

103D CONGRESS  
1ST SESSION

# S. 317

To reform Customs Service operations, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 4 (legislative day, JANUARY 5), 1993

Mr. DECONCINI introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To reform Customs Service operations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Customs Inspector  
5 Benefit Reform Act of 1993”.

6 **SEC. 2. OVERTIME AND PREMIUM PAY FOR CUSTOMS OFFI-**  
7 **CERS.**

8 (a) IN GENERAL.—Section 5 of the Act of February  
9 13, 1911 (19 U.S.C. 261 and 267) is amended to read  
10 as follows:

1 **“SEC. 5. OVERTIME AND PREMIUM PAY FOR CUSTOMS OF-**  
2 **FICERS.**

3 “(a) OVERTIME PAY.—

4 “(1) IN GENERAL.—Subject to paragraph (2)  
5 and subsection (c), a customs officer who is officially  
6 assigned to perform work in excess of 40 hours in  
7 the administrative workweek of the officer or in ex-  
8 cess of 8 hours in a day shall be compensated for  
9 that work at an hourly rate of pay that is equal to  
10 2 times the hourly rate of the basic pay of the offi-  
11 cer. For purposes of this paragraph, the hourly rate  
12 of basic pay for a customs officer does not include  
13 any premium pay provided for under subsection (b).

14 “(2) SPECIAL PROVISIONS RELATING TO OVER-  
15 TIME WORK ON CALLBACK BASIS.—

16 “(A) MINIMUM DURATION.—Any work for  
17 which compensation is authorized under para-  
18 graph (1) and for which the customs officer is  
19 required to return to the officer’s place of work  
20 shall be treated as being not less than 2 hours  
21 in duration; but only if such work begins at  
22 least 1 hour after the end of any previous regu-  
23 larly scheduled work assignment.

24 “(B) COMPENSATION FOR COMMUTING  
25 TIME.—

1           “(i) IN GENERAL.—Except as pro-  
2           vided in clause (ii), in addition to the com-  
3           pensation authorized under paragraph (1)  
4           for work to which subparagraph (A) ap-  
5           plies, the customs officer is entitled to be  
6           paid, as compensation for commuting time,  
7           an amount equal to 3 times the hourly rate  
8           of basic pay of the officer.

9           “(ii) EXCEPTION.—Compensation for  
10          commuting time is not payable under  
11          clause (i) if the work for which compensa-  
12          tion is authorized under paragraph (1)  
13          commences within 2 hours of the next reg-  
14          ularly scheduled work assignment of the  
15          customs officer.

16       “(b) PREMIUM PAY FOR CUSTOMS OFFICERS.—

17           “(1) NIGHT WORK DIFFERENTIAL.—

18           “(A) 3 P.M. TO MIDNIGHT SHIFTWORK.—If  
19           the majority of the hours of regularly scheduled  
20           work of a customs officer occur during the pe-  
21           riod beginning at 3 p.m. and ending at 12 a.m.,  
22           the officer is entitled to pay for work during  
23           such period (except for work to which para-  
24           graph (2) or (3) applies) at the officer’s hourly

1 rate of basic pay plus premium pay amounting  
2 to 15 percent of that basic rate.

3 “(B) 11 P.M. TO 8 A.M. SHIFTWORK.—If  
4 the majority of the hours of regularly scheduled  
5 work of a customs officer occur during the pe-  
6 riod beginning at 11 p.m. and ending at 8 a.m.,  
7 the officer is entitled to pay for work during  
8 such period (except for work to which para-  
9 graph (2) or (3) applies) at the officer’s hourly  
10 rate of basic pay plus premium pay amounting  
11 to 20 percent of that basic rate.

12 “(C) 7:30 P.M. TO 3:30 A.M. SHIFTWORK.—  
13 If the regularly scheduled work assignment of a  
14 customs officer is 7:30 p.m. to 3:30 a.m, the of-  
15 ficer is entitled to pay for work during such pe-  
16 riod (except for work to which paragraph (2) or  
17 (3) applies) at the officer’s hourly rate of basic  
18 pay plus premium pay amounting to 15 percent  
19 of that basic rate for the period from 7:30 p.m.  
20 to 11:30 p.m. and at the officer’s hourly rate of  
21 basic pay plus premium pay amounting to 20  
22 percent of that basic rate for the period from  
23 11:30 p.m. to 3:30 a.m.

24 “(2) SUNDAY DIFFERENTIAL.—A customs offi-  
25 cer who performs any regularly scheduled work on a

1 Sunday that is not a holiday is entitled to pay for  
2 that work at the officer's hourly rate of basic pay  
3 plus premium pay amounting to 100 percent of that  
4 basic rate.

5 “(3) HOLIDAY DIFFERENTIAL.—A customs offi-  
6 cer who performs any regularly scheduled work on a  
7 holiday is entitled to pay for that work at the offi-  
8 cer's hourly rate of basic pay plus premium pay  
9 amounting to 100 percent of that basic rate.

10 “(4) TREATMENT OF PREMIUM PAY.—Premium  
11 pay provided for under this subsection may not be  
12 treated as being overtime pay or compensation for  
13 any purpose.

14 “(c) EXCLUSIVITY OF PAY UNDER THIS SECTION.—  
15 A customs officer who receives overtime pay under sub-  
16 section (a) or premium pay under subsection (b) for time  
17 worked may not receive pay or other compensation for  
18 that work under any other provision of law.

19 “(d) REGULATIONS.—The Secretary of the Treasury  
20 shall prescribe such regulations as are necessary or appro-  
21 priate to carry out this section, including regulations—

22 “(1) to ensure that callback work assignments  
23 are commensurate with the overtime pay authorized  
24 for such work; and

1           “(2) to prevent the disproportionate assignment  
2 of overtime work to customs officers who are near  
3 to retirement.

4           “(e) DEFINITIONS.—As used in this section:

5           “(1) The term ‘customs officer’ means an indi-  
6 vidual performing those functions specified by regu-  
7 lation by the Secretary of the Treasury for a cus-  
8 toms inspector or canine enforcement officer. Such  
9 functions shall be consistent with such applicable  
10 standards as may be promulgated by the Office of  
11 Personnel Management.

12           “(2) The term ‘holiday’ means any day des-  
13 igned as a holiday under a Federal statute or Ex-  
14 ecutive order.”.

15           (b) CONFORMING AMENDMENTS.—

16           (1) Section 2 of the Act of June 3, 1944 (19  
17 U.S.C. 1451a), is repealed.

18           (2) Section 450 of the Tariff Act of 1930 (19  
19 U.S.C. 1450) is amended—

20           (A) by striking out “**AT NIGHT**” in the  
21 section heading and inserting “**DURING OVER-**  
22 **TIME HOURS**”;

23           (B) by striking out “at night” and insert-  
24 ing “during overtime hours”; and

1 (C) by inserting “aircraft,” immediately  
2 before “vessel”.

3 (c) EFFECTIVE DATE.—The amendments made by  
4 subsections (a) and (b) apply to customs inspectional serv-  
5 ices provided on or after the date occurring 90 days after  
6 the date of the enactment of this Act.

7 **SEC. 3. FOREIGN LANGUAGE PROFICIENCY AWARDS FOR**  
8 **CUSTOMS OFFICERS.**

9 Cash awards for foreign language proficiency may,  
10 under regulations prescribed by the Secretary of the  
11 Treasury, be paid to customs officers (as referred to in  
12 section 5(e)(1) of the Act of February 13, 1911) to the  
13 same extent and in the same manner as would be allowable  
14 under subchapter III of chapter 45 of title 5, United  
15 States Code, with respect to law enforcement officers (as  
16 defined by section 4521 of such title).

17 **SEC. 4. APPROPRIATIONS REIMBURSEMENTS FROM THE**  
18 **CUSTOMS USER FEE ACCOUNT.**

19 Section 13031(f)(3) of the Consolidated Omnibus  
20 Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3))  
21 is amended by amending clause (i) of subparagraph (A)  
22 to read as follows:

23 “(i) in—

1           “(I) paying overtime compensation and  
2 premium pay under section 5 (a) and (b) of the  
3 Act of February 13, 1911,

4           “(II) paying necessary expenses for agency  
5 contributions to the Civil Service Retirement  
6 and Disability Fund or the Federal Employees  
7 Retirement System to match deductions from  
8 the overtime compensation paid under  
9 subclause (I), and

10           “(III) providing all preclearance services  
11 for which the recipients of such services are not  
12 required to reimburse the Secretary of the  
13 Treasury, and”.

14 **SEC. 5. TREATMENT OF CERTAIN PAY OF CUSTOMS OFFI-**  
15 **CERS FOR RETIREMENT PURPOSES.**

16           (a) IN GENERAL.—Section 8331(3) of title 5, United  
17 States Code, is amended—

18           (1) by striking out “and” at the end of sub-  
19 paragraph (C);

20           (2) by striking out the semicolon at the end of  
21 subparagraph (D) and inserting “; and”;

22           (3) by adding after subparagraph (D) the fol-  
23 lowing:

24           “(E) with respect to a customs officer (re-  
25 ferred to in subsection (e)(1) of section 5 of the

1 Act of February 13, 1911), compensation for  
2 overtime inspectional services provided for  
3 under subsection (a) of such section 5, but not  
4 to exceed 50 percent of any statutory maximum  
5 in overtime pay for customs officers which is in  
6 effect for the year involved;” and

7 (4) by striking out “subparagraphs (B), (C),  
8 and (D) of this paragraph,” and inserting “subpara-  
9 graphs (B), (C), (D), and (E) of this paragraph”.

10 (b) EFFECTIVE DATE.—The amendments made by  
11 subsection (a) take effect on the date of the enactment  
12 of this Act and apply only with respect to service per-  
13 formed on or after such date.

14 **SEC. 6. REPORTS.**

15 (a) CUSTOMS USER FEE ACCOUNT REPORTS.—Sub-  
16 paragraph (D) of section 13031(f)(3) of the Consolidated  
17 Omnibus Budget Reconciliation Act of 1985 (19 U.S.C.  
18 58c(f)(3)(D)) is amended to read as follows:

19 “(D) At the close of each fiscal year, the Secretary  
20 of the Treasury shall submit a report to the Committee  
21 on Finance of the Senate and the Committee on Ways and  
22 Means of the House of Representatives—

23 “(i) containing a detailed accounting of all ex-  
24 penditures from the Customs User Fee Account dur-  
25 ing such year, including a summary of the expendi-

1       tures, on a port-by-port basis, for which reimburse-  
2       ment has been provided under subparagraph (A)(ii);  
3       and

4               “(ii) containing a listing of all callback assign-  
5       ments of customs officers for which overtime com-  
6       pensation was paid under section 5(a) of the Act of  
7       February 13, 1911, and that were less than 1 hour  
8       in duration.”.

9       (b) OTHER REPORTS.—

10               (1) GAO REPORT.—The Comptroller General of  
11       the United States shall undertake—

12               (A) an evaluation of the appropriateness  
13       and efficiency of the customs user fee laws for  
14       financing the provision of customs inspectional  
15       services; and

16               (B) a study to determine whether cost sav-  
17       ings in the provision of overtime inspectional  
18       services could be realized by the United States  
19       Customs Service through the use of additional  
20       inspectors as opposed to continuing the current  
21       practice of relying on overtime pay.

22       The Comptroller General shall submit a report on  
23       the evaluation and study required under this sub-  
24       section to the Committees by no later than the 1st  
25       anniversary of the date of the enactment of this Act.

1           (2) TREASURY RECOMMENDATION.—On the day  
2           that the President submits the budget for the  
3           United States Government for fiscal year 1994 to  
4           the Congress under section 1105(a) of title 31,  
5           United States Code, the Secretary of the Treasury  
6           shall submit to the Committees recommended legis-  
7           lative proposals for improving the operation of cus-  
8           toms user fee laws in financing the provision of cus-  
9           toms inspectional services.

10           (3) DEFINITION OF COMMITTEES.—For pur-  
11           poses of this subsection, the term “Committees”  
12           means the Committee of Ways and Means of the  
13           House of Representatives and the Committee on Fi-  
14           nance of the Senate.

15 **SEC. 7. HAZARDOUS DUTY DIFFERENTIAL.**

16           (a) IN GENERAL.—Notwithstanding section 5545(d)  
17           of title 5, United States Code, in the administration of  
18           such section, the Commissioner of Customs of the United  
19           States Customs Service may designate hazardous duty  
20           functions for the purpose of paying hazardous duty dif-  
21           ferentials to customs officers.

22           (b) DEFINITION.—For purposes of this section the  
23           term “customs officer” means an individual performing  
24           those functions specified by regulation by the Secretary  
25           of the Treasury for a customs inspector or canine enforce-

1 ment officer. Such functions shall be consistent with such  
2 applicable standards as may be promulgated by the Office  
3 of Personnel Management.

4 (c) EFFECTIVE DATE.—This section shall take effect  
5 and apply to inspectional services provided on or after Oc-  
6 tober 1, 1993.

7 **SEC. 8. SPECIAL PAY ADJUSTMENT FOR CUSTOMS SERVICE**  
8 **EMPLOYEES.**

9 (a) IN GENERAL.—Section 405 of the Federal Em-  
10 ployees Pay Comparability Act of 1990 (5 U.S.C. 5305  
11 note; 104 Stat. 1466) is amended by adding at the end  
12 thereof the following new subsection:

13 “(d)(1) The provisions of subsection (a) shall apply  
14 to customs officers.

15 “(2) For purposes of this section the appropriate  
16 agency head for prescribing regulations shall be the Sec-  
17 retary of the Treasury.

18 “(3) For purposes of this section the term ‘customs  
19 officer’ means an individual performing those functions  
20 specified by regulation by the Secretary of the Treasury  
21 for a customs inspector or canine enforcement officer.  
22 Such functions shall be consistent with such applicable  
23 standards as may be promulgated by the Office of Person-  
24 nel Management.”.

25 (b) EFFECTIVE DATE.—

1           (1) IN GENERAL.—Subject to the provisions of  
2 paragraph (2), the amendment made by this section  
3 shall be effective on and after the first day of the  
4 first applicable pay period beginning on or after Oc-  
5 tober 1, 1993.

6           (2) REGULATIONS.—The Secretary of the  
7 Treasury may prescribe regulations after the date of  
8 the enactment of this section to provide for the im-  
9 plementation of the amendment made by this section  
10 on or after the effective date under paragraph (1).

11 **SEC. 9. CUSTOMS INSPECTOR AND CANINE ENFORCEMENT**  
12 **OFFICER CREDITABLE SERVICE FOR RETIRE-**  
13 **MENT.**

14           (a) DESIGNATION OF ARDUOUS ENFORCEMENT PO-  
15 SITIONS.—The Commissioner of Customs (hereafter in  
16 this section referred to as the “Commissioner”) may des-  
17 ignate positions in the Customs Service as arduous en-  
18 forcement positions. An arduous enforcement position may  
19 only be filled by an employee who—

20           (1) is a customs inspector or canine enforce-  
21 ment officer;

22           (2) is capable of performing duties which are  
23 sufficiently rigorous that employment opportunities  
24 should be limited to young and physically vigorous  
25 individuals, as determined by the Commissioner;

1 (3) is less than 57 years of age;

2 (4) qualifies in firearms tests conducted on a  
3 quarterly basis under regulations promulgated by  
4 the Commissioner; and

5 (5) qualifies in all physical fitness standards  
6 under regulations promulgated by the Commissioner  
7 that are generally applicable to all Federal law en-  
8 forcement officers.

9 (b) REMOVAL FROM ARDUOUS ENFORCEMENT POSI-  
10 TION.—A customs inspector or canine enforcement officer  
11 who fails to qualify on any quarterly firearms test as re-  
12 quired under subsection (a)(4) or fails to maintain the  
13 physical fitness standards under subsection (a)(5) shall be  
14 removed from an arduous enforcement position. Such in-  
15 spector or officer may not be assigned to an arduous en-  
16 forcement position for a period of no less than 6 months.

17 (c) CIVIL SERVICE RETIREMENT SYSTEM.—

18 (1) DEFINITIONS.—Section 8331 of title 5,  
19 United States Code, is amended—

20 (A) in paragraph (25) by striking out  
21 “and” after the semicolon;

22 (B) in paragraph (26) by striking out the  
23 period and inserting in lieu thereof a semicolon  
24 and “and”; and

1 (C) by adding at the end thereof the fol-  
2 lowing new paragraph:

3 “(27) ‘designated customs inspector’ means a  
4 customs inspector or canine enforcement officer who  
5 is serving in an arduous enforcement position as  
6 designated by the Commissioner of Customs under  
7 section 9 of the Customs Inspector Benefit Reform  
8 Act of 1993.”.

9 (2) CREDITABLE SERVICE.—Section 8332 of  
10 title 5, United States Code, is amended by adding  
11 at the end thereof the following new subsection:

12 “(o)(1) For purposes of this chapter, and subject to  
13 the provisions of this subsection, a designated customs in-  
14 spector shall receive 1½ years of creditable service for  
15 each year of actual service as a designated customs inspec-  
16 tor. Such service shall be based on full years and twelfth  
17 parts thereof, excluding from the aggregate the fractional  
18 part of a month, if any.

19 “(2) The provisions of paragraph (1) shall not apply  
20 to any customs inspector or canine enforcement officer un-  
21 less such inspector or officer has no less than 5 years of  
22 actual service as an employee (which is otherwise cred-  
23 itable service under this section).

1 “(3) No customs inspector or canine enforcement of-  
 2 ficer may be credited with more than 20 years of cred-  
 3 itable service under the provisions of paragraph (1).

4 “(4) This subsection shall not be construed to give  
 5 any customs inspector or canine enforcement officer credit  
 6 for both service as such inspector or officer and service  
 7 as a designated customs inspector during any specified  
 8 time period.”.

9 (3) DEDUCTIONS, CONTRIBUTIONS, AND DEPOS-  
 10 ITS.—Section 8334 of title 5, United States Code, is  
 11 amended—

12 (A) in the first sentence of subsection  
 13 (a)(1) by inserting “designated customs inspec-  
 14 tor,” after “law enforcement officer,”; and

15 (B) in the table under subsection (c) by in-  
 16 serting after the item relating to law enforce-  
 17 ment officers and firefighters the following new  
 18 item:

“Designated customs inspector for  
 designated customs inspector  
 service ..... 7½..... After September 30, 1993.”.

19 (4) COMPUTATION OF ANNUITY.—Section 8339  
 20 of title 5, United States Code, is amended by adding  
 21 at the end thereof the following new subsection:

22 “(r) The annuity of an employee with creditable serv-  
 23 ice under section 8332(o) retiring under this subchapter  
 24 is computed under subsection (a) of this section, except

1 the annuity of such employee is computed with respect to  
2 the service credited under section 8322(o)(1) as a des-  
3 ignated customs inspector by multiplying 2½ percent of  
4 his average pay by the years of that service.”.

5 (5) APPLICATION.—The amendments made by  
6 this subsection shall be effective on and after Octo-  
7 ber 1, 1993, and shall apply with regard to service  
8 performed by a customs inspector or canine enforce-  
9 ment officer in an arduous enforcement position on  
10 and after such date.

11 (d) FEDERAL EMPLOYEES RETIREMENT SYSTEM.—

12 (1) DEFINITIONS.—Section 8401 of title 5,  
13 United States Code, is amended—

14 (A) in paragraph (31) by striking out  
15 “and” after the semicolon;

16 (B) in paragraph (32) by striking out the  
17 period and inserting in lieu thereof a semicolon  
18 and “and”; and

19 (C) by adding at the end thereof the fol-  
20 lowing new paragraph:

21 “(33) ‘designated customs inspector’ means a  
22 customs inspector or canine enforcement officer who  
23 is serving in an arduous enforcement position as  
24 designated by the Commissioner of Customs under

1 section 9 of the Customs Inspector Benefit Reform  
2 Act of 1993.”.

3 (2) CREDITABLE SERVICE.—Section 8411 of  
4 title 5, United States Code, is amended by adding  
5 at the end thereof the following new subsection:

6 “(h)(1) For purposes of this chapter, and subject to  
7 the provisions of this subsection, a designated customs in-  
8 spector shall receive 1½ years of creditable service for  
9 each year of actual service as a designated customs inspec-  
10 tor. Such service shall be based on full years and twelfth  
11 parts thereof, excluding from the aggregate the fractional  
12 part of a month, if any.

13 “(2) The provisions of paragraph (1) shall not apply  
14 to any customs inspector or canine enforcement officer un-  
15 less such inspector or officer has no less than 5 years of  
16 actual service as an employee (which is otherwise cred-  
17 itable service under this section).

18 “(3) No customs inspector or canine enforcement of-  
19 ficer may be credited with more than 20 years of cred-  
20 itable service under the provisions of paragraph (1).

21 “(4) This subsection shall not be construed to give  
22 any customs inspector or canine enforcement officer credit  
23 for both service as such inspector or officer and service  
24 as a designated customs inspector during any specified  
25 time period.”.

1           (3) DEDUCTIONS FROM PAY.—Section  
2           8422(a)(2)(B) of title 5, United States Code, is  
3           amended by inserting “designated customs inspec-  
4           tor,” after “law enforcement officer,”.

5           (4) GOVERNMENT CONTRIBUTIONS.—Section  
6           8423(a) is amended—

7                   (A) in paragraph (1)(B) by inserting “des-  
8                   ignated customs inspector,” after “law enforce-  
9                   ment officer,”; and

10                   (B) in paragraph (3)(A) by inserting “des-  
11                   ignated customs inspector,” after “law enforce-  
12                   ment officer,”.

13           (5) COMPUTATION OF ANNUITY.—Section 8415  
14           of title 5, United States Code, is amended—

15                   (A) in subsection (g)(2) by inserting “des-  
16                   ignated customs inspector,” after “law enforce-  
17                   ment officer,”; and

18                   (B) by adding at the end thereof the fol-  
19                   lowing new subsection:

20           “(h) The annuity of an employee with creditable serv-  
21           ice under section 8411(h) retiring under this subchapter  
22           is computed under subsection (a) of this section, except  
23           the annuity of such employee is computed with respect to  
24           the service credited under section 8411(h)(1) as a des-

1 igned customs inspector by multiplying  $1\frac{7}{10}$  percent of  
 2 his average pay by the years of that service.”.

3 (6) APPLICATION.—The amendments made by  
 4 this subsection shall be effective on and after Octo-  
 5 ber 1, 1993, and shall apply with regard to service  
 6 performed by a customs inspector or canine enforce-  
 7 ment officer in an arduous enforcement position on  
 8 and after such date.

9 **SEC. 10. APPLICATION OF CUSTOMS SERVICE FEES TO PAS-**  
 10 **SENGERS.**

11 (a) IN GENERAL.—Subparagraph (A) of section  
 12 13031(b)(1) of the Consolidated Omnibus Budget Rec-  
 13 onciliation Act of 1985 (19 U.S.C. 58c(b)(1)(A)) is  
 14 amended to read as follows:

15 “(A) the arrival of any passenger whose jour-  
 16 ney—

17 “(i) originated in—

18 “(I) a territory or possession of the  
 19 United States; or

20 “(ii) originated in the United States and  
 21 was limited to—

22 “(I) territories and possessions of the  
 23 United States; and

24 (b) EFFECTIVE DATE.—The amendment made by  
 25 this section shall apply with respect to customs services

1 rendered in regard to arriving passengers using transpor-  
2 tation for which documents or tickets were issued after  
3 the date that is 90 days after the date of the enactment  
4 of this Act.

○

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