105TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 105–541

DRUG FREE BORDERS ACT OF 1998

MAY 18, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ARCHER, from the Committee on Ways and Means, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 3809]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3809) to authorize appropriations for the United States Customs Service for fiscal years 1999 and 2000, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
I. Introduction	7
A. Purpose and Summary	7
B. Background and Need for Legislation	7
C. Legislative History	9
II. Explanation of the Bill	11
A. Title I—Authorization of Appropriations for U.S. Customs Service	11
1. Authorization of Appropriations	11
2. Narcotics Detection Equipment for the United States-Mexico Border, United States-Canada Border, and Florida and the Gulf Coast Seaports	12
3. Peak Hours and Investigative Resource Enhancement for the United States-Mexico and United States-Canada Borders	13
4. Compliance with Performance Plan Requirements	13
B. Title II—Overtime and Premium Pay of Officers of the United States Customs Service; Miscellaneous Provisions	13
1. Subtitle A—Overtime Pay and Premium Pay of Officers of the United States Customs Service	13

59–006

a. Fiscal Year Cap 13
b. Restriction on Payment of Overtime Pay to Hours Actually Worked 15
c. Premium Pay 16
i. Restriction on Payment of Premium Pay to Hours Actually Worked 16
ii. Revision of Night Work Differential Provisions 17
d. Use of Amounts for Additional Overtime Enforcement Activities of the Customs Service Resulting from Savings from Payment of Overtime and Premium Pay 19
2. Subtitle B—Miscellaneous Provisions 19
a. Rotation of Duty Stations and Temporary Duty Assignments of Officers of the U.S. Customs Service for Integrity and Drug Interdiction Purposes 19
b. Effect of Collective Bargaining Agreements on Ability of U.S. Customs Service to Interdict Contraband 20
III. Vote of the Committee 22
IV. Budget Effects of the Bill 23
A. Committee Estimates of Budgetary Effects 23
B. Budget Authority and Tax Expenditures 23
C. Cost Estimate Prepared by the Congressional Budget Office 23
V. Other Matters To Be Discussed Under the Rules of the House 25
A. Committee Oversight Findings and Recommendations 25
B. Summary of Findings and Recommendations of the Committee on Government Reform and Oversight 25
C. Constitutional Authority Statement 25
VI. Changes in Existing Law Made by the Bill, as Amended 25
VII. Additional Views 31

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Drug Free Borders Act of 1998".

TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR UNITED STATES CUSTOMS SERVICE

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

(a) DRUG ENFORCEMENT AND OTHER NONCOMMERCIAL OPERATIONS.—Subparagraphs (A) and (B) of section 301(b)(1) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(A) and (B)) are amended to read as follows:

"(A) $964,587,584 for fiscal year 1999.

"(B) $1,072,928,328 for fiscal year 2000.".

(b) COMMERCIAL OPERATIONS.—Clauses (i) and (ii) of section 301(b)(2)(A) of such Act (19 U.S.C. 2075(b)(2)(A)(i) and (ii)) are amended to read as follows:

"(i) $970,838,000 for fiscal year 1999.

"(ii) $999,963,000 for fiscal year 2000.".

(c) AIR INTERDICTION.—Subparagraphs (A) and (B) of section 301(b)(3) of such Act (19 U.S.C. 2075(b)(3)(A) and (B)) are amended to read as follows:

"(A) $98,488,000 for fiscal year 1999.

"(B) $101,443,000 for fiscal year 2000.".

(d) SUBMISSION OF OUT-YEAR BUDGET PROJECTIONS.—Section 301(a) of such Act (19 U.S.C. 2075(a)) is amended by adding at the end the following:

"(3) By no later than the date on which the President submits to the Congress the budget of the United States Government for a fiscal year, the Commissioner of Customs shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the operations of the Customs Service as provided for in subsection (b).".

SEC. 102. NARCOTICS DETECTION EQUIPMENT FOR THE UNITED STATES-MEXICO BORDER, UNITED STATES-CANADA BORDER, AND FLORIDA AND THE GULF COAST SEAPORTS.

(a) FISCAL YEAR 1999.—Of the amounts made available for fiscal year 1999 under section 301(b)(1)(A) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(A)), as amended by section 101(a) of this Act, $90,244,000 shall be available until expended for acquisition and other expenses associated with implementation and deployment of narcotics detection equipment along the United States-Mexico border, the United States-Canada border, and Florida and the Gulf Coast seaports, as follows:

(1) UNITED STATES-MEXICO BORDER.—For the United States-Mexico border, the following:

(A) $6,000,000 for 8 Vehicle and Container Inspection Systems (VACIS).

(B) $11,000,000 for 5 mobile truck x-rays with transmission and backscatter imaging.

(C) $12,000,000 for the upgrade of 8 fixed-site truck x-rays from the present energy level of 450,000 electron volts to 1,000,000 electron volts (1–MeV).

(D) $7,200,000 for 8 1–MeV pallet x-rays.

(E) $1,000,000 for 200 portable contraband detectors (busters) to be distributed among ports where the current allocations are inadequate.

(F) $600,000 for 50 contraband detection kits to be distributed among all southwest border ports based on traffic volume.

(G) $500,000 for 25 ultrasonic container inspection units to be distributed among all ports receiving liquid-filled cargo and to ports with a hazardous material inspection facility.

(H) $2,450,000 for 7 automated targeting systems.

(I) $360,000 for 30 rapid tire deflator systems to be distributed to those ports where port runners are a threat.

(J) $480,000 for 20 portable Treasury Enforcement Communications Systems (TECS) terminals to be moved among ports as needed.

(K) $1,000,000 for 20 remote watch surveillance camera systems at ports where there are suspicious activities at loading docks, vehicle queues, secondary inspection lanes, or areas where visual surveillance or observation is obscured.

(L) $1,254,000 for 57 weigh-in-motion sensors to be distributed among the ports with the greatest volume of outbound traffic.

(M) $180,000 for 36 AM traffic information radio stations, with 1 station to be located at each border crossing.

(N) $1,040,000 for 260 inbound vehicle counters to be installed at every inbound vehicle lane.

(O) $950,000 for 38 spotter camera systems to counter the surveillance of customs inspection activities by persons outside the boundaries of ports where such surveillance activities are occurring.

(P) $390,000 for 60 inbound commercial truck transponders to be distributed to all ports of entry.

(Q) $1,600,000 for 40 narcotics vapor and particle detectors to be distributed to each border crossing.

(R) $400,000 for license plate reader automatic targeting software to be installed at each port to target inbound vehicles.

(S) $1,000,000 for a demonstration site for a high-energy relocatable rail car inspection system with an x-ray source switchable from 2,000,000 electron volts (2–MeV) to 6,000,000 electron volts (6–MeV) at a shared Department of Defense testing facility for a two-month testing period.

(2) UNITED STATES-CANADA BORDER.—For the United States-Canada border, the following:

(A) $3,000,000 for 4 Vehicle and Container Inspection Systems (VACIS).

(B) $8,800,000 for 4 mobile truck x-rays with transmission and backscatter imaging.

(C) $3,600,000 for 4 1–MeV pallet x-rays.

(D) $250,000 for 50 portable contraband detectors (busters) to be distributed among ports where the current allocations are inadequate.

(E) $300,000 for 25 contraband detection kits to be distributed among ports based on traffic volume.

(F) $240,000 for 10 portable Treasury Enforcement Communications Systems (TECS) terminals to be moved among ports as needed.

(G) $400,000 for 10 narcotics vapor and particle detectors to be distributed to each border crossing based on traffic volume.

(3) FLORIDA AND GULF COAST SEAPORTS.—For Florida and the Gulf Coast seaports, the following:

(A) $4,500,000 for 6 Vehicle and Container Inspection Systems (VACIS).

(B) $11,800,000 for 5 mobile truck x-rays with transmission and backscatter imaging.

(C) $7,200,000 for 8 1–MeV pallet x-rays.

(D) $250,000 for 50 portable contraband detectors (busters) to be distributed among ports where the current allocations are inadequate.

(E) $300,000 for 25 contraband detection kits to be distributed among ports based on traffic volume.

(b) FISCAL YEAR 2000.—Of the amounts made available for fiscal year 2000 under section 301(b)(1)(B) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(B)), as amended by section 101(a) of this Act, $8,924,500 shall be for the maintenance and support of the equipment and training of personnel to maintain and support the equipment described in subsection (a).

(c) ACQUISITION OF TECHNOLOGICALLY SUPERIOR EQUIPMENT; TRANSFER OF FUNDS.—

(1) IN GENERAL.—The Commissioner of Customs may use amounts made available for fiscal year 1999 under section 301(b)(1)(A) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(A)), as amended by section 101(a) of this Act, for the acquisition of equipment other than the equipment described in subsection (a) if such other equipment—

(A)(i) is technologically superior to the equipment described in subsection (a); and

(ii) will achieve at least the same results at a cost that is the same or less than the equipment described in subsection (a); or

(B) can be obtained at a lower cost than the equipment described in subsection (a).

(2) TRANSFER OF FUNDS.—Notwithstanding any other provision of this section, the Commissioner of Customs may reallocate an amount not to exceed 10 percent of—

(A) the amount specified in any of subparagraphs (A) through (R) of subsection (a)(1) for equipment specified in any other of such subparagraphs (A) through (R);

(B) the amount specified in any of subparagraphs (A) through (G) of subsection (a)(2) for equipment specified in any other of such subparagraphs (A) through (G); and

(C) the amount specified in any of subparagraphs (A) through (E) of subsection (a)(3) for equipment specified in any other of such subparagraphs (A) through (E).

SEC. 103. PEAK HOURS AND INVESTIGATIVE RESOURCE ENHANCEMENT FOR THE UNITED STATES-MEXICO AND UNITED STATES-CANADA BORDERS.

Of the amounts made available for fiscal years 1999 and 2000 under subparagraphs (A) and (B) of section 301(b)(1) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(A) and (B)), as amended by section 101(a) of this Act, $117,644,584 for fiscal year 1999 and $184,110,928 for fiscal year 2000 shall be available for the following:

(1) A net increase of 535 inspectors, 120 special agents, and 10 intelligence analysts for the United States-Mexico border and 375 inspectors for the United States-Canada border, in order to open all primary lanes on such borders during peak hours and enhance investigative resources.

(2) A net increase of 285 inspectors and canine enforcement officers to be distributed at large cargo facilities as needed to process and screen cargo (including rail cargo) and reduce commercial waiting times on the United States-Mexico border.

(3) A net increase of 40 inspectors at sea ports in southeast Florida to process and screen cargo.

(4) A net increase of 300 special agents, 30 intelligence analysts, and additional resources to be distributed among offices that have jurisdiction over major metropolitan drug or narcotics distribution and transportation centers for intensification of efforts against drug smuggling and money-laundering organizations.

(5) A net increase of 50 positions and additional resources to the Office of Internal Affairs to enhance investigative resources for anticorruption efforts.

(6) The costs incurred as a result of the increase in personnel hired pursuant to this section.

SEC. 104. COMPLIANCE WITH PERFORMANCE PLAN REQUIREMENTS.

As part of the annual performance plan for each of the fiscal years 1999 and 2000 covering each program activity set forth in the budget of the United States Customs Service, as required under section 1115 of title 31, United States Code, the Commissioner of the Customs Service shall establish performance goals, performance indicators, and comply with all other requirements contained in paragraphs (1) through (6) of subsection (a) of such section with respect to each of the activities to be carried out pursuant to sections 102 and 103 of this Act.

TITLE II—OVERTIME AND PREMIUM PAY OF OFFICERS OF THE UNITED STATES CUSTOMS SERVICE; MISCELLANEOUS PROVISIONS

Subtitle A—Overtime Pay and Premium Pay of Officers of the United States Customs Service

SEC. 201. CORRECTION RELATING TO FISCAL YEAR CAP.

Section 5(c)(1) of the Act of February 13, 1911 (19 U.S.C. 267(c)(1)) is amended to read as follows:

"(1) FISCAL YEAR CAP.—The aggregate of overtime pay under subsection (a) (including commuting compensation under subsection (a)(2)(B)) that a customs officer may be paid in any fiscal year may not exceed $30,000, except that—

"(A) the Commissioner of Customs or his or her designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service; and

"(B) upon certification by the Commissioner of Customs to the Chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that the Customs Service has in operation a system that provides accurate and reliable data on a daily basis on overtime and premium pay that is being paid to customs officers, the Commissioner is authorized to pay any customs officer for one work assignment that would result in the overtime pay of that officer exceeding the $30,000 limitation imposed by this paragraph, in addition to any overtime pay that may be received pursuant to a waiver under subparagraph (A).".

SEC. 202. CORRECTION RELATING TO OVERTIME PAY.

Section 5(a)(1) of the Act of February 13, 1911 (19 U.S.C. 267(a)(1)), is amended by inserting after the first sentence the following new sentence: "Overtime pay provided under this subsection shall not be paid to any customs officer unless such officer actually performed work during the time corresponding to such overtime pay.".

SEC. 203. CORRECTION RELATING TO PREMIUM PAY.

(a) IN GENERAL.—Section 5(b)(4) of the Act of February 13, 1911 (19 U.S.C. 267(b)(4)), is amended by adding after the first sentence the following new sentence: "Premium pay provided under this subsection shall not be paid to any customs officer unless such officer actually performed work during the time corresponding to such premium pay.".

(b) CORRECTIONS TO NIGHT WORK DIFFERENTIAL PROVISIONS.—Section 5(b)(1) of such Act (19 U.S.C. 267(b)(1)) is amended to read as follows:

"(1) NIGHT WORK DIFFERENTIAL.—

"(A) 6 P.M. TO MIDNIGHT.—If any hours of regularly scheduled work of a customs officer occur during the hours of 6 p.m. and 12 a.m., the officer is entitled to pay for such hours of work (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate.

"(B) MIDNIGHT TO 6 A.M.—If any hours of regularly scheduled work of a customs officer occur during the hours of 12 a.m. and 6 a.m., the officer is entitled to pay for such hours of work (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.

"(C) MIDNIGHT TO 8 A.M.—If the regularly scheduled work assignment of a customs officer is 12 a.m. to 8:00 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.".

SEC. 204. USE OF SAVINGS FROM PAYMENT OF OVERTIME AND PREMIUM PAY FOR ADDITIONAL OVERTIME ENFORCEMENT ACTIVITIES OF THE CUSTOMS SERVICE.

Section 5 of the Act of February 13, 1911 (19 U.S.C. 267), is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

"(e) USE OF SAVINGS FROM PAYMENT OF OVERTIME AND PREMIUM PAY FOR ADDITIONAL OVERTIME ENFORCEMENT ACTIVITIES.—

"(1) USE OF AMOUNTS.—For fiscal year 1999 and each subsequent fiscal year, the Secretary of the Treasury—

"(A) shall determine under paragraph (2) the amount of savings from the payment of overtime and premium pay to customs officers; and

"(B) shall use an amount from the Customs User Fee Account equal to such amount determined under paragraph (2) for additional overtime enforcement activities of the Customs Service.

"(2) DETERMINATION OF SAVINGS AMOUNT.—For each fiscal year, the Secretary shall calculate an amount equal to the difference between—

"(A) the estimated cost for overtime and premium pay that would have been incurred during that fiscal year if this section, as in effect on the day before the date of the enactment of sections 202 and 203 of the Drug Free Borders Act of 1998, had governed such costs; and

"(B) the actual cost for overtime and premium pay that is incurred during that fiscal year under this section, as amended by sections 202 and 203 of the Drug Free Borders Act of 1998.".

SEC. 205. EFFECTIVE DATE.

This subtitle, and the amendments made by this subtitle, shall apply with respect to pay periods beginning on or after 15 days after the date of the enactment of this Act.

Subtitle B—Miscellaneous Provisions

SEC. 211. ROTATION OF DUTY STATIONS AND TEMPORARY DUTY ASSIGNMENTS OF OFFICERS OF THE UNITED STATES CUSTOMS SERVICE TO PROMOTE INTEGRITY.

(a) IN GENERAL.—Section 5 of the Act of February 13, 1911 (19 U.S.C. 267), as amended by this Act, is further amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following:

"(f) ROTATION OF DUTY STATIONS AND TEMPORARY DUTY ASSIGNMENTS OF CUSTOMS OFFICERS.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, bargaining agreement, or Executive order, in order to ensure the integrity of the United States Customs Service, the Secretary of the Treasury—

"(A) may transfer up to 5 percent of the customs officers employed as of the beginning of each fiscal year to new duty stations in that fiscal year on a permanent basis; and

"(B) may transfer customs officers to temporary duty assignments for not more than 90 days.

"(2) VOLUNTARY AND OTHER TRANSFERS.—A transfer of a customs officer to a new duty station or a temporary duty assignment under paragraph (1) is in addition to any voluntary transfer or transfer for other reasons.

"(3) RULE OF CONSTRUCTION.—The requirements of this subsection, including any regulations established by the Secretary to carry out this subsection, are not subject to collective bargaining.

"(4) AVAILABILITY OF AMOUNTS.—Of the amounts made available for fiscal year 2000 under section 301(b)(1)(B) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(B)), not more than $25,000,000 for such fiscal year shall be available to carry out this subsection. Amounts made available under the preceding sentence are authorized to remain available until expended.".

(b) EFFECTIVE DATE.—Section 5(f) of the Act of February 13, 1911, as added by subsection (a), shall take effect on October 1, 1999.

SEC. 212. EFFECT OF COLLECTIVE BARGAINING AGREEMENTS ON ABILITY OF UNITED STATES CUSTOMS SERVICE TO INTERDICT CONTRABAND.

Section 5 of the Act of February 13, 1911 (19 U.S.C. 267), as amended by this Act, is further amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following:

"(g) EFFECT OF COLLECTIVE BARGAINING AGREEMENTS ON ABILITY OF CUSTOMS SERVICE TO INTERDICT CONTRABAND.—

"(1) SENSE OF THE CONGRESS.—It is the sense of the Congress that collective bargaining agreements should not have any adverse impact on the ability of the United States Customs Service to interdict contraband, including controlled substances.

"(2) PROVISIONS CAUSING ADVERSE IMPACT TO INTERDICT CONTRABAND.—

"(A) REQUIREMENT TO MEET.—If the Commissioner of the Customs Service determines that any collective bargaining agreement with the recognized bargaining representative of its employees has an adverse impact upon the interdiction of contraband, including controlled substances, the parties shall meet to eliminate the provision causing the adverse impact from the agreement.

"(B) FAILURE TO REACH AGREEMENT.—If the parties do not reach agreement within 90 days of the date that the Commissioner of Customs made the determination of adverse impact, the negotiations shall be considered at impasse and the Commissioner of Customs may immediately implement the last offer of the Customs Service. Such implementation shall not result in an unfair labor practice or, except as may be provided under the following sentence, the imposition of any status quo ante remedy against the Customs Service. Either party may then pursue the impasse to the Federal Service Impasses Panel pursuant to section 7119(c) of title 5, United States Code, for ultimate resolution.

"(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the authority of the Commissioner of Customs to implement immediately any proposed changes without waiting 90 days, if exigent circumstances warrant such immediate implementation, or if an impasse is reached in less than 90 days.".

I. INTRODUCTION

A. PURPOSE AND SUMMARY

H.R. 3809 would better enable the U.S. Customs Service to interdict drugs along the U.S. borders by increasing Custom's authorization by 31% for drug enforcement over the President's request for fiscal years 1999 and 2000 and give the Customs Service the ability to rotate Customs officers to different assignments, in emergency cases, to help fight the war on drugs. H.R. 3809 would also revise Customs overtime and premium pay to reflect the original Congressional intent where Customs officers are paid only for overtime and premium time worked and clarify that officers are only paid premium pay between the hours of 6 p.m. and 6 a.m. and would devote any savings to fund additional drug enforcement related overtime pay. It would also relax the manner in which the fiscal-year $30,000 cap for overtime pay is calculated by removing premium pay from the cap. Finally, the bill would allow the Commissioner of Customs to require Customs and its unions to bargain on any issue or agreement which would have an adverse impact on the interdiction of contraband. The parties would have 90 days to resolve the problem. If no agreement is reached, the Commissioner of Customs would then be able to implement Customs' last offer, and either party could then pursue the impasse to the Federal Service Impasses Panel.

B. BACKGROUND AND NEED FOR LEGISLATION

Drug use among teenagers is now skyrocketing. According to official statistics, more children are using marijuana, cocaine, and heroin. More children are dying as a result. This legislation is de-

signed to help keep drugs out of our nation's children's hands by stopping drugs from coming across U.S. borders. The various provisions of the bill are each aimed at accomplishing this essential national goal.

H.R. 3809 would provide a two-year authorization of appropriations for Customs. The statutory basis for the authorizations of appropriations for Customs is section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)). The most recent authorizations of appropriations for Customs were included in the Customs and Trade Act of 1990 [P.L. 101–382]. These authorizations expired at the end of FY92. Legislation is necessary to authorize subsequent appropriations to fund the operations of Customs for FY 1999 and FY 2000.

The Committee on Ways and Means has adopted a two-year authorization process to provide Customs with predictable guidance as they plan their budgets as well as guidance from the Committees for the appropriations process. In preparation for consideration of the H.R. 3809, the Subcommittee on Trade considered the President's budget for FY 1999 and requested projected budget summaries for FY 2000. Customs was able to provide the Subcommittee with unofficial projections for FY 2000, reflecting the funding levels which these agencies anticipate submitting to OMB. However, in prior years, the Committee has had considerable difficulty in obtaining a budget summary for the second year.

The Act of February 13, 1911, as amended, known as the "1911 Act," created the original overtime pay system for Customs inspectors. The Act authorized Customs to compensate officers at a rate of two days of basic hourly pay for Sundays, and a rate of two days of basic hourly pay plus the basic hourly rate for holidays. Minimum compensation for nighttime pay—5 p.m to 8 a.m.—was 4 to 12 hours of pay.

Section 13811 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1993, known as the Customs Officer Pay Reform Amendments (COPRA), amended the 1911 Act with regard to the overtime and premium pay system for Customs inspectors and canine enforcement officers, effective January 1, 1994. Only inspectors and canine officers are covered by the reforms, and only when performing inspections. Clerical and support staff are no longer eligible for double time and are covered—as are most other Federal employees—under the Federal Employees Pay Act (FEPA), at 1½ regular pay. The FEPA overtime rate is not to exceed $25.07 per hour, or 1½ times the basic hourly rate of a GS–10, Step 1 employee.

The Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1993 also amended overtime compensation paid to Customs officers as part of the basic pay for the Civil Service Retirement System. Compensation may not exceed 50 percent of the statutory maximum in overtime pay for Customs officers (i.e., $15,000 or 50 percent of $30,000).

Because of a number of arbitration rulings, Customs has been required to pay both overtime and night pay to Customs officers for work not performed. Further, the changes Congress made to the night pay system for Customs in 1993 has resulted in an unforseen circumstance where Customs officers can receive night pay for

working at 12:00 noon. These situations have cost Customs in excess of $6 million annually. The Treasury Inspector General has called for a legislative change to correct the night pay system.

Customs has also entered into agreements with its unions which prevent it from making permanent changes of duty stations for its Customs officers, affecting its ability to ensure Customs officers' integrity. Customs has also given up its right, through union agreements, to respond effectively to significant problems at various locations by transferring Customs officers on a temporary basis to locations needing additional resources, especially for drug interdiction efforts. Finally, there is a need to ensure that Customs is not prevented from implementing needed interdiction activities because of collective bargaining agreements with the union that adversely affect the ability of Customs to fight the war on drugs.

C. Legislative History

Legislative hearing

The Subcommittee on Trade of the Committee on Ways and Means held public hearings on March 11, 1997, May 15, 1998 and April 30, 1998 on Customs, including budget authorizations and oversight issues.

On March 11, 1997, both the General Accounting Office (GAO) and the National Treasury Employees Union (NTEU) provided testimony before the Subcommittee on Trade. GAO's testimony, given by Norman J. Rabkin, Director, Administration of Justice Issues, General Government Division, focused on the labor-management activities within the U.S. Customs Service. NTEU's testimony, given by Robert M. Tobias, National President, focused on improving benefits for Customs officers.

GAO testified that Executive Order 12871, issued October 1, 1993, required the head of each agency to create labor-management councils at appropriate levels to help involve employees and their union representatives as full partners with management representatives to identify problems and craft solutions to better serve the agency's customers and accomplish its mission. The Order further required agencies to bargain with unions on issues formerly bargained on only at the agency's discretion. These issues include "numbers, types and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work."

GAO further testified that some Customs management and union officials believed that partnership between Customs and the union was working well. Other managers believed that the process took too long, that management had to bargain even on small issues, and that managers remained accountable for actions and results but that there was no union accountability. Union officials also expressed concern that management did not understand and was not fully trained on the concept of partnership, that managers did not want to involve union representatives in the decision making process, and that managers continued to make unilateral decisions.

NTEU testified that it supported the funding needed to support the rapidly increasing demands placed on the Customs Service for illegal narcotics and drug interdiction, trade law enforcement, reve-

nue collection, and export enhancement. NTEU further testified as to the need for improved retirement benefits for Customs officers, an increase in the overtime earnings cap, and the restoration of Sunday and night premium pay while Treasury Department employees were on sick or annual leave.

On May 15, 1997, the Trade Subcommittee held an oversight hearing on Customs issues. GAO again testified on Customs drug interdiction efforts, labor-management relations, and overtime issues. GAO identified problems with the night and premium pay provisions of the Customs officers pay system and cited a study by the Treasury Inspector General (IG) which identified additional concerns regarding night and Sunday premium pay.

On April 30, 1998, the Trade Subcommittee held a budget authorization and oversight hearing on the Customs Service. Both the Treasury IG and NTEU provided testimony at the hearing. The Treasury IG gave testimony expressing concern that Customs officers could earn night pay at noon or for almost any hour of the day or night depending on when a particular shift began. The IG testified that when Congress changed night pay for Customs officers in 1993, its intention was that savings would occur. However, instead of producing any savings, night pay provisions resulted in an increase from $51,000 per year in fiscal year 1993 to $8.9 million a year in fiscal year 1995. The IG testified, "Clearly, this was not the expected result when COPRA (Customs officer pay reform amendments) was passed in 1993."

NTEU President, Robert M. Tobias, testified that by working with the union, Customs has been able to implement Operation Brass Ring, a highly successful drug interdiction operation. Mr. Tobias also testified that NTEU supported some of the provisions of H.R. 2262 (now subtitle A of Title II of H.R. 3809). However, the NTEU believed that other parts of the bill were counterproductive to an effective Customs Service. NTEU was very firm in its opposition to the provisions establishing no overtime pay for work not performed and no premium pay for work not performed.

Subcommittee bill

On May 7, 1998, Mr. Crane introduced H.R. 3809, the "Drug Free Borders Act of 1998." The bill was referred to the Committee on Ways and Means.

The Subcommittee on Trade of the Committee on Ways and Means marked up the bill on May 12, 1998, and ordered it to be favorably reported by a roll call vote of 12 ayes and 3 nays, as amended.

On May 14, 1998, the Committee met to consider H.R. 3809, as reported by the Subcommittee on Trade. At that time, Chairman Crane offered an amendment in the nature of a substitute to H.R. 3809. The amendment was agreed to by voice vote. The Committee then ordered the bill favorably reported, as amended, by a roll call vote of 29 ayes, 0 nays, and 1 present.

II. EXPLANATION OF THE BILL

A. Title I—Authorization of Appropriations for U.S. Customs Service

1. SEC. 101. AUTHORIZATION OF APPROPRIATIONS

Present law.—The Customs Procedural Reform and Simplification Act of 1978 [P.L. 95–110] provides for a two-year authorization of appropriations for the U.S. Customs Service. That law, as amended by section 8102 of the Omnibus Budget Reconciliation Act of 1986 [P.L. 99–509], first outlined separate amounts for commercial and noncommercial operations for the salaries and expenses portion of the Customs authorizations.

The most recent authorization of appropriations for Customs (under section 101 of the Customs and Trade Act of 1990 [P.L. 101–382]) provided $1,247,884,000 for salaries and expenses and $150,199,000 for operations and maintenance of the air interdiction program in FY 1992.

Appropriations for Customs for FY 1998 were included in P.L. 105–61 and totaled $1,522,165,000 for salaries and expenses and $92,758,000 for operations and maintenance of the air and marine interdiction programs.

On May 6, 1997, the House passed H.R. 1463, providing for authorization of appropriations for the Customs Service for noncommercial operations ($668,397,000 for FY 1998; $684,018,000 for FY 1999), commercial operations ($901,441,000 for FY 1998; $930,447,000 for FY 1999), and air and marine interdiction ($95,258,000 for FY 1998; $98,226,000 for FY 1999). The Senate has not acted on this legislation.

Separate minimum and maximum amounts for commercial and noncommercial operations for the salaries and expenses portion of Customs authorization, and maximum amounts for the air and marine interdiction programs, are intended to provide guidance to Customs in the allocation of resources.

Explanation of provision.—Section 101 of H.R. 3809 would amend section 301(b)(1) of the Customs Procedural Reform and Simplification Act of 1978 to authorize appropriations for Customs, not to exceed $964,587,584 in FY 1999 and $1,072,928,328 in FY 2000 for salaries and expenses incurred in drug enforcement and other noncommercial operations, and not less than $970,838,000 in FY 1999 and $999,963,000 for FY 2000 for salaries and expenses incurred in commercial operations. For operation and maintenance of the air and marine interdiction programs, H.R. 3809 would authorize appropriations not to exceed $98,488,000 in FY 1999 and $101,443,000 in FY 2000.

Section 101 would also require out-year budget projections such that, no later than the date on which the President submits the budget to the Congress for a fiscal year, Customs would be required to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate projected amounts of funds necessary for the succeeding fiscal year. In addition, Customs would be required to provide projections for minimum amounts requested to be authorized for commercial operations under the salaries and expenses account; maximum

amounts to be authorized for drug enforcement and other non-commercial operations under the salaries and expenses account; and maximum amounts to be appropriated for the operation of Customs air and marine interdiction programs.

Reason for change.—The Committee recognizes the efforts of the U.S. Customs Service in reorganizing and modernizing its operations. The significant changes in culture and process underway at Customs promise to improve the delivery of services to the trade community and benefit American taxpayers in cost savings. The Committee supports Customs" reorganization and modernization efforts and will continue to follow these plans closely as they unfold.

In addition, the Committee is concerned about the need for Customs to increase the overall level of Customs officers and special agents dedicated to counter-narcotics and anti-money laundering activities. The Committee is also concerned that Customs has the necessary resources for drug and other enforcement activities. The authorization of both fiscal year 1999 and 2000 is substantially larger than the President's request, providing the Customs Service with the needed resources to stop drugs from entering this country while at the same time expediting the entry of legitimate of persons and cargo.

2. SEC. 102. NARCOTICS DETECTION EQUIPMENT FOR THE UNITED STATES-MEXICO BORDER, UNITED STATES-CANADA BORDER, AND FLORIDA AND THE GULF COAST SEAPORTS.

Present law.—No applicable section.

Explanation of provision.—Section 102 of H.R. 3809 would require that $90,244,000 of the FY 1999 appropriations be available until expended for acquisition and other expenses associated with implementation and deployment of narcotics detection equipment along the United States-Mexico border, the United States-Canada border, and Florida and the Gulf seaports. The equipment would include vehicle and container inspection systems, mobile truck x-rays, upgrades to fixed-site truck x-rays, pallet x-rays, busters, contraband detection kits, ultrasonic container inspection units, automated targeting systems, rapid tire deflator systems, portable Treasury Enforcement Communications Systems terminals, remote surveillance camera systems, weigh-in-motion sensors, vehicle counters, spotter camera systems, inbound commercial truck transponders, narcotics vapor and particle detectors, and license plate reader automatic targeting software. It would also provide funding to test a high-energy relocatable rail car inspection system.

The provision would further require that $8,924,500 of the FY 2000 appropriations be used for the maintenance of equipment described above. This section would also provide the Commissioner of Customs with some flexibility in using these funds and would allow for the acquisition of new updated technology not anticipated when this bill was drafted.

Reason for change.—The Committee recognizes the needs of the Customs Service to effectively interdict drugs entering this country. Customs currently lacks sufficient equipment along the Canada, Mexico and Gulf areas to effectively interdict the drugs entering this country while at the same time ensuring that trade flows in

a timely manner. This section provides the necessary equipment to improve the facilitation of trade and passengers entering this country, while at the same time increasing its narcotics interdiction efforts.

3. SEC. 103—PEAK HOURS AND INVESTIGATIVE RESOURCE ENHANCEMENT FOR THE UNITED STATES-MEXICO AND UNITED STATES-CANADA BORDERS

Present law.—No applicable section.

Explanation of provision.—Section 103 of H.R. 3809 would require that $117.6 million of funds authorized for FY 1999 and $184.1 million for FY 2000 be made available for a net increase of 1745 inspectors, canine enforcement officers, special agents, intelligence analysts, and internal affairs agents to increase inspectional and investigative resources and to improve inspection times and effectiveness during peak crossing hours.

Reason for change.—The Committee recognizes the need of the Customs Service to quickly facilitate the entry of persons and goods entering this country while at the same time preventing contraband, including drugs, from entering the United States. Customs currently lacks sufficient personnel along the U.S.-Canada and U.S.-Mexico borders as well as sea ports in southeast Florida and major narcotics distribution and money laundering centers around the country. This section provides the necessary personnel to improve the facilitation of cargo and persons entering this country, while at the same time increasing its narcotics interdiction efforts.

4. SEC. 104—COMPLIANCE WITH PERFORMANCE PLAN REQUIREMENTS

Present law.—No applicable section.

Explanation of provision.—Section 104 of H.R. 3809 would require Customs to specifically measure the effectiveness of the resources dedicated in sections 102 and 103 as part to its annual performance plan.

Reason for change.—The Committee recognizes the needs of the Customs Service to assess and measure the effectiveness of its limited resources. This provision ensures that Customs evaluates how it used these additional resources to achieve the goals of Congress.

B. TITLE II—OVERTIME AND PREMIUM PAY OF OFFICERS OF THE UNITED STATES CUSTOMS SERVICE; MISCELLANEOUS PROVISIONS

1. SUBTITLE A—OVERTIME PAY AND PREMIUM PAY OF OFFICERS OF THE UNITED STATES CUSTOMS SERVICE

a. Sec. 201—Fiscal year cap

Current law.—Section 5(c)(1) of the Act of February 13, 1911 (19 U.S.C. 267(c)(1)) states that the aggregate amount of a Customs officer's overtime pay, including commuting compensation and premium pay, is $30,000.[1] A Customs officer who receives overtime or premium pay (holidays, Sundays, or night work) for time worked is prohibited from receiving compensation for that work under any

[1] The fiscal year cap was increased as of October 1, 1997, from $25,000 to $30,000 by P.L. 105–61 (the FY 98 Treasury appropriations act) over the objections of the Committee on Ways and Means because it did not comprehensively address overtime and premium pay issues.

other provision of law. The Commissioner may grant waivers to prevent excessive costs or to meet emergency requirements of the Customs Service.

Section 5(a)(1) of the Act of February 13, 1911 (19 U.S.C. 267(a)(1)) outlines the general overtime pay system for Customs officers. Basic overtime compensation for work not regularly scheduled is provided as follows:

a. Work in excess of 8 hours per day or 40 hours per week at twice the basic hourly rate of basic pay;

b. "Callback" pay at twice the basic hourly rate. An officer will receive at least two hours of callback pay for any call back of two hours of work or less, if the work begins at least one hour after the end of any previously scheduled work and ends at least one hour before the beginning of regularly scheduled work.

c. Compensation for the commute, in addition to callback time, at three times the basic hourly rate. 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 if the work begins within two hours of the officers's next regularly scheduled work assignment.

Explanation of provision.—Section 201 of H.R. 3809 would amend section 5(c)(1) of the Act of February 13, 1911 (19 U.S.C. 267(c)(1)) to remove premium pay from the calculation of the $30,000 fiscal-year cap, thus increasing the amount of overtime pay a Customs officer may receive, with no annual limit on the amount of premium pay. The provision also would allow the Commissioner the authority to waive the $30,000 fiscal-year cap to prevent excessive costs or to meet emergencies, and to pay a Customs officer for one work assignment that would result in the overtime pay of that officer exceeding the $30,000 fiscal-year cap. This authority would be granted only upon certification to the Chairmen of the Committee on Ways and Means in the House and the Committee on Finance of the Senate that Customs has in operation a system that provides accurate and reliable data on a daily basis on overtime and premium pay being paid to Customs officers.

Reason for change.—Administration of the fiscal-year cap has posed a considerable challenge for Customs, which has been generally scrupulous in its observance of the statute. Eliminating premium pay from the calculation of the fiscal-year cap will facilitate Customs administration as fewer Customs officers will approach the level of the cap by working overtime alone.

Should an officer reach the fiscal-year cap, the provision would allow the Commissioner to pay that officer for one additional work assignment that would result in the overtime pay of the officer exceeding the cap. Thereafter, no additional overtime would be assigned to that officer, except to meet emergency requirements of the Customs Service. Under the National Inspectional Assignment Policy (NIAP) contracts negotiated with the National Treasury Employees Union (NTEU), Customs has agreed to assign overtime to Customs officers based on daily tracking of each officers overtime- and premium-pay earnings. Section 201 therefore also requires that authority to exceed the cap by one assignment will be granted to the Commissioner only upon certification to the Chairmen of the

Committee on Ways and Means and the Committee on Finance of the Senate that Customs has in operation a system that provides accurate and reliable data on a daily basis on overtime and premium pay that is being paid to each Customs officer. As such, the Committee urges Customs to complete the development and implementation of a system such as the Customs Overtime Scheduling System (COSS), an automated system intended to provide accurate and reliable data on a daily basis on overtime and premium pay that is being paid to each Customs officer. The current manual administration of overtime costs is inefficient and wasteful, costing more than $4.5 million in FY 1997, which corresponds to 125 inspectors working full time at an average GS–10, Step 1 level. An accurate and reliable system would permit these expenses to be used to perform more appropriate functions, including drug interdiction.

b. Sec. 202—Restriction on payment of overtime pay to hours actually worked

Present law.—No applicable statutory provision. On October 30, 1997, an arbitration ruling required the Customs Service to pay overtime to a Customs officer for work not performed if that officer was not permitted to work that time due to an administrative error. An earlier arbitration ruling required Customs to pay overtime to a Customs officer for work not performed if Customs had prevented that officer from working right up to the fiscal year salary cap, a practice Customs has in place to prevent an Anti-Deficiency Act violation.

Explanation of provision.—Section 202 of H.R. 3809 would prevent Customs from paying overtime pay to Customs officers for work not actually performed. However, as described above, section 201 would allow the Commissioner the authority to pay a Customs officer for one work assignment that would result in the overtime pay of that officer exceeding the fiscal-year cap.

Reason for change.—The Committee is greatly concerned that three arbitral decisions require Customs to pay overtime for work not performed. Specifically, as a result of a decision by a labor arbitrator in August 1982, Customs is required to pay overtime plus interest for hours not actually worked to officers denied overtime assignments because they have reached the level set by the port directors. The amount paid by Customs pursuant to the arbitral decision equals the difference between the fiscal-year cap and the level which the officer had reached at the time the port director stopped assigning additional overtime to that officer. As a result of a decision by a labor arbitrator in November 1993, Customs is required to pay for overtime not actually worked to officers whose overtime is inappropriately assigned to part-time employees. In yet another decision by a labor arbitrator in October 1997, Customs is now required to pay overtime to Customs officers for work not performed when the officer was not assigned an overtime assignment due to an inadvertent administrative error. The current practice of paying overtime for work not performed replaces the practice of providing the next comparable overtime assignment to the officer who was inadvertently skipped over.

The provision would clarify Congressional intent with regard to overtime for Customs officers by preventing Customs from paying overtime to officers for hours not actually worked. Specifically, this section would exclude payment to Customs officers who do not perform work due to: (1) administrative error that can be remedied by an alternative work assignment; (2) Customs administration of the statutory overtime cap; and (3) an employee on any leave status. This section would not prevent overtime awards where there has been a violation of Title V or Title VI, including EEOC. Specifically, settlements made due to arbitrator rulings, including on such issues as EEO or other discrimination violations are considered settlements and are paid out of the Customs Salaries and Expenses account. Customs inspectional overtime as defined by H.R. 3809 is only paid for inspectional work (as defined by P.L. 103–66). Thus, limitations preventing premium pay and overtime for work not performed would not apply to violations of other provisions of law because funding comes out of an unaffected account.

Customs would achieve savings by prohibiting these payments which it has been required to make since the 1982 arbitral decision. Between fiscal years 1994 and 1996, Customs paid in excess of $350,000 pursuant to the requirements of the first two arbitral decision cited above, and it is unclear yet what the third arbitral decision will cost the taxpayers. Accordingly, Customs would achieve considerable savings in prohibiting these payments—savings which can pay for hours actually worked.

c. Sec. 203—Premium pay

i. (a) Restriction on payment of premium pay to hours actually worked

Current law.—An arbitration ruling required Customs to grant premium pay to officers for regularly scheduled premium pay hours even if the officer subsequently takes sick or annual leave and does not actually work those hours. P.L. 105–61, making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies for the fiscal year ending September 30, 1998, restricts Customs for fiscal year 1998 from paying Sunday premium pay to an employee if the employee has not actually performed work on a Sunday.

Explanation of provision.—Section 203(a) of H.R. 3809 would make permanent the current appropriation restriction for fiscal year 1998 and would also include night and holiday premium pay by amending section 5(b)(4) of the Act of February 13, 1911 (19 U.S.C. 267(b)(4)) to prohibit Customs from paying premium pay to an employee if the employee has not actually performed work during the time corresponding to such premium pay.

Reason for change.—The Committee is greatly concerned that an arbitral decision requires Customs to pay premium pay for hours not actually worked. Specifically, due to the decision by a labor arbitrator in September 1996, Customs is required to pay premium pay to officers for regularly-scheduled premium pay hours even if the officer subsequently fails to work those hours due to annual leave, sick leave, or National Guard duty leave.

As with the restriction on payment of overtime pay outlined in section 201, this provision would clarify Congressional intent with regard to premium pay for Customs officers by preventing Customs from paying premium pay to officers for hours not actually worked. The provision would make permanent the Congressional intent expressed in the current appropriation restriction for fiscal year 1997 outlined in P.L. 104–208, the bill making omnibus consolidated appropriations for the fiscal year ending September 30, 1997.

The provision would clarify Congressional intent with regard to the requirement that Customs officers actually perform work during the time corresponding to overtime and premium pay. The provision would clarify Congressional intent with regard to premium pay for Customs officers by preventing Customs from paying premium pay to officers for hours not actually worked. Specifically, this section would exclude payment to Customs officers who do not perform work due to: (1) administrative error that can be remedied by an alternative work assignment; (2) Customs administration of the statutory overtime cap; and (3) an employee on any leave status, except for an employee who is on leave pursuant to 5 U.S.C. 6322 or 6323. Further, this section would not prevent premium pay awards where there has been a violation of Title V or Title VI, including EEOC.

As with section 202, settlements made due to arbitral rulings are paid out of the Customs Salaries and Expenses account and are thus unaffected by this provision limiting premium pay, which is paid out of the user fee account.

Between fiscal years 1994 and 1996, Customs paid in excess of $2.9 million pursuant to the requirements of the arbitral decision cited above. It is the view of the Committee that these resources would be better utilized by Customs in other areas.

ii. (b) Revision of night work differential provisions

Current law.—Section 5(b)(1) of the Act of February 13, 1911 (19 U.S.C. 267(b)(1)) provides that, if an officer works the majority of his or her hours between 3 p.m. and midnight, compensation equals the basic hourly rate plus 15 percent of the basic hourly rate for the entire eight hour shift. If an officer works the majority of his or her hours between 11 p.m. and 8 a.m., compensation equals the basic hourly rate plus 20 percent for the entire eight hour shift. If the officer's regularly scheduled work assignment falls between 7:30 p.m. and 3:30 a.m., compensation equals the basic hourly rate plus 15 percent for the period from 7:30 p.m. to 11:30 p.m., and the basic hourly rate plus 20 percent for the period from 11:30 p.m. to 3:30 a.m.

For example, if a Customs officer is scheduled to work a shift that starts at 12:00 noon and ends at 8 p.m., five of the eight hours of that shift, or the majority of hours, occur during the 3 p.m. to 11 p.m. night premium pay hours. Thus, the Customs officer is paid night pay (an additional 15 percent) for all eight hours of the shift that starts at noon.

Explanation of provision.—Section 203(b) of H.R. 3809 would amend section 5(b)(1) of the Act of February 13, 1911 (19 U.S.C. 267(b)(1)) to provide that, if any hour of an officer's regularly scheduled work hours occur between 6 p.m. and midnight, com-

pensation would equal the basic hourly rate plus 15 percent for those hours only. If any work hours occur between midnight and 6 a.m., compensation would equal the basic hourly rate plus 20 percent for those hours only. The remaining hours would be compensated at regular pay. The bill also would allow for a Customs officer regularly scheduled to work the shift from 12:00 midnight to 8 a.m. to be paid at a premium rate of 20 percent over his or her base salary for the entire shift.

In the example given above, a Customs officer working noon to 8 p.m. would earn night premium pay only between the hours of 6 p.m. and 8 p.m.

Reason for change.—The COPRA greatly increased the number of available hours in which a Customs Officer can earn premium pay for night work. COPRA also increased the 10 percent night differential compensation to 15 percent and 20 percent, depending on the time of day that the assignment is worked. Among Federal employees, only Customs officers are compensated at a premium pay rate of 15 percent or 20 percent (depending on the hours of the shift) of basic hourly pay for night work. Furthermore, only Customs officers are compensated at the 15 percent premium pay rate during the entire period for a shift running from noon to 8 p.m. In fact COPRA allows Customs to pay night differential premium payments for 23 hours of the day (12 p.m. to 11 a.m.), rather than 12 hours of the day (6 p.m. to 6 a.m.) as was previously the case under FEPA. Premium pay for night work by most other Federal employees is provided at a rate of 10 percent for the hours from 6 p.m. to 6 a.m. and is available only for those hours worked during that period, not the entire shift.

The Congressional intent of the COPRA was to ensure that Customs officers' schedules met customer demand. A recent report by the Treasury Inspector General concluded that Customs schedules do correspond to its workload and to its customers' needs and that Customs did not change their schedules specifically in order to earn night differential. "Customs Officer Pay Reform Amendments (COPRA)," OIG–96–094 (September 13, 1996). Instead, the report concluded, the COPRA itself has caused the increase in night differential spending. The report suggested that

> The Assistant Secretary (Enforcement) should direct Customs to seek legislation that would lessen the number of hours available for Customs officers to earn night differential and reduce the night work differentials to a 10 percent premium on base pay. The change to the COPRA should create a night differential payment package that would more accurately reimburse Customs officers for hours actually worked at night, as was done previously under FEPA (p. 9).

Testimony by the General Accounting Office (GAO) before the Subcommittee on Trade supported the principle behind the Treasury Inspector General's position by stating: "Although we believed that inspectors should be paid extra for working overtime, we recommend that (1) the 1911 Act be amended so that inspector overtime would be more directly linked to actual hours worked, and (2) Customs management focus on achieving a more efficient use of

overtime." "U.S. Customs Service: Oversight Issues," GAO/T–GGD–97–107 (May 15, 1997).

However, the Committee believes that the Inspector General's recommendation that the night differential premium be reduced to 10 percent of basic hourly pay does not provide sufficient compensation for these officers. Instead, the Committee believes that the current 15 percent or 20 percent premiums, depending on the actual hours worked, should be continued but that they be limited to the hours actually worked during the premium period. The Committee recognized the additional hardship that the midnight to 8:00 a.m. shift places on Customs officers and provided for that with a provision that would grant premium pay of 20 percent for all 8 hours of that shift.

In fiscal year 1997, Customs paid more than $2.5 million pursuant to the requirement to pay night differential premiums outside the FEPA hours of 6 p.m. to 6 a.m. It is the view of the Committee that Customs officers should be afforded treatment similar to that of other Federal employees with regard to pay for hours actually worked, while recognizing the original intent of COPRA that the unique nature of Customs inspectional work may require higher premiums.

d. Sec. 204—Use of amounts for additional overtime enforcement activities of the customs service resulting from savings from payment of overtime and premium pay

Present law.—No applicable section.

Explanation of provision.—Section 204 of H.R. 3809 would require the Secretary of the Treasury to calculate any savings created as a result of sections 202 and 203 of this bill. Customs would be required to use the savings to provide additional overtime for enforcement purposes.

Reason for change.—The Committee wants to ensure that savings from sections 202 and 203 from this bill are used for additional overtime enforcement activities at the ports where the savings occurred.

Sec. 205—Effective date

Present law.—No applicable section.

Explanation of provision.—Section 205 of H.R. 3809 provides that the effective date of subtitle A to be the first pay period beginning on or after 15 days after the date of enactment.

2. SUBTITLE B—MISCELLANEOUS PROVISIONS

a. Sec. 211—Rotation of duty stations and temporary duty assignments of officers of the United States Customs Service for integrity and drug interdiction purposes

Present law.—No applicable section. Currently, Customs cannot rotate a Customs officer permanently or for temporary duty unless the officer agrees to the change, as per the current bargaining agreement.

Explanation of provision.—Section 211 of H.R. 3809 would grant authority to the Secretary of the Treasury to transfer permanently up to five percent of the number of Customs officers employed at

the beginning of each fiscal year. The Secretary also may transfer Customs officers to temporary duty assignments for not more than 90 days. This section would become effective on October 1, 1999. Of the amount authorized for the Customs Service in section 101, $25 million would be earmarked in fiscal year 2000 to carry out this subsection and would remain available until expended. The authority would not be subject to collective bargaining.

Reason for change.—The Committee believes that the Customs Service should be able to ensure the integrity of its workforce and address critical problems in a timely manner. By granting authority to rotate Customs officers the Committee is enhancing the integrity of the Customs Service. Transferring Customs officers to temporary duty assignments allows Customs the ability to react to the changing drug smuggling threat.

The Committee believes that specifically granting the Secretary of the Treasury the authority to permanently relocate Customs officers for integrity purposes and to temporarily assign Customs officers for drug interdiction purposes would limit Customs from negotiating away that authority during future union negotiations. However, the Committee believes that the effective date of this provision should be on October 1, 1999 to allow for the current national contract between the National Treasury Employees Union and the Customs Service to expire. With this effective date, the Committee believes that it cannot be argued that H.R. 3809 abrogates the national contract with the NTEU. To achieve the purpose of this subsection, the Committee would authorize $25 million in fiscal year 2000 and remain available until expended.

b. Sec. 212—Effect of collective bargaining agreements on ability of United States Customs Service to interdict contraband

Present law.—No applicable section. Currently, there is no time limit to the collective bargaining process.

Explanation of provision.—Section 212 of H.R. 3809 expresses the sense of the Congress that collective bargaining agreements should not have any adverse impact on the ability of Customs to interdict contraband, including controlled substances. The provision further provides that if the Customs Commissioner determines that any collective bargaining agreement has an adverse impact upon the interdiction of contraband, the parties shall meet to eliminate the provision causing the adverse impact from the agreement. If the parties cannot reach agreement within 90 days, the Commissioner of Customs may implement Customs' last offer. Either party may then bring the impasse to the Federal Service Impasses Panel for ultimate resolution. The Commissioner of Customs may implement immediately any proposed changes without waiting 90 days if exigent circumstances warrant such immediate implementation or if an impasse is reached in fewer than 90 days.

Reason for change.—The Committee strongly believes that Congress should ensure that union agreements do not prevent or interfere with the ability of the Customs Service to interdict contraband. There are too many examples in which negotiations between Customs and its union have been unreasonably extended to the detriment of the interdiction of contraband, including narcotics. For example, since early 1995 in El Paso, Texas, Customs and the Na-

tional Treasury Employees Union (NTEU) local have been negotiating over work conditions at the three bridges between Mexico and El Paso. One of the most significant problems that has occurred involves the use of a very successful drug interdiction approach called pre-primary roving for Canine Enforcement Officers (CEO) and Inspectors. This approach, used in almost every other location along the Southwest border, involves sending a team of CEOs (with at least one drug dog) and inspectors working traffic in front of the primary entry booths to "pre screen" vehicles. The vehicles continue moving towards the primary booths while the screening takes place. Thus, traffic is not halted but instead facilitated while Customs has a much improved opportunity to detect drugs entering the United States. In locations such as San Ysidro, California, more than 50 percent of all drug seizures occur due to this technique.

However, in El Paso, the Committee understands that the union has been unwilling to allow this technique. Instead, the union insists that only ten vehicles per lane be allowed in front of the primary booths with all other traffic stopped. The cars in these lanes are then turned off while traffic behind them waits. Finally, only when all traffic is stopped and the ten cars per lane are shut off will the CEOs come out and run their dogs on these vehicles. This practice insisted upon by the union does not effectively add the element of surprise to pre primary inspections and does not improve facilitation of legitimate traffic.

The Committee is concerned about other instances of union delays which affect the ability of Customs to interdict contraband. For example, at the Miami, Florida international airport, Customs management sought to ensure better use of overtime for drug interdiction purposes and to align the work force with the work load. A large number of international flights arrive, primarily from South America, between the hours of 4:00 a.m. and 6:00 a.m. during a period of time which Customs does not currently have a regularly scheduled shift established. These flights are currently handled exclusively by Customs officers working overtime. To address the workload issue and to free this overtime for even higher priority drug interdiction work, Customs has been attempting to negotiate with the union representatives in Miami to create a 4:00 a.m. to 12:00 noon shift at Miami International Airport. However, these negotiations have been ongoing for nearly four years without success. A brief outline of negotiations is listed below:

December 1994—Negotiations begin to address local assignment policy issues as required by the National Inspectional Assignment Policy (NIAP).

March 26, 1996—Discussion on shift issues.

August 5–8, 1996—Peer Facilitation Team composed of union and management members of the NIAP negotiating team work with local parties to attempt to resolve issues. Unable to achieve progress.

February 10, 1997—Parties formed new negotiating teams.

June 18, 1997—Customs management believes impasse is again reached.

September 16, 1997—Parties jointly request assistance of Federal Mediation and Conciliation Service.

December 11–12, 1997—Mediator meets with parties, but no progress made. Mediator recommends parties resume negotiations without assistance six more times.

Jan.–Feb. 1998—Parties meet three more times. No progress made. Additional meetings canceled by the union.

March 24, 1998—Management persuades mediator to return. After meeting with both sides, mediator declares that there has been no progress and said that there was nothing more that he could do.

March 26, 1998—Management informed union that it would implement last offer on April 20, 1998.

March 27, 1998—Union states intent to file a request for assistance of the Federal Service Impasses Panel (FSIP).

April 2, 1998—Union filed with FSIP and indicated its belief that the FSIP should decline jurisdiction because parties are not at impasse.

May 4, 1998—In response to request by FSIP for Customs' position regarding impasse, Customs responded that it believes an impasse exists.

Almost four years later, the parties are still bargaining over issues without implementation of the needed shift and as of May 14, 1998, the FSIP has not yet accepted the case for settlement. The Committee strongly believes that this situation is untenable.

There are more examples at other Customs locations. The Committee believes that these examples show how the union may intentionally or unintentionally thwart drug interdiction efforts through bargaining, or the unwillingness to bargain. It further demonstrates the need for greater cooperation between Customs management and employees in negotiating and implementing collective bargaining agreements in order to ensure the most effective drug interdiction efforts.

Effective date.—Upon date of enactment.

III. VOTE OF THE COMMITTEE

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means in its consideration of the bill H.R. 3809:

Motion To Report the Bill

The bill, H.R. 3809, as amended, was ordered favorably reported by a rollcall vote of 29 yeas to 0 nays, and 1 voting present (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Archer	X			Mr. Rangel	X		
Mr. Crane	X			Mr. Stark	X		
Mr. Thomas	X			Mr. Matsui			
Mr. Shaw	X			Mrs. Kennelly	X		
Mrs. Johnson	X			Mr. Coyne			
Mr. Bunning				Mr Levin	X		
Mr. Houghton	X			Mr. Cardin			
Mr. Herger	X			Mr. McDermott	X		
Mr. McCrery	X			Mr. Kleczka			
Mr. Camp	X			Mr. Lewis			

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Ramstad	X			Mr. Neal			
Mr. Nussle	X			Mr. McNulty			
Mr. Johnson	X			Mr. Jefferson	X		
Ms. Dunn	X			Mr. Tanner	X		
Mr. Collins	X			Mr. Becerra			X
Mr. Portman				Mrs Thurman	X		
Mr. English	X						
Mr. Ensign	X						
Mr. Christensen	X						
Mr. Watkins	X						
Mr. Hayworth	X						
Mr. Weller	X						
Mr. Hulshof	X						

XIV. BUDGET EFFECTS OF THE BILL

A. Committee Estimates of Budgetary Effect

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill H.R. 3809, as reported: The Committee agrees with the cost estimate furnished by the Congressional Budget Office set forth below.

B. Budget Authority and Tax Expenditures

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that the bill would affect direct spending by less than $500,000 per year, and contains no new tax expenditures, or change in revenues.

C. Cost Estimate Prepared by the Congressional Budget Office

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office (CBO), the following report prepared by CBO is provided:

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 18, 1998.

Hon. Bill Archer,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3809, the Drug Free Borders Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

James L. Blum
(For June E. O'Neill, Director).

Enclosure.

H.R. 3809—Drug Free Borders Act of 1998

Summary: H.R. 3809 would authorize appropriations for 1999 and 2000 for the U.S. Customs Service, including funds for salaries and expenses, acquisitions, and the air interdiction program. In addition, the bill would make several changes to the current laws relating to overtime and premium pay for Customs officers.

Assuming appropriation of the authorized amounts, CBO estimates that enacting H.R. 3809 would result in additional discretionary spending of about $4.2 billion over the 1999–2003 period. H.R. 3809 could affect direct spending; therefore pay-as-you-go procedures would apply. However, we estimate that any increases in direct spending would be less than $500,000 per year. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would have no impact on the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3809 is shown in the following table. For the purposes of this estimate, CBO assumes that the amounts authorized by the bill will be appropriated by the start of each fiscal year and that outlays generally will follow the historical spending rates for the authorized activities. We expect that some funds will be spent more slowly than the historical rates because the bill would provide substantial increases in authorizations relative to 1998 funding levels. The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal years, in millions of dollars—					
	1998	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law:						
Budget Authority [1]	1,715	0	0	0	0	0
Estimated Outlays	1,712	190	0	0	0	0
Proposed Changes:						
Authorization Level	0	2,034	2,174	0	0	0
Estimated Outlays	0	1,673	2,171	364	0	0
Spending Under H.R. 3809:						
Authorization Level [1]	1,715	2,034	2,174	0	0	0
Estimated Outlays	1,712	1,863	2,171	364	0	0

[1] The 1998 level is the amount appropriated for that year for the Customs Service's salaries and expenses and air interdiction accounts.

The provisions of H.R. 3809 that modify overtime and premium pay for Customs officers could affect direct spending since such costs are paid out of a direct spending account (that is, from funds not subject to annual appropriation). Some of the bill's provisions could increase these personnel costs, while other provisions probably would yield small savings. CBO estimates that the net effect of H.R. 3809 on direct spending would be less than $500,000 annually.

Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Enacting H.R. 3809 could affect direct spending, but CBO estimates that the net changes would be less than $500,000 a year.

Intergovernmental and private-sector impact: H.R. 3809 contains no intergovernmental or private-sector mandates as defined in

UMRA and would have no impact on the budgets of state, local, or tribal governments.

Estimate prepared by: Mark Grabowicz.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to subdivision (A) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee concludes that the actions taken in this legislation are appropriate given its oversight of the U.S. Customs Service.

B. Summary of Findings and Recommendations of the Committee on Government Reform and Oversight

With respect to subdivision (D) of clause 2(l)(4) of rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that no oversight findings or recommendations have been submitted to this Committee by the Committee on Government Reform and Oversight with respect to the provisions contained in H.R. 3809.

C. Constitutional Authority Statement

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, relating to Constitutional Authority, the Committee states that the Committee's action in reporting the bill is derived from Article 1 of the Constitution, Section 8 ("The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and to provide for * * * the general Welfare of the United States * * *), and the 16th amendment to the Constitution.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 301 OF THE CUSTOMS PROCEDURAL REFORM AND SIMPLIFICATION ACT OF 1978

Sec. 301. (a)(1) * * *

* * * * * * *

(3) By no later than the date on which the President submits to the Congress the budget of the United States Government for a fiscal year, the Commissioner of Customs shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds

for the succeeding fiscal year that will be necessary for the operations of the Customs Service as provided for in subsection (b).

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) FOR NONCOMMERCIAL OPERATIONS.—There are authorized to be appropriated for the salaries and expenses of the Customs Service that are incurred in noncommercial operations not to exceed the following:

[(A) $516,217,000 for fiscal year 1991.
[(B) $542,091,000 for fiscal year 1992.]
(A) $964,587,584 for fiscal year 1999.
(B) $1,072,928,328 for fiscal year 2000.

(2) FOR COMMERCIAL OPERATIONS.—(A) There are authorized to be appropriated for the salaries and expenses of the Customs Service that are incurred in commercial operations not less than the following:

[(i) $672,021,000 for fiscal year 1991.
[(ii) $705,793,000 for fiscal year 1992.]
(i) $970,838,000 for fiscal year 1999.
(ii) $999,963,000 for fiscal year 2000.

* * * * * * *

(3) FOR AIR INTERDICTION.—There are authorized to be appropriated for the operation (including salaries and expenses) and maintenance of the air interdiction program of the Customs Service not to exceed the following:

[(A) $143,047,000 for fiscal year 1991.
[(B) $150,199,000 for fiscal year 1992.]
(A) $98,488,000 for fiscal year 1999.
(B) $101,443,000 for fiscal year 2000.

THE ACT OF FEBRUARY 13, 1911

An ACT To diminish the expense of proceedings on appeal and writ of error or of certiorari.

* * * * * * *

SEC. 5. OVERTIME AND PREMIUM PAY FOR CUSTOMS OFFICERS.

(a) OVERTIME PAY.—

(1) IN GENERAL.—Subject to paragraph (2) and subsection (c), a customs officer who is officially assigned to perform work in excess of 40 hours in the administrative workweek of the officer or in excess of 8 hours in a day shall be compensated for that work at an hourly rate of pay that is equal to 2 times the hourly rate of the basic pay of the officer. *Overtime pay provided under this subsection shall not be paid to any customs officer unless such officer actually performed work during the time corresponding to such overtime pay.* For purposes of this paragraph, the hourly rate of basic pay for a customs officer does not include any premium pay provided for under subsection (b).

* * * * * * *

(b) PREMIUM PAY FOR CUSTOMS OFFICERS.—

[(1) NIGHT WORK DIFFERENTIAL.—

[(A) 3 P.M. TO MIDNIGHT SHIFTWORK.—If the majority of the hours of regularly scheduled work of a customs officer occurs during the period beginning at 3 p.m. and ending at 12 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate.

[(B) 11 P.M. TO 8 A.M. SHIFTWORK.—If the majority of the hours of regularly scheduled work of a customs officer occurs during the period beginning at 11 p.m. and ending at 8 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.

[(C) 7:30 P.M. TO 3:30 A.M. SHIFTWORK.—If the regularly scheduled work assignment of a customs officer is 7:30 p.m. to 3:30 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate for the period from 7:30 p.m. to 11:30 p.m. and at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate for the period from 11:30 p.m. to 3:30 a.m.]

(1) NIGHT WORK DIFFERENTIAL.—

(A) 6 P.M. TO MIDNIGHT.—If any hours of regularly scheduled work of a customs officer occur during the hours of 6 p.m. and 12 a.m., the officer is entitled to pay for such hours of work (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate.

(B) MIDNIGHT TO 6 A.M.—If any hours of regularly scheduled work of a customs officer occur during the hours of 12 a.m. and 6 a.m., the officer is entitled to pay for such hours of work (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.

(C) MIDNIGHT TO 8 A.M.—If the regularly scheduled work assignment of a customs officer is 12 a.m. to 8:00 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.

* * * * * * *

(4) TREATMENT OF PREMIUM PAY.—Premium pay provided for under this subsection may not be treated as being overtime pay or compensation for any purpose. *Premium pay provided under this subsection shall not be paid to any customs officer unless such officer actually performed work during the time corresponding to such premium pay.*

(c) LIMITATIONS.—

[(1) FISCAL YEAR CAP.—The aggregate of overtime pay under subsection (a) (including commuting compensation under subsection (a)(2)(B)) and premium pay under subsection (b) that a

customs officer may be paid in any fiscal year may not exceed $25,000; except that the Commissioner of Customs or his designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service.]

(1) FISCAL YEAR CAP.—The aggregate of overtime pay under subsection (a) (including commuting compensation under subsection (a)(2)(B)) that a customs officer may be paid in any fiscal year may not exceed $30,000, except that—

(A) the Commissioner of Customs or his or her designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service; and

(B) upon certification by the Commissioner of Customs to the Chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that the Customs Service has in operation a system that provides accurate and reliable data on a daily basis on overtime and premium pay that is being paid to customs officers, the Commissioner is authorized to pay any customs officer for one work assignment that would result in the overtime pay of that officer exceeding the $30,000 limitation imposed by this paragraph, in addition to any overtime pay that may be received pursuant to a waiver under subparagraph (A).

* * * * * * *

(e) USE OF SAVINGS FROM PAYMENT OF OVERTIME AND PREMIUM PAY FOR ADDITIONAL OVERTIME ENFORCEMENT ACTIVITIES.—

(1) USE OF AMOUNTS.—For fiscal year 1999 and each subsequent fiscal year, the Secretary of the Treasury—

(A) shall determine under paragraph (2) the amount of savings from the payment of overtime and premium pay to customs officers; and

(B) shall use an amount from the Customs User Fee Account equal to such amount determined under paragraph (2) for additional overtime enforcement activities of the Customs Service.

(2) DETERMINATION OF SAVINGS AMOUNT.—For each fiscal year, the Secretary shall calculate an amount equal to the difference between—

(A) the estimated cost for overtime and premium pay that would have been incurred during that fiscal year if this section, as in effect on the day before the date of the enactment of sections 202 and 203 of the Drug Free Borders Act of 1998, had governed such costs; and

(B) the actual cost for overtime and premium pay that is incurred during that fiscal year under this section, as amended by sections 202 and 203 of the Drug Free Borders Act of 1998.

(f) ROTATION OF DUTY STATIONS AND TEMPORARY DUTY ASSIGNMENTS OF CUSTOMS OFFICERS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, bargaining agreement, or Executive order, in order to en-

sure the integrity of the United States Customs Service, the Secretary of the Treasury—

(A) may transfer up to 5 percent of the customs officers employed as of the beginning of each fiscal year to new duty stations in that fiscal year on a permanent basis; and

(B) may transfer customs officers to temporary duty assignments for not more than 90 days.

(2) VOLUNTARY AND OTHER TRANSFERS.—A transfer of a customs officer to a new duty station or a temporary duty assignment under paragraph (1) is in addition to any voluntary transfer or transfer for other reasons.

(3) RULE OF CONSTRUCTION.—The requirements of this subsection, including any regulations established by the Secretary to carry out this subsection, are not subject to collective bargaining.

(4) AVAILABILITY OF AMOUNTS.—Of the amounts made available for fiscal year 2000 under section 301(b)(1)(B) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(B)), not more than $25,000,000 for such fiscal year shall be available to carry out this subsection. Amounts made available under the preceding sentence are authorized to remain available until expended.

(g) EFFECT OF COLLECTIVE BARGAINING AGREEMENTS ON ABILITY OF CUSTOMS SERVICE TO INTERDICT CONTRABAND.—

(1) SENSE OF THE CONGRESS.—It is the sense of the Congress that collective bargaining agreements should not have any adverse impact on the ability of the United States Customs Service to interdict contraband, including controlled substances.

(2) PROVISIONS CAUSING ADVERSE IMPACT TO INTERDICT CONTRABAND.—

(A) REQUIREMENT TO MEET.—If the Commissioner of the Customs Service determines that any collective bargaining agreement with the recognized bargaining representative of its employees has an adverse impact upon the interdiction of contraband, including controlled substances, the parties shall meet to eliminate the provision causing the adverse impact from the agreement.

(B) FAILURE TO REACH AGREEMENT.—If the parties do not reach agreement within 90 days of the date that the Commissioner of Customs made the determination of adverse impact, the negotiations shall be considered at impasse and the Commissioner of Customs may immediately implement the last offer of the Customs Service. Such implementation shall not result in an unfair labor practice or, except as may be provided under the following sentence, the imposition of any status quo ante remedy against the Customs Service. Either party may then pursue the impasse to the Federal Service Impasses Panel pursuant to section 7119(c) of title 5, United States Code, for ultimate resolution.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the authority of the Commissioner of Customs to implement immediately any proposed changes without waiting 90 days, if exigent circumstances

warrant such immediate implementation, or if an impasse is reached in less than 90 days.

[(e)] *(h)* DEFINITIONS.—As used in this section:

(1) * * *

* * * * * * *

VII. ADDITIONAL VIEWS

We strongly support the authorizations of appropriations in Title I of H.R. 3608 to provide additional resources needed by the U.S. Customs Service to combat illegal drug traffic across our borders. The interdiction efforts of the Customs Service and the Immigration and Naturalization Service represent an integral component of the National Drug Control Strategy issued by the Clinton Administration in February. Additional equipment, the latest technology, and increased numbers of inspectors and other personnel are essential for more effective anti-drug enforcement, as well as to facilitate entry of legitimate cargo. The war against drugs is not a partisan issue. Rather, it is a national priority with strong bipartisan support.

We also support provisions in Title II to prevent "pay for no work." Our concerns focus on the proposed changes in labor-management relations of the Customs Service and the potential impact of these changes on the war against drugs.

We are concerned about two provisions in H.R. 3809 which would authorize the Customs Service to negate the effects of collective bargaining agreements entered into by Customs management and Customs employees, as relates to the transfer and temporary assignment of Customs inspectors and to the interdiction of contraband.

Specifically, sections 211 and 212 of the bill authorize the Customs Service to negate the status and importance of the collective bargaining process with its employees. These two sections would allow Customs managers to abrogate unilaterally certain collective bargaining and partnership agreements which were developed, as recently as a year and a half ago, to coordinate joint efforts by Customs managers and employees to interdict drugs effectively.

Section 211 authorizes the Customs Service to reassign Customs employees without regard to any existing law, or collective bargaining agreement. While this reassignment may be attractive to those who do not like unions, it is important to remember that the provision may well have a serious negative effect and demoralize the very workforce we are asking to fight our war on drugs.

Section 212 authorizes the Customs Service to determine whether a collective bargaining agreement has "an adverse impact on the interdiction of contraband" and, if so, to implement a management action and talk to the union later.

These provisions are clearly an attempt by some to attack our Federal employees, in this case Customs union members, under the guise of supporting drug interdiction. The two provisions about which we are concerned are just plain "anti-union" text with a "drug interdiction" cover.

It would seem that Customs management has an upfront obligation to negotiate an agreement with its employees in good faith.

Even so, it is clear that these two provisions will set the unacceptable precedent of making Federal employee bargaining contracts essentially a useless exercise.

Abrogation of a contract is a serious matter under the rule of law. This bill provides the power to abrogate contracts—alone a dangerous precedent—without any standards to determine when that power can be exercised.

We do not agree with insulting Customs employees by telling them that the Congress wants Customs management to ignore the agreements they have reached with their employees. These provisions do not make sense when the Congress, in another breath, is telling Customs inspectors to put their lives on the line and do whatever it takes to stop drugs.

Maybe Customs management needs to better identify its priorities and negotiate accordingly. The solution is not to give Customs the power to negotiate with its employees and then allow management to say "we changed our mind." Customs collective bargaining agreements are unique in the Federal Government in that the agreements are "open" to changes at any time, at the request of either party. We are not confident that Customs has utilized all the authorities it has under current law, or under the terms of the bargaining agreement, to address whatever management problems may exist.

It is important to remember that legislation in 1993 to reform the pay structure and responsibilities of the Customs inspectors was approved by this Committee on a bipartisan basis and was supported by both Customs management and the employees' union. This is not the case with H.R. 3809. Sections 211 and 212 have not been agreed to by the Committee on a bipartisan basis, and the provisions have not been agreed to by Customs management and employees. Nor did the Committee hold hearings on these particular provisions and the issues they raise. And, it is not clear what the Administration's views are on these provisions.

We have applauded the Customs Service for having one of the most effective, if not be the best, partnership arrangements in Government. We are concerned that sections 211 and 212 imply that the commitment by Customs employees to drug interdiction is less than sincere. This is not the message we wish to send to those putting their lives on the line each day at our borders, in our airports, and on our docks.

These provisions were put together and considered hastily. Consequently, their potential effect on the workforce is unknown. The last thing any of us want to do is promote legislation which would undercut the morale, commitment, and enforcement efforts of the Customs inspectors from whom we expect so much.

ROBERT T. MATSUI.
KAREN L. THURMAN.
WM. J. JEFFERSON.
BARBARA B. KENNELLY.
CHARLES B. RANGEL.
WILLIAM J. COYNE.
JIM MCDERMOTT.
JERRY KLECZKA.
XAVIER BECERRA.
JOHN LEWIS.
PETE STARK.
BENJAMIN J. CARDIN.
MICHAEL R. MCNULTY.
RICHARD E. NEAL.
SANDER LEVIN.

○