

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 will be using the 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 replacing 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and thus require more labor, meaning that the labor estimates used for the current flat rates have become yet more outdated.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 will be affected by a rule that changes 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,<sup>1</sup> the scale of potential economic effects cannot be precisely predicted.

However, we do not expect that these changes in user fees will 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,<sup>2</sup> dog and cat food manufacturers<sup>3</sup> 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 manufacturers<sup>4</sup> 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 processors<sup>5</sup> 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

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

<sup>2</sup> U.S. Census Bureau, 1997 Economic Census. The 2002 Census is not yet available.

<sup>3</sup> North American Industry Classification System (NAICS) code 311111, Dog and Cat Food Manufacturing.

<sup>4</sup> NAICS code 311119, Other Animal Food Manufacturing.

<sup>5</sup> NAICS code 311613, Rendering and Meat Byproduct Processing.

and fertilizer byproducts<sup>6</sup> had an average total annual value of shipments of \$16.2 million. Even if these hourly rate user fees were to triple the inspection and approval costs of pet food facilities, the fees charged to these facilities will 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 approved by APHIS in order for the pet food to be imported into those countries, those facilities directly benefit from the inspections, as they are a necessary element for exports of these products to occur. In addition, using hourly rates will allow the fee to be tied directly to the amount of time required to perform the service at a given facility.

#### *Impact on Small Entities*

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects of their rules on small entities. The Small Business Administration (SBA) has set out criteria based on the North American Industry Classification System for determining which economic entities meet the definition of a small business. The entities potentially affected by this final rule will be U.S. manufacturers of pet food and pet food ingredients intended for export.

Under the SBA's criteria, an entity engaged in the manufacture of pet food or in rendering and meat byproduct processing is considered to be a small entity if it employs 500 or fewer employees. In 1997, nearly 99 percent of dog and cat food manufacturers would have been considered small under this criterion. Similarly, 100 percent of other animal food manufacturers and rendering and meat byproduct processors would have been considered small under this criterion. However, because, as discussed above, the inspection fees represent a very small portion of the value of shipments from these facilities, we expect that this change in user fees will have a minimal impact on users, whether small or large.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### **Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to

<sup>6</sup> NAICS code 3116134, Animal and Marine Feed and Fertilizer Byproducts.