# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Federal Grain Inspection Service

### 7 CFR Part 800

### Fees for Supervision of Official Services

**AGENCY:** Federal Grain Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Grain Inspection Service (FGIS or Service) is reducing fees by approximately 40 percent for the supervision of inspection and weighing services performed by agencies. The fee reduction will reduce the level of applicable operating reserves. FGIS also is establishing fees to recover the costs incurred for supervision of agencies performing Class Y weighing services and clarifying the fee schedule by consolidating the fees for protein and oil analyses under the category "official criteria." These change clarify and update the fee schedule.

**EFFECTIVE DATE:** October 1, 1985.

**FOR FURTHER INFORMATION CONTACT:** Lewis Lebakken, Jr., Information Resources Management Branch, RM, USDA, FGIS, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382-1738.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

#### Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule does 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.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities. FGIS is required by statute to make services available and to cover the estimated costs of providing such services. Moreover, this action, in part, would reduce applicable fees.

Pursuant to the Administrative Procedures Act, good cause is found to make this final rule effective October 1, 1985, which is less than 30 days after publication because this final rule will provide a reduction in the level of fees for services provided by FGIS as well as promote program stability by providing for an orderly reduction of current operating revenues. Therefore, this reduction should be implemented as soon as practicable. Also, other changes in this final rule will further update the fee schedule.

#### Final Action

The United States Grain Standards Act, as amended, (7 U.S.C. 71 *et seq.*) requires that delegated States and designated agencies pay fair and reasonable fees to cover the estimated costs to FGIS to supervise these agencies.

In the July 10, 1985 **Federal Register** (50 FR 28104) FGIS proposed specific changes to the fees for supervision of agencies performed under the United States Grain Standards Act (USGSA). A correction docket was published on July 23, 1985, (50 FR 29985). The comment period ended August 9, 1985. Thirteen comments were received on the proposed rule. Ten commenters supported the proposed decrease in FGIS fees assessment for supervision of official agencies. Two commenters suggested that FGIS refund to the agencies all applicable operating reserves in excess of cost of supervising agencies for a six-month period, or that the reserves be reduced by expending a portion in a manner that would be of significant benefit to all agencies. FGIS believes it is in the best interest of all parties concerned to reduce the operating reserves on a planned gradual basis through lower fees. This is consistent with FGIS' long standing policy of increasing or decreasing fees, as appropriate, to match revenues and operating costs. This approach is also consistent with, and supports a fee schedule that will maintain a 6-month reserve. FGIS also feels that agencies have already received substantial benefits from the 1984 fee reduction and will continue to receive these benefits with the proposed reduction in supervision fees. The reduction in operating reserves on a planned gradual basis would avoid any potential sharp increase in fees as may be required beause of unanticipated or accelerated program losses.

One commenter suggested that the proposed reduction in supervision fees represented a rebate to agencies and suggested that FGIS' plan to reduce the operating reserve discriminates against States currently under an expanded delegation of authority with FGIS because in the past such States in effect contributed to the operating reserves and presently are assessed fees determined on an annual basis pursuant to their expanded delegations of authority. The FGIS fees assessed to these States would not be affected by the 40% reduction in supervision fees. This reduction in user fees is part of FGIS' continuing effort to match future revenues with future costs of operating each FGIS program, including supervision of agencies. The expanded delegation of authority with specific States represents an added effort to match FGIS revenues and costs while reducing overall expenses and strengthening program operations. As stated above, FGIS increases or decreases fees, as appropriate, to match revenues and operating costs. Presently, States operating under an expanded delegation of authority voluntarily participate in a program that has reduced FGIS costs and, in turn, the supervision fees assessed to these States. The combination of these savings, along with improved program effectiveness, benefits both FGIS and the States participating in the expanded delegation of authority program. FGIS will continue to monitor its fiscal position to provide cost-effective services.

A final rule was made effective August 1, 1984 (49 FR 26560) which, in part, reduced the fees for FGIS supervision of inspection and weighing of delegated States and designated agencies by approximately 35%. This reduction in fees was intended to bring

revenues more in line with FGIS costs while, at the same time, gradually reducing the level of operating reserves for these two programs. Since that time, FGIS has carefully monitored the level of these fees in light of current program costs and revenues, including applicable operating reserves.

The 1984 reduction in fees slowed the rate of growth in the operating reserves by approximately 64%. However, the operating reserves continue to grow, but at a slower rate. As of April 30, 1985, for both supervision programs, FY 1985 revenues were $1.8 million with costs of $1.2 million. As of that date, the level of the applicable operating reserves was $4.5 million. In the 1984 reduction, some factors used in projections were affected by an unanticipated increase in grain exports during the first few months of fiscal year 1985. Further, FGIS has and continues to adopt costs saving measures to provide the grain trade with the most cost effective programs practicable. Additionally effective August 1, 1984, FGIS implemented a new program in which additional supervisory authorities have been delegated to the States of California and Washington in their delegated capacities under the Act. This action permitted the closing of two field offices. The action will not change the level of fees assessed to the delegated States because the fees charged are assessed separately as set forth in the States' delegation of authority documents.

A comparison of FY 1984 actual costs with comparable FY 1985 actual costs indicates that FGIS costs have been reduced by approximately 9%. Presently, grain exports are at levels approximately 19% below the first quarter of FY 85 levels. Recent trends indicate that exports are running approximately 4.5% behind comparable 1984 figures. The trend is expected to continue. A comparison of FY 84 actual revenues with comparable FY 85 actual revenues indicates that FGIS revenues have been reduced approximately 41%.

Nevertheless, based upon present operating reserve levels, FGIS is reducing the fees for supervision of official services by approximately 40%.

This reduction will operate the programs at net losses to reduce the operating reserves on a planned gradual basis; thereby avoiding any potential sharp increase in fees as may be required because of unanticipated or accelerated program losses. The reduction when added to the 1984 reduction will reduce applicable fees by approximately 61% over early FY 1984 levels.

FGIS will continue to monitor its cost and revenues in this area so that appropriate action may be taken to further revise these fees, if deemed necessary.

FGIS is establishing fees to cover costs incurred for the supervision of agencies performing official Class Y weighing services. The fees have been set at a level which is anticipated not to increase applicable operating reserves.

The Administrator is authorized to perform permissive inspections under official standards or, upon request, under other approved criteria. Protein testing is one such other criteria and supervision fees for protein analysis performed by agencies are listed separately in the supervision fee schedule. In order to clarify the fee schedule and provide supervision fees for any and all official criteria, FGIS will assess $.20 supervision fees for protein, oil or any other analyses under the heading "official criteria." A conforming change is reflected in footnote 6.

Miscellaneous nonsubstantive changes, including redesignating and revising footnotes, are being made to clarify and facilitate the use of the fee schedule.

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

Administrative practice and procedure, Export, Grain.

## PART 800—GENERAL REGULATIONS

Accordingly, 7 CFR Part 800 of the regulations is amended as follows:

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. In § 800.71(a), Schedule C, Tables 1 and 2 are revised to read as follows:

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

(a) * * *

SCHEDULE C—FEES FOR FGIS SUPERVISION OF OFFICIAL INSPECTION AND WEIGHING SERVICES PERFORMED BY DELEGATED STATES AND/OR DESIGNATED AGENCIES IN THE UNITED STATES[1]

TABLE 1

| Inspection services (bulk or sacked grain) | Official inspection or reinspection services |
|---|---|
| (1) Official sample-lot inspection service (white certificate): | |
| (i) For official grade and official factor determinations: | |
| (A) Truck or trailer (per inspection)[2] | $0.30 |
| (B) Boxcar or hopper car (per inspection)[2] | 0.95 |
| (C) Barge (per inspection)[3] | 6.15 |
| (D) Ship (per ship)[3] | 49.20 |
| (E) All other lots (per inspection)[2,4] | 0.30 |
| (ii) For official factor or official criteria determinations: | |
| (A) Factor determination (per inspection) (maximum 2 factors)[5] | 0.20 |
| (B) Official criteria[5,6] | 0.20 |
| (2) Stowage examination services: | |
| (i) Ship (per stowage certificate) | 3.00 |
| (ii) Other carriers (per stowage certificate) | 0.20 |
| (3) Warehouseman's sample-lot inspection service (yellow certificate) or submitted sample inspection service (pink certificate): | |
| (i) For official grade and official factor determinations (per inspection) | 0.30 |
| (ii) For official factor or official criteria determinations: | |
| (A) Factor determination (per inspection) (maximum 2 factors)[5] | 0.20 |
| (B) Official criteria[5,6] | 0.20 |
| (4) Reinspection services: | |
| (i) Truck, boxcar, hopper car, barge, ship, warehouseman's sample-lot, submitted sample, factor determination, and all other lots (per sample inspected) | 0.30 |
| (ii) Official criteria[5,6] | 0.20 |

SCHEDULE C—FEES FOR FGIS SUPERVISION OF OFFICIAL INSPECTION AND WEIGHING SERVICES PERFORMED BY DELEGATED STATES AND/OR DESIGNATED AGENCIES IN THE UNITED STATES[1]—Continued

NOTE: The footnotes for Table 1 are shown at the end of Table 2.

TABLE 2

| Official services (bulk or sacked grain) | Official weighing services | |
|---|---|---|
| | (Class X) | (Class Y) |
| (1) Official weighing services: | | |
| (i) Truck or trailer (per carrier) | $0.30 | $0.20 |
| (ii) Boxcar or hopper car (per carrier) | 0.95 | 0.25 |
| (iii) Barge (per carrier) | 6.15 | 1.55 |
| (iv) Ship (per carrier)[3] | 49.20 | N/A |
| (v) All other lots (per lot or part lot)[4] | 0.30 | 0.20 |

[1] The fees include the cost of supervision functions performed by the Service for official inspection and weighing services performed by delegated States and/or designated agencies.

[2] A fee shall be assessed for each carrier or sample inspected if a combined lot certificate is issued or a uniform loading plan is used to determine grade.

[3] A fee shall be assessed per ship regardless of the number of lots or sublots loaded at a specific service point. A fee shall not be assessed for divided-lot certificates.

[4] Inspection services for all other lots include, but are not limited to, sampling service, condition examinations, and examination of grain in bins and containers. For weighing services, all other lots include, but are not limited to, sesvans and inhouse bin transfers.

[5] Fees shall be assessed for a maximum of two factors. If more than two factors are determined, fees are assessed at rates in Table 1 (1)(i) or (3)(i) above, as applicable, based on carrier or type sample represented.

[6] Official criteria includes, but is not limited to, protein and oil analyses. A fee shall be assessed for each sample tested.

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Dated: September 13, 1985.

**D.R. Galliart,**

*Acting Administrator.*

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