. Unless an adverse comment is received within 30 days from the date of publication, this rule will be effective 45 days from the date of publication. If FGIS receives one or more written adverse comments within 30 days from the date of publication, a document withdrawing the direct final rule prior to its effective date will be published in the Federal Register stating that adverse comments were received.

Regulatory Flexibility Act

Since grain export volume can vary significantly from year to year, estimating the impact in any future fee changes can be difficult. AMS recognizes the need to provide predictability to the industry for inspection and weighing fees. AMS collects fees for performing official inspection and weighing services adequately cover the cost of providing those services. While not required by the Reauthorization Act, this rulemaking limits the impact of a large annual change in fees by setting an annual cap of 5 percent for increases or decreases in inspection and weighing fees. The statutory requirement to maintain an operating reserve between 3 and 6 months of operating expenses ensures that AMS can adequately cover its costs without imposing an undue burden on its customers.

Currently, AMS regularly reviews its user-fee financed programs and adjusts the user-fees according to the equations stated in 7 CFR 800.71(b)(2)(ii). The regulations (7 CFR 800.71(a)(1)) also require AMS to publish the adjusted fees by January 1 of each year. These regulations remain unchanged in this rulemaking. AMS will continue to seek out cost saving measures and implement appropriate changes to reduce its costs to provide alternatives to fee increases.

This rulemaking is unlikely to have an annual effect of \$100 million or more or adversely affect the economy. Also, under the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-12), AMS has considered the economic impact of this rulemaking on small entities. 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. This rulemaking is being issued to ensure that the annual fee adjustments are published by January 1st and are not hindered by the rulemaking process. AMS will annually publish a Notice in the *Federal Register* on the fee adjustment and publish all fees on the public website.

The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS). This rulemaking affects customers of AMS's official inspection and weighing services in the domestic and export grain markets (NAICS code 115114).

Under the USGSA, all grain exported from the United States must be officially inspected and weighed. AMS provides mandatory inspection and weighing services at 43 export facilities in the United States and 7 facilities for U.S. grain transshipped through Canadian ports. Five delegated State agencies provide mandatory inspection and weighing services at 13 facilities. All of these facilities are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the SBA. Further, the provisions of this rulemaking apply equally to all entities. 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 define a foreign commerce grain business as persons who regularly engage in buying for sale, handling, weighing, or transporting grain totaling 15,000 metric tons or more during the preceding or current calendar year. Currently, there are 97 businesses registered to export grain, most of which are not small businesses.

Most users of the official inspection and weighing services do not meet the SBA requirements for small entities. Further, AMS is required by statute to make services available to all applicants and to recover the costs of providing such services as nearly as practicable, while maintaining a 3 to 6 month operating reserve. There are no additional reporting, record keeping, or other compliance requirements imposed upon small entities as a result of this rulemaking. AMS has not identified any other federal rules which may duplicate, overlap, or conflict with this rulemaking. Because this rulemaking does not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not provided.

Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Exports, Grains, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, FGIS 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.

2. Section 800.71(a)(1) is revised to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

(1) *Schedule A—Fees for official inspection and weighing services performed in the United States and Canada.* For each calendar year, FGIS will calculate *Schedule A* fees as defined in paragraph (b) of this section. FGIS will publish a notice in the FEDERAL REGISTER and post *Schedule A* fees on the Agency's public website.

* * * * *

Dated: December 18, 2018.

Greg Ibach,
Under Secretary,
Marketing and Regulatory Programs.

BILLING CODE 3410-02 P

[FR Doc. 2018-27787 Filed: 12/26/2018 8:45 am; Publication Date: 12/27/2018]