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SUPPLEMENTARY INFORMATION:

Background

Pet food rendering facilities process animal byproducts by cooking them down into various products that are used as ingredients in pet foods and animal feeds. Pet food blending facilities take different materials and mix them according to manufacturers' specifications. Pet food digest facilities produce enzymatic meals in powdered or liquid form for use as pet food flavor enhancers. Pet food spraying and drying facilities produce powdered materials, which are also used as flavor enhancers. Pet food manufacturing facilities combine and cook ingredients to produce the finished pet food, which is then packaged for sale in the United States or for export to another country.

Facilities that process or manufacture pet food ingredients or products for export, including manufacturing, rendering, blending, digest, and spraying and drying facilities, are required by the European Union (EU) and some other foreign regions to be inspected and approved by the Animal and Plant Health Inspection Service (APHIS). These inspections and approvals are carried out by APHIS in accordance with the regulations in 9 CFR part 156, "Voluntary Inspection and Certification Service."

User fees to reimburse APHIS for the costs of providing veterinary diagnostic services and import- and export-related services for live animals and birds and animal products are contained in 9 CFR part 130. Section 130.11 lists flat rate fees for inspecting and approving pet food manufacturing, rendering, blending, digest, and spraying and drying facilities.

The flat rate annual user fees for inspection and approval of these facilities were established in a final rule we published in the **Federal Register** on June 20, 2000 (65 FR 38179-38182, Docket No. 98-045-2). Prior to that final rule, APHIS had charged hourly rate user fees for inspection of these facilities, as provided for by § 130.30(a)(11). We established the flat rate annual user fees in § 130.11 based on requests from pet food industry representatives that we modify our user fees to make it easier for them to know in advance what their costs would be. We calculated the flat rate annual user fees to reflect the average annual cost to APHIS of providing these services.

However, we have determined that APHIS is no longer recovering its full

costs for providing these services through the flat rate annual user fees in § 130.11. The flat annual rate user fees for initial approval and renewal of approval of pet food manufacturing facilities were based on our estimates that initial approval would require 6.4 hours of labor on the part of Veterinary Services inspectors and support staff, while renewal of approval would require 5.4 hours. For pet food rendering facilities, the estimates were 5.8 hours for initial approval and 4.2 hours for renewal of approval; for pet food blender facilities, 6.7 hours for initial approval and 4.8 hours for renewal of approval; for pet food digest facilities, 6.0 hours for initial approval and 3.3 hours for renewal of approval; and for pet food spraying and drying facilities, 4.2 hours for initial approval and 2.5 hours for renewal of approval. (All these estimated times include both the time required to provide the service and travel time to and from the facilities.)

While these estimates were accurate at the time the user fees were established, foreign requirements for inspection and approval have changed somewhat in the interim, and we have found that initial approvals and renewals of approval can now require 1½ times the labor we had estimated they would require when the flat rate annual user fees were set. This means that APHIS does not recover its costs under the current flat rate annual user fee schedule.

In addition, the EU's requirements for inspection and approval of facilities that wish to export pet food to the EU changed dramatically on May 1, 2003. Inspections under these new requirements are more complex and thus require more labor, meaning that the estimates of labor required for inspection and approval on which the current flat rate user fees are based have become yet more outdated.

The EU's new requirements also make it infeasible to address the present unrecovered costs by simply recalculating the current flat rate user fees for inspection and approval of pet food facilities. The amount of time needed to complete the inspection processes that are required by the EU varies widely between pet food facilities, even pet food facilities of the same type. Charging a flat rate user fee for inspections performed in accordance with these new requirements would thus be inequitable, as facility operators whose facilities could be inspected in a relatively short amount of time would, in effect, be subsidizing facility operators whose facilities required inspections of greater length.

Furthermore, under the EU's requirements, pet food facilities that are not found to be in compliance at the initial inspection must, if they still wish to export pet food to the EU, undergo reinspection. The APHIS flat rate annual user fees for inspection and approval and for renewal of approval in § 130.11 are intended to cover APHIS' costs for all inspections required during the year. We developed these flat rate user fees based on an average of two inspections per year. However, the new EU requirements are likely to require more frequent reinspections for some facilities. The cost of these additional reinspections will not be recovered under the current flat rate user fees. A flat rate annual user fee that did take the possibility of these additional reinspections into account would also be inequitable; under such a fee, facility owners whose facilities required relatively few inspections would, in effect, be subsidizing those whose facilities required more inspections, to a far greater degree than under the EU's previous requirements.

Finally, we cannot predict what changes foreign governments may make to their requirements for inspection and approval of pet food facilities in the future, or what changes we might need to make in the flat rate user fees because of those changes. A more flexible system, using the hourly rates proposed here, would reduce the need for future rulemaking while ensuring that APHIS properly recovers its full costs for providing these services and that all customers are charged fairly.

These considerations have led us to conclude that the flat rate annual user fees for inspection and approval of pet food facilities, while providing cost certainty for facility operators and reducing administrative timekeeping costs for APHIS, have not achieved, and will not be able to achieve, their primary goal: Ensuring that APHIS recovers the costs of inspecting and approving such facilities. Returning to an hourly rate user fee would allow us to charge facility operators an appropriate amount for the labor expended in inspecting and approving their facilities, would allow us to recover the costs of any reinspections that may be required, and would give us more flexibility should the requirements of importing countries for inspection and approval change in the future.

Therefore, we are proposing to remove the flat rate user fees for inspection and approval of pet food manufacturing, rendering, blending, or digest facilities and pet food spraying and drying facilities from the table of flat rate user fees in § 130.11. With the