

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 354

#### 9 CFR Parts 97 and 130

[Docket No. 00-087-1]

#### 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 animals, poultry, animal byproducts, germ plasm, organisms, vectors, plants, plant products, or other 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 2002 through 2006 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 make several nonsubstantive changes to the regulations that correct errors or inconsistencies.

**DATES:** We invite you to comment on this docket. We will consider all comments we receive that are postmarked, delivered, or e-mailed by June 21, 2002.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01-087-1, Regulatory Analysis and Development,

PPD, APHIS, Station 3C71, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 01-087-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01-087-1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** For information concerning Agricultural Quarantine and Inspection program operations, contact Mr. Colonel Locklear, Senior Staff Officer, PPQ, APHIS, 4700 River Road, Unit 60, Riverdale, MD 20737-1236; (301) 734-8372.

For information concerning Veterinary Services program operations, contact Dr. Karen James-Preston, Assistant Director, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 40, Riverdale, MD 20737-1236; (301) 734-3261.

For information concerning user fee development, contact Ms. Kris Caraher, Accountant, User Fees Section, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737-1231; (301) 734-8351.

#### 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 hourly overtime rates for inspection, laboratory testing, certification or quarantine services since the publication in the **Federal Register** of a final rule on June 10, 1993 (58 FR 32433-32434, Docket No. 91-196-2). That rule increased overtime rates proportionate to, and as a result of, a January 1992 pay raise for Federal employees, which resulted in increased costs for the retirement system, health insurance, and travel, as well as increased costs associated with billing and collection. The June 1993 increase in overtime rates allowed APHIS to recover the costs of providing overtime services.

Based on changes to the costs associated with providing inspection, laboratory testing, certification, and quarantine services outside of an employee's normal tour of duty, 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 (FY) 2002 through 2006; the FY 2002 rates would become effective on the date specified in the final rule, the FY 2003 through FY 2006 rates would become effective on the first day of each of the fiscal years, and the FY 2006 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, 2005 (the beginning of FY 2006). 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.

This proposed rule would amend the regulations by:

1. Establishing hourly overtime rates for each of the fiscal years 2002 through 2006 that are charged to a 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 2002 through 2006 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 recover 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 regularly established hours of service. 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, agency/management support costs, and central/departmental charges.

To calculate the proposed overtime rates, we identified and projected the direct costs in each of the fiscal years 2002 through 2006 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 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, 2002	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Direct cost components:					
Employee's salary .....	\$31.75	\$32.58	\$33.69	\$34.83	\$36.02
Night differential .....	0.09	0.09	0.10	0.10	0.10
Hospital insurance tax .....	0.48	0.49	0.51	0.52	0.54
FICA .....	1.28	1.32	1.36	1.41	1.46
Indirect cost components:					
Area delivery .....	1.48	1.52	1.57	1.62	1.68
Billing and collection .....	1.35	1.39	1.44	1.49	1.54
Program direction and support .....	3.71	3.80	3.93	4.07	4.20
Agency/management support .....	2.18	2.24	2.31	2.39	2.47
Central/department charges .....	2.66	2.73	2.82	2.92	3.02
Hourly "raw" rate .....	44.98	46.16	47.73	49.35	51.03
Hourly rate rounded .....	45.00	46.00	48.00	49.00	51.00
Quarter hour rate .....	11.25	11.50	12.00	12.25	12.75

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, 2002	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Direct cost components:					
Employee's salary .....	\$42.34	\$43.44	\$44.92	\$46.44	\$48.02
Night differential .....	0.12	0.12	0.13	0.13	0.14
Hospital insurance tax .....	0.64	0.65	0.68	0.70	0.72

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—Continued

Cost components	Effective date of final rule—Sept. 30, 2002	Oct. 1, 2002—Sept. 30, 2003	Oct. 1, 2003—Sept. 30, 2004	Oct. 1, 2004—Sept. 30, 2005	Beginning Oct. 1, 2005
FICA .....	1.71	1.76	1.82	1.88	1.94
Indirect cost components:					
Area delivery .....	1.97	2.02	2.09	2.16	2.24
Billing and collection .....	1.35	1.39	1.44	1.49	1.54
Program direction and support .....	4.90	5.02	5.19	5.37	5.55
Agency/management support .....	2.88	2.95	3.05	3.16	3.27
Central/department charges .....	3.52	3.61	3.73	3.86	3.99
Hourly "raw" rate .....	59.43	60.96	63.05	65.19	67.41
Hourly rate rounded .....	59.00	61.00	63.00	65.00	67.00
Quarter hour rate .....	14.75	15.25	15.75	16.25	16.75

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, 2002	Oct. 1, 2002—Sept. 30, 2003	Oct. 1, 2003—Sept. 30, 2004	Oct. 1, 2004—Sept. 30, 2005	Beginning Oct. 1, 2005
Direct cost components:					
Employee's salary .....	\$31.75	\$32.58	\$33.69	\$34.83	\$36.02
Night differential .....	0.09	0.09	0.10	0.10	0.10
Hospital insurance tax .....	0.48	0.49	0.51	0.52	0.54
FICA .....	1.28	1.32	1.36	1.41	1.46
Indirect cost components:					
Area delivery .....	1.48	1.52	1.57	1.62	1.68
Billing and collection .....	1.35	1.39	1.44	1.49	1.54
Program direction and support .....	N/A	N/A	N/A	N/A	N/A
Agency/management support .....	N/A	N/A	N/A	N/A	N/A
Central/department charges .....	N/A	N/A	N/A	N/A	N/A
Hourly "raw" rate .....	36.43	37.39	38.67	39.97	41.34
Hourly rate rounded .....	36.00	37.00	39.00	40.00	41.00
Quarter hour rate .....	9.00	9.25	9.75	10.00	10.25

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, 2002	Oct. 1, 2002—Sept. 30, 2003	Oct. 1, 2003—Sept. 30, 2004	Oct. 1, 2004—Sept. 30, 2005	Beginning Oct. 1, 2005
Direct cost components:					
Employee's salary .....	\$42.34	\$43.44	\$44.92	\$46.44	\$48.02
Night differential .....	0.12	0.12	0.13	0.13	0.14
Hospital insurance tax .....	0.64	0.65	0.68	0.70	0.72
FICA .....	1.71	1.76	1.82	1.88	1.94
Indirect cost components:					
Area delivery .....	1.97	2.02	2.09	2.16	2.24
Billing and collection .....	1.35	1.39	1.44	1.49	1.54
Program direction and support .....	N/A	N/A	N/A	N/A	N/A
Agency/management support .....	N/A	N/A	N/A	N/A	N/A
Central/department charges .....	N/A	N/A	N/A	N/A	N/A
Hourly "raw" rate .....	48.13	49.38	51.08	52.80	54.60
Hourly rate rounded .....	48.00	49.00	51.00	53.00	55.00
Quarter hour rate .....	12.00	12.25	12.75	13.25	13.75

**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 weighted average salary of GS-10 step 1 at all locations that provided these services during FY 2002 to obtain a weighted average salary of \$44,181 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 \$44,181 by 2,087 employee hours per year to obtain the average employee's salary amount of \$21.17 per hour during normal tour of duty hours.

An APHIS employee is paid 1 1/2 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 outside of his or her normal tour of duty on Sundays. Therefore, we multiplied the average employee's salary of \$21.17 per hour by 1.5 to obtain the FY 2002 employee's salary of \$31.75 per hour for work performed outside of an employee's normal tour of duty on Saturdays, holidays, and weekdays. We also multiplied the average employee's hourly salary by two to obtain the FY 2002 employee's salary of \$42.34 per hour for those services performed outside of an employee's normal tour of duty on Sundays.

To account for anticipated increases in the cost of living during FYs 2003 through 2006, we added the 2.6 percent cost of living increase for FY 2003 and the 3.4 percent cost of living increases for FYs 2004 through 2006 that were projected in the President's Budget for FY 2003.

**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 determined the percentage of total employee salary costs attributable to the night differential costs during FYs 1998 through 2000. The actual night differential costs of \$30,071 were 0.29 percent of the total employee salary costs of \$10,517,532 during that period. This percentage was then applied to the employee's salary for each overtime rate category. For example, the night differential costs of \$0.09 per hour for FY 2003 for work performed on a holiday, Saturday, or weekday outside of an employee's normal tour of duty equals the FY 2003 employee's salary of \$32.58 per hour for the same overtime rate category multiplied by 0.29 percent.

**Personal Benefits.** The personal benefits portion of the overtime rates 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 (OASDI), 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 they are 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 personal 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 determined the percentage of total employee salary costs attributable to the hospital insurance tax costs during FYs 1998 through 2000. The actual hospital insurance tax costs of \$158,247 were 1.5 percent of the total employee salary costs of \$10,517,532 during that period. This percentage was then applied to the employee's salary for each overtime rate category. For example, the hospital insurance tax amount of \$0.49 per hour for FY 2003 for work performed by an employee on Saturdays, holidays, or weekdays outside of his or her normal tour of duty equals the FY 2003 employee's salary of \$32.58 per hour for the same overtime rate category multiplied by 1.5 percent.

Similarly, to obtain the FICA portion of the overtime rates, we determined the percentage of total employee salary costs attributable to the FICA costs during FYs 1998 through 2000. The actual FICA costs of \$425,118 was 4.04 percent of the total employee salary costs of \$10,517,532 during that period. This percentage was then applied to the employee's salary for each overtime rate category. For example, the FICA amount of \$1.32 per hour for FY 2003 for work performed on Saturdays, holidays, or weekdays by an employee outside of his or her normal tour of duty equals the FY 2003 employee's salary of \$32.58 per hour for the same overtime rate category multiplied by 4.04 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 determined the percentage of total employee salary costs attributable to the area delivery costs during FYs 1998 through 2000. The actual area delivery costs of \$490,117 were 4.66 percent of the total employee salary costs of \$10,517,532 during that period. This percentage was then applied to the employee's salary for each overtime rate category. For example, the area delivery amount of \$1.52 per hour for FY 2003 for work performed on a holiday, Saturday, or weekday outside of an employee's normal tour of duty equals the FY 2003 employee's salary of \$32.58 per hour for the same overtime rate category multiplied by 4.66 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 actual billings and collections costs for fiscal years 2002 through 2006 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, certification, or quarantine services performed by an APHIS employee on a Sunday, holiday, or at 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.

**Program Direction and Support.** Program direction and support consists of management support at APHIS' headquarters and includes the costs of management support staff, directors'

offices, and regional offices. We used the APHIS standard overhead rate of 10.17 percent for program support net costs.

#### *Agency/Management Support.*

Agency/management 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 of total costs.

*Central/Department Charges.* This component includes APHIS' share, expressed as a percentage of the total cost, of services provided centrally by the United States Department of Agriculture (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 6.29 percent.

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 2002 through 2006. 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	Effective Date of Final Rule—Sept. 30, 2002	Oct. 1, 2002—Sept. 30, 2003	Oct. 1, 2003—Sept. 30, 2004	Oct. 1, 2004—Sept. 30, 2005	Beginning Oct. 1, 2005
Inspection, testing, certification, or quarantine of animals and animal or agricultural products.	Monday–Saturday and holidays.	\$37.84	\$45.00	\$46.00	\$48.00	\$49.00	\$51.00
	Sundays .....	47.96	59.00	61.00	63.00	65.00	67.00
Commercial airline inspection services.	Monday–Saturday and holidays.	30.64	36.00	37.00	39.00	40.00	41.00
	Sundays .....	39.36	48.00	49.00	51.00	53.00	55.00

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.

#### **Miscellaneous**

We are also proposing to reorganize several user fees listed in the table in 9 CFR 130.7. In a final rule published on August 28, 2000 (65 FR 51997–52010, Docket No. 97–058–2), and effective October 1, 2000, we reorganized the user fees listed in the table in § 130.7 by alphabetizing those user fees for animals transiting the United States. The original organization used prior to the August 2000 final rule presented these user fees in a more reader-friendly format. Therefore, we are proposing to amend the table in § 130.7 by returning to the original organization of the user

fees for animals transiting the United States.

We are also proposing to correct a section reference within 9 CFR 130.20. In the August 2000 final rule cited in the previous paragraph, we consolidated all the hourly and premium hourly rate user fees for import and export services into one new section, § 130.30. As a result, several sections were removed and reserved, including § 130.21. When we made that change, however, we failed to update an internal reference to § 130.21 within § 130.20 to reflect the consolidation of those user fees into one section. We are, therefore, proposing to amend § 130.20 to correct that error.

Additionally, we are proposing to use both feminine and masculine pronouns when referring to APHIS employees in 7 CFR 354.1 and 9 CFR 97.1. Both masculine and feminine pronouns, such as “he or she” or “him or her,” are commonly used in reference to individuals not otherwise identified as specifically male or female and appear as such elsewhere in our regulations. Updating these references will make the regulations in 7 CFR 354.1 and 9 CFR

97.1 more consistent and gender inclusive.

#### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

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 vary depending on when and what type of services are performed. There is one overtime rate schedule for services provided on Sundays and another schedule for overtime services provided on Saturdays, holidays, and weekdays outside the employee's regular tour of duty. Owners and operators of aircraft, however, are subject to different overtime rate schedules.

Currently, APHIS charges \$39.36 per hour per employee for services provided to owners and operators of aircraft outside of the regularly established hours of service on a Sunday, and \$30.64 per hour per employee for services provided to owners and operators of aircraft outside the employee's regular tour of duty on a holiday or any other period. APHIS charges \$47.96 per hour per employee for those services performed at the request of all users except owners and operators of aircraft on Sundays, and \$37.84 per hour per employee for services performed at the request of all users except owners or operators of aircraft on a holiday or any other time outside the employee's regular tour of duty.

This proposed rule covers future overtime rates for inspection, laboratory testing, certification, or quarantine services performed by an employee outside of his or her regularly scheduled tour of duty. Publishing rate changes in advance would allow users of APHIS' services to incorporate the overtime

rates into their budget planning. Table 5, shown above, lists the proposed overtime rates for fiscal years 2002 through 2006.

The current hourly overtime rates for inspection, laboratory testing, certification and quarantine services were made effective June 13, 1993 (58 FR 32433-32434, Docket No. 91-196-2). The proposed changes to the current overtime rates are intended to allow APHIS to recover cost increases associated with the provision of overtime services subsequent to that rule.

The percentage increase in hourly overtime rates for FY 2002 over the current overtime rates is shown in the table below. Because the proposed overtime rates for FY 2002 (October 1, 2001 through September 30, 2002) reflect cost increases incurred since 1993, the increase in overtime rates is highest for this year. The following table also lists the average annual percentage increase in the proposed overtime rates from FY 2002 through FY 2006.

Rate category	Outside of employee's normal tour of duty	Current hourly overtime rate	FY 02 hourly overtime rate	Increase FY 02 rate over current rate (percent)	Average annual increase for FY 02-06 (percent)
Inspection, testing, certification, or quarantine of animals and animal or agricultural products.	Monday-Saturday and holidays .....	\$37.84	\$45.00	18.9	3.2
	Sundays .....	47.96	59.00	23.0	3.3
Commercial airline inspections services.	Monday-Saturday and holidays .....	30.64	36.00	17.5	3.3
	Sundays .....	39.36	48.00	22.0	3.5

Overtime services performed for all users except owners and operators of aircraft outside of regularly scheduled hours of operation on Monday through Saturday or on holidays account for three-fourths of all overtime hours. During FY 1998 through 2000, overtime

services performed for all users except owners and operators of aircraft outside of regularly scheduled hours of operation on Monday through Saturday or on holidays averaged 286,749 hours per year, or 76 percent of all overtime hours. The average hours of overtime

services performed annually during fiscal years 1998 through 2000 for each overtime rate category are shown below, along with each rate category's percentage of that total.

Rate category	Outside of employee's normal tour of duty	Average annual overtime hours (FY 98-00)	Percentage of total
Inspection, testing, certification, or quarantine of animals and animal or agricultural products.	Monday-Saturday and holidays .....	286,749	76
	Sundays .....	28,165	7
Commercial airline inspection services .....	Monday-Saturday and holidays .....	45,857	12
	Sundays .....	18,398	5
Total .....	.....	379,169	100

Because the number of overtime hours in each rate category is unknown for FY 2002 and beyond, the impact of this proposed rule on APHIS' revenues in those years is also unknown. Total overtime hours for all rate categories combined have shown a steady increase from 341,336 hours in FY 1998 to

390,600 hours in FY 1999 and 405,570 hours in FY 2000. This increase would suggest that the use of overtime services will continue to increase in the future, especially given that world trade is also likely to increase. In this regard, it is unlikely that demand for overtime

services will lessen as a result of the proposed rate increases.

Furthermore, we do not anticipate users of APHIS' services to alter their planned imports and exports in order to avoid the proposed overtime rates, given the low value in absolute dollar terms of the rate increases. In none of the four

categories, for example, does the increase in rates exceed \$11.04 in any one year. The average annual increase in overtime rates between the current rate and the rate for FY 2006 is only \$2.63 for all users of overtime services, except for commercial airline inspection services, that are performed outside of regularly scheduled hours of operation on Monday through Saturday or on holidays.<sup>1</sup> This overtime rate category accounts for three-fourths of all overtime hours. In many cases, these proposed overtime rate increases for inspection, laboratory testing, certification, or quarantine services performed outside of an employee's normal tour of duty represent only a small portion of the dollar value of the

plants, animals, or other commodities for which they are performed. For example, the purchase and import of a breeding-grade animal into the United States can range between \$1,500 and \$5,000 per head, an amount that would suggest that the proposed overtime rate increases would be a relatively insignificant factor in an importer's decision regarding if and when an animal should be imported. Indeed, the average annual increase in overtime rates through FY 2006 of \$2.63 for users of overtime services, except for commercial airline inspection services, that are performed on weekdays and Saturdays or on holidays is equivalent to less than 1 percent of the value of an animal worth \$2,000.

Assuming that annual overtime hours in fiscal years 2002 through 2006 match those for fiscal year 2000 (October 1, 1999, through September 30, 2000), this proposed rule would generate about \$19 million in additional revenues over that generated under the current rates for APHIS over the 5-year period, as is shown in the table below.<sup>2</sup> The additional revenue generated by the changes in the hourly overtime rates corresponds to cost increases associated with providing inspection, laboratory testing, certification and quarantine services on Sundays, holidays, or at any other time outside an employee's normal tour of duty, and will allow APHIS to recover the full cost of providing these services.

ADDITIONAL REVENUES FROM PROPOSED RATES.—BASED ON FY 2000 OVERTIME HOURS (IN MILLIONS)

Rate category	Outside of employee's normal tour of duty	Effective date of final rule—Sept. 30, 2002	Oct. 1, 2002—Sept. 30, 2003	Oct. 1, 2002—Sept. 30, 2004	Oct. 1, 2004—Sept. 30, 2005	Oct. 1, 2005—Sept. 30, 2006	Total
Inspection, testing, certification, or quarantine of animals and animal or agricultural products.	Monday–Saturday and holidays.	\$1.13	\$2.57	\$3.20	\$3.51	\$4.14	\$14.55
	Sundays .....	0.16	0.37	0.43	0.49	0.54	1.99
Commercial airline inspection services.	Monday–Saturday and holidays.	0.12	0.28	0.37	0.41	0.46	1.64
	Sundays .....	0.08	0.18	0.22	0.25	0.29	1.02
Total .....	.....	\$1.49	\$3.40	\$4.22	\$4.66	\$5.43	\$19.20

This proposed rule has the potential to affect any private individual or business entity dealing with plants, animals, poultry, germ plasm, animal products, organisms, vectors, aquaculture, or the testing of these items, including importers, exporters, brokers, dealers, animal exhibitors, laboratories, universities, and individuals who travel with their pets. Affected individuals and entities would incur higher costs. The number of individuals and businesses that could be adversely affected by this proposed action would depend on the ability of any one individual or business entity to absorb the increased costs or pass them on. This information is not available.<sup>3</sup> However, in many cases, some entities that pay overtime fees to APHIS, such as brokers, would be unaffected because they are able to pass those fees on to

their clients. Furthermore, the amount of the proposed overtime rate increases, both in absolute dollar terms and in percentage terms of the dollar value of the affected plants or animals, suggest that the impact on most individuals and entities would be minimal.

#### Small Entity Impact

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small entities, such as small businesses, organizations, and governmental jurisdictions. All entities affected by the proposed overtime rate increases, both large and small, would incur higher costs.

It is reasonable to assume that most businesses affected by this proposed rule are small in size. This is because most U.S. businesses in general are

small, based on the standards of the U.S. Small Business Administration (SBA). In 1997, for example, there were 5,769 U.S. firms in NAICS 541710, a classification comprised of firms primarily engaged in conducting research and experimental development in the physical, engineering, or life sciences, including agriculture and veterinary subjects. Of those 5,769 firms, 4,607 were in operation for all of 1997 and, of those, all but 28 had fewer than 500 employees, the SBA's small entity criterion for firms in that NAICS category.<sup>4</sup> Accordingly, most of the businesses potentially affected by this proposed rule are likely to be small in size. However, for the reasons discussed above, the proposed overtime rate increases would not have a significant economic impact on those businesses.

<sup>1</sup> Users of APHIS' services during overtime periods are typically charged for between 3 and 6 hours of overtime per service request. As a practical matter, therefore, the actual impact for users of each service request would typically be 3 to 6 times the rate increase for 1 hour of overtime service. However, the year-to-year hourly overtime rate increases are so low in absolute dollar terms that

these rate increases should not cause most users to alter their planned imports and exports.

<sup>2</sup> Because this proposed rule is being published after the start of FY 2002, the FY 2002 column of the table projects additional revenues for only half of that fiscal year, assuming that the number of overtime hours would be spread evenly throughout the year. For FY 2002, therefore, we used one-half the number of annual overtime hours worked

during FY 2000 to calculate the additional revenue generated by the proposed overtime rates over the current rates.

<sup>3</sup> Even if a list of the current users of APHIS' services during overtime hours were available, those users may be unwilling, for proprietary reasons, to provide the financial data needed to assess their ability to absorb the increased costs.

<sup>4</sup> Source: SBA and U.S. Census Bureau.

## Alternatives

One alternative to this proposed rule would be to make no changes to the current overtime rates for inspection, laboratory testing, certification, or quarantine services performed by an employee on a Sunday or holiday or any time outside of his or her regular tour of duty. We do not consider leaving the current overtime rates unchanged a reasonable alternative because we would not recover the full cost for providing these services during overtime periods. This alternative would place the burden of increased costs for overtime services on the general taxpayer instead of the users of those services.

Another alternative to this proposed rule would be to either exempt small businesses from the overtime rate increases or establish a different overtime rate schedule for small businesses. Every business, including small businesses, using a government service needs to pay the cost of that service, rather than having other businesses pay a disproportionate share or having those costs passed on to the general public. Therefore, we do not consider exempting small businesses from these overtime rates or establishing a different user fee schedule for small businesses a viable option because it would not allow for the full recovery of our costs from all users of the overtime services.

## Cost-Benefit Analysis

The benefit of user fees is the shift in the payment for services from taxpayers as a whole to those persons who are receiving the government service. While taxes may not change by the same amount as the change in user fee collections, there is a related shift in the appropriation of taxes to government programs that allows those tax dollars to be applied to other programs that benefit the public. Therefore, there would be a relative savings to taxpayers as a result of the proposed rule.

The administrative cost involved in obtaining these savings would be minimal. APHIS already has a user fee program and a mechanism for collecting user fees in place; this proposed rule

would simply update the existing fees in that system. Accordingly, increases in administrative costs would be small. Because the savings to taxpayers are sufficiently large and the administrative costs would be small, it is likely that the net gain in reducing the burden on taxpayers as a whole would outweigh the cost of administering the user fee program with the updated user fees contained in this proposed rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

## Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

## Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

## Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## List of Subjects

### 7 CFR Part 354

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—[Amended]

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

1. The authority citation for part 354 would be revised to read as follows:

**Authority:** 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

2. In § 354.1, paragraph (a) would be amended as follows:

a. By revising the introductory text of paragraph (a)(1).

b. By revising paragraph (a)(1)(iii).

c. In paragraph (a)(2), by revising the first sentence.

### § 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 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 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) 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)			Oct. 1, 2004– Sept. 30, 2005	Beginning Oct. 1, 2005
	(Effective Date of Final Rule)— Sept. 30, 2002	Oct. 1, 2002– Sept. 30, 2003	Oct. 1, 2003– Sept. 30, 2004		
Monday through Saturday and holidays .....	\$45.00	\$46.00	\$48.00	\$49.00	\$51.00
Sundays .....	59.00	61.00	63.00	65.00	67.00



(iii) The overtime rate to be charged owners or operators of aircraft at airports of entry or other places of inspection as a consequence of the operation of the aircraft, for work performed outside of the regularly established hours of service is listed in the following table:

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, 2002	Oct. 1, 2002—Sept. 30, 2003	Oct. 1, 2003—Sept. 30, 2004	Oct. 1, 2004—Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays .....	\$36.00	\$37.00	\$39.00	\$40.00	\$41.00
Sundays .....	48.00	49.00	51.00	53.00	55.00

<sup>1</sup> These charges exclude administrative overhead costs.

(2) A minimum charge of 2 hours shall be made for any Sunday or holiday or unscheduled overtime duty performed by an employee on a day when no work was scheduled for him or her, or which is performed by an employee on his or her regular workday beginning either at least 1 hour before his or her scheduled tour of duty or which is not in direct continuation of the employee's regular tour of duty.

\* \* \*

\* \* \* \* \*

**Title 9—[Amended]****PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS**

3. The authority citation for part 97 would be revised to read as follows:

**Authority:** 7 U.S.C. 2260; 49 U.S.C. 80503; 7 CFR 2.22, 280, and 371.4.

4. Section 97.1 would be amended as follows:

- a. By revising paragraph (a) introductory text, and paragraph (a)(3).
- b. In paragraph (b), by revising the first sentence.

**§ 97.1 Overtime services relating to imports and exports.**

(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 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 or holiday or overtime service request the Animal and Plant Health Inspection Service 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), and (a)(3) of this section:

## OVERTIME FOR INSPECTION, LABORATORY TESTING, CERTIFICATION, OR QUARANTINE OF 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, 2002	Oct. 1, 2002—Sept. 30, 2003	Oct. 1, 2003—Sept. 30, 2004	Oct. 1, 2004—Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays .....	\$45.00	\$46.00	\$48.00	\$49.00	\$51.00
Sundays .....	59.00	61.00	63.00	65.00	67.00

\* \* \* \* \*

(3) The overtime rate to be charged owners or operators of aircraft at airports of entry or other places of inspection as a consequence of the operation of the aircraft, for work performed outside of the regularly established hours of service is listed in the following table:

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, 2002	Oct. 1, 2002—Sept. 30, 2003	Oct. 1, 2003—Sept. 30, 2004	Oct. 1, 2004—Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays .....	\$36.00	\$37.00	\$39.00	\$40.00	\$41.00
Sundays .....	48.00	49.00	51.00	53.00	55.00

<sup>1</sup> These charges exclude administrative overhead costs.

(b) A minimum charge of 2 hours shall be made for any Sunday or holiday or unscheduled overtime duty performed by an employee on a day

when no work was scheduled for him or her, or which is performed by an

employee on his or her regular workday beginning either at least 1 hour before his or her scheduled tour of duty or which is not in direct continuation of the employee's regular tour of duty.

\* \* \*

### PART 130—USER FEES

5. The authority citation for part 130 would continue 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 371.4.

6. In § 130.7, paragraph (a), the table would be revised to read as follows:

#### § 130.7 User fees for import or entry services for live animals at land border ports along the United States-Canada border.

(a) \* \* \*

Type of live animal	Unit	User fee		
		Oct. 1, 2001– Sept. 30, 2002	Oct. 1, 2002– Sept. 30, 2003	Beginning Oct. 1, 2003
Animals being imported into the United States:				
Breeding animals (Grade animals, except horses):				
Sheep and goats .....	per head .....	\$0.50	\$0.50	\$0.50
Swine .....	per head .....	0.75	0.75	0.75
All others .....	per head .....	3.25	3.25	3.25
Feeder animals:				
Cattle (not including calves) .....	per head .....	1.50	1.50	1.50
Sheep and calves .....	per head .....	0.50	0.50	0.50
Swine .....	per head .....	0.25	0.25	0.25
Horses (including registered horses), other than slaughter and in-transit.	per head .....	27.00	28.00	29.00
Poultry (including eggs), imported for any purpose .....	per load .....	47.00	48.00	50.00
Registered animals (except horses) .....	per head .....	5.50	5.75	6.00
Slaughter animals (except poultry) .....	per load .....	24.00	24.00	25.00
Animals transiting <sup>1</sup> the United States:				
Cattle .....	per head .....	1.50	1.50	1.50
Sheep and goats .....	per head .....	0.25	0.25	0.25
Swine .....	per head .....	0.25	0.25	0.25
Horses and all other animals .....	per head .....	6.50	6.75	6.75

<sup>1</sup> The user fee in this section will be charged for in-transit authorizations at the port where the authorization services are performed. For additional services provided by APHIS, at any port, the hourly user fee rate in § 130.30 will apply.

\* \* \* \* \*

#### § 130.20 [Amended]

7. In § 130.20, paragraph (b)(1) would be amended by removing the citation “§ 130.21(a)” and adding the citation “§ 130.30(a)” in its place.

8. In § 130.50, paragraph (b)(3)(i), the table would be revised to 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, 2002	Oct. 1, 2002– Sept. 30, 2003	Oct. 1, 2003– Sept. 30, 2004	Oct. 1, 2004– Sept. 30, 2005	Beginning Oct. 1, 2005
Rate for inspection, testing, certification or quarantine of animals, animal products or other commodities <sup>3</sup> .	Monday–Saturday and holidays. Sundays .....	\$45.00 59.00	\$46.00 61.00	\$48.00 63.00	\$49.00 65.00	\$51.00 67.00
Rate for commercial airline inspection services <sup>4</sup> .	Monday–Saturday and holidays. Sundays .....	36.00 48.00	37.00 49.00	39.00 51.00	40.00 53.00	41.00 55.00

<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.

\* \* \* \* \*

Done in Washington, DC, this 15th day of April 2002.

**W. Ron DeHaven,**

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

[FR Doc. 02-9827 Filed 4-19-02; 8:45 am]

BILLING CODE 3410-34-U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Chapter I

#### [Summary Notice No. PE-2002-28]

#### Petition for Rulemaking; Summary of Petition Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for rulemaking received; request for comments.

**SUMMARY:** Although not required under part 11 of Title 14, Code of Federal Regulations (14 CFR), this document contains a summary of a petition for rulemaking to amend certain requirements of 14 CFR. While the FAA considers the best course of action on this matter, we believe the public should be made aware of this petition for rulemaking, and we specifically request comments from other aircraft manufacturers who may be experiencing problems similar to those encountered by the petitioner, Airbus. Neither publication of this document nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition. The facts presented in this summary are as presented by the petitioner.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before May 22, 2002.

**ADDRESSES:** Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2002-11705 at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to <http://dms.dot.gov>. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets

Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1-800-647-5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Forest Rawls (202) 267-8033, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Issued in Washington, DC on April 8, 2002.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

#### Petition for Rulemaking

*Docket No.:* FAA-2002-11705.

*Petitioner:* Airbus.

*Section of 14 CFR Affected:* Appendix M to part 121 and Appendix E to part 125 of 14 CFR

*Description of Relief Sought:* The rulemaking implemented by FAA in August of 1997 (62 FR 38362) substantially improved the requirements for recording of up to 88 parameters of flight data for diagnostic use in the event of an accident or serious incident. Most of the improvement in the recording capability did not directly apply to Airbus aircraft, however, because almost all of the additional parameters required by FAA had long been incorporated into the standard Airbus product specification. However, in a few cases, the very detailed specifications adopted in the FAA rule differed slightly from the recording parameters that had been implemented in Airbus aircraft. In that rulemaking, it was clearly stated that FAA had tailored that rule to avoid major equipment redesign or retrofits. The new requirements are to be met in stages, with the first 34 parameters being treated initially (at the next heavy maintenance check after August 18, 1999, but no later than August 20, 2001), followed by parameters 35 through 57 (for aircraft manufactured after August 18, 2000, upon delivery), and finally parameters 58 through 88 (for aircraft manufactured after August 19, 2002, upon delivery).

On August 24, 1999 (64 FR 46117), FAA amended this digital flight data recorder (DFDR) resolution recording requirements for several parameters for Airbus airplanes. The amendments addressed only the first 34 parameters. Similarly, on August 24, 2000, the FAA revised the DFDR regulations to accommodate several technical changes related to parameters 35 through 57 for Airbus.

Airbus has now completed its audit of compliance requirements for Parameters 58 through 88, and finds three specific technical issues of compliance for which it seeks rule changes.

Specifically, Airbus seeks minor technical changes as specified herein to the recording requirements for parameter 83 (cockpit trim control input position—roll), parameter 84 (cockpit trim control input position—yaw), and parameter 88 (cockpit flight control input forces—rudder).

Airbus notes that the FAA, in adopting the new DFDR recording resolution requirements did not intend to require equipment redesign or retrofit. The cockpit trim position recording specification changes that are requested would be implemented in order to comply with that aim. These sensors have been installed on Airbus aircraft for many years, and it adds no safety or analytic benefit that Airbus can identify to replace these sensors with ones that are literally compliant with the regulatory specifications. The resolution deviations sought are small, and fully consistent with the smallest increment employed in the parameters employed for actual control of the respective flight control surfaces.

With regard to rudder pedal forces, the Airbus implementation requires a sensor that sums the rudder pedal forces from the cockpit pedals, these having no independent breakaway capability. Therefore, though the force is accurately measured, the actual force applied at each pedal varies somewhat with pedal ergonomics, adjusted to account for size differences from person to person, and also with actual pedal position. However, this shortfall in accuracy does not prohibit detailed and continuous high-resolution determination of the force that is applied to the rudder pedals so as to permit diagnosis of the source of movement of the pedals themselves (parameter 14) and the flight control surface (parameter 17). In fact, the inaccuracy due to pedal position can be corrected based on the measurement of parameter 14, leaving only the inaccuracy resulting from ergonomic adjustment. If the ergonomic adjustment is known (based on post-accident aircraft examination, for example), it, too, can be corrected.

Specifically, changes are sought to the recording requirements for the following parameters as contained in Appendix M to part 121 and Appendix E to part 125 of 14 CFR:

For A310 and A300-6 series aircraft. Parameter 83, cockpit trim control input position-roll: Required to be resolved to 0.028 degrees (0.2% of operational range of  $\pm 7$  degrees) but is implemented with