Done in Washington, DC, this 14th day of June 2000.

Richard L. Dunkle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–15469 Filed 6–19–00; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 98–045–2]

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 user fees for the inspection and approval of pet food manufacturing, rendering, blending, digest, and spraying and drying facilities. We are replacing hourly rate user fees previously used to cover costs for this service with flat rate user fees that 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 that we recover our costs.

EFFECTIVE DATE: July 20, 2000.

FOR FURTHER INFORMATION 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

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. Prior to this final rule, the hourly rate user fees listed in § 130.21 included fees for inspecting and approving pet food facilities under 9 CFR part 156, ''Voluntary Inspection and Certification Service.''

On January 5, 2000, we published in the **Federal Register** (65 FR 391–394, Docket No. 98–045–1) a proposal to replace the hourly rate user fees for the inspection and approval of pet food manufacturing, rendering, blending, digest, and spraying and drying facilities with flat rate user fees that would cover the cost of all inspections required for annual approval.

We solicited comments concerning our proposal for 60 days ending March 6, 2000. We did not receive any comments. Therefore, for the reasons given in the proposed rule, 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.

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. Prior to the effective date of this rule, we charged hourly rate user fees for inspection and approval of manufacturing, rendering, blending, digest, and spraying and drying facilities. This rule replaces those hourly rate user fees 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 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 facility), and adding the average direct labor involved and proportional shares of support costs, overhead, and departmental charges.

The resulting 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 are not 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 hourly rate user fees and the new flat rate user fees.

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

Type of pet food facility	Average cost to facilities at hourly rate user fees		Cost to facilities under new 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 facilities are expected to decrease overall when the flat fees are implemented. Pet food spraying and drying facilities will not be affected by this 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 average hourly rate user fee and using the new 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 used an hourly rate user fee. Column ''B*C'' represents the dollar amount that will be collected by APHIS when it uses the new flat rate user fee. Based on the difference between the total collections under the two methods, the new flat rate fee will 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 could be affected by this rule 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 rule on those entities, whether small or large, should be insignificant.

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 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; 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* are 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 is 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.
(each additional group of donor pairs, up to 5 pairs per group, on the same certificate)	$24.75 per group of donor pairs.

Service	User fee
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 is added to 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 biosecurity level three laboratories	$977.00 for all costs of inspection related to approving the laboratory for handling one defined set of organisms or vectors.
Inspection for approval of pet food spraying and drying facilities:	
Initial approval	$275.00 for all inspections required during the year.
Renewal	$162.00 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 14th day of June 2000.

Richard L. Dunkle,

Acting Administrator, Animal and Plant Health Inspection Service.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG22

Elimination of the Requirement for Noncombustible Fire Barrier Penetration Seal Materials and Other Minor Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its fire protection regulations to remove the requirement that fire barrier penetration seal materials be noncombustible, and to make other minor changes. The final rule removes a requirement that has a negligible contribution to safety and includes editorial changes designed to meet the intent of the Presidential memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing.''

EFFECTIVE DATE: July 20, 2000.

FOR FURTHER INFORMATION CONTACT: Daniele Oudinot, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–3731; e-mail DHO@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The NRC conducted a technical assessment of fire barrier penetration seals. The NRC documented the results of its assessment in SECY–96–146, ''Technical Assessment of Fire Barrier Penetration Seals in Nuclear Power Plants,'' July 1, 1996; in NUREG–1552, ''Fire Barrier Penetration Seals in Nuclear Power Plants,'' July 1996; and in NUREG–1552, Supplement 1, January 1999. On the basis of its findings, the NRC concluded that the noncombustibility criterion for penetration seal materials that is specified in the NRC fire protection regulation and review guidance had a negligible contribution to safety, and recommended that this noncombustibility criterion be deleted. Copies of NUREG–1552 and NUREG–1552, Supplement 1, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy of each document is also available for inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. NUREG–1552, Supplement 1, is also available through the Technical Reports area of the NRC Reference Library accessed through the NRC Website: http://www.nrc.gov/NRC/NUREGS/index.html.

II. Analysis of Public Comments and Staff Response

The proposed rule was published for public comment in the **Federal Register** on August 18, 1999 (64 FR 44860). The comment period ended on November 1, 1999. The NRC received eight comment letters. Six commenters supported the proposed amendment; two commenters objected to the changes. This section discusses the comments received, how the NRC staff was able to incorporate some comments into the final rule and, if not, why a comment was not accepted. This section addresses all comments, but specific commenters are not identified.

A commenter suggested that footnote 1 to Section I, ''Introduction and Scope,'' of Appendix R to 10 CFR Part 50, be deleted because its wording is identical to footnote 4 to § 50. 48(b). This commenter stated that the basis for deleting footnote 4 to § 50.48 also applies to footnote 1 to Section I of Appendix R. The NRC agrees with this comment and footnote 1 to Section I of Appendix R is deleted.

One of the commenters who endorsed the proposed rule stated that, in particular, (1) There are no reports of fire that have challenged the ability of fire-rated penetration seals to confine a fire; (2) numerous fire endurance tests have confirmed the fire-resistive capabilities of the penetration seal materials, designs, and configurations installed in nuclear power plants; and (3) if penetration seals are properly designed, installed, and maintained, there is reasonable assurance that they will provide the fire-resistive integrity of the fire barriers in which they are installed, and confine a fire to its area of origin.

A commenter objected to the rule change, but did not identify any specific technical or safety information for NRC staff consideration. Therefore, the comment did not result in changes to the rule.

One commenter provided multiple comments in opposition to the proposed rule. Each of these comments are discussed below. None of the comments resulted in any changes from the proposed rule.

1. *Comment.* The non-combustibility requirement for fire seals is key in providing a high level of confidence in the operability determination for a fire seal.

Response. The Commission disagrees. 10 CFR Part 50, Appendix A, General Design Criteria (GDC), Criterion 3—Fire Protection states: ''Noncombustible and heat resistant materials shall be used wherever practical throughout the unit. * * *'' Thus, the Commission's most fundamental requirements with respect to fire protection do not mandate the exclusive use of noncombustible materials. The Commission's implementing requirements on fire protection in 10 CFR 50.48 and 10 CFR Part 50, Appendix R, require the use of fire barriers that meet 1-hour or 3-hour fire ratings; while the current regulation requires the use of noncombustible materials it is also clear that the 1-hour and 3-hour ratings can be achieved with the use of properly tested, rated and qualified material that is ''combustible.'' Penetration seals used as a part of the rated fire barrier assembly are required to meet the acceptance criteria of Nationally Recognized Testing Standards that are specifically designed to test these components. Examples of these standards include American Society for Testing and Materials (ASTM) E–814, ''Standard Test Method for Fire Tests of Through-Penetration Fire Stops,'' and Institute of Electrical and Electronics Engineers (IEEE) 634, ''Standard Cable Penetration Fire Stop Qualification Test.'' These nationally recognized testing standards do not require the penetration seal material to be noncombustible, but rather focus on the penetration seals ability to prevent flame travel through the opening and limit the heat transfer through the penetration seal assembly by measuring the cold-side temperature. As such, ''noncombustibility,'' as defined in ASTM–136, ''Standard Test Method for Behavior of Materials in a Vertical Tube Furnace at 750 °C,'' is not a necessary requirement for an adequate fire barrier or a penetration seal that is part of this barrier. Penetration seal assemblies, when properly tested, qualified, and installed, meet this requirement as a fire (heat) resistant material. In fire protection engineering design, this can be thought of as analogous to the National Fire Protection Association (NFPA) Life Safety Code, NFPA 101,