Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 800

[Doc. No. AMS–FGIS–24–0027]

RIN 0581–AE28

Formulas for Calculating Hourly and Unit Fees for FGIS Services

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Agricultural Marketing Service (AMS), Federal Grain Inspection Service (FGIS or Service) proposes to amend its user fee regulations to establish standardized formulas the agency would use to calculate hourly and unit fees. The proposed changes would 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 proposed rulemaking would also make specified conforming changes and minor technical changes to the regulations to correct two typographical errors.

DATES: Comments are due on or before November 22, 2024.

ADDRESSES: Interested persons are invited to submit written comments on this proposed rulemaking. AMS encourages comments to be submitted through the Federal eRulemaking Portal at *https://www.regulations.gov.* Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments for AMS–FGIS–24–0027. All comments submitted in response to this proposal are part of the public record and will be posted for public viewing without change at *https://www.regulations.gov.* All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the commenter will be publicly accessible. AMS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

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SUPPLEMENTARY INFORMATION: This proposed rulemaking would amend FGIS's user fee regulations to establish standardized formulas the agency would use to calculate hourly and unit fees. The proposed new formulas, which are similar to the standardized formulas used in other AMS user-fee funded grading programs, would amend the regulations at 7 CFR 800.71. The formulas proposed here would 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 the fee schedules posted on AMS's public website at: *https://www.ams.usda.gov/about-ams/fgis-program-directives.*

Background

The USGSA authorizes and requires the Secretary of Agriculture to charge and collect reasonable fees to cover the estimated costs for performing official grain inspection and weighing services (which are mandatory under the Act for U.S. grain exports). In 2015, Congress amended the USGSA to provide that ''[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 . . . not less frequently than annually.'' (7 U.S.C. 79(j)(4) and 79a(l)(3)). To comply with these provisions, FGIS, then the Grain Inspection, Packers, and Stockyards Administration (GIPSA), issued regulations requiring the agency to review and adjust fees annually in order to maintain a 3- to 6-month reserve of operating expenses. (81 FR 49855).

Through those regulations, the Service determined that maintaining the operating reserve at 4.5-months of operating expenses would comply with the statutory requirement that FGIS maintain an operating reserve of 3 to 6 months. Under the current regulation, in years when the operating reserve has been sufficient, for each $1 million that the reserve's balance exceeded 4.5 months, the Service reduced fees by 2 percent, and no greater than 5 percent. Conversely, in years when the operating reserve was projected to be insufficient, for each $1 million that the balance fell short of the 4.5-month target, the Service increased fees by 2 percent, while also capping such increases at 5 percent. The current regulations limit annual fee increases or decreases to no greater than 5 percent.

The current regulations provide for FGIS review and revision of fees annually (800.71(b)) to establish the tonnage fees (national and local) and supervision fees. The annual adjustment of fees is based on the operating reserve total at the end of the prior fiscal year. Fees are increased or decreased to maintain an operating reserve of 4.5 months of operating expenses. Historically, the operating reserve balance remained higher than the 4.5-month target, so FGIS annually reduced fees by the maximum amount, 5 percent, in 2017 (81 FR 96339), 2018 (83 FR 6451), and 2019 (84 FR 11926); and by 2 percent in 2020 (85 FR 8536).

However, at the close of FY 2020, FGIS was operating at a loss of $5 million and had an operating reserve balance below 4.5 months of operating expenses. In accordance with current regulations, FGIS increased fees by 5 percent in 2021 (86 FR 1475), 2022 (87 FR 920), and 2023 (88 FR 18512). These annual fee increases were not sufficient to both cover operating costs and maintain a sufficient operating reserve. Because of the cap on how much the annual increase could be, 2023 fees were lower than those charged in 2016 (*e.g.,* the contract regular hourly rate in 2016 was $40.20 and, in 2023, the rate was $39.20). A drop in export tonnage (and its associated revenue) further increased the FGIS deficit. Table 1 below illustrates the interplay between FGIS revenues, reserve balances, and fee adjustments over the previous 5 years.

TABLE 1—FGIS GRAIN INSPECTION AND WEIGHING NET INCOME AND OPERATING RESERVE FOR THE LAST 5 FISCAL YEARS

Fiscal year	Operating Net (millions)	Operating Reserve balance (millions)	Operating Reserve balance (months)	Annual export tons [1] (million metric tons)	Fee adjustment (fiscal year end) (%)
2019	($6)	$15.5	5	108	Reduced 5.
2020	(5.5)	10	3	110	Reduced 2.
2021	(3)	7	2.5	137	Increased 5.
2022	(4)	3	1	124	Increased 5.
2023	(3.5)	(0.5)	(0.3)	97	Increased 5.

[1] The data in this column represent export grain officially inspected and/or weighed (excluding land carrier shipments to Canada and Mexico inspected or weighed by delegated States and designated agencies), and outbound grain officially inspected and/or weighed by FGIS.

Since 2021, the expected revenue from user fees has been lower than FGIS anticipated. During this time, the export volume (on which FGIS assesses tonnage fees) has declined year-over-year: by 10 percent in 2022, and 22 percent in 2023. Through June 20, 2024, export volumes are 5 percent higher than the same period in 2023, but still 6 percent lower than the five-year average. Reduced export volume has also impacted FGIS's ability to reestablish a sufficient operating reserve. This decline has been, in part, impacted by natural disasters. Though export volumes vary depending on weather, prices, and global demand, export volumes had risen in consecutive years since 2018. This significant decline was not expected, and the hurricane and severe drought were major unexpected events that contributed to the sudden decline in export volume.

In August 2021, Hurricane Ida struck the coast of Louisiana just prior to the high-volume harvest season. The lower Mississippi River handles over half of U.S. grain exports, and many of the major grain exporters sustained damage and could not return to normal operations for months. Grain export inspection volume declined by 10 percent in 2022, and corresponding FGIS user fee revenue dropped by $3 million in FY 2022.

Then, in 2022, a severe drought struck the midwestern U.S., and parts of the Mississippi River, which handles the barge traffic that feeds the nation's largest export market, sunk to the lowest levels in recorded history, dating back 143 years. Those record-low river levels hindered barge and vessel loading operations, and export volumes declined by another 22 percent year-over-year from 2022 to 2023. FGIS experienced another $3.5 million reduction in revenue for the same period. In the two years following the hurricane and drought, FGIS revenue was down a combined $6.5 million.

Agency operating costs were also significantly impacted by the COVID–19 Pandemic, as well as information technology and cost-of-living expenses increases.

While the above discussed conditions individually presented significant challenges, their unprecedented, cumulative effect over a short time span limited FGIS's ability to recover its costs and contributed to the depletion of FGIS's reserves, jeopardizing its current ability to sustain and provide inspection and weighing services.

2023 Periodic Review

Under the current regulations, FGIS can review all fees to ''ensure they reflect the true cost of providing and supervising official service.'' (7 CFR 800.71(c)). Given the confluence of events outside the agency's control, FGIS performed a periodic review in 2023 that examined the costs of all services offered. The review disclosed that most FGIS fees were misaligned with the actual costs of services and that the current regulatory fee formulas did not account for all agency costs and operating expenses. This misalignment and failure to account for actual costs and expenses has contributed to the current financial situation. The operating reserves for grain inspection and weighing activities at the end of FY 2023 were $0.

New Fee Formulas

This proposed rulemaking would amend FGIS's user fee regulations at 7 CFR 800.71 to revise the formulas the agency uses to calculate fees annually. The proposed changes would enable FGIS to assess fees for official services that are sufficient to cover its costs and maintain a 3- to 6-month operating reserve. The proposed changes would also provide transparency and predictability to the grain industry, and allow FGIS to plan effectively for staffing, equipment investments, and procurement or development of inspection technology.

The formulas in this proposed rulemaking are modeled after the standardized formulas AMS uses to calculate user fees in other user-fee funded grading programs (*e.g.,* AMS's dairy, beef, poultry, egg, cotton, and specialty crops grading programs). Established in 2014 (79 FR 67313), the standardized method enables AMS to use current information about resource needs and projected costs of providing services to update rates for services, thus better avoiding unexpected financial shortfalls or unintended reserve surpluses. AMS believes that adopting similar formulas to calculate user fees for grain inspection and weighing services would help FGIS adjust the operating reserve account as necessary and provide its customers with information they need for planning purposes. Once the reserve balance has reached an appropriate level, FGIS anticipates that the standardized formulas for fee rates will appropriately account for increases or decreases in the actual costs of providing inspection services.

The primary purpose of this proposed rulemaking is to address gaps in the current fee formulas. The current FGIS tonnage formula accounts only for fees assessed on grain tonnage and supervision of official agencies (§ 800.71(b)(1) and (b)(2)); it excludes direct service costs and unit fees. In addition, the current formulas only account for an adjustment based on the operating reserve balance, and do not consider other factors or include any projection for the next year's costs. In an environment where costs are generally going up (even if slowly), FGIS fees compared to costs would lag at least one year behind, since the formulas are looking at prior years without projection toward potential cost increases. The formulas proposed in this document would address these gaps; specifically, the proposed formulas would consider the previous year's expenses and project future year costs by including a cost-of-living adjustment and an operating reserve adjustment. These specific formulas are described further in this section.

As with other programs, FGIS would perform financial analyses each year to determine whether the current fees are adequate to recover the costs incurred by providing grain inspection and weighing services. FGIS would use historical or prior year cost and workload data, along with applicable projections, to generate estimates of future obligations and revenues, as described further below in this proposed rulemaking. On the bases of these analyses and formulas, FGIS would determine the rates necessary to sustain grain inspection and weighing services. Using the proposed formulas to calculate the fees, and reviewing the fees on an annual basis would more accurately reflect the actual cost of providing services each year and would provide greater transparency and predictability to the grain industry. FGIS would publish the fees for each upcoming year in an annual user-fee notice in the **Federal Register**. The yearly notice would include both the per-hour rates and the per-unit rates. Updated fees schedules would no longer appear in the Code of Federal Regulations but would be available on the FGIS website.

Definitions

In order to provide additional clarity, FGIS defines the following terms used throughout this document as follows:

Bad debt—accounts receivable that will likely remain uncollectable and will be written off.

Benefits—various non-wage compensation provided to employees in addition to their normal wages or salaries.

Cost of living—the cost of maintaining a certain standard of living based on economic assumptions issued by the Office of Management and Budget (OMB).

Direct hours—the regular hours worked by employees of FGIS. This does not include overtime or holiday hours.

Direct pay—monetary compensation paid to employees of FGIS for work performed. Pay is based on the U.S. Office of Personnel Management pay rate tables. It may include night and Sunday differential costs.

Field Office administrative costs—the costs of management, support, and maintenance of a Field Office, including, but not limited to, the management and administrative support personnel, rent, and utilities. This does not include any costs directly related to providing original or review inspection or weighing services.

Holiday—the legal public holidays specified in paragraph (a) of section 6103, title 5, of the United States Code (5 U.S.C. 6103(a)) and any other day declared to be a holiday by Federal statute or Executive order. Under section 6103(b) and Executive Order 10358 as amended, if the specified legal public holiday falls on a Saturday, the preceding Friday shall be considered to be the holiday, or if the specified legal public holiday falls on a Sunday, the following Monday shall be considered to be the holiday.

Hour—measure by which grading, certification, inspection, classification, laboratory, or other services cost is based and expenses are charged.

Indirect costs—the costs of FGIS activities that support the services provided to the industry and are not covered by FGIS tonnage fees.

National program administrative costs—the costs of national management and support of official grain inspection and/or weighing. This does not include the Field Office administrative costs and any costs directly related to providing service.

Operating reserve—the amount of funds the Service has available to provide official grain inspection and/or weighing services.

Operating costs—costs attributed to performing grading, inspection, certification, or laboratory services duties (*i.e.,* training, equipment, local travel, and other such costs), plus operating reserve, plus indirect costs. This term is interchangeable with ''Operating expenses''.

Overtime—hours worked in excess of the approved schedule. Work performed after the first 8 hours per day or 40 hours per week is considered overtime.

Regular rate—the cost per hour for work provided in accordance with an applicant contract. Under Federal labor laws, this rate applies to the first 8 hours per day, or first 40 hours worked per week by AMS employees.

Unit—any measurement that there is one of. For example, one submitted sample, one barge, one aflatoxin test or one appeal inspection.

Formulas for the Regular Rate, Overtime Rate, and Holiday Rate

This proposed rulemaking would revise FGIS's regulations at 7 CFR 800.71 to implement a new formula for calculating user fees. FGIS would publish the specific inputs used to calculate service fees on its public website. FGIS would expect to announce the actual annual fee rates in a **Federal Register** notice during the first quarter of each year and would also publish the fees on its website.

Salaries, hours, and most rates [1] used in the formulas would be based on the prior fiscal year's actual costs and hours of service. FGIS would round the final rates to the nearest $0.10. Currently, some fees are charged on a per unit basis and others are charged on a per hour basis. FGIS would continue to provide costs based on a per hour and per unit basis to maintain consistency.

FGIS proposes to establish the following formulas:

Regular rate—The total direct pay of FGIS 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 of cost-of-living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses would be added to the cost of providing the service through the operating rate or the travel would be billed separately. An example of the calculation would look like this: [Total direct pay divided by total direct hours ($2,663,407/82,985) = $32.10, multiplied by 1.7% (cost-of-living increase) = $32.64, + $10.04 (benefits rate) + $28.90 (operating rate) + $0.01 (bad debt allowance rate) = $71.59 (rounded to $71.60); rounding is done to the nearest $0.10.]

Overtime rate—The total direct pay of FGIS 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 of 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 would be added to the cost of providing the service through the operating rate or the travel would be billed separately. An example of the calculation would look like this: [Total direct pay divided by total direct hours ($2,663,407/82,985) = $32.10, multiplied by 1.7% (cost-of-living increase) = $32.64, multiplied by 1.5 (overtime rate) = $48.96 + $10.04 (benefits rate) + 28.90 (operating rate) + $0.01 (bad debt allowance rate) = $87.91 (rounded to $87.90); rounding is done to the nearest $0.10.]

Holiday rate—The total direct pay of FGIS personnel performing grading,

[1] Some rates, such as those for equipment use and specialist laboratory services, are based on unique cost components that are not accounted for in the prior fiscal year's obligations and service hours.

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 of 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 would be added to the cost of providing the service through the operating rate or the travel would be billed separately. An example of the calculation would look like this: [Total direct pay divided by total direct hours ($2,663,407/82,985) = $32.10, multiplied by 1.7% (cost-of-living increase) = $32.64, multiplied by 2 (double time or Holiday rate) = $65.28, + $10.04 (benefits rate) + $28.90 (operating rate) + $0.01 (bad debt allowance rate) = $104.23 (rounded to $104.20); rounding is done to the nearest $0.10.]

Formula calculations would be based on the prior fiscal year's actual costs or historical costs, workload data, projection of expenses impacting program costs, cost-of-living increases, and inflation. Cost-of-living increases and inflation factors would be based on economic assumptions from OMB. Rather than codifying a reference to an OMB budget document in the regulations, each year AMS would use the most recent economic factors released by OMB for budget development purposes to determine cost impacts for these user fee activities.

FGIS would continue to calculate adjusted fees for each calendar year and would publish a corresponding notice in the **Federal Register** and post the fees on its public website. The yearly notice would include a per-hour rate and, in some instances, the equivalent per-unit rate. The per-unit rate would be provided for functions that historically use a unit-cost basis for payment (*e.g.,* price per submitted sample). In those cases where a per-unit rate is necessary, the formulas would have an additional step to convert per-hour costs into a per-unit rate.

Formulas for the Benefits Rate, Operating Rate, and Allowance for Bad Debt Rate

FGIS would derive the components of the formulas above using the previous fiscal year's actual costs, as follows:

Benefits rate—The total direct benefits costs of FGIS personnel performing grading, weighing, laboratory services, and equipment testing divided by the total hours worked (regular, overtime, and holiday), which is then multiplied by the next calendar year's percentage cost-of-living increase. An example of the calculation would look like this [Total direct benefits costs/(total regular hours + total overtime hours + total holiday hours) ($819,207/82,985)] = $9.87, multiplied by 1.7% (cost-of-living increase) = $10.04.]

Operating rate—The total operating costs (including user fee adjustment) of FGIS personnel performing grading, weighing, laboratory services, and equipment testing divided by total hours worked (regular, overtime, and holiday), which is then multiplied by the percentage of inflation. The operating rate would include an adjustment for the operating reserve as an operating cost. For the purposes of this example, FGIS will call out the reserve adjustment separately. This example will assume $1,000,000 is needed for the reserve and assume all other operating costs are $42,000,000, divided by 630,000 total hours. An example of the calculation would look like this: [Total operating costs/(total regular hours + total overtime hours + total holiday hours) ($42,000,000 + 1,000,000)/630,000 = $69.61, multiplied by 2% (inflation) = $69.62.]

Allowance for bad debt rate—Total bad debt for grading, weighing, laboratory services, and equipment testing divided by total hours worked (regular, overtime, and holiday). An example of the calculation would look like this: [Total bad debt cost/(total regular hours + total overtime hours + total holiday hours) ($1,000/82,985) = $ 0.01.]

As noted above, the proposed formulas reflect that the costs of providing services include both direct and indirect costs. Direct costs include the costs of salaries, employee benefits, and if applicable, travel and some operating costs. Indirect costs include the costs of program and AMS activities supporting the services provided to the industry and are not covered by FGIS tonnage fees. For purposes of these proposed formulas, indirect costs have been included as part of operating costs.

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 pursuant to a final rule). To implement the revised fees, the interim rule imposed a stay on §§ 800.71 and 800.72(b). To amend these sections, if finalized, this rulemaking would first lift the stay imposed on them by the interim rule.

This proposed rulemaking also proposes to make certain conforming changes in 7 CFR part 800. Specifically, this proposal would restore 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 rulemaking would revise § 800.71 to incorporate the proposed formulas, these internal substitutions would no longer be needed. Accordingly, if finalized, this proposed rulemaking would replace references to § 800.74 with references to § 800.71 in §§ 800.34, 800.36, 800.156(d)(5), and 800.197(b)(3). The proposal, if finalized, would also replace the reference to §§ 800.72(a) and 800.74 in § 800.73(d) with a reference to § 800.72. Finally, because the proposed changes to § 800.71 would render § 800.74 obsolete, this proposal also removes that section.

Technical Corrections

This proposed rulemaking would also correct 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 proposed rulemaking 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.

OMB has designated this proposed rulemaking as not significant under Executive Orders 12866, 13563, and 14094. Accordingly, OMB has not reviewed this proposed 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,[2] FGIS is now experiencing a deficit which is forecasted to grow without corrective action.

This proposed rule would revise the formulas under which FGIS adjusts fees annually to ensure stability of the program. The proposal would 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 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 proposed rulemaking 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 separately in the **Federal Register** (89 FR 48257), addresses the agency's current deficit, this proposed rulemaking 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 would 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 proposal. This proposed rulemaking, if finalized, would allow FGIS to continue providing mandatory and voluntary grain inspection services that facilitate international and domestic trade. This proposal would also allow FGIS to adjust fees in the future in response to unforeseeable climate, logistical, and market conditions, and to maintain required operating reserves.

A 45-day comment period is provided to allow interested parties to submit written comments on this proposed rulemaking.

Initial 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 proposed rulemaking on small entities. Accordingly, FGIS has prepared this initial 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 proposed rulemaking would 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 to date, show a total of 2,123 different accounts over this time, though many firms are represented by multiple accounts. For the purpose of this initial 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 2 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.

[2] 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.

TABLE 2—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 proposed amendments to FGIS's user fee regulations would not change the relative burden of fees on small businesses. The provisions of this proposed rulemaking would apply equally to all entities. In addition, use of standardized user-fee rate calculations would benefit all inspection applicants, regardless of size, as fees would more closely reflect the current costs of inspections, and the fee calculation process would be more transparent. Through its annual review, FGIS would be able to monitor the financial status of the grain inspection and weighing program to determine whether further adjustments are necessary. Finally, this proposed rulemaking would 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 proposed rulemaking.

Executive Order 12988

This proposed rulemaking 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 proposed rulemaking would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this proposed rulemaking. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rulemaking.

Executive Order 13175

This proposed rulemaking 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 proposed rulemaking 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 proposed rulemaking 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 proposed rulemaking would 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 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, 1621–1627.

§ 800.0 [Amended]

■ 2. In § 800.0, 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 No. 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, the last sentence, remove the citation "§ 800.74" and add in its place the citation "§ 800.71".

■ 5. Lift the stay on § 800.71 and revise § 800.71 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.

(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 of 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 of 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 of 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.

* * * * *

(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), in the second sentence 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''.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–23192 Filed 10–7–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–2327; Project Identifier MCAI–2024–00233–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A319–111, 112, –113, –114, –115, –131, –132, and –133 airplanes; A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. This proposed AD was prompted by a full-scale fatigue test that found cracks on the main landing gear (MLG) bay rear skin panel at the stringer run-out at Frame 46 and Stringer 32 on the left-hand and right-hand sides. This proposed AD would require repetitive special detailed inspections (SDIs) of the affected area for cracking and applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 22, 2024.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No.-FAA–2024–2327; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2024–2327.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Tim Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3667; email: *timothy.p.dowling@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2024–2327; Project Identifier MCAI–2024–00233–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as