National Grain and Feed Association
NAEGA North American Export Grain Association
1250 Eye Street, N.W., Suite 1003, Washington, D.C., 20005-3922
NGFA: (202) 289-0873 NAEGA: (202) 682-4030

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BY ELECTRONIC MAIL

Mr. Randall Jones
Deputy Administrator
Grain Inspection, Packers and Stockyards Administration
U.S. Department of Agriculture
1400 Independence Avenue, S.W., Room 1643-S
Washington, D.C. 20250-3604

RE: Comments on Notice of Proposed Rulemaking to Revise Existing Regulations in the U.S. Grain Standards Act, 81 Fed. Reg. 3970 (January 25, 2016)

Dear Deputy Administrator Jones:

The National Grain and Feed Association (NGFA) and the North American Export Grain Association (NAEGA) submit this joint statement in response to the Grain Inspection, Packers and Stockyards Administration (GIPSA) request in the January 25, 2016 *Federal Register* for comments on its proposal to revise the existing regulations and add new regulations under the U.S. Grain Standards Act (USGSA) to comply with amendments to the USGSA made by the Agriculture Reauthorization Act of 2015 (P.L. 114-54), hereafter referenced as the "Reauthorization Act." As discussed more fully below, we generally support the proposed changes and offer several recommendations to clarify the intent of the statutory revisions.

The NGFA, established in 1896, comprises more than 1,050 member companies that operate more than 7,000 facilities and handle more than 70 percent of the U.S. grain and oilseed crop. The 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 strategic alliances with the North American Export Grain Association (NAEGA) and Pet Food Institute. In addition, affiliated with the NGFA are 26 state and regional grain and feed trade associations. Canadian and Mexican firms also are NGFA members.

NAEGA, a not-for-profit trade association established in 1912, consists of private and publicly owned companies and farmer-owned cooperatives that are involved in and provide services to the bulk grain and oilseed exporting industry. NAEGA's mission is to promote and sustain the development of commercial export of grain and oilseeds and their primary products. Through a reliance on member action and support, NAEGA acts to accomplish its mission from its office in Washington D.C., and in markets throughout the world.

We wish to begin by reiterating the essential role performed by the U.S. Department of Agriculture's Federal Grain Inspection Service (FGIS) in maintaining 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 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 admired around the world for providing a fungible, abundant, safe and sustainable commodity supply that is responsive to customer needs.

U.S. competitiveness in global markets, as well as stakeholders ranging from farmers to end-users, benefit when FGIS and its delegated State agencies provide state-of-the-art, market-responsive official inspection and weighing of bulk grains and oilseeds at export, and do so in a reliable, uninterrupted, consistent and cost-effective manner.

In the January 25 *Federal Register* notice, GIPSA states that the proposed revisions would amend 7 CFR part 800 to comply with the amendments made by the Reauthorization Act. Specifically, the GIPSA-proposed changes are intended to:

- Remove the requirement to officially weigh inbound barge shipments at export port locations (Sec. Sec. 800.15 and 800.216);
- Require GIPSA to approve all requests for waivers of official inspection and weighing requirements for export grain in "emergencies or other circumstances which would not impair the objectives of the [USGSA]" (Sec. 800.18);
- Base the portion of fees assessed on tonnage on the five-year rolling average of export tonnage volume (Sec. 800.71);
- Adjust fees annually to maintain a three- to six-month operating reserve for inspection and supervision services (Sec. 800.71);
- Remove the provision that allows applicants to request service from an official agency outside an assigned geographic region after 90 days of nonuse of service (Sec. 800.117);
- Waive the geographic boundaries established for official agencies between two adjacent official agencies if both official agencies agree in writing to the waiver. (Sec. 800.117);

- Without changing current termination dates, terminate inspection licenses every five years instead of every three years (Sec. 800.175);
- Require delegated States to notify GIPSA of any intent to temporarily discontinue official inspection or weighing services at least 72 hours in advance, except in the case of a major disaster (Sec. 800.195);
- Require delegated States to submit to a GIPSA review of their delegation every five years to certify that they comply with the requirements for delegation under the USGSA (Sec. 800.195);
- Require designated official agencies to respond to concerns identified during GIPSA's consultations with customers as part of the renewal of a designation (Sec. 800.196); and
- Extend the minimum length of designation for official agencies from three years to five years (Sec. 800.196).

Several of these amendments made to the USGSA by Congress under the Reauthorization Act are the most significant changes to the statute in nearly 20 years. The changes and how they are implemented can have a positive impact on the global competitiveness of U.S. grains and oilseeds whose exports are valued at more than $50 billion annually. These key changes include calculation and adjustment of fees to maintain a three- to six-month operating reserve for inspection and weighing services, as well as new definitions and clarification of provisions in existing requirements, and the addition of a new section to the statue that would require delegated states to notify GIPSA of any intention to temporarily discontinue service.

The NGFA and NAEGA have reviewed and with some noted exceptions generally support the proposed changes. Provided FGIS adopts and incorporates our subsequent recommendations offered herein to sections 800.18, 800.71 and 800.195, respectively. By adopting our recommended changes, we believe the regulations will implement the statute appropriately and improve FGIS' ability to provide cost-effective and reliable official inspection and weighing services.

Definition of Emergency and Request for Waivers(Section 800.18)

The USGSA mandates that most U.S. export grain be officially inspected and weighed whenever official standards and procedures are utilized, with such activities required to be performed and supervised by FGIS. Except in certain cases in which FGIS chooses to delegate its inspection authority to a State agency to perform the service, or to waive the official inspection requirement in response to a contractual agreement between the buyer and seller, the Act requires that FGIS personnel provide official inspection service and official weighing or supervision of weighing service at export locations.

Definition of Emergency

NGFA and NAEGA oppose GIPSA's proposed definition of the term "emergency," as including "a situation outside the control of the Service (i.e., GIPSA) or a delegated State that prevents the prompt issuance of official certificates…."

This definition was not included in the Reauthorization Act. Nor did Congress state that emergency waivers to which this term is applied were to be made conditional in any way on whether the situation was or was not "outside the control of GIPSA or a delegated State." The "outside the control of the Service" is far too expansive and could conjure up any number of "excuses" GIPSA could use to avoid issuing a waiver promptly if the buyer and seller agree.

> Therefore, we recommend the following change to Section 800.0 (b) regarding the definition of the term "Emergency":
>
> *Replace proposed definition:*
>
> *"Any situation outside of the control of the Service or a delegated State that prevents prompt issuance of certificates in accordance with Sec. 800.160(c)."*
>
> *With new definition:*
>
> *"Any situation that prevents prompt issuance of certificates, in accordance with Sec. 800.160(c)."*

Request for Emergency Waivers

In addition, NGFA and NAEGA strongly oppose the wording of Sections 800.18(b)(7)(A) and 800.18(b)(7)(B) because the proposed language deviates from the statutory language of the Reauthorization Act and would inappropriately limit the waiver of official inspection or weighing certificates only to "emergency" situations. Instead, this section should be rewritten to be consistent with the statute and allow for waivers also to be issued if doing so "will not impair the objectives of the act" and the buyer and seller agree – regardless of whether an "emergency" exists.

This is consistent with the statutory language, which reads as follows:

> The Secretary "shall waive" official inspections in emergency situations.
>
> (1) DISCRETIONARY WAIVER AUTHORITY.—Section 5(a)(1) of the United States Grain Standards Act (7 U.S.C. 77(a)(1)) is amended in the first proviso by striking ''may waive the foregoing requirement in emergency or other circumstances which would not impair the

> objectives of this Act'' and inserting ''**shall waive** the foregoing requirement in emergency **or other circumstances** that would not impair the objectives of this Act whenever the parties to a contract for such shipment mutually agree to the waiver and documentation of such agreement is provided to the Secretary prior to shipment'' *[Emphasis added.]*

Therefore, we strongly believe regulation should be consistent with the statutory language and urge the following change to Section 800.18(b)(7)(A) and Section (b)(7)(B) regarding emergency waivers:

Replace proposed language:

"(A) That an emergency exists that precludes official inspection or Class X weighing;
(B) That granting an emergency waiver will not impair the objectives of the Act; and…"

With new language:

"(A) That an emergency exists that precludes official inspection or Class X weighing; ***or***
(B) That granting a waiver will not impair the objectives of the Act; and…"

Export Tonnage Fees: Five-Year Rolling Average and Three to Six Month Operating Reserve

The Act requires two actions be taken by the Secretary of Agriculture with respect to fees for official inspection and weighing. One action is that all fees related to official inspection and weighing services must be adjusted at least annually to maintain a three- to six-month operating reserve. The other is that the export tonnage fees for official inspection and weighing must be based on the rolling five-year average of export tonnage volumes. In its proposed rule, FGIS would implement the two fee actions on a calendar year basis beginning January 1, 2017. In addition, FGIS would adjust Schedule A and Schedule B fees periodically, taking into account other Schedule A fee adjustments that may have occurred to maintain a three- to six-month reserve.

Current State of Finances for FGIS Accounts

Table 1 provides a snapshot of FGIS's finances from fiscal year (FY) 2006 to FY 2015. In FY 2015, FGIS's revenue, expenses, surplus/deficit and operating reserve exceeded all other years. Across all of the accounts, there were $30.61 million in the operating reserve, with an approximately $9.5 million surplus. We believe the large amount of operating reserve justifies a reduction in service fees beginning January 1, 2017.

Further, in FY 2015, the Inspection and Weighing Program account had $12.9 million in operating reserve with a nearly $7 million surplus. The FY 2015 operating reserve and surplus will result in almost $20 million in operating reserve for FY 2016. This compares to $38.09 million in expense for FY 2015.

Meanwhile, the Supervision of Official Agencies Program account had $8.26 million in operating reserve for FY 2015 and a $0.97 million surplus. Adding the carryover operating reserve and to the surplus will tally to approximately $9 million in operating reserve for FY 2016, which far exceeds the annual expense that has been less than $1.5 million in recent years.

The Rice Inspection Program account had a sizable operating reserve in FY 2015, as well, at approximately $10 million, which was twice as large as the $5.13 million in FY 2015 expense.

The Commodities Inspection Program account had an operating reserve of $1.01 million for FY 2015, which declined slightly in FY 2016 due to a deficit of $0.15 million.

Table 1: Federal Grain Inspection Service (FGIS) Financial Information (Millions)

Fiscal Years	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
U.S. Grain Standards Act										
Inspection and Weighing Program (520 Account)										
Revenue	$30.13	$31.41	$36.00	$31.19	$36.89	$37.65	$28.16	$29.84	$43.48	$44.96
Expense	$28.63	$30.53	$33.45	$33.26	$35.47	$36.56	$34.29	$33.27	$37.47	$38.09
Surplus/Deficit	$1.49	$0.88	$2.55	-$2.07	$1.41	$1.10	-$6.13	-$3.42	$6.01	$6.87
Operating Reserve	$2.06	$3.64	$6.33	$4.67	$6.53	$7.99	$1.87	-$1.19	$5.92	$12.90
Supervision of Official Agencies Program (530 Account)										
Revenue	$2.23	$2.31	$2.47	$2.15	$2.45	$2.43	$2.08	$1.98	$2.32	$2.33
Expense	$1.65	$1.79	$1.87	$1.95	$1.95	$1.83	$1.27	$1.13	$1.22	$1.36
Surplus/Deficit	$0.59	$0.51	$0.60	$0.20	$0.50	$0.60	$0.81	$0.86	$1.10	$0.97
Operating Reserve	$1.43	$1.96	$2.58	$2.79	$3.43	$4.07	$4.89	$6.24	$7.03	$8.26
Agricultural Marketing Act										
Rice Inspection Program (570 Account)										
Revenue	$3.97	$3.44	$4.96	$4.18	$5.84	$5.42	$5.31	$6.10	$5.16	$6.93
Expense	$4.44	$4.08	$4.00	$3.76	$4.28	$4.42	$4.62	$4.71	$4.50	$5.13
Surplus/Deficit	-$0.47	-$0.65	$0.95	$0.42	$1.56	$0.99	$0.69	$1.39	$0.66	$1.80
Operating Reserve	-$0.11	-$0.62	$0.52	$1.01	$2.65	$3.61	$4.30	$5.89	$6.65	$8.45
Commodities Inspection Program (580 Account)										
Revenue	$2.08	$1.95	$2.28	$2.41	$3.92	$2.70	$2.30	$2.47	$2.79	$2.98
Expense	$2.24	$2.40	$2.49	$2.76	$3.55	$2.81	$2.94	$2.94	$2.92	$3.13
Surplus/Deficit	-$0.16	-$0.45	-$0.20	-$0.35	$0.37	-$0.11	-$0.64	-$0.47	-$0.13	-$0.15
Operating Reserve	$1.90	$1.20	$1.71	$1.48	$1.97	$2.01	$1.36	$1.55	$1.16	$1.01
Total for U.S. Grain Standards Act and Agricultural Marketing Act										
Revenue	$38.70	$39.10	$45.70	$39.93	$49.09	$48.20	$37.85	$40.39	$53.75	$57.20
Expense	$37.17	$38.80	$41.80	$41.73	$45.25	$45.62	$43.12	$42.04	$46.10	$47.71
Surplus/Deficit	$1.53	$0.30	$3.90	-$1.80	$3.84	$2.58	-$5.27	-$1.65	$7.65	$9.50
Operating Reserve	$5.52	$6.80	$11.14	$9.95	$14.58	$17.69	$12.42	$12.48	$20.76	$30.61
FGIS Appropriation	$18.19	$17.61	$17.61	$17.93	$18.27	$17.79	$16.48	$16.47	$17.91	NA

Source: FGIS Financial Data at https://www.gipsa.usda.gov/fgis/public_financialdata.aspx

Three- to Six-Month Operating Reserve for Official Inspection and Weighing Services

The Act requires and the proposed rule applies the three- to six-month operating reserve to all fees associated with official inspection and weighing services. Therefore, the three- to six-month reserve requirement would apply to the Inspection and Weighing Program account.

On page 3975 of the proposed rule, GIPSA proposes that when the reserve for the Inspection and Weighing Program is outside of the three- to six-month reserve requirement, that all Schedule A fees would decrease or increase 2 percent, but not to exceed 5 percent, for each $1 million that the reserve is more or less than the required three- to six-months of operating expenses. GIPSA proposes that this calculation occur annually at the end of each fiscal year and the new Schedule A fee changes would be implemented at the beginning of the calendar year.

NGFA/NAEGA recommend strongly that the determination of whether Schedule A fees should be adjusted should be based on the midpoint of the three- to six-month range, which is 4.5 months. Thus, the targeted reserve would be 4.5 months of average operating expense based on the previous fiscal year's operating expense. All Schedule A fees would decrease or increase 2 percent for each $1 million that the reserve is more or less than 4.5 months of operating expense. NGFA and NAEGA further recommend that there be no cap on the amount that Schedule A fees can change. Based on projections, NGFA and NAEGA estimate that its recommended approach would result in a fee reduction of 10 percent or more for new Schedule A fees implemented effective January 1, 2017.

Assessment of Operating Reserve for All FGIS Accounts

The Reauthorization Act does not require and the proposed rule does not include a mechanism to adjust fees for the other FGIS accounts. However, as can be viewed in Table 2, the operating reserve is large relative to the average monthly operating expense for the Supervision of Official Agencies Program account (81.3 months) and the Rice Inspection Program account (24 months).

For these reasons, the NGFA and NAEGA recommend the following:

- ***Suspension of the $0.011 per metric ton fee (Schedule B fee) that is collected on domestic U.S. grain shipments inspected and/or weighed until the operating reserve for the Supervision of Official Agencies Program account reaches 4.5 months of average monthly expense, based upon the previous fiscal year's expense. Once the reserve trigger of 4.5 months is reached, we further recommend that FGIS assess a fee that closely aligns with its expenses to supervise the official agencies.***

- ***Suspension of the fees collected for rice inspection until the operating reserve for the Rice Inspection Program account reaches 4.5 months of average monthly expense, based upon the previous fiscal year's expense. Once the reserve target of 4.5 months is reached, NGFA and NAEGA further recommend that FGIS assess fees that closely align with its expenses to administer the Rice Inspection Program.***

- ***For the Commodities Inspection Program account, FGIS should target an operating reserve of 4.5 months of average monthly expense, based upon the previous fiscal year's expense.***

Table 2: Estimated FY 2016 Operating Reserve by Program Area

	U.S. Grain Standards Act		Agricultural Marketing Act		Total for Programs
	Inspection and Weighing	Supervision of Official Agencies	Rice Inspection	Commodities Inspection	
Avg. Monthly FY15 Expense (Millions)	$3.17	$0.11	$0.43	$0.26	$3.98
3 to 6 Month Reserve Requirement	$9.52 to $19.04	$0.34 to $0.68	$1.28 to $2.56	$0.78 to $1.56	$11.93 to $23.85
Operating Reserve	$19.77	$9.23	$10.25	$0.86	$40.11
Operating Reserve / Avg. Monthly FY15 Expense	6.2 Months	81.3 Months	24.0 Months	3.3 Months	10.1 Months

Table 3 displays the inspection and weighing program revenue and expenses for the FGIS field offices for FY 2012 to FY 2015. Revenues have regularly exceeded expenses in almost all FGIS field offices.

Table 3: Inspection and Weighing Program Revene and Expenses by FGIS Field Office (Millions)

Fiscal Years	2012	2013	2014	2015
Portland				
Revenue	$4.34	$3.55	$4.86	$4.60
Expense	$3.81	$3.35	$3.75	$3.55
Profit/Loss	$0.53	$0.20	$1.11	$1.05
Grand Forks				
Revenue	$0.00	$0.00	$0.00	$0.01
Expense	$0.00	$0.01	$0.01	$0.01
Profit/Loss	$0.00	-$0.01	-$0.01	$0.00
League City				
Revenue	$4.78	$6.67	$8.30	$8.98
Expense	$5.66	$6.04	$6.47	$6.90
Profit/Loss	-$0.88	$0.62	$1.83	$2.08
Stuttgart				
Revenue	$0.08	$0.10	$0.06	$0.04
Expense	$0.05	$0.06	$0.06	$0.04
Profit/Loss	$0.03	$0.04	$0.00	$0.00
Toledo				
Revenue	$1.73	$2.09	$2.58	$3.21
Expense	$1.91	$1.73	$1.70	$1.99
Profit/Loss	-$0.18	$0.36	$0.88	$1.22
New Orleans				
Revenue	$16.80	$16.47	$24.84	$25.46
Expense	$14.61	$14.62	$18.00	$18.21
Profit/Loss	$2.18	$1.85	$6.84	$7.25
Domestic Inspection Office				
Revenue	$0.18	$0.17	$0.32	$0.43
Expense	$0.14	$0.14	$0.15	$0.21
Profit/Loss	$0.05	$0.03	$0.16	$0.22

Source: A Freedom of Information Act request to FGIS by NGFA and NAEGA on March 4, 2016.

Periodic Review of Schedule A Fees

In the proposed rule, adjustments to Schedule A fees would occur periodically, taking into account other Schedule A fee adjustments that may have occurred to maintain a three- to six-month reserve for the Inspection and Weighing Program account.

NGFA and NAEGA agree that Schedule A fees need to be rebalanced periodically to reflect changing conditions. As such, we request that GIPSA be as transparent as possible in rebalancing the Schedule A fees and consult the fee schedules of official agencies for reasonableness, as well as seek public comment during the review process. NGFA and NAEGA recommend that FGIS review the Schedule A fees annually.

Periodic Review of FGIS Expenses

The proposed rule does not include a periodic review of the inspection and weighing expenses at FGIS field offices or the administrative expenses associated with support and delivery of official inspection and weighing services. However these are important areas for review since these costs have a direct bearing on the fees charged for services and tonnage.

NGFA and NAEGA urges FGIS to bring its field office expenses, and resultant fees, in line with those of official agencies that provide inspection and weighing services. We also encourage FGIS to redouble efforts to control its administrative costs. NGFA and NAEGA recommend that FGIS conduct an extensive review of its expenses annually, and report the results to the Grain Inspection Advisory Committee and other stakeholders.

Publishing of FGIS Financial Data and FGIS Annual Report

Data transparency and reporting reliability are critical, and NGFA and NAEGA strongly urge FGIS to consistently publish its financial data and annual report for the preceding fiscal year by no later than the start of the ensuing calendar year. Under this approach, the publication and issuance of financial data and the annual report for FY 2016 would be January 1, 2017. This three-month timeframe should give FGIS ample time to accumulate date and issue its report.

National and Local Tonnage Fees

In the proposed rule, all outbound grain officially inspected and/or weighed by the FGIS field offices in Portland, Toledo, New Orleans and League City would be assessed the national tonnage fee, plus the applicable local tonnage fee. By contrast, export grain officially inspected and/or weighed by delegated states and official agencies, excluding land carrier shipments to Canada and Mexico, would be assessed the national tonnage fee only.

The national tonnage fee would be updated annually to equal 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 FGIS during the previous five fiscal years.

The local tonnage fee is calculated individually for each field office, and would be updated annually to equal the applicable FGIS field office's administrative costs for the previous fiscal year, divided by the average yearly tons of outbound grain officially inspected and/or weighed by the respective field office during the previous five fiscal years.

Table 4 contains data on tonnage fees for FY 2006 to FY 2015. In FY 2015, FGIS collected the national tonnage fee on 118.8 million metric tons (mmt) of grain. The breakdown was 34.4 mmt of grain inspected by delegated states and designated agencies, 65.2 mmt at the New Orleans field office, 12.5 mmt at the League City field office, 4.1 mmt at the Portland field office and 2.5 mmt at the Toledo field office. The grain inspected at the field offices also was assessed the local tonnage fees.

In FY 2015, the national tonnage fee revenue was $7.01 million and the expense was $6.28 million, netting a surplus of $0.74 million. The local tonnage fees netted a deficit of $0.41 million at New Orleans, a deficit of $0.10 million at League City, a surplus of $0.07 million at Portland and a surplus of $0.05 million at Toledo.

Table 4: Grain Officially Inspected and Tonnage Fees

Fiscal Years	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Quantity of Grain Produced (Million Metric Tons) 1/										
U.S. Grain Production	426.0	477.5	474.7	500.4	480.7	464.1	462.1	540.0	545.1	NA
Quantity of Standardized Grain Officially Inspected (Million Metric Tons) 2/										
Export by FGIS	76.2	77.9	81.5	71.4	77.7	81.3	63.9	57.8	82.6	NA
Export by Delegated States	27.1	26.6	32.2	25.1	29.2	29.5	27.6	19.4	26.1	NA
Export by Designated Agencies	10.1	14.0	14.9	10.1	11.5	12.3	13.4	8.7	17.3	NA
Total Export	113.4	118.5	128.6	106.6	118.4	123.1	104.9	85.9	126.0	NA
Total Domestic	174.5	178.2	181.3	168.0	191.5	187.3	175.1	144.4	171.9	NA
Total Domestic and Export	287.9	296.7	309.9	274.6	309.9	310.4	280.0	230.4	297.9	NA
Quantity of Grain Assessed Local Tonnage Fee and/or National Tonnage Fee (Million Metric Tons) 3/										
Portland (Local & National)	NA	NA	NA	NA	NA	6.5	5.7	4.0	6.1	4.1
Toledo (Local & National)	NA	NA	NA	NA	NA	1.6	1.3	1.3	1.8	2.5
New Orleans (Local & National)	NA	NA	NA	NA	NA	55.2	49.5	42.4	62.9	65.2
League City (Local & National)	NA	NA	NA	NA	NA	17.8	7.6	10.4	12.6	12.5
Delegated States & Designated Agencies (National) 4/	NA	NA	NA	NA	NA	NA	NA	5.2	34.2	34.4
Total Tonnage (National)	NA	NA	NA	NA	NA	81.1	64.2	63.3	117.6	118.8
National Tonnage Fee (Millions) 5/										
Revenue	NA	NA	NA	NA	NA	NA	NA	$3.03	$6.72	$7.01
Expense	NA	NA	NA	NA	NA	NA	NA	$6.46	$6.06	$6.28
Surplus/Deficit	NA	NA	NA	NA	NA	NA	NA	-$3.43	$0.66	$0.74
Local Tonnage Fee (Millions) 5/										
Portland										
Revenue	NA	NA	NA	NA	NA	NA	NA	$0.42	$0.76	$0.51
Expense	NA	NA	NA	NA	NA	NA	NA	$0.42	$0.40	$0.44
Surplus/Deficit	NA	NA	NA	NA	NA	NA	NA	-$0.01	$0.36	$0.07
Toledo										
Revenue	NA	NA	NA	NA	NA	NA	NA	$0.21	$0.43	$0.59
Expense	NA	NA	NA	NA	NA	NA	NA	$0.46	$0.44	$0.54
Surplus/Deficit	NA	NA	NA	NA	NA	NA	NA	-$0.24	-$0.09	$0.05
New Orleans										
Revenue	NA	NA	NA	NA	NA	NA	NA	$0.91	$2.09	$2.08
Expense	NA	NA	NA	NA	NA	NA	NA	$1.86	$2.52	$2.49
Surplus/Deficit	NA	NA	NA	NA	NA	NA	NA	-$0.95	-$0.43	-$0.41
League City										
Revenue	NA	NA	NA	NA	NA	NA	NA	$1.31	$1.63	$1.58
Expense	NA	NA	NA	NA	NA	NA	NA	$1.31	$1.38	$1.68
Surplus/Deficit	NA	NA	NA	NA	NA	NA	NA	$0.00	$0.24	-$0.10

1/ Source: USDA-National Agricultural Statistics Service, Quick Stats. This figure includes production of wheat, corn, sorghum, barley, oats, and soybeans.

2/ Source: FGIS Annual Reports at https://www.gipsa.usda.gov/fgis/public_reports.aspx

3/ Source: NGFA tonnage data request to FGIS on December 22, 2015.

4/ 7CFR22151 effective 5/1/2013 to reallocate national tonnage fee on all grain export inspections performed by official agencies, excluding land carrier shipments to Canada and Mexico.

5/ Source: Source: FGIS Financial Data at https://www.gipsa.usda.gov/fgis/public_financialdata.aspx

According to the proposed rule, FGIS would begin updating the national and local tonnage fee rates beginning January 1, 2017. Using estimated export inspection volumes for FY 2012 to FY 2016 and projected inspection and weighing administrative costs for FY 2016, NGFA and NAEGA estimate the national tonnage rate that will be released on January 1, 2017 will be unchanged from the FY 2016 rate, which was $0.061/metric ton (mt). By contrast, we estimate that the local tonnage rates will be increased for three of the four-field offices.

NGFA and NAEGA agree with GIPSA's proposed approach to the national and local tonnage fees. We believe the proposed tonnage fee calculations will result in predictable tonnage rates that will accurately reflect and gradually adjust to changing national and local tonnage volumes. Since the tonnage fee rates will be affected directly by FGIS's national and field office administrative costs, NGFA and NAEGA encourage cost reductions.

Table 5: Forecast Tonnage Fees for FY2017

Fiscal Years	2012	2013	2014	2015	2016	2017F
National Tonnage Fee						
National Tonnage 1/	97.9	80.2	117.6	118.8	109.7	
National Inspection & Weighing Administrative Costs 2/		$6.46	$6.06	$6.28	$6.40	
National Tonnage Fee 3/					$0.061	$0.061
Portland Tonnage Fee						
Local Tonnage 1/	5.7	4.0	6.1	4.1	3.8	
Local Inspection & Weighing Administrative Costs 2/		$0.42	$0.40	$0.44	$0.44	
Local Tonnage Fee 3/					$0.130	$0.094
Toledo Tonnage Fee						
Local Tonnage 1/	1.3	1.3	1.8	2.5	2.3	
Local Inspection & Weighing Administrative Costs 2/		$0.46	$0.44	$0.54	$0.55	
Local Tonnage Fee 3/					$0.245	$0.302
New Orleans Tonnage Fee						
Local Tonnage 1/	49.5	42.4	62.9	65.2	60.3	
Local Inspection & Weighing Administrative Costs 2/		$1.86	$2.52	$2.49	$2.54	
Local Tonnage Fee 3/					$0.033	$0.045
League City Tonnage Fee						
Local Tonnage 1/	7.6	10.4	12.6	12.5	11.5	
Local Inspection & Weighing Administrative Costs 2/		$1.31	$1.38	$1.68	$1.72	
Local Tonnage Fee 3/					$0.131	$0.157

1/ Due to the 5/1/2013 procedure change in assessing the national tonnage fee, the national tonnage fee for 2012 and 2013 is estimated by dividing the quantity of grain assessed the national tonnage fee in 2014 by the quantity of export grain inspected in 2014 and multiplying the product by the applicable year's quantity of export grain inspected. The national tonnage for 2016 is estimated by dividing the quantity of grain assessed the national tonnage fee in 2014 by the quantity of export grain inspected in 2014 and multiplying the product by the sum of projected 2016 exports for corn, grain sorghum, barley, oats, wheat and soybeans from the February 2016 World Agricultural Supply and Demand Estimates. The local tonnage for 2016 is estimated by dividing the projected 2016 national tonnage by the 2015 national tonnage and multiplying the product by the 2015 local tonnage.
2/ The National and Local Inspection & Weighing Administrative Costs for 2016 are projected to be 2 percent higher than 2015 costs.
3/ The 2017 tonnage fees are projected by dividing the applicable 2016 Inspection & Weighing Administrative Costs by the applicable 2012-2016 average tonnage.

Estimated Impact of a 10 Percent Change in Schedule A Fees and Updates to Tonnage Rates

Tables 6 and 7 provide a comparison of the projected fees paid to FGIS in 2016 and 2017 by a New Orleans-based grain export facility. Table 6 contains NGFA and NAEGA's 2016 projections for FGIS services, tonnage exported and FGIS charges. The fees in Table 6 were obtained from FGIS's Directive dated October 1, 2015.

Table 7 contains NGFA and NAEGA's projected fee changes that would become effective January 1, 2017. Those changes are an approximate 10 percent reduction in Schedule A fees and an increase in the local tonnage rate for the New Orleans FGIS field office from $0.033/mt to $0.045/mt.

As can be viewed in Tables 6 and 7, a 10 percent decrease in Schedule A fees would reduce the export facilities fees paid to FGIS from $1,895,303.80 to $1,705,773.42 – or by a total of $189,530.38. This decrease in service costs would be offset partly by an increase in local tonnage fees from $1,050,498.88 to $1,184,605.12 – amounting to $134,106.24. The net result of the 10 percent decrease in service costs and increase in local tonnage fees would be a reduction in fees paid to FGIS from $2,945,802.68 to $2,890,378.54 or $55,424.14.

Table 6: Projected Fees Paid to FGIS in 2016 by a New Orleans Export Facility

Service	Quantity	Unit	Billing Rate	Charge
Canvas Bags for Samples	3,931	Canvas Bags	$2.00	$7,862.00
G201, 1-yr Contract, Mon-Fri, 6am-6pm	14,339	Hours	$40.20	$576,427.80
G202, 1-yr Contract, Mon-Fri, 6pm-6am	14,288	Hours	$42.10	$601,524.80
G203, 1-yr Contract, Sat-Sun & Overtime	10,433	Hours	$48.20	$502,870.60
G204, 1-yr Contract, Holidays	1,922	Hours	$71.40	$137,230.80
G213, Non-Contract, Mon-Fri, 6am-6pm	271	Hours	$71.40	$19,349.40
G214, Non-Contract, Mon-Fri, 6pm-6am	381	Hours	$71.40	$27,203.40
G216, Non-Contract, Holidays	60	Hours	$71.40	$4,284.00
G255, Samples Provided	3,881	Samples	$3.50	$13,583.50
G256, Soybean protein and oil	416	Tests	$2.70	$1,123.20
G286, Wheat protein	353	Tests	$2.70	$953.10
G293, All other Mycotoxins (rapid test kit method)	139	Tests	$20.80	$2,891.20
			Total for Services	**$1,895,303.80**
National Tonnage Fee	11,175,520	MT	$0.061	$681,706.72
Local Tonnage Fee	11,175,520	MT	$0.033	$368,792.16
			Total for Tonnage Fees	**$1,050,498.88**
			Grand Total	**$2,945,802.68**

Table 7: Projected Fees Paid to FGIS in 2017 by a New Orleans Export Facility

Assumes a 10% Decrease in Schedule A Fees and an Increase in the Local Tonnage Rate from $0.033/MT to $0.045/MT

Service	Quantity	Unit	Billing Rate	Charge
Canvas Bags for Samples	3,931	Canvas Bags	$1.80	$7,075.80
G201, 1-yr Contract, Mon-Fri, 6am-6pm	14,339	Hours	$36.18	$518,785.02
G202, 1-yr Contract, Mon-Fri, 6pm-6am	14,288	Hours	$37.89	$541,372.32
G203, 1-yr Contract, Sat-Sun & Overtime	10,433	Hours	$43.38	$452,583.54
G204, 1-yr Contract, Holidays	1,922	Hours	$64.26	$123,507.72
G213, Non-Contract, Mon-Fri, 6am-6pm	271	Hours	$64.26	$17,414.46
G214, Non-Contract, Mon-Fri, 6pm-6am	381	Hours	$64.26	$24,483.06
G216, Non-Contract, Holidays	60	Hours	$64.26	$3,855.60
G255, Samples Provided	3,881	Samples	$3.15	$12,225.15
G256, Soybean protein and oil	416	Tests	$2.43	$1,010.88
G286, Wheat protein	353	Tests	$2.43	$857.79
G293, All other Mycotoxins (rapid test kit method)	139	Tests	$18.72	$2,602.08
			Total for Services	**$1,705,773.42**
National Tonnage Fee	11,175,520	MT	$0.061	$681,706.72
Local Tonnage Fee	11,175,520	MT	$0.045	$502,898.40
			Total for Tonnage Fees	**$1,184,605.12**
			Grand Total	**$2,890,378.54**

<u>Estimated Overcharge for Inspection & Weighing Services by FGIS</u>

Even if FGIS reduces its Schedule A fees by 10 percent effective January 1, 2017, NGFA and NAEGA believe the cost of using FGIS export inspection and weighing services still would be significantly higher than the fees charged by official agencies for domestic inspection and weighing services. As displayed in Table 8, we estimate a New Orleans export facility could save an additional $1,167,076.07 – or a whopping 40 percent in 2017 – if official agencies were allowed to inspect and weigh export grain.

NGFA and NAEGA believes that the cost of FGIS inspection and weighing service is alarmingly high compared to the cost of using similar services provided by official agencies. As a result, we urge that FGIS seek ways to bring its costs for inspection and weighing services into line with those of official agencies.

Table 8: Estimated Overcharge by FGIS for Inspection and Weighing Services in 2017 at a New Orleans Export Facility

Service	Quantity	Unit	FGIS Billing Rate	FGIS Charge	Official Agency Billing Rate 1/	Official Agency Charge	Overcharge
Canvas Bags for Samples	3,931	Canvas Bags	$1.80	$7,076	$0.00	$0	$7,076
G201, 1-yr Contract, Mon-Fri, 6am-6pm	14,339	Hours	$36.18	$518,785	$20.00	$286,780	$232,005
G202, 1-yr Contract, Mon-Fri, 6pm-6am 2/	14,288	Hours	$37.89	$541,372	$22.00	$314,336	$227,036
G203, 1-yr Contract, Sat-Sun & Overtime	10,433	Hours	$43.38	$452,584	$30.00	$312,990	$139,594
G204, 1-yr Contract, Holidays	1,922	Hours	$64.26	$123,508	$40.00	$76,880	$46,628
G213, Non-Contract, Mon-Fri, 6am-6pm 3/	271	Hours	$64.26	$17,414	$30.00	$8,130	$9,284
G214, Non-Contract, Mon-Fri, 6pm-6am 3/	381	Hours	$64.26	$24,483	$30.00	$11,430	$13,053
G216, Non-Contract, Holidays	60	Hours	$64.26	$3,856	$40.00	$2,400	$1,456
G255, Samples Provided	3,881	Samples	$3.15	$12,225	$5.50	$21,346	-$9,120
G256, Soybean protein and oil	416	Tests	$2.43	$1,011	$4.75	$1,976	-$965
G286, Wheat protein	353	Tests	$2.43	$858	$5.25	$1,853	-$995
G293, All other Mycotoxins (rapid test kit method)	139	Tests	$18.72	$2,602	$25.00	$3,475	-$873
			Total for Services	**$1,705,773**		**$1,041,596**	**$664,178**
National Tonnage Fee 4/	11,175,520	MT	$0.061	$681,707	$0.061	$681,707	$0
Local Tonnage Fee	11,175,520	MT	$0.045	$502,898	$0.000	$0	$502,898
			Total for Tonnage Fees	**$1,184,605**		**$681,707**	**$502,898**
			Grand Total	**$2,890,379**		**$1,723,302**	**$1,167,076**

1/ Kansas Grain Inspection Service.

2/ Kansas Grain Inspection Service does not have a regular hourly rate for night work. A night rate of $22/hour is assumed.

3/ Kansas Grain Inspection Service does not have non-contract rates. The overtime rate of $30/hour is assumed.

4/ National tonnage fee to support FGIS headquarter administrative costs would be paid irrespective of who performs inspection and weighing services.

Summary of Fee Recommendations

We summarize the aforementioned comments regarding FGIS's proposed fees with the following:

- With respect to the operating reserve requirement for official inspection and weighing services, NGFA and NAEGA recommend that the trigger to adjust the operating reserve should be the midpoint of the three- to six-month range, which is 4.5 months. Thus, the targeted reserve would be 4.5 months of average operating expense based upon the previous fiscal year's operating expense. We concur with FGIS's proposal for all Schedule A fees to decrease or increase 2 percent for each $1 million the operating reserve exceeds or falls below the trigger, but disagree with FGIS's proposal for a 5 percent cap on the maximum annual change in Schedule A fees, and urge that such a cap be eliminated for Schedule A fees. Doing so would result in a much-needed and fully justifiable reduction of 10 percent or more for FY 2017 Schedule A fees.

- In addition, NGFA and NAEGA recommend a suspension of the $0.011 per metric ton fee (Schedule B fee) that is collected on domestic U.S. grain shipments inspected and/or weighed until the operating reserve for the Supervision of Official Agencies Program account reaches 4.5 months of average monthly expense based on the previous fiscal year's expense. Once the reserve target of

4.5 months is reached, we advise that FGIS assess a fee that closely aligns with its expenses to supervise the official agencies. A suspension of the fees collected for rice inspection also is recommended until the operating reserve for the Rice Inspection Program account reaches 4.5 months of average monthly expense. based upon the previous fiscal year's expense. Once the reserve target of 4.5 months is reached, NGFA and NAEGA propose that FGIS assess fees that closely align with its expenses to administer the Rice Inspection Program. We recommend a targeted operating reserve of 4.5 months of average monthly expense based upon the previous fiscal year's expense is for the Commodities Inspection Program account.

- Further, NGFA and NAEGA believe that Schedule A fees need to be reviewed annually to reflect changing conditions, and urge GIPSA to be as transparent as possible in rebalancing the Schedule A fees, consult the fee schedules of official agencies for reasonableness, and seek public input during the review process. Data transparency and reporting reliability are critical and we strongly urge FGIS to consistently publish its financial data and annual report for the ended fiscal year by the start of the following calendar year.

- NGFA and NAEGA agree with GIPSA's proposed approach to the national and local tonnage fees, and believe the proposed tonnage fee calculations will result in predictable tonnage rates that will accurately reflect and gradually adjust to changing national and local tonnage volumes. Since the tonnage fee rates will be directly impacted by FGIS's national and field office administrative costs, we urge FGIS to review its administrative costs and make reductions. We also recommend that FGIS perform an extensive review of its expenses annually. In this regard, NGFA and NAEGA note that the cost of FGIS inspection and weighing service is severely higher (estimated at 40 percent more) than the cost of using similar services provided by the official agencies, and thus recommend that FGIS aggressively pursue ways to bring its costs for inspection and weighing services in line with those of official agencies.

72-Hour Advance Notice of Discontinuation of Official Services

In the Reauthorization Act, there is specific language that establishes transparent disruption notification and reporting requirements if GIPSA fails to provide inspections services after a delegated state stops performing their mandatory services. This includes:

- **A delegated state is required to provide a 72-hour notice if it intends to discontinue providing official service.**

  ''(C) STATE AGENCY REQUIREMENTS.—If a State agency that has been delegated authority under this paragraph intends to temporarily discontinue official inspection or weighing services for any reason, except in the case of a major disaster, the State agency shall notify the Secretary in writing of the intention of the State agency to do so at least 72 hours in advance of the discontinuation date."

- **The Secretary then would have 24 hours from the time notice is received to notify Congress that the delegated state is not going to perform their mandated official inspection functions.**

  ''(2) not later than 24 hours after the start of the disruption in inspection or weighing, submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes— ''(A) the disruption; and ''(B) any actions necessary to address the concerns of the Secretary relating to the disruption so that inspections or weighings may resume; and"

- **In such instances, the Secretary is required to provide Congress with daily updates on the status of the service disruption.**

Given the inclusion and prominence of these provisions in the Reauthorization Act, and the disruptions in official service by such a delegate state agency that precipitated these provisions, NGFA and NAEGA urge that the proposed rule be amended to require that the delegated State also provide 72-hour advance notice to affected users of official inspection and weighing services if such service is to be discontinued, identical to the timeframe that applies to notification of service disruption to the Secretary. This would provide a chance for affected export port locations and their customers to make alternative arrangements to preserve the flow of U.S. exports, address logistical problems and potentially lessen the economic harm to U.S. agricultural producers that has resulted in the past from such official service disruptions.

Further, we urge that language in the statute requiring 24-hour notification to Congress by the Secretary be included in the regulation.

Therefore, we recommend that section 800.195(f)(11) be modified to read as follows:

"A delegated State shall notify the Secretary of its intention to temporarily discontinue official inspection and/or weighing services for any reason, except in the case of major disaster. ***The Secretary shall report to Congress, not later than 24 hours after the start of the disruption in inspection or weighing services, a report that describes the disruption and any actions necessary to address the disruption so that inspections or weighing services may resume.*** *The delegated State must provide written notification to both the Service,* ***and affected export port locations and elevator operators****, no less than 72 hours in advance of the discontinuation date.*

Delegated States Submit to GIPSA Review Every Five Years

The Reauthorization Act also requires transparency and regular review of delegated authority. This includes the publication of a notice in the *Federal Register,* a 30-day comment period and the publication of a detailed *Federal Register* notice explaining why a state agency has been either approved or disapproved for delegation. Similar to the officially designated agencies, the delegation process is required to occur every five years.

In this regard, NGFA and NAEGA urge that the review of delegated State Agencies begin no later than Sep. 30, 2016, and that this be stipulated in the final rule. We believe an expedited review is warranted given the circumstances that resulted in Congress including this and related provisions in the Reauthorization Act, and because delegated State agencies have been operating under open-ended and nebulous memoranda of understanding, in some cases for decades.

We also urge that FGIS confirm in the proposed rule that all costs associated with the certification process for Delegated states will come from funds appropriated to the agency, and not through revenue generated from users of official services.

Therefore, we suggest that section 800.195(g)(4) of the proposed rule be modified to read as follows:

"At least once every five years, beginning ***no later than September 30, 2016, each****, delegated State shall submit to a review of its delegation by the service in accordance with the criteria and procedures for delegation prescribed in Section 7(e) of the Act, this section of the regulations and instructions.* ***The funding for the review of a delegated State's delegation shall be conducted solely through funds appropriated to the agency by Congress. "***

Conclusion

As implementation of the Reauthorization Act moves forward, NGFA and NAEGA urge FGIS and the officially delegated States to be both transparent in the disclosure of their service performance and the status of their financial data.

We further believe the Secretary of Agriculture is obligated under the Reauthorization Act to intervene to provide official inspection and weighing services immediately if FGIS employees, or personnel of a delegated State agency or designated domestic entities, are unwilling or unable to perform such services. Ultimately, the economic well-being of U.S. agriculture and America's reputation in global markets are at stake.

The NGFA and NAEGA appreciate GIPSA's consideration of our views and recommendations on its proposed amendments to the USGSA, and would be pleased to respond to any questions the agency may have. Our point of contact is NGFA Vice President for Safety and Regulatory Affairs Jess McCluer, jmccluer@ngfa.org or D: 202-888-1102. As always, NGFA and NAEGA stand ready to work with GIPSA to seek ways to improve the efficiency and cost-effectiveness of the valued official inspection system.

Sincerely,

Randall C. Gordon	Gary C. Martin
President	President and CEO
National Grain and Feed Association	North American Export Grain Association