June 24, 2014

Re: Docket No. APHIS-2009-0047
Fee Increases for Overtime Services

The Society of American Florists (SAF) and AmericanHort submit the following joint comments on behalf of the floriculture and nursery industry in the U.S., in response to the proposed rule, “Fee Increases for Overtime Services,” as published in the April 25, 2014 Federal Register. We thank you for the opportunity to comment.

AmericanHort was formed in 2014, with the consolidation of the American Nursery & Landscape Association (ANLA) and OFA—The Association of Horticultural Professionals and their 220 years’ legacy of service to American horticulture. AmericanHort membership is comprised of nearly 16,000 member and affiliate businesses that include nursery and greenhouse growers, garden retailers, landscape designers and installers, and suppliers to the industry. A number of firms are engaged in more than one of these operations.

SAF, a national trade association representing the floriculture and greenhouse industry, includes 10,000 small business members; growers, wholesalers, retailers, importers and related organizations, located in communities nationwide and abroad in. The industry produces and sells cut flowers and foliage, foliage plants, potted flowering plants, and bedding plants, which compete in the international marketplace.

The floriculture and nursery industry represents a vibrant and economically very significant part of American agriculture. Floriculture and nursery crops are the third-largest domestic U.S. crop in value, ahead of wheat, tobacco and cotton, and outranked only by corn and soybeans. Nursery and floriculture crops represent about 15 percent of total U.S. crop receipts, and comprise over $15 billion of the U.S. farmgate economy.
GENERAL COMMENTS

We fully understand the need to periodically update the overtime rates charged to maintain cost recovery for providing overtime services. However, we have concerns regarding this proposal in light of the impact it would have on our industry given the current rules in place at the ports. Furthermore, we are not convinced that the level of increase is reflective of actual costs.

Most, if not all, of the ports require that overtime be requested and paid in a minimum of four-hour blocks, whether or not all four hours are actually needed or used. The current proposal would be acceptable to our industry if, and only if, APHIS (and if appropriate CBP) could give the industry the flexibility to request and pay for only the amount of time actually needed for services. For example, inspection and clearance of a shipment simply requiring two hours of overtime should only be billed at the actual time required – two hours, rather than billing the customer for the full four-hour minimum.

It is our understanding that some of challenges the agency has in including greater flexibility in assessment of overtime stems from agreements negotiated with the inspectors’ union. While these negotiations have a direct impact on industry costs the industry does not have a seat at the table to represent stakeholder needs. It is not appropriate that industry be held responsible to the costs associated with arbitrary timeframes imposed by those negotiations, rather the industry should be charged for actual work done and time spent.

Since the last major overhaul of the overtime fee structure in 2002, costs have undoubtedly gone up and we support the need to maintain a revenue neutral program, as long those increases are reflective of actual work and effort. Most of the overtime increases range from 45-55%. Despite the 12-year gap, that is a very significant jump. Much of the analysis done to justify the overtime costs was based on employee costs. However, when one evaluates salary increases since 2002 (GS-11 – Rest of the US – $45,285) with 2014 (GS-11 – Rest of the US – $57,982) you find an increase of only 28%. We recognize that salaries are not the only factor impacting costs but they do serve as a useful benchmark. Another useful benchmark is the Consumer Price Index (CPI), meant to be generally reflective of increased costs and inflation. From May, 2002 to May, 2014 the CPI increased by just over 32%. Overtime fee increases of 45-55% not only appear unwarranted but from a business perspective are likely untenable.

Greater responsiveness to current industry practices is needed, as well. At the port in Atlanta, importers cannot add weekend overtime past the 3 pm Friday deadline. However, the busiest importing days, based on industry need and long-established industry practices, include Saturday and Sunday. It is impossible to predict with certainty by 3 pm on Friday how much overtime actually will be required over the weekend. Our industry imports highly perishable products – in this case, plant cuttings or live plants. Yet the Port
of Atlanta is completely ignoring established industry practices, which require inspections on Saturday and Sunday.

CONCLUSION

In short, we can support an increase in overtime fees, and understand the necessity of retaining a “revenue-neutral” system. However, we oppose, what appears to be exorbitant increases and we stress the need for increased flexibility rather than arbitrary overtime minimums (e.g., 4 hour blocks). We believe the process would be much improved if industry was included in the union negotiation process and industry practices had a role in final agreements. Overtime increases should be based on comprehensive evaluations with stakeholder involvement before final determinations are made. Furthermore, we request that no increases be imposed until the Atlanta requirement of requesting overtime by 3 pm on Friday be modified to reflect industry realities. Obviously, this change should be made at any other port as applicable.

We very much appreciate the commitment of APHIS to support trade while preventing new incursions of pests and pathogens and the opportunity to continue to provide comments to APHIS on this issue, which is of very high importance to our industry. We ask, of course, that our comments and stated concerns be addressed directly.

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