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CUSTOMS SERVICE

Information on User Fees

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The Honorable Daniel Patrick Moynihan, Chairman
The Honorable Bob Packwood
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable Sam M. Gibbons, Acting Chairman
The Honorable Bill Archer
Ranking Minority Member
Committee on Ways and Means
House of Representatives

The Honorable J.J. Pickle, Chairman
The Honorable Amo Houghton
Ranking Minority Member
Subcommittee on Oversight
Committee on Ways and Means
House of Representatives

This fact sheet provides information on the U.S. Customs Service's user fees. Revenues from these user fees partially finance Customs' inspectional services. House Conference Report No. 213,[1] accompanying the Omnibus Budget Reconciliation Act (OBRA) of 1993[2] required us to report to the Senate Committee on Finance and the House Committee on Ways and Means on the efficiency, effectiveness, and fairness of Customs' user fees. In our discussions with majority and minority staff from the Senate Finance Committee and the Oversight Subcommittee, House Ways and Means Committee, we agreed to respond to the Conference Report's requirement by providing information on (1) the current structure of user fees, (2) uses of user fee revenues, (3) changes and possible fiscal impact of the North American Free Trade Agreement (NAFTA) on the user fees, and (4) changes to Customs' overtime and premium pay system resulting from the Customs Officer Pay Reform provisions of OBRA of 1993. To obtain information on the user fees, we reviewed relevant documents and held discussions with Customs officials. Appendix I contains a detailed discussion of our objectives, scope, and methodology.

[1]H.R. Conf. Rep. No. 213, 103rd Cong., 1st Session at 922 (1993).

[2]P.L. 103-66 (1993).

User Fee Structure

The Customs user fee program that we agreed to summarize consists of two categories. The first category consists of the seven conveyance- and passenger-related user fees established by the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985[3] and the user fee for processing barges and bulk carriers from Canada and Mexico established by the Tax Reform Act of 1986.[4] These fees are commonly referred to as "COBRA user fees."

The second category consists of the commerce-related merchandise processing fee (MPF) established by the Omnibus Budget Reconciliation Act (OBRA) of 1986.[5] The MPF was initially assessed on the invoiced value (ad valorem) of formal merchandise entries.[6] The Customs and Trade Act of 1990[7] amended the MPF by adding a fee schedule with minimum and maximum fee levels. The change was made to make the MPF consistent with U.S. general obligations under the General Agreement on Tariffs and Trade (GATT) after some U.S. trading partners protested the initial MPF structure to a GATT panel. The panel ruled that the MPF violated GATT import fee rules and in effect constituted a tax on imports.

In fiscal year 1993, these two user fee categories generated total revenues of $733.4 million—$189.6 million in COBRA user fee revenues and $543.8 million in MPF revenues.

Uses of Fee Revenues

Customs uses COBRA fee revenues to fund various inspectional services. These services include processing air and sea passengers and conveyances, such as commercial trucks and vessels, entering the country. Under COBRA as initially enacted, user fee revenues were used to pay for all Customs inspectional overtime—work in excess of 40 hours in a week or work on Sundays and holidays—and all preclearance costs for which

[3]P.L. 99-272 (1986).

[4]P.L. 99-514 (1986).

[5]P.L. 99-509 (1986).

[6]Formal entries generally refer to merchandise with a value of over $1,250. Informal entries, in general, refer to commercial merchandise with a value of less than $1,250 or personal importations regardless of value.

[7]P.L. 101-382 (1990).

reimbursement was not required and excess preclearance costs.[8] The Customs and Trade Act amended COBRA of 1985 to allow Customs to use any surplus revenues after overtime and preclearance costs were funded—to hire inspectional personnel, purchase equipment, and fund related items that enhance inspectional services, such as computer software used to target passengers for inspection.

The Customs and Trade Act also established certain requirements for distributing surplus revenues and using surplus-funded personnel and equipment. First, surplus revenues must be distributed in proportion to the amount contributed by each user fee category. However, these revenues need not be fully expended. Second, surplus-funded positions must facilitate passenger and conveyance processing and must be used to enhance the inspectional services already provided. These positions cannot be used to replace, or supplant, existing positions funded by regular appropriations. Third, new equipment must be used to enhance the current levels of service in those categories of passenger, conveyance, and dutiable mail processing for which COBRA user fees are collected.

Customs audits at three ports of entry in August 1993 found that these sites appeared to be using COBRA-funded positions and equipment for the purposes they were intended. Appendix II discusses the current structure of COBRA user fees and the uses of fee revenues.

MPF revenues offset the costs of Customs' commercial operations, such as assessing and collecting duties, taxes, and fees on imported merchandise. Appendix III discusses the current structure of MPF and uses of fee revenues.

Effects of NAFTA on User Fees

The NAFTA Implementation Act of 1993[9] further changed COBRA user fees. It increased the air and sea passenger processing user fee from $5.00 to $6.50 for fiscal years 1994 through 1997. The increase became effective January 1, 1994. For the same period, it eliminated the prior air and sea passenger processing user fee exemption for those air and sea passengers traveling to the United States from Canada, Mexico, U.S. territories and

[8]Preclearance is the process through which international air passengers and their baggage are tentatively examined and inspected by Customs for entry into the United States before departure. Six preclearance stations are in Canada, one in Bermuda, and two in the Bahamas. Excess costs are the additional costs incurred when providing inspectional services in foreign ports, as compared to examining and inspecting air passengers and their baggage in the United States. Such costs include housing and moving costs for Customs personnel as well as excess management and operational costs.

[9]P.L. 103-182 (1993).

possessions, and adjacent islands.[10] Customs estimated that about 18 million passengers traveled to the United States from the exempted locations in fiscal year 1993. Customs also estimated that the elimination of exemptions, coupled with the processing fee increase, should generate an additional $156 million in revenues annually. The act also extended the COBRA user fees from September 30, 1998, through September 30, 2003. Finally, it stipulated that beginning with fiscal year 1998, the country exemptions would be reinstated and the air and sea passenger processing user fee would revert to $5.

The NAFTA Implementation Act also changed the MPF. It extended the MPF from an expiration date of September 30, 1998, to September 30, 2003. It prohibited raising the MPF for Mexico after December 31, 1993. Further, the MPF for NAFTA-eligible goods from Mexico is to be eliminated altogether by June 1999. Customs estimated that it collected about $42 million in MPF revenues assessed on merchandise imported from Mexico in fiscal year 1992. The act also stipulated that as long as Canada remains a NAFTA country, no MPF would be charged on merchandise of Canadian origin, as determined under the United States-Canada Free Trade Agreement Implementation Act of 1988.[11] MPF exemptions for Canadian merchandise totaled $116 million in fiscal year 1993. Customs estimated that such exemptions will total $133 million in foregone receipts in fiscal year 1994. The possible impact of NAFTA on the COBRA user fees and the MPF is discussed in appendixes II and III respectively.

Changes to Customs' Overtime and Premium Pay System

The Customs Officer Pay Reform provisions of OBRA of 1993 amended (1) the overtime and premium pay system for Customs inspectors and canine enforcement officers, effective January 1, 1994, and (2) COBRA of 1985 to pay for the new overtime and premium pay system with COBRA user fee revenues, limiting coverage to only inspectors and canine enforcement officers. However, it is too early to determine the effects of the changes on COBRA user fee revenues and Customs' "Salaries and Expenses" appropriation account because Customs has not yet fully implemented the reform provisions. Customs is negotiating with the National Treasury Employees Union (NTEU) to resolve issues such as the implementation of a 7-day workweek. Appendix IV discusses the changes to Customs' overtime and premium pay system.

[10]U.S. territories and possessions include American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. Adjacent islands include all islands in the Caribbean Sea, the Bahamas, Bermuda, St. Pierre and Miquelon, and the Turks and Caicos Islands.

[11]P.L. 100-449 (1988).

On June 7, 1994, we met with the Deputy Assistant Commissioner for Inspection and Control and other Customs officials responsible for the user fees to discuss the contents of this fact sheet. These officials generally agreed with the information presented, and we have incorporated their comments and clarifications where appropriate.

We are providing copies of this fact sheet to interested congressional committees, the Secretary of the Treasury, the Commissioner of Customs, and the Directors of the Congressional Budget Office and the Office of Management and Budget. Copies will also be made available to others upon request.

Major contributors to this fact sheet are listed in appendix V. Please contact me on (202) 512-8777 if you have any questions concerning this fact sheet.

for Henry R. Wray

Laurie E. Ekstrand
Associate Director, Administration
of Justice Issues

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Abbreviations

CBO	Congressional Budget Office
COBRA	Consolidated Omnibus Budget Reconciliation Act
ECCF	Express Consignment Courier Facility
FEPA	Federal Employees Pay Act
FTE	full-time equivalent
GATT	General Agreement on Tariffs and Trade
MPF	merchandise processing fee
NAFTA	North American Free Trade Agreement
NFC	North American Free Trade Agreement
NTEU	National Treasury Employees Union
OBRA	Omnibus Budget Reconciliation Act
OMB	Office of Management and Budget
PPT	permanent part-time
TIE	temporary intermittent employee

Objectives, Scope, and Methodology

House Conference Report No. 213, accompanying the Omnibus Budget Reconciliation Act (OBRA) of 1993, required us to report to the Senate Committee on Finance and the House Committee on Ways and Means on the efficiency, effectiveness, and fairness of Customs' user fees. In our discussions with majority and minority staff from the Senate Finance Committee and the Oversight Subcommittee of the House Ways and Means Committee, we agreed to respond to the Conference Report's requirement through this fact sheet by providing information on (1) the current structure of the user fees, (2) the uses of fee revenues, (3) the changes and possible fiscal impact of the North American Free Trade Agreement (NAFTA) on the user fees, and (4) the changes to the Customs overtime and premium pay system resulting from the Customs Officer Pay Reform provisions of OBRA of 1993.

To address these objectives, we interviewed officials from Customs' Office of Inspection and Control, User Fee Task Force and the Budget Division. We reviewed user fee legislation, including the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, the NAFTA Implementation Act of 1993 and OBRA of 1993, and implementing regulations and related Customs user fee guidance and policies. In addition, we reviewed user fee revenue collection and expenditure information. We did not verify the accuracy of all of this information. We discussed the uses of COBRA user fee and merchandise processing fee revenues with officials from the Congressional Budget Office (CBO) and the Office of Management and Budget (OMB). Finally, we reviewed COBRA-funded inspectional staffing and equipment allocations. We performed our work at Customs headquarters; at OMB headquarters; and at Dulles International Airport, all in Washington, D.C., and in Los Angeles at the international airport and seaport.

We did our work between November 1993 and June 1994 in accordance with generally accepted government auditing standards. We discussed the contents of this fact sheet with relevant Customs officials who agreed with the information presented. We have incorporated their comments where appropriate.

Current Structure of COBRA User Fees and Uses of Fee Revenues

As authorized by section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, Customs charges fees for providing various inspectional services. These services include processing passengers and conveyances entering the country. As initially enacted, fees were charged for processing air and sea passengers, commercial trucks, railcars, private vessels and aircraft, commercial vessels, dutiable mail packages, and Customs broker permits. The Tax Reform Act of 1986 amended COBRA of 1985 by adding a fee for processing barges and bulk carriers from Canada and Mexico.

Structure of COBRA User Fees

COBRA user fees range from $5 for processing commercial vehicles to $397 for processing commercial vessels (see table II.1). Several user fees, such as those for processing commercial vessels, commercial vehicles, and private aircraft and vessels, are collected by Customs at the time and place of arrival in the United States from the owners or operators of these conveyances.[12] In contrast, the user fee for processing air and sea passengers is collected by the party issuing the ticket or travel document, such as an air carrier or cruise line, and remitted on a quarterly basis to Customs.

[12]Owners or operators have the option to pay an annual fee for railcars, a fee for commercial vessels, or purchase annual decals for commercial vehicles, private aircraft or vessels before their entry into the United States.

Table II.1: COBRA User Fees

COBRA user fee category	Party liable for payment	Time and place of payment	Amount of fee
Commercial vessel fee	Owner/operator	At time and place of arrival	$397, not to exceed $5,995 per year
Commercial vehicle fee	Owner/operator	At time and place of arrival	$5, or $100 annual decal
Railcar fee	Owner/operator	Quarterly by railroad company	$7.50 or $100 annual fee
Private aircraft/ vessel fee	Owner/operator	At time and place of arrival	$25 annual decal
Air/sea passenger fee	Passenger	Quarterly by air carrier or cruise line—part of ticket price	$6.50
Dutiable mail fee	Recipient	Time and place of receipt	$5 per package
Broker permit fee	Broker	When issued at district office	$125
Barge/bulk carrier fee	Owner/operator	At time and place of arrival	$100, not to exceed $1,500 per year

Source: U.S. Customs Service data.

COBRA User Fee Revenues Collected Since Fiscal Year 1987

Customs collected $103.4 million in COBRA user fee revenues in fiscal year 1987 (the first full year the user fees were in effect), increasing to $189.6 million in fiscal year 1993 (see table II.2). Table II.2 also shows that the air and sea passenger processing user fee has generated the majority of COBRA user fee revenues, increasing from $61.5 million in fiscal year 1987 to $144.1 million in fiscal year 1993. Passenger processing user fee revenues have also increased as a percentage of total COBRA user fee revenues, from 59 percent in fiscal year 1987 to 76 percent in fiscal year 1993.

Table II.2: COBRA User Fee Revenues Collected Since Fiscal Year 1987

Dollars in millions

COBRA user fee category	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991	FY 1992	FY 1993
Commercial vessel fee	$22.3	$19.4	$19.2	$18.6	$18.4	$18.0	$17.6
Commercial vehicle fee	11.2	11.8	12.7	13.3	13.8	14.5	15.2
Railcar fee	3.9	4.5	4.8	5.0	4.4	5.3	6.4
Private aircraft/ vessel fee	1.2	1.3	1.3	1.3	1.3	1.4	1.3
Air/sea passenger fee	61.5	89.5	101.4	111.4	116.7	131.8	144.1
Dutiable mail fee	2.8	3.4	3.9	3.9	3.4	4.2	4.3
Broker permit fee	0.2	0.3	0.2	0.2	0.2	0.2	0.3
Barge/bulk carrier fee	0.3	0.5	0.5	0.5	0.5	0.5	0.5
Total revenues collected[a]	**$103.4**	**$130.7**	**$144.0**	**$154.2**	**$158.8**	**$176.0**	**$189.6**

[a]Total revenues collected may not add due to rounding.

Source: U.S. Customs Service data.

Disposition of COBRA User Fee Revenues

The COBRA user fee revenues collected are deposited as offsetting receipts through Customs' National Finance Center (NFC) into the Customs User Fee Account, a separate account within Treasury's general fund. These revenues are not subject to the annual congressional appropriation process.[13] The Congressional Budget Office (CBO) considers these revenues to be offsetting receipts to the Customs budget. The Office of Management and Budget (OMB) considers the use of these revenues to be a permanent, indefinite appropriation (identification code 20-0602-0-1-751, subcategory 60.05). They are considered permanent because no further appropriation is required and indefinite because the amount depends upon expenditures requiring reimbursement (see section on uses of COBRA user fee revenues).

COBRA User Fee Revenue Allocation Process

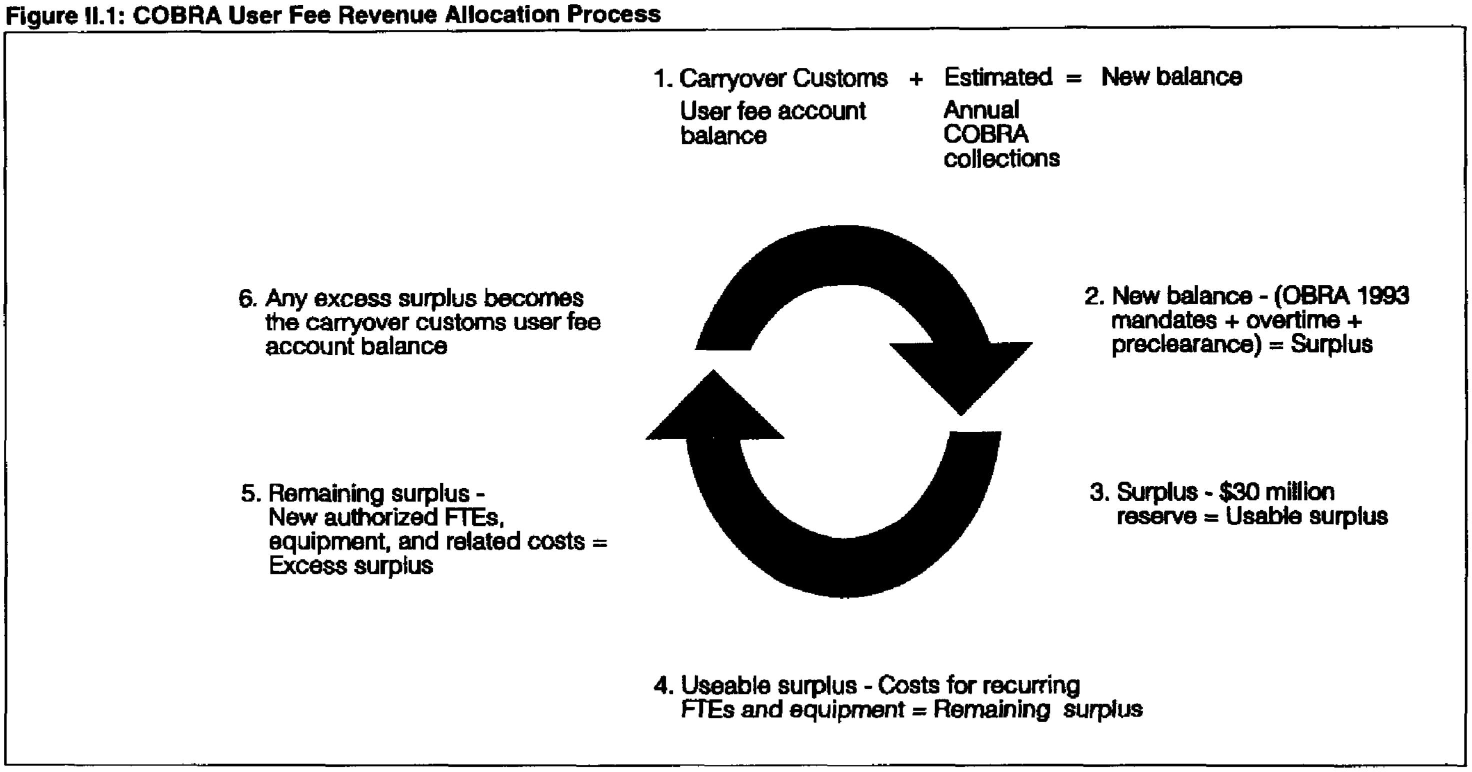
The annual allocation process of COBRA user fee revenues to fund Customs overtime and other purposes involves several steps (see figure II.1). The process begins with the carryover Customs User Fee Account balance, to which Customs adds the estimated COBRA user fee collections for the fiscal year. From this new balance, the following expenditures or reimbursement of appropriations required by OBRA of 1993 are to be deducted:

[13]Additional revenues generated during fiscal years 1994 through 1997 as a result of Section 521 of the North American Free Trade Agreement are subject to congressional appropriations as discussed later in this fact sheet.

(1) overtime and premium pay costs; (2) an amount not to exceed $18 million to the Treasury's general fund; (3) Civil Service Retirement and Disability Fund costs; (4) preclearance costs; and (5) foreign language proficiency award costs, leaving a surplus, provided revenues still exceed costs (these expenditures are discussed in more detail in app. IV). Reimbursement of appropriations is subject to apportionment.[14] From the surplus, a $30 million reserve is deducted, leaving a usable surplus. From the usable surplus, the costs for recurring full-time equivalent (FTE) inspectional positions and equipment—allocated in previous years—are deducted. From the remaining surplus, the costs for new OMB-apportioned FTE positions, equipment, and related items are deducted. Any excess surplus revenues are carried over to the Customs User Fee Account balance and are to be made available for the next year. As discussed in the next section, the carryover surplus has been used to offset the federal budget deficit.

[14]Apportionment is the action by which OMB distributes amounts available for obligation, including budgetary reserves established pursuant to law, in an appropriation or fund account. The apportionment process is intended to (1) prevent the obligation of amounts available within an appropriation or fund account in a manner that would require deficiency or supplemental appropriations and (2) achieve the most effective and economical use of amounts made available for obligation. OMB may reserve some funds to provide for contingencies or to effect savings, pursuant to the Antideficiency Act.

Figure II.1: COBRA User Fee Revenue Allocation Process



Source: U.S. Customs Service data.

COBRA User Fee Revenue Surpluses Since Fiscal Year 1987

The annual allocation process of COBRA user fee revenues has generated surpluses each year since fiscal year 1987 (see table II.3). The annual surpluses have created a carryover surplus of $189.5 million through fiscal year 1993. Unless apportioned by OMB, the surplus is not available to fund Customs overtime or other COBRA intended purposes. CBO and OMB classify the carryover surplus as an offset to the federal budget deficit. Consequently, using the carryover surplus would increase the deficit and federal borrowing unless the amount used was offset by increasing revenues or making reductions elsewhere in the federal budget. On September 30, 1993, OMB apportioned $278 million in COBRA user fees for use in fiscal year 1994 and authorized automatic apportionment for all additional revenues available in the account. The apportionment authority

[14]Apportionment is the action by which OMB distributes amounts available for obligation, including budgetary reserves established pursuant to law, in an appropriation or fund account. The apportionment process is intended to (1) prevent the obligation of amounts available within an appropriation or fund account in a manner that would require deficiency or supplemental appropriations and (2) achieve the most effective and economical use of amounts made available for obligation. OMB may reserve some funds to provide for contingencies or to effect savings, pursuant to the Antideficiency Act.

made available to Customs all revenues collected in the Customs User Fee Account plus the $189.5 million carryover surplus.

Table II.3: COBRA User Fee Fiscal Year End Revenue Surpluses Since Fiscal Year 1987

Dollars in millions

Fiscal year	1987	1988	1989	1990	1991	1992	1993
Annual surplus	$27.0	$21.9	$28.5	$37.3	$31.3	$18.3	$24.2
Carryover surplus	$27.9[a]	$49.9	$78.4	$115.6	$146.9	$165.3	$189.5

[a]Includes $0.9 million in surplus revenues from fiscal year 1986.

Source: U.S. Customs Service data.

Exemptions From COBRA User Fees

The following exemptions apply to certain COBRA user fees. The exemptions, other than those for the air and sea passenger processing fee that are discussed in a separate section, are listed by user fee category. There are no exemptions for the dutiable mail user fee category.

Commercial Vessel Fee

The commercial vessel fee is not assessed for the arrival of (1) any vessel which, at the time of arrival, is being used solely as a tugboat; (2) any barge or bulk carrier from Canada or Mexico (see user fee for barge/bulk carrier); (3) vessels of war and public vessels not permitted to carry passengers, baggage, or merchandise; (4) passenger vessels making three or more trips per week between a U.S. port and a foreign port, vessels used as ferry boats—carrying passengers, baggage, and merchandise—and/or a vessel (ferry) being used to provide transportation only between places that are no more than 300 miles apart and to transport only passengers, vehicles, or railroad cars, which are being used, or have been used, in transporting passengers or goods; (5) licensed yachts or undocumented American pleasure vessels not engaged in trade (noncommercial vessels); (6) vessels arriving in distress or to take on bunkers, sea stores, or ship's stores; and (7) tugboats with a Great Lakes license when towing vessels that are required to enter and clear.

Barge and Bulk Carrier Fee

The barge and bulk carrier fee is not assessed on (1) Lighter Aboard ship barges if they arrive on a mother vessel and (2) non self-propelled barges (including Lighter Aboard ship barges) under tow when moving coastwise, provided towing begins in a U.S. port.

Railcar Fee

The railcar fee is not assessed on (1) empty railcars; (2) in-transit railcars whose journey originates and terminates in the same country, as long as passengers do not board or disembark and cargo is not loaded or unloaded from a railcar while it is within the transited country; (3) locomotives and cabooses; and (4) railcars which, at the time of arrival, are being transported by any vessel other than a ferry.

Commercial Vehicle Fee

The commercial vehicle fee is not assessed on (1) a commercial vehicle transported, at the time of its arrival, by a vessel that is not a ferry; (2) emergency vehicles; (3) vehicles owned or operated by the U.S. or foreign governments or any political subdivision of those governments; (4) vehicles that are used to transport household effects, when the operator is not performing this service on a for-hire basis; (5) public utility vehicles; (6) vehicles towed on an auto carrier or trucks; (7) company vehicles arriving to transport passengers to meetings and lunch or to pick up company mail or other documents; (8) vehicles owned by farmers who regularly cross the border to work their farms or carry equipment or farm products to use in working their farms; (9) vehicles that are being used only for personal reasons, even though they may be used regularly to transport commercial merchandise; (10) vehicles carrying only passengers and their baggage; and (11) buses or taxis carrying only passengers, even though one or more passengers may be carrying commercial merchandise.

Private Aircraft and Vessel Fee

The private aircraft and vessel fee is not assessed on (1) private vessels less than 30 feet in length, and not carrying goods required to be declared to Customs, (2) private vessels granted a cruising license, and (3) foreign-flag private vessels arriving at a U.S. port to acquire cruising licenses.

Effect of NAFTA Implementation Act on COBRA User Fees

Section 521 of the North American Free Trade Agreement (NAFTA) Implementation Act of 1993 changed the COBRA user fees as follows. First, it increased the air and sea passenger processing fee from $5.00 to $6.50 for each passenger for fiscal years 1994 through 1997. The increase became effective January 1, 1994. Second, the act removed country exemptions for air and sea passengers traveling to the United States from Canada, Mexico, U.S. territories and possessions, and adjacent islands through September 1997. Customs officials estimated that the elimination of the country exemptions will add about 18 million passengers to those eligible for the processing fee,[15] and the elimination of exemptions, coupled with the user fee increase, should generate an additional $156 million per year in passenger processing fee revenues.

The revenues collected resulting from these two changes in the fee are to be deposited in the Customs User Fee Account to reimburse inspectional costs not otherwise reimbursed. However, these additional revenues are subject to appropriation and are not considered part of the COBRA user fee permanent and indefinite appropriation. Customs has no access to these additional revenues without specific appropriations language.

Third, the act extended the COBRA user fees from an expiration date of September 30, 1998 to September 30, 2003. Fourth, it stipulated that beginning with fiscal year 1998, the country exemptions would be reinstated, and the processing fee would revert to $5.00 per passenger.

Uses of COBRA User Fee Revenues

In fiscal year 1993, Customs data showed that $103.9 million in COBRA user fee revenues funded inspectional overtime costs. This figure includes all costs associated with COBRA overtime, namely costs for (1) overtime under provisions of the Act of February 13, 1911,[16] (2) the Federal Employees Pay Act (FEPA), (3) travel, (4) Medicare, and (5) Social Security. COBRA user fee revenues are also used to fund excess preclearance costs, which were explained earlier. Effective January 1, 1994, OBRA of 1993 limited the use of COBRA user fee revenues for overtime to Customs inspectors and canine enforcement officers (see app. IV). Excess preclearance costs totaled $7.9 million in fiscal year 1993.

Uses of COBRA User Fee Surplus Revenues

As authorized by the Customs and Trade Act of 1990, COBRA user fee surplus revenues fund the recurring costs of FTE positions and equipment from previous years. Recurring equipment costs include those for maintenance, repairs, and operations. Surplus revenues also fund new FTE positions (131 additional full-time permanent positions and 13.5 part-time FTEs in fiscal year 1994), equipment, and related items. As of September 30, 1993, Customs data showed a total of 664 full-time permanent positions

[15] As a result of NAFTA's changes to the passenger processing fee, only the following passengers are still exempt from paying this fee: (1) employees of air and sea carriers traveling on official business; (2) diplomats who are accredited in the United States or who have diplomatic passports or visas; (3) passengers precleared on Military Airlift Command flights; (4) passengers arriving because of an emergency or forced landing; and (5) passengers transiting the United States using an airport in-transit facility.

[16] 36 Stat. 899, 901 (1911) (codified as amended at 19 U.S.C. 267).

funded with COBRA user fee revenues, or 10 percent of all inspectional full-time permanent positions (see table II.4).

In addition, surplus revenues are used to fund permanent part-time (PPT) and temporary intermittent employee (TIE) inspectional positions—112 PPT and TIE positions since fiscal year 1991. A PPT inspector is to work less than 40 hours a week or not more than 78 hours per pay period. A TIE inspector is to be hired for seasonal or intermittent periods and is to be compensated only for the time when services were actually rendered. Currently, TIE inspectors can work up to 700 hours each year. Effective October 1, 1994, TIE inspectors will be able to work up to 1,040 hours each year. For fiscal year 1994, Customs is authorized to have up to 930 FTEs which can consist of full-time permanent positions, PPTs, and TIEs.

Table II.4: Customs Inspectional Full-Time Permanent Positions as of September 30, 1993

Type of position	Number of positions	Positions as percent of total positions
COBRA-funded positions	664	10.0%
Other reimbursable FTEs (e.g., at small airports)	44	0.7
Non-COBRA appropriated FTEs	5,907	89.3
Total inspectional FTEs	**6,615**	**100.0%**

Source: U.S. Customs Service data.

Requirements for Using COBRA User Fee Revenue Surpluses

The Customs and Trade Act established certain requirements for distributing surplus revenues and using surplus-funded personnel and equipment. First, surplus revenues must be distributed in proportion to the amount contributed by each fee category. Revenue distributions by fee category are projections based on the most recent complete fiscal year data. For example, when determining fiscal year 1994 air and sea passenger distribution, Customs calculated the distribution percentage for the fee category using collection data from fiscal year 1992. After OBRA of 1993 mandated costs, projected overtime and preclearance costs, and the $30 million reserve were subtracted from the estimated available balance, the surplus was distributed by user fee category. Since the air and sea passenger category contributed about 75 percent of COBRA user fee revenues in fiscal year 1992, it received a distribution of 75 percent or $103.9 million for fiscal year 1994. While the revenues are distributed to each COBRA user fee category, not all of the revenues are necessarily spent. Through fiscal year 1993, surplus revenues have funded 472 full-time permanent positions for air and sea passenger processing (see table II.5).

Table II.5: COBRA-Funded Inspectional Full-Time Permanent Positions by Category and Fiscal Year

COBRA user fee category	FY 1991	FY 1992	FY 1993	Category Total
Air/sea passenger fee	231	128	113	**472**
Commercial vehicle fee	35	10	42	**87**
Commercial vessel fee	13	27	11	**51**
Railcar fee	12	3	24	**39**
Dutiable mail fee	0	6	2	**8**
Private aircraft/vessel fee	2	1	4	**7**
Total positions	**293**	**175**	**196**	**664**

Source: U.S. Customs Service data.

Second, surplus-funded positions must be used to facilitate passenger and conveyance processing as well as enhance the inspectional services already provided. Surplus-funded positions cannot be used to replace, or supplant, existing positions funded by regular appropriations. The Customs and Trade Act of 1990 requires that surplus funds available to reimburse costs for inspectional personnel, equipment purchases, and related items shall only be available to reimburse costs in excess of the highest amount appropriated for such costs during the period beginning with fiscal year 1990 and ending with the current fiscal year. While the act refers to appropriated funds, Customs officials told us that as a practical matter, Customs managers at ports of entry measure compliance with the act by monitoring FTE levels and not appropriated funds.

Customs officials provided the following example to demonstrate problems they are experiencing with this legislative requirement.

> "In complying with the Federal Government's personnel reduction policy of 10 percent in FY 93, Customs at Miami planned to reduce all work sections, i.e. airport passenger processing, airport cargo processing, contraband enforcement team, seaport cargo processing, etc., by 10 percent. Because we [Customs] could not reduce the base level for airport passenger processing, we had to absorb those additional cuts in the cargo processing and enforcement programs."

According to these officials, if the base level of positions was reduced in passenger processing, all COBRA funding for personnel and equipment would be eliminated.

Third, new equipment must be used to enhance the current levels of service in those categories of passenger, conveyance, and dutiable mail processing for which COBRA user fees are collected. Examples of such equipment include X-ray machines and automated mail systems. Related costs are incurred for items that enhance inspectional services, such as computer software used to target passengers for inspection.

In August 1993, Customs audits at three ports of entry found that these sites appeared to be using COBRA-funded positions and equipment for their intended purposes. Further, according to the Customs port director at Los Angeles International Airport, COBRA-funded positions have enabled him to keep pace with increasing passenger traffic and reduce overtime costs by about $2 million. Furthermore, Customs inspectors used COBRA-funded equipment, such as computer terminals, to identify high-risk passengers for inspection.

Surplus Revenue Obligations for Fiscal Year 1993

The COBRA user fee surplus revenue obligations for fiscal year 1993 are summarized in table II.6. These obligations totaled $166.0 million and included costs for overtime, excess preclearance, and existing and new FTE positions.

Table II.6: Summary of Fiscal Year 1993 COBRA User Fee Surplus Revenue Obligations

Dollars in millions

Obligation category	Fiscal year 1993 obligations
Overtime	$103.9
Excess preclearance	7.9
Existing and new FTE positions	28.8
Equipment and related items	14.7
Administrative overhead	10.7
Total expenditures	**$166.0**

Source: U.S. Customs Service data.

Current Structure of the MPF and Uses of Fee Revenues

The Omnibus Budget Reconciliation Act (OBRA) of 1986 expanded Customs' user fee program by creating the merchandise processing fee (MPF). The MPF was originally assessed on the invoiced value (ad valorem) of formal merchandise entries at a rate of 0.22 percent for the first nine months of the fee, and 0.17 percent thereafter.

Structure of the MPF

The Customs and Trade Act of 1990 amended the MPF to make it consistent with U.S. general obligations under the General Agreement on Tariffs and Trade (GATT). GATT requires fees on imports, such as the MPF, be "commensurate with the cost of services rendered."[17] GATT also states that import fees may not "represent an indirect protection to domestic products...or a taxation for...fiscal purposes."[18] The original MPF rate was set to approximate the cost of services—processing merchandise entering the country. However, U.S. trading partners, such as Canada and the European Community, found the MPF excessive and improperly based and protested the fee to a GATT panel. At issue was whether the purpose of MPF was to cover costs or raise revenues.

In November 1987, the GATT panel ruled that the MPF exceeded the cost of services rendered and in effect constituted a tax on imports that discriminated against them in favor of domestic products. More specifically, the panel maintained that the ad valorem fee structure made it difficult to approximate costs because import shipments of equal value, such as machinery and diamonds, would not necessarily have similar processing costs. In addition, the panel found that Customs had included in its import-processing costs the costs of (1) processing airport passengers, (2) collecting and transmitting export documentation, (3) processing imports exempt from the fee, and (4) carrying out international affairs activities of Customs officials stationed overseas.

In response to the GATT panel's ruling, the Customs and Trade Act maintained the 0.17 percent rate but added a fee schedule. The schedule established (1) a minimum $21 fee (for entries under $11,053) and a maximum $400 fee (for entries over $210,526) on commercial imported merchandise (entries with a value between $11,053 and $210,526 would be assessed a fee at the rate of 0.17 percent) and (2) flat fees on informally entered goods of a commercial or noncommercial nature (see table III.1). The Customs and Trade Act also established additional flat fees for some

[17] GATT, Article II, 2(c).

[18] GATT, Article VIII, 1(a).

courier hubs, express consignment courier facilities (ECCF),[19] and small airports[20] handling more than 25,000 informal entries. The Omnibus Budget Reconciliation Act of 1990[21] further amended the MPF by giving the Secretary of the Treasury the authority to adjust the ad valorem rate, within a range of 0.15 and 0.19 percent, if warranted by differences between collections and expenditures. Currently, the ad valorem rate is 0.19 percent.

Table III.1: Merchandise Processing Fee

Party liable for payment	Time and place of payment	Fee schedule
Importer	Part of customs entry process	Formal entries $21 Minimum/range of 0.15%-0.19% ad valorem—currently 0.19%/$400 maximum $3 manual surcharge Informal entries $2, $5, or $8
Courier company	Billed quarterly for reimbursable costs plus additional annual payment as of the fiscal year end.	Reimbursable facilities must make an additional "annual payment to the Secretary" in the amount equal to Customs' charge for the activity. This payment represents the MPF owed the government on merchandise shipped through ECCFs and is collected in lieu of assessing the MPF on each item that enters the United States through ECCFs.

Source: U.S. Customs Service data.

MPF Revenues Collected Since Fiscal Year 1987

Customs collected $538.8 million in MPF revenues in fiscal year 1987 (the first full year the MPF was in effect), increasing to $543.8 million in revenues in fiscal year 1993 (see table III.2). The decrease in MPF revenues from $735.5 million in fiscal year 1990 to $484.1 million in fiscal year 1991 resulted from the Customs and Trade Act's amendments to the MPF. That

[19]An ECCF is a reimbursable facility processing 25,000 or more informal entries a year.

[20]As defined by 19 U.S.C. 58c(b)(9)(B)(ii).

[21]P.L. 101-508 (1990).

change was to bring the MPF back into compliance with the GATT rules as discussed earlier.

Table III.2: MPF Revenues Collected Beginning With Fiscal Year 1987

Dollars in millions

Fiscal Year	1987	1988	1989	1990	1991	1992	1993
Revenues collected	$538.8	$656.2	$729.3	$735.5	$484.1	$493.9	$543.8

Source: U.S. Customs Service data.

MPF Collection and Disposition Process

The MPF is to be assessed using a fee schedule (as explained earlier) and collected at the same time as other Customs duties on formal and informal merchandise entries from the importer of record. The MPF revenues collected are to be deposited through Customs' National Finance Center (NFC) in the Customs User Fee Account. From this account, the revenues are to be deposited in the Treasury's general fund as of the end of each month. The Congressional Budget Office (CBO) classifies the MPF revenues as offsetting receipts for Customs in the Treasury budget, while the Office of Management and Budget (OMB) classifies these revenues as "special fund" appropriations in the Customs budget (identification code 20-0602-0-1-751, sub-category 40.20). Customs does not have any control over the allocation of the MPF revenues since these revenues, unlike COBRA user fee revenues, must be specifically appropriated by Congress each new fiscal year.

Exemptions From the MPF

Merchandise is exempt from the MPF if it meets one of the following conditions: (1) it entered the country under special classification provisions in chapter 98 of the Harmonized Tariff Schedule of the United States; (2) is a product of an insular possession of the United States, such as the Virgin Islands; (3) is a product of a Caribbean Basin Initiative country, such as Jamaica; or (4) is a product of a least-developed beneficiary developing country, such as Bangladesh. In addition, the United States-Canada Free Trade Agreement Implementation Act of 1988 required a 5-year phased elimination of the MPF for merchandise from Canada eligible under this act beginning in January 1990. While MPF exemptions for Canadian merchandise totaled $116 million in fiscal year 1993, Customs estimated that such exemptions will total $133 million in foregone receipts in fiscal year 1994. Exemptions from the MPF totaled $158 million in fiscal year 1993.

Effect of NAFTA Implementation Act on MPF

Section 204 of the North American Free Trade Agreement (NAFTA) Implementation Act of 1993 changed the MPF as follows. It extended the MPF from an expiration date of September 30, 1998 to September 30, 2003. It also prohibited raising the MPF for Mexico after December 1993—the MPF for NAFTA-eligible merchandise from Mexico is to be eliminated altogether by June 1999. Customs estimates that it collected about $42 million in MPF revenues assessed on merchandise imported from Mexico in fiscal year 1992, the latest year for which estimates are available. The act further stipulated that as long as Canada remained a NAFTA country, no MPF on Canadian merchandise eligible under the United States-Canada Free Trade Agreement Implementation Act would be charged.

Uses of MPF Revenues

MPF revenues as appropriated are used to offset the costs of Customs' commercial operations. Commercial operations include activities which support the (1) assessment and collection of duties, taxes, and fees on imported merchandise; (2) collection and reporting of import statistics; and (3) enforcement of laws of other federal agencies and international agreements.

OBRA of 1993 Changes to Customs' Overtime and Premium Pay System

It is too early to determine the effects changes to Customs' overtime and premium pay system will have on the expenditure of COBRA user fees or Customs' appropriated funds for salaries and expenses. Section 13811 of the Omnibus Budget Reconciliation Act (OBRA) of 1993 amended the overtime and premium pay system for Customs inspectors and canine enforcement officers effective January 1, 1994. However, Customs has yet to fully implement the changes to the overtime and premium pay system. Customs is negotiating with the National Treasury Employees Union (NTEU) to resolve issues such as the implementation of a 7-day workweek.

Background

The Act of February 13, 1911, as amended,[22] created Customs' original inspectional overtime system. As interpreted, the 1911 act authorized Customs to provide compensation to its officers at a rate of 2 days regular pay for inspectional services performed on Sundays, and at a rate of 2 days regular pay plus the hourly rate for services performed on holidays. For inspectional services performed at night—hours between 5 p.m. and 8 a.m.—the minimum compensation was 4 to 12 hours of pay, depending on whether the inspector worked late, came in early, or was called back to work.

As discussed earlier, COBRA user fee revenues pay for Customs inspectional overtime. Section 13813 of OBRA of 1993 amended the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 to define what overtime and premium pay will be funded with COBRA user fee revenues.

Coverage

OBRA of 1993 defines a Customs officer as an individual performing those functions specified by regulation by the Secretary of the Treasury for a Customs inspector or canine enforcement officer. Treasury, in interim regulations effective January 1, 1994, defines as Customs officers "only those individuals assigned to position descriptions titled "Customs Inspector," "Supervisory Customs Inspector," "Canine Enforcement Officer," or "Supervisory Canine Enforcement Officer."[23] Before the act was enacted, support staff, including inspectional aides and clerical staff who worked overtime while assisting inspectors, were compensated in the same manner as inspectors from COBRA fee revenues. The interim

[22]A 1920 amendment expanded the range of duties for which overtime was paid, fixed pay for overtime hours of 5 p.m. to 8 a.m., and specified the precise method of computing overtime. In 1979, Congress capped individual overtime earnings at $20,000, and at $25,000 in 1983.

[23]Department of the Treasury, Customs Service. Pay Reform for Customs Inspectional Services, 58 Fed. Reg. 68520, 68523 (1993).

regulations specify that Customs employees other than Customs officers, such as inspectional aides and clerical staff, who perform overtime services will continue to be paid for such services under the provisions of Federal Employees Pay Act (FEPA), as provided in 19 C.F.R. 24.17.[24] The overtime rate for FEPA employees is 1-1/2 times their regular basic pay.[25] FEPA employee overtime is paid from appropriated funds.

Appropriation Reimbursements From the Customs User Fee Account

OBRA of 1993 provides that the Secretary of the Treasury directly reimburse from the Customs User Fee Account each appropriation for the amount paid out of that appropriation. Reimbursing each appropriation is the method through which the Customs User Fee Account funds the following costs: (1) overtime compensation, (2) premium pay, (3) agency contributions to the Civil Service Retirement and Disability Fund to match deductions from the overtime compensation paid, (4) all preclearance services for which the recipients of such services are not required to reimburse the Secretary of the Treasury, and (5) foreign language proficiency awards.

The reimbursement of appropriations from the Customs User Fee Account is subject to apportionment (as discussed earlier); is to be made at least quarterly; and, to the extent necessary, may be based on estimates made by the Secretary of the Treasury. Adjustments to subsequent reimbursements can be made as necessary. OBRA of 1993 provides that for each fiscal year, the amount required to reimburse costs in the five categories previously discussed will be projected from actual requirements. Only collections in excess of projected costs for those five categories in a given fiscal year are available to provide enhanced Customs services for user fee payers.

The President's fiscal year 1994 budget included savings from proposed reforms of Customs' overtime system, and the President projected that these reforms would reduce the required overtime payments by an estimated $18 million per year. The budget noted that proposed changes to fee legislation would allow benefits from overtime reform to be returned to the taxpayer via deficit reduction. OBRA of 1993 contains required changes to meet the deficit reduction goal. That act provides that for each fiscal year, the Secretary of the Treasury is to calculate an amount that represents the difference between the estimated cost for overtime compensation under the previous law and the actual cost for overtime

[24]Id at 68522.

[25]The overtime rate is not to exceed 1-1/2 times the hourly rate of a GS-10, step 1 (currently, $21.99).

compensation, premium pay, and agency retirement contributions that is incurred during that fiscal year under OBRA of 1993 amendments as well as the actual cost incurred for foreign language proficiency awards.

The Secretary of the Treasury is required to then transfer from the Customs User Fee Account to the general fund of the Treasury the above calculated amount, or $18 million, whichever amount is less. These transfers are required to be made at least quarterly and on the basis of estimates to the same extent as are reimbursements discussed earlier with regard to adjustments in subsequent reimbursements. The transfer of funds has priority over all other reimbursements from the Customs User Fee Account except overtime and preclearance costs.

Basic Overtime

Basic overtime compensation—for work not regularly scheduled—is provided for work that is officially assigned in excess of 40 hours per administrative workweek[26] or 8 hours per day at 2 times the hourly rate of basic pay. The provision also provides (1) compensation for those officers required to return to their place of work, known as "callback," at 2 times the basic hourly rate and (2) compensation for the commute, in addition to callback time, at 3 times the basic hourly rate. Callback compensation is to be paid for at least 2 hours of work, but only if the work begins at least 1 hour after the end of any previously scheduled work assignment and ends at least 1 hour before the beginning of the regularly scheduled work assignment. Compensation for the commute is not payable if the work does not begin within 16 hours of the Customs officer's last regularly scheduled work assignment, or begins within 2 hours of the officer's next regularly scheduled work assignment.

In addition to overtime, Customs officers are also entitled to premium pay differentials for certain shift work performed at night and work performed on federal holidays and Sundays.

Night Work

For regularly scheduled night work, the premium pay provisions depend on the regularly scheduled hours of the Customs officer. If the majority of the officer's regularly scheduled hours are between 3 p.m. and midnight, compensation equals the basic hourly rate plus premium pay of 15 percent of the hourly rate. If the majority of the hours are between 11 p.m. and 8

[26]"Administrative workweek" means a period of 7 consecutive calendar days beginning Sunday and continuing through the following Saturday. As discussed later, the implementation of the workweek is still under negotiation.

a.m., compensation equals the basic hourly rate plus premium pay of 20 percent of the hourly rate.[27]

Sunday and Holiday Work

The basic overtime pay provision applies to Sunday work that is not regularly scheduled. Any regularly scheduled work on a Sunday that is not a holiday is considered premium pay. Compensation for such work equals the basic hourly rate plus premium pay of 50 percent of the hourly rate. By interim regulation, when a Customs officer's regularly scheduled shift occurs in part on a Sunday, the officer is to receive Sunday differential pay for those hours of work that are performed during the 24-hour period of that Sunday and the night differential pay for those hours that do not fall on that Sunday.

The basic overtime pay provision also applies to holiday work that is not regularly scheduled. Any regularly scheduled work on a holiday is considered premium pay. Compensation for such work equals the basic hourly rate plus premium pay of 100 percent of the hourly rate. The interim regulations specify that a Customs officer is to receive payment for only one differential for any one given period of work. The order of precedence for the payment of premium pay differentials is holidays, Sundays, and night work.

Limitations for Overtime and Premium Pay Compensation

OBRA of 1993 establishes certain limitations for overtime and premium pay compensation. The aggregate amount of a Customs officer's overtime pay, including commuting compensation and premium pay, is limited to $25,000 each fiscal year. A Customs officer who receives overtime or premium pay for time worked is prohibited from receiving pay or other compensation for that work under any other provision of law. The Commissioner of Customs or a designee may waive the limitations in individual cases to prevent excessive costs or to meet emergency requirements.

Amendments to the Civil Service Retirement System

OBRA of 1993 amended 5 U.S.C. 8331 (3) to include overtime compensation paid to a Customs officer as part of basic pay for the Civil Service Retirement System. The compensation may not exceed 50 percent of the statutory maximum in overtime pay for Customs officers

[27]OBRA of 1993 established a 7:30 p.m. to 3:30 a.m. shift to provide compensation to Customs officers whose regularly scheduled work does not fall predominantly within either the 3 p.m. or 11 p.m. shifts. For a regularly scheduled assignment during 7:30 p.m. to 11:30 p.m., compensation equals the basic hourly rate plus premium pay of 15 percent of the hourly rate. For the hours 11:30 p.m. to 3:30 a.m., compensation equals the basic hourly rate plus premium pay of 20 percent of the hourly rate.

($25,000—50 percent of that amount, which equals $12,500). This provision became effective on January 1, 1994, and applies only to service performed on or after that date.

Cost Projections for Overtime and Premium Pay Provisions

Customs projects that overtime and premium pay costs totaling $97.5 million in fiscal year 1994 and $94.5 million in fiscal year 1995 will be funded from COBRA user fee revenues. These estimates include costs for all overtime, half of the costs for the 50 percent Sunday premium, and the night differential costs in excess of costs for the 10 percent night differential earned after 6 p.m. and before 6 a.m.

Customs projects that FEPA and some premium pay costs previously paid for by COBRA user fee revenues totaling $5.3 million in fiscal year 1994 and $13.4 million in fiscal year 1995 will be funded from the agency's "Salaries and Expenses" appropriation account. The fiscal year 1994 projected costs include FEPA ($2.2 million) and holiday premium pay ($3.1 million) costs but exclude Sunday premium pay costs and cover the last 9 months of the fiscal year since enactment of OBRA of 1993. Fiscal year 1995 projected costs include the FEPA ($2.9 million) as well as Sunday ($6.3 million) and holiday ($4.2 million) premium pay costs.

Implementation of Overtime and Premium Pay Provisions

According to Customs officials, the overtime and premium pay and the foreign language provisions of OBRA of 1993 have not been fully implemented. Customs is awaiting final approval from Treasury on departmental guidelines to implement these provisions. As of June 7, 1994, Customs is continuing to negotiate with the NTEU to determine how a 7-day workweek should be implemented. Customs officials expect that until the negotiations are concluded, work on Sunday will continue to be paid as an overtime day.

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