

Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least \$5,000,000, and the remaining 7 handlers have sales less than \$5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule continues to reduce the additional holding and storage payments specified in paragraphs (b) and (c) of § 989.401 regarding 2002 NS reserve raisins that were used as cattle feed. Specifically, additional payments for such raisins accrued beginning September 13, 2003, rather than August 1, 2003. Under the order, handlers are compensated for receiving, storing, fumigating, and handling reserve tonnage raisins acquired during a crop year. The order also authorizes additional holding and storage payments for reserve raisins held beyond the crop year of acquisition. This action continues to reduce these additional payments for 2002 NS reserve raisins held by handlers on August 1, 2003, that were used as cattle feed. Authority for this action is provided in § 989.66(f) of the order.

Regarding the impact of this rule on affected entities, handlers and producers, the order provides that handlers store reserve raisins for the account of the RAC. Net proceeds from sales of such reserve raisins are distributed to the reserve pool's equity holders, primarily producers. Handlers are compensated from reserve pool funds for their costs in receiving, storing, fumigating, and handling reserve raisins during the crop year of acquisition and for the subsequent crop year. Compensation is also paid for the

use of bins and boxes for storing reserve raisins held beyond the crop year of acquisition.

Under the disposal program, 22,541 tons of reserve raisins remained at handler premises after August 1, 2003. About 525 tons were removed per day. The cost to store, handle, and fumigate the remaining tonnage at the rate of \$2.30 per ton per month between August 1 and September 12, 2003, would have been about \$66,256. Bin-rental costs for the same period at the current rate of \$0.20 per day per bin would have been about \$198,075.00. Thus, the RAC saved about \$264,331 in costs that would have been used for holding and storing 2002 reserve raisins intended for use as cattle feed between August 1 and September 12, 2003. This rule continues to reduce these costs to zero and thereby reduce expenses incurred by the 2002 NS reserve pool. Handlers, however, will not be compensated this amount for holding and storing this tonnage.

Regarding alternatives to this action, one option would be to maintain the status quo and have the 2002 reserve pool incur these costs. However, this would not help to improve returns to 2002 equity holders. Another alternative would be to reduce the payments for the period August 1 through September 12, 2003, to figures lower than those currently specified in § 989.401. However, all RAC members supported reducing the additional holding and storage payments for 2002 reserve raisins intended for use as cattle feed so that such payments accrued beginning September 13, 2003, rather than August 1, 2003.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the RAC's Administrative Issues Subcommittee and RAC meetings on July 2, 2003, where this action was deliberated were both public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

An interim final rule concerning this action was published in the **Federal Register** on July 31, 2003 (68 FR 44857). Copies of the rule were mailed by the RAC staff to all RAC members and

alternates, the Raisin Bargaining Association, handlers, and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. The rule provided for a 60-day comment period that ended on September 29, 2003. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

#### PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 989 which was published at 68 FR 44857 on July 31, 2003, is adopted as a final rule without change.

Dated: November 7, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03-28519 Filed 11-13-03; 8:45 am]

BILLING CODE 3410-02-P

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 9 CFR Part 130

[Docket No. 03-036-2]

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

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the user fee regulations to replace 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 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. Burlinson, Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737-1231; (301) 734-8364.

For information concerning user fee rate development, contact Mrs. Kris Caraher, User Fees Section Head, Financial Systems and Services Branch, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737-1232; (301) 734-5901.

**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

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 By-product 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.

Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This final 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 are amending 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 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

**§ 130.1 [Amended]**

■ 2. Section 130.1 is amended by removing the 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*.

■ 3. In § 130.11, paragraph (a), the table is revised to read as follows:

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

(a) \* \* \*

Service	Unit	User fee beginning Oct. 1, 2003
Embryo collection center inspection and approval (all inspections required during the year for facility approval).	per year .....	\$380.00
Inspection for approval of biosecurity level three laboratories (all inspections related to approving the laboratory for handling one defined set of organisms or vectors).	per inspection .....	977.00
Inspection for approval of slaughter establishment:		
Initial approval (all inspections) .....	per year .....	373.00
Renewal (all inspections) .....	per year .....	323.00
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96:		
Approval (compliance agreement) (all inspections for first year of 3-year approval) .....	per year .....	398.00
Renewed approval (all inspections for second and third years of 3-year approval) .....	per year .....	230.00

\* \* \* \* \*

Done in Washington, DC, this 7th day of November 2003.

**Peter Fernandez,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–28512 Filed 11–13–03; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Parts 145 and 147**

[Docket No. 03–017–2]

**National Poultry Improvement Plan and Auxiliary Provisions**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new or modified sampling and testing procedures for Plan participants and participating flocks. These changes were voted on and approved by the voting delegates at the Plan’s 2002 National Plan Conference

and will keep the provisions of the Plan current with changes in the poultry industry and provide for the use of new sampling and testing procedures.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1498 Klondike Road, Suite 200, Conyers, GA 30094–5104; (770) 922–3496.

**SUPPLEMENTARY INFORMATION:**

**Background**

The National Poultry Improvement Plan (NPIP, also referred to below as “the Plan”) is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control egg-transmitted, hatchery-disseminated poultry diseases. Participation in all Plan programs is voluntary, but flocks, hatcheries, and dealers must first qualify as “U.S. Pullorum-Typhoid Clean” as a condition for participating in the other Plan programs. The regulations in 9 CFR parts 145 and 147 (referred to below as the regulations) contain the provisions of the Plan. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department

of Agriculture (USDA) amends these provisions from time to time to incorporate new scientific information and technologies within the Plan.

On May 23, 2003, we published in the **Federal Register** (68 FR 28169–28175, Docket No. 03–017–1) a proposal to amend the Plan by providing new or modified sampling and testing procedures, removing the requirements for the minimum weight of hatching eggs, changing the restrictions on animal protein used in mash and pellet feed, adding a reinstatement procedure to the U.S. S. Enteritidis Clean program, and adding new U.S. Avian Influenza Clean programs for turkey breeding flocks and products and waterfowl, exhibition poultry, and game breeding flocks and products.

We solicited comments concerning our proposal for 60 days ending July 22, 2003. We received one comment by that date, from a private citizen. This commenter raised several issues related to the proposed rule. These issues are discussed below.

The commenter objected to the fact that the changes we proposed to make to the Plan were developed by Federal and State animal health officials and industry representatives working cooperatively. The commenter stated that other groups with an interest in