
**Testimony Before the Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives**

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**U.S. Customs Service
Fiscal Year 2002 Budget Authorization Hearing**

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Mr. Chairman, members of the Subcommittee, I am pleased to appear before you today. In April of 1999, I testified on the results of an audit we conducted on the impact of the United States Customs Services Officers Pay Reform amendments (COPRA) on Customs' overtime and premium pay. Our audit, which was completed in September of 1996, found that while the COPRA legislation was expected to reduce the United States Customs Service (Customs) overtime costs for inspectional services, it in fact increased total overtime and premium pay costs.

COPRA became law as part of the Omnibus Budget Reconciliation Act of 1993. It took effect January 1, 1994. COPRA created a new and exclusive overtime compensation and premium pay system for Customs officers performing inspectional services. The intent of the COPRA legislation was to more closely match earnings to hours worked. House Report 103-111, dated May 25, 1993, estimated that COPRA changes would result in overtime savings of \$12 million in both Fiscal Year (FY) 1994 and 1995 with total savings through FY 1998 of \$52 million.

Our audit found that premium pay expenses for Customs, specifically, the night work differential, substantially

increased under COPRA. Instead of the significant reduction in Customs overtime costs that COPRA was anticipated to provide, costs increased due to the use of both overtime and premium pay. Clearly, this was not the expected result when COPRA was passed in 1993.

According to data available from Customs budget account summaries, we determined that in FY 1993, the last full year under the prior pay legislation, commonly know as "1911 Act overtime", Customs' total overtime costs including shift differentials were \$99.2 million. Of this, approximately \$51,000 was due to night differentials. Looking at FY 1995, the first full year under COPRA, we found that total overtime costs increased to approximately \$106.1 million. Of this, \$8.9 million was specifically attributable to night differentials. Therefore, COPRA substantially increased Customs costs for night differential pay from \$51,000 in 1993 to \$8.9 million in 1995. Customs has continued to experience higher costs each year. In FY 1997 total overtime pay, including premium pay was \$126.8 million of which \$9.3 million was due to night differentials. In FY 2000 the costs were \$158.9 million and \$14.4 million, respectively.

One of the major reasons for the increase in Customs premium pay costs, and more specifically the night differential is that the enactment of COPRA greatly increased the number of available hours in which a Customs officer could earn night differential. Also, COPRA increased the night differential amount from 10 percent of basic pay to 15 percent or 20 percent depending on the time of day.

Specifically, the time period that qualifies for night differential premium pay extends from 3 p.m. to 8 a.m. or 17 out of the 24 hours in the day. The period from 3 p.m. to 12 a.m. qualifies for the 15 percent differential and the period from 11 p.m. to 8 a.m. qualifies for the 20 percent differential. The night differential provision in the COPRA legislation also provides that if the majority of a shift falls within the night differential period, then the entire shift qualifies for the night differential premium. For example, a Customs officer can earn a 15 percent night differential for the entire 8 hours of a shift that starts at 12 noon and ends at 8 p.m. In addition, that officer can earn a 20 percent night differential for an entire 9-hour shift that starts at 3 a.m. and continues through 12 noon. Likewise, a shift that runs from 8 p.m. until 4 a.m. would also qualify for night differential pay, at the 20 percent

rate. Essentially, all 24 hours of the day can qualify for night differential premium pay and a tour of duty such as 12 noon to 8 p.m. which most of us would consider primarily daytime hours, qualifies for 8 hours of night differential pay.

Another factor increasing Customs night differential expenses was an arbitration ruling, which was issued on December 9, 1995. A panel arbitrator ruled in favor of the National Treasury Employees Union which protested Customs refusal to pay night differential to Customs officers who were on leave for periods of 8 hours or longer. The ruling required Customs to pay officers COPRA night differential even when they are on leave, if those leave days would normally qualify for night differential had the officers been at work. This created a situation where officers received night differential premium pay even if they were on vacation.

In summary, the overall cost to Customs for overtime has shown an increase rather than a decrease after the passage of COPRA and has steadily increased every year since 1995.

The night differential portion of that total cost has steadily increased from \$51,000 in FY 1993 to \$14.4 million in FY 2000. That substantial increase will remain a part of Customs' total overtime costs and continue its upward trend unless the provisions of COPRA outlined in this testimony are eliminated or modified through new legislation.