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Customs Service Inspector Overtime:
Outdated Law and Inefficient Management

Statement of Lowell Dodge
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Before the
Subcommittee on Oversight
Committee on Ways and Means
U.S. House of Representatives



OVERSIGHT HEARINGS ON THE
MANAGEMENT OF OVERTIME AT THE CUSTOMS SERVICE

SUMMARY OF STATEMENT BY LOWELL DODGE
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U.S. GENERAL ACCOUNTING OFFICE

International travelers and imported merchandise entering the United States are subject to U.S. Customs Service inspection upon arrival. Because goods and passengers often arrive outside the regular workday, many of the inspections are done on overtime.

Inspectional overtime costs, which are reimbursed through a user fee and not paid from appropriated funds, totaled \$103 million in fiscal year 1990, up from \$57 million in overtime paid to Customs inspectors in 1985.

The 1911 law governing Customs inspectional overtime permits Customs to pay its inspectors generous amounts for hours actually worked, particularly on Sundays and holidays, when work assignments of no minimum length qualify under the law for 2 full days (16 hours) of pay. GAO found that many of the conditions that justified the 1911 Act governing Customs inspectional overtime no longer apply.

GAO also found that Customs sometimes disregards its own internal control procedures in operating its overtime payment system, and that some of the controls are not adequate. GAO found, for example, that simple edit checks, if built into Customs' automated system, could prevent certain types of duplicate payments GAO's review uncovered.

Customs has not concerned itself, until recently, with the aggregate costs of inspectional overtime. While Customs officials have been careful to make certain that individual inspectors do not exceed the \$25,000 annual cap on overtime earnings, they have evidenced less concern for managing the day-to-day overtime assignments that build to the cap.

In 1989, Customs formed an internal task force to review overtime costs. The task force issued a broad set of recommendations in 1990. Customs has begun to implement them.

GAO recommends that Customs take greater advantage of opportunities to manage overtime more efficiently, such as adjusting its workday to the workload, paying the lowest rate applicable, and limiting use during the highest cost periods.

GAO also recommends that Congress reevaluate the basis for computing premium pay for inspectors and revise the 1911 Act as necessary to ensure that overtime hours paid bear a more direct relationship to actual hours worked.

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STATEMENT OF LOWELL DODGE
DIRECTOR, ADMINISTRATION OF JUSTICE ISSUES
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Mr. Chairman and Members of the Subcommittee:

Thank you for your invitation to be here today to discuss our review of the U.S. Customs Service's use of overtime for inspectional services. I will highlight the problems we identified and then discuss the law governing Customs overtime, which we believe is no longer relevant in the modern inspectional environment.

BACKGROUND

When a ship, plane, car, train, or truck crosses a U.S. border and arrives at a U.S. port, passengers and/or 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 improper classification or marking that would understate the value of goods for duty purposes; for contraband; and other unlawful imports. Inspectors working for Customs are responsible for enforcing some 400 legal provisions, many for

other federal agencies. These provisions are designed to protect American agriculture and business, as well as public health and safety. The nature of the work of a Customs inspector is the same whether it is performed on regular time or on overtime.

Under the 1911 Act governing Customs inspectional overtime, work on Sunday is compensated at a rate equal to 2 days of regular pay. On holidays, the compensation is the total of 2 days pay, plus the regular hourly rate for the period of time worked on the holiday. No minimum period of work is required to qualify for the premium pay. Also, 4 hours of regular pay is provided for each 2-hour period worked on weekday overtime. Inspectors who are called back to work after having left at the end of the regular workday qualify for special rates. Many other applications of overtime pay are possible depending upon when overtime begins and ends.

A noteworthy feature of inspectional overtime is the frequent absence of a direct relationship between inspector overtime pay and actual hours worked. Hypothetically, under the 1911 Act, an inspector can work as little as 1 minute on a Sunday or holiday and receive 2 days pay.

Overtime is subject to an annual cap of \$25,000 per inspector and is available to inspectional employees through Grade 13 of the General Schedule.

Historically, individual importers and shippers reimbursed Customs directly for inspectional overtime services on an as-needed basis. The Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 changed this arrangement by establishing user fees for processing passengers and cargo. These fees are paid by users of Customs' inspectional services regardless of whether overtime is worked. User fee collections are paid into a Treasury fund from which Customs overtime is reimbursed. In fiscal year 1990, overtime reimbursements accounted for \$102.8 million of the \$149 million collected in user fees.

FINDINGS

In short, Mr. Chairman, we found the following:

(1) Increasing aggregate costs. The cost of Customs overtime grew from \$57 million to \$103 million from 1985 to 1990, an increase of 81 percent in actual dollars (35 percent in constant dollars). We believe this growth was caused in part by the preoccupation of Customs Service officials on ensuring that inspectors not exceed the \$25,000 annual cap on overtime earnings. At the same time, these officials paid insufficient attention to the management of both overtime use and costs overall and to the day-to-day decisions of overtime scheduling.

Customs has only recently begun to take action on improving its management of overtime.

(2) Internal control weaknesses. In paying for inspectional overtime, Customs sometimes disregards its own internal control procedures, and some of its controls are inadequate. We believe this leaves Customs vulnerable to fraud and abuse.

(3) Outdated legislation. The intent of the 1911 Act was to compensate inspectors for overtime work that often occurred at inconvenient hours of the night, on weekends, and in all types of weather. Transportation and communication capabilities were such that overtime work was difficult to schedule in advance. While some inspectional assignments still occur at inconvenient hours, today's environment is in other ways substantially different. For example, overtime assignments can be scheduled in advance much more often today than in 1911. We believe the 1911 Act needs reevaluation.

Beginning in 1988, Customs management has sought to control the growth in overtime costs. In 1989, Customs initiated actions, including the formation of a task force, to address overtime management and use. The task force found significant inefficient use of overtime, including a practice of overstaffing of inspections on Sundays and holidays, when high overtime pay is in effect. The task force made a number of recommendations for

improving overtime usage, such as adjusting regular workshifts to match the workload more closely. Customs has begun to carry these recommendations out.

MANAGING THE OVERTIME CAP

Few of the Customs officials with whom we spoke were concerned about the cost of overtime. Rather, Customs officials said their primary management goals were to (1) process overtime pay claims expeditiously, so that inspectors would receive overtime pay promptly and (2) ensure that no inspector exceeded the \$25,000 annual cap. In effect, the cap functioned as the only operational limit on Customs officials in managing overtime. Without management of overtime usage on a day-to-day basis, aggregate overtime costs grew more significantly.

The change in the mechanism for funding Customs overtime introduced with the enactment of COBRA in 1985 (effective in 1986) made it easier for Customs to disregard the aggregate cost of overtime. COBRA created a common fund into which all users of Customs services pay. This arrangement replaced the longstanding system of obtaining payment from those shippers, importers, etc. who actually received overtime services. Lost with the replacement of the previous system was an element of discipline present in direct payment of overtime by those needing it.

The Customs overtime task force reported that the user fee funds from which overtime is paid came to be viewed as a "bottomless pit." The task force found, as we did, that Customs had paid little attention to managing overtime beyond ensuring that individual inspectors did not exceed the pay cap.

We would note that a further statutory change, in the Customs and Trade Act of 1990, allows Customs to hire inspectors from any unspent portion of the user fee funds. This change creates an additional incentive for Customs to manage overtime, so as to preserve funds for hiring additional inspectors.

THE HIGH COST OF CUSTOMS OVERTIME

Paying the 1911 Act overtime rates can be expensive on a per hour basis, considering the amount of overtime actually worked. In particular, pay for Sundays, holidays, and callbacks can result in large amounts of pay for the amount of time actually worked. We offer several examples of overtime illustrating the high cost of overtime worked, and suggesting that Customs was inattentive to the objective of managing overtime to keep down its cost:

- Inspector A worked overtime nine times during a 2-week period. He worked a total of 21 hours and 5 minutes on these assignments. Under 1911 Act rules, he was credited for pay purposes for 80 hours of work. Thus, he received \$1,458.40, or an effective rate of \$69.17 an hour, as compared to his regular hourly rate of \$18.23 per hour.

Five of these overtime assignments were on callbacks. On these 5 assignments, the inspector worked a total of 2 hours and 55 minutes, was credited with 50 hours for pay purposes, and received \$918.78, or an effective rate of \$315.01 an hour as compared to his \$18.23 per hour regular rate. On one assignment, this inspector received \$218.76 for 25 minutes work. Under 1911 Act rules, this 25 minutes was counted as 12 hours for pay purposes.

- Inspector B worked 6 overtime assignments over a 2-week period, with 4 of these assignments on call-backs and 2 on Sundays. This inspector worked a total of 3 hours and 45 minutes on the 6 assignments, which ranged from 25 minutes to 1 hour in length. Under 1911 Act rules, Inspector B's actual work time of 3 hours and 45 minutes totalled 68 hours for pay purposes. This inspector received \$906.44, for an effective rate of \$241.72 an hour, more than 18 times the regular pay of \$13.33 per hour. On the 2 Sundays during this period, Inspector B worked a total of 1 hour and received \$426.56.
- Inspector C's regular 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, Customs callback regulations under the 1911 Act guaranteed him 8 hours pay. He would be paid \$106.64 for the 15 minutes worked, or an effective rate of \$426.56 per hour as compared to his regular hourly pay of \$13.33.

In a full year, inspectors can earn impressive amounts of overtime pay for the amounts of actual overtime worked. For example:

- Inspector D worked 252 overtime assignments in fiscal year 1989. The average assignment length was 36 minutes. The effective hourly rate paid was \$138.00 as compared to the regular hourly rate of \$11.71. Inspector D was paid a total of \$20,921 in overtime for the year.
- Inspector E worked 228 overtime assignments in fiscal year 1989. The average assignment length was 35 minutes. The effective hourly rate paid was \$183.00 as compared to the regular hourly rate of \$16.38. Inspector E was paid \$24,379 in overtime for the year.

Two further examples illustrate additional points:

- At one international airport we visited, on a Monday holiday, 25 inspectors processed 1,096 passengers on 21 flights. On the following Monday which was not a holiday, 17 inspectors processed 1,127 passengers on 22 flights. In this instance,

the higher cost holiday processing was assigned more inspectors than a comparable non-overtime period with a larger workload.

- Inspector F 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 overtime 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 overtime pay.

The same inspector was credited four hours of pay for the 30 minutes of actual work from 11:30 until midnight on Saturday. He then qualified for the 16 hours of pay given for work on Sunday, on the basis of 15 minutes actual work from midnight to 12:15 a.m. For his work Sunday afternoon he was credited 8 hours because the assignment was a callback and eight hours for the overtime worked.

In this instance, Customs could have reduced the cost of the overtime worked, if it had, for example, avoided the 15 minute segment from midnight to 12:15 a.m., and/or assigned the Sunday afternoon portion to an inspector not on callback.

Overtime Assignments of Short Duration

As illustrated by some of the foregoing examples, we found that Customs port officials scheduled overtime for short periods of time that in many instances resulted in high payment for overtime. We are not questioning whether the work done on overtime needed to be done. Rather, we are suggesting that overtime costs can be reduced with closer management attention to the scheduling of work assignments.

In our analysis of the overtime database for fiscal year 1989, we found a noteworthy incidence of short duration overtime assignments. Such assignments contribute to high costs because of the high pay multipliers available for these assignments under

1911 Act overtime rules. The 1989 data, for example, show that 71 percent of all fiscal year 1989 overtime assignments used in our analysis included some weekday overtime; of these, 33 percent involved overtime assignments that started or ended within two hours of the regular workday. What this means is that staying late or coming in early in this manner results in 4 hours of overtime pay. Looking at callback assignments in the database, 45 percent were for 1 hour or less of work.

The effects of short overtime assignments are greater worked on Sundays and holidays, as seen in table 1.

Table 1:
Short Assignments on Sundays and Holidays

<u>Inspector/ Day</u>	<u>Minutes worked</u>	<u>Overtime Paid</u>		
		<u>Actual Pay</u>	<u>Effective Hourly Rate</u>	<u>Regular pay per hour</u>
Inspector G (Sunday OT)	19	\$250.72	\$791.76	\$15.67
Inspector H (Sunday OT)	19	175.68	554.79	10.98
Inspector I (Holiday OT)	30	255.04	510.08	15.94
Inspector J (Sunday OT)	20	199.04	597.18	12.44
Inspector K (Sunday OT)	45	336.32	448.43	21.02

Not all inspectors work assignments as short as these on Sundays and holidays. These are admittedly several of the more extreme cases we found. However, in fiscal year 1989, 45 percent of

Sunday and holiday assignments were in the "less-than-8 hours" category, and of these, a third were assignments lasting less than two hours. Our concern is that the cumulative effect of inspectional assignments such as these--when other options often exist for Customs, such as staggering work hours, adjusting shifts, and combining short assignments--is to push aggregate overtime costs upward. We believe there is a need for closer oversight over these assignments.

Customs' own overtime task force questioned the appropriateness of short assignments. The task force report, issued in 1990, estimated that about \$22 million could be saved annually if Customs could eliminate one category of short assignments--those completed within 2 hours before or after the regular workday.

Less Costly Overtime Rate May Apply

Customs also could increase efficiency by reducing overtime costs through use of the overtime rates set in the Federal Employees Pay Act (FEPA), where applicable. Customs regulations provide that the FEPA rate, rather than the 1911 Act rate, is to be used for overtime assignments that are "pending" at the end of the regular workday, carried over into the first hour of overtime, and completed within the first hour. However, Customs does not require the overtime workticket to show whether the assignment was one that was carried over, and the overtime

system has no other way of making this determination. Thus, in calculating overtime pay, Customs' automated system is set to consider all overtime assignments to be "new" assignments, so that the more expensive 1911 Act rates may be paid for the first hour of overtime.

INTERNAL CONTROLS

Customs maintains a separate pay system for overtime compensation. We found that internal control requirements for this system were generally included in Customs directives and in a detailed handbook, but they were not always followed at the five ports we visited. Our concern is that Customs is vulnerable to fraud and abuse because procedures for the overtime administrative process and internal control requirements are not being followed at ports, districts, and regions .

Moreover, the computer system operated by Customs' National Finance Center that pays overtime salaries does not include sufficient edit checks, to preclude, for example, certain types of duplicate payments.

From randomly selected overtime worktickets, we found instances of:

-- missing certification by supervisors that the overtime was worked;

- inspectors scheduling their own overtime work and self-certifying that they worked the amounts claimed, a violation of basic separation of duty requirements;
- workticket preparation not in accordance with Customs and basic internal control standards;
- incorrect start and stop times being used for overtime assignments; and
- duplicate claims for, and payments of, overtime to inspectors.

To check further on the accuracy of worktickets, the basic source documents for the payment of overtime, we reviewed 58 in Atlanta and found 80 errors, omissions, and inconsistencies in them. Each of the 58 had one or more errors. At another port, we checked 55 worktickets; 13 were error-free, but the remaining 42 worktickets contained a total of 70 errors. At a third, we checked 59 worktickets; 34 had no errors, but there were 28 errors in the remaining 25 worktickets. While we could not compute a dollar cost to Customs resulting from these errors, they are of concern because of their prevalence and because of the role these documents have in determining overtime pay.

We turned over evidence of the duplicate payments to Customs' Office of Internal Affairs and some duplicate payments were confirmed.

1911 ACT IS OUTDATED

The 1911 Act pay provisions are an anachronism in the 1991 environment. Some federal employees--particularly those

involved in law enforcement--commonly work overtime and do not receive overtime pay as generous as that available to inspectors at Customs and other agencies. Sunday and holiday work, once rare, is not uncommon today.

Current day scheduling of transportation and modern communications capabilities make overtime work easier to schedule in advance; although unscheduled overtime still occurs, today's overtime is more likely to be predictable and therefore less likely to be disruptive of inspectors' personal lives. Working conditions have also generally improved. Much of the work is indoors, so that weather is less of a factor, and airport work, which did not exist in 1911, generally involves a more highly managed and cleaner working environment than existed at ports in 1911.

Moreover, provisions in the 1911 Act impede Customs' efforts to manage overtime more efficiently. For example, placing regular workshifts on Sundays to meet the workload occurring on Sundays saves little overtime expense, because any Sunday work qualifies under the 1911 Act for payment of two days or 16 hours' pay.

We therefore conclude that the rationale for the 1911 Act is no longer relevant. Given this lack of relevance, the aggregate cost of overtime under the 1911 Act, and difficulties Customs will continue to experience in managing overtime under the Act,

we believe a compelling case exists for Congress to reevaluate the basis for computing overtime premium pay for inspectors.

RECOMMENDATIONS

To address the concerns we have noted Mr. Chairman, we offer a set of recommendations. For the near term, we recommend that the Commissioner of Customs be required to take more aggressive action to address internal control weaknesses in the overtime payment system and to make more efficient use of Customs workforce by aligning shifts more closely with the workload. These recommendations can and should be implemented whether or not the overtime provisions of the 1911 Act are amended. We believe the Customs Service has an obligation to manage its use of inspectional overtime efficiently, regardless of the source of funds used to cover overtime.

Our major recommendation addresses the overtime provisions of the 1911 Act. We recommend that Congress reevaluate the basis for computing premium pay for 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.

Concern over the inspectional overtime system is not new. Nor are the arguments that will be posed against changing the Act's provisions. Principal among these arguments is that premium pay

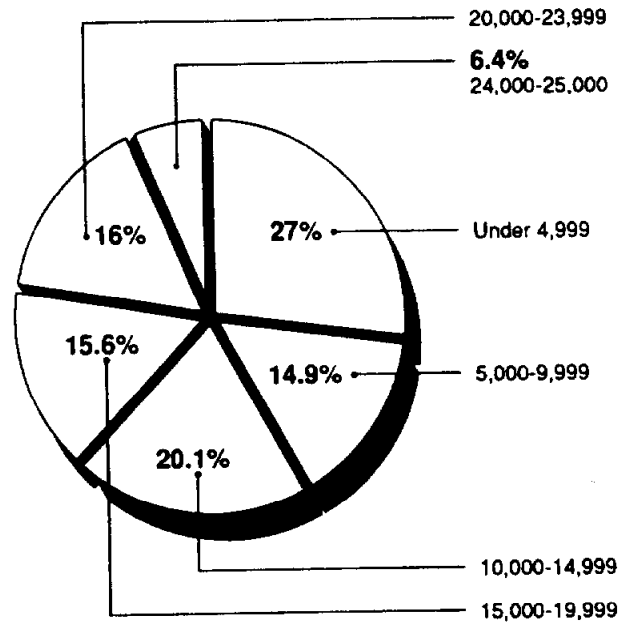
practices must be considered in conjunction with such factors as the level of base salaries, retirement system coverage, and sources of funds used to make the premium payments. We view all of these considerations as being outside the question of how much employees should be fairly paid when they are required to work outside the normal workday. We agree that such factors are legitimate concerns in an overall assessment of a pay system, but maintain that, as with premium pay, each factor should be considered on its own merits.

Finally, in making this recommendation, we are not seeking to assert that extra pay for overtime is unwarranted. To the contrary, we agree that a premium for overtime is clearly justified. We urge only that it be based more on actual time worked.

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This concludes my statement, Mr. Chairman. I would be pleased to respond to any questions you or other Subcommittee Members may have.

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



Duration of Sunday/Holiday Overtime
for Fiscal Year 1989
(Based on worktickets)

