

Proposed Rules

Federal Register

Vol. 65, No. 3

Wednesday, January 5, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 98-045-1]

Veterinary Services User Fees; Pet Food Facility Inspection and Approval Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend existing user fees for the inspection and approval of pet food manufacturing, rendering, blending, digest, and spraying and drying facilities. Existing user fees require such facilities to pay user fees based on hourly rates for inspections and approval. We are proposing to replace the hourly rates for this specific service with flat rate user fees that would cover the cost of all inspections required for annual approval. We are taking this action in order to make it easier for users to know their costs in advance, while still ensuring we cover our costs.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by March 6, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 98-045-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 98-045-1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations for Veterinary Services, contact Ms. Louise Lothery, Administrative Officer, Management Support Staff, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737-1231; (301) 734-7517.

For information concerning rate development of the proposed user fee, contact Ms. Donna Ford, Section Head, Financial Systems and Services Branch, Budget and Accounting Service Enhancement Unit, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737-1232; (301) 734-8351.

SUPPLEMENTARY INFORMATION:

Background

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 and other foreign countries to be inspected and approved by the Animal and Plant Health Inspection Service (APHIS).

Rendering facilities process slaughter byproducts, animals unfit for human consumption, and meat scraps by cooking them down into various types of protein meal that are used as ingredients in pet foods. Blending facilities take different kinds of protein meal and mix them according to manufacturers' specifications. Digest facilities produce enzymatic meals in powdered or liquid form for use as pet food flavor enhancers. Spraying and drying facilities produce powdered blood meal, which is also used as a flavor enhancer. Manufacturing facilities add enzymatic digests and/or blood meal to blended protein meal to produce the finished pet food, which is then packaged for sale in the United States or for export to another country.

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 130.8 lists miscellaneous flat rate user fees. Section

130.21 lists the hourly rate user fees charged for APHIS' export services, which include inspecting and approving pet food facilities under 9 CFR part 156, "Voluntary Inspection and Certification Service."

We are proposing to amend 9 CFR part 130 to establish flat rate annual user fees to cover the cost of APHIS' inspection and approval of pet food manufacturing, rendering, blending, digest, and spraying and drying facilities. Under this proposal, pet food manufacturing, rendering, blending, and digest facilities would be subject to a user fee of \$404.75 for initial approval and a user fee of \$289.00 for annual renewal of APHIS approval. Pet food spraying and drying facilities would be subject to a user fee of \$275.00 for initial approval and \$162.50 for annual renewal of APHIS approval. The flat rate user fees would cover all costs of inspection, including airfare and/or ground travel, lodging, inspection, per diem, and miscellaneous travel expenses.

We are proposing this action based on a 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 will be. We have determined that the most effective way to do this is to establish a flat rate annual user fee, which would effectively eliminate any variation in cost that could otherwise result in charging hourly rates for inspections.

We calculated the proposed flat rate annual user fees to reflect the average annual cost to APHIS of providing these services. The average annual cost includes the time to provide the service and travel time, which are both currently billed at an hourly rate. The total charge to each facility would not be significantly different from what each facility currently pays.

We are also proposing to make nonsubstantive changes to 9 CFR part 130, including moving all of the flat rate user fees contained in § 130.8 that are charged to import/export facilities or establishments into a new § 130.11, which would also include the flat rate fees that we are proposing in this document. The following table shows where the fees for each service currently listed in the regulations would be located in part 130 if this proposal is adopted.

Service	Current section	Proposed section
Germ plasm being exported	130.8	130.8
Germ plasm being imported	130.8	130.8
Import compliance assistance	130.8	130.8
Inspection for approval of slaughter establishments	130.8	130.11
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96	130.8	130.11
Processing VS form 16-3, "Application for Permit to Import Controlled Material/Import or Transport Organisms or Vectors	130.8	130.8
Release from export agricultural hold	130.8	130.8
Embryo collection center inspection and approval	130.8	130.11
Inspection for approval of pet food manufacturing, rendering, blending, or digest facilities	N/A	130.11
Inspection for approval of pet food spraying and drying facilities	N/A	130.11

We are also proposing to amend § 130.1 to add the following definitions for "pet food blending facility," "pet food digest facility," "pet food manufacturing facility," "pet food rendering facility," and "pet food spraying and drying facility."

Pet food blending facility: A facility that blends animal or plant protein meal for use in pet food.

Pet food digest facility: A facility that produces enzymatic protein meals in powdered or liquid form for use as pet food flavor enhancers.

Pet food manufacturing facility: A facility that produces, processes, or packages pet food for sale in the United States or for export to another country.

Pet food rendering facility: A facility that processes slaughter byproducts, animals unfit for human consumption, and meat scraps by cooking them down into protein meal for use as ingredients in pet food.

Pet food spray/dry facility: A facility that produces powdered blood meal for use as a flavor enhancer in pet food.

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.

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. Currently, we charge hourly rate user fees for inspection and approval of manufacturing, rendering, blending, digest, and spraying and drying facilities. We are proposing to amend the regulations by removing these hourly rate user fees for inspection and approval and replacing them with two sets of flat rate annual user fees: one for the inspection and approval of pet food manufacturing, rendering, blending, and digest facilities, and one for the inspection and approval of pet food spraying and drying facilities.

We arrived at the flat rate annual user fees that we are proposing by calculating the average number of hours

required for an APHIS inspector to complete an inspection (including travel time), multiplying by the average number of inspections performed during a year (two per center), and adding the average direct labor involved and proportional shares of support costs, overhead, and departmental charges.

The resulting proposed flat rate user fees for manufacturing, rendering, blending, or digest facilities are \$404.75 for initial inspection and approval and \$289.00 for renewal of approval; for spraying and drying facilities, they are \$275.00 for initial inspection and approval and \$162.50 for renewal of approval. These fees would not be significantly different from the amount customers have paid yearly in the past at hourly rates for initial inspection and approval.

The table below shows the difference between the average cost for initial and renewed inspection and approval for each of the five categories of pet food facilities using the current hourly rate user fees and the cost under the proposed flat rate user fees. Change in cost of inspection and approval under proposed flat rate user fees

CHANGE IN COST OF INSPECTION AND APPROVAL UNDER PROPOSED FLAT RATE USER FEES

Type of pet food facility	Average cost to facilities at current hourly rate user fees		Cost to facilities under proposed flat rate user fees		Change in user fee collections	
	Initial approval	Renewed approval	Initial approval	Renewed approval	Initial approval	Renewed approval
Manufacturing	\$415.00	\$353.25	\$404.75	\$289.00	-\$10.25	-\$64.25
Rendering	376.75	272.75	404.75	289.00	28.00	16.25
Blending	436.25	316.00	404.75	289.00	-31.50	27.00
Digest	390.75	213.75	404.75	289.00	14.00	76.00
Spraying/Drying	275.00	162.50	275.00	162.50	0	0

As shown in the table, the user fees collected for the inspection and

approval of pet food manufacturing and blending industries are expected to

decrease overall. Pet food spraying and drying facilities would not be affected by this proposed rule. For the inspection and approval of the

rendering and digest facilities, user fee collections are expected to increase.

However, as shown in the table below, the total amount of fees collected is not expected to change significantly.

COMPARISON OF TOTAL HOURLY (A) AND FLAT (B) RATE USER FEE COLLECTIONS, BASED ON THE NUMBER OF APPROVALS (C) ISSUED IN 1997 FOR MANUFACTURING, RENDERING, BLENDING, AND DIGEST PET FOOD FACILITIES

	A	B	C	(A*C)	(B*C)
Manufacturing facilities	[(415+353.25)/2]=\$384.13	[(404.75+289)/2]=\$346.88	88	\$33,803.00	\$30,525.00
Rendering facilities	[(376.75+272.75)/2]=\$324.75	[(404.75+289)/2]=\$346.88	148	\$48,063.00	\$51,337.50
Blending facilities	[(436.25+316)/2]=\$376.13	[(404.75+289)/2]=\$346.88	7	\$2,428.13	\$2,428.13
Digest facilities	[(390.75+213.75)/2]=\$302.25	[(404.75+289)/2]=\$346.88	12	\$3,627.00	\$4,162.50
Total collections using the two different methods (A and B).				\$87,921.13	\$88,453.13

In the table above, columns "A" and "B" depict the average charges by APHIS for an initial inspection and a license renewal, using the current hourly rate average user fee and using the proposed flat rate user fee. Column "C" shows the number of facilities that were approved by APHIS in 1997 within each of the pet food industries.

The last two columns ("A*C") and ("B*C") represent the dollar amounts collected by APHIS using the two different methods. Column "A*C" represents the dollar amount collected by APHIS when it uses an hourly rate user fee. Column "B*C" represents the expected dollar amount if APHIS uses the proposed flat rate user fee. Based on the difference between the total collections under the two methods, the proposed flat rate fee would result in a 0.6 percent increase in total collections.

Effects on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic effects of rules on small business, organizations, and governmental jurisdictions. The entities that would be affected by this proposal are pet food manufacturing, rendering, blending, digest, and spraying and drying facilities. According to Small Business Administration data, there are 1,100 firms in the United States that produce cat and dog food or ingredients that go into pet food, 1,030 (over 93 percent) of which would be considered small (employing fewer than 500 people). However, as shown above, the economic effects of this proposal on those entities, whether small or large, would be insignificant.

Under these circumstances, the Administrator of the Animal and Plant

Health Inspection Service has determined that this action would 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 Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to amend 9 CFR part 130 as follows:

PART 130—USER FEES

1. The authority citation for part 130 continues to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 130.1, definitions for "pet food blending facility," "pet food digest facility," "pet food manufacturing facility," "pet food rendering facility," and "pet food spraying and drying facility" would be added in alphabetical order to read as follows:

§ 130.1 Definitions.

* * * * *

Pet food blending facility. A facility that blends animal or plant protein meal for use in pet food.

Pet food digest facility. A facility that produces enzymatic protein meals in powdered or liquid form for use as pet food flavor enhancers.

Pet food manufacturing facility. A facility that produces, processes, or packages pet food for sale in the United States or for export to another country.

Pet food rendering facility. A facility that processes slaughter byproducts, animals unfit for human consumption, and meat scraps by cooking them down into protein meal for use as ingredients in pet food.

Pet food spraying and drying facility. A facility that produces powdered blood meal for use as a flavor enhancer in pet food.

* * * * *

3. In § 130.8, paragraph (a), the table would be revised to read as follows:

§ 130.8 User fees for other services.

(a) * * *

Service	User fee
Germ plasm being exported: ¹ Embryo: (up to 5 donor pairs)	\$54.75 per certificate.

Service	User fee
(each additional group of donor pairs, up to 5 pairs per group, on the same certificate)	\$24.75 per group of donor pairs.
Semen	\$33.50 per certificate.
Germ plasm being imported: ²	
Embryo	\$39.50 per load.
Semen	\$39.50 per load.
Import compliance assistance:	
Simple (2 hours or less)	\$51.25 per release.
Complicated (more than 2 hours)	\$131.75 per release.
Processing VS form 16-3, "Application for Permit to Import Controlled Material/Import or Transport Organisms or Vectors":	
For permit to import fetal bovine serum when facility inspection is required	\$208.50 per application.
For all other permits	\$27.50 per application.
Amended application	\$11.50 per amended application.
Application renewal	\$15.00 per application.
Release from export agricultural hold:	
Simple (2 hours or less).	51.25 per release.
Complicated (more than 2 hours)	\$131.75 per release.

¹ This user fee includes a single inspection and resealing of the container at the APHIS employee's regular tour of duty station or at a limited port. For each subsequent inspection and resealing required, the applicable hourly rate user fee would apply.

² For inspection of empty containers being imported into the United States, the applicable hourly rate user fee would apply, unless a user fee has been assessed under 7 CFR 354.3.

* * * * *

4. A new § 130.11, would read as follows:

§ 130.11 User fees for inspecting and approving import/export facilities and establishments.

(a) User fees for the inspection of various import and export facilities and establishments are listed in the

following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Service	User fee
Embryo collection center inspection and approval	\$278.50 for all inspections required during the year for facility approval.
Inspection for approval of pet food manufacturing, rendering, blending, or digest facilities:	
Initial approval	\$404.75 for all inspections required during the year.
Renewal	\$289.00 for all inspections required during the year.
Inspection for approval of pet food spraying and drying facilities:	
Initial approval	\$275.00 for all inspections required during the year.
Renewal	\$162.50 for all inspections required during the year.
Inspection for approval of slaughter establishment:	
Initial approval	\$246.50 for all inspections required during the year.
Renewal	\$213.50 for all inspections required during the year.
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96:	
Initial approval	\$262.75 for first year of 3-year approval (for all inspections required during the year).
Renewal	\$152.00 per year for second and third years of 3-year approval (for all inspections required during the year).

* * * * *

Done in Washington, DC, this 21st day of December 1999.

Craig A. Reed,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00-218 Filed 1-4-00; 8:45 am]

BILLING CODE 3410-34-U