

BILLING CODE: 3410-34-P

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: Proposed rule.

SUMMARY: We are proposing to change 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 inspection, laboratory testing, certification, or quarantine under the regulations. We are proposing to increase these overtime rates for each of the fiscal years 2014 through 2018 to reflect the anticipated costs associated with providing these services during each year. Establishing the overtime rate changes in advance would allow users of APHIS' services to incorporate the rates into their budget planning. We are also proposing to clarify 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: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0047>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2009-0047, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0047> or in our reading room, which 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) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information concerning Plant Protection and Quarantine program operations, contact Mr. William E. Thomas, AQI Coordinator, PPQ, APHIS, 4700 River Road Unit 131, Riverdale, MD 20737-1231; (301) 851-2306.

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 user fee development, contact Ms. Kris Caraher, Branch Chief, Review and Analysis, Financial Management Division, MRPBS, APHIS, 4700 River Road Unit 55, Riverdale, MD 20737; (301) 851-2834.

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.

APHIS has not adjusted the overtime rates for inspection, laboratory testing, certification, or quarantine services since we published a final rule in the Federal Register on July 25, 2002 (67 FR 48519-48525, Docket No. 00-087-2) that was effective on August 11, 2002. That rule increased overtime rates proportionate to, and as a result of, changes to the costs associated with providing inspection, laboratory testing, certification, and quarantine services outside of an employee's normal tour of duty and allowed for yearly increases to the rates charged. The last of these annual increases went into effect on October 1, 2005. That final rule increased overtime rates so that APHIS could recover the costs of providing overtime services.

Based on continuing changes to the costs associated with providing inspection, laboratory testing, certification, and quarantine services, as well as annual salary increases for Federal

employees, the current overtime rates must be adjusted in order for APHIS to properly recover the full cost of providing these services. Therefore, we are proposing to establish the hourly overtime rates for fiscal years (FYs) 2014 through 2018; the FY 2014 rates would become effective on the date specified in a final rule following this proposed rule, the FY 2015 through 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. The overtime rate tables in this document, therefore, do not specify an end date for overtime rates that would become effective on October 1, 2017 (the beginning of FY 2018). Establishing the overtime rate changes in advance would allow users of APHIS' services to incorporate the rates into their budget planning. We plan to publish a notice in the Federal Register prior to the beginning of each fiscal year to remind and notify the public of the overtime rates charged for inspection, laboratory testing, certification, and quarantine services for that particular fiscal year.

The proposed rule would amend the regulations by:

1. Establishing hourly overtime rates for each of the fiscal years 2014 through 2018 that are charged to the person, firm, or corporation having ownership, custody, or control of plants, plant products, animals, poultry, animal byproducts, germ plasm, organisms, vectors, or other regulated commodities or articles subject to certain inspection, laboratory testing, certification, or quarantine, who needs the services of an APHIS employee on a Sunday or holiday, or at any other time outside the employee's regular tour of duty; and
2. Establishing hourly overtime rates for each of the fiscal years 2014 through 2018 that are charged to an owner or operator of an aircraft for inspection or quarantine services provided by an APHIS employee at an airport outside of the regularly established hours of service.

The overtime rates proposed in this document are based on our review and cost analysis of the current fees, which indicated that increases are needed to ensure that the fees charged are adequate for APHIS to cover the cost of providing these overtime services. The cost analysis is based on our review of data such as anticipated costs due to increases in salaries and benefits of Federal employees, indirect costs, program management costs, billing and collection service costs, Agency overhead costs, and departmental charges.

#### Overtime Rate Components

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.

To calculate the proposed overtime rates, we identified and projected the direct costs in each of FYs 2014 through 2018 for each of the following four overtime rate categories:

1. Inspection, laboratory testing, certification, or quarantine of animals and animal or agricultural products or articles performed by an APHIS employee outside of his or her normal tour of duty on Saturdays, holidays, or weekdays;

2. Inspection, laboratory testing, certification, or quarantine of animals and animal or agricultural products or articles performed by an APHIS employee outside of his or her normal tour of duty on Sundays;

3. Commercial airline inspection services performed by an APHIS employee outside of his or her normal tour of duty on Saturdays, holidays, or weekdays; and

4. Commercial airline inspection services performed by an APHIS employee outside of his or her normal tour of duty on Sundays.

We then identified and added the appropriate indirect costs to the direct costs to obtain the “raw” hourly overtime rates. For each of the four overtime rate categories, we then rounded these raw rates up to the nearest whole dollar to arrive at the final hourly overtime rates. The following tables list the direct and indirect cost components for each of the four overtime rate categories.

Table 1.—Proposed overtime rates for inspection, laboratory testing, certification, or quarantine of animals and animal or agricultural products or articles performed by an APHIS employee outside of his or her normal tour of duty on Saturdays, holidays, or weekdays

Cost components	[Effective date of final rule]- Sept. 30, 2014	Oct. 1, 2014- Sept. 30, 2015	Oct. 1, 2015- Sept. 30, 2016	Oct. 1, 2016- Sept. 30, 2017	Beginning Oct. 1, 2017
<u>Direct cost components:</u>					
Employee’s salary	\$39.80	\$40.00	\$40.20	\$40.40	\$40.60
Night differential	0.10	0.10	0.10	0.10	0.10
Hospital insurance tax	0.57	0.57	0.57	0.58	0.58
FICA	1.87	1.88	1.89	1.90	1.91
<u>Indirect cost components:</u>					
Area delivery	7.19	7.22	7.26	7.30	7.33
Billing and collection	1.61	1.62	1.63	1.64	1.65
Agency level program delivery	5.20	5.23	5.25	5.28	5.30
Agency level administrative support	3.06	3.07	3.09	3.10	3.12
Central/department charges	1.93	1.94	1.95	1.96	1.97
Imputed Costs	12.17	12.23	12.30	12.36	12.42
Hourly “raw” rate	73.49	73.86	74.23	74.60	74.97
Hourly rate rounded	74.00	74.00	75.00	75.00	75.00
Quarter hour rate	18.50	18.50	18.75	18.75	18.75

Table 2.—Proposed overtime rates for inspection, laboratory testing, certification, or quarantine of animals and animal or agricultural products or articles performed by an APHIS employee outside of his or her normal tour of duty on Sundays

Cost components	[Effective date of final rule]-Sept. 30, 2014	Oct. 1, 2014-Sept. 30, 2015	Oct. 1, 2015-Sept. 30, 2016	Oct. 1, 2016-Sept. 30, 2017	Beginning Oct. 1, 2017
<u>Direct cost components:</u>					
Employee’s salary	\$53.06	\$53.33	\$53.60	\$53.86	\$54.13
Night differential	0.13	0.13	0.13	0.13	0.13
Hospital insurance tax	0.76	0.76	0.76	0.77	0.77
FICA	2.49	2.50	2.52	2.53	2.54
<u>Indirect cost components:</u>					
Area delivery	9.58	9.63	9.68	9.73	9.78
Billing and collection	1.61	1.62	1.63	1.64	1.65
Agency level program delivery	6.88	6.91	6.95	6.98	7.02
Agency level administrative support	4.04	4.06	4.09	4.11	4.13
Central/department charges	2.55	2.57	2.58	2.59	2.60
Imputed Costs	16.23	16.31	16.39	16.48	16.56
Hourly “raw” rate	97.34	97.83	98.32	98.81	99.30
Hourly rate rounded	98.00	98.00	99.00	99.00	100.00
Quarter hour rate	24.50	24.50	24.75	24.75	25.00

Table 3.—Proposed overtime rates for commercial airline inspection services performed by an APHIS employee outside of his or her normal tour of duty on Saturdays, holidays, or weekdays

Cost components	[Effective date of final rule]-Sept. 30, 2014	Oct. 1, 2014-Sept. 30, 2015	Oct. 1, 2015-Sept. 30, 2016	Oct. 1, 2016-Sept. 30, 2017	Beginning Oct. 1, 2017
<u>Direct cost components:</u>					
Employee’s salary	\$39.80	\$40.00	\$40.20	\$40.40	\$40.60
Night differential	0.10	0.10	0.10	0.10	0.10
Hospital insurance tax	0.57	0.57	0.57	0.58	0.58
FICA	1.87	1.88	1.89	1.90	1.91
<u>Indirect cost components:</u>					
Area delivery	7.19	7.22	7.26	7.30	7.33
Billing and collection	1.61	1.62	1.63	1.64	1.65
Imputed Costs	12.17	12.23	12.30	12.36	12.42
Hourly “raw” rate	63.30	63.62	63.94	64.26	64.58
Hourly rate rounded	64.00	64.00	64.00	65.00	65.00
Quarter hour rate	16.00	16.00	16.00	16.25	16.25

Table 4.—Proposed overtime rates for commercial airline inspection services performed by an APHIS employee outside of his or her normal tour of duty on Sundays

Cost components	[Effective date of final rule]- Sept. 30, 2014	Oct. 1, 2014- Sept. 30, 2015	Oct. 1, 2015-Sept. 30, 2016	Oct. 1, 2016- Sept. 30, 2017	Beginning Oct. 1, 2017
<u>Direct cost components:</u>					
Employee’s salary	\$53.06	\$53.33	\$53.60	\$53.86	\$54.13
Night differential	0.13	0.13	0.13	0.13	0.13
Hospital insurance tax	0.76	0.76	0.76	0.77	0.77
FICA	2.49	2.50	2.52	2.53	2.54
<u>Indirect cost components:</u>					
Area delivery	9.58	9.63	9.68	9.73	9.78
Billing and collection	1.61	1.62	1.63	1.64	1.65
Imputed costs	16.23	16.31	16.39	16.48	16.56
Hourly “raw” rate	83.87	84.29	84.71	85.13	85.56
Hourly rate rounded	84.00	85.00	85.00	86.00	86.00
Quarter hour rate	21.00	21.25	21.25	21.50	21.50

Direct Cost Components

Employee’s Salary. The employee’s salary covers APHIS’ direct labor costs for the pay an employee earns when he or she provides inspection, laboratory testing, certification, or quarantine services outside of his or her normal tour of duty. We used the estimated weighted average salary of General Schedule (GS)-10 step 1 at all locations that provided these services during FY 2014 to obtain a weighted average salary of \$55,371 per year. The salary of a GS-10 step 1 is the maximum amount at which overtime is paid to an employee for performing these services.

We divided the average salary of \$55,371 by 2,087 employee hours per year to obtain the average employee’s salary amount of \$26.53 per hour during normal tour of duty hours.

An APHIS employee is paid 1.5 times the normal employee's salary for services performed outside of his or her normal tour of duty on Saturdays, holidays, or weekdays, and is paid twice the normal employee's salary for those services performed on Sundays. Therefore, we multiplied the average employee's salary of \$26.53 per hour by 1.5 to obtain the FY 2014 employee's salary of \$39.80 per hour for work performed outside an employee's normal tour of duty on Saturdays, holidays, and weekdays. We also multiplied the average employee's hourly salary of \$26.53 by two to obtain the FY 2014 employee's salary of \$53.06 per hour for those services performed outside of an employee's normal tour of duty on Sundays.

Night Differential. The night differential covers the Agency's costs for overtime work performed by an APHIS employee at night. This consists of the pay earned by an employee above the basic rate for regularly scheduled work performed at night between 6 p.m. and 6 a.m., and includes an employee's base pay, compensatory time, Sunday double time, and "over 40" overtime pay for overtime work performed at night.

To obtain the night differential portion of the overtime rates, we estimated the percentage of total employee salary costs attributable to the night differential costs during FY 2014. The estimated night differential costs of \$13,629 are 0.24 percent of the total average employee salary costs of \$5,582,990. This percentage was then applied to the employee's salary for each overtime rate category. For example, the night differential costs of \$0.10 per hour for FY 2014 for work performed on a holiday, Saturday, or weekday outside of an employee's normal tour of duty equals the FY 2014 employee's salary of \$39.80 per hour for the same overtime rate category multiplied by 0.24 percent.

Personnel Benefits. Personnel benefits are limited to those additional benefits that accrue to an APHIS employee as a result of the employee performing services specifically during overtime periods. These benefits are the hospital insurance tax and the FICA contributions made by the Agency.

The hospital insurance tax and the FICA contributions cover APHIS' costs for the U.S. Social Security System's Medicare Insurance and the U.S. Social Security System's Old Age, Survivor, Death Insurance, respectively. The hospital insurance tax is used to help pay for an employee's hospital services during retirement. The Agency's FICA contributions help pay for an employee's insurance when he or she is eligible (usually at age 62), insurance for surviving spouses and/or children of deceased employees, and a part of the Social Security System's contribution to disability payments in certain cases.

Because the personnel benefits portion of the overtime rates cost is limited to the hospital insurance tax and the FICA contributions made by the Agency, a full-blown benefits percentage was not applied in the same manner that a benefits percentage would be applied if those services were provided during an employee's normal tour of duty. To obtain the costs of the hospital insurance portion of the overtime rates, we estimated the percentage of total employee salary costs attributable to the hospital insurance tax costs in FY 2014. The estimated hospital insurance tax costs of \$79,583 are 1.43 percent of the estimated employee salary costs of \$5,582,991. This percentage was then applied to the employee's salary for each overtime rate category. For example, the hospital insurance tax amount of \$0.57 per hour for FY 2014 for work performed by an employee on Saturdays, holidays, or weekdays outside of his or her normal tour of duty equals the FY 2014 employee's salary of \$39.80 per hour for the same overtime rate category multiplied by 1.43 percent.

Similarly, to obtain the FICA portion of the overtime rates, we estimated the percentage of total employee salary costs attributable to the FICA costs during FY 2014. Estimated FICA costs of \$263,579 are 4.69 percent of the estimated total employee salary costs of \$5,582,991 in FY 2014. This percentage was then applied to the employee's salary for each overtime rate category. For example, the FICA amount of \$1.87 per hour for FY 2014 for work performed on Saturdays, holidays, or weekdays by an employee outside of his or her normal tour of duty equals the FY 2014 employee's salary of \$39.80 per hour multiplied by 4.69 percent.

#### Indirect Cost Components

Area Delivery. Area delivery covers APHIS' costs for local clerical and administrative activities; indirect labor hours (supervision of personnel and time spent doing work that is not directly connected with the services but that is nonetheless necessary); travel and transportation for personnel; supplies, equipment, and other necessary items; training; general supplies for offices, washrooms, cleaning, etc.; contract services (such as guard service, maintenance, trash pickup, etc.); grounds maintenance; and utilities. Utilities include water, telephone, electricity, gas, heating, and oil. These costs are accumulated in a distributable account and an appropriate amount is charged to the overtime rates account throughout the year.

To obtain the area delivery costs portion of the overtime rates, we estimated the percentage of total employee salary costs attributable to the area delivery costs in FY 2014. The estimated area delivery costs of \$1,008,258 are 18.06 percent of the estimated employee salary costs of \$5,582,991 in FY 2014. This percentage was then applied to the employee's salary for each overtime rate category. For example, the area delivery amount of \$7.19 per hour for

FY 2014 for work performed on a holiday, Saturday, or weekday outside of an employee's normal tour of duty equals the estimated FY 2014 salary of \$39.80 per hour for the same overtime rate category multiplied by 18.06 percent.

Billings and Collections. The billings and collections portion of the overtime rates covers APHIS' costs for physically billing and collecting for services covered by the overtime rates. Billing costs are the costs of managing user fee accounts for our customers. Collections expenses include the costs of managing customer payments and accurately reflecting those payments in our accounting system.

To calculate the billings and collections portion of the overtime rates, we estimated our billings and collections costs for FY 2014 through FY 2018 by identifying the specific employees who provide billing and collection services and estimating the percentage of time each of those employees will spend on user fee billings and collections for inspection, laboratory testing, or quarantine services performed by an APHIS employee on a Sunday, holiday, or any other time outside of the employee's normal tour of duty. We then added related billings and collections costs, such as credit bureau costs, mailing costs, materials, printing costs, and the cost of our accounting system.

Imputed Costs. Imputed costs include Office of Worker's Compensation costs from the Department of Labor; costs of employee leave earned in a prior fiscal year and used in the current fiscal year; headquarters space operation and maintenance costs; Office of Personnel Management and State Department costs to provide retirement, health, and life insurance benefits to employees; unemployment compensation costs; and Department of Justice judgment fund costs. Collections for the part of the fee for imputed costs is not retained in the

reimbursable overtime account but is forwarded to the U.S. Treasury in accordance with the Office of Management and Budget (OMB) Circular A-25, User Charges,<sup>1</sup> Government Accountability Office guidance, and U.S. Department of Agriculture (USDA) Departmental Regulations.

To calculate the imputed costs portion of the overtime rates, we estimated the reimbursable overtime's portion of the FY 2014 APHIS imputed costs. The estimated imputed costs of \$1,707,714 are 30.59 percent of the estimated employee salary costs of \$5,582,991. This percentage was then applied to the employee's salary for each overtime rate category. For example, the imputed costs amount of \$12.17 per hour for FY 2014 for work performed on a holiday, Saturday, or weekday outside of an employee's normal tour of duty equals the estimated FY 2014 salary of \$39.80 per hour for the same overtime rate category multiplied by 30.59 percent.

Agency Level Program Delivery. Agency level program delivery costs are management support costs the APHIS programs incur at APHIS' headquarters and includes the costs of management support staffs; planning, finance and strategy work; program directors' offices; and program regional offices. We used the APHIS standard overhead rate of 10.17 percent to calculate this cost component for the appropriate reimbursable overtime rates.

Agency Level Administrative Support. Agency level administrative support includes the pro-rata share of the costs of certain Agency activities, including budget and accounting services, regulatory and legal services, Administrator's office costs, personnel services, public information services, and liaison with Congress. We used the APHIS standard agency support costs rate of 5.98 percent to calculate this cost component for the appropriate reimbursable overtime rates.

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<sup>1</sup> OMB Circular A-25, User Charges is available on the Internet at [http://www.whitehouse.gov/omb/circulars\\_a025](http://www.whitehouse.gov/omb/circulars_a025).

Central/Departmental Charges. This component includes APHIS' share, expressed as a percentage of the total cost, of services provided centrally by the USDA. Services that the USDA provides centrally include the Federal Telephone Service, mail, National Finance Center processing of payroll and other money management, unemployment compensation, Office of Workers Compensation Programs, and central supply for storing and issuing commonly used supplies and USDA forms. The USDA notifies APHIS how much the Agency owes for these services. We have included a pro-rata share of these USDA charges that is attributable to overtime services of 3.25 percent for the calculation of the appropriate reimbursable overtime rates.

Costs for Agency level program delivery, agency level administrative support, and central/departamental charges are not included in our calculations for commercial airline inspection services performed by an APHIS employee outside of his or her normal tour of duty on Saturdays, holidays, weekdays, or Sundays. Those inspections are administered under the Airport and Airway Development Act of 1970, which limits the rate to be charged after normal tour of duty hours to only the cost actually incurred in performing the inspection, and includes the cost of employee salary, benefits, night differential, hospital insurance tax, FICA, area delivery, billing and collection, and unfunded leave costs only.

As is the case with all APHIS user fees, we intend to review, at least annually, the activities, programs, and fee assumptions for the user fees proposed in this document. We will publish any necessary adjustments in the Federal Register.

## Hourly Overtime Rates

The regulations in 7 CFR 354.1(a)(1) and 9 CFR 97.1(a) contain the hourly overtime rates charged to any person, firm, or corporation having ownership, custody, or control of animals, poultry, animal byproducts, germ plasm, organisms, vectors, plants, plant products, or other regulated commodities subject to inspection, laboratory testing, certification, or quarantine under the regulations. We are proposing to amend 7 CFR 354.1(a)(1) and 9 CFR 97.1(a) to reflect the hourly overtime rates that would be charged for fiscal years 2014 through 2018. The table below shows the current and proposed hourly overtime rates.

Table 5.—Current and proposed overtime rates (per hour)

	Outside employee's normal tour of duty	Fiscal Year					
		Current rate	[Effective date of final rule]- Sept. 30, 2014	Oct. 1, 2014- Sept. 30, 2015	Oct. 1, 2015- Sept. 30, 2016	Oct. 1, 2016- Sept. 30, 2017	Beginning Oct. 1, 2017
Inspection, testing, certification, or quarantine of animals and animal or agricultural products	Monday-Saturday and holidays	\$51	\$74	\$74	\$75	\$75	\$75
	Sundays	\$67	\$98	\$98	\$99	\$99	\$100
Commercial airline inspection services	Monday-Saturday and holidays	\$41	\$64	\$64	\$64	\$65	\$65
	Sundays	\$55	\$84	\$85	\$85	\$86	\$86

These changes to the hourly overtime rates are the only substantive changes this proposed rule would make to the regulations in 7 CFR 354.1(a)(1) and 9 CFR 97.1(a) regarding overtime rates. Other provisions of the overtime rates for inspection, laboratory testing, certification, and quarantine services performed outside of an employee's normal tour of duty would continue to apply if these proposed overtime rates were made effective.

In addition to those overtime fees described above, APHIS also charges user fees for certain other services. The regulations in 7 CFR part 354 and 9 CFR part 130 set out user fees for other inspection and quarantine services provided by APHIS for the import and export of plants, plant products, animals, animal byproducts, or other regulated commodities or articles. The user fees would not be affected by the overtime rate changes proposed in this rule. However, users who request import- or export-related services that are covered by flat rate user fees on a Sunday, holiday, or any time outside of an employee's normal tour of duty, and who are subject to the overtime rates set forth in 7 CFR 354.1 or 9 CFR 97.1, would be charged the hourly overtime rate changes proposed in this rule, in addition to the flat rate user fees. The overtime rates charged to users who request flat rate user fee services are set out in the table in 9 CFR 130.50(b)(3)(i). We would, therefore, amend the table in § 130.50(b)(3)(i) to reflect the overtime rates in proposed 7 CFR 354.1 and 9 CFR 97.1.

#### Department of Homeland Security Inspection Overtime Fees

We are also proposing to include language in 7 CFR 354.1, 9 CFR 97.1, and 9 CFR 130.50 to clarify that any agricultural inspection performed by an employee of the Department of Homeland Security (DHS) Bureau of Customs and Border Protection 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. This action is necessary because the costs associated with such DHS inspections may differ from those incurred by APHIS, therefore, varying overtime charges may apply in such circumstances in order for DHS to properly recover costs and adequately fund program operations.

#### Executive Order 12866 and Regulatory Flexibility Act

This proposed 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.

We have prepared an initial regulatory flexibility analysis that examines the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

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 proposed rule would amend the user fees for reimbursable overtime user fees to reflect increases in 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 work other than inspection of a commercial aircraft outside the employee's regular tour of duty, and \$67 per hour per employee for work other than inspection of a commercial aircraft that is performed on Sundays outside the employee's regular tour of duty. APHIS charges \$55 per hour per employee for inspection of a commercial aircraft performed outside of the employee's normal tour of duty on a Sunday, and \$41 per hour per employee for inspection of a commercial aircraft performed outside of the regularly established hours of service on a holiday or any other period. This proposed rule change would establish hourly overtime rates for each of the fiscal years 2014 through 2018. These rates would increase over a 5-year period by \$24 for regular work other than inspection of a commercial aircraft, by \$33 for Sunday work other than inspection of a commercial aircraft, by \$24 for regular inspection of a commercial aircraft, and by \$31 for Sunday inspection of a commercial aircraft.

#### 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) No retroactive effect will be given to this rule; and (2) 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

##### 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 propose to amend 7 CFR part 354 and 9 CFR parts 97 and 130 as follows:

Title 7

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)				
	[Effective date of final rule]- Sept. 30, 2014	Oct. 1, 2014-Sept. 30, 2015	Oct. 1, 2015-Sept. 30, 2016	Oct. 1, 2016-Sept. 30, 2017	Beginning Oct. 1, 2017
Monday through Saturday and holidays	\$74	\$74	\$75	\$75	\$75
Sundays	98	98	99	99	100

\* \* \* \* \*

(iii) \* \* \*

Overtime for Commercial Airline Inspection Services <sup>1</sup>					
Outside the employee's normal tour of duty	Overtime rates (per hour)				
	[Effective date of final rule]- Sept. 30, 2014	Oct. 1, 2014-Sept. 30, 2015	Oct. 1, 2015-Sept. 30, 2016	Oct. 1, 2016-Sept. 30, 2017	Beginning Oct. 1, 2017
Monday through Saturday and holidays	\$64	\$64	\$64	\$65	\$65
Sundays	84	85	85	86	86

<sup>1</sup> 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 established and charged according to the provisions of this section, 5 CFR part 551, or 19 CFR 24.16.

\* \* \* \* \*

## Title 9

### 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 (a) introductory text, (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.<sup>1</sup>

(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:

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<sup>1</sup> 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.

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)				
	[Effective date of final rule]- Sept. 30, 2014	Oct. 1, 2014- Sept. 30, 2015	Oct. 1, 2015- Sept. 30, 2016	Oct. 1, 2016- Sept. 30, 2017	Beginning Oct. 1, 2017
Monday through Saturday and holidays	\$74	\$74	\$75	\$75	\$75
Sundays	98	98	99	99	100

\* \* \* \* \*

(3) \* \* \*

Overtime for Commercial Airline Inspection Services<sup>1</sup>

Outside the employee's normal tour of duty	Overtime rates (per hour)				
	[Effective date of final rule]- Sept. 30, 2014	Oct. 1, 2014- Sept. 30, 2015	Oct. 1, 2015- Sept. 30, 2016	Oct. 1, 2016- Sept. 30, 2017	Beginning Oct. 1, 2017
Monday through Saturday and holidays	\$64	\$64	\$64	\$65	\$65
Sundays	84	85	85	86	86

<sup>1</sup> These 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 established and 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<sup>1,2</sup>

	Outside of the employee's normal tour of duty	Overtime rates (per hour)				
		[Effective date of final rule]- Sept. 30, 2014	Oct. 1, 2014-Sept. 30, 2015	Oct. 1, 2015-Sept. 30, 2016	Oct. 1, 2016-Sept. 30, 2017	Beginning Oct. 1, 2017
Rate for inspection, testing, certification or quarantine of animals, animal products or other commodities <sup>3</sup>	Monday-Saturday and holidays	\$74	\$74	\$75	\$75	\$75
	Sundays	98	98	99	99	100
Rate for commercial airline inspection services <sup>4</sup>	Monday-Saturday and holidays	64	64	64	65	65
	Sundays	84	85	85	86	86

<sup>1</sup>Minimum 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.

<sup>2</sup>When 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.)

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

<sup>4</sup>See § 97.1(a)(3) of this chapter for details.

\* \* \* \* \*

(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 21<sup>st</sup> day of April 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.