

digest, and spraying and drying facilities with user fees based on hourly rates for inspections and approval. We have found that the flat rate annual user fees we have been charging no longer cover the costs of our inspections and cannot be adequately formulated to cover the costs of the inspections and reinspections mandated by various foreign regions to which those facilities export their pet food ingredients or products. This action will ensure that our user fees cover the cost of providing these services to pet food facilities.

**EFFECTIVE DATE:** December 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** For information concerning program operations for Veterinary Services, contact Dr. Thomas W. Burleson, Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737-1231; (301) 734-8364.

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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 annual fees for inspecting and approving pet food manufacturing, rendering, blending, digest, and spraying and drying facilities.

On July 9, 2003, we published in the **Federal Register** (68 FR 40817-40820, Docket No. 03-036-1) a proposal to amend the regulations by replacing the flat rate annual user fees currently charged for the inspection and approval of pet food manufacturing, rendering, blending, digest, and spraying and drying facilities in § 130.11 with user fees for inspections and approval based on the hourly rates in § 130.30. We took this action because APHIS was not recovering its full costs for providing these services under the flat rate annual user fees and because the flat rate annual user fees could not be adequately reformulated due to changes in the inspection and approval requirements of the EU for pet food facilities that export their products to the EU.

We solicited comments concerning our proposal for 60 days ending September 8, 2003. We received one comment by that date, from a pet food manufacturer. This commenter requested that, instead of establishing user fees for inspections and approval of pet food facilities based on hourly rates, we develop new flat rate annual user fees.

We realize that flat rate annual user fees aid pet food facilities by allowing them to know in advance what their costs for inspection and approval will be; in fact, we previously established the flat rate annual user fees for these activities at the request of pet food industry representatives. However, as we discussed in the proposed rule, the EU's new requirements 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 new 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 established here, will 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, 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 will allow us to charge facility operators an appropriate amount for the labor expended in inspecting and approving their facilities, will allow us to recover the costs of any reinspections that may be required, and will give us more flexibility should the requirements of importing countries for inspection and approval change in the future. We are not making any changes to the proposed rule in response to this comment.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The rule has