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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Parts 97 and 130

[Docket No. APHIS-2009-0047]

Fee Increases for Overtime Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are changing the hourly rates charged for Sundays, holidays, or other overtime work performed by employees of the Animal and Plant Health Inspection Service (APHIS) for any person, firm, or corporation having ownership, custody, or control of regulated commodities or articles subject to agricultural inspection, laboratory testing, certification, or quarantine under the regulations. We are increasing these overtime rates for each of the fiscal years 2016 through 2018 to reflect the anticipated costs associated with providing these services during each year. Establishing the overtime rate changes in advance will allow users of APHIS' services to incorporate the rates into their budget planning. We are also clarifying the regulations to indicate that agricultural inspections performed by the Department of Homeland Security (DHS) may be billed in accordance with DHS overtime regulations for services performed outside of regular business hours, as DHS rates may differ from those charged by APHIS.

DATES: Effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: For information concerning Plant Protection and Quarantine program operations, contact Ms. Diane L. Schuble, AQI User Fee Coordinator, Office of the Executive Director-Policy Management, PPQ, APHIS, 4700 River Road Unit 131, Riverdale, MD 20737 1231; (301) 851-2338.

For information concerning Veterinary Services program operations, contact Ms. Carol Tuszynski, Director, Planning, Finance, and Strategy Staff, Program Support Services, VS, APHIS, 4700 River Road Unit 58, Riverdale, MD 20737–1231; (301) 851–3463.

For information concerning APHIS overtime fee development, contact Ms. Adelaide Feukam, Auditor, Review and Analysis, Financial Management Division, MRPBS, APHIS, 4700 River Road Unit 55, Riverdale, MD 20737; (301) 851-2601.

For information concerning DHS overtime fees, contact Mrs. Kara Welty, Chief, Debt Management Branch, Indianapolis, CBP, DHS, 6650 Telecom Drive Suite 100, Indianapolis, IN 46278–2010; (317) 614–4614.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR chapter III and 9 CFR chapter I, subchapters D and G, require inspection, laboratory testing, certification, or quarantine of certain animals, poultry, animal byproducts, germ plasm, organisms, vectors, plants, plant products, or other regulated commodities or articles intended for importation into, or exportation from, the United States. With some exceptions, which are explained below, when these services must be provided by an Animal and Plant Health Inspection Service (APHIS) employee on a Sunday or on a holiday, or

at any other time outside the APHIS employee's regular duty hours, the Government charges an hourly overtime fee for the services in accordance with 7 CFR part 354 and 9 CFR part 97.

Based on changes to the costs associated with providing agricultural inspection, laboratory testing, certification, and quarantine services, we determined that adjustments to the overtime rates in 7 CFR part 354 and 9 CFR part 97 were necessary in order for APHIS to recover the full cost of providing these services. Therefore, we proposed to set hourly overtime rates for inspection, laboratory testing, certification, and quarantine services provided outside of an employee's normal tour of duty for fiscal years (FYs) 2014 through 2018. Our proposal was published in the Federal Register on April 25, 2014 (79 FR 22887-22895, Docket No. APHIS-2009-0047).¹ The proposed overtime rates were based on our costs of providing the services, including direct labor costs, area delivery costs, billing and collection costs, program direction and support costs, agency/management support costs, central/departmental changes, and a reserve component, plus adjustments for inflation and anticipated annual increases in the salaries of employees who provide the services.

We also proposed to include language in 7 CFR 354.1, 9 CFR 97.1, and 9 CFR 130.50 to clarify and inform the public that any agricultural inspection performed by an employee of the Department of Homeland Security (DHS) Bureau of Customs and Border Protection (CBP) on a Sunday, holiday, or anytime outside of the employee's normal tour of duty may be billed in accordance with the regulations in 5 CFR part 551, 7 CFR 354.1, 9 CFR 97.1, 9 CFR 130.50, or 19 CFR 24.16. Such billing is necessary because the costs associated with the DHS agricultural inspections and incurred by DHS may differ from those incurred by APHIS. Therefore, varying

¹ To view the proposed rule and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0047>.

overtime charges may apply in such circumstances in order for DHS to properly recover their costs and adequately fund their program operations.

We solicited comments concerning our proposal for 60 days ending June 24, 2014. We received 43 comments by that date. They were from producers, importers, industry groups, and private individuals. Two were supportive of the proposed action. The remainder are discussed below by topic.

Comments on Rate Calculation Methodology

As previously stated, we proposed to establish the hourly overtime rates for FY 2014 through FY 2018. We note that, as FYs 2014 and 2015 have ended, the overtime rates covered by this final rule are now only for FYs 2016 through 2018. The FY 2016 rates will become effective 30 days after the date of publication of this final rule; the FY 2017 and FY 2018 rates would become effective on the first day of each of the fiscal years, and the FY 2018 rates would remain in effect until new rates were established.

One commenter stated that our aim of seeking set rates for anticipated costs over a 5 year period is too speculative and far too difficult to predict with accuracy. The commenter suggested that APHIS use a 5 year projection as a planning tool only and constrain specific overtime cost increases to a shorter timeframe.

We disagree with the commenter's assessment. Based on our experience with past overtime fee increases, information regarding such increases that covers a longer timeframe allows users of APHIS' services to incorporate the rates into their budget planning. In addition, we arrive at our projected figures using those gross domestic product (GDP) figures provided by the Office of Management and Budget (OMB) in the Presidential budget, which is the Government standard for such fees and is not subject to rate instability. Moreover, as explained

above, the actual timeframe of this rule will be based on a shorter 3 year period since it will only apply to FYs 2016 through 2018.

The commenter went on to assert that our calculations should address not only the cost of providing overtime service, but also specify what steps are being taken to reduce costs to the Agency and thereby also reduce customer costs.

While the main cost driver of reimbursable overtime is the cost of salaries and benefits, APHIS has taken steps in recent years to achieve efficiencies as part of United States Department of Agriculture's (USDA) Blueprint for Stronger Service.² For example, APHIS centralized certain services such as information technology, customer service support, telecommunications, and vehicle inventory while also enacting additional controls on purchases. APHIS continues to look for opportunities to reduce operating costs where possible while maintaining the level of services needed to carry out our mission of safeguarding U.S. agriculture.

We calculated our overtime rates to cover the full cost of providing inspection, testing, certification, or quarantine services at laboratories, border ports, ocean ports, rail ports, quarantine facilities, and airports outside of the normal tour of duty of the employee providing these services. The cost of providing these services includes direct and indirect costs. The direct costs are an employee's salary and specific benefits, which are APHIS' payment of the hospital insurance tax and its contribution to the Federal Insurance Contribution Act (FICA), and the Agency's costs for work performed at night. The indirect costs are area delivery costs, billing and collection costs, program direction and support costs, central/departmental charges, and unfunded leave costs.

² Information on this initiative is available on the Internet at http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=blueprint_for_stronger_service.html.

A number of commenters observed that, in the calculation of overtime rates, only the variable cost of providing the additional service outside of regular business hours should be included in the assessment of the overall cost. Specifically, the commenters stated that there is no justification for the inclusion of most of the components identified in area delivery, imputed costs, agency level program delivery, agency level administrative support, and central/departmental charges.

We followed Federal guidance related to fee setting and managerial cost accounting in determining program costs. Specifically, we followed OMB Circular A-25: User Charges, which provides guidance on setting fees in the Federal Government, and SFAS No. 4, which includes, among other things, a definition of full cost. OMB Circular A-25, which may be viewed at http://www.whitehouse.gov/omb/circulars_default, establishes the requirement that fees be set at full cost to the Government, and provides a definition and examples for full cost. OMB Circular A-25 very specifically defines full cost to include the costs referenced by the commenters.

Another commenter asked to review APHIS's full revenue-costs statements as well as the full economic impact assessment. The commenter stated that the information was not included with the proposed rule.

Our full calculation of all aspects of overtime fees, starting with direct labor costs and including all indirect costs and overhead elements, was included in the proposed rule, which is available for public review on the Internet at:

<http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0047>. The regulatory impact analysis and initial regulatory flexibility analysis were also made available on Regulations.gov along with the proposed rule as part of the rule's supporting documents. We maintain that this

level of detail provides the highest degree of transparency and supports the required increase needed in our rates.

As detailed above, APHIS calculates its overtime fees based on a variety of sources apart from employee salary considerations. Per OMB Circular A-25, the overtime program is a full cost recovery program, which includes the direct and indirect costs outlined previously.

One commenter stated that APHIS should reconsider its cost estimates since the initial impetus for the proposed rule was work done in 2010 at the height of the financial crisis. The commenter went on to say that, since that time, the rate of importation and export has increased significantly, which would increase Agency funds that might be used to cover these costs instead.

We disagree with the commenter's assessment. While there are other components involved, much of the cost of overtime inspection is made up of inspector salaries. The APHIS budget provides funding for inspectors working within business hours, Monday through Friday, except holidays. Any work performed outside that timeframe is, by definition, additional and irregular. As detailed in OMB Circular A-25, Federal agencies are charged to recoup their costs in such instances via the assessment of overtime fees. Any additional funds that APHIS (or DHS for that matter) may receive via any increases in trade would remain in the accounts used by the specific Agency and programs that provide the services and incur the costs.

Comments on Billing Procedures

Two commenters stated that most, if not all, of the ports require that overtime be requested and paid for in a minimum of 4-hour blocks regardless of whether those 4 hours are needed or used. The commenters suggested that APHIS change its overtime billing policy so that importers would only be charged for the time required to conduct the requested inspection.

The commenters also suggested that, if an inspector is called for overtime work in the 4 hour block described above and the whole of that time is not used, that inspector should then remain onsite for the remainder of the 4 hour time period in order to deal with any other vessels or cargoes that may arrive and require immediate inspection.

In § 354.1, paragraph (a)(2) states that a minimum charge of 2 hours will be made for inspection services performed by an APHIS employee outside of his or her normal tour of duty on Saturdays, holidays, weekdays, or Sundays. In addition, overtime fees may include a commuted traveltime period (CTT), which is established by APHIS to cover the time an employee spends reporting to and returning from the place where the requested overtime duties are performed.³ We believe the 4-hour minimum cited by the commenters includes the minimum overtime work time of 2 hours in addition to 2 hours of CTT. Although CTT ranges from 1 to 12 hours, 2 hours is the allotted CTT at many of our busiest ports. Regarding the commenters' second point concerning inspectors remaining onsite to perform other unexpected inspection; an arrangement of this nature is not precluded by the regulations. However, APHIS leaves such administrative details to the knowledge and discretion of the individual ports. The actual management of staffs, inspectors, hours, staffing for arrival, and identification of risk and needs varies from port to port and is best handled by port directors equipped with the detailed information necessary to make daily staffing decisions.

Two commenters observed that, in many instances, vessels and cargoes are ready for inspection during normal business hours only to find that DHS inspectors are not available due to the volume of inspections required for other vessels. The commenters stated that users should

³ A full listing of CTT periods may be found in § 354.2 of the regulations.

not be made to pay for services rendered in overtime periods that could have been conducted during normal business hours had sufficient personnel been available.

We have considered the commenters' point and have received detailed information from DHS regarding their staffing policies at the ports. Overall, DHS employs a rigorous, data-driven methodology to identify staffing requirements. It is composed of multiple elements – some fixed, others variable – that may be adjusted according to changing priorities, risks, and threats. In early 2014, a risk-based Agriculture Resource Allocation Model was finalized, which will serve as an important component of DHS's methodology. The Agriculture Resource Allocation Model will more accurately calculate the number of agricultural inspectors required to efficiently handle workflow at the ports. DHS will integrate the results of the Agriculture Resource Allocation Model into its existing methodology in order to provide a more holistic view of DHS's staffing requirements. Generally speaking, APHIS and DHS staffing decisions for agricultural inspections are continuously being reformulated based on changing conditions so that the ports may operate at a constantly improving level of service.

Two commenters stated that the regulations should stipulate that any overtime fees collected should be returned to the port where the services are rendered. The commenters said that this would ensure that sufficient funds are available where needed, and the Agencies would not be required to utilize appropriated funds or cash reserves to cover expenses associated with overtime fees.

We disagree with the commenters. It would be administratively burdensome for APHIS (or DHS for that matter) to maintain and track reimbursable overtime collections for agricultural inspection to a port-by-port level. Because the application of reimbursable overtime rates distinctively mirrors the work the employees perform and are paid for, there is no need to track

collections and costs to this level. Program budgeters carefully consider the amount of reimbursable overtime work at their ports in providing budget estimates from year to year. Finally, APHIS and DHS overtime fee collections are already tracked to the agency level; those collections remain in the appropriate accounts to fund each Department's respective overtime operations.

Two commenters observed that both APHIS and DHS must be able to provide invoices for all overtime fees in a timely manner. The commenters suggested that the regulations stipulate that invoices will be provided within 30 days of the inspection date.

Comments referring to specific billing practices are outside the scope of the current rulemaking. Invoices are generally provided simultaneous to inspection; however the commenters should contact the port director with any questions or concerns about the timeliness of billing.

Other commenters stated that it would be possible for APHIS and DHS to assess overtime fees at a lower rate if industry were involved in negotiations between those Agencies and the inspectors' union.

Any discussion of union contract negotiation is outside the scope of the current rulemaking.

A commenter observed that greater responsiveness to current industry practices is needed. The commenter went on to state that, at the port in Atlanta, GA, importers cannot request weekend overtime after 3 p.m. on Friday, however it is impossible to determine with certainty by that time how much overtime will be necessary. The commenter is engaged in the importation of plant cuttings or live plants, which are perishable, and the busiest importing days, based on industry need and long-established industry practice, include Saturdays and Sundays.

Another commenter stated that the port in Miami, FL, had recently extended its weekday operational hours. The commenter urged APHIS to maintain those hours.

As previously stated, APHIS leaves such administrative details as the deadline for requesting weekend overtime and the operational hours of the ports to the knowledge and discretion of those individual ports. If the first commenter wishes to propose an extension of the deadline for requesting weekend overtime and the second commenter would like to maintain extended weekday hours of operation they should contact their local port directors.

Comments on Proposed Costs

A number of commenters expressed concern at the cost numbers supplied by APHIS in the proposed rule.

Several commenters observed that the proposed rule would increase the cost for overtime services by 30 to 49 percent (some commenters cited the increase as 45 to 55 percent); a number that represents 3 to 5 times the rate of inflation since the last increase in 2002. Further, the commenters remarked that the U.S. Department of Labor had reported only a 10 percent increase in the Consumer Price Index since 2002. The commenters were troubled by the difference between the inflation rate, the Consumer Price Index rate, and the proposed percentage increase to overtime fees.

Overtime fees are not solely based on either the rate of inflation or the Consumer Price Index. As stated previously, the cost of providing these services includes direct and indirect costs. The direct costs are an employee's salary and specific benefits, which are APHIS' payment of the hospital insurance tax and its contribution to the FICA, and the Agency's costs for work performed at night. The indirect costs are area delivery costs, billing and collection

costs, program direction and support costs, central/departmental charges, and unfunded leave costs.

Another commenter suggested that the cost increases should be made incrementally over the next several years to lessen the burden on producers and exporters and help them maintain their competitive position.

A phase-in of the proposed changes would simply delay achieving the rule's objectives: To properly recover costs and adequately fund program operations. We would add that the decision to request overtime services, and therefore to incur additional costs, is left to the importer and such importers may realize price efficiencies by scheduling inspections during regular business hours.

Several commenters observed that the increase in the overtime fees will come in conjunction with a new fee of \$375 per treatment for various types of treatments currently offered at no charge. The commenters asserted that the cumulative effect of these cost increases will have a chilling effect on the perishable goods import/export market in the United States.

The fee to which the commenters refer was included in a proposal to add new fee categories and adjust current fees charged for certain agricultural quarantine and inspection services provided in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international passengers arriving at ports in the customs territory of the United States.⁴ While the fees discussed in that rule are compulsory, overtime fees represent the cost of providing the additional service outside of regular business hours. As stated previously, the decision to request overtime services, and therefore to incur additional costs, is left to the importer.

⁴ You may view the proposed rule at <http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0021>.

Comments on Economic Impact

A number of commenters from Florida stated that the proposed increase in overtime fees would prove detrimental to trade, commerce, and the economy of that State.

We disagree with the commenters' assessment. Based on the economic assessment included with the proposal, we estimate that the impact of this rule will be minor. Further, the commenters did not provide any economic data in support of their claim for APHIS to examine.

Another commenter observed that Florida has successfully worked with APHIS to implement the first ever cold treatment pilot project for perishable commodities. The commenter was concerned that increased overtime fee rates would prove economically detrimental to the future of that project both in Florida and other areas where cold treatment is already permitted.

We disagree with the commenter's statement. APHIS' agreement with the shipping lines in the Florida cold treatment pilot program requires that cold treatment be completed before the ship arrives at the port because there are no approved cold treatment facilities available in Florida. Since the cold treatment must take place prior to shipment arrival, any information regarding application of cold treatment may be transmitted to the ports during regular business hours.

Comments on Comment Period

We received several requests for an extension of the comment period on the proposed rule. After careful consideration, we determined to keep the original deadline. While APHIS has not updated its overtime fees since 2005, these increases remain a routine cost-recovery measure for the Agency.

Comments on Agency Jurisdiction

Two commenters stated that, to the extent APHIS and CBP are performing the same inspection services, the shipping community has a reasonable right to expect that the rates charged will be consistent across the agencies and that any internal conflicts in pay and rate schedules should be transparent to the service recipient. The commenters concluded that, to the extent one agency is acting on behalf of the other, it is imperative that the agency which is incurring the costs retains the appropriate percentage of the revenues collected.

We agree with the commenters' observations. Providing clarity while allowing APHIS and DHS to recoup inspection costs was our intent in publishing this rule.

Finally, one commenter said that there is confusion about which agencies have responsibility for and jurisdiction over various functions. The commenter said that the rule should clearly delineate which functions are performed by APHIS and which are performed on behalf of APHIS by DHS. The commenter concluded that fees should be listed only in the relevant sections of the CFR, and there must be no question that both APHIS and DHS are not billing individually for the same services.

Generally speaking, most of the agricultural inspections discussed in this rule are performed by DHS pursuant to the Homeland Security Act. Examples of agricultural inspections performed by APHIS include those associated with the importation of live plants, which occur at designated plant inspection stations, and APHIS oversight of certain port of entry treatments. As stated in the proposed rule, DHS conducts billings of their overtime charges in accordance with the regulations in 5 CFR part 551, 7 CFR 354.1, 9 CFR 97.1, 9 CFR 130.50, or 19 CFR 24.16. The DHS fees for agricultural inspection overtime work are not listed in a specific section of the CFR as the Homeland Security Act that first established DHS did not provide any new

regulatory authority to DHS but rather used the existing regulatory authority of those agencies or programs whose functions were transferred to DHS. So APHIS' regulatory authority is used to enumerate or revise agricultural inspection overtime rates.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with a few, minor editorial changes.

Executive Order 12866 and Regulatory Flexibility Act

This final rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

APHIS charges hourly overtime rates to individuals, firms, and corporations requesting inspection, testing, certification, or quarantine services at laboratories, border ports, ocean ports, rail ports, quarantine facilities, and airports outside of the regularly established hours of service. These overtime rates are charged to the individuals, firms, or corporations requesting the services, and the fees vary depending on the type of service performed and when the service is provided. This rule amends the fees for reimbursable overtime to reflect increased costs associated with providing these services.

APHIS is updating these fees to take into account the routine increases in the cost of conducting business during overtime hours. The cost to the import/export program to provide

these services has increased year to year, and these proposed increases are necessary to more accurately provide the full cost recovery of this Agency activity.

Currently, APHIS charges \$51 per hour per employee for inspection, testing, certification, or quarantine of animals or agricultural products outside the employee's regular tour of duty, and \$67 per hour per employee for inspection, testing, certification, or quarantine of animals or agricultural products that is performed on Sundays outside the employee's regular tour of duty. APHIS charges \$41 per hour per employee for commercial airline inspection services that are performed outside of the regularly established hours of service on a holiday or any other period and \$55 per hour per employee for commercial airline inspection services that are performed outside of the regularly established hours of service on a Sunday. This rule establishes hourly overtime rates for each of the fiscal years 2016 through 2018. From FY 2016 through FY 2018, these rates would increase by \$24 for inspection, testing, certification, or quarantine of animals or agricultural products outside the employee's regular tour of duty (Monday through Saturday and holidays), by \$33 for inspection, testing, certification, or quarantine of animals or agricultural products that is performed on Sundays outside the employee's regular tour of duty, by \$24 for commercial airline inspection services that are performed outside of the regularly established hours of service on a holiday or any other period, and by \$31 for commercial airline inspection services that are performed outside of the regularly established hours of service on a Sunday.

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 2 CFR chapter IV.)

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 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

7 CFR Part 354

Animal diseases, Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

9 CFR Part 97

Exports, Government employees, Imports, Livestock, Poultry and poultry products, Travel and transportation expenses.

9 CFR Part 130

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

Accordingly, we are amending 7 CFR part 354 and 9 CFR parts 97 and 130 as follows:

Title 7—Agriculture

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND
USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 7701-7772, 7781-7786, and 8301-8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

2. Section 354.1 is amended as follows:

a. By revising paragraph (a)(1) introductory text, including the table.

b. In paragraph (a)(1)(i), by removing the words “the Customs Service, Immigration and Naturalization Service” and adding the words “U.S. Customs and Border Protection” in their place.

c. By revising the table in paragraph (a)(1)(iii).

d. In paragraph (a)(2), by removing the word “A” in the first sentence and adding the words “Except as provided in paragraph (a)(3) of this section, a” in its place.

e. By adding paragraph (a)(3).

f. In paragraphs (a)(2), (b), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(4), and (f), by adding the words “or U.S. Customs and Border Protection” after the words “Animal and Plant Health Inspection Service” each time they appear.

The addition and revisions read as follows:

§ 354.1 Overtime work at border ports, sea ports, and airports.

(a)(1) Any person, firm, or corporation having ownership, custody, or control of plants, plant products, animals, animal byproducts, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine under this chapter and subchapter D of chapter I, title 9 CFR, who requires the services of an employee of the Animal and Plant Health Inspection Service or U.S. Customs and Border Protection on a Sunday or holiday, or at any other time outside the regular tour of duty of that employee, shall sufficiently in advance of the

period of Sunday, holiday, or overtime service request the Animal and Plant Health Inspection Service or U.S. Customs and Border Protection inspector in charge to furnish the service during the overtime or Sunday or holiday period, and shall pay the Government at the rate listed in the following table, except as provided in paragraphs (a)(1)(i), (ii), and (iii), and (a)(3) of this section:

Overtime for Inspection, Laboratory Testing, Certification, or Quarantine of Plant, Plant Products, Animals, Animal Products or Other Regulated Commodities			
Outside the employee's normal tour of duty	Overtime rates (per hour)		
	<u>[Insert date 30 days after date of publication in the Federal Register]-Sept. 30, 2016</u>	Oct. 1, 2016-Sept. 30, 2017	Beginning Oct. 1, 2017
Monday through Saturday and holidays	\$75	\$75	\$75
Sundays	99	99	100

* * * * *

(iii) * * *

Overtime for Commercial Airline Inspection Services ¹			
Outside the employee's normal tour of duty	Overtime rates (per hour)		
	<u>[Insert date 30 days after date of publication in the Federal Register]-Sept. 30, 2016</u>	Oct. 1, 2016-Sept. 30, 2017	Beginning Oct. 1, 2017
Monday through Saturday and holidays	\$64	\$65	\$65
Sundays	85	86	86

¹ These charges exclude administrative overhead costs.

* * * * *

(3) The overtime rate and all other charges, including minimum and commute compensation charges, to be billed for services provided by an employee of U.S. Customs and Border Protection shall be charged according to the provisions of this section, 5 CFR part 551, or 19 CFR 24.16.

* * * * *

Title 9—Animals and Animal Products

PART 97--OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

3. The authority citation for part 97 continues to read as follows:

Authority: 7 U.S.C. 8301-8317; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.4.

4. Section 97.1 is amended as follows:

a. By revising paragraph (a) introductory text, including the table.

b. In paragraph (a)(1), by removing the words “the Customs Service, Immigration and Naturalization Service” and adding the words “U.S. Customs and Border Protection” in their place.

c. By revising the table in paragraph (a)(3).

d. By adding paragraph (a)(4).

e. In paragraphs (b), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(4), and (f), by adding the words “or U.S. Customs and Border Protection” after the words “Animal and Plant Health Inspection Service” each time they appear.

The addition and revisions read as follows:

§ 97.1 Overtime work at laboratories, border ports, ocean ports, and airports.¹

(a) Any person, firm, or corporation having ownership, custody, or control of animals, animal byproducts, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine under this subchapter and subchapter G of this chapter, and who requires the services of an employee of the Animal and Plant Health Inspection Service or U.S. Customs and Border Protection on a Sunday or holiday, or at any other time outside the regular tour of duty of the employee, shall sufficiently in advance of the period of Sunday, holiday, or overtime service request the Animal and Plant Health Inspection Service or U.S. Customs and Border Protection inspector in charge to furnish the service and shall pay the Government at the rate listed in the following table, except as provided in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section:

Overtime for Inspection, Laboratory Testing, Certification, or Quarantine of Plant, Plant Products, Animals, Animal Products or Other Regulated Commodities			
Outside the employee's normal tour of duty	Overtime rates (per hour)		
	<u>[Insert date 30 days after date of publication in the Federal Register]-</u> Sept. 30, 2016	Oct. 1, 2016-Sept. 30, 2017	Beginning Oct. 1, 2017
Monday through Saturday and holidays	\$75	\$75	\$75
Sundays	99	99	100

* * * * *

¹ For designated ports of entry for certain animals, animal semen, poultry, and hatching eggs, see §§ 93.102, 93.203, 93.303, 93.403, 93.503, 93.703, and 93.805 of this chapter. For designated ports of entry for certain purebred animals see §§ 151.1 through 151.3 of this chapter.

(3) * * *

Overtime for Commercial Airline Inspection Services ¹			
Outside the employee's normal tour of duty	Overtime rates (per hour)		
	<u>[Insert date 30 days after date of publication in the Federal Register]-</u> Sept. 30, 2016	Oct. 1, 2016-Sept. 30, 2017	Beginning Oct. 1, 2017
Monday through Saturday and holidays	\$64	\$65	\$65
Sundays	85	86	86

¹These charges exclude administrative overhead costs.

(4) The overtime rate and all other charges, including minimum and commute compensation charges, to be billed for services provided by an employee of U.S. Customs and Border Protection shall be charged according to the provisions of this section, 5 CFR part 551, or 19 CFR 24.16.

* * * * *

PART 130--USER FEES

5. 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.

6. Section 130.50 is amended as follows:

a. In paragraph (b)(3) introductory text, by removing the words “or (ii)” and adding the words “, (ii), or (iii)” in their place.

b. By revising the table in paragraph (b)(3)(i).

c. By adding paragraph (b)(3)(iii).

The addition and revision read as follows:

§ 130.50 Payment of user fees.

* * * * *

(b) * * *

(3) * * *

(i) * * *

Overtime for Flat Rate User Fees ^{1,2}				
	Outside of the employee's normal tour of duty	Overtime rates (per hour)		
		<u>[Insert date 30 days after date of publication in the Federal Register]-Sept. 30, 2016</u>	Oct. 1, 2016-Sept. 30, 2017	Beginning Oct. 1, 2017
Rate for inspection, testing, certification or quarantine of animals, animal products or other commodities ³	Monday-Saturday and holidays	\$75	\$75	\$75
	Sundays	99	99	100
Rate for commercial airline inspection services ⁴	Monday-Saturday and holidays	64	65	65
	Sundays	85	86	86

¹Minimum charge of 2 hours, unless performed on the employee's regular workday and performed in direct continuation of the regular workday or begun within an hour of the regular workday.

²When the 2-hour minimum applies, you may need to pay commuted travel time. (See § 97.1(b) of this chapter for specific information about commuted travel time.)

³See § 97.1(a) of this chapter or 7 CFR 354.3 for details.

⁴See § 97.1(a)(3) of this chapter for details.

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(iii) For information on rules pertaining to the charges associated with employees of U.S. Customs and Border Protection performing agricultural inspection services, please see 7 CFR 354.1 and 9 CFR 97.1.

* * * * *

Done in Washington, DC, this 28th day of September 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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