

removal of these specific user fees, such facilities would be charged for inspection and approval in accordance with § 130.30, which provides, among other things, that user fees for inspections conducted under 9 CFR part 156 will be calculated at the hourly rate (or hourly overtime rate, if applicable) listed in that section when those inspections are not covered by flat rate user fees elsewhere in part 130.

In addition to listing user fees for the current and future fiscal years (FY 2003 and beyond), the table in § 130.11 lists user fees for fiscal years 2001 and 2002. Because fiscal years 2001 and 2002 have passed, we believe it is no longer necessary to list the user fees for those fiscal years in the regulations. Therefore, we are also proposing to amend the user fee table in § 130.11 by removing the columns that list fees for fiscal years 2001 and 2002. In addition, because this proposed rule will not be finalized during FY 2003, we are also proposing to remove the column that lists fees for FY 2003. Because there would then be only one column listing user fees, we are proposing to remove the designation "Beginning October 1, 2003" from that column.

Finally, because we would be removing the specific flat rate user fees for inspecting and approving pet food manufacturing, rendering, blending, digest, and spraying and drying facilities, it would no longer be necessary to maintain definitions in § 130.1 related to those fees. Specifically, we would amend § 130.1 by removing the definitions for *pet food blending facilities*, *pet food digest facilities*, *pet food manufacturing facilities*, *pet food rendering facilities*, and *pet food spraying and drying facilities*, as those terms would no longer be used in part 130.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

APHIS is proposing to use hourly and premium hourly rate user fees listed in § 130.30 to cover the cost of providing services for the approval of U.S. pet food manufacturing, rendering, blending, digest, and spraying and drying facilities in lieu of the current flat rate user fees contained in § 130.11. Facilities that process or manufacture pet food ingredients or products for export are required by the EU and other foreign countries to be inspected and

approved by APHIS in order for the pet food to be imported. APHIS is proposing to replace the flat rates with hourly rates to recover its full costs for these inspection and approval services.

User fees recover the cost of operating a public system by charging those members of the public who use the system, rather than the public as a whole, for its operation. It is justifiable to recover the costs of the inspection and approval of U.S. pet food manufacturing, rendering, blending, digest, and spraying and drying facilities through user fees. These facilities benefit from the inspection service as it provides the approvals required by the countries to which they export; user fees thus internalize the costs of this service to those who require the service and benefit from it.

APHIS user fees are intended to cover the full cost of providing the service for which the fee is charged. The cost of providing a service includes direct labor and direct material costs. It also includes administrative support, Agency overhead, and departmental charges. Due to changes in the inspection and approval requirements of certain countries, APHIS has found that providing these services can now require up to 1½ times the labor estimated as being necessary when the flat rate annual user fees were set. Therefore, APHIS is not currently recovering all appropriate costs. 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 labor estimates used for the current flat rates have become yet more outdated.

The amount of time required to perform an inspection can vary widely, depending on such factors as the size of the facility, the complexity of the operation, and the preparation that has occurred at the facility in anticipation of the inspection. However, the labor time associated with inspections is generally underrepresented by the current fees, and will become more so as requirements change. The current flat rate user fee of \$404.75 for an initial inspection and approval at a pet food manufacturing, rendering, blending, or digest facility is the equivalent of approximately 5 hours at the hourly rate, but we have found it can easily take 10 or more hours to approve some facilities. It can, therefore, be expected that the total user fees charged under the hourly rate will be greater than the

current flat rate for inspection and approval services.

To the extent that changes in user fees alter operational costs, any entity that utilizes APHIS services that are subject to user fees would be affected by a rule that changed those fees. The degree to which an entity is affected depends on its market power, or the ability to which costs can be either absorbed or passed on to its buyers. Without information on either profit margins and operational expenses of the affected entities, or the supply responsiveness of the pet food industry,¹ the scale of potential economic effects cannot be precisely predicted.

However, we do not expect that the proposed change in user fees would significantly impact users. Even at higher levels, the inspection fees represent a very small portion of the value of shipments from these facilities. In 1997,² dog and cat food manufacturers³ had an average total annual value of shipments of \$46.6 million, and even the smallest operations (1 to 4 employees) had an average total annual value of shipments of nearly \$700,000. Other animal food manufacturers⁴ had an average total annual value of shipments of \$12.7 million, with the smallest operations (1 to 4 employees) having an average total annual value of shipments of \$2.3 million. Renderers and other meat byproduct processors⁵ had an average total annual value of shipments of \$10.7 million, with the smallest operations (1 to 4 employees) having an average total annual value of shipments of nearly \$800,000. Those processors specifically dealing with animal and marine feed and fertilizer byproducts⁶ had an average total annual value of shipments of \$16.2 million. Even if the proposed hourly rate user fees were to triple the inspection and approval costs of pet food facilities, the fees charged to these facilities would continue to be very small compared to their revenues.

Because the EU and other countries require U.S. facilities that process or manufacture pet food ingredients or products for export be inspected and

¹ The measurement of supply responsiveness would provide information on the likely impact on an entity's activities due to changes in operating costs.

² U.S. Census Bureau, 1997 Economic Census. The 2002 Census is not yet available.

³ North American Industry Classification System (NAICS) code 311111, Dog & Cat Food Manufacturing.

⁴ NAICS code 311119, Other Animal Food Manufacturing.

⁵ NAICS code 311613, Rendering & Meat Byproduct Processing.

⁶ NAICS code 3116134, Animal & Marine Feed and Fertilizer Byproducts.