



Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
www.hoganlovells.com

MEMORANDUM

From: Gary Jay Kushner
Brian D. Eyink

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RE: FSIS Releases Final Rule Expanding Inspectors' Compensable Activities

Today, the Food Safety and Inspection Service (FSIS) will publish a final rule, *Additional Changes to the Schedule of Operations Regulations*, expanding FSIS inspectors' standard 8-hour workday to include time needed to prepare the inspection station, retrieve and return lot tally sheets, sharpen knives, and conduct duties scheduled by FSIS, including administrative activities. Establishments receiving inspection will need to incorporate time for these activities into their schedules of operations or incur overtime inspection charges. The rule will take effect 60 days after it is published; an advance copy of the final rule is attached. This expansion of an inspector's compensable activities comes on the heels of last year's final rule requiring that donning and doffing activities be included in an inspector's standard tour of duty. 1/

Under the final rule, and in light of last year's donning and doffing rule, poultry and meat establishments will have to allot time for on-line inspectors to perform the following activities, which vary to reflect the activities required for poultry and meat inspection:

Poultry Establishments:

- Don required gear and walk to the inspection station 2/
- Pick up lot tally sheets
- Walk from the inspection station and doff required gear
- Complete time and attendance sheets

Meat Establishments:

- Don required gear and walk to the inspection station
- Prepare the inspection station
- Walk from the inspection station and doff required gear
- Complete time and attendance sheets
- Sharpen knives (if a knife sharpening service is not provided by the establishment)

FSIS supervisors will conduct time measurements to determine how much time should be allotted for these activities, and the agency expects the additional activities, aside from knife sharpening, will

1/ See HL Memorandum, FSIS Issues Memorandum Explaining New Donning and Doffing Procedures (June 30, 2011).

2/ Note that donning, doffing, and walking activities before and after the lunch break are also considered part of the standard workday.

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take at most three minutes per day. FSIS has determined that inspectors will require one minute per day to complete time and attendance sheets. If a meat establishment does not provide knife sharpening services, the establishment must provide an inspector one 15-minute knife-sharpening period per week if the inspector is on the line three or fewer days per week or two 15-minute knife-sharpening periods per week if the inspector is on the line four or more days per week.

Consistent with the approach taken in incorporating donning and doffing activities into an inspector's standard workday, FSIS has determined that these activities are "integral and indispensable to the principal work of inspection program personnel" and must be included as part of the standard workday. The agency rejected a comment that time spent on these activities should be disregarded as *de minimus*.

FSIS states in the final rule that inspectors will be instructed to complete these activities to the extent possible during any unused time in a 15-minute overtime block ^{3/} or during any part of the work day the inspector is not on the line. Although the activities will count toward an inspector's tour of duty, the agency will not count time spent on these activities against the maximum ten hours per work day an inspector may spend on the slaughter line.

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We will continue to monitor this and other regulatory developments related to establishments' schedules of operations. Please do not hesitate to contact us with any questions.

^{3/} Overtime inspection is billed in 15 minute increments regardless of how many of those 15 minutes are required.