National Grain and Feed Association
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NAEGA
North American Export Grain Association

1400 Crystal Drive, Suite 260, Arlington, VA, 22202
Phone: 202-289-0873 (NGFA); 202-682-4030 (NAEGA)

July 8, 2024

BY ELECTRONIC MAIL

Mr. Arthur Neal
Deputy Administrator
Federal Grain Inspection Service
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250-3604

RE: Interim Rule, *Fees for Official Inspection and Weighing Services Under the United Stated Grain Standards Act*

Dear Deputy Administrator Neal:

The National Grain and Feed Association (NGFA) and the North American Export Grain Association (NAEGA) appreciates this opportunity to provide comments in response to the Federal Grain Inspection Service (FGIS) interim rule, published in the June 6, 2024, edition of the ***Federal Register****,* increasing the hourly and unit fees for Official inspection and weighing services that are performed under the U.S. Grain Standards Act (USGSA, "the Act") that will be in effect on **July 8, 2024**. 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.

NGFA, established in 1896, consists of grain, feed, processing, exporting and other grain handling companies that operate more than 8,000 facilities that handle grains and oilseeds. NGFA's membership encompasses all sectors of the industry, including country, terminal and export grain elevators; commercial feed and feed ingredient manufacturers; biofuels producers; cash grain and feed merchants; end-users of grain and grain products, including processors, flour millers, and livestock and poultry integrators; commodity futures brokers and commission merchants; and allied industries. The NGFA also has a strategic alliance with the North American Export Grain Association. In addition, affiliated with the NGFA are twenty-seven state and regional grain and feed trade associations. Canadian firms also are NGFA members.

NAEGA is a not-for-profit trade association, established in 1912, of private and publicly owned companies and farmer-owned cooperatives that are involved in and provide services to the agri-bulk products international trading industry. NAEGA works to foster an inclusive and sustainable grain and oilseed export industry that provides predictability and efficiency for all stakeholders – from producer to consumer.

FGIS performs an essential role by establishing, maintaining, and updating the Official U.S. grain standards, which are critical to establishing value and price-discovery in the U.S. and global grain and oilseed marketplace. The inspection and other services provided by FGIS, which are funded principally through industry-paid fees, contribute significantly to the marketing and trading of U.S. grains and oilseeds by farmers and other commercial parties. The U.S. grain handling and export system is recognized around the world for its ability to provide a competitively priced, fungible, abundant, safe, and sustainable commodity supply that is responsive to customer needs.

American farmers, grain handlers and exporters, as well as our foreign customers, depend upon accurate, timely and cost-effective delivery of impartial third-party Official inspection and weighing services administered by the FGIS and its Officially designated and delegated agencies. It is essential that the U.S. Official grain inspection and weighing system be recognized globally for its impartial, consistent, reliable, and timely measurement and certification of quality attributes and weights. The availability of accurate FGIS inspection results is also important to enable buyers and sellers to determine grain value and to facilitate market price discovery.

All official USGSA services are financed by user fees, with the federal portion of fee revenue maintained in an operating reserve (OR) fund. Activities such as developing grain standards and procedures for measuring quality, along with management salaries, are financed through congressional appropriations. Currently, 70 percent of FGIS's budget is based on user fees while the other 30 percent are covered through appropriated funds. In addition, there is a $55 million cap on user fees that is maintained annually through Congressional appropriations. This means that FGIS cannot exceed $55 million in expenses unless the Secretary makes a formal request to Congress. Therefore, any increase in expenses to perform official services counts against the user fee cap. In addition, the user fee cap includes work that FGIS does in inspecting rice and lentils which is regulated by the Agricultural Marketing Act (AMA), not the USGSA.

FGIS is required to annually review its fees for service, including national and local tonnage, and supervision tonnage fees. The agency calculates its tonnage fees, which, by regulation, consist of the national tonnage and local tonnage fees. FGIS also reviews the amount of funds available in its operating reserve at the end of each fiscal year to ensure that it has 4 ½ months of operating expenses, which is also required by regulation.

The USGSA provides FGIS' with the authority to charge and collect reasonable fees to cover the cost of performing official services. In 2015, the USGSA was amended by the Agriculture Reauthorizations Act of 2015, to require FGIS to adjust annually the export grain inspection and weighing fees when the OR is less than or more than 4 ½ months of operating expenses. The amendments also instructed the Program to adjust tonnage fees on an annual basis using a rolling five-year average of export tons.

NGFA and NAEGA led the efforts to amend the USGSA in 2015. NGFA and NAEGA believed that the rolling five-year average in tonnage fee calculations would result in predictable tonnage rates that will accurately reflect and gradually adjust to changing national and local tonnage volumes. Since the change to the fee structure, the national tonnage fees have decreased significantly while exports have increased, which was the original intent. In addition, since the tonnage fee rates are directly impacted by FGIS's national and field office administrative costs, FGIS administrative cost reductions have also helped to lower the fees.

The agency currently has a five percent annual cap on an increase or decrease of other Schedule A and tonnage fees. Therefore, when the agency "periodically" reviews its fees to determine changes to be made for the next calendar year, it is limited in how much the fees can be increased or decreased to maintain the OR level required by the USGSA.

Effective April 1, 2024, FGIS increased Official inspection and weighing service fees by five percent since FGIS' operating reserve was below 4 ½ months of operating expenses by $12,410,578. The OR at the end of fiscal year 2023 was a deficit of $504,270, with a monthly operating expense of $2,645,846. The target of 4 ½ months of operating reserve is $11,906,307. This March 7, 2024, notice shows the five-year rolling average of exported grain for 2019-2023 along with the national and local export tons and fees. The five-year rolling average is 114,983,388 mmt even though the 2023 officially inspected tonnage was 96,609,360 mmt, a 22 percent decrease from 2022. The original projection for the OR deficit in FY 23 was almost $4.5 million. However, the Agriculture Marketing Service (AMS) provided $1.9 million in emergency funding and FGIS was able to allocate $2 million in appropriated funds to the OR.

Subsequently, FGIS published the June 6, 2024, interim final rule to revise its hourly and unit fees and recover costs of providing inspection services. The hourly contract rate will increase from $41.20 to $65, and the non-contract rate will increase from $73 to $93.30. The contract rate for weekends and overtime will increase from $49.10 to $81.30. The non-contract rate will increase from $73 to $116.60. With the increased revenue, as well as the continued implementation of cost-saving measures, FGIS "projects" positive revenue and a positive operating reserve balance by the end of FY24. Without adjusting hourly and unit-based fees, FGIS anticipates a deficit in its FY 2024 operating reserves of nearly $9 million. With such a shortfall, FGIS will not have sufficient revenue to meet obligations and will cease operations.

Due to the fees changes through the interim rule, NGFA and NAEGA are concerned about the potential impact of promoting the marketing of high-quality grain to both domestic and foreign buyers based on the agency's current financial status.

The export market for U.S. grains and oilseeds is shifting. With a more competitive global marketplace, Brazil has surpassed the U.S. in exports to China for both commodities. In addition, Mexico has proposed limiting the amount of genetically modified corn that can be exported which could have an impact on the U.S. corn export market. Finally, based on the significant increase of biofuel production in the U.S., decline in the amount soybeans in the supply chain for export is conceivable. As a result, there is a continued projection over the next twelve to eighteen months of a decline in exports. Therefore, the agency needs to look at all options to minimize costs and expenses for both the federal government and exporters to prepare for the decrease in user-fee revenue.

The other Schedule A fees are adjusted by FGIS based on the five-year rolling average for calculating the tonnage fee. Prior to the interim rule, the hourly service rates (contract and non-contract) were less than they were in 2016. When introducing the five-year rolling average, it was not the intent of NGFA and NAEGA for this calculation and subsequent adjustments to also be used for adjusting other user fees appearing on Schedule A (e.g., hour contract rates, etc.). We believe it was also not the intent of Congress.

In fact, NGFA and NAEGA recommended that FGIS not put a cap on the Schedule A Fees during the rulemaking process to implement the changes to the USGSA regulations based on the 2015 Reauthorization, nor did they recommend using the five-year rolling average for use in calculation of other Schedule A fees. Both the cap and rolling average practices were implemented by FGIS and AMS after FGIS was reorganized to be part of that agency in 2017, the same year that the rolling average fee changes went into effect.

Considering a continued projected decrease in exports, significant increases in fees paid by industry are unsustainable. FGIS needs to de-couple the other Schedule A user fees from the five-year rolling average for tonnage fees to make the fees more in line with the market rates. NGFA and NAEGA are willing to work with the FGIS to identify possible solutions that align with the current market rates and needs.

We believe that the service-oriented culture of AMS and FGIS can have a continued positive impact on both American farmers and our industry, as well, by using cost-effective services to promote U.S. grains and oilseeds in foreign markets.

NGFA and NAEGA appreciates FGIS' consideration of these comments representing the grain trade in the United States and would be pleased to respond to any questions the agency may have on this important matter.

Sincerely,

Michael Seyfert
President and Chief Executive Officer
National Grain and Feed Association

Alejandra Castillo
President and Chief Executive Officer
North American Export Grain Association