

assessable onions was then determined by taking into consideration the estimated level of assessable shipments, other revenue sources, and the Committee's goal of not having to use reserve funds during 2003–2004.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2003–2004 season could be about \$5.00 per hundredweight. Therefore, the estimated assessment revenue for the 2003–2004 fiscal period as a percentage of total producer revenue could be about 1.9 percent.

This proposed rule would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meetings were widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the April 3, and the June 12, 2003, meetings were open to the public and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would not impose additional reporting or recordkeeping requirements on either small or large Idaho-Eastern Oregon onion 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2003–2004 fiscal period begins on July 1, 2003, and the order requires that the

rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

#### List of Subjects in 7 CFR Part 958

Onions, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is proposed to be amended as follows:

#### PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. A new section 958.112 is added to read as follows:

##### **§ 958.112 Fiscal period.**

The fiscal period shall begin July 1 of each year and end June 30 of the following year, both dates inclusive.

3. Section 958.240 is revised to read as follows:

##### **§ 958.240 Assessment rate.**

On and after July 1, 2003, an assessment rate of \$0.095 per hundredweight is established for Idaho-Eastern Oregon onions.

Dated: July 2, 2003.

**A.J. Yates,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–17277 Filed 7–8–03; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 9 CFR Part 130

[Docket No. 03–036–1]

#### 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 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 no longer cover the costs of our inspections and cannot be adequately formulated to cover the costs of inspections and reinspections mandated by various foreign regions to which those facilities export their pet food ingredients or products. This action would ensure that our user fees cover the cost of providing these services to pet food facilities.

**DATES:** We will consider all comments that we receive on or before September 8, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–036–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–036–1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and “Docket No. 03–036–1” on the subject line.

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 dockets, 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 Dr. Thomas W. Bursleson, 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 Ms. Kris Caraher, Accountant, User Fees Section,

Financial Systems and Services Branch, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737-1232, (301) 734-8351.

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

The flat rate annual user fees for inspection and approval of these facilities were established in a final rule we published in the **Federal Register** on June 20, 2000 (65 FR 38179-38182, Docket No. 98-045-2). Prior to that final rule, APHIS had charged hourly rate user fees for inspection of these facilities, as provided for by § 130.30(a)(11). We established the flat rate annual user fees in § 130.11 based on 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 would be. We calculated the flat rate annual user fees to reflect the average annual cost to APHIS of providing these services.

However, we have determined that APHIS is no longer recovering its full

costs for providing these services through the flat rate annual user fees in § 130.11. The flat annual rate user fees for initial approval and renewal of approval of pet food manufacturing facilities were based on our estimates that initial approval would require 6.4 hours of labor on the part of Veterinary Services inspectors and support staff, while renewal of approval would require 5.4 hours. For pet food rendering facilities, the estimates were 5.8 hours for initial approval and 4.2 hours for renewal of approval; for pet food blender facilities, 6.7 hours for initial approval and 4.8 hours for renewal of approval; for pet food digest facilities, 6.0 hours for initial approval and 3.3 hours for renewal of approval; and for pet food spraying and drying facilities, 4.2 hours for initial approval and 2.5 hours for renewal of approval. (All these estimated times include both the time required to provide the service and travel time to and from the facilities.)

While these estimates were accurate at the time the user fees were established, foreign requirements for inspection and approval have changed somewhat in the interim, and we have found that initial approvals and renewals of approval can now require 1½ times the labor we had estimated they would require when the flat rate annual user fees were set. This means that APHIS does not recover its costs under the current flat rate annual user fee schedule.

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 estimates of labor required for inspection and approval on which the current flat rate user fees are based have become yet more outdated.

The EU's new requirements also 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 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 proposed here, would 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 and reducing administrative timekeeping costs for APHIS, have not achieved, and 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 would allow us to charge facility operators an appropriate amount for the labor expended in inspecting and approving their facilities, would allow us to recover the costs of any reinspections that may be required, and would give us more flexibility should the requirements of importing countries for inspection and approval change in the future.

Therefore, we are proposing to remove the flat rate user fees for inspection and approval of pet food manufacturing, rendering, blending, or digest facilities and pet food spraying and drying facilities from the table of flat rate user fees in § 130.11. With the

removal of these specific user fees, such facilities would be charged for inspection and approval in accordance with § 130.30, which provides, among other things, that user fees for inspections conducted under 9 CFR part 156 will be calculated at the hourly rate (or hourly overtime rate, if applicable) listed in that section when those inspections are not covered by flat rate user fees elsewhere in part 130.

In addition to listing user fees for the current and future fiscal years (FY 2003 and beyond), the table in § 130.11 lists user fees for fiscal years 2001 and 2002. Because fiscal years 2001 and 2002 have passed, we believe it is no longer necessary to list the user fees for those fiscal years in the regulations.

Therefore, we are also proposing to amend the user fee table in § 130.11 by removing the columns that list fees for fiscal years 2001 and 2002. In addition, because this proposed rule will not be finalized during FY 2003, we are also proposing to remove the column that lists fees for FY 2003. Because there would then be only one column listing user fees, we are proposing to remove the designation "Beginning October 1, 2003" from that column.

Finally, because we would be removing the specific flat rate user fees for inspecting and approving pet food manufacturing, rendering, blending, digest, and spraying and drying facilities, it would no longer be necessary to maintain definitions in § 130.1 related to those fees. Specifically, we would amend § 130.1 by removing the definitions for *pet food blending facilities*, *pet food digest facilities*, *pet food manufacturing facilities*, *pet food rendering facilities*, and *pet food spraying and drying facilities*, as those terms would no longer be used in part 130.

#### **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.

APHIS is proposing to use 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 proposing to replace 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 would be affected by a rule that changed 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 the proposed change in user fees would 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 and fertilizer byproducts<sup>6</sup> had an average total annual value of shipments of \$16.2 million. Even if the proposed hourly rate user fees were to triple the inspection and approval costs of pet food facilities, the fees charged to these facilities would 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

<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 & Cat Food Manufacturing.

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

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

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

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 would 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 proposed 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 proposed change in user fees should 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 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 would continue 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 would be 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 would be revised to read as follows:

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

(a) \* \* \*

Service	Unit	User fee
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 inspection 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 2nd day of July 2003.

**Kevin Shea,**

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

[FR Doc. 03–17332 Filed 7–8–03; 8:45 am]

**BILLING CODE 3410–34–P**

**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 121**

**Small Business Size Standards; Waiver of the Nonmanufacturer Rule**

**AGENCY:** Small Business Administration.

**ACTION:** Notice of intent to terminate waiver of the Nonmanufacturer Rule for Small Arms Ammunition Manufacturing.

**SUMMARY:** The U.S. Small Business Administration (SBA) intends to terminate the waivers of the Nonmanufacturer Rule for Small Arms Ammunition Manufacturing. SBA's

intent to terminate the waivers of the Nonmanufacturer Rule is based on our recent discovery of small business manufacturers for these classes of products. Terminating these waivers will require recipients of contracts set aside for small or 8(a) businesses to provide the products of small business manufacturers or processor on such contracts.

**DATES:** Comments must be received on or before July 31, 2003.

**ADDRESS COMMENTS TO:** Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW