

Readers may note that our proposed user fees for tests performed at NVSL FADDL are higher than our proposed user fees for the same tests performed at NVSL in Ames. Both NVSL FADDL and NVSL in Ames work with infectious and contagious disease agents. However, NVSL FADDL, which is isolated from the U.S. mainland, is designed to work specifically with highly infectious diseases exotic to the United States. Because of this, special biosecurity measures are required at NVSL FADDL that are not required at NVSL in Ames. As a result, NVSL FADDL operating costs are higher than NVSL in Ames' operating costs. The user fees we are proposing reflect this difference in costs.

Premium costs. Premium costs are expenses that are incurred solely for a specific test or service. For example, certain tests require expensive reagents in addition to the direct labor time and laboratory materials included in administrative support costs. Premium costs for the proposed flat rate user fees have been included in the proposed calculated fees. For example, each sterilization by gamma radiation at NVSL FADDL requires special radioactive materials, irradiation costs, and travel costs for an APHIS employee to hand-carry the material. Based on the high amount of costs involved, these premium costs have been added to the proposed specific fee involved rather than included as an administrative support cost that is spread among all fees for tests, reagents, and other services.

Agency overhead. Agency overhead is the pro rata share, attributable to a particular diagnostic reagent, material, or veterinary diagnostic service, of the management and support costs for all Agency activities at the regional level and above. Included are the costs of providing budget and accounting services, management support at the headquarters and regional levels, including the Administrator's office, and personnel services, public information services, and liaison with Congress. Agency overhead is calculated at 16.15 percent of total direct labor and support costs. For example, the agency overhead for one virus isolation test is \$5.44, which is the product of virus isolation direct labor and administrative support costs of \$33.70 multiplied by 16.15 percent.

Departmental charges. Departmental charges are APHIS's share, expressed as a percentage of the total cost, of services provided centrally by the U.S. Department of Agriculture. Services the Department provides centrally include the Federal telephone service; mail;

National Finance Center processing of payroll, billing, collections, and other money management; unemployment compensation; Office of Workers Compensation Programs; and central supply for storing and issuing commonly used supplies and departmental forms. The Department notifies APHIS how much the agency owes for these services.

We have included a pro rata share of these departmental charges, as attributed to a particular test, diagnostic reagent, or other veterinary diagnostic material or service, in our user fee calculations at the rate of 5.23 percent. For example, departmental charges to perform one virus isolation test are \$2.05. This amount equals 5.23 percent of total direct labor costs, administrative support costs, and Agency overhead costs of \$39.14 described above.

Reserve. We are proposing to add an amount that would provide for a reasonable balance, or reserve, in the veterinary diagnostics user fee account. All user fees would contribute to the reserve proportionately. The reserve would ensure that we have sufficient operating funds in cases of fluctuations in activity volumes, bad debt, program shutdown, or customer insolvency. We intend to monitor the reserve balance closely and propose adjustments in our fees as necessary to ensure a reasonable balance. For example, the reserve amount included in the calculation for one virus isolation test is \$2.06 per test. The total costs in this example thus far equal \$43.25.

Calculation of proposed user fees. The basic steps in the calculation for each particular service are: (1) Calculate direct labor costs by determining the average amount of direct labor required to perform the service and multiply the average direct labor hours by the average salary and benefit costs for laboratory employees; (2) calculate the pro rata share of administrative support costs; (3) determine the premium costs (if any); (4) calculate the pro rata share of agency overhead and departmental charges, respectively; (5) add all costs; and (6) round up to the next \$0.25 for all fees less than \$10 or round up or down to the nearest dollar for all fees greater than \$10. For example, the total virus isolation cost per test for FY 2004 of \$43.25 is rounded down to \$43 per test. The result of these calculations is a user fee that covers the total cost to perform a particular test or provide a particular veterinary diagnostic material or service one time. As is the case with all APHIS user fees, we intend to review, at least annually, the user fees proposed in this document. We will

publish any necessary adjustments in the **Federal Register**.

In addition, we would remove the following tests because they are either obsolete, no longer being performed at NVSL in Ames or NVSL FADDL, or are being performed but being incorporated into another published rate:

Avian origin bacterial antisera, mycoplasma
Equine origin glanders antiserum
Leptospira culturing
Leptospira serotyping
Mycobacterium avium serotyping
Mycology culture identification
Mycology/fungus culture or isolation
Mycoplasma isolation
Mycoplasma identification
Plasmid typing
Warburg
Virus isolation for Newcastle disease virus
Brucella milk ELISA
Mercaptoethanol
Mycology/fungus serology
Check tests, anaplasma complement fixation
Manual, Brucellosis complement fixation
Manual, Anaplasmosis, Johnes's disease

We would also remove a footnote that appears in the tables in §§ 130.15(a) and 130.16(a) and (b). The footnote describes a discount that applies to all diagnostic, non-import-related complement fixation, hemagglutination inhibition, fluorescent antibody, indirect fluorescent antibody virus neutralization, and peroxidase linked antibody tests. The discount applies to the 11th and subsequent tests on the same submission by the same submitter for the same test and antigen. We have reevaluated the time it takes to conduct these additional tests and have determined that it is no longer cost effective to perform the tests at a discount. Therefore, we would remove the footnote from those tables.

Finally, in §§ 130.15(a), 130.16(a), and 130.18, we would amend the tables by updating several of the entries to reflect the designations currently used by NVSL to refer to the particular test or service. There would be no change in the services or tests themselves; the names would simply be changed to be consistent with the terminology used by NVSL.

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.

We are proposing to increase the user fees for veterinary diagnostic services to reflect changes in operating costs and changes in calculating our costs. These