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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 868

[Doc. No. AMS-FGIS-18-0088]

RIN 0581-AD85

Fees for Rice Inspection Services and Removal of Specific Fee References

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations governing the sampling, inspection, weighing, and certification of rice performed under authority of the Agricultural Marketing Act of 1946 (AMA), as amended, by decreasing fees by 20 percent for fiscal year (FY) 2020 and by another 20 percent for FY 2021. These revisions are necessary to lower the balance in the program's operating reserve to a level adequate to cover three to six months' expenses. AMS is implementing the standardized AMS

user-fee calculations used in other AMS programs for rice inspection services beginning in FY 2022.

DATES: Effective January 30, 2020, and applicable beginning January 1, 2020.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: The AMA (7 U.S.C. 1621-1638) authorizes the Federal Grain Inspection Service (FGIS) to provide official inspection and weighing services—on a user-fee basis—for rice (7 U.S.C. 1622(h)). The AMA provides for the assessment and collection of reasonable fees from the users of the services to cover, as nearly as practicable, the costs of the services rendered. AMS receives no directly appropriated funds to provide inspection and weighing services. AMS ability to provide these services depend on user fees.

The fees reflect direct and indirect costs of providing services. Direct costs include employee salaries and benefits, and certain operating expenses, such as travel. Indirect overhead costs include expenses related to FGIS and AMS activities supporting the services provided to the industry, including administrative and supervisory expenses, rent, communication, utilities, contractual services, supplies, and equipment. The formula used to

calculate the fee rates also includes the cost of building and maintaining an operating reserve, as required by AMS. Reserves are held to meet financial obligations in case of program closure or other unexpected events.

AMS invited comments on the proposed rule identifying changes to the FGIS user fees for rice inspection and weighing services (84 FR 45439). AMS received no comments.

The fees for rice inspection services were last revised in 2007 (72 FR 1931). The fee schedule at 7 CFR 868.91 provides for fee increases at set intervals, the most recent taking effect in October 2010 for the 2011 fiscal year and beyond. Although fees have not increased since then, the current fee structure has generated a recurring annual operating surplus for several years, resulting in an estimated reserve balance at the end of FY 2019 that would cover 21 months of rice inspection program expenses, exceeding AMS's target of maintaining funds to cover 3 to 6 months' expenses. Estimated monthly costs to operate the rice inspection program in FY 2019 are \$457,000. Thus, AMS would consider an operating reserve of between \$1.37 million and \$2.74 million (3 and 6 times the monthly operating cost, respectively) at the end of FY 2019 to be appropriate. Financial data for the rice inspection program for fiscal years 2015 through 2019 is reviewed in Table 1.

TABLE 1—RICE PROGRAM FINANCIAL ANALYSIS
[Millions of Dollars]*

	FY 15	FY 16	FY 17	FY 18	FY 19 **
Revenue	\$6.93	\$5.79	\$5.84	\$5.50	\$5.49
Obligations	5.13	5.36	5.44	5.39	5.48
Annual Surplus or (Deficit)	1.80	0.43	0.40	0.11	0.01
Operating Reserve—running balance	8.45	8.88	9.28	9.38	9.39

* Figures may not sum due to rounding and adjustments of prior year obligations.

** FY 2019 values are projections.

As illustrated by Table 1, even though revenues have generally declined due to varying requests for service and increased efficiencies, and obligations have generally increased over the last five years due to inflation and costs of living adjustments, year-after-year surpluses have continued to increase. The result is an operating reserve running balance exceeding the range AMS deems appropriate.

AMS addresses the surplus by reducing fees for rice inspection services by 20 percent across the board for FY 2020 and by another 20 percent for FY 2021. AMS expects that reducing fees in this manner would gradually reduce the balance in the reserve fund while also allowing FGIS to continue making strategic operational expenditures to meet industry expectations and achieve United States

Department of Agriculture (USDA) goals.

The rates in this rule are for Federal inspection services only. Third-party inspection service providers establish their rates independently.

Fees for fiscal years 2020 and 2021 are shown in Tables 2 and 3 below:

TABLE 2—HOURLY RATES/UNIT RATE PER CWT

Service ¹	Regular workday (Monday–Saturday)	Nonregular workday (Sunday and Holiday)
FY 2020 (Effective 01/01/2020):		
Contract (per hour per Service representative)	\$49.40	\$68.50
Noncontract (per hour per Service representative)	60.20	82.90
Export Port Services (per hundredweight) ²	0.059	
FY 2021 (Effective 10/01/2020):		
Contract (per hour per Service representative)	39.50	54.80
Noncontract (per hour per Service representative)	48.20	66.30
Export Port Services (per hundredweight) ²	0.047	

TABLE 3—UNIT RATES SERVICE ³

Inspection for quality (per lot, subplot, or sample inspection)	FY 2020 effective 01/01/2020	FY 2021 effective 10/01/2020
(a) Rough rice	\$37.80	\$30.20
(b) Brown rice for processing	32.50	26.00
(c) Milled rice	23.40	18.70
Factor analysis for any single factor (per factor):		
(a) Milling yield (per sample) (Rough or Brown rice)	29.30	23.40
(b) All other factors (per factor) (all rice)	14.10	11.30
Total free and fatty acid	45.80	36.60
Stowage Examination (service-on-request):		
(a) Ship (per stowage space) (minimum 5 spaces per ship)	40.40	32.30
(b) Subsequent ship examination (same as original) (minimum 3 spaces per ship)	40.40	32.30
(c) Barge (per examination)	32.40	25.90
(d) All other carriers (per examination)	12.40	9.90

For FY 2022 and beyond, AMS will determine rice inspection service fees by using the standardized formulas AMS has established for calculating user fees for Cotton, Dairy, Fruits and Vegetables, Meat and Livestock, Poultry, Science and Technology, and Tobacco. 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 on an annual basis, thus better avoiding unexpected financial shortfalls or unintended reserve surpluses. AMS announces the fees pertaining to all the AMS inspection-related services for the coming year annually through a notice in the **Federal Register** by the preceding June 1. AMS posts the fees on the Agency's website for customer reference

¹ Original and appeal inspection services include: Sampling, grading, weighing, and other services requested by the applicant when performed at the applicant's facility.

² Services performed at export port locations on lots at rest.

³ Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or in combination at other than the applicant's facility.

during the year. AMS believes this action for rice would help FGIS adjust the rice inspection reserve account as necessary and provide its customers with information they need for planning purposes. Once the reserve balance has reached an appropriate level, AMS anticipates that the standardized formula for fee rates will appropriately account for increases in the actual costs of providing inspection services.

Currently, 7 CFR 868.91—Fees for certain Federal rice inspection services—provides the fees for rice inspections. Section 868.91 lists the fees in two tables: Hourly rates or per unit rates per hundredweight for contract and noncontract services, and unit rates for inspecting, analyzing, or providing other related services. The tables give annual rates effective in 2007, 2008, 2009, and 2010. The current rates have not been adjusted since October 1, 2010. AMS is removing the two tables from § 868.91 for FY 2020. AMS will publish instead reduced fees—as described in Tables 2 and Table 3 above—on the AMS website for FY 2020 and FY 2021.

For FY 2022 and beyond, AMS adds a new § 868.91(b) specifying the formulas for calculating rice inspection fees on an annual basis. As with other

programs, AMS would perform financial analyses each year to determine whether the current fees are adequate to recover the costs incurred by providing rice inspection services. AMS would use historical or prior year cost and workload data, along with applicable projections to generate estimates of future obligations and revenues. On the bases of these analyses and formulas, AMS would determine the rates necessary to sustain rice inspection program services. Using the formulas to calculate the fees, and reviewing the fees on an annual basis, would more accurately reflect the actual cost of providing inspection services each year and would provide greater transparency and predictability to the rice industry. AMS would publish the fees for each upcoming fiscal year in the annual AMS user-fee notice in the **Federal Register** by the preceding June 1. 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 AMS website.

Calculations

AMS will base salary, hours, and most factors used in the calculations on the

prior year's actual costs, workload data, projection of expenses impacting program costs, cost of living increase, and inflation. AMS would base cost of living increase and inflation factors on the most recent economic data released by the Office of Management and Budget (OMB) for budget development purposes. AMS would round the final rates up to make the amounts divisible by the quarter hour (15 minutes). Under the rate formulas, the minimum charge for services covered by the inspection fee rates would be for 15 minutes. As explained later in this document, the applicant requesting inspection service would be charged travel costs on an actual basis. AMS chose to use these formulas for rice inspection fees, so they would be consistent with the formulas used agency wide in other AMS programs.

Currently, some rice inspection service fees are charged on a per hour basis, and some are charged on a per unit basis. AMS will continue providing costs on both bases to maintain continuity. As well, AMS would provide the specific amounts used to calculate each year's rates upon request.

AMS adds a new paragraph § 868.91(b)(1) to include the formulas for calculating regular, overtime, and holiday fee rates for FY 2022 and succeeding fiscal years. AMS further adds a new paragraph § 868.91(b)(2) to include the component formulas for benefits, operating, and allowance for bad debt rates.

Finally, AMS adds a new § 868.91(b)(3), which specifies that AMS will use the most recently released OMB economic data to generate the cost of living and inflation factors used in the above formulas.

Travel Expense

One factor that may have contributed to the operating reserve buildup over time is the incorporation of an allowance for travel expenses in the current rice inspection fee rates that may not have reflected actual travel costs. AMS addresses this by specifying in the fee calculation formulas that travel expenses related to providing inspection services, such as commercial transportation costs, mileage, and per diem, will be based on actual travel costs incurred to perform the service. The fee rate calculations in § 868.91(b) will specify that actual travel expenses for rice inspection services may be added to the cost of providing the service, consistent with current practice under most other AMS programs. This change will be applicable to fee rates beginning in FY 2022.

As a conforming change, AMS removes the language in § 868.92(a)(2)—Explanation of service fees and additional fees, which makes specific reference to the inclusion of travel expenses in the current rice inspection fee calculations, as that language would be obsolete.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Retroactive implementation of this rule is necessary to provide relief to those persons who are adversely affected by being assessed a user fee rate higher than would be collected under this rule. Making this rule effective retroactively will allow interested producers and others in the marketing chain to benefit from the reduced user fee assessment immediately. Therefore, the Administrator of the Agricultural Marketing Service has determined that this rule should be effective retroactively starting January 1, 2020.

Executive Orders 12866, 13563, and 13771

Executive Orders 12866—Regulatory Planning and Review, and 13563—Improving Regulation and Regulatory Review, 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 of reducing costs, harmonizing rules, and promoting flexibility. This rule does not meet the criteria of a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Therefore, OMB has not reviewed this rule under those Orders. Additionally, because this rule does not meet the definition of a significant regulatory action under Executive Order 12866, it does not trigger the requirements contained in Executive Order 13771. See OMB's memorandum titled "Interim Guidance Implementing Section 2 of the E.O. of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

AMS considered several alternatives to the changes in this rule, including making larger decreases to the FY 2020 and FY 2021 rates to bring the reserve balance down more quickly or making

a larger fee rate decrease for FY 2020 only. Ultimately, AMS determined that the approach of making smaller—but still significant—reductions two years in a row before transitioning to the standardized fee calculations would be the alternative least disruptive to the industry while moving toward desirable reserve levels. AMS expects the changes to benefit the rice industry by reducing rates by 20% for each of the next two years and then adjusting rates as needed annually thereafter to reflect actual expenses related to rice inspections. Under the rule, rice inspection service users would likely enjoy further savings since most inspection sites are near FGIS field offices and charges for travel will be based on actual expenses rather than the standard flat amount incorporated into the current fee rates. AMS does not expect the rule to provide any environmental, public health, or safety benefits. AMS has not identified any costs related to this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988—Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. No administrative proceedings would be required before parties could file suit in court challenging the provisions of this rule.

Congressional Review Act

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

Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–602), AMS has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 169 applicants who receive rice inspection services. AMS estimates 42 percent of these users would be considered small businesses based on criteria established by the Small Business Administration (13 CFR 121.201) to differentiate between large and small business entities. SBA uses the North American Industry Classification System (NAICS) to categorize various industry businesses. SBA defines small rice farmers, NAICS code 111160, as those

whose annual receipts do not exceed \$750,000 and small rice millers, NAICS code 311212, as those with no more than 500 employees.

When the current rice inspection fees were set in 2007, an 18 percent increase was implemented to cover program deficits caused by increases in employee salaries and benefits, the replacement of aging rice inspection equipment, and upgrading the information technology system used to generate certificates. The increase also was intended to create the operating reserve. However, as explained earlier in this document, revenues have continued to exceed expenditures, indicating that an adjustment to the fee schedule is now warranted. In addition, travel expenses were built into the hourly and unit fees currently charged by the program, resulting in higher than necessary revenues to cover the actual service provided.

Changes to the fees will reduce the cost of rice inspections by 20 percent for all services in FY 2020 across the board, regardless of the business entity's size, for a projected savings of approximately \$1.17 million to the industry. A further 20 percent reduction for FY 2021 will net approximately \$2.13 million in savings to the industry. All entities using rice inspection services, large and small, would be expected to benefit from reduced expenses for these services. Savings would be proportionate to the number of inspection services an entity requests each year. Use of standardized AMS user-fee rate calculations for FY 2022 and beyond would benefit all inspection applicants, regardless of size, as fees would more closely reflect the current cost of inspections, and the fee calculation process would be more transparent. Through its annual review, AMS would be able to monitor the financial status of the rice inspection program to determine whether further adjustments are necessary.

AMS has determined this rule would not have a significant economic impact on a substantial number of entities as defined under the RFA because fewer than half the applicants for rice inspection services meet the definition of small entities. Further, rice inspection and weighing services are provided upon request, and rice industry businesses are under no obligation to use these services.

Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Paperwork Reduction Act and E-Government Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and record keeping requirements of the rice inspection program have previously been approved by OMB under control number 0580-0013. No additional reporting, record keeping, or other compliance requirements would be imposed as a result of this rule.

AMS is committed to complying with the E-Government Act (44 U.S.C. 3601, *et seq.*), to promote 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.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

For the reasons set out in the preamble, AMS amends 7 CFR part 868 as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

- 1. The authority citation for part 868 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

- 2. Revise § 868.91 to read as follows:

§ 868.91 Fees for certain Federal rice inspection services.

The fees for services in paragraph (a) apply to Federal inspection services. Starting with fiscal year 2022, calculations provided in paragraph (b) will be used to determine annual fee rates.

(a) Fees for services are published on the Service's website.

(b) For each fiscal year, starting with 2022, the Administrator will calculate the rates for services, issue a public notice, and publish fees on the Service's website with an effective date of October 1 of each year.

(1) For each year, the Administrator will calculate the rates for services, per hour per inspection program employee using the following formulas:

(i) *Regular rate.* The Service's total inspection program personnel direct pay divided by direct hours, 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, actual travel expenses may also be added to the cost of providing the service.

(ii) *Overtime rate.* The Service's total inspection program personnel direct pay

divided by direct hours, 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 an allowance for bad debt. If applicable, actual travel expenses may also be added to the cost of providing the service.

(iii) *Holiday rate.* The Service's total inspection program personnel direct pay divided by direct hours, 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 an allowance for bad debt. If applicable, actual travel expenses may also be added to the cost of providing the service.

(2) For each year, based on previous year/historical actual costs, the Administrator will calculate the benefits, operating, and allowance for bad debt components of the regular, overtime, and holiday rates as follows:

(i) *Benefits rate.* The Service's total inspection program direct benefits costs divided by the total hours (regular, overtime, holiday) worked, which is then multiplied by the next year's percentage of cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(ii) *Operating rate.* The Service's total inspection program operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(iii) *Allowance for bad debt rate.* Total allowance for bad debt, divided by total hours (regular, overtime, holiday) worked.

(3) The Administrator 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.

§ 868.92 [Amended]

- 3. Amend § 868.92 by removing paragraph (a)(2) and redesignating paragraphs (a)(3) through (5) as paragraphs (a)(2) through (4), respectively.

Dated: January 21, 2020.

Bruce Summers,
Administrator, Agricultural Marketing Service.

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