

GAO

Report to the Chairman, Subcommittee  
on Trade, and the Chairman,  
Subcommittee on Oversight, Committee  
on Ways and Means, House of  
Representatives

June 1991

# CUSTOMS SERVICE

## 1911 Act Governing Overtime Is Outdated



---

---



United States  
General Accounting Office  
Washington, D.C. 20548

---

**General Government Division**

B-241811

June 14, 1991

The Honorable Sam M. Gibbons  
Chairman, Subcommittee on Trade  
Committee on Ways and Means

The Honorable J. J. Pickle  
Chairman, Subcommittee on Oversight  
Committee on Ways and Means  
House of Representatives

This report responds to your request that we review the Customs Service's use of inspectional overtime. We are reporting on the results of visits to five Customs ports; our analysis of Customs' national overtime database; and our assessment of the relevance of the 1911 Act, which created Customs' inspectional overtime, in today's environment.

Copies of this report are being sent to the Secretary of the Treasury, the Commissioner of Customs, and other interested parties. Copies will be made available to others upon request.

Other major contributors to this report are listed in appendix V. Please contact me at (202) 275-8389 if you have any questions concerning this report.

A handwritten signature in cursive script that reads 'Lowell Dodge'.

Lowell Dodge  
Director, Administration  
of Justice Issues

---

# Executive Summary

---

## Purpose

International travelers and imported merchandise entering the United States are subject to U.S. Customs Service inspection upon arrival. Because of the growing amounts of overtime, the Chairman, Subcommittee on Trade, and the Chairman, Subcommittee on Oversight, House Committee on Ways and Means, asked GAO to determine whether Customs is managing overtime for inspectional services in the most efficient way.

---

## Background

In the Act of February 13, 1911, Congress enacted overtime pay provisions for Customs inspectors. Major justifications for the Act, including its 1920 amendments were (1) that the government would not have to pay for the overtime but rather the requester of the services would bear the burden and (2) the inspectors' long work hours "at all times and in all weathers." Current overtime provisions for Customs inspectors are essentially those provided in the 1911 Act, as amended, and overtime paid under these provisions is commonly referred to as "1911 Act overtime." (See pp. 10 and 11.)

On Sundays, work is compensated at a rate of 2 days regular pay. On holidays, the compensation is the total of 2 days pay plus the hourly rate for the period of time worked on the holiday. No minimum period of work is required to qualify for the premium—overtime—pay. Thus, inspectors can work as little as 1 minute and receive 2 days pay for Sunday work and 2 days plus the hourly rate for holiday work. For overtime work during the week, the minimum compensation is 4 to 12 hours pay, depending on whether the inspector works late, comes in early, or is called back to work. In 1979, Congress capped individual overtime earnings at \$20,000 and in 1983 at \$25,000 per year. (See pp. 53 and 54.)

Historically, the private sector reimbursed Customs directly for overtime services. This changed with enactment of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, which established user fees for processing passengers and cargo. These user fees are to be paid regardless of whether overtime is worked. Customs' inspectional overtime expenses are reimbursed from the COBRA user fees. (See p. 12.)

Customs port officials bear the primary responsibility for implementing overtime. Customs headquarters officials allow them considerable discretion in establishing local policies and procedures under the guidance of headquarters directives, Customs regulations, and union agreements. Thus, local policies and procedures can vary widely. (See pp. 16 and 21.)

GAO examined Customs' overtime policies, procedures, and national database on the use and cost of overtime. GAO also visited five ports of various sizes, types, and geographic locations and talked with Customs management officials, employee representatives, and members of the importing community. (See pp. 12-15.)

---

## Results in Brief

In recent years, overtime pay to Customs inspectors increased from \$56.8 million in fiscal year 1985 to \$102.8 million in fiscal year 1990. GAO believes an important contributing cause to this growth has been management's (1) focus on ensuring that inspectors not exceed the \$25,000 annual cap and (2) disregard of the individual overtime assignments that build to the cap. GAO could not determine from Customs' records how much could be saved if Customs management had done a better job of controlling overtime cost.

At the five ports GAO visited, management's inattention to individual overtime assignments has resulted in vulnerability to fraud and abuse. GAO found internal controls weaknesses that resulted in errors in preparing overtime documentation, certifying payments, and entering data in the overtime system. GAO also found examples of improper time card certifications and duplicate payments.

Inattention to managing overtime assignments resulted in waste through inefficient use of overtime. Nationally, GAO found that in fiscal year 1989, 45 percent of overtime assignments that involved calling back an inspector after a regular work period was for 1 hour or less. A recent internal task force estimated that Customs could save roughly \$22 million by eliminating overtime pay for work completed within 2 hours before or after the end of the regular workday by better aligning its work schedule with its workload. GAO noted that at the five ports it visited, management paid little attention to opportunities for avoiding overtime by adjusting shifts or using staggered hours to schedule work.

The 1911 Act overtime provisions hinder the efficient management of overtime, and the special payments provided are premised on some conditions that no longer exist. For example, the provision that inspectors receive 2 days pay for any amount of time worked on a Sunday and up to 3 days pay for holiday work creates a disincentive for the use of shifts or staggered work hours. The special payments were set up when it was less typical for ports to operate outside of regular hours, especially on Sundays and holidays. Thus, much of the rationale for the special 1911 Act payments is no longer relevant.

GAO agrees with the concept that inspectors should be paid extra for working overtime. However, GAO believes that the 1911 Act should be revised so that inspector overtime pay is more directly linked to actual hours worked and that Customs management should focus on achieving a more efficient use of overtime.

---

## Principal Findings

---

### Management Should Focus on More Efficient Use of Overtime

Few of the Customs officials with whom GAO spoke were concerned about the cost of overtime. Customs officials said their primary concerns were quickly processing pay-related documents so inspectors would receive pay promptly and ensuring that no inspector exceeded the \$25,000 annual cap. (See p. 19.)

This same attitude was found by the Customs task force, which reported that very few managers were concerned about the high cost of overtime and that it was obvious that overtime was being managed only from the perspective of not exceeding the cap. The report noted that, in some ports where Customs inspectors were about to reach the cap, work was curtailed and/or part-time help was used to ensure that the cap was not exceeded, but once the new fiscal year began, these practices were discontinued and earlier practices were reinstated. (See p. 28.)

In analyzing three 2-week pay periods at five ports, GAO found numerous instances of internal controls weaknesses related to the use and payment of overtime. For example, GAO reviewed 58 source documents in Atlanta and found 80 errors, omissions, and inconsistencies. All 58 Atlanta documents contained some type of error, omission, or inconsistency. At the other ports such problems ranged from 28 to 70 for similar numbers of source documents. GAO could not compute a dollar cost to Customs resulting from these errors. But the results clearly indicated that through its inattention to individual overtime assignments, Customs has made itself vulnerable to fraud, waste, and abuse at these ports. (See pp. 16-18.)

Local management's inattention also resulted in waste through inefficient use of overtime. GAO's review of Customs' overtime database showed that, nationally, 23 percent of about 700,000 total overtime assignments in fiscal year 1989 involved calling an inspector back to work after a regular work period had been completed. Moreover, almost

half of these callback assignments involved 1 hour or less of work. Further, almost 33 percent of all fiscal year 1989 weekday overtime assignments occurred within 2 hours of the start or end of the regular workday. Management at the five ports paid little attention to opportunities for avoiding overtime by using such techniques as shifts and staggered hours to schedule work on days other than Sundays and holidays. (See pp. 28 and 29.)

The costliness of the current system can be illustrated by the following:

- Inspector A's regular work hours were 8:00 a.m. to 5:00 p.m. If he were called back at 7:15 p.m. to inspect a commercial vessel's cargo and worked 15 minutes, callback pay provisions in the 1911 Act would guarantee him 8 hours pay. He would be paid \$106.64 for the 15 minutes worked, or an effective rate of \$426.56 per hour compared to his regular hourly pay of \$13.33. (See p. 29.)
- Inspector B was scheduled for Sunday work inspecting arriving passengers at an international airport. He worked 45 minutes. Sunday pay provisions in the 1911 Act guaranteed him 2 days pay. He was paid \$336.32 for the 45 minutes, or an effective rate of \$448.43 per hour compared to his regular hourly pay of \$21.02. (See p. 41.)

The following examples illustrate the effect of individual overtime assignments over a 1-year period:

- Inspector C worked 252 overtime assignments in fiscal year 1989. The average assignment length was 36 minutes. The effective hourly rate paid was \$138.37 as compared to the inspector's regular hourly rate of \$11.71. Inspector C was paid a total of \$20,920.88 in overtime for the year. (See p. 26.)
- Inspector D worked 228 overtime assignments in fiscal year 1989. The average assignment length was 35 minutes. The effective hourly rate paid was \$183.37 compared to the regular hourly rate of \$16.38. Inspector D was paid \$24,379.00 in overtime for the year. (See p. 26.)

Through fiscal year 1990, funds obtained from user fees could only be used to reimburse Customs for overtime. Any surplus went into a special account at the Treasury. In 1990, Congress changed the law. Now, any user fee funds not spent on overtime can be used to hire more inspectors and purchase equipment to enhance services at international airports. This creates an additional incentive to hold down overtime costs. (See pp. 12 and 35.)

The Customs overtime task force proposed several initiatives to better manage overtime use and cost in its 1990 report. Customs has begun implementing some of these initiatives. However, without change to the 1911 Act, Customs will not be able to attain the most efficient use of overtime. (See pp. 35 and 36.)

---

## 1911 Act Is Outdated and Should Be Revised

The intent of the 1911 Act was to compensate inspectors for providing service outside the regular hours of the port. Today, however, some ports are routinely open 24 hours a day, 7 days a week. Also, it is not unusual for some federal employees to work Sundays and/or holidays. (See pp. 38 and 39.)

Notwithstanding the change in conditions, the 1911 Act compensates inspectors who work on a Sunday or holiday with at least 2 days pay. As a result, the 1911 Act hinders the efficient use of shifts and staggered hours to manage overtime costs. (See pp. 40 and 41.)

GAO agrees with the concept that those who work outside normal duty hours and on a Sunday or holiday should be paid extra. However, GAO believes the rationale for the 1911 Act provisions is no longer relevant, that the special payments are far in excess of that which other federal employees receive, and that a compelling case exists for Congress to reevaluate the basis for computing premium pay for inspectors. (See pp. 41 and 42.)

GAO suggests that in revising the 1911 Act, Congress adhere to the principle that, as with other federal employees, inspector pay for overtime hours and Sunday and holiday work should be more directly related to the number of hours actually worked. This, to GAO, is more logical, reasonable, and equitable than the 1911 Act's principle of paying employees for far more hours than they actually work. If Congress should deem that inspectional overtime carries unique burdens and risks, Congress may wish to allow a higher premium for such overtime than for standard Federal Employees Pay Act overtime. Such a premium should still be tied, however, to overtime hours actually worked. (See pp. 45 and 46.)

The issue of pay for overtime and Sunday and holiday work is not new and neither are the arguments that will be posed against changing the Act's provisions. Principal among these arguments is that premium pay practices must be considered in conjunction with such factors as the level of base salaries, retirement system coverage, and sources of funds



used to make the premium payments. GAO views all of these considerations as being outside the question of how much employees should fairly be paid when they are required to work outside the normal workday. Such factors are legitimate concerns of a pay system, but, as with premium pay, each should be considered on its own merits. (See p. 46.)

---

### Recommendation to Congress

GAO recommends that Congress reevaluate the basis for computing premium pay for Customs inspectors and make such revisions to the 1911 Act as are necessary to ensure that hours paid bear a more direct relationship to hours worked. (See p. 46.)

---

### Recommendations to the Agency

GAO makes several recommendations designed to improve Customs' administration of overtime. (See pp. 22, 23, 36, and 37.)

---

### Agency Comments

GAO discussed the contents of this report with officials of Customs and of the National Treasury Employees Union, who each provided both oral and written comments in response to those discussions. The comments are addressed in the text where appropriate, and the written comments are contained in appendixes III and IV. (See pp. 55-72.) At the request of one of the requesters, GAO did not provide these officials with a draft of the report for official review and comment.

Customs officials generally agreed with the facts presented. They pointed out that their overtime task force addressed many of GAO's concerns regarding overtime management but also expressed the opinion that the 1911 Act should stay intact pending a study of inspector pay. GAO did not examine the overall pay package but continues to believe that each component, such as overtime, should be considered on its own merits. (See pp. 55-60.)

The National Treasury Employees Union provided comments that to a large extent describe advantages and disadvantages of 1911 Act overtime to inspectors, Customs as an agency, the traveling public, and the importing community. Most of these are included in the text of the report. (See pp. 61-72.)

---

# Contents

---

<b>Executive Summary</b>		2
<b>Chapter 1</b>		10
<b>Introduction</b>	Background	10
	Customs Overtime	10
	Objective, Scope, and Methodology	12
<b>Chapter 2</b>		16
<b>Customs Needs to Address Administrative Weaknesses in Overtime System</b>	Internal Controls Over Overtime System Weak	16
	Efforts Taken by Customs to Improve Overtime Controls	21
	Conclusions	22
	Recommendations to the Secretary of the Treasury	22
	Agency Comments	23
<b>Chapter 3</b>		24
<b>Customs Can Improve Its Management of Overtime Costs</b>	Factors Affecting Overtime Costs	24
	Overtime Pay Expensive for Hours Worked	25
	Inefficient Practices That Drove Up Overtime Costs	27
	Expansion of Activities Eligible for Overtime Has Driven Up Costs	34
	Other Significant Concerns Cited in Customs Overtime Task Force Report	35
	Conclusions	35
	Recommendations to the Secretary of the Treasury	36
	Agency Comments	37
<b>Chapter 4</b>		38
<b>Overtime Provisions of 1911 Act Are Outdated</b>	Conditions Have Changed Since 1911	38
	Tying Hours Paid to Hours Worked	41
	Advantages and Disadvantages of 1911 Act Overtime as Expressed by Customs Inspectors and Management, NTEU Officials, and Others	43
	Conclusions	45
	Recommendation to Congress	46
	Agency Comments	46
<b>Appendixes</b>	Appendix I: Basic Rules of Customs Overtime and Comparison to FEPA	48

---

---

Contents

---

Appendix II: Legislative History of Customs Overtime	50
Appendix III: Comments From the U.S. Customs Service	55
Appendix IV: Comments From the National Treasury Employees Union	61
Appendix V: Major Contributors to This Report	73

---

**Tables**

Table 2.1: Number of Sampled Worktickets With Errors From Three Selected Pay Periods	17
Table 2.2: Internal Control Deficiencies in Sampled Worktickets From Three Selected Pay Periods	18
Table 3.1: Comparison of Time Worked to Compensation for 16 Inspectors in Fiscal Year 1989	26
Table 4.1: Overtime Paid for Sundays/Holidays and Weekdays During Fiscal Year 1989	39
Table 4.2: Examples of 1911 Act Sunday/Holiday Rates' Impact on Pay	41
Table 4.3: Examples of 1911 Act Pay Compared to FEPA Pay	42
Table I.1: Comparison of FEPA and 1911 Act Weekday, Sunday, and Holiday Overtime Pay Rates	48

---

**Figures**

Figure 3.1: Percent of Workforce Earning Overtime by Overtime Salary Range in Fiscal Year 1989	27
Figure 3.2: Length of Callback Assignments in Fiscal Year 1989	31
Figure 4.1: Hours Worked on Sundays/Holidays by Type of Carrier Serviced, Fiscal Year 1989	39
Figure 4.2: Duration of Sunday/Holiday Work for Fiscal Year 1989 (Based on worktickets)	40

---

**Abbreviations**

COBRA	Consolidated Omnibus Budget Reconciliation Act of 1985
FEPA	Federal Employees Pay Act
NTEU	National Treasury Employees Union
OBRA	Omnibus Budget Reconciliation Act of 1987

# Introduction

---

International travelers and imported merchandise entering the United States are subject to U.S. Customs Service inspection upon arrival. To handle the volume of cargo and passengers arriving in the United States, Customs inspectors historically have worked overtime.

---

## Background

Customs is a decentralized agency with field operations in 7 regions, 45 districts and areas, and about 300 ports. International passengers and all cargo imported into the United States must enter through a Customs port.

When a ship, plane, train, car, or truck crosses a border into the United States and arrives at a U.S. port, passengers and cargo are subject to Customs inspection. Such inspections can include questioning and/or physically examining passengers and their luggage for nondeclared items, contraband, etc. Cargo inspections involve physically opening some cargo and examining the contents for (1) improper classification or marking that would understate the value of goods for duty purposes, (2) contraband, and (3) other unlawful imports.

Customs' mission is to collect revenue on imports and to prevent improper entry of goods. As part of this mission, Customs is to

- assess, collect, and protect revenue due the United States from import duties, taxes, and fees;
- control, regulate, and facilitate carriers, persons, and articles entering or departing the United States to ensure compliance with laws and regulations; and
- enforce all statutes, regulations, and rulings governing the admission of articles into the United States.

Customs' mission has been expanded over the years. Customs now assists in administering and enforcing for about 40 agencies some 400 legal provisions aimed at protecting U.S. agriculture, business, and public health.

---

## Customs Overtime

Agencies other than Customs—such as the Immigration and Naturalization Service and the Animal and Plant Health Inspection Service—also process international travelers and merchandise. These federal inspection agencies' overtime compensation is governed by special laws and regulations partially modeled after the Customs overtime law, which

was the first enacted. Most other federal employees' overtime is governed either by the Federal Employees Pay Act (FEPA) of 1945, as amended, 5 U.S.C. 5541-5549 (1988), or the Fair Labor Standards Act, as amended, 29 U.S.C. 201 et seq. (1988). Additional information on special pay rates for inspectors and FEPA requirements can be found in two earlier GAO reports<sup>1</sup> and in appendix I.

As early as 1799, federal law required vessel owners to purchase a special license, with a portion of the fee being used to pay inspectors working overtime. Current overtime provisions for Customs inspectors, codified in 19 U.S.C. 261, 267, are essentially those provided in the Act of February 13, 1911 (36 Stat. 899, 901.) Although the provisions have been amended and expanded over the years, the provisions often are referred to as "1911 Act overtime." Our use of the term Customs inspectors includes all Customs personnel earning 1911 Act overtime.

In passing the 1911 Act and its 1920 amendments, Congress provided separate compensation rates for Customs inspectors in part because the private sector reimbursed the federal government for the cost of the overtime work. In addition, inspectors were considered to be underpaid, and they worked longer than usual hours "at all times and in all weathers." Customs overtime, for the most part, occurred at night, was frequently unplanned, and was for the convenience of the private sector. Appendix II provides a more detailed legislative history of Customs' overtime provisions.

Customs inspectors working overtime are paid for minimum periods of time rather than for the actual time worked. Generally, inspectors receive 4 hours of regular pay for each 2-hour period of overtime worked, but they may also receive 4 hours of regular pay if the overtime period is as short as 1 hour. On Sundays, any time worked up to 8 hours is compensated at a rate of 16 hours regular pay. On holidays, inspectors receive an automatic 16 hours pay plus their regular pay for the actual number of hours worked on the holiday. Customs overtime is most expensive on Sundays, holidays, and weeknight callback assignments. An inspector can work 1 minute on a Sunday or holiday and receive 2 days pay. On a weeknight, an inspector called back to work after his normal hours can receive a minimum of 4 to 12 hours of regular pay depending upon the start and stop times.

---

<sup>1</sup>Premium Pay for Federal Inspectors at U.S. Ports of Entry (GAO/GGD-74-91, Feb. 14, 1975) and Observations on Overtime, Sunday, and Holiday Compensation for the U.S. Customs Service, Immigration and Naturalization Service, and the Animal and Plant Health Inspection Service Inspectors (GAO/GGD-85-5, Oct. 16, 1984).

Customs' normal workday hours are 8:00 a.m. to 5:00 p.m. In some locations, the workday has been adjusted to match peak traffic periods by using adjusted shifts or staggered work hours. Customs' workweek is Monday through Saturday. Customs inspectors work 5-day schedules, getting Sundays and another day off. Generally, there is little difference in inspector duties during regular and overtime hours.

The Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, ended the long-standing practice of direct reimbursement by the private sector requesters of Customs overtime services. COBRA established Customs user fees to be paid by aircraft and vessel passengers and cargo carriers. These user fees are not based on the amount of overtime worked and, in fact, spread the cost of Customs overtime between those who require and use Customs' overtime services and those who do not. Some passengers—such as those from Canada, Mexico, and certain islands—are exempted from COBRA user fees.

User fee collections are deposited in a special Treasury fund from which Customs 1911 Act overtime expenses are reimbursed. Until the Customs and Trade Act of 1990 was enacted, excess collections were returned to a user fee account in the Treasury. Beginning in fiscal year 1991, Customs can use excess collections in the user fee account to hire additional full- and part-time inspectors and to procure equipment to enhance services at international airports. The 1990 act also created a \$30 million reserve in case overtime costs should exceed COBRA collections.

## Objective, Scope, and Methodology

Because of the increasing amount of overtime work, the Chairman, Subcommittee on Trade, and the Chairman, Subcommittee on Oversight, House Committee on Ways and Means, asked us to undertake a review of Customs' overtime practices relating to passenger and commercial cargo inspections. Our objective was to determine if Customs is managing inspectional overtime in the most efficient manner. Overtime under FEPA was, therefore, beyond the scope of this report.

We judgmentally selected five ports for detailed work—Atlanta; Savannah; El Paso, Tex.; Seattle; and Pembina, N. Dak. These ports were chosen because they represent a variety in terms of types (i.e., air, sea, land, and/or border), sizes, and geographic dispersion. Given the approximately 300 Customs ports, it was not feasible for us to do detailed work at a sufficient number of randomly selected ports. Therefore, our findings from the five ports cannot be generalized to all of Customs.

The five ports we visited included major airports, major seaports on both the East and West Coasts, and land borders with both Mexico and Canada. Four of the ports ranked in the top 55 ports in fiscal year 1989 overtime costs. In total, the five ports accounted for 187,982 hours (6.3 percent) and \$6,083,632 (6.1 percent) of the total hours and costs, respectively, of overtime in fiscal year 1989.

One component of our review involved analyzing Customs' centralized database, which contains data on Customs employees who work inspectional overtime. Our analyses were designed to determine how efficiently Customs is managing overtime. To do so, we generated the following information—which is not routinely generated by Customs—from Customs' national overtime database: (1) differences in overtime use among the various Customs regions, districts, and ports; (2) overtime use by inspectors at different grade levels; (3) patterns of staffing and overtime use; and (4) potential cases of overtime overpayment.

From the national overtime database, we computed summary information for fiscal years 1985 through 1990. This summary information is based on "worktickets," which are basically time and attendance records for Customs' inspectional overtime system. The overtime system is separate from the regular pay system. One workticket is usually prepared for each overtime assignment. However, in some instances, more than one workticket is used to show one overtime assignment. For example, in fiscal year 1989 one overtime assignment was shown on one workticket for about 86 percent of the 752,422 worktickets.

In computing the summary information for fiscal years 1985 through 1990, we also included the database records, which showed adjustments to the dollar amounts on worktickets. These adjustments are entered into the database to correct an overpayment or underpayment that is detected on a workticket already entered into the database.

We used fiscal year 1989 data from the national database for our detailed analyses of specific patterns of overtime use because it was the last full year of data available when we began this work in December 1989. We used fiscal year 1985 through 1990 summary data to observe trends. We eliminated those cases not involving payments of 1911 Act overtime. For our detailed analysis of specific patterns of overtime use for fiscal year 1989, we deleted cases that contained inconsistent information. The latter included instances where the database showed that (1) the same employee worked multiple overlapping overtime periods, (2) the type of overtime payment made was inappropriate as to the date

and time the overtime was worked, and (3) the same overtime assignment number was given to multiple worktickets.

Our final set of national data consisted of 671,966 overtime assignments worked during fiscal year 1989. We did not include adjustments in the input data for these analyses because it was not possible to reliably match adjustments to the appropriate worktickets. In fiscal year 1989, there were about 2,250 adjustments to worktickets. The net effect of the adjustments was to increase the total amount of overtime paid for the year by \$69,539. Therefore, by omitting the adjustments from our analysis, we have made our results conservative—i.e., we are more likely to be understating than overstating the specific patterns and trends.

To check the accuracy of data in the national database, we randomly selected, from fiscal year 1989, 60 worktickets in each of four of the ports visited (Atlanta, Seattle, Savannah, Pembina). We selected 300 worktickets in El Paso.<sup>2</sup> We then compared the information on the worktickets against the data in the national database. Statistically, we are 95 percent confident that the error rate in the national database is less than 6 percent for Pembina and Savannah; the error rates for Atlanta and Seattle are between .4 and 11 percent; and for El Paso the error rate is between 8 and 16 percent. Because we limited our work to five ports, these results on data errors cannot be generalized to the entire national database of about 300 ports.

A second component of our study involved examining worktickets to determine compliance with overtime regulations. At each of the five ports, we took a random sample, which varied from 49 to 78 worktickets, from within three randomly selected pay periods.<sup>3</sup> The worktickets were reviewed for compliance with Customs and individual port regulations and directives as well as federal overtime compensation laws for scheduling, verifying, paying, reporting, and managing overtime. The findings from our compliance review cannot be generalized beyond the ports and time periods that we examined.

A third component of our study involved examining all overtime assignments within the three randomly selected pay periods at the five ports

---

<sup>2</sup>In El Paso, the error rate found in the original 60 was higher than at the other ports. We selected additional cases in order to estimate more precisely the magnitude of errors in the database.

<sup>3</sup>The number of worktickets reviewed differs because of the random sampling procedure used. This procedure involved generating a list of 500 random workticket numbers and a list of 3 random pay periods. All worktickets among the 500 that fell into the three pay periods were included in the compliance review.



to determine the reasonableness of overtime scheduling. We discussed justifications for overtime scheduling with port, district, and regional officials where appropriate. These overtime assignments were also reviewed for adherence to internal controls standards set forth by the Comptroller General and Customs' own policies and procedures. These findings also cannot be generalized beyond the ports and time periods that we examined.

The final component of our study involved doing structured telephone interviews with Customs officials in 38 additional ports. The objective was to broaden our perspective of Customs' inspectional overtime activities. We randomly selected 38 ports from the 61 ports that Customs' regional offices had evaluated and reported on in 1988 and 1989. These peer review reports were intended to provide Customs management with feedback on how well overtime is managed in individual ports.

At Customs headquarters, we obtained Customs documents relating to overtime regulations, port statistics, and copies of peer review reports for ports submitting them. We interviewed Customs officials, attorneys, representatives from the Office of Management and Budget, industry associations, and the president of the National Treasury Employees Union (NTEU). We also analyzed information from internal studies done by Treasury's Office of the Inspector General, Customs' Office of Workforce Effectiveness and Development, and Customs' peer review reports. We reviewed the final report and other documents associated with a review by a Customs task force on 1911 Act overtime management. This report is referred to hereinafter as the "Customs overtime task force report."

At the ports visited, we interviewed Customs district and port directors, some regional Customs officials, members of the importing community—including airport and seaport officials, and the representatives of NTEU to obtain their views on overtime management, overtime use, and the quality of services being provided.

We did our work from December 1989 to April 1991 in accordance with generally accepted government auditing standards. We discussed the facts developed and the related issues with Customs and NTEU officials. At the request of one of the requesters, we did not provide Customs or NTEU with a draft report for review and comment. Nevertheless, both Customs and NTEU provided written comments that we incorporated into this report where appropriate. Their written comments appear in appendixes III and IV.

# Customs Needs to Address Administrative Weaknesses in Overtime System

Customs has not fully complied with provisions in the regulations or its own procedures governing the use and payment of overtime for inspectional services. As overtime is currently managed at the five ports we visited, Customs is vulnerable to fraud, waste, and abuse. We found problems with the day-to-day management of overtime at these ports, including weak internal controls over the workticket system. We also found errors in preparing the worktickets, certifying them for payment, and entering data in the overtime system.

Customs port officials bear the primary responsibility for implementing overtime. Customs headquarters officials allow them considerable discretion in establishing local policies and procedures under the guidance of headquarters directives, Customs regulations, and union agreements. Thus, local policies and procedures can vary widely.

In 1988, Customs headquarters instituted management reviews (peer reviews) of port overtime policies and procedures as a way of monitoring port activities, but these have had limited value because they were considered advisory, there was infrequent follow-up on recommendations, and their distribution was limited.

---

## Internal Controls Over Overtime System Weak

At each of the five ports we visited, we reviewed a random sample of worktickets from three randomly selected pay periods to determine whether they complied with the 1911 Act, regulations, and Customs procedures as well as with generally accepted federal standards for internal controls. We reviewed a varying number of worktickets at the 5 ports, ranging from 49 in Savannah to 78 in Seattle.

---

## Worktickets Contained Errors

To the extent possible, we determined whether the worktickets were complete, filled out properly, and approved by a supervisor. As shown in table 2.1, for example, in Atlanta we reviewed 58 source documents called "worktickets" and found 80 errors, omissions, and inconsistencies in them. None of the 58 were error-free. At the port of Pembina, we checked 55 worktickets; 13 were error-free, but the remaining 42 worktickets contained 70 errors. Twenty-seven of these 70 errors were contained on 9 worktickets.

**Table 2.1: Number of Sampled Worktickets With Errors From Three Selected Pay Periods**

Number of worktickets with	Customs ports				
	Atlanta	El Paso	Pembina	Savannah	Seattle
0 errors	0	34	13	26	32
1 error	40	22	23	17	42
2 errors	14	3	10	6	3
3 errors	4	0	9	0	1
<b>No. of worktickets reviewed</b>	<b>58</b>	<b>59</b>	<b>55</b>	<b>49</b>	<b>78</b>
<b>Total no. of errors, omissions, inconsistencies</b>	<b>80</b>	<b>28</b>	<b>70</b>	<b>29</b>	<b>51</b>

## Workticket Preparation Deficiencies

Customs inspectors are supposed to fill out a workticket showing the details of each overtime assignment that has been completed, according to guidance for the workticket process provided in detail in Customs' Issuance System Workticket Handbook. The inspector and supervisor or assigning officer are then to certify by signature that the assignment was worked and that all information is correct. The workticket has data fields, such as the start and stop time, without which the overtime pay cannot be calculated; the customer (e.g., airline) serviced; and service codes for such things as type of aircraft, vessel, or vehicle. A Customs port or contract employee enters the information into the national overtime database using a remote computer terminal. Overtime calculations of compensable hours and pay are made from the national database by Customs' National Finance Center in Indianapolis. This system is separate from Customs' regular payroll system.

At each port, we discovered internal control deficiencies that raised questions about the appropriateness of some overtime payments. We found worktickets that (1) were not certified by a supervisor, (2) were approved by the person who worked the overtime, (3) were improperly completed or altered, and (4) showed incorrect start and stop times for assignments. Table 2.2 shows that in Atlanta, for example, there were a total of 66 internal control deficiencies on 58 worktickets reviewed. At the other four ports, the number of deficiencies ranged from 13 deficiencies on 78 worktickets in Seattle to 44 deficiencies on 55 worktickets in Pembina.

**Table 2.2: Internal Control Deficiencies in Sampled Worktickets From Three Selected Pay Periods**

Deficiency	Customs ports				
	Atlanta (N=58) <sup>a</sup>	El Paso (N=59) <sup>a</sup>	Pembina (N=55) <sup>a</sup>	Savannah (N=49) <sup>a</sup>	Seattle (N=78) <sup>a</sup>
Missing certification	1	0	1	0	3
Self-certification	1	7	27	5	0
Improper preparation	60	5	13	8	5
Incorrect time or date	4	5	3	6	5
<b>Total deficiencies</b>	<b>66</b>	<b>17</b>	<b>44</b>	<b>19</b>	<b>13</b>

<sup>a</sup>N equals the number of worktickets reviewed at each port.

### Missing Certification

At three of the five ports, we found instances where there was no certification to indicate a supervisor had approved the overtime. Customs' Workticket Handbook requires such supervisory approval, and the National Finance Center workticket system is not supposed to accept an uncertified workticket.

In Seattle, we found an additional 281 worktickets out of 26,534 worktickets totaling \$33,532 from fiscal years 1989 and 1990 that were missing supervisor certifications. The Customs supervisor said he was not familiar with the handbook's provisions for certifications that require supervisory approval of the workticket indicated by a signature. For worktickets missing the supervisor's approval, the supervisor's name had nonetheless been keyed in when the data were entered into the system. According to officials at the National Finance Center, the system erases the name of the individual authorizing and entering the data. Therefore, we could not determine who in Seattle was responsible for entering the unapproved worktickets.

### Self-Certification

From the worktickets in our sample, we found at least one instance in four of the five ports where the inspectors who worked overtime had approved their own worktickets. Seattle had no such instances. In Pembina, 27 of the 44 deficiencies found on 55 worktickets involved self-certification by inspectors. The Workticket Handbook allows self-certifications only in small or "one man" ports but suggests that other verification procedures such as spot-checks be done by district directors or their designees. None of the ports we visited were one man ports; therefore, they were not subject to this exception.

### Improper Preparation

At each port we visited, we found that some worktickets were improperly prepared or altered in some way. The number of problems varied as indicated in tables 2.1 and 2.2. Worktickets had been completed in pencil

instead of ink and changed or altered without any indication of supervisory approval; this violates internal controls standards. Only one of the changes we found indicated with an initial and the date when the change was made or whether supervisory approval of the change was obtained.

### Incorrect Time or Date

Information on the workticket must be recorded and entered accurately to ensure correct payments. During a weekday assignment, the ending time of an inspector's regular workday and the overtime start and stop times are needed by the National Finance Center to compute the proper overtime payment. For Sunday or holiday assignments, however, the inspector designates these days by entering the words "SUND" or "HOLI" in lieu of the regular workday ending time. The system then uses these designations to pay the Sunday/holiday rate.

In analyzing the national overtime database, we found 2,587 assignments totaling \$422,848 in which the completion date did not match the "SUND," "HOLI," or weekday designation on the workticket. We could not determine whether the overtime was paid correctly or whether an underpayment or overpayment occurred because we could not determine which of the two reported entries was correct. A National Finance Center official said such mistakes are possible given that the system does not cross-check the date and completion time entries. He said, however, that the completion date is more often incorrect than the completion time.

GAO's Policy and Procedures Manual for Guidance of Federal Agencies (Title 6) requires that suitable controls over payroll processing shall be incorporated into each system to provide effective checks to ensure that payroll data is correctly processed. It further stipulates that when automated equipment is used, controls shall be incorporated into the programmed instructions and fully used to help ensure accurate payroll processing. Among other things, these controls should include predetermined limits on the computation of pay, checks on sequences of records, and verifications of balances.

### Duplicate Payments

We identified situations in the national database and the ports visited where Customs had made duplicate payments. During analysis of the national overtime database, we found two conditions under which the system paid individuals twice: (1) overlapping time periods and (2) duplicate assignment numbers.

Information is entered into the national database on the basis of worktickets that indicate the assignment number, date, and time the assignment was worked. Using this information, Customs should be able to identify (1) reporting of overtime assignments that occur during the same time periods or take place during the regular workday, and (2) assignments that duplicate other overtime assignments.

We found that an inspector at the Atlanta port was paid overtime twice for working overlapping time periods. Port officials initially said the work was done on different days and the problem was an improperly prepared workticket. However, port personnel were unable to locate the worktickets to substantiate their claim. Upon further investigation, a port official found that the individual had indeed received two overtime payments for the same time period. He also found that the inspector had been working his regular hours during this period. Port officials initiated actions to collect the overpayment. Customs officials said they will make several changes to the national database to prevent additional overpayments.

We also analyzed the national database to determine whether there were other duplicate payments in Atlanta in fiscal year 1989. As a result, we identified 23 additional assignments that appeared to be duplicates. Of the 23, 18 inspectors received duplicate payments when 1 of the 18 inquired about an apparent unpaid assignment. Customs overtime system controls did not catch the mistake. We discovered the error nearly 1 year after it occurred.

We asked Customs' Office of Internal Affairs to follow up on these 23 assignments to determine if they were duplicate payments and the extent to which duplicate payments based on the same assignment number are a problem in the system. Officials in the Office of Internal Affairs confirmed that 20 of the 23 assignments we identified were duplicate payments. They further analyzed the national overtime database for duplicate assignment numbers and found 184 apparent duplicates out of 790,767 worktickets processed nationwide during fiscal year 1989. The apparent overpayments totaled \$18,532.66. Office of Internal Affairs officials ran the same program for fiscal year 1990 (October 1989 through August 1990) and found 92 duplicate assignment numbers totaling \$9,455.90 in 689,699 worktickets. Customs officials said they plan to collect any overpayments. They also said that the system was changed so that potential duplicate assignment numbers should not be paid until port officials verify that they are not duplicates.

The national database is programmed to identify duplicate assignment numbers. The National Finance Center will pay a potentially duplicate assignment number and place it on an error report. Port officials are then supposed to request the reports from the on-line system and review them. Customs' Workticket Handbook instructs port officials to investigate the assignments on the error report and initiate corrective action if it is needed. Regarding the duplicate payments we identified, a National Finance Center official said that the port officials had either ignored the error report or ignored the instructions in the handbook.

---

## Efforts Taken by Customs to Improve Overtime Controls

Customs' Office of Workforce Effectiveness and Development, which provided support for the overtime task force, is developing an oversight capability. It plans to routinely collect information on schedules, workload, industry concerns, and training needs and to hold quarterly meetings with management officials. This Office was instrumental in establishing a training program in December 1990 on overtime regulations, interpretations, and port policies. We believe this step was appropriate because port officials and inspectors told us their training was primarily on the job and could be inconsistent from one port to another.

---

## Minimal Oversight and Review by Ports

Customs district and port officials control the scheduling of the overtime, the certification of the worktickets, and the entry of the data from the worktickets into the national overtime database. As indicated earlier, certain information on the workticket must be recorded accurately to ensure proper payment. Generally, the ports we visited did not have review procedures to ensure that (1) data were being accurately recorded, (2) certifications were made, (3) the data were entered into the automated system accurately, and (4) the inspectors were actually paid the correct amount. Customs officials said the overriding concerns were processing the worktickets as quickly as possible so inspectors would receive their pay on time and ensuring that no inspector exceeded the \$25,000 annual cap on overtime pay.

We followed up with officials at the National Finance Center, who said that, historically, emphasis has been placed on the timeliness of payments. They said that when they observe an error or some other discrepancy that will prevent payment, they notify the port. They also pointed out that their responsibility is processing the data already entered into the system. They would not know if a workticket was completed incorrectly, false, or improperly certified.

---

## Peer Reviews

In 1988, Customs initiated peer reviews of overtime use at ports. In peer reviews, a team of Customs officials from outside a port reviews the port's overtime policies and procedures. The team is to report deficiencies and recommend improvements to the port being reviewed.

We reviewed 1988 and 1989 peer review reports that covered 61 ports to identify potential problems at ports we were contacting. We found that the reports, for the most part, addressed concerns such as port policies and procedures for using overtime, internal controls, staffing, and other management issues. However, as shown by the results of our work at the five ports and our discussions with officials at other ports, the impact of the peer reviews has been limited. We believe this was due, at least in part, to the following factors: (1) the distribution of peer review reports was usually limited to the district or region, (2) port officials considered the recommendations advisory, and (3) there was infrequent follow-up by the districts or regions.

---

## Conclusions

As overtime is currently managed at the ports we visited, Customs is vulnerable to fraud, waste, and abuse. Customs officials had not fully complied with important regulatory and procedural requirements for managing inspectional overtime as evidenced by incorrect worktickets, missing certifications, inaccurate data, and duplicate payments. We also found that, contrary to Customs requirements, some inspectors were scheduling and approving their own overtime, a practice that violates basic internal controls requirements to discourage abuse and fraudulent activity. Customs' Office of Workforce Effectiveness and Development's plans to make overtime management more efficient should, if properly implemented, address many of the administrative and scheduling problems we discussed in this report.

---

## Recommendations to the Secretary of the Treasury

We recommend that the Secretary of the Treasury direct the Commissioner of Customs to take the following actions to improve internal controls over the administration of overtime:

- Review procedures at ports, districts, and regions and the National Finance Center to ensure they comply with Customs directives and internal controls standards.
- Require corrective action for, and routine follow-up on, the problems surfaced in peer review reports, and that the reports be distributed to headquarters as well as field management levels for appropriate action.



- 
- Review duplicate payments to determine whether fraud and/or abuse were present and take any necessary disciplinary and recovery actions.

---

**Agency Comments**

Customs' May 30, 1991, letter (see app. III) explains steps the agency will take to immediately ensure that internal controls are being followed.

---

# Customs Can Improve Its Management of Overtime Costs

---

Since 1985, overtime expenditures increased from \$56.8 million in fiscal year 1985 to \$102.8 million in fiscal year 1990—an 81 percent increase. If adjusted to constant dollars, the increase is 35 percent.

We attempted to identify causes for the growth experienced since 1985 by looking at workload and other factors that we thought might explain the cost increases. However, due to insufficient data and the interdependence of the factors, we could not readily determine whether or to what extent these factors accounted for the growth.

We were, however, able to determine that an important contributing cause of the cost growth was that Customs officials were focusing on managing the \$25,000 per inspector per year overtime cap and not focusing on efficiently managing individual assignments. This led to several management practices that drove up overtime costs. Customs should achieve significant dollar savings by better managing overtime, particularly at the port level.

On the basis of a May 1989 internal review, the Deputy Commissioner of Customs formed an overtime task force composed of high-level headquarters and regional officials in November 1989. This group, sometimes referred to by Customs as its “Blue Ribbon Panel,” was to study and report on the growing amount of overtime and its impact on service levels to the traveling public and importing industry. Customs has begun implementing the task force recommendations. We believe Customs initiatives are steps in the right direction.

---

## Factors Affecting Overtime Costs

In addition to inefficient management practices and the effect of the 1911 Act, which we discuss in subsequent sections, other factors may have also influenced overtime costs during the period 1985 to 1990.

For example, the number of international travelers and imported merchandise entering the United States and subject to Customs inspections has increased since 1985. The number of persons entering the United States increased from 291.4 million in fiscal year 1985 to 425.2 million in fiscal year 1990 for a growth rate of 46 percent. The number of carriers and imports increased from 89.7 million to 125.2 million and 6.9 million to 9.2 million, respectively. The growth rate was 40 percent and 33 percent, respectively. Also, according to Customs officials, the pay and grade of inspectors increased 26 percent between 1985 and 1990.

During the same period, however, Customs introduced a number of initiatives designed to increase the efficiency of the workforce. For example, Customs' Automated Commercial System, Centralized Examination Stations, and Advance Passenger Information System for airports were installed between 1985 and 1990. These systems, intended to streamline processing, should have helped curtail the demand for overtime.

We could not isolate the effects on overtime costs of every possible variable because many of the factors are interdependent and the needed data were not available. We reasoned, however, that notwithstanding the reasons for cost growth, good management practices should mitigate the net cost effects of other factors. Thus, we focused our efforts on Customs management practices concerning overtime.

---

## **Overtime Pay Expensive for Hours Worked**

Managing the scheduling of overtime work is important because 1911 Act overtime pay is expensive and is disproportionate to the number of hours actually worked. To illustrate this point, we judgmentally selected a sample of 16 inspectors and compared time worked to time paid. For example, inspector 1 worked 2 overtime hours in fiscal year 1989. His overtime pay of \$1,188.60 was based on 90 hours. The average length of his overtime assignments for the year was 14 minutes.

Chapter 3  
 Customs Can Improve Its Management of  
 Overtime Costs

Table 3.1: Comparison of Time Worked to Compensation for 16 Inspectors in Fiscal Year 1989

Inspector	Number of overtime assignments worked	Number of overtime hours compensated for	Number of overtime hours actually worked	Average assignment length <sup>a</sup>	Total overtime salary	Regular hourly pay rate	Effective overtime hourly pay rate
1	10	90	2	0:14	\$1,188.60	\$13.17	\$509.40
2	41	557	261	6:22	3,603.60	6.47	13.81
3	41	334	96	2:20	4,880.40	14.61	50.84
4	24	378	177	7:22	7,624.72	20.19	43.08
5	32	437	60	1:52	8,053.20	17.26	134.26
6	43	691	328	7:37	9,790.56	14.17	29.86
7	144	1,218	471	3:16	9,830.60	8.07	20.88
8	74	917	209	2:49	14,614.96	15.94	69.96
9	91	954	139	1:32	16,467.08	17.26	118.65
10	187	2,113	755	4:02	19,908.40	9.42	26.37
11	187	1,319	172	0:55	20,431.36	15.49	118.90
12	252	1,787	151	0:36	20,920.88	11.71	138.37
13	65	1,022	391	6:01	21,270.80	20.82	54.44
14	258	1,662	189	0:44	23,100.80	13.90	122.03
15	201	2,709	1,157	5:45	24,299.72	8.97	21.00
16	228	1,488	133	0:35	24,379.00	16.38	183.37
	117 <sup>b</sup>	1,105 <sup>b</sup>	293 <sup>b</sup>	3:30 <sup>b</sup>	\$14,376.48 <sup>b</sup>	\$13.99 <sup>b</sup>	\$103.45 <sup>b</sup>

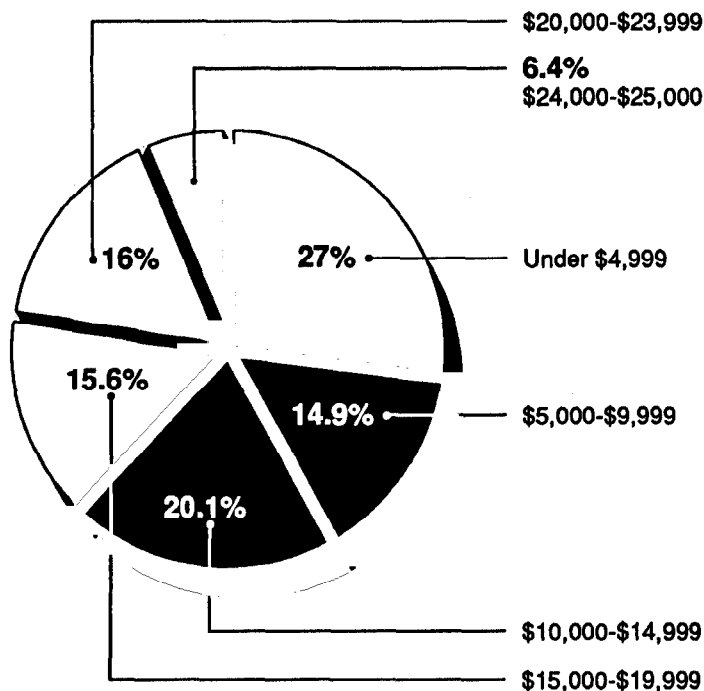
<sup>a</sup>In hours and minutes.

<sup>b</sup>Overall average for the 16 inspectors.

Source: GAO analysis of Customs data.

We also analyzed overtime pay in fiscal year 1989 to determine the range of individual inspector earnings. As indicated in figure 3.1, 16 percent of those working 1911 Act overtime earned from \$20,000 to 23,999 during fiscal year 1989, and another 6 percent earned between \$24,000 and \$25,000 per year. We found that no one exceeded the overtime cap. Earnings shown in figure 3.1 include overtime work by part-time employees, secretaries, and any other employees receiving 1911 Act overtime pay.

Figure 3.1: Percent of Workforce Earning Overtime by Overtime Salary Range in Fiscal Year 1989



Source: GAO analysis of Customs data.

## Inefficient Practices That Drove Up Overtime Costs

Some port officials had adopted inefficient overtime policies. Our analysis of the national overtime database and port visits showed that port officials were (1) using the annual cap to manage overtime, (2) not consistently adjusting shifts or using staggered work hours in a cost-efficient manner, (3) using callbacks inefficiently, (4) overstaffing on Sundays and holidays, and (5) not using the correct rates for assignments of less than 1 hour when the assignment continued from the regular workday. In addition, the practice of extending night assignments into a Sunday or holiday, triggering the 1911 Act's Sunday and holiday pay provisions, is inefficient.

## Using Annual Cap to Manage Overtime

In 1983, Congress put an annual cap of \$25,000 on individual overtime earnings. Customs officials at the ports we visited told us, and the Customs overtime task force report stated, that staying within the cap has been Customs management's primary goal. Port officials have taken different approaches, however, to managing the overtime cap. Some port officials apportioned the \$25,000 cap over the 26 federal pay periods

and notified inspectors when they would exceed the biweekly cap at their current rate of overtime work. Other port officials allowed inspectors to earn up to 80 percent of the cap within the first six pay periods of the year before their biweekly overtime earnings were limited. During our review, we did not identify any inspectors who were exceeding the cap.

Very few of the officials in the ports we visited or contacted by telephone expressed concern about the cost of overtime. Our finding parallels that of the Customs overtime task force, which reported that "this lack of accountability has engendered the firm belief that the user fee fund is a bottomless pit." The report also stated that "very few managers interviewed by the task force expressed a concern about the high cost of 1911 overtime," and "at many locations visited, it was obvious that overtime was not being managed, but rather managers were only making sure each employee did not exceed the cap." The overtime task force report noted that in some ports where the cap became a concern near the end of the fiscal year, work was curtailed and shifts were implemented to ensure that everyone stayed below the cap. The report stated that once the new fiscal year began, the shifts were discontinued and earlier practices reinstated.

---

### **Not Consistently Adjusting Shifts or Using Staggered Work Hours in Cost-Efficient Manner**

The Omnibus Budget Reconciliation Act (OBRA) of 1987 instructed the Secretary of the Treasury to prescribe regulations governing work shifts at airports so that regular work hours would more closely match the work flow. Customs officials issued a directive in December 1988 requiring port officials to "consider" setting or moving shifts and/or staggered hours to times that would be more cost efficient by enabling more of the workload to be covered by regular work time rather than by overtime.

Theoretically, overtime is worked because either the volume of the work or the merchandise arrival time preclude completing inspections during regular work hours. Avoiding overtime in such situations could be done by hiring more inspectors; holding the merchandise over until the next workday; or adjusting workload through shifts or staggered work hours, where appropriate, so that overtime is not needed. Under this concept, Customs officials would analyze the port workloads and then, if warranted, align the workdays with peak workload periods rather than maintaining the usual 8:00 a.m. to 5:00 p.m. workday.

For example, an international airport having regular arrivals between 1:00 p.m. and 7:00 p.m., peaking between 3:00 p.m. and 5:00 p.m., could have an 8:00 a.m. to 5:00 p.m. shift to cover the regular day. A second 12:00 p.m. to 8:00 p.m. shift would put the maximum number of inspectors on duty during the peak arrivals. This added shift would also eliminate the need for routine overtime from 5:00 p.m. to 7:00 p.m. and minimize the need for evening callbacks.

The Customs overtime task force report said that some Customs ports are not making use of shifts and staggered work hours in a cost-efficient manner. The report indicated that Customs could save up to \$10 million a year if it could eliminate 1911 Act overtime pay for work done within 1 hour before or after the workday and up to \$22 million if it could eliminate work completed within 2 hours before or after the regular workday. A Customs official acknowledged that these were "ballpark" estimates. If peak port traffic periods are such that these overtime hours are justified, they concluded, then shifts or staggered hours should be used.

Our analysis of the national database supports the task force's conclusion. We found that 33 percent of all fiscal year 1989 weekday overtime assignments fell into the time period 2 hours before or after the regular workday.

---

### **Using Callbacks Inefficiently**

Callbacks are overtime assignments that are similar to Sunday and holiday assignments in that the hours paid for are disproportionate to the hours worked. Inspectors called back to work on the same day can receive a minimum of 4 to 12 hours of overtime pay, depending on the start and stop times of assignments. Following is an example, based on an actual case, of the disproportionate relationship between overtime hours worked and paid for:

- On one occasion, an inspector began an overtime assignment at 5:00 p.m., following the end of the regular workday, and worked until 7:30 p.m. The inspector received 4 hours overtime pay under the 1911 Act overtime rule of 4 hours pay for weekday overtime of at least 1 hour of work (see app. I). At an hourly rate of \$13.33, the inspector earned \$53.32 for the 2-1/2 hours of overtime worked for an effective hourly rate of \$21.33. If the same inspector had gone home at 5:00 p.m., had been called back to work at 7:15 p.m., and worked 15 minutes, the compensation would have been 8 hours pay, or \$106.64, which is an effective hourly rate of \$426.56 per hour. In this case, under 1911 Act

overtime rules, the inspector would have received 4 hours pay for being called back and another 4 hours pay for the hours worked. If the inspector had not been called back until after 9:00 p.m. and worked 15 minutes, under the 1911 Act callback provision the inspector would have earned 8 hours pay just for the callback (rather than 4) and another 4 hours pay for the period worked—12 hours pay at his rate is \$159.96, or an effective rate of \$639.84 per hour.

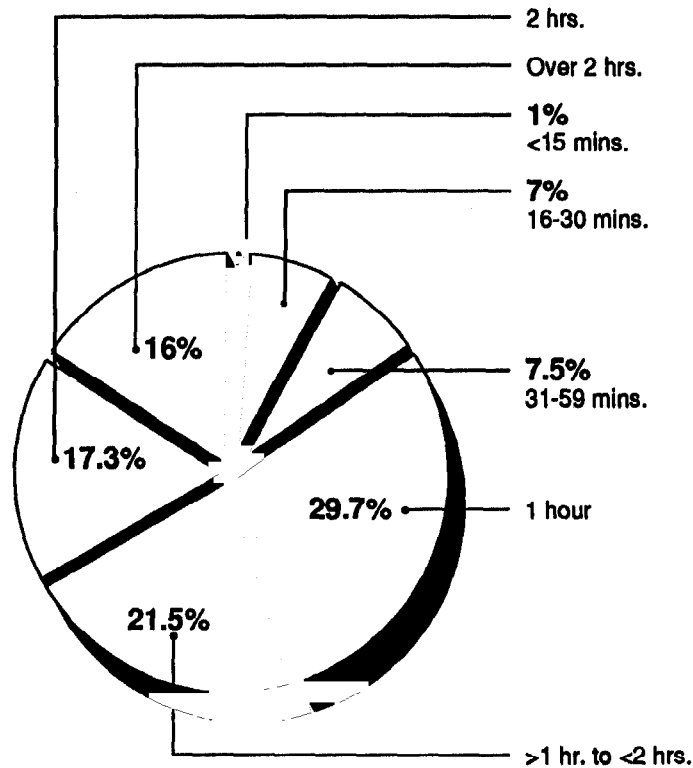
There are many other variations of the callback regulation that have evolved over the years. The following examples from Customs' national overtime database indicate how callbacks can drive up overtime costs:

- An inspector whose regular hourly pay was \$18.23 worked overtime 9 times during a 2-week pay period. He worked a total of 21 hours and 5 minutes and received \$1,458.40, or an effective average rate of \$69.17 per hour. Five of these assignments were on callbacks. On these five assignments, he worked a total of 2 hours and 55 minutes and received \$918.78, or an effective average rate of \$315.01 per hour. On one assignment, he received \$218.76 for 25 minutes of work.
- An inspector whose regular hourly pay was \$13.33 worked 5 overtime assignments over a 2-week period; three of these assignments were on callbacks, and two were on Sundays. She worked a total of 3 hours and 40 minutes on the 5 assignments, which ranged from 15 minutes to 2 hours in length. On the three callback assignments, she received \$426.56 for 1 hour and 20 minutes of work, an average rate of \$319.92 an hour and about 24 times her regular hourly pay.

Our analysis of the national database showed that there were 155,051 callback assignments worked in fiscal year 1989, or 23 percent of all overtime assignments worked. We found that 45 percent of the fiscal year 1989 callback assignments were for 1 hour or less, as shown in figure 3.2.



Figure 3.2: Length of Callback  
Assignments in Fiscal Year 1989



Source: GAO analysis of Customs data.

### Overstaffing on Sundays and Holidays

The Customs overtime task force reported problems in overstaffing on Sundays and holidays and noted that Customs does not have consistent and cost-effective workload management procedures. The task force compared Sunday and holiday staffing, risk factors, and enforcement results to similar weekday data for two ports and found the following:

- One location routinely assigned approximately 40 inspectors on Saturdays and 60 inspectors on Sundays and holidays.
- Another location regularly scheduled from 45 to 50 inspectors during the week but approximately 105 inspectors on Sundays and holidays.

We also found that the number of inspectors assigned on Sundays and holidays to passenger and cargo locations appeared to be excessive. At one airport we visited, we observed that on a Monday holiday, 25 inspectors worked and processed 1,096 passengers on 21 flights. On the following Monday, which was not a holiday, 17 inspectors worked and

processed 1,127 passengers on 22 flights. Customs port officials had no explanation for the staffing pattern when we asked about it.

Customs' peer review reports also indicated overstaffing problems. In 4 reports we reviewed that covered 13 Customs ports, overstaffing problems were indicated, mostly at airports on Sundays and holidays.

---

### **Not Using Correct Rates for Assignments Lasting Less Than 1 Hour**

Customs' implementing regulations provide that if an inspector starts a new assignment at the end of his regular workday and works less than 1 hour, the 1911 Act rate is applied. However, if an overtime assignment of less than 1 hour stems from an assignment beginning before the end of the regular workday, Customs regulations provide that the inspector is entitled to overtime compensation under FEPA rather than the 1911 Act. For example, if an inspector whose regular day ends at 5:00 p.m. starts an assignment at 4:30 p.m. and finishes the assignment at 5:45 p.m., the inspector should be compensated at the FEPA rate for the 45-minute period worked beyond 5:00 p.m.

FEPA overtime is much less costly than 1911 Act overtime, since it is paid at one and a half times the hourly pay rate, in 15 minute increments. To illustrate the difference between FEPA and 1911 Act overtime pay, an inspector whose regular pay is \$16.00 an hour and who works 15 minutes overtime would receive \$6.00 under FEPA ( $\$16.00 \times 1.5 = \$24.00$  an hour;  $\$24 / 4 = \$6$ ) as opposed to \$64.00 if 1911 Act rates (4 hours  $\times$  \$16.00 an hour would equal \$64) were applied.

We observed instances of overtime assignments beginning before 5:00 p.m. and continuing into the overtime period for less than 1 hour for which FEPA might apply. However, Customs' overtime pay system cannot determine which assignments are new and which are continuations from the regular workday. Neither the overtime nor payroll systems are designed to provide this information. Thus, the National Finance Center treats all assignments with 5:00 p.m. recorded in the overtime database as new assignments when they could be continuations. The system pays the 1911 Act rate for these overtime assignments as if the regular workday were finished and a new overtime assignment had begun, even when the FEPA rate should be paid. Customs officials have indicated they plan to address this system shortcoming.

## Extending Night Assignments Into Higher Paid Sunday and Holiday Periods

Because any Sunday or holiday work is compensated with at least 2 days pay, as required by the 1911 Act, the Sunday/holiday rate is paid to those inspectors whose Saturday night or preholiday assignment extends over into a Sunday or holiday. For example, an inspector whose regular shift ended at 11:30 p.m. on a Saturday night worked a 45-minute overtime assignment beginning at 11:30 p.m. and continuing into Sunday morning to 12:15 a.m. His regular hourly rate was \$14.85. The 2 days pay provision for any Sunday work paid him \$297.00 for the 45-minute period. Had this assignment been worked on any other week-night, the overtime pay would have been for 4 hours, or \$59.40 for the assignment.

We identified 1,650 assignments in the fiscal year 1989 national overtime database in which inspectors worked between 12:01 a.m. and 1:00 a.m. on a Sunday or holiday morning on assignments starting the night before. Applying the Sunday/holiday provision to the 1,650 assignments that continued for less than an hour into a Sunday or holiday cost \$349,127.

When an inspector begins Sunday/holiday work, he or she is required by overtime regulations to be available for any additional assignments that can be worked within 8 hours from the start of his or her first Sunday/holiday assignment. Time worked within this 8-hour period does not result in additional pay beyond the 16 hours already earned. After the 8-hour period, however, weekday overtime rates take effect. The inspectors who worked on the 1,650 assignments that continued for less than an hour into a Sunday or a holiday did not return to work additional overtime during this 8-hour period.

Inspectors who work on assignments that continue for less than an hour into a Sunday or holiday, and who later return to work during this 8-hour period, can claim additional benefits under callback rules. If there is a break in service of at least 2 hours after this 8 hour period, callback rates apply. Of the 1,650 assignments, we identified 450 instances where inspectors were called back after a period of 10 hours or more had expired, thus invoking callback provisions.

For example, an inspector worked a 45-minute overtime assignment that began at 11:30 p.m. on a Saturday, and ran until 12:15 a.m. Sunday. He was then called back to work an assignment on the same Sunday from 1:15 p.m. to 5:45 p.m. He was paid a total of \$534.60 for the two assignments, which amounted to 5 hours and 15 minutes of actual work time.

Under 1911 Act overtime rules, he was credited with 36 hours of overtime pay.

This inspector was credited 4 hours of pay for the 30 minutes of actual work from 11:30 a.m. until midnight on Saturday. He then qualified for 16 hours of pay for Sunday work, based on 15 minutes of actual work from midnight to 12:15 a.m. For his work Sunday afternoon, he was credited with 8 hours because the assignment was a callback, and an additional 8 hours for the overtime worked.

For comparison purposes, if the 1911 Act did not require application of Sunday pay provisions to the 15-minute portion of the assignment that continued into the Sunday, the inspector would have been paid \$297.00 based on 20 hours of 1911 Act overtime.

---

## **Expansion of Activities Eligible for Overtime Has Driven Up Costs**

Customs has issued several directives that increased the number of basic types of inspectional activities—examining merchandise, persons, and carriers—eligible for 1911 Act overtime. The effect is that more activities are paid out of the COBRA user fee fund and, thus, may have driven up overtime costs. For example, in November and December 1987, Customs began paying 1911 Act overtime for certain activities of Contraband Enforcement Team members and Customs mail branch employees. In February 1988, Canine Enforcement officers began receiving 1911 Act overtime in connection with baggage and merchandise examinations. In December 1988, enforcement officers working with passengers or merchandise became eligible for 1911 Act overtime. In addition, import specialists began receiving 1911 Act overtime. The overtime task force also noted that Contraband Enforcement Teams, which have discretion as to when to make inspections, were large users of inspectional overtime. Customs officials could not provide estimates as to how much these additional activities have driven up the cost of overtime.

The Customs overtime task force identified instances where 1911 Act rates were misused. They noted, for example, cases where secretaries were paid at 1911 Act rates on Sundays and holidays to enter work-tickets into the overtime database and aides were compensated at the 1911 Act rate for entering data into Customs' cargo selectivity computer system.

---

## Other Significant Concerns Cited in Customs Overtime Task Force Report

The Customs overtime task force report identified significant concerns in addition to those cited thus far. For example, it stated at the outset that overtime costs are increasing “in excess of pay rate increases.” In addressing the increase in overtime costs, the task force report observed that unlike other budget categories, Customs field managers are not held accountable for remaining within a budgeted allocation of 1911 Act overtime funds. Thus, these funds are “used freely so long as the \$25,000 cap is not exceeded.” Managers are held accountable “only . . . if they exceed the cap.”

The task force proposed and Customs was implementing a plan to address the concerns over the increase in overtime including: realign staff to workload; develop automated systems to ensure better alignment of labor resources to workload; enhance the overtime workticket system; and include in each manager’s performance plan the responsibility for the efficient management of overtime. A standing committee was also formed to monitor the administration of overtime and to ensure that initiatives are accomplished. The committee is to meet quarterly. We believe these are positive steps. Customs officials told us, however, that labor union concerns could impact the success of some initiatives.

These steps are consistent with the requirements of the Customs and Trade Act of 1990. That law required Customs officials to project inspectional overtime needs so that funds remaining in the COBRA user fee account could be used to enhance services—such as hiring full- and part-time inspectors and procuring equipment—for international flights, to the payers of the user fees. The conference report accompanying the Customs and Trade Act of 1990 stated that the conferees intended that inadequate Customs staffing no longer be a reason in delaying approval of new or expanded international flights. Customs officials are developing plans for using the excess collections. We believe the 1990 act provides an additional incentive to Customs to gain control over overtime costs.

---

## Conclusions

Between fiscal years 1985 and 1990, Customs’ overtime expenditures increased from \$56.8 to \$102.8 million. We attempted to identify causes for the growth experienced since 1985 by looking at workload and other factors that we thought might explain the cost increases. However, due to insufficient data and the interdependence of the factors, we could not readily determine whether or to what extent these factors accounted for the growth.

We were, however, able to determine that an important contributing cause of the cost growth was that Customs officials were focusing on managing the \$25,000 per inspector per year overtime cap and not focusing on efficiently managing individual assignments. This led to several management practices that drove up overtime costs. Customs should achieve significant dollar savings by better managing overtime, particularly at the port level.

Management is inherently responsible for the efficient use of its workforce. An additional incentive exists for Customs because, beginning in fiscal year 1991, Customs can use excess amounts in the user fee fund to hire additional inspectors or purchase equipment to enhance service at international airports.

Managing the use of overtime is also important because 1911 Act overtime pay is costly. We identified several weaknesses in Customs' scheduling practices that have driven up overtime costs and noted that Customs has paid little attention to opportunities to avoid overtime. Weaknesses we identified include (1) not consistently adjusting shifts or using staggered work hours, (2) inefficiently using callbacks, (3) overstaffing on Sundays and holidays, and (4) not using FEPA rates when appropriate.

The Customs' overtime task force also recognized the need for Customs to better manage its overtime. For example, it found that Customs could save \$22 million annually if regular workday schedules could be extended by 2 hours. The task force developed a plan with several initiatives to address overtime costs. We believe the task force's plan is a positive step.

Consistent with the task force findings, we believe that Customs management needs to be more cognizant of the effect of its scheduling on overtime costs.

---

## Recommendations to the Secretary of the Treasury

We recommend that the Secretary of the Treasury direct the Commissioner of Customs to, as a minimum, do the following to more efficiently manage inspectional overtime:

- more aggressively employ such techniques as shifts and staggered work hours to cover more of the workload within regular work hours;

- 
- develop procedures that better assure the most efficient use of callback assignments, and that better match Sunday and holiday staffing to anticipated workload; and
  - reimburse overtime using FEPA rates when assignments are continuations of assignments begun during regular hours and last less than 1 overtime hour.

---

## Agency Comments

Customs, in its written comments, stated that there were three primary factors contributing to the increase in overtime expenditures—pay raises, some grade level increases, and an increasing overall workload. With regard to pay raises and grade adjustments, Customs officials said that these factors together account for about 26 percent of the increase. However, Customs could not provide us support for their figure, nor could we independently verify it. Neither were they able to establish the respective roles of the other factors they cited.

As explained on pages 24 and 25, we sought to analyze the impact of these factors. However, due to insufficient data and the interdependence of these and other possible factors, we could not readily determine whether or to what extent these factors accounted for the growth.

Customs agreed with our points concerning Customs' preoccupation with the overtime cap at the expense of managing individual assignments.

NTEU raised concerns about the use of shifts, when schedules do not justify shifts or staggered work hours, and their impact on employee well-being. We concur with NTEU and believe that shifts should be used when and where they make sense and when all factors are considered.

# Overtime Provisions of 1911 Act Are Outdated

---

Customs inspector overtime is being paid using rates essentially established by legislation enacted in 1911. A different set of circumstances applied in 1911 from those that exist today. In 1911, it was difficult to predict the need for and arrange for overtime because of transportation and communication systems. Airports did not exist, and telecommunication systems were in their infancy. Sunday and holiday work for federal employees was unusual. Moreover, the requester of overtime service paid the costs of overtime; however, this method of covering the cost of overtime was changed in 1985 by COBRA and, thus, the arrangement that held in 1911 no longer applies today.

The 1911 Act provisions may have been appropriate at the time, but, for the reasons cited, they are not relevant in today's work environment. Congress should reevaluate the validity of the 1911 Act provisions and consider adopting provisions that are more closely tied to the hours actually worked. To this end, the concept embodied in FEPA can be useful.

---

## Conditions Have Changed Since 1911

In today's inspectional environment, inspectors generally know in advance if they will be required to work overtime. Communication systems are advanced, and most cargo has scheduled arrival times. Sundays and holidays have become regular business days for the international travel industry, and Sunday and holiday work is not uncommon for other federal employees such as park rangers and police, hospital workers, and employees at federal museums.

In addition, a major justification for the 1911 Act was that private sector carriers who requested overtime services would pay the overtime inspection costs. With the enactment of COBRA, however, the requester does not pay the cost directly; rather, users of Customs services pay into a common fund from which overtime is paid.

---

## Sundays and Holidays Are Regular Business Days at Many Ports

The purpose of the 1911 Act was to compensate Customs inspectors for providing service outside their regular working hours. In 1911, it was considered unusual for employees to work on Sundays or holidays. In fiscal year 1989, 31 percent of the worktickets submitted and 46 percent of the overtime paid was for Sunday and holiday work (see table 4.1).



**Chapter 4  
Overtime Provisions of 1911 Act  
Are Outdated**

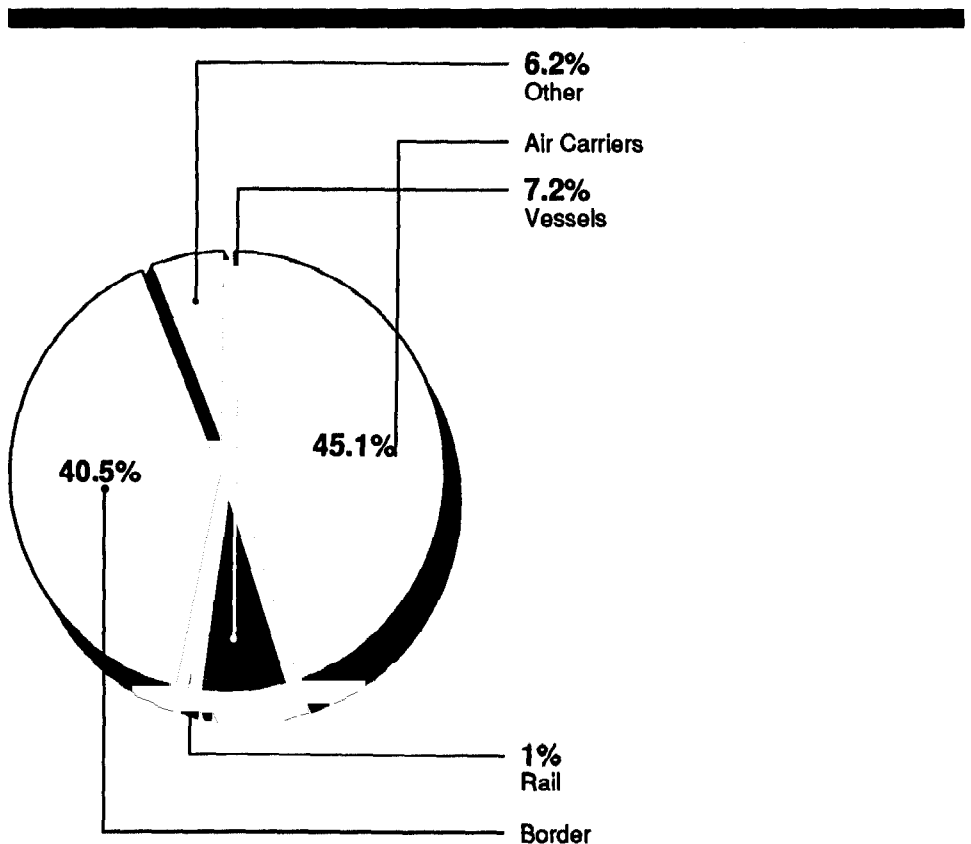
**Table 4.1: Overtime Paid for Sundays/  
Holidays and Weekdays During Fiscal  
Year 1989**

Type of overtime	Worktickets		Payment	
	Number	Percent	Amount	Percent
Sunday/holiday	231,539	31	\$45,162,062	46
Weekday	518,108	69	53,934,147	54
<b>Total</b>	<b>749,647<sup>a</sup></b>	<b>100</b>	<b>\$99,096,209</b>	<b>100</b>

<sup>a</sup>Of the 752,422 worktickets that we identified as 1911 Act overtime payments for fiscal year 1989, 749,647 could be distinguished as Sunday/holiday or weekday payments.

As shown in figure 4.1, the advent and growth of air travel has changed Customs' workload. Our analysis showed that 45 percent of the Sunday and holiday overtime worked in fiscal year 1989 was done at airports. In 1911, there was no international air traffic.

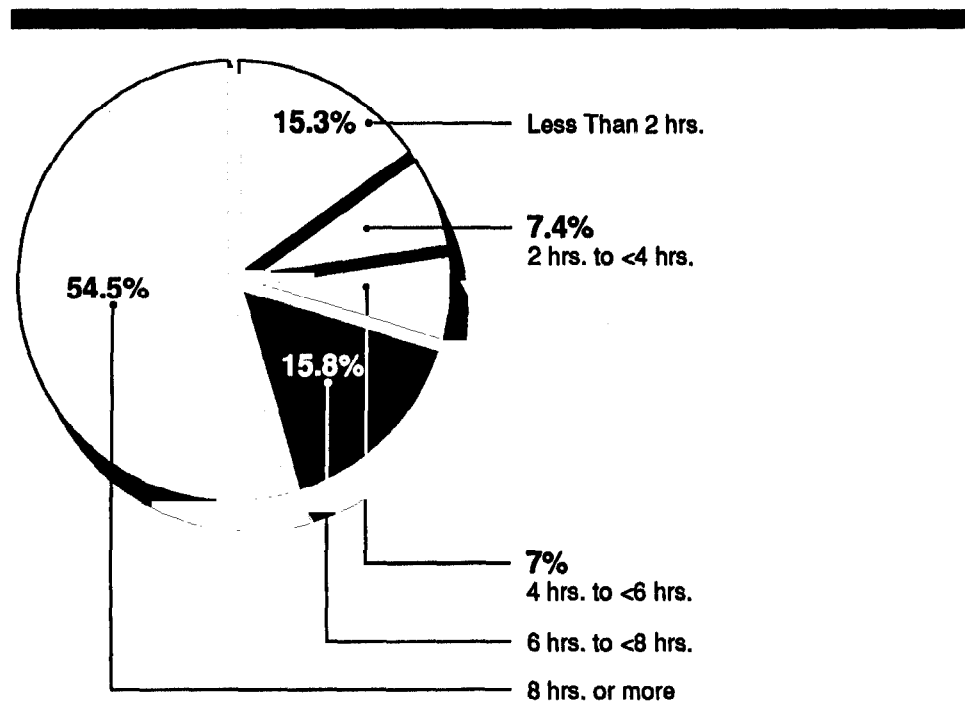
**Figure 4.1: Hours Worked on Sundays/  
Holidays by Type of Carrier Served,  
Fiscal Year 1989**



Note: Other includes military couriers, mail, etc.  
Source: GAO analysis of Customs data.

Figure 4.2 shows that 54.5 percent of the Sunday and holiday work-tickets in fiscal year 1989 was for 8 hours or more.

**Figure 4.2: Duration of Sunday/Holiday Work for Fiscal Year 1989** (Based on worktickets)



Source: GAO analysis of Customs data.

### 1911 Act Provisions Discourage Efficient Overtime Management

Some provisions of the 1911 Act discourage the efficient management of overtime, primarily the Sunday/holiday provision. The 1911 Act establishes 2 days pay for a Sunday or holiday assignment, regardless of its duration. On a holiday, the inspector also receives regular pay for the hours worked that day. The result of this provision is that today Customs must pay the Sunday/holiday rate (1) to provide service on what has become a normal workday at many ports, (2) to compensate employees whose Saturday night or preholiday assignment extends into a Sunday or holiday for a few minutes, and (3) for any amount of Sunday/holiday work. We found inspectors working as little as 19 minutes and receiving 2 days pay for a Sunday or holiday.

We judgmentally selected the examples in table 4.2 from the five ports we visited to illustrate how expensive Sunday and holiday pay can be.

**Table 4.2: Examples of 1911 Act Sunday/  
Holiday Rates' Impact on Pay**

Day	Regular pay per hour	Minutes worked	Overtime paid	
			Actual pay <sup>a</sup>	Effective hourly rate <sup>b</sup>
Sunday	\$15.67	19	\$250.72	\$791.76
Sunday	10.98	19	175.68	554.79
Holiday	15.94	30	255.04	510.08
Sunday	12.44	20	199.04	597.18
Sunday	21.02	45	336.32	448.43

<sup>a</sup>Calculated by multiplying regular pay per hour times 16 hours.

<sup>b</sup>Calculated by converting minutes worked to percentage of an hour and dividing actual amount paid by that percentage.

Source: GAO analysis of Customs data.

Given the strong pay advantages these rates give to Customs inspectors, the provisions of the law governing Sunday hinder the implementation of the provisions in OBRA that encouraged Customs to establish shifts and staggered work hours so that more of the workload can be covered by regular work time rather than overtime. Customs officials believe they have the authority to establish shifts or staggered hours covering Sundays. However, under the 1911 Act, provisions specifying that 2 days pay is required for Sunday work would still apply; thus, cost savings would not result.

## Tying Hours Paid to Hours Worked

We have previously concluded that the overtime pay provisions in the 1911 Act are no longer relevant to today's environment. The concept followed in calculating premium—overtime—pay for other federal employees under FEPA, 5 U.S.C. 5552 et. seq., which ties overtime pay more directly to hours actually worked should also apply to inspectors.

Under FEPA, overtime rates are expressed as multiples of actual amounts of overtime worked. FEPA overtime is paid at 1-1/2 times the employee's regular rate of pay up to the rate for GS-10, Step 1.<sup>1</sup> Overtime worked on a Sunday or holiday is paid at the same rate. FEPA also provides for a night differential of 10 percent for night work and a Sunday differential of 25 percent when the employee's regular work schedule covers a Sunday. Employees who work on holidays are entitled to twice the regular rate of pay for up to 8 hours of holiday work. Table 4.3 shows how Customs' overtime pay rates compare to FEPA rates.

<sup>1</sup>Exceptions to the Title 5 provisions apply to certain employee groups. For example, the GS-10, step 1 limitation does not apply to all law enforcement personnel.

**Chapter 4  
Overtime Provisions of 1911 Act  
Are Outdated**

**Table 4.3: Examples of 1911 Act Pay Compared to FEPA Pay**

Overtime type	Regular pay per hour	FEPA rate <sup>a</sup>	Minutes worked	1911 Act overtime pay	FEPA overtime pay <sup>b</sup>
Sunday	\$15.67	\$18.87	19	\$250.72	\$37.74
Sunday	10.98	16.47	19	175.68	32.94
Sunday	12.44	18.66	20	199.04	37.32
Sunday	21.02	18.87	45	336.32	37.74
Callback	16.37	18.87	30	131.04	37.74
Callback	13.33	18.87	20	106.64	37.74
Callback	14.47	18.87	15	115.76	37.74
Callback	13.33	18.87	20	159.96	37.74
Callback	12.95	18.87	20	155.40	37.74

<sup>a</sup>The FEPA rate is one and one-half times the base rate of pay, not to exceed the rate of GS-10 step 1 (\$18.87/hour in this case).

<sup>b</sup>FEPA overtime is shown at the FEPA callback rate, which is the most expensive premium pay provision under FEPA. It guarantees a minimum of 2 hours pay for unscheduled overtime. All assignments would have been paid at this rate if paid under FEPA.

Source: GAO analysis of Customs data.

FEPA also provides for unscheduled callbacks and recognizes the inconvenience of being called back at odd hours. FEPA authorizes at least 2 hours overtime pay for unscheduled overtime even if less than 2 hours of overtime work is required. Similarly, an employee who is required to do any work on a holiday is guaranteed at least 2 hours of holiday pay. The 1911 Act, in comparison, authorizes a minimum of 4 hours pay for what can be just minutes of work. Depending upon the hour of the callback, or whether Sundays or holidays are involved, the 1911 Act rates can be very expensive, as indicated in chapter 3.

FEPA for the most part, ties payment of overtime to actual hours of overtime worked. We believe this basic concept should apply to inspectional overtime as well. We are not suggesting that inspectional overtime should be paid at FEPA rates. Rates for inspectors should be determined by taking into account the various factors applying to the inspectional function, so long as the underlying concept holds. The concept is that inspectional overtime should bear a more direct relationship than at present to actual overtime worked.

---

## Advantages and Disadvantages of 1911 Act Overtime as Expressed by Customs Inspectors and Management, NTEU Officials, and Others

As requested by the Subcommittee, we elicited viewpoints of Customs management—including district and port directors, some regional officials, and inspectors; the president of the NTEU; and members of the importing community—including airport, seaport, and border port officials, and carrier associations concerning the 1911 Act-generated overtime system at Customs. We also queried Customs officials in the 38 ports we contacted by telephone about their views on overtime. Their responses were grouped according to the perceived advantages and disadvantages of Customs overtime for the inspector, Customs, the traveling public, and the importing community. We did not verify the validity of any of the assertions made by the various parties.

---

## Advantages and Disadvantages of Current Overtime System for Customs Inspectors

According to Customs and NTEU officials interviewed, Customs' overtime system, as a whole, fairly compensates inspectors. They said it takes into account inspectors' irregular work hours and allows a quality of life that might not be achieved otherwise. They said that the supplemental income provides an incentive to work long overtime hours.

NTEU officials said that in many respects the Customs inspector's work is more dangerous today and more complicated than in earlier times. Examples they provided include (1) climbing into and out of freight containers; (2) working at isolated warehouses, borders, and airfields; (3) processing heavy volumes of traffic at some border crossings; (4) apprehending drug smugglers, criminals, and terrorists; and (5) applying computer technology to inspections, which was largely a manual process until recently.

On the negative side, inspectors commented that overtime work which often includes weekends and holidays, cuts into their personal lives, and can affect their health. NTEU officials said that inspectors' base salaries are lower than comparable law enforcement salaries at the federal, state, and municipal levels. They also noted that, under federal statutes, inspectors carry weapons and must meet weapons proficiency requirements just as other law enforcement officers, but—unlike law enforcement officers—inspectors are not eligible for retirement after 20 years of service. Customs and NTEU officials commented that inspectors' overtime earnings are not included in the calculation of retirement annuities. Customs officials said that because retirement income is calculated on their base pay, many inspectors work beyond the usual retirement ages to maintain their incomes. Finally, several officials commented that the \$25,000 overtime cap should be increased to account for inflation.

---

### Advantages and Disadvantages of Current Overtime System for Customs

Customs officials commented that Customs benefits from current overtime laws because overtime pay attracts high caliber employees. Overtime also helps to retain employees. They said that the federal government and Customs benefit because retirement benefits are not paid on overtime earnings and paying overtime salaries is generally cheaper than hiring additional inspectors. NTEU officials commented that overtime is an efficient use of overall government resources because COBRA-authorized user fees enable Customs to enforce a multitude of laws for other agencies; these agencies, thus, do not need similar enforcement positions.

On the negative side, most Customs officials contacted commented that efficiently managing the overtime system, as structured, is difficult because of the overtime pay cap. In ports where a significant number of inspectors is nearing the cap, service is curtailed or inspectors are brought in from other ports. If inspectors from one port are asked to help out at a port that has reached the cap, Customs' travel and per diem costs will probably increase, they said. Overtime compensation, they said, also discourages inspectors from moving into management positions because managers (GS-14 and up) are not entitled to overtime, and their pay could be less than that of the inspectors they are supervising. Some officials also commented that extensive overtime work can adversely affect an inspector's productivity and effectiveness.

---

### Advantages and Disadvantages of Current Overtime System for the Traveling Public and Importing Community

Most Customs and NTEU officials interviewed said that the traveling public and importing community benefit from Customs overtime. They said that user fees, as opposed to appropriations that may be uncertain, guarantee that funds and, thus, service will be available when needed. They pointed out that the overtime system in place is designed to provide inspectional services, generally on demand, and also allows inspector availability to parallel traffic volume. Smaller carriers and importers benefit, they said, because COBRA user fees are spread among most members of the importing community, thus reducing their costs. Moreover, larger carriers and importers benefit because they generally get service when needed, and the annual dollar limit on some COBRA fees sets a cost ceiling for them.

The importing community representatives—including brokers, carriers, and airport and seaport officials—we talked with knew little about how Customs schedules or pays for overtime. Generally, they believed they were receiving adequate inspectional services. However, they did not believe services were noticeably better now that user fees fund services.

Some representatives we talked with would have preferred returning to the pre-COBRA reimbursement method. Their reasoning was that if the industry was willing to pay directly for the overtime service, Customs should provide it and bill the party directly.

Some Customs, NTEU, and importing community officials said that service is not always available on demand. Reasons provided included (1) once the overtime cap is met by each inspector in a port, service is restricted unless other ports can help out or the Commissioner of Customs temporarily waives a port's overtime cap and (2) arrival times for charter flights, private aircraft, and private vessels are generally not as reliable as scheduled service—this may result in inadequate inspector staffing. Most complaints, they said, originate when international flights are delayed by weather or mechanical problems and they arrive when the port is thinly staffed.

---

## Conclusions

The special Sunday and holiday rates established by the 1911 Act were intended to compensate inspectors for providing service outside the regular hours of the port and to make the private party requesting the service pay for it. It may have been unusual for federal employees to frequently work on Sundays or holidays in 1911, but today some ports are routinely open 24 hours a day, 7 days a week. Moreover, it is no longer unusual for some federal employees to work regularly Sundays and/or holidays. Although OBRA encouraged Customs to use shifts, it cannot do so cost-effectively on Sundays and holidays because of the 1911 Act compensation provisions.

Thus, the rationale underlying the rates established in the 1911 Act is outdated. The 1911 Act compensates inspectors at a rate far in excess of what most federal employees receive. We recognize that work done outside normal duty hours should be accorded a higher rate of pay. However, given changes in the work environment and related laws since 1911, we believe that Congress should reevaluate the basis for computing premium pay for inspectors.

For such reconsideration, we suggest that, as with other federal employees, pay for overtime hours and all Sunday and holiday work should be closely and directly related to the hours actually worked. We believe the approach followed in calculating premium pay amounts for other federal employees under FEPA is a more logical arrangement than the methods used under the 1911 Act. Specifically, FEPA recognizes that it is appropriate to pay higher than regular amounts when employees

must work overtime on a Sunday or holiday, or a weekday, but, as a rule, premium payments under FEPA are made for the hours actually worked. FEPA also recognizes that unscheduled callback overtime can be disruptive and inconvenient to employees. For this reason FEPA requires that such overtime will be deemed to be at least 2 hours in duration for pay purposes even if less time is actually worked.

The premium rates paid Customs inspectors on Sundays, holidays, and weekdays may not necessarily need to be the same as those provided under FEPA. But the idea of basing premium payments on the actual hours worked seems to us to be more reasonable than the present approach for paying Customs inspectors overtime.

We do not agree with the arguments advocated by proponents of the current rate structure that premium pay practices must be considered in conjunction with such factors as the level of base salaries, retirement system coverage, and the sources of funds used to make the premium payments. These considerations are outside the question of how much employees should fairly be paid when they are required to work outside the normal workday. They are also factors that are not unique to inspectors but are generally applicable to the entire federal workforce. Such factors are legitimate concerns of a pay system, but, as with premium pay, each should be considered on its own merits.

Given the changes in the work environment since 1911 and the fact that the 1911 Act provisions preclude the efficiencies afforded by shifts and staggered work hours, we believe that a compelling case exists for revising the 1911 Act. Such revisions, we believe, should be based on the principle that hours paid should be tied to hours worked.

---

## **Recommendation to Congress**

We recommend that Congress reevaluate the basis for computing premium pay for Customs inspectors and make such revisions in the 1911 Act as are necessary to ensure that hours paid bear a more direct relationship to hours worked.

---

## **Agency Comments**

Customs said that the 1911 Act should remain in place until a viable alternative compensation package for inspectors is enacted. We did not consider such a proposal because that was beyond the scope of our review. We continue to believe, however, that each component of an overall package, such as the overtime provisions, should be considered on its own merits.



---

**Chapter 4**  
**Overtime Provisions of 1911 Act**  
**Are Outdated**

---

NTEU cited numerous advantages and disadvantages of 1911 Act overtime, most of which are included in the text of this report. NTEU's June 3, 1991, letter is reprinted in appendix IV.

# Basic Rules of Customs Overtime and Comparison to FEPA

This appendix describes the rules governing Customs' current use of 1911 Act overtime. Customs inspectional overtime pay provided under the 1911 Act differs significantly from that provided to other federal employees under the Federal Employees Pay Act (FEPA). A major distinction between the two is how work increments are defined. FEPA workers are usually paid for work actually done in 15-minute increments. For example, 1 hour and 15 minutes of overtime work warrants 1 hour and 15 minutes of pay at the applicable rate, which is generally one and one-half times the regular hourly pay rate up to the GS-10, step 1 level. In contrast, under the 1911 Act inspectors are paid for minimum periods of time. For example, the overtime rate is generally a minimum of 4 hours of regular pay for each 1- to 2-hour period worked.

Table I.1 compares the major weekday, Sunday, and holiday compensation provisions for most government employees under FEPA with the 1911 Act provisions applicable to Customs inspectors.

**Table I.1: Comparison of FEPA and 1911 Act Weekday, Sunday, and Holiday Overtime Pay Rates**

Law	Weekday overtime rate	Sunday rate	Holiday rate
FEPA	1-1/2 times regular pay	1-1/2 times regular pay (1-1/4 times regular pay for regularly scheduled Sunday shifts)	1-1/2 times regular pay (double time for work during regular shift)
1911 Act	4 hours of regular pay for each 2-hour period, provided at least 1 hour is actually worked	16 hours of regular pay for any period worked up to 8 hours; weekday overtime rates apply after 8 hours of work	16 hours of regular pay plus the inspector's hourly rate for the number of hours actually worked up to 8 hours; for work in excess of the first 8 hours, weekday overtime rates apply

## Other Rules for Computing Customs Overtime

The basic rules under the 1911 Act for an inspector working a day shift between 8:00 a.m. and 5:00 p.m. follow.

For an assignment starting between 5:00 p.m. and 9:00 p.m. a "rollback" method is used. In this situation, no matter when the inspector starts overtime work between 5:00 p.m. and 9:00 p.m., his compensable period of overtime is always rolled back to 5:00 p.m. The compensable period then ends at the conclusion of his services. Thus, if an inspector starts overtime work at 7:00 p.m. and works until 8:00 p.m., his compensable time is rolled back to 5:00 p.m. He is, therefore, considered to have a compensable time of 5:00 p.m. to 8:00 p.m., even though he actually

---

**Appendix I**  
**Basic Rules of Customs Overtime and**  
**Comparison to FEPA**

---

worked only 1 hour. Under the regulations, the inspector accrues two 4-hour periods and, thus, receives 8 hours pay for this assignment.<sup>1</sup>

For assignments starting between 9:00 p.m. and 6:00 a.m., the compensable time is computed by adding 4 hours to the inspector's actual work time. Thus, an inspector called to work at midnight and who works until 1:00 a.m. has a compensable period of 5 hours. This gives him three periods or 12 hours pay for his 1 hour of actual work.<sup>2</sup>

For assignments starting between 6:00 a.m. and 8:00 a.m., any time worked, whether minutes or the full 2 hours, is considered a compensable time of 2 hours for which the employee receives 4 hours pay.<sup>3</sup>

The rules also provide that if an inspector works less than 1 hour between 5:00 p.m. and 6:00 p.m., he is credited with 1 hour of compensable time if the assignment is a new one and was not pending at the end of his regular shift.<sup>4</sup>

Any work on a Sunday or holiday is treated as a compensable 8 hours. Thus, if an employee is called in for a Sunday or holiday assignment, even of short duration such as 30 minutes, he is considered to have a compensable period of 8 hours and is, thus, entitled to receive 16 hours pay.

Overtime work from 8:00 a.m. to 5:00 p.m. is not compensable under the 1911 Act; thus, for example, overtime work within these hours on an inspector's day off (including Saturdays) is compensated under FEPA or the Fair Labor Standards Act, 29 U.S.C. 201 et seq., instead.

This is only a brief summary of the basic 1911 Act rules applicable to an inspector who works a regular day shift between 8:00 a.m. and 5:00 p.m. There are many other rules dealing with broken periods of overtime (two assignments in a night), maximum benefits payable, treatment of overtime just prior to or after a Sunday or holiday assignment, etc. Further, employees who regularly work nonstandard shifts (e.g., 3:30 p.m. to midnight) come under a variation of the basic rules.

---

<sup>1</sup>19 C.F.R. 24.16(g) (second sentence, first clause).

<sup>2</sup>19 C.F.R. 24.16(g) (second sentence, second clause).

<sup>3</sup>19 C.F.R. 24.16(g) (second sentence, third clause).

<sup>4</sup>19 C.F.R. 24.16(d).

# Legislative History of Customs Overtime

The regulation of Customs inspectors' pay began with the Act of March 2, 1799, 1 Stat. 627, 677. Section 53 allowed Customs officials to put inspectors on board vessels and required inspectors to oversee cargo processing. The Act further required vessel owners to pay the salaries of inspectors who came on board vessels and did overtime work.

The provisions of the 1799 Act were broadened and formalized by the Acts of March 3, 1873, 17 Stat. 579; June 26, 1884, 23 Stat. 53, 59; June 30, 1906, 34 Stat. 633; and March 4, 1909, 35 Stat. 1065. These acts established overtime pay for night work and directed Customs officials to fix a uniform rate of pay, collect it from vessel owners, and pay it to the inspectors.

The Customs overtime law in effect today, 29 U.S.C. 267 (1988)—the 1911 Act—originated in section 5 of the Act of February 13, 1911, 36 Stat. 899, 901, and repealed the previous Customs overtime laws. The 1911 Act formalized overtime compensation for night inspectional services and, for the first time, authorized extra compensation for work performed on Sundays and holidays. The Act of February 7, 1920, 41 Stat. 402, amended the 1911 Act, expanded the range of duties for which overtime was paid, fixed pay for the overtime hours of 5:00 p.m. to 8:00 a.m., and specified the precise method of computing overtime. The legislative history of the 1911 and 1920 acts shows that proponents of extra compensation constantly made the point that the government would not be out of pocket by the legislation.<sup>1</sup> Thus, private companies that benefitted from the extra hours of service continued to bear the cost of overtime wages. In addition, prior to the enactment of the 1920 amendments to the 1911 Act, Customs inspectors were required to work 10-hour days, 2 hours longer than the accepted working day, for “very low” pay and “at all times and in all weathers.”<sup>2</sup>

The Customs Administrative Act of 1938, 52 Stat. 1077, 1082 continued congressional authorization for overtime pay “in all cases where Customs employees perform services outside regular hours of business for private interests, the expense to be borne by the person requesting such services.” The 1938 act also preserved Treasury’s authority to assign Customs officers to regular tours of duty at night, on Sundays, or on holidays when those assignments were in the public interest, without paying overtime.

<sup>1</sup>United States v. Myers, 320 U.S.C. 561, 566 (1944).

<sup>2</sup>59 Cong. Rec. 2171, 2115.

In 1943, Customs inspectors at Port of Detroit bridges, tunnels, and ferries, challenged the Treasury's refusal to pay overtime compensation at night and on Sundays and holidays at 1911 Act rates. Treasury maintained that (1) the employees' statutory right to payment was dependent upon private sector reimbursement and that (2) the 1938 act had exempted owners of highway bridges and tunnels from paying overtime compensation because 24-hour service at such structures was in the public interest.

The Supreme Court held the government primarily liable for the overtime wages in United States v. Myers, supra. The Court noted that private sector reimbursement requirements had been a motivation for congressional approval of earlier legislation; however, the government, as the employer, had the responsibility to pay the wage rates set in statutory provisions to the inspectors. The Court also held that Treasury could use a "shift" system, whereby employees would work staggered hours to provide 24-hour service at the borders, thus avoiding overtime wages as long as the shift did not exceed the normal 9-hour day.

When Customs attempted to collect extra compensation from bridge and tunnel operators to cover overtime pay, the operators responded by closing their facilities on Sundays and holidays. The emergency situation caused by closing Canadian and Mexican borders led to the Act of June 3, 1944, 58 Stat. 269. The 1944 Act, citing United States v. Myers, waived the reimbursement requirement for highway bridges, tunnels, and ferries between the United States and Canada and Mexico and directed the government to pay all overtime compensation.

In 1945 and 1954, when Congress was considering legislation that resulted in the Federal Employees Pay Act of 1945 (FEPA), 59 Stat. 295, and the 1954 amendments to FEPA, 68 Stat. 1110, consideration was given to overhauling inspection overtime legislation. Citing the lack of uniformity among the inspection services, a Civil Service Commission study advocated including inspectors under FEPA. However, as enacted, FEPA explicitly preserved the special overtime pay laws applicable to federal inspectors, including Customs. Reasons given for maintaining different overtime laws were similar to those articulated when each inspectional overtime law was initially enacted: the existing private sector reimbursement clauses, the particularly burdensome nature of inspectional overtime work, and the long history of the special status for

the inspection service. The inconsistency of taking away inspection service overtime benefits in legislation designed to expand overtime compensation for other federal workers was another factor in keeping the inspector overtime pay laws.

The reimbursement concept that had been crucial to the preservation of inspectional overtime laws was modified by the Airport and Airway Development Act Amendments of 1976, Public Law 94-353, July 12, 1976, 90 Stat. 871, 882. The 1976 act held the federal government responsible for all daytime Sunday and holiday overtime pay, which had been paid by aircraft owners and operators. The reimbursement language was further modified when the concept of user fees was introduced by the Customs Procedural Reform and Simplification Act of 1978, Public Law 95-410, Oct. 3, 1978, 92 Stat. 888. The 1978 act allowed Customs to set rates to cover the cost of certain noninspection services with revenue accruing to the U.S. Treasury.

## Customs User Fees

Since 1984, several different statutes have been enacted that authorized Customs to collect fees for services that were, for the most part, previously exempt from direct charges. One statute enacted in 1984 charges for Customs services at small airports.<sup>3</sup> The second statute—the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, Public Law 99-272, April 7, 1986, 100 Stat. 308—established fixed fees for processing passengers and carriers entering the U.S. User fees authorized by these acts are in addition to those fees collected by Customs on behalf of other agencies—such as the Army Corps of Engineers for harbor maintenance and the Department of Agriculture for processing specified imported meats. These user fees increased the amount of revenue collected and revamped the system for authorizing charges, setting rates, and controlling the use of special revenue accounts.

COBRA established fees for processing passengers and carriers such as trucks, barges, railroad cars, and private aircraft. For example, the fees—regardless of the number of entries per year—are \$5.00 per passenger entry aboard a commercial vessel or aircraft<sup>4</sup> and \$5.00 for dutiable mail. Other COBRA fees have an annual dollar limit, the highest being \$5,955 for commercial vessels of 100 net tons or more.

<sup>3</sup>Section 236 of the Trade and Tariff Act of 1984, Public Law 98-573, Oct. 30, 1984, 98 Stat. 2992.

<sup>4</sup>Passengers from Mexico, Canada, a U.S. territory or possession, and certain adjacent islands are exempt. Travelers crossing land borders are also exempt.

COBRA is significant because it changed remaining legislative requirements that the common carrier directly reimburse Customs for overtime inspectional services as provided. Under COBRA, air and vessel passengers and cargo carriers pay a fee for using Customs services. In the case of passengers, a \$5.00 charge is included in each ticket. Carriers pay either as the cargo crosses the border or on an annual basis. The user fee must be paid whether or not overtime is worked. Receipts from user fees go into a permanent Treasury account from which Customs inspectional overtime charges are reimbursed.

The Omnibus Budget Reconciliation Act of (OBRA) 1986, Public Law 99-509, Oct. 21, 1986, 100 Stat. 1965, introduced charges for processing merchandise entering the U.S. on the basis of its value. The merchandise processing fee imposed by OBRA is paid by importers in addition to any COBRA fees due. OBRA collections are also maintained in a permanent Treasury account used to offset the cost of Customs noninspectional and enforcement (commercial) operations. For a more detailed discussion of the merchandise processing fee, see U.S. Customs Service: Merchandise Processing Fee—Examination of Costs and Alternatives (GAO/GGD-90-91BR, June 15, 1990).

In 1987, OBRA was amended by the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, Dec. 22, 1987, 101 Stat. 1330-1337. It encouraged the use of staggered work hours or shifts at airports as a way of providing service outside normal work hours and as a way of efficiently utilizing inspectors' time. Subsequently, the Customs and Trade Act of 1990, Public Law 101-382, Aug. 20, 1990, 104 Stat. 629, 637, authorized Customs to hire additional inspectors from user fee collections that are in excess of that needed to pay for inspectional overtime. Specifically, certain surplus COBRA fees collected can be used to hire full- and part-time inspectors and procure equipment. The goal is to enhance services for new or expanded international flights.

---

## Overtime Pay Ceilings

In 1979, in an effort to control overtime expenditures, Congress put a \$20,000 limit on Customs inspectors' annual overtime pay.

In its 1981, 1982, and 1983 hearings, the House Committee on Appropriations continued to discuss the reasonableness of Customs overtime compensation; however, no legislation was enacted.

In July and August 1983, the Departments of Justice and the Treasury submitted to Congress proposed legislation to amend the rate of pay for

inspectors' overtime, Sunday, and holiday work. The proposed legislation would have reduced Customs inspectors' overtime pay to time and a half, thus making their overtime rate more comparable to the rate established by FEPA. (A similar bill was introduced in 1989; it also proposed changing retirement benefits for inspectors.) Congress did not pass the proposed legislative changes. In 1983, Congress increased the annual overtime pay limitation per inspector from \$20,000 to \$25,000, and it is still in effect.



# Comments From the U.S. Customs Service

**THE COMMISSIONER OF CUSTOMS**

WASHINGTON, D.C.

MAY 30 1991

MAN-1-IC:W

Dear Mr. Dodge:

I appreciate your meeting with my staff on May 23, 1991, regarding General Accounting Office Report GGD-264390, Overtime Usage in the Customs Service. However, we are disappointed that normal and usual procedures are not being followed, thereby denying the Customs Service the opportunity to review and comment on the report prior to its being finalized.

Nevertheless, the Customs Service will address some critical issues that were raised at our recent meeting. The key areas briefly discussed were the increases in overtime costs from 1985-90 in relation to the workload, the viability of the 1911 Act as a means to compensate Customs officers for overtime service, and compliance with internal controls and the integrity of the accounting systems. We have prepared the enclosed document in response to some of the issues raised at our recent briefing.

Customs believes that it has taken a number of actions to improve the administration of the 1911 Act. In particular, the activities of the Blue Ribbon Panel have reflected our determination to ensure fair and equitable administration of the Act, while providing the enforcement and facilitative measures demanded by the public, the Administration and Congress.

REPORT SMUGGLING TO UNITED STATES CUSTOMS SERVICE 1-800-BE-ALERT

-2-

We hope that our comments have been beneficial to an accurate appraisal of the management of overtime in the Customs Service. We look forward to receiving a completed copy of your report so that we can more fully assess your findings and recommendations.

Sincerely,



Carol Hallett  
Commissioner

Mr. Lowell Dodge  
Director of Administration  
of Justice Issues  
General Accounting Office  
41 G Street N.W.  
Washington, D.C. 20548

Enclosure

**Overtime Usage in the Customs Service  
Response to GAO**

**MANAGEMENT OF TOTAL COSTS**

**FINDING:** An 80.3% increase in overtime costs since 1985 is not in proportion to increases in workload.

**RESPONSE:** Of the 80.3% increase, 26% is directly attributable to pay raises and increases in the grade levels. The remaining cost increase is primarily attributable to the increases in workload without corresponding increases in labor resources causing the Customs Service to rely heavily on overtime to supplement its labor resources.

During the past decade, the traditional workload indicators have more than doubled in every category, of which a proportionate amount occurred from 1985-90. These categories include:

	FY85	FY90	Change
air passengers	33.8M	47.7M	+ 41%
sea passengers	4.5M	7.1M	+ 57%
land passengers	253.0M	370.0M	+ 46%
land carriers	89.0M	124.3M	+ 40%
formal entries	6.9M	9.2M	+ 33%
informal releases	3.2M	9.1M	+184%

During this period, the U.S. was engaged in a war on drugs in which the Customs Service was directed to be the front line. Since 1985, Customs narcotics seizures have increased substantially:

	FY85	FY90	Change
heroin	784.6 lbs.	1,497.1 lbs.	+ 91%
cocaine	50,506.4 lbs.	164,703.2 lbs.	+ 226%
opium	505.0 lbs.	2,047.2 lbs.	+ 305%

In addition, monetary instrument seizures have increased from \$95.8 million to \$446 million, a 366% increase.

**FINDING:** Customs managers are concerned with the management of the overtime cap and not with management of overtime costs.

**RESPONSE:** This finding parallels the results of Customs own internal review of the management of overtime issues.

A review of assignment practices begun in 1986 resulted in the issuance of Customs Directive 51250-03, dated December 20, 1988. This document directed managers to ensure the efficient, effective and economical utilization of labor resources.

-2-

In May 1989, the Office of Inspection and Control initiated an internal review of the management of overtime costs. Findings of the internal review were presented to the Commissioner of Customs and the Regional Commissioners in February 1990. In March 1990, the Commissioner determined that a Blue Ribbon Panel consisting of field representatives from every region should conduct in-depth surveys of the overtime management at various sites.

The Blue Ribbon Panel assessment recommended that the following findings be addressed at some locations:

- better alignment of workforce with workload patterns,
- reduction in Sunday and holiday staffing,
- better proration of assignments, and
- overtime cap management.

In order to address these findings, the Customs Service has adopted a plan to:

- realign staff to workload,
- develop automated systems to ensure better alignment of labor resources to work load,
- enhance the overtime work ticket system, and
- include in each manager's performance plan the responsibility for the efficient management of overtime.

In addition, a standing committee was formed to ensure that all regions are properly monitoring the administration of overtime. The committee meets quarterly with representatives from each region who are responsible for ensuring proper implementation of overtime practices and uniformity of overtime management within their region.

-3-

Prior to FY 1991, overtime was the only source of meeting the enormous increase in demands for service. Legislation passed by Congress in August 1990 authorized Customs the use of surplus user fee resources to hire additional inspectional personnel, equipment, and related expenses in its passenger and conveyance related service areas. For FY 1991, Customs authorized the funding of 256 inspectors, 29 passive canine teams, and \$1.8 million in part-time resources. As of April 30, 1991, 122 inspectors are already on-board, with those remaining undergoing pre-employment formalities. Twelve million dollars in equipment and related costs were also authorized during this first year.

PROVISIONS OF THE LAW

**FINDING:** Customs overtime compensation law (19 U.S.C. 267), written in 1911, is outdated for the 1990's.

**RESPONSE:** We believe the 1911 Act should remain in place until a viable alternate compensation package for inspectors is enacted.

Inspectors are required, as a condition of employment, to make themselves available to meet unexpected service demands regardless of weather, time of night or day, family or other personal considerations. The employee's personal life is disrupted by the demands of the service at any time. The employee suffers this hardship because the compensation is deemed adequate.

The service demands are often irregular and unpredictable. Airline and vessel arrivals are subject to sudden changes, requiring a rapid expansion in the assigned work force. We are required to provide service 24 hours a day, 365 days a year. Clearly, the ability to utilize overtime enables the government to expand service to the public at the least cost whenever the demand arises.

The position of inspector is unique to the government. It is Customs recommendation that an Inspector Compensation Panel be established to examine the unique characteristics of this position and develop a comprehensive package that would ensure competitiveness in recruitment, fairness in pay, and retention capability.

-4-

**ADMINISTRATIVE WEAKNESSES**

**FINDING:** The overtime work ticket accounting system allowed duplicate payments of some assignments.

**RESPONSE:** The Office of Inspection and Control requested the Office of Internal Affairs to review alleged duplicate payments of assignments. The findings were that approximately 30 work tickets out of more than 1.6 million assignments were deemed to be duplicate payments.

Effective September 20, 1990, additional edits were incorporated into the work ticket system to preclude duplicate payments for the same assignment. Revisions and edits to the work ticket system are made as we become aware of any shortcomings in the system.

**FINDING:** Existing internal controls were not being applied uniformly and consistently by field managers.

**RESPONSE:** Any findings that internal controls are not being fully implemented by field managers are of serious concern to the Customs Service. We will take immediate action to remind all field managers of what source data documents and procedures are available for internal controls and reiterate their obligation to implement those procedures.

The Customs Service is committed to further improving and refining internal controls. The Office of Inspection and Control (I&C) is strengthening the internal controls through the development of an automated scheduling system to track and control all regular and overtime assignments. This system is currently being field tested at 7 major port locations.

# Comments From the National Treasury Employees Union



Hand Delivery

June 3, 1991

Rodney Hobbs  
General Accounting Office  
U.S. Customs Headquarters Bldg.  
1301 Constitution Ave., NW  
Room 2132  
Washington, D.C. 20229

Re: Report Concerning 1911 Overtime

Dear Mr. Hobbs:

While appreciative of the opportunity to meet briefly with representatives of GAO on May 31, 1991, NTEU strenuously disagrees with the decision to disallow the customary period for interested parties to review and comment on GAO's report on the 1911 overtime system. As the result of the decision to withhold the report until the commencement of hearings, NTEU has been prevented from fully addressing crucial points in the report which may greatly impact the employees NTEU represents.

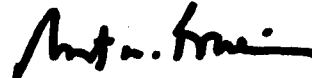
While GAO's role in this matter has been represented as that of fact-finder, the secrecy surrounding the report has prevented interested parties such as NTEU from contributing to the fact-finding process and assessing the accuracy of GAO's findings. Precluding interested parties from review and comment will not strengthen the validity of the report. Instead, this secrecy must call the findings into question.

901 E Street, N.W. • Suite 600 • Washington, D.C. 20004 • (202) 783-4444

**Appendix IV  
Comments From the National Treasury  
Employees Union**

NTEU submits the following general comments concerning the 1911 overtime system. These comments must be considered in any full and fair review of inspector overtime. NTEU requests that they be appended to the report, along with this cover letter.

Respectfully submitted,



Robert M. Tobias  
National President



I. The system of inspectional overtime established by the Act of February 13, 1911, as amended, (1911/44 Act) provides substantial advantages and few disadvantages to Customs as an agency, to Customs inspectors, and to the importing community and traveling public paying COBRA fees.

A. Inspectors

Advantages

The system provides fair compensation to inspectors who must work long, irregular hours under stressful and often dangerous conditions.

It provides a needed supplement to inspectors whose base pay is relatively low when compared to other occupations with similar risks and responsibilities.

The 1911 system, in place for 80 years, allows inspectors to enjoy a quality of life which could not be attained without it. This enables high caliber employees to remain employed as Inspectors instead of having to seek employment elsewhere.

Disadvantages

Inspectors may not be paid for work performed. This happens when an inspector works more than one period of overtime (two hours) but does not work more than one hour into the next two hour period.

1911 overtime earnings are not included in the calculation of an inspector's retirement annuity.

Customs does not pay 1911 rates for overtime services performed before 5:00 pm or after 8:00 am.

B. Customs as an agency

Advantages

It assists the agency in attracting and retaining high caliber employees by supplementing otherwise unattractive base salary rates.

The agency's benefit costs remain stable by using current employees to perform overtime services instead of hiring additional staff.

The system ensures that the agency will be able to provide sporadic and unpredictable services to carriers outside regular working hours without having to obtain additional appropriated funding or make staffing decisions based on uncertain events.

Due to carrier funding, the agency can provide services upon request. This expedites commerce, ensures the prompt

processing of perishable goods, and allows travelers to enter the country without unreasonable delay. Without carrier funding, compensation for these functions would have to be paid from appropriated funds, thereby increasing the burden on the budget and the taxpayer.

Disadvantages

Additional services provided between 8:00 am and 5:00 pm are not paid out of the COBRA account.

C. The importing community and traveling public paying COBRA fees

Advantages

It provides the importing community and traveling public with available staffing without having society absorb the cost of hiring additional personnel to provide services outside of regular working hours.

The availability of highly qualified and fairly compensated Customs employees relieves society of the cost of paying employees of other agencies to enforce the multitude of laws enforced by a Customs inspector. (e.g. USDA, INS, Fish and Wildlife, Public Health, FDA, DOT, EPA, etc.).

This carrier funded system ensures the importing community and the traveling public that the availability of services will increase commensurate with the increase in the volume of cargo and passengers.

The 1911 system is designed to provide carriers with services upon demand. Commerce and passenger facilitation is not disrupted by the uncertainties of the appropriation process.

Smaller carriers and importers share the cost of receiving services with larger members of the importing community, thereby making it easier for the smaller businesses to obtain services.

Disadvantages

Despite paying into the COBRA fund, carriers do not get timely service due to agency refusals to schedule overtime work or to adequately staff overtime assignments. NTEU recommends that Congress take steps to ensure that this money is spent to provide requested services, not stockpiled to help ease the budget deficit.

II. The rates established in the 1911/44 Act are justified in view of the difficult nature of the Customs inspector position and changes in the position which have made the position even more demanding than when the rates were enacted.

Inspectional work today is at least as hazardous as in "earlier times." Inspectors still climb aboard ships and search through cargo holds. Containers must also be inspected, which involves climbing over and occasionally tunnelling through containers in which dangerous devices or substances may be concealed. Significantly, the container itself may also require intensive examination and an examination of a container and its goods is more difficult and time consuming than examining bulk goods. In hot weather, temperatures inside containers also routinely exceed 100 degrees.

Inspectors continue to work in isolated warehouses and freight yards, exposed to accidents and attack. They must still climb aboard trains and trucks and examine passenger vehicles. They are still assigned to deserted docks, isolated border inspection booths and remote airfields. All of these functions must be performed regardless of weather conditions and at all hours.

The working conditions and duties of inspectors working at border crossings have not improved. In fact, due to the drastic increase in traffic, conditions have become more onerous since staffing levels have not kept up with the increased traffic volume. Neither have facilities in many other locations seen significant improvement. In some areas, inspectors work in shacks or trailers without adequate sanitation facilities.

Significantly, in many cases, inspectors are at greater risk of bodily harm today than in "earlier times." In most locations, the agency has decided to staff assignments with skeleton crews in order to keep overtime expenditures to a minimum. Whereas in the past, several inspectors may have been assigned to a particular job, today a single inspector may be assigned, increasing the risk of accident or injury by reducing the staffing available to do the job. Additionally, today's inspector faces a greater risk from drug smugglers, criminals and terrorists.

An inspector's job is also more complicated than in "earlier times." Many aspects of an inspector's job have been computerized which requires a greater degree of technical expertise. Furthermore, inspectors today are expected to be more law enforcement minded. Much greater emphasis is placed on narcotic interdiction and the apprehension of felons. Regardless of the nature of the container and conveyance, smugglers will continue to conceal contraband. Inspectors must find it.

Conveyance arrival times are not always predictable. Although some airlines may be fairly dependable, numerous others are frequently late in arriving due to weather conditions or mechanical problems. Charter flights and private aircraft are also frequently late. Vessels are still prone to tardiness. These frequent tardy arrivals result in long and arduous assignments which often occur after a regular eight (8) hour shift. There is no predictability of traffic at border locations. Passenger vehicles and pedestrians continue unabated seven days a week. Likewise, there is no advance notice of truck traffic.

III. Despite being subject to stringent qualification requirements and high job stress, the total compensation package for Customs Inspectors is less than that of many federal, state, and municipal law enforcement personnel.

Inspectors are hired at either GS-5 (Step 1 pays \$16,973 per year) or GS-7 (Step 1 pays \$21,023 per year), well below the average starting rate for many law enforcement officers and progress along career ladder only to a journeyman rate of GS-9 despite being required to be expert in complicated Customs law and many other statutes. There are only a limited number of senior GS-11 jobs. Many law enforcement officers have the chance to earn significantly more.

It should also be noted that inspectors are not considered "law enforcement officers" under federal statutes concerning pay and retirement benefits. Consequently, despite being required to carry weapons and meet one of the toughest weapon qualification requirements in the nation and performing criminal law enforcement activities, inspectors do not enjoy the benefit of any law enforcement premium pay.

Similarly, despite the fact that inspectors have been assaulted and killed in the line of duty, they are not eligible for law enforcement "twenty year" retirement and do not have their overtime earnings included in the calculation of their retirement annuities. Likewise, many law enforcement officers have fully paid health insurance or have to contribute a smaller percentage of their wages toward health insurance premiums than do Customs inspectors.

IV. The \$25,000 annual cap on inspector overtime earnings creates unnecessary problems in workload management.

The overtime cap creates problems in providing overtime services upon request. The agency is compelled to implement systems to monitor overtime earnings to ensure that no employee exceeds the annual cap. This leads to making staffing decisions based on proximity to the cap and the expenditure of substantial

time and resources on the monitoring process. A frequent result of this process is short staffing an assignment in situations when available inspectors are close to the cap. Another result is the assignment of inspectors who are not near the cap from other areas which results in the dilution of staffing in those areas and the expenditure of travel and per diem funds.

In many cases, the cap serves to penalize both employees who want to work more overtime and those who want to work less. When the cap becomes a problem, employees near the cap who may want to work additional assignments are prevented from doing so. Employees who do not wish to work additional assignments may then be forced to work in their stead.

V. Employees are not likely to work inordinate amounts of overtime to the point where their productivity is diminished.

It is axiomatic that productivity and effectiveness diminish when the amount of overtime worked by an individual becomes excessive. This type of excess is, however, unlikely to occur. Customs policy, the collective bargaining agreement, and common sense place limits on the amounts of overtime employees may work in a specified period.

The 1911 compensation system also provides adequate compensation for the hours worked. Coupled with limits on the amount of overtime which can be worked, this serves to ensure a highly motivated workforce which does not work an inordinate amount of overtime. Without adequate compensation, inspectors will be less inclined to accept overtime assignments which would lead to staffing problems and delays in providing services.

VI. Increased usage of shifts and/or staggered work hours will not promote the efficiency of the Customs Service.

Inspectors routinely rotate between assigned work locations and shifts. Studies have repeatedly demonstrated that employees who regularly work during night hours and employees who rotate among different shifts suffer adverse effects on their physical and mental health. They also tend to be less productive than their counterparts who work fixed daytime hours. In light of the stressful and demanding nature of the inspector position, NTEU believes that the increased use of shifts will certainly result in a diminution of inspector efficiency.

In addition to the loss of efficiency which comes from working shifts, the personal lives of inspectors will suffer from increased use of shifts. It will become more difficult to maintain a meaningful family life and engage in productive community activities. These drawbacks will adversely impact the ability of

Appendix IV  
Comments From the National Treasury  
Employees Union

inspectors to make personal plans and will make the position less attractive to all, especially those with families.

Unless full time staffing is drastically expanded, increased use of shifts will dilute the service available to the public during traditional business hours. Staffing two shifts with the same number of inspectors who had previously worked one shift and covered assignments outside the shift by working overtime will reduce the number of inspectors on the first shift. This results in less staffing during the hours when the most business is likely to be conducted. The inevitable result will be longer lines of passengers and slower service to the importing community. The hiring of additional personnel to sufficiently staff new shifts will be expensive and come from appropriated funds or the COBRA account surplus. Regardless of the source of funding, the Service estimates that a full time inspector position costs \$50,000 per year. In most, if not all cases, assigning duties outside normal working hours on an overtime basis should produce a net savings when compared to hiring additional personnel.

Shifts should not be established solely for the purpose of eliminating overtime payments for isolated or irregular events. In such cases, before and after completion of the task which precipitated the shift, inspectors have "down time" because they are required to remain at work during the remainder of a senseless shift.

VII. By improving the computer system used by Customs, the agency can better meet the needs of the public.

NTEU has consistently called for better integration of the computers and computer software used by Customs in its Automated Commercial System (ACS) into the Customs workplace. Proper use of computers would expedite the inspection process, while freeing inspectors and others to conduct better and more frequent inspections. Inspectors should be able to access the ACS, obtain the information they need to make a determination as to whether to inspect or not inspect, and move on the next task. Under the ACS scheme, the system usually determines what will be inspected, requiring the inspector to pursue a time-consuming override process if he/she does not concur.

"Proper service to the public" demands that Customs not only expedite the movement of passengers, for example, but also protect the public's health and welfare through adequate enforcement of the trade laws. ACS as it is now devised fails to provide a sufficient enforcement system because the cargo selectivity criteria upon which the system is based is often invalid.

VIII. Although there are sufficient funds to pay for current and increased overtime services, additional full-time inspectors would better enable the Service to fulfill its mission.

Although some areas of the country are currently short staffed, additional personnel should not be hired solely for the purpose of reducing overtime expenditures. There has been a consistent surplus of funds in the COBRA overtime account since its inception. Overtime services can be provided to meet many of the demands of the traveling public and the importing community. The agency has elected to restrict overtime spending in recent years and now, through revision to the COBRA enabling legislation, will be allowed to spend some of the surplus funds for additional staff and equipment. The new statutory scheme, however, ensures the continuation of sufficient funding to provide overtime services. There is, therefore, no shortage of funding from the commercial community for overtime expenditures. This money should be spent on its intended purpose. There is no need to hire additional staff solely to reduce overtime spending.

There is, however, a need for additional inspectors. The emphasis on automation in recent years and the agency's increased use of new shifts has come at the expense of maintaining appropriate staffing levels. NTEU has consistently advocated additional hiring to return inspectional staffing to the levels which existed prior to the personnel cutting attitudes of Customs management. The need for additional inspectors becomes more acute with the burgeoning volume of cargo and passengers for which the Service is responsible.

Congress has recognized that there are not enough inspectors to protect our borders against the influx of drugs. Consequently, Congress has allocated \$212 million for FY 91 to the National Guard for the purpose of drug interdiction. This money can be better spent by hiring additional inspectors. Not only are inspectors better qualified than members of the National Guard to interdict narcotics, they are also able to perform the full range of inspectional functions.

If additional hiring does occur, full time inspectors should be hired. Because they are better trained and more committed to their careers, full time inspectors are better able to service the public. Additionally, in light of the dangerous nature of the inspector position, inspectors depend on the ability of their fellow worker to properly react to hazardous situations. Part time employees cannot be fully expected to perform as well as a full time inspector in emergencies.

IX. Congress already has the authority to oversee Customs' provision of service to the public. Further legislative controls appear unnecessary.

Congress retains the authority, via its authorizing and appropriating functions, to conduct general oversight and control of Customs' activities and expenditures. Any additional express authority would be redundant. In addition, such scrutiny defeats the stated purpose of the COBRA fee law, which was designed to give Customs flexibility in meeting the needs of the trade community. In fact, the express statutory quid-pro-quo for the fee was service to those paying the fee. Congress need only insist that Customs meet its obligations under the current law.

X. Appropriated funding for Customs inspector overtime would not enhance the overtime compensation system.

NTEU sees no advantage to paying for overtime services through the appropriations process. These services are provided to "for-profit" carriers (many of them foreign carriers) at their request. The carriers derive direct financial benefit from being able to expedite their business outside normal working hours. Taxpayers should not have to bear the expense of funding these services.

Additionally, as evidenced by the appropriation process for FY 91, Congress and the administration are hard pressed to fashion a budget under current circumstances. An additional responsibility could easily result in further delays. Funding for overtime services would also be subject to annual uncertainty as it competes with other programs for scarce national resources.

XI. The rates established by the 1911/44 Act are fully justifiable.

The oft-cited example of an inspector working 30 minutes on a Sunday or holiday to receive 2 days pay is an anachronism. Such an occurrence is very rare. Far more common is the requirement to work an entire 8 hour shift or longer on a Sunday or holiday performing a variety of different overtime assignments. The result is the inspector receives pay for the work at a double time rate. Collective bargaining agreements in the private sector provide at least double time for such work. Many provide triple time. The Sunday and holiday compensation for inspectors is not unreasonable, especially in light of the incentive it provides to carriers not to request a disruption of the inspector's Sunday or holiday.



The 1911 compensation system was created, and still serves to provide, premium services outside of normal working hours. The principle of paying a premium rate for overtime services is well established in private industry and other areas of the government. Inspectors who receive compensation under the statute are highly qualified professionals who are paid a base rate less than law enforcement personnel. They are expected to perform stressful and physically demanding services at any hour, regardless of the weather. Furthermore, the time spent in preparing for and travelling to and from overtime assignments must be considered. This time is not compensated. Thus, to work the mythical one-half hour on Sunday, an inspector can easily spend an hour dressing (a well groomed, uniformed appearance is required) and two hours travelling to and from an assignment.

The 1911 system is just as valid today as it was 80 years ago. In fact, the more demanding nature of the position and the ever increasing volume of cargo and passengers make the position even more deserving of this type of premium compensation. Failure to maintain the 1911 system will undoubtedly inhibit Customs' ability to attract and retain qualified inspectors and will shatter the morale of current inspectors who have come to depend on this system as part of their overall compensation package.

XII. Problems encountered in the administration of the overtime cap can be avoided by eliminating the cap or revising it in recognition of relevant economic factors.

It is highly unlikely that any inspectors will reach the \$25,000 cap early in the year. Customs and NTEU have negotiated over the establishment of systems to monitor and prorate overtime earnings so that this occurrence can be avoided. It is possible, however, for difficulties to be encountered toward the end of the year. These situations highlight the fact that the current overtime cap has outlived its usefulness. It should either be eliminated or revised to reflect wage increases, inflation and other economic factors.

XIII. The increase in the amount of overtime worked is due to a drastically increased workload without a commensurate increase in staffing.

GAO and Congress may note that there has been a significant increase in the amount of overtime worked during the last five (5) years. While the amount of overtime may have, in fact, increased, the increase is easily explained and justifiable. During that period of time, the agency's workload has increased remarkably. Commercial and passenger entries have soared. Additionally, the Service expanded its functions since it was

Appendix IV  
Comments From the National Treasury  
Employees Union

designated as the lead agency in the war on drugs. This new role necessitated new types of functions and an increase in the overall workload of the agency.

During the same period in which the agency's responsibilities increased, inspector staffing remained relatively stagnant. Despite NTEU's annual arguments in favor of increased inspector staffing, the agency has chosen instead to devote funding to electronic systems, many of which have serious flaws. The result of these circumstances is clear. The agency has attempted to meet its mandate of "doing more with less." Instead of providing adequate staffing to meet an ever increasing workload, the agency has elected to limit many of the traditional functions performed by inspectors. If inspectors performed the full range of traditional inspectional functions, there would be an even greater amount of overtime worked. The increase in the amount of overtime worked over the last five (5) years is due to an overburdened inspectional workforce attempting to meet the demands of a spiraling workload.

---

# Major Contributors to This Report

---

**General Government  
Division, Washington,  
D.C.**

Weldon McPhail, Assistant Director, Administration of Justice Issues  
Rodney F. Hobbs, Assignment Manager  
Melvin J. Horne, Evaluator  
Joanne M. Parker, Social Science Analyst  
Catherine M. Hurley, Computer Programmer Analyst

---

**Office of the General  
Counsel, Washington,  
D.C.**

Bruce Goddard, Senior Attorney

---

**Atlanta Regional  
Office**

Frankie L. Fulton, Regional Management Representative  
Clarence Tull, Evaluator-in-Charge



---

### **Ordering Information**

**The first five copies of each GAO report are free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.**

**U.S. General Accounting Office  
P.O. Box 6015  
Gaithersburg, MD 20877**

**Orders may also be placed by calling (202) 275-6241.**

---

**United States  
General Accounting Office  
Washington, D.C. 20548**

**Official Business  
Penalty for Private Use \$300**

**First-Class Mail  
Postage & Fees Paid  
GAO  
Permit No. G100**

---