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REPORT TO THE CONGRESS 095

Premium Pay For Federal Inspectors At U. S. Ports-Of-Entry

Department of the Treasury,
Department of Justice
Department of Agriculture
Department of Health, Education,
and Welfare

*BY THE COMPTROLLER GENERAL
OF THE UNITED STATES*

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COMPTROLLER GENERAL OF THE UNITED STATES
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To the President of the Senate and the
Speaker of the House of Representatives

This is our report on premium pay for Federal inspectors
at U.S. ports-of-entry.

We made our review pursuant to the Budget and Accounting
Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act
of 1950 (31 U.S.C. 67).

We are sending copies of this report to selected Committees
of the Congress; the Director, Office of Management and Budget;
the Chairman, Civil Service Commission; the Secretary of the
Treasury; the Secretary of Health, Education, and Welfare; the
Secretary of Agriculture; and the Attorney General.

James B. Stacks

Comptroller General
of the United States

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ABBREVIATIONS

APHIS	Animal and Plant Health Inspection Service
CSC	Civil Service Commission
FEPA	Federal Employees Pay Act of 1945, as amended
GAO	General Accounting Office
INS	Immigration and Naturalization Service
OMB	Office of Management and Budget
PHS	Public Health Service
WAE	when actually employed

COMPTROLLER GENERAL'S
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AT U.S. PORTS-OF-ENTRY
Department of the Treasury
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and Welfare

D I G E S T

WHY THE REVIEW WAS MADE

GAO wanted to obtain information on the effect of differences in the pay for inspectors of four Federal agencies for night overtime and Sunday and holiday work at ports-of-entry and charges for such services to the parties-in-interest (airlines, ship-owners, etc.), to determine whether it would be feasible to have one law and one set of regulations for such overtime payments and a uniform policy on the charges to the parties-in-interest.

FINDINGS AND CONCLUSIONS

Overtime payments

The premium pay laws and regulations of the four agencies--U.S. Customs Service, Treasury Department; Immigration and Naturalization Service, Justice Department; the Animal and Plant Health Inspection Service, Agriculture Department; and Public Health Service, Department of Health, Education, and Welfare--contain different provisions for compensating inspectors.

Customs and Immigration laws are essentially the same and contain specific provisions for compensating inspectors for Sunday, holiday, and night overtime. (See p. 3.)

The *Public Health Service law* contains provisions for compensating inspectors for work on Sundays and holidays and night overtime which are different and in most cases provide less pay for the hours worked than those in the Customs and Immigration laws. (See p. 4.)

Agriculture's law does not contain specific pay provisions but authorizes the Secretary of Agriculture to pay inspectors for all overtime, night, or holiday work at such rates as he may determine. The pay provisions in the regulations adopted by the Secretary differ from those in the Customs, Immigration, and Public Health Service laws. (See p. 3.)

Each agency head prescribes the regulations for administering the law pertaining to his agency. These regulations are not uniform and cause further differences in the pay for Sunday, holiday, and night overtime.

The laws for the two agencies with the most inspectors (Customs and Immigration) have been interpreted by the Courts as requiring extra pay for work on Sunday, even though the employee received another day off for work on Sunday. As a result, neither agency schedules Sunday as part of

the regular workweek. (See p. 3.)

The laws for Agriculture and the Public Health Service do not prevent Sunday scheduling, but only the Public Health Service schedules Sunday as part of the regular workweek. (See p. 4.)

As a result of the different premium pay laws and regulations, inspectors working about the same number of Sunday, holiday, or night overtime hours were paid for a varying number of hours. For example, on a Sunday at Logan International Airport, Boston, in clearing the only flight they inspected that day, Customs and Immigration inspectors both worked less than 2 hours, but received 16 hours of pay. Immigration inspectors had to perform administrative duties during the ensuing 6-3/4 hours to complete an 8-hour tour of duty as required by regulations. An Agriculture inspector worked 2-1/4 hours inspecting this flight and one additional cargo flight and received 9 hours' pay. The Public Health Service did not have to inspect this flight. If it had been inspected, assuming it took 1-3/4 hours, the inspector would have received 8 hours' pay. (See p. 15.)

The premium pay laws of the four agencies do not specify the number of hours for which an employee will be paid if he is "called back" to duty after completing his regular tour. Each agency has adopted different regulations, which result in different pay to inspectors for working about the same hours. (See p. 19.)

The premium pay laws and/or regulations applicable to inspectors at the ports-of-entry differed from, and in most areas were more generous than,

those for other Federal employees and ground personnel of commercial airlines. (See p. 28.)

Reimbursement of overtime payments

The parties-in-interest are required to reimburse the Government for most of the overtime, Sunday, and holiday pay received by the Customs and Agriculture inspectors. The Government is not reimbursed for a fairly large share of such pay for Public Health Service and Immigration inspectors. (See p. 2.)

As shown above, the inspectors can receive payment for a varying number of hours for the same number of hours worked. This affects the amount charged to the party-in-interest. Other differences in the laws and regulations affect the amount charged. (See p. 39.)

RECOMMENDATIONS

The Secretaries of the Treasury; Agriculture; Health, Education, and Welfare; and the Attorney General should review their regulations issued under their premium pay laws for inspectors at ports-of-entry and, to the extent permitted by the current laws, develop uniform regulations on pay for overtime, Sunday, and holiday work and on the reimbursability of the cost of inspections performed at ports-of-entry. (See pp. 34 and 42.)

Because of the Civil Service Commission's overall responsibilities for issuing the basic regulations governing the pay of most Federal employees, the Chairman should help the agencies develop uniform regulations on pay for overtime, Sunday, and holiday work performed at ports-of-entry. (See p. 34.)

X The Director of the Office of Management and Budget should help the agencies develop uniform regulations on the reimbursability of the cost of inspections performed at ports-of-entry. (See p. 43.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

Premium pay

Each agency directly involved in port-of-entry inspections agreed with GAO's recommendation to review their regulations and develop more uniformity on premium pay. The Civil Service Commission said it would assist in this endeavor upon request from the agencies concerned.

Justice and Customs, however, stressed the difficulties in developing uniform regulations, and none of the agencies indicated any definite plans or time frame for accomplishing this objective.

Y The Chairman of the Civil Service Commission should take the lead in establishing the desired uniform overtime regulations. GAO also requested the four agencies directly concerned and the Commission to comment on the merits and disadvantages of several alternative changes in legislation to establish a uniform premium pay law for inspectors at the ports-of-entry.

All the agencies agreed on the need for uniform legislation but had varying views on how it could best be accomplished. (See app. II.)

The Civil Service Commission favored adopting legislation which would provide that the inspectors be paid in accordance with the Federal Employees Pay Act of 1945, as amended. (See p. 35.)

Reimbursement for premium pay

All the agencies directly concerned agreed to GAO's recommendation on adopting uniform reimbursement regulations. The Office of Management and Budget stated that it would be most willing to help develop such regulations. None of the agencies, however, indicated any definite plans or time frame for accomplishing these objectives. GAO believes that the Director of the Office of Management and Budget should take the lead.

GAO also asked the agencies and the Office of Management and Budget for their views on the merits and disadvantages of several alternative changes in legislation to establish a uniform system of reimbursement for services at ports-of-entry. (See p. 43.)

MATTERS FOR CONSIDERATION BY THE CONGRESS

Premium pay

The Congress should enact one premium pay law to apply to the four inspection agencies for services at ports-of-entry. To insure uniformity, the responsibility for issuing implementing regulations should be assigned to one agency, such as the Civil Service Commission. (See p. 37.)

Legislation should be considered to provide that the overtime, Sunday, and holiday pay of inspectors at ports-of-entry be determined in accordance with the Federal Employees Pay Act of 1945, as amended, with some modifications.

These are the removing of the limitation which restricts overtime payments to the minimum overtime rate of a GS-10 and providing that the

inspectors be paid for traveltime when called back to duty after completing their regular tours or on days they are not scheduled to work. (See p. 38.) To ease the impact of such a change, consideration should be given to providing a transition period from the current special premiums to the modified pay provisions of the act.

As noted on page 31, GAO did not review payments to a small number of employees of the Federal Communications Commission and the Coast Guard who are compensated under premium pay provisions similar to those applicable to Customs and Immigration. The Congress may wish to consider whether any change in legislation should also cover these employees.

Reimbursement for premium pay

The Congress should enact legislation establishing a uniform policy on the charges to be made to the parties-in-interest for inspections at ports-of-entry. (See p. 44.)

Consideration should be given to enacting legislation which would require that there be established at each port-of-entry specific days and times during which the full cost, including overhead, of inspections performed by any of the four agencies would be charged to the parties-in-interest. The specific days and times should be the same for all agencies performing services at a given port.

CHAPTER 1

INTRODUCTION

Persons and articles entering the United States are subject to inspection by four Federal agencies.

--The U. S. Customs Service, Department of the Treasury inspects baggage, collects duties on imported merchandise, interdicts the flow of narcotics and dangerous drugs, and combats smuggling of prohibited and restricted articles or smuggling of articles to avoid paying duties.

--The Immigration and Naturalization Service (INS), Department of Justice, checks citizenship and determine admissibility of aliens.

--The Animal and Plant Health Inspection Service (APHIS) Department of Agriculture, inspects agricultural items to keep out plant and animal disease and insect pests

--The Public Health Service (PHS), Department of Health Education, and Welfare, checks for required inoculations and apparent health.

Each agency usually carries out its responsibilities independently of the others, but in certain situations inspectors of one agency perform the functions of one or more of the other agencies.

OVERTIME PAID INSPECTORS
UNDER SPECIAL PREMIUM PAY STATUTES

Over 75 million vessels, planes, and vehicles arrived in the United States during fiscal year 1974. The four agencies estimate that in fiscal year 1974 about 6,886 inspectors were required to carry out port-of-entry inspections. The parties-in-interest reimburse the Government for a large share of the payments to the inspectors for Sunday, holiday, and night overtime work. The Government, generally, is not reimbursed for Sunday, holiday, and night overtime at border crossings.

During fiscal year 1974 about \$47.6 million was paid to inspectors under the special premium pay statutes, about \$36.7 million of which was reimbursed by parties-in-interest and about \$10.9 million of which was absorbed by the Government, as shown below.

	Amount of overtime	Amount paid by	
		Party-in-interest	U.S. Government
Customs	\$32,664,731	\$27,047,398	\$ 5,617,333
INS	11,398,043	6,348,709	5,049,334
Agriculture	3,543,952	3,306,523	237,429
PHS	<u>64,031</u>	<u>23,976</u>	<u>40,055</u>
Total	<u>\$47,670,757</u>	<u>\$36,726,606</u>	<u>\$10,944,151</u>

The above amounts paid by parties-in-interest include an undetermined amount paid by the Defense Department and other Federal agencies when they received reimbursable inspections. These amounts were not readily available from the records maintained by the inspection agencies.

PREMIUM PAY PROVISIONS

Special laws have been enacted to compensate inspectors of the four agencies at ports-of-entry for Sunday, holiday, and night overtime work. The following briefly describes the

premium pay laws and regulations of the four agencies. Appendix I contains additional information on these laws and regulations.

Inspections at ports-of-entry outside the times specified in the special premium pay laws and regulations are compensated for in accordance with the Federal Employees' Pay Act of 1945, as amended (FEPA) (5 U.S.C. 5541-5549).

Customs

Premium pay provisions for Customs inspectors were established by section 5 of the act of February 13, 1911, as amended (19 U.S.C. 267). The act provides, in part, that extra compensation be paid to Customs inspectors for Sundays and holidays and night duty between 5 p.m. and 8 a.m. on other days if not part of regular duty hours. This law provides that compensation for night duty during the week be one-half of the inspectors' regular gross daily rate for each 2 hours of service; any fraction of 2 hours amounting to at least 1 hour is counted as 2 hours. Inspectors receive 2 additional days' pay for Sunday or holiday duty. The Secretary of the Treasury prescribes the regulations for administering this law.

The Supreme Court ruled *United States v. Myers*, 320 U.S. 56 (1943) that under the law Customs employees were entitled to extra pay for duty on Sundays and holidays, even though they had received another day off for the Sunday or holiday worked. As a result, Customs does not schedule Sunday as part of the inspectors' basic workweek.

INS

Overtime compensation for INS inspectors is provided for in the act of March 2, 1931, as amended (8 U.S.C. 1353a), which is essentially the same as the Customs 1911 overtime law. The Attorney General prescribes the regulations for administering this law. Sunday is not part of the inspectors' basic workweek.

APHIS

Premium pay for APHIS inspectors performing inspection and quarantine services relating to imports and exports is

based on the act of August 28, 1950 (7 U.S.C. 2260). The act authorizes the Secretary of Agriculture to pay inspectors for all overtime, night, or holiday work performed by them at such rates as he may determine. The Secretary has issued regulations setting rates similar to those of FEPA. (See p. 28.) He also has provided for commuted traveltime allowances for employees called back to duty during weekdays and for Sunday and holiday duty.

Compensation for weekday overtime is at the FEPA rate of one and one-half times an inspector's regular rate, not to exceed the minimum overtime rate of a grade 10, for a minimum of 2 hours. Compensation for Sunday duty is twice an inspector's hourly pay for a minimum of 2 hours, or the number of hours worked, plus locally established traveltime compensated at the FEPA overtime rate. Holiday duty is compensated at the inspector's regular hourly rate for the number of hours worked during his normally scheduled hours plus locally established traveltime at the FEPA overtime rate. He also receives 1 day's pay for the holiday. Work outside normally scheduled hours on holidays is compensated at the FEPA overtime rate plus the locally established traveltime at the FEPA overtime rate. Sunday is not part of the basic 40-hour workweek.

PHS

In accordance with the overtime provisions of the Public Health Service Act, as amended (42 U.S.C. 267), PHS inspectors are paid overtime for work on Sundays, holidays, and Monday through Saturday between 6 p.m. and 6 a.m. if such duty does not fall within the regular tours of duty. Inspectors working during these periods receive twice their basic rate for each hour worked and for up to 2 hours' standby duty. The Surgeon General prescribes the regulations for administering this law.

When Sunday is part of the inspectors' basic 40-hour workweek, they receive a 25-percent premium for Sunday duty. Holiday duty falling within a 40-hour workweek is compensated at the inspectors' regular pay rates for the number of hours worked up to 8 hours. They also receive 1 day's pay for the holiday.

REIMBURSABLE PROVISIONS

The laws and regulations pertaining to overtime, Sunday, and holiday pay for inspections at ports-of-entry also provide in most instances for the reimbursement for such payments by the party-in-interest. These laws generally provide, however, that the Government not be reimbursed for certain amount including those earned at international highways, bridges, tunnel or ferries between the United States and Mexico or between the United States and Canada. The maximum that can be charged to owners of private aircraft or vessels for an inspection during premium pay periods by any or all of the four agencies is \$25. (See p. 52.)

The following table illustrates the general practices of the four agencies concerning the reimbursability (R) or non-reimbursability (N) for the services performed at airports on Sundays, or holidays or during overtime hours.

	<u>Customs</u>	<u>Agriculture</u>	<u>INS</u>	<u>PHS</u>
Regularly scheduled commercial flights arriving:				
On Sundays	R	(a)	(b)	N
On holidays	R	(a)	(b)	N
In night overtime periods	R	R	(b)	N
Nonscheduled and chartered flights arriving:				
On Sundays	R	(a)	R	(a)
On holidays	R	(a)	R	(a)
In night overtime periods	R	R	R	R

^aThese services are nonreimbursable if the assigned staff can perform the inspection without calling in additional inspectors.

^b Services are nonreimbursable unless a regularly scheduled flight arrives more than 1 hour off schedule.

REIMBURSABLE RATES

When a charge is made for overtime, Sunday, or holiday service, Customs, INS, and PHS charge the parties-in-interest the amount paid to the inspectors and APHIS charges flat overtime rates, which include administrative and clerical costs.

PORT HOURS OF OPERATION

The regular hours of operation of the four agencies need not coincide at each port of entry. Hours of operation are supposed to be established by each agency to provide adequate service to the public at minimum cost and can be changed when the flow of traffic changes. In determining hours of operation, Customs and APHIS have to consider inspection of cargo in addition to passengers, whereas INS and PHS have to set their hours only according to passenger arrivals.

Employees are assigned to a 40-hour, 5-day week within the port hours; only PHS includes Sunday in the basic work-week. For the other agencies, Sunday is an overtime workday. In commenting on this report, Customs said most management-labor agreements with employee associations provide for a minimum 2 weeks' advance notice of assignments.

The agencies generally know in advance the arrival times of regularly scheduled planes and of charter flights. Employees are scheduled to work one of the work-shifts within the port hours to handle regularly scheduled traffic. Deviations from port hours are not made to handle charter flights or other nonscheduled flights whose arrival times will be outside port hours. These are inspected on overtime.

The party-in-interest must request services during overtime, Sunday, and holiday hours. Since operators of planes and vessels arriving outside regular port hours of one or more agencies cannot realistically detain their passengers or crew until inspectors come on duty, they usually have no choice but to request the overtime services of these inspectors and, depending on the situation and agency involved, may be

liable for any pay accruing to these inspectors.

In commenting on this report, Customs agreed that, if a vessel or a plane arrives during an overtime period, the operators have no option but to request inspection. They pointed out, however, that the operators do have an option in scheduling arrival times.

CHAPTER 2

NEED FOR CHANGE IN LAWS AND REGULATIONS

PERTAINING TO OVERTIME PAID TO GOVERNMENT INSPECTORS

AT U.S. PORTS-OF-ENTRY

The laws and regulations pertaining to Sunday, holiday, and overtime pay of inspectors at ports-of-entry can and do result in substantial differences in the number of hours for which they are paid by the four agencies for inspecting the same ship or plane. They also result in substantial overtime being earned by inspectors for work on Sunday, which is not a regular workday for three of the four agencies, even though Sunday usually has about the same amount of traffic at ports-of-entry as the average weekday.

In commenting on this report, INS cited the case of Tom S. Acuna, Et Al v. the United States, 202, Ct. Cl. 206 (1973) which pointed out that, if Sunday were scheduled as part of the immigration inspectors' regularly scheduled workweek, he would receive 3 days' pay for each Sunday, 1 day's pay as part of the workweek, and 2 additional days' pay for work on Sunday under the act of March 2, 1931. If Sunday were scheduled as part of the inspectors' workweek and he had no other overtime that week, he would receive 7 days' pay for 5 days' work. By scheduling Sunday as an overtime day, the employee would be required to work 6 days to receive 7 days' pay.

Customs inspectors would also receive 3 days' pay for Sunday, if it were scheduled as part of their basic workweek.

The following schedule shows the overtime paid to inspectors of the four agencies for work at ports-of-entry during fiscal year 1974.

	<u>Number of inspectors</u>	<u>Amount of overtime</u>	<u>Average amount of overtime per inspector</u>
Customs	4,717	\$32,664,731	\$6,925
INS	1,461	11,398,043	7,802
Agriculture	625	3,543,952	5,670
PHS	<u>83</u>	<u>64,031</u>	771
Total	<u>6,886</u>	<u>\$47,670,757</u>	

Though full-time inspectors are the primary recipients of these amounts, other employees, including "when actually employed" (WAE) inspectors, receive compensation under these statutes when working on Sundays and holidays. The above figures include the INS and Customs WAE inspectors and their earnings. The amount of overtime attributable to these inspectors could not be readily determined.

The calendar year 1973 earnings for the inspector with the highest overtime earnings at airports we visited follow.

	<u>Agency</u>	<u>Annual Salary</u>	<u>Overtime</u>	<u>Total</u>
Bangor International Airport, Bangor, Maine	Customs	\$17,047	\$25,383	\$42,430
	INS	16,848	29,299	46,147
	Agriculture	16,510	9,534	26,044
Logan International Airport, Boston, Mass.	Customs	16,940	6,601	23,541
	INS	15,155	15,127	30,282
	Agriculture	15,354	4,586	19,940
Dulles International Airport, Chantilly, Va.	Customs	18,577	11,447	30,024
	INS	15,025	12,012	27,037
	Agriculture	14,490	9,296	23,786
Seattle-Tacoma International Airport, Seattle, Wash.	Customs	15,264	12,505	27,769
	INS	16,906	18,341	35,247
	Agriculture	(a)	(a)	(a)

^aNo full-time inspectors; assigned on an "as-needed" basis.

Because the annual overtime earnings of PHS inspectors were generally not significant, they are not included in the table.

There were differences in overtime pay for (1) Sunday and holiday work and (2) "callback time," or hours of work credited to an inspector for work performed when called to duty during specified hours either after or before his regular hours or when called back for duty on Sundays or holidays.

SUNDAY INSPECTIONS

A major part of the premium payments received by inspectors of the three agencies which do not schedule Sunday as part of the regular workweek is for Sunday work. At the eight locations reviewed, we computed, as shown in the following table, the percentage of payments received by inspectors from these agencies for work on Sundays during 1 month to total night overtime, Sunday, and holiday payments during that month. There were four Sundays and one holiday during the test month.

Percent of September 1972 overtime payments earned on Sundays

	<u>Customs</u>	<u>INS</u>	<u>APHIS</u>
Seattle Seaport	22	24	29
Seattle-Tacoma International Airport	25	44	34
Blaine, Wash., Border Crossing	59	73	-
Bangor International Airport	62	53	(a)
Highgate Springs, Vt., Border Crossing	78	79	(a)
Logan International Airport	45	44	21
Boston Seaport	20	35	39

Percent of September 1972 overtime
payments earned on Sundays

	<u>Customs</u>	<u>INS</u>	<u>APHIS</u>
Dulles International Airport	32	38	(a)

^aInformation not obtained for APHIS employees at these sites.

The number of planes, vessels, and motor vehicles required to be inspected on a Sunday is usually about the same as the number inspected on the average weekday. Also the pattern of international flight arrivals at the locations visited was about the same on Sunday as on a weekday. The following schedule shows the number of international plane arrivals during various time periods during 1 test month at three of the international airports visited.

	<u>Logan</u>		<u>Dulles</u>		<u>Bangor</u>	
	Average		Average		Average	
	<u>Number</u>	<u>per day</u>	<u>Number</u>	<u>per day</u>	<u>Number</u>	<u>per day</u>
Midnight to 8 a.m.:						
Weekdays	21	0.8	3	0.1	13	0.5
Sundays	6	1.5	-	-	5	1.2
Holidays	2	2	-	-	1	1.0
8 a.m. to 5 p.m.:						
Weekdays	361	14.4	128	5.1	153	6.0
Sundays	55	13.7	27	6.7	19	4.8
Holidays	17	17	6	6.0	6	6.0
5 p.m. to midnight:						
Weekdays	331	13.2	95	3.8	93	3.7
Sundays	44	11.0	17	4.2	12	3.0
Holidays	12	12.0	3	3.0	5	5.0

From Monday through Saturday the regular inspectors are usually assigned to work five 8-hour shifts within the established port hours. For example, at Logan, the Customs port hours were from 8 a.m. to midnight. During our test month on

a typical weekday, 21 inspectors were assigned to work from 3 a.m. to 5 p.m., 9 were assigned to work from noon to 8 p.m., and 3 were assigned to work from 4 p.m. to midnight. Any planes arriving outside port hours on a weekday are inspected on overtime.

On Sundays about the same number of Customs inspectors are required to inspect international flights at Logan as on a weekday, but most of them work fewer hours because on weekdays the inspectors are also required to perform other duties, such as cargo inspections, during their 8-hour workday. On Sundays cargo inspections are rarely made by inspectors who have been assigned to clear arriving passengers. For example, at Logan International Airport on a typical Sunday in September 1972, 4 inspectors worked a full 8 hours, 18 worked from 4 to 7 hours, and 8 worked only 1 hour or less. All were paid for 16 hours at the regular rates.

Customs stated that the assignment schedules at Logan are intelligible only if they are related to the number, passenger loads, and times of arrival. They also stated that all inspectors were correctly paid the same amount of overtime but there could be very sound reasons for the amount of time actually worked.

We did not question the correctness of the amounts paid to the inspectors or the reasons why some worked less than 8 hours on Sunday. The information shown was meant to demonstrate that the number and pattern of arrivals and the number of assigned inspectors were about the same on a Sunday as on a weekday. Therefore, not scheduling Sundays as part of the basic workweek, although justified on the basis of avoiding extra costs under the present law, could not be justified on the basis of the workload.

At Logan about the same number of regular INS inspectors worked on a Sunday as on an average weekday. INS regulations, however, require regular INS inspectors who work on Sunday to work a total of 8 hours, including split shifts, and administrative duties, to earn the 16 hours' pay for Sunday work. (See p. 13.)

For work on Sundays APHIS inspectors get paid only for the hours worked, for a minimum of 2 hours, plus a commuted

travel allowance. For PHS inspectors, Sunday is part of the regular workweek when warranted.

A Customs official said Customs has 133 border crossings along the Canadian and Mexican borders. About 60 of these crossings are open 7 days a week, and the hours of service on a Sunday are usually the same as on other days of the week. At the Canadian border, hours of service are adjusted seasonally to correspond to the traffic and Sunday hours may not always correspond to weekday hours. Hours of service at less than 24-hour ports are usually much longer in the summer than the winter.

Sunday and holiday compensation

A Customs inspector can receive 16 hours of pay for working 1 hour on a Sunday. If he is called back later during the same day and works 1 additional hour, he can receive an additional 12 hours' pay for a total of 28 hours' pay for 2 hours' work.

For the same 2 hours Agriculture inspectors could receive up to 17 hours at regular rates depending on the travel allowance at the location. INS inspectors would receive pay for 24 hours but would have to remain on duty for 9 hours.

The Customs and INS laws provide that the compensation rate for inspectors for Sunday or holiday services is 2 additional days' pay. Customs has determined that this extra compensation shall be for services during the 8 hours from the start of the first assignment regardless of the time served within the 8-hour period. An inspector who has completed a reimbursable overtime activity on a Sunday or holiday is to hold himself available for further reimbursable overtime services which may occur within 8 hours from the start of his first assignment. If there are no known additional arrivals, he can return home.

INS requires inspectors working on Sundays or holidays to perform 8 hours of duty. If their inspection duties require less than 8 hours, they must perform administrative duties to make up the balance of the 8 hours. As a result of these requirements, Customs inspectors can receive 16 hours' pay for working as little as 1 hour and INS inspectors

must work 8 hours to receive 16 hours' additional pay on Sunday or holidays.

Customs also allows up to 4 hours' credit (8 hours' pay) when an inspector is called back to duty upon completing an 8-hour Sunday assignment. INS allows 2 hours' credit (4 hours' pay) when an inspector is called back upon completing 8 hours' service on Sundays.

The following table illustrates the number of hours at the inspectors' regular rates that can be earned on Sunday.

	<u>Equivalent hours paid at regular rate</u>			
	<u>Customs</u>	<u>INS</u>	<u>Agriculture</u>	<u>PHS</u>
<u>Sunday</u>				
Work any fraction of 1 hour	16	^a 16	5-1/2 to 8-1/2 (note b)	6
Work 8 hours (not scheduled)	16	16	17-1/2 to 20-1/2 (note b)	20
Work 8 hours as part of scheduled 40 hours	(c)	(c)	(c)	10
Called back 4 hours after completing an 8-hour assignment and work 1 hour (additional pay)	12	8	5-1/2 to 8-1/2 (note b)	6

^aInspectors must work an additional 7 hours on administrative duties to earn the 16 hours of pay. (See p. 13.)

^bRanges are due to different traveltime allowances for the ports reviewed.

^cNot done.

Hours of pay received for holiday work differ among the four agencies as explained on pages 3 and 4. For work on a

holiday, Customs and INS inspectors are paid for the holiday plus pay for the hours worked computed on the same basis as pay for Sunday work. Agriculture and PHS inspectors' pay depends on circumstances under which the holiday is worked, such as the inspectors' duty hours.

The following examples demonstrate actual amounts of overtime earned by inspectors on Sundays at the airports visited.

Example 1

On a Sunday, three INS inspectors reported to Logan International Airport to clear a charter flight estimated to land at 12:05 a.m. The flight landed at 12:25 a.m. and the inspection was completed at 1:20 a.m. This was the only flight that the three inspectors worked because the next scheduled flight arrived at 11:05 a.m. They were required to perform administrative duties during the ensuing 6-3/4 hours to complete an 8-hour tour of duty.

Ten Customs inspectors were called to inspect the above flight for an overtime assignment. They began at midnight and ended at 1:45 a.m. for 1-3/4 hours of duty.

One Agriculture inspector was called in at midnight to inspect the above flight and one additional cargo flight. He started at 12:05 a.m. and finished at 2:20 a.m. for a total of 2-1/4 hours of overtime.

PHS did not inspect this flight because its policy is to inspect chartered flights only from countries with known health problems or if there is sickness aboard and neither applied in this case. If a PHS inspector had been called in and worked a similar period, i.e., 1-3/4 hours, he would have been entitled to 8 hours' pay--2 hours' callback and 2 hours' duty period, or a total of 4 hours at twice his hourly rate.

The following table shows the compensation received by the above inspectors for their overtime.

	<u>Elapsed hours</u>	<u>Hours paid each inspector</u>
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Customs:

Ten inspectors worked from midnight to 1:45 a.m. and received Sunday overtime pay.	1-3/4	16
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INS:

Three inspectors worked from 12:05 a.m. to 1:20 a.m. inspecting the flight and the balance of the 8-hour period on administrative work.	8	16
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Agriculture:

One inspector worked from 12:05 a.m. to 2:20 a.m. and received 3 hours of travel-time at one and one-half times his hourly rate and 2-1/4 hours of duty at twice his hourly rate.	2-1/4	9
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Example 2

On a Sunday various inspections were conducted at Dulles International Airport between 8:30 a.m. and 11:30 p.m. While performing these inspections, inspectors of the four agencies worked various numbers of hours and duty periods, as shown below.

	<u>Elapsed hours</u>	<u>Hours paid each inspector</u>
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Customs:

(Customs inspectors worked several shifts and different numbers of hours ranging from 3 to 10-1/2 hours.)

	<u>Elapsed hours</u>	<u>Hours paid each inspector</u>
One inspector worked 3 hours and received Sunday pay of 16 hours.	3	16
One inspector worked 8 hours and received 16 hours of Sunday pay. He continued working another hour and received night overtime pay of 4 hours.	9	20
One inspector worked 8 hours and received 16 hours of Sunday pay. He also continued working another hour and received night overtime pay of 4 hours. He was then called back to work 4 hours later and was credited with 4 hours of callback time and 4 hours of overtime pay for working 1-1/2 hours.	10-1/2	32
Two inspectors worked 8 hours and received Sunday pay of 16 hours.	8	16
Another 13 inspectors worked 4 hours and received 16 hours' Sunday pay. They were called in and worked 1 additional hour 8 hours after starting their initial Sunday assignment and received 4 hours of night overtime pay. No callback pay was received because the second assignment began immediately following the end of the 8-hour period which began at the start of the first assignment.	5	20

	<u>Elapsed hours</u>	<u>Hours paid each inspector</u>
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INS:

<p>Eight inspectors worked various 8-hour shifts performing inspection and administrative duties and received Sunday pay of 16 hours.</p>	8	16
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Agriculture:

<p>One inspector was scheduled to work from 1:30 p.m. to 6 p.m. He received double time for those hours plus traveltime of 3 hours at time and one-half. His traveltime was 3 hours instead of the regular 1-hour allowance for Dulles since his regular duty station during that week was Andrews Air Force Base, Maryland, where 3 hours' traveltime is allowed. He was also called back and worked from 9 p.m. to 11 p.m., for which he received 2 hours' pay at double time and 3 hours' travel at time and one-half.</p>	6-1/2	22
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<p>A second inspector worked from 10:15 a.m. to 11:30 a.m., 2 p.m. to 6 p.m., and 9 p.m. to 11 p.m. He was compensated at double time for 8 hours worked and received traveltime of 1 hour at time and one-half for each of the three times he was called back.</p>	8	20-1/2
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<u>Elapsed</u> <u>hours</u>	<u>Hours paid</u> <u>each inspector</u>
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PHS:

One inspector was assigned to duty from 10 a.m. to 6 p.m. as part of his regular work-week. He received a 25-percent differential for scheduled Sunday duty in addition to his regular pay.

8	10
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CALLBACK ASSIGNMENTS

Differences in the amounts paid to inspectors called back for overtime assignment can result from the overtime regulations of the four agencies.

A Customs inspector can earn 12 hours' pay by being called back for 1 hour of duty 4 hours after his regular tour ended. Under the same circumstances INS, PHS, and Agriculture inspectors would earn 8, 6, and from 4-1/2 to 7-1/2 hours depending on their allowances, respectively. The following schedule shows the number of hours of pay inspectors of the four agencies can receive when they work 1 hour beyond their regular hours and when they are called back after their regular hours and work 1 hour.

<u>Weekday</u>	<u>Customs</u>	<u>INS</u>	<u>Agriculture</u> (notes a and b)
Worked 1 hour beyond 8-hour duty day ended at 6 p.m.	4	4	1-1/2
Called back for 1 hour of duty 2 hours after 8 hours of duty ended at 6 p.m.	8	8	4-1/2 to 7-1/2
Called back for 1 hour of duty 4 hours after 8 hours of duty ended at 6 p.m.	12	8	4-1/2 to 7-1/2

^aThe hours earned by the Agriculture inspectors are compensated at the regular hourly rate of the employee but do not exceed the minimum rate of a grade 10.

^bThe ranges shown for Agriculture inspectors are due to different travel allowances at the ports visited.

The following examples illustrate the actual amounts earned by inspectors on callback assignments at ports visited.

Example 1

On a Monday a charter flight arrived at Dulles International Airport at 9:25 p.m. and was inspected by 13 customs inspectors, 8 INS inspectors, and 2 Agriculture inspectors. The hours of compensation were as follows:

	<u>Elapsed hours</u>	<u>Hours paid each inspector</u>
Customs:		
Twelve inspectors whose regular tours of duty ended at 5 p.m. were called back at 9 p.m. and worked until 10:15 p.m. Each was credited with 4 hours of callback time and 1 hour and 15 minutes of duty, or a total of 5-1/4 hours. Each received 4 hours' pay for each 2 hours or fraction thereof of at least 1 hour, or 12 hours of pay.	1-1/4	12
One inspector whose normal tour of duty ended at 8:30 p.m. returned for duty from 9 p.m. to 10:15 p.m. and was credited with 1 hour and 15 minutes of duty. He received 4 hours of pay.	1-1/4	4

<u>Elapsed</u> <u>hours</u>	<u>Hours paid</u> <u>each inspector</u>
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INS:

Eight inspectors whose tours of duty ended between 4:30 p.m. and 6 p.m. were called back at 8:45 p.m. and worked until 10:10 p.m. They were credited with 2 hours of callback time and 1 hour and 25 minutes of duty time, or a total of 3 hours and 25 minutes. They received 4 hours' pay for each 2 hours or fraction thereof of at least 1 hour, or 8 hours' pay.

1 hr. 25 min	8
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Agriculture:

Two inspectors whose regular tours of duty ended at 5:30 p.m. and 6 p.m. were called back at 9:25 p.m. and worked until 10:30 p.m. Each received 1 hour traveltime and 2 hours' minimum duty time for a total of 3 hours. Each received 4-1/2 hours' pay.

1 hr. 5 min.	^a 4-1/2
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^a Pay was limited to the hourly minimum overtime rate of grade 10, which is lower than the inspectors' hourly rate.

Example 2

On a Monday an unscheduled charter flight arrived at Logan International Airport at 1:50 a.m. and was covered by 4 INS inspectors, 15 Customs inspectors, and 1 Agriculture inspector on an overtime basis. The hours of compensation earned follow.

<u>Elapsed</u> <u>hours</u>	<u>Hours paid</u> <u>each inspector</u>
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Customs:

Five inspectors whose normal tours of duty ended at 5 p.m. were called back at 1:45 a.m. and worked until 3 a.m. Each was credited with 4 hours of callback and 1-1/4 hours of duty, or a total of 5-1/4 hours. Each received 12 hours' pay.

1-1/4	12
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Three inspectors whose normal tours of duty ended at 5 p.m. were called back at 2 a.m. and worked until 3 a.m. Each was credited with 4 hours of callback and 1 hour of duty, or a total of 5 hours. Each received 12 hours' pay.

1	12
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Six inspectors whose normal tours of duty ended at 5 p.m. were called back at 2:15 a.m. and worked until 3 a.m. Each was credited with 4 hours of callback and 1 hour minimum duty time, or a total of 5 hours. Each received 12 hours' pay.

3/4	12
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One inspector whose normal tour of duty ended at 5 p.m. was called back at 1:30 a.m. and worked until 3 a.m. He was credited with 4 hours of callback and 1-1/2 hours of duty, or a total of 5-1/2 hours. He received 4

	<u>Elapsed hours</u>	<u>Hours paid each inspector</u>
hours' pay for each 2 hours or fraction thereof of at least 1 hour, or 12 hours' pay.	1-1/2	12

INS:

Two inspectors whose normal tours of duty ended at 5 p.m. and two whose tours ended at 6 p.m. were called back at 1:45 a.m. and worked un- til 3 a.m. Each was credit- ed with 2 hours of callback and 1-1/4 hours of duty, or a total of 3-1/4 hours. Each received 8 hours' pay.	1-1/4	8
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Agriculture:

One inspector whose 8-hour tour of duty begins at 8:30 a.m. was called in at 1:40 a.m. and worked until 3 a.m. He received 3 hours' com- muted traveltime and a mini- mum 2-hour duty time for a total of 5 hours at time and one-half, or 7-1/2 equiv- alent hours.	1-1/3	7-1/2
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The above shows the difference between Customs and INS inspectors pay that can arise during a weekday assignment, even though the overtime laws of both agencies are essentially the same. The difference is attributed to the agencies callback regulations. Customs allows up to 4 hours' and INS allows up to 2 hours'. This converts to 8 hours' and 4 hours' pay respectively.

PHS did not inspect this flight because its policy is to inspect chartered flights only from countries with known health problems or if there is sickness aboard and neither applied in this case. If a PHS inspector had been called in and worked a

similar period of time, i.e., less than 1-1/2 hours, he would have been entitled to 6 hours' pay--2 hours' callback and a minimum duty period of 1 hour, or a total of 3 hours at twice his hourly rate.

PART-TIME EMPLOYEES' PAY

Customs and INS use WAE inspectors to assist in inspections. They are compensated for Sunday and holiday work at the special rates provided for by the Customs and INS overtime acts.

The Comptroller General has ruled (B-167804, March 11, 1970) that, on the basis of the language of the overtime laws, WAES are entitled to the extra compensation under the Customs and INS overtime acts only for Sunday or holiday work. He held that an employee must be a full-time employee with a regular tour of duty to be entitled to overtime pay under these acts on a day other than a Sunday or a holiday.

Customs compensates its WAEs for Sunday and holiday work on the same basis it compensates its regular inspectors, i.e., a WAE inspector receives 2 days' pay for a Sunday assignment, regardless of its duration, and is subject to duty during the 8 hours following the start of the first assignment. Callback assignments are reimbursed on the basis of the night overtime rules. INS requires WAEs to work 8 hours on Sundays or holidays when called in on an overtime assignment; however, the hours need not be continuous. At one location visited, it was INS practice to require only WAEs to work noncontinuous hours for which they receive 2 days' pay. For example, if the first assignment took only 2 hours, the WAEs were released subject to callback until they worked an aggregate of 8 hours. The regular inspectors performed administrative duties to complete 8 hours of duty during their first assignment and were paid night overtime for any additional inspections on that day.

The following example demonstrates the different scheduling methods between INS and Customs for WAEs and between INS full-time and WAE employees.

On a Sunday three flights at Bangor International Airport were covered by Customs and INS inspectors, including both regular inspectors and WAEs. The following tables show the hours worked and the hours for which they were paid.

Customs:	<u>Elapsed hours</u>	<u>Hours paid each inspect</u>
Five WAEs worked as follows:		
First assignment from 12:54 a.m. to 2:20 a.m.	1 hr. 26 min.	16
Second assignment from 1:53 p.m. to 3:30 p.m.	1 hr. 37 min.	12
Third assignment from 7:55 p.m. to 9:20 p.m.	<u>1 hr. 25 min.</u>	a <u>8</u>
Total	<u>4 hr. 28 min.</u>	<u>36</u>

^a Although the inspectors earned 12 hours for the third assignment, they are limited to 8 because 36 hours is the maximum number of hours allowed by law--16 hours' extra pay for Sunday work and 20 hours' for night overtime.

The computation basis for the above assignments was as follows:

First assignment:

Elapsed time 12:54 a.m. to 2:20 a.m. equals 1 hour and 26 minutes. The inspectors were entitled to 16 hours' pay for the 8-hour period starting at 12:54 a.m. and ending at 8:54 a.m. If there had been other flights during this period, they would have had to cover them at no additional compensation. There were no other flights and the employees were off duty until they reported for the next assignment.

Second assignment:

Elapsed time 1:53 p.m. to 3:30 p.m. equals 1 hour and 37 minutes. The inspector was entitled to 4 hours' call-back credit plus 2 hours for the elapsed time. This equals 12 hours' pay. Employees were off duty at 3:30 p.m. until they reported for the third assignment.

Third assignment:

Elapsed time 7:55 p.m. to 9:20 p.m. equals 1 hour and 25 minutes. The inspector was entitled to 4 hours' callback credit plus 2 hours for the elapsed time. This equals 12 hours' pay as in the second assignment. However, the 36-hour Sunday maximum limits the inspector to 8 hours for this assignment.

Four regular inspectors who worked these and other assignments were compensated in the same manner.

<u>INS</u>	<u>Elapsed hours</u>	<u>Hours paid each inspector</u>
Six WAEs worked as follows:		
First assignment from 12:30 a.m. to 1:30 a.m.	1	16
Second assignment from 1:30 p.m. to 3 p.m.	1-1/2	-
Third assignment from 7:15 p.m. to 8:30 p.m.	<u>1-1/4</u>	<u>-</u>
Total	<u>3-3/4</u>	<u>16</u>

The inspectors must work noncontinuous hours for their first 8-hour work period. Since no additional inspections were required, they were excused from the remaining 4-1/4 hours and received 16 hours' pay.

	<u>Elapsed hours</u>	<u>Hours paid each inspector</u>
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Two regular inspectors worked as follows:

One regular inspector worked the first assignment 12:30 a.m. to 1:30 a.m. and completed an 8-hour assignment at 9 a.m. He worked on administrative duties from 1:30 a.m. to 9 a.m. He also worked on the the second assignment 1:30 p.m. to 3 p.m. He was credited with 2 hours' callback time and 2 hours for the time worked,	9-1/2	24
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A second regular inspector worked the first assignment 12:30 a.m. to 1:30 a.m. and completed an 8-hour assignment at 9 a.m. He worked on administrative duties from 1:30 a.m. to 9 a.m. He worked subsequent assignments from 1:30 p.m. to 3 p.m., 4 p.m. to 6 p.m., and 7:15 p.m. to 8:30 p.m. For these assignments he was credited with 2 hours' callback time and 7 hours for the elapsed time 1:30 p.m. to 8:30 p.m.	15	36
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INS requires its inspectors who work on Sundays or holidays to perform 8 hours of inspectional or administrative duties. The 8 hours need not necessarily be consecutive, and administrative work is not to be assigned to complete an 8-hour tour when it is known that the inspector can be used on inspections later in the day.

On the above Sunday assignments at Bangor Airport, the two full-time INS inspectors did not work split shifts but the WAEs did. Upon completing their first Sunday or holiday assignments, the full-time inspectors worked on administrative duties for the balance of the 8 hours. They then claimed compensation on the basis of night overtime regulations for subsequent assignments. Using this method, one inspector earned \$692, or 20-1/2 days' pay for assignments each of the four Sundays and the holiday during the month, and the second inspector earned \$687, or 11-1/2 days' pay, for assignments on three Sundays and the holiday.

We brought the above inconsistency in Sunday work hours of full-time and WAE inspectors to the attention of INS regional office officials. We also brought to their attention a similar situation at Logan Airport involving regular inspectors not working split shifts. As a result, the full-time Bangor Airport inspectors were directed to have their work schedules correspond to the inspection workload and be comparable to the work schedules of WAEs. The INS officials, however, did not believe it practicable to work noncontinuous hours for the initial 8-hour overtime duty period at Logan Airport due to time involved in getting to and from the airport and will only require that the inspectors account for the clock hours and nature of other duties performed.

OVERTIME PAY PROVISIONS OF OTHER FEDERAL AGENCIES AND COMMERCIAL FIRMS

We also obtained information on overtime, Sunday, and holiday pay provisions applicable to (1) Federal employees other than those at the ports-of-entry and (2) commercial airlines employees. In most situations, the provisions applicable to inspectors at the ports were different and in most cases more generous.

Other Federal agencies

Most Federal employees are compensated for overtime, Sunday, and holiday work under FEPA. The following table compares the pay provisions applicable to most employees under FEPA and inspectors at ports-of-entry.

FEPA provisions

Selected payments in
similar situations for
inspectors at the
ports-of-entry

1. Overtime (hours exceeding 40 per week) paid at one and one-half times the employee's basic hourly rate limited to the minimum overtime rate of a GS-10.
 2. Sunday work, if part of employee's 40-hour workweek, is paid for at one and one-fourth times the employee's hourly rate. Sunday work, if not part of the 40-hour basic workweek, is paid for at one and one-half times the employee's hourly rate limited to the minimum overtime rate of a GS-10.
 3. For holiday work employee is compensated at his basic rate for hours worked, but not exceeding 8, in addition to the regular pay. Holiday work not within employee's basic workweek is compensated as in number 1 above.
1. Overtime rate for Customs, INS, and PHS employees is at least twice their basic rate.
 2. Only PHS schedules Sunday as part of the regular workweek for which employees are paid at the FEPA rate. Customs employees receive 16 hours' pay for as little as 1 hour of work on a Sunday. INS inspectors receive 16 hours' pay for 8 hours work.
 3. Customs inspectors receive their regular pay for the day plus 2 additional days' pay for working any part of the day for less than 8 hours. INS inspectors receive the same pay as Customs inspectors for holiday work except that they must work the full 8 hours to obtain the 2 additional days' pay.

4. When called back for an overtime assignment, the work period is deemed to be at least 2 hours compensated as in number 1 above.
4. Customs inspectors can receive as much as 12 hours' pay for working 1 hour, if called back to duty 4 hours or more after completing their tours of duty. INS inspectors receive 8 hours' pay in similar circumstances.
5. Other than the guaranteed minimum work period, there is no provision to compensate employees for traveltime when employees are called back.
5. Agriculture inspectors receive traveltime at one and one-half times their basic rates, not to exceed the minimum overtime rate of a GS-10, for locally established travel periods.

FEPA also contains additional overtime provisions for certain Federal employees, as shown below.

Federal employees whose basic pay rates are fixed and adjusted from time-to-time in accordance with prevailing rates by a wage board or similar administrative authority serving the same purpose are compensated for overtime work on weekdays and Sundays at time and one-half their basic rates.

FEPA provides that Federal Aviation Administration employees who occupy positions in which (1) the duties are critical to the immediate daily operation of the air traffic control system, directly affect aviation safety, and involve physical or mental strain or hardship, (2) overtime work is unusually taxing, and (3) the operating requirements cannot be met without considerable overtime, are entitled to receive one and one-half times their basic rates for overtime. Sunday, if part of their regular workweek, is paid for at FEPA rates.

The head of an agency, with the approval of the Civil Service Commission, may provide that Federal employees who work administratively uncontrollable overtime which requires considerable amounts of irregular, unscheduled overtime duty and are generally responsible for recognizing, without supervision, circumstances which require them to remain on duty shall receive premium pay on an annual basis rather than as provided in FEPA. This provision does not apply to regularly scheduled overtime, night,

Sunday, or holiday duty which is governed by FEPA. The law provides that premium pay on an annual basis for irregular unscheduled overtime be not less than 10 percent nor more than 25 percent of that part of their basic pay which does not exceed the minimum basic rate for a GS-10. The Civil Service Commission has established the following premium pay scale for irregular unscheduled overtime of these employees.

	Percent of basic pay <u>(note a)</u>
Overtime hours average at least 3 hours but no more than 5 hours per week	10
Overtime hours average over 5 hours but no more than 7 hours per week	15
Overtime hours average over 7 hours but no more than 9 hours per week	20
Overtime hours average over 9 or more hours per week	25

^aMay not exceed minimum basic rate for a GS-10.

Certain Federal Communications Commission and Coast Guard employees who perform marine inspections are compensated for working night overtime and on Sundays and holidays under laws containing provisions similar to those in the Customs and INS premium pay laws. We did not review the premium pay regulations and practices of these agencies due to the minor amounts paid.

In commenting on this report, Customs stated that neither commercial employees or other Federal employees are normally assigned to uncontrollable overtime assignments, day after day, Sunday after Sunday, and week in and week out. Justice also stressed the hardships of the inspectors' job in its comments.

Scheduling of Sunday as a regular workday

We inquired at selected Federal agencies which employ personnel who, by the nature of their work, must work on Sundays as to whether Sundays are scheduled as part of the regular workweek. Officials of these agencies said certain employees, such as employees of the Forest Service, Department of Agriculture, stationed at national forests; U.S. Park Service personnel of the Department of Interior stationed at national parks and seashores; Customs Service patrol officers stationed at ports-of-entry; and certain civil service employees in PHS and the Veterans Administration hospitals, are required to work on Sunday as part of their regular workweek and are compensated under FEPA. Also section 203 of Public Law 93-82, enacted on August 2, 1973, granted nurses in the Veterans Administration additional compensation for each hour of service on a Sunday, when part of a regular tour of duty, at a rate equal to 25 percent of the hourly rate, which is the same as the FEPA rate.

Civil Service Commission responsibilities

The Civil Service Commission (CSC) is responsible for issuing the regulations for administering FEPA. Inspectors of the four agencies are compensated in accordance with FEPA and the CSC regulations for their basic work hours and also for any overtime worked during hours other than those prescribed in the premium pay laws. However, the four agency heads prescribe the regulations for administering the premium pay laws of their agencies. We discussed with CSC officials the inequities in night overtime, Sunday, and holiday pay to inspectors at ports-of-entry which have been created by the laws and regulations. We inquired whether CSC was authorized to review the regulations and, to the extent permitted by the laws, require the agencies to adopt uniform regulations.

According to these officials, CSC does not have any jurisdiction over the special premium pay regulation of these agencies. We were informed, however, that CSC does have a continuing interest in the pay laws and regulations of these agencies and that it has reviewed these laws and regulations during its personnel evaluation reviews at the agencies.

In 1955 an interagency committee headed by CSC studied overtime pay for Federal inspectional employees and concluded, among other things, that there should be a single premium pay law for them. As a result of this study, a bill was introduced in the Congress in 1956, which would have placed Customs, INS, Agriculture, and PHS under one premium pay law. The bill, however, was never reported out of committee.

Commercial overtime practices

We obtained the following information on the overtime pay practices of commercial airlines. For ground personnel the usual workweek consists of any 5 consecutive days. They are generally paid one and one-half times their basic rate for overtime. An exception to this general rule provides that overtime exceeding 12 hours of any workday be reimbursed at twice the basic rate. A minimum duty period of 3 to 4 hours at overtime rates is guaranteed for callback time. Employees called back on their first day off are paid one and one-half times their regular rate for the hours worked and at twice their regular rate if called back on their second day off.

Sundays may be part of the regular workweek. Pay for holiday work is generally two and one-half times the basic rate

CONCLUSIONS

There should be one premium pay law applicable to the inspection agencies for services at the ports-of-entry. To assure uniformity one agency should be responsible for issuing implementing regulations. Pending the consideration of such legislation, the agencies concerned should, to the extent permitted by current laws, develop uniform regulations on premium pay.

RECOMMENDATION

We recommend that the Secretaries of the Treasury; Agriculture; Health, Education, and Welfare; and the Attorney General review their regulations implementing their premium pay laws for inspectors at ports-of-entry and, to the extent permitted by the laws, develop uniform regulations on pay for overtime, Sunday, and holiday work.

We recommend also that the Chairman of CSC, because of its responsibilities for issuing the regulations governing the pay of most Federal employees, help the agencies develop these uniform regulations.

AGENCY COMMENTS AND OUR EVALUATION

All the agencies directly concerned agreed with our recommendation. CSC said that, upon request from the agencies, it would be glad to assist in this endeavor. Justice and Customs stressed the difficulties in developing uniform regulations. None of the agencies indicated any definite plans or time frame for adopting uniform regulations. We believe that the CSC should take the lead in setting up the meetings, discussions, and proposals needed to achieve uniform regulations on pay for night overtime, Sunday, and holiday inspections at ports-of-entry to the extent permitted by current law.

We also requested the agencies concerned to give us their views on the merits and disadvantages of several legislative alternatives to achieve uniform overtime pay for Federal inspectors at ports-of-entry. The alternatives suggested were legislation which would provide overtime, Sunday, or holiday pay in accordance with (1) FEPA, (2) FEPA with some modifications to provide travel allowances for employees called back to duty and remove the limitation which restricts overtime rates to the minimum overtime rate of a GS-10, (3) provisions similar to that applicable to employees who work administratively uncontrollable, irregular unscheduled overtime, (4) employees in comparable non-Government operations, and (5) that applicable to the PHS inspectors.

The agency comments, included as appendix II, are summarize below.

- Customs described the present maze of laws, rules, and regulations as inconsistent, confusing, and irritating but did not find much merit in the suggested alternatives. Customs emphasized the effect on employee morale of any substantial reduction in annual earnings. It also pointed out that the inspectors are required to work long and arduous hours and eat and sleep irregularly.
- Justice found some merit--greater use and flexibility of manpower and premium pay comparable to most Federal civilian employees--in adopting FEPA legislation but emphasize the hardships of an inspector's job. It presented some disadvantages or did not comment on the other suggested alternatives and felt that the inspectors fully earn the extra compensation provided under current law.
- APHIS said that it has been the policy of the Department of Agriculture for many years that there should be a uniform premium pay rate for inspectors at the ports-of-entry. It favored legislation which would provide premium pay as in FEPA, with modifications concerning traveltime and the limitations on the pay rate.
- PHS agreed that there was a need for a uniform premium pay system and said it would be pleased to cooperate with the other interested agencies in developing one. It did not comment on the suggested alternatives.
- The Office of Management and Budget (OMB) said it has favored legislative proposals which would achieve uniformity in premium pay for inspectors without creating or extending inequities vis-a-vis other Federal employees.
- CSC said that it favored legislation which would make the premium pay provisions of FEPA applicable to the inspectors at the ports-of-entry. It suggested, however, that consideration be given to a transition period from the current special premiums to the standard pay provisions.

Concerning the need for a change in the law, we recognize that some inspectors now work long irregular hours and sometimes sleep and eat irregularly and that the adoption of new legislation which would reduce the annual earnings of the inspectors would meet with resistance from the unions and employees.

In most situations, the need for some employees to work long hours on a sustained basis can be overcome by hiring and training new employees. The option is attractive to management since the additional employees will usually be paid at straight time instead of overtime rates. The peculiarities of the laws pertaining to inspections at the ports-of-entry, however, limit the extent to which this solution can be applied.

For example, the laws applicable to Customs and INS provide that inspection employees will receive 2 additional days' pay for work on Sunday. As shown on page 10, premium pay for work on Sunday made up a large part of the total premium pay at the locations we visited. Sunday is not scheduled as part of the basic workweek by either agency because, as shown on page 8, to do so would result in the inspectors' receiving 7 days' pay for 5 days' work. Sunday is therefore scheduled as overtime, and, if the inspector works 8 hours on Sunday and has no other overtime, he will receive 7 days' pay for 6 days' work.

The hiring of additional employees would not reduce the number of Sunday premium pay hours since anyone performing inspections on a Sunday, even WAEs (see p. 24), must be paid 2 days' pay. Some reduction in night overtime can be achieved by having such work performed by WAEs who are not entitled to premium pay for work on weekdays. The hiring of more regular employees and WAEs or extending the port hours to reduce night overtime, however, could be costly to the Government because most overtime pay is billed to the party-in-interest, while salaries paid during nonovertime periods are absorbed by the Government.

The agencies concerned agree on the need for a uniform law for overtime pay to Federal inspectors at the ports-of-entry. Customs and INS, however, stress the long irregular hours which their inspectors must work. Justice also noted that under present law some INS employees refuse promotion to a higher grade if such promotion involves the loss of overtime and a lower gross pay per annum.

In our opinion, the present system results in a vicious circle which can be broken only with new legislation. The premium pay rates are now apparently so attractive that many inspectors willingly work the long and irregular hours required to earn the premium pay which greatly increases their gross annual pay. Only by making such work less attractive--such as permitting the scheduling of Sunday as part of the regular workweek at the 25-percent premium required by FEPA--will the employees willingly relinquish some of the long hours they now work.

Because of the irregular hours and other hardships associated with some inspection assignments at the ports-of-entry, we believe that some modifications in FEPA would need to be made if the law were made applicable to the inspectors at ports-of-entry. The inspectors should be paid for traveltime if they are called back to duty after their regular tours of duty or on days they are not scheduled to work. Their overtime payments should be computed at their basic rates and should not be limited to the minimum overtime rate of a GS-10 employee.

The reduction in the number of overtime hours would require the hiring of additional employees. Whether the cost of hiring additional inspectors would increase or decrease the Government's cost would depend, to a large extent, on any changes in law concerning the reimbursability of inspection costs discussed in chapter 3.

MATTERS FOR CONSIDERATION BY THE CONGRESS

We recommend that the Congress enact one premium pay law to apply to the four inspection agencies for services at ports-of-entry. To insure uniformity, we recommend that the responsibility for issuing implementing regulations be given to one agency, such as CSC.

We recommend that the Congress consider legislation which would provide that the overtime, Sunday, and holiday pay of inspectors at ports-of-entry be determined in accordance with FEPA with some modifications, such as removing the limitation which restricts overtime payments to the minimum overtime rate of a GS-10 and providing that inspectors be paid for travel-time when called back to duty after their regular tours of duty or on days they are not scheduled to work.

To ease the impact of such a change, consideration should be given to providing a transition period from the current special premiums to the modified FEPA pay provisions.

As noted on page 31, we did not review payments to a small number of employees of the Federal Communications Commission and the Coast Guard who are compensated under premium pay provisions similar to those applicable to Customs and INS. The Congress may wish to consider whether any change in legislation should also cover these employees.

CHAPTER 3

NEED FOR CHANGE IN THE LAWS AND REGULATIONS PERTAINING TO PORT-OF-ENTRY SERVICES WHICH ARE REIMBURSABLE

Under present laws and regulations many circumstances affect when and how much the party-in-interest pays for inspections rendered by the four agencies at ports-of-entry. As discussed previously, the number of hours of overtime pay for the same hours of work can vary substantially between the agencies and this affects the amounts billed to the party-in-interest. In addition, billings to the party-in-interest for three of the four agencies are based on the overtime payments made to the inspectors, and the fourth agency charges a flat hourly rate.

LAWS AND REGULATIONS NOT UNIFORM FOR REIMBURSABLE SERVICES

The premium pay laws and regulations of the four agencies also contain provisions requiring the party-in-interest to reimburse the Government for a large part, but not all, of the overtime, Sunday, or holiday pay inspectors receive. Thus a party-in-interest might pay for the services of one or more of the agencies inspecting the same flight and not pay for the others.

For example:

1. Customs, in accordance with its law, bills the party-in-interest for all flights inspected for which it pays overtime, Sunday, or holiday pay. This includes all regularly scheduled flights, nonscheduled flights, and charter flights. (See p. 52 for the limitation on the charges for inspecting private aircraft and vessels.)
2. The law provides that extra compensation paid by INS to its inspectors for overtime, Sunday, or holiday service not be charged to regularly scheduled flights. INS regulations provide that this extra compensation for inspections at airports be reimbursable only when a regularly scheduled flight arrives 1 hour or more off schedule or if a non-

scheduled or chartered plane is inspected during overtime or on Sundays and holidays.

INS regulations require that the entire payment due the inspector for overtime, Sunday, or holiday work be charged to the parties not exempted from payment by the law. As a result, INS inspectors can inspect a combination of regularly scheduled flights which arrive on time, late arriving scheduled flights, and nonscheduled and charter flights on a Sunday and the pay they earn will be charged to the late arrivals and to the nonscheduled and charter flights. In effect, the nonexempt flights are paying for the inspections of the regularly scheduled flights which arrive on time.

3. The Agriculture law authorizes the Secretary of Agriculture to accept from persons for whom overtime, night, or holiday inspections are performed reimbursement for any sums paid by him for such work. Pursuant to this authority, Agriculture's instructions provide that regularly scheduled flights arriving on Sundays or holidays are inspected on a nonreimbursable basis if they arrive during the scheduled overtime working hours of the inspectors on duty. Nonscheduled and charter flights arriving on Sundays or holidays are treated in the same manner; however, if additional inspectors are needed during these periods, their extra compensation is reimbursable by the airlines serviced. Overtime services performed during night overtime periods for any type of flight are reimbursable.

The practice of assigning inspectors to Sunday and holiday overtime duty is not consistent within Agriculture. Agriculture generally assigns enough inspectors to handle the flights arriving on a Sunday or holiday at Logan International Airport, and the Government is not reimbursed for their overtime payments. On the other hand the policy at Dulles International is to assign one inspector to work on Sundays and holidays and call in another if needed. For 1 month reviewed by us, this additional inspector was called in each Sunday and on the one holiday

occurring that month and his overtime pay was charged to the flights receiving his service. Also Agriculture did not assign inspectors to Sunday duty at the Seattle-Tacoma International Airport and all inspections were reimbursed by the party-in-interest.

4. The Public Health Service Act exempts regularly scheduled flights from reimbursement for any extra compensation paid to PHS inspectors on Sunday, holiday, or overtime assignments. PHS regulations provide further that there be no charge for services to nonscheduled or charter flights arriving at any time inspectors on a regular tour of duty are available to perform the necessary inspections.

The following examples demonstrate how the above reimbursable practices affect charges for inspections at airports visited.

<u>Flight</u>	<u>Airport</u>	<u>Arrival Time</u>	<u>Reimbursable</u>			
			<u>Customs</u>	<u>INS</u>	<u>Agriculture</u>	<u>PHS</u>
A	Dulles International	2:15 p.m. (Sunday)	yes	no	Partly	no
B	Logan International	3:30 p.m. (Sunday)	yes	yes	no	no
C	Logan International	8:15 p.m. (weekday)	yes	yes	yes	no

Flight A was a scheduled flight which arrived on a Sunday at 2:15 p.m. Since this was a scheduled flight which arrived within 1 hour of its scheduled arrival time, INS and PHS did not charge for the inspection. Two Agriculture inspectors inspected this flight. One had been assigned to Sunday duty, and his overtime pay was absorbed by the Government. The other had been called in and the airline was therefore charged for his services. Customs charges for all Sunday inspections.

Flight B was a scheduled flight which arrived 1 hour late on a Sunday at 3:30 p.m. Since this flight was 1 hour late, INS charged for the inspection. Agriculture inspected

this flight with an inspector assigned to Sunday duty, and therefore no charge was made. PHS does not charge for any scheduled flights, while Customs charges for all Sunday inspections.

Flight C was a scheduled flight which arrived 3-1/2 hours late on a weekday at 8:15 p.m. Although this flight was within Customs and INS duty hours, Customs charged for the inspection since additional inspectors had to be held over to work this flight. INS charged for its inspection since the flight was more than 1 hour late and additional inspectors had to be held over. Agriculture charged for its inspection since the flight was inspected after its duty hours. PHS did not charge for its services since the flight was a scheduled flight. One PHS inspector remained on duty after his regular duty hours to inspect this flight, and the Government absorbed his overtime pay.

BASIS FOR CHARGE NOT UNIFORM FOR REIMBURSABLE SERVICES

Customs, INS, and PHS laws state that the extra compensation paid to inspectors shall be paid by the party requesting the service. Agriculture's law states that the Secretary of Agriculture shall accept from persons for whom overtime, night, or holiday work is performed reimbursement for any sums paid for such work.

When a party-in-interest is charged, Customs, INS, and PHS charges are based on the overtime, Sunday, or holiday payments made to the inspectors. No charge is made for related overhead items. Agriculture, however, makes a flat hourly charge for reimbursable services, which includes clerical and administrative costs.

CONCLUSIONS

There should be one law establishing a uniform policy on the charges to be made to the parties-in-interest for inspections at ports-of-entry. The agencies concerned should, to the extent permitted by current laws, develop uniform regulations on the charges to be made to the parties-in-interest.

RECOMMENDATION

We recommend that the Director, OMB, help the agencies develop these uniform regulations.

AGENCY COMMENTS AND OUR EVALUATION

We requested the agencies to comment on the merits of the following legislative alternatives: (1) no charge to the parties-in-interest for any inspections, (2) require the parties-in-interest to pay the full cost of all inspections except those at border crossings, (3) same as (2) but retain the \$25 limit on charges to operators of private aircraft or vessels, and (4) require that there be established at each port-of-entry specific days and times during which the full cost of inspections performed by any of the four agencies would be charged to the parties-in-interest.

The agencies favored charging the parties-in-interest for inspections. Customs and APHIS preferred establishing specific days and times during which the full cost of inspections by any of the agencies would be charged to the parties-in-interest. Justice also preferred this alternative and recommended retaining the \$25 limit on the charges to private aircraft and vessels.

Customs likened the establishing of specific days and times during which the full cost of inspections by any of the four agencies would be charged to the parties-in-interest to the present practice. For Customs, in many instances there might be little change, but there would be some and for some of the other agencies there would be major changes. For example, if the agencies established port hours of 8 a.m. to 8 p.m. at a certain airport with all inspections during these hours being without charge and all inspections during other hours being charged to the parties-in-interest at full cost, the following changes would occur:

1. Whether there was a charge would depend on the time of the inspection and not whether the inspectors were in an overtime status.
2. Any charge would be at full cost and therefore would include overhead. Only APHIS now charges for overhead.

3. Whether a flight was scheduled, unscheduled, or chartered would not affect whether a charge would be made.

The agencies directly concerned agreed on the need for uniform reimbursement regulations, to the extent permitted by current law, and OMB said it would be willing to help the inspection agencies develop them. The agencies gave no definite plans or time frame for achieving this objective. We believe OMB should take the lead in setting up the meetings, discussions, and proposals necessary to develop uniform reimbursement regulations.

We believe that the charges to the party-in-interest for Federal inspections of any of the four agencies at ports-of-entry should (1) be geared to the days and hours such services are performed rather than to the overtime status of the employees and, with respect to aircraft, whether the flight is scheduled, unscheduled, or chartered, and (2) be based on full cost, including overhead.

MATTERS FOR CONSIDERATION BY THE CONGRESS

We recommend that:

- The Congress enact legislation establishing a uniform policy on the charges to be made to the parties-in-interest for inspections at ports-of-entry.
- The Congress consider legislation which would require that there be established at each port-of-entry specific days and times during which full cost, including overhead, of inspections performed by any of the four agencies be charged to the parties-in-interest.

To insure uniformity in the regulations implementing the law, OMB should be given the responsibility for issuing such regulations.

CHAPTER 4

SCOPE OF REVIEW

We examined the laws and regulations pertaining to overtime pay for inspectors of Customs, INS, APHIS, and PHS. Our work included discussions with officials of these agencies at their headquarters and regional offices and at ports-of-entry. Our work was performed at the headquarters of each agency and at the following ports-of-entry.

- Logan International Airport, Boston, Massachusetts.
- Dulles International Airport, Chantilly, Virginia.
- Seattle-Tacoma International Airport, Seattle, Washington.
- Bangor International Airport, Bangor, Maine.
- Blaine, Washington, Border Crossing.
- Highgate Springs, Vermont, Border Crossing.
- Port of Boston, Boston, Massachusetts.
- Port of Seattle, Seattle, Washington.

We directed our review to obtaining information on the practices followed by the four agencies for assigning their inspectors to overtime, Sunday, and holiday duty; compensation for such duty; and the practices for charging the parties receiving the service. We obtained this information for inspections at international border crossings, seaports, and airports, but our work was performed primarily at international airports.

SUMMARY OF PREMIUM PAY AND REIMBURSABLE
PROVISIONS OF THE FOUR FEDERAL AGENCIES
PERFORMING INSPECTIONS AT PORTS-OF-ENTRY

PREMIUM PAY PROVISIONS

Customs

Sundays and holidays

Customs regulations issued pursuant to 19 U.S.C. 267 provide that the rate of extra compensation for Sundays or holidays be twice the gross daily rate of an inspector's regular pay for service performed during an 8-hour period from the start of the first assignment regardless of the time served within the 8 hours whether it is served continuously or in broken periods, or whether it covers one or more inspection assignments. Services exceeding those performed within 8 hours on a Sunday or holiday are compensated on the same basis as overtime service performed at night on a weekday.

Callback pay

Customs regulations provide that, if an inspector is called back to duty within the first 4 hours of the night after his normal tour of duty ends, he is compensated from the end of his tour of duty to the end of the service. If an inspector is called back 4 or more hours after his normal tour of duty ends or more than 2 hours before the end of the night (8 a.m.), he is compensated for the time of his service plus 4 hours (1 day's pay). Inspectors are also allowed the callback time on Sunday if called back to duty more than 8 hours after the start of the first Sunday duty assignment. In no case is an inspector's weekday overtime rolled back before 5 p.m.

Decisions affecting Sunday, holiday,
and night overtime pay

There have been numerous court decisions concerning night overtime, Sunday, and holiday pay for Customs inspectors. A principal case was settled by the Supreme Court in 1944 in United States v. Myers (320 U.S. 561). The Court

APPENDIX I

upheld the position of Customs employees that were entitled to extra pay under the law when serving at international bridges, tunnels, and ferries on regular tours of duty on Sunday or holidays, even though they had received another day off for the Sunday or holiday worked. The Court also construed the statute to require extra compensation for inspectors without regard to the hours of the day or whether such services are additional to a regular workweek. Another Court decision (O'Rourke v. United States, 109 Ct. Cl. 33, 1974) held that Customs inspectors were entitled to the extra compensation under the 1911 act for work at international highway crossings where the Government is not reimbursed for such services.

INS

Sundays and holidays

INS regulations issued pursuant to 8 U.S.C. 1353a provide that the compensation rate for Sundays or holidays is twice the basic rate. INS requires full-time inspectors to perform 8 hours of inspectional or administrative duties on such days.

Service exceeding 8 hours performed during the 24 hours of a Sunday or holiday is compensated on the same basis as overtime performed at night on a weekday.

Callback pay

INS regulations provide further that an inspector is entitled to 2 additional hours of compensation (1/2 day's pay) if called in during the night on a weekday 2 or more hours after completing his normal tour of duty or 2 or more hours after completing an aggregate of 8 hours on a Sunday or a holiday. If he is called back within the first 2 hours after completing his normal tour, he is compensated from the end of his normal tour of duty. However, in no case is the overtime rolled back before 5 p.m. on Monday through Saturday.

Decisions affecting Sunday, holiday, and night overtime pay

There have also been numerous Court decisions concerning payments of night overtime and Sunday and holiday pay

to INS inspectors. The courts have followed the decisions in the Myers case (see p. 47) and similar benefits have been extended to INS inspectors for tours of duty on Sundays and holidays, whether or not the Government is reimbursed for such services.

APHISSunday and holiday duty

As stated on page 4, 7 U.S.C. 2260 authorizes the Secretary of Agriculture to pay inspectors for all overtime, night, or holiday work at such rates as he may determine. He has issued regulations providing that compensation for Sunday duty is twice the basic rate for a minimum of 2 hours, or the number of hours worked, plus locally established traveltime compensated at the FEPA overtime rate of 1-1/2 times an inspector's regular hourly rate, not to exceed the minimum hourly rate of a GS-10. Holiday duty is compensated at the inspector's regular hourly rate for the number of hours worked during his normally scheduled duty hours, plus locally established traveltime at the FEPA overtime rate. He also receives 1 day's pay for the holiday. Hours worked outside his normally scheduled hours on holidays are compensated at the FEPA overtime rate.

Callback pay

Agriculture regulations provide that, when called back for overtime, inspectors receive a travel allowance computed at the FEPA overtime rate plus pay for a minimum work period of 2 hours computed at the FEPA overtime rate on weekdays and on holidays for hours worked outside normally scheduled hours. Compensation for Sunday is twice their hourly rate for a minimum of 2 hours plus traveltime at the FEPA rate. The travel allowance is determined by the local Agriculture officials but generally may not exceed 3 hours. Thus, if an inspector whose weekday tour of duty ends at 5 p.m. is called back at 8 p.m. and works until 9 p.m., he receives a travel allowance generally not to exceed 3 hours plus a minimum of 2 hours' work, or up to 5 hours at 1-1/2 times his hourly rate or 1-1/2 times the minimum hourly rate of a grade 10, whichever is lower.

PHSSunday and holiday duty

PHS regulations provide that inspectors be compensated for each hour worked or fraction thereof and for up to 2 hours' standby duty on Sundays and holidays, if such duty does not fall within a regular tour of duty of the employee. Holiday duty falling within a regular workweek is compensated at the

inspector's regular hourly rate of pay for the number of hours worked up to 8 hours. He also received 1 day's pay for the holiday. For duty on a Sunday which is part of an employee's basic workweek, he receives a 25-percent premium.

Callback pay

The regulations provide that an inspector who starts night overtime, Sunday, or holiday duty at least 2 hours beyond his last regular tour of duty receives 2 hours' callback pay plus 1 hour's pay for any part of the first hour of work, for a minimum of 3 hours, computed at twice his hourly rate. For example, if an inspector whose regular tour ends at 6 p.m. is called for overtime at 9 p.m. and works until 11 p.m., he receives 4 hours of overtime pay--2 hours' callback and 2 hours' work time, which equals 8 hours at his regular pay. If an inspector is called back less than 2 hours after the end of a regular tour of duty, he receives callback only to the end of his regular tour of duty; however, his time is never rolled back beyond 6 p.m. Monday through Saturday.

REIMBURSABLE PROVISIONS

Customs

Under 19 U.S.C. 67 Customs is reimbursed for overtime services by the parties-in-interest for all inspections on Sundays or holidays or during night overtime periods except those at border crossings. At airports this policy applies to all scheduled, nonscheduled, and chartered flights.

INS

According to 8 U.S.C. 1353b, extra compensation paid by INS to its inspectors shall be reimbursed by the party-in-interest with certain exceptions. Although the inspector at an airport receives premium pay for night overtime, Sunday, and holiday duty, the Government is not reimbursed if the flight is a regularly scheduled flight. However, by regulation the overtime is reimbursable when a regularly scheduled flight arrives 1 hour or more off schedule or if a nonscheduled or chartered

APPENDIX I

plane is inspected. In effect, the only overtime for which INS receives reimbursement for the premium amounts paid to inspectors is for arriving vessels (other than those on the Great Lakes), charter and unscheduled flights, and scheduled flights arriving 1 hour or more off schedule.

APHIS

According to 7 U.S.C. 2260 the Department is authorized to accept reimbursement for any sums paid for overtime, night, or holiday inspections. Agriculture has made some exemptions. Regularly scheduled commercial flights arriving on Sundays or holidays are serviced on a nonreimbursable basis if they arrive during the scheduled overtime hours of the inspectors. Non-scheduled and charter flights arriving on Sundays or holidays are treated in the same manner; however, if additional inspectors are needed during these periods, their extra compensation is reimbursable by the airline. Services performed during overtime hours on weekdays are reimbursable.

PHS

The Public Health Service Act provides that extra compensation paid to inspectors be reimbursed by the party receiving the service, with certain exemptions. One exemption provides that PHS always inspect regularly scheduled flights on a non-reimbursable basis, regardless of whether the service is performed on Sundays or holidays or after duty hours. Also PHS regulations provide that any inspections of nonscheduled or charter flights during duty hours on Sundays and holidays be performed on a nonreimbursable basis. Inspections of non-scheduled and charter flights arriving after duty hours on weekdays, Sundays, and holidays are performed on a reimbursable basis.

Private aircraft and vessels

Public Law 91-258, approved May 21, 1970, in section 53 states that the maximum amount payable by owners of private aircraft or vessels for services performed by Customs, PHS, INS, and APHIS on Sundays or holidays or between 5 p.m. and 8 a.m. on other days shall not exceed \$25. One agency performs a primary inspection of the

APPENDIX I

private aircraft or vessel; the determination as to which agency performs this service is made locally. If an inspector from one of the other agencies must be called out, the inspector performing the primary inspection collects the amount due.



UNITED STATES CIVIL SERVICE COMMISSION

IN REPLY PLEASE REFER TO

WASHINGTON, D.C. 20415

YOUR REFERENCE

AUG 5 1974

Mr. Forrest R. Browne
Director, Federal Personnel and
Compensation Division
General Accounting Office
Washington, DC 20548

Dear Mr. Browne:

We appreciate the opportunity to comment on the draft of your report to the Congress on the Review of Payments for Overtime Services of Federal Agencies at U.S. Ports-of-Entry. The Commission has long been concerned about the excessive overtime compensation authorized by law for inspectors at ports-of-entry.

A great deal of effort was devoted to this subject by the Commission in the 1940's and 1950's and a legislative proposal was developed and sponsored by the Administration in 1956 and 1957 but it did not receive consideration by the Congress. More recently, in December 1969, in reporting to the House Committee on Post Office and Civil Service on a bill that would have extended the special pay provisions applicable to customs and immigration inspectors to certain other inspectors, the Commission urged that steps be taken to eliminate these special provisions rather than to extend them.

[34] With respect to the alternatives that Congress might consider in establishing a uniform premium pay law, (pages 6a and 6b of the draft report), we believe that number 1 is the most desirable. This approach would afford port-of-entry inspectors the same treatment so far as overtime and other premium pay is concerned as that which is afforded to other Federal employees.

See GAO note, p. 55.]

We would suggest that another alternative be considered which would have the same final objective but which would provide a period of transition from the current special premiums to the standard pay provisions.

[34]

[See GAO
note.]

On page 52 of the draft, you recommend that the Secretaries of Treasury, Agriculture, Health, Education and Welfare, and the Attorney General review their regulations and to the extent permitted by law develop uniform regulations on pay for overtime, Sunday and holiday work. You further recommend that the Commission assist the agencies in this work. Upon request from the agencies concerned, the Commission will be pleased to assist in this endeavor.

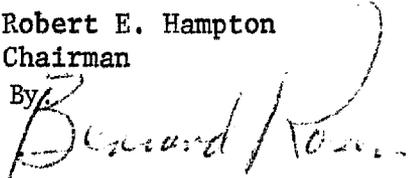
Should you wish to discuss this subject with us, please call Mr. Raymond C. Weissenborn, Chief, Pay Policy Division, on 632-5570.

Sincerely yours,

(Out of city)

Robert E. Hampton
Chairman

By



Bernard Rosen
Executive Director

GAO note: The numbers in brackets refer to the final report

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUL 9 1974

Honorable Elmer B. Staats
Comptroller General
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Staats:

This is in reply to Mr. Victor L. Lowe's May 9, 1974 letter in which he requested comments on a GAO draft report titled, "Report to the Congress on the Review of Payments for Overtime Services of Federal Agencies at U.S. Ports-of-Entry."

The report appears to accurately describe the problems of unequal premium pay for inspectors and the lack of uniformity in charges for inspection services at ports-of-entry. The problems are of long standing with a history of unsuccessful attempts for corrective action through legislation. Historically, we have favored legislative proposals which would achieve uniformity in premium pay computation for inspectors without creating or extending inequities vis-a-vis all other Federal employees. Our position today is the same.

With respect to reimbursement from parties-of-interest for overtime inspection services, we believe that it is warranted and should not be eliminated. We agree with your recommendation on the need for uniform reimbursement regulations and would be most willing to assist the inspection agencies in developing them, to the extent permitted under current laws.

We appreciate the opportunity to comment on your draft report and share your interest in improving inspection activities at ports-of-entry.

Sincerely,


Frederic V. Malek
Deputy Director



THE DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

JUL 22 1974

Dear Mr. Abston:

The enclosed comments obtained from the U.S. Customs Service concern the GAO draft report on a Review of Payments for Overtime Services of Federal Agencies at U.S. Ports-of-Entry. The response generally agrees with the report's conclusions that Congress, Treasury, and the other specified Federal agencies should work toward one law and consistent implementing regulations for overtime pay to Federal inspectors and also a uniform policy on charges assessed parties-in-interest for such services.

At the same time, the response cautions that uniformity will be difficult to achieve because of the impact on wages and reimbursements and other impediments. While we are certainly open to examining the matter again, I would add that past studies including the 1955 inter-agency study mentioned in the report have not led to resolution of the problems.

The Customs response contains a number of other comments which you may wish to consider in preparing a final report.

Sincerely yours,

Warren F. Brecht
Assistant Secretary for Administration

Mr. Oliver Gene Abston
Assistant Director, General
Government Division
U.S. General Accounting Office
Washington, D. C. 20548

- GAO notes:
1. Deleted comments related to matters discussed in the final draft report but omitted from this final report.
 2. Numbers in brackets refer to the final report.

Enclosure



DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

WASHINGTON



JUL 12 1974

REFER TO

AUD-5-S:A:I HJ

Dear Mr. DeZerne:

The General Accounting Office report has been reviewed by officers of the U.S. Customs Service and the following comments are provided for your use in preparing a reply to the General Accounting Office.

General Comments

A. Discrepancies In Overtime Compensation and Reimbursement Requirements

Disregarding the technical accuracy of the statistical information and assertions contained in the report, the fact of the wide inter-agency variances in the methodology of overtime compensation computations and reimbursement requirements cannot be refuted or ignored. In addition to the interagency variances there also exist intra-agency variances which, when considered with those cited in the report, present to individuals and firms doing business with all four agencies a maze of laws, rules and regulations which can only be described as inconsistent, confusing and irritating. The two following examples, which are everyday occurrences within Customs operations are presented to illustrate intra-agency variances.

1. When regular, full-time employees and part-time W.A.E. employees are assigned to perform night services for a party-in-interest, the full-time employees receive overtime compensation under the provisions of 19 U.S.C. 267, the Customs overtime statute, and the party-in-interest is required to reimburse the cost to Customs. The part-time W.A.E. employees, however, who worked side by side with the full-time employees, receive compensation at their regular rate of pay and the related cost is not reimbursable by the private party. This condition exists as a result of Comptroller General Decision B-167804, wherein it was decided, part-time W.A.E. employees are not entitled to earn overtime compensation under the provisions of 19 U.S.C. 267 for services performed during the night hours on weekdays.

2. When a tour of duty covering a period of the night, i.e., 4 p.m. to 12 midnight, is established at a port of entry, the assigned employee receives regular compensation plus night differential and normal Customs services are provided free. However, when the occasion arises where the employee scheduled to work the established night shift fails to report for duty because of illness, etc., necessitating the assignment of another inspector, on his scheduled day off, to work the hours of the established tour, the normal conditions of the port are reversed. Customs service is no longer provided free, users are notified accordingly and required to request all services; overtime compensation, under the provision of 19 U.S.C. 267, is paid the employee and reimbursement is required.

While most of the current inconsistencies are specifically attributable to differences in the governing overtime statutes, a limited number, as stated in the report, are attributable to implementing agency regulations. The GAO recommendation, concerning the establishment of an interagency committee to review existing agency regulations for the purpose of eliminating conflicting provisions, is, therefore, valid. The specific objectives of the committee, established within a framework of cost consciousness and impact on employee morale, must be clearly defined and firmly fixed prior to its commencing work on this paramount project.

B. Comments Concerning GAO Recommendations on Alternative Overtime Compensation Methods and Reimbursement Requirements

The nature of the Customs overtime statute, 19 U.S.C. 267 makes inseparable, the overtime compensation paid the employee and cost recovery (reimbursement) from the requesting parties-in-interest. Despite the inseparable nature of the current law, the GAO report separates these two basic elements, compensation and reimbursement, and offers two separate sets of alternatives. The report, however, is silent with respect to the cost consequences of such an approach. The dangers inherent in this approach can be demonstrated by reviewing one specific discrepancy identified in the report. The Immigration and Naturalization Service, by statutory authority, furnishes free overtime services to scheduled airlines arriving on time, whereas Customs, by statutory direction, requires reimbursement. Should the Customs overtime statute be changed to provide for similar reimbursement requirements by both agencies, the Customs Service would have to incur an estimated \$7,000,000 in additional expenses each fiscal year.

APPENDIX II

The report is silent with respect to what impact the alternative compensation methods would have on an employee's total yearly overtime earnings. No estimated figures are provided to indicate what amount of overtime compensation an average employee could expect to receive, nor is there a comparison between amounts payable under the alternative methods with the amount currently being earned. Further, the report does not even consider the effect on employee morale if the earnings were to be less under the alternative methods. To imagine that a substantial downward deviation in annual earnings, particularly in conjunction with current inflationary trends, will not have any effect on employee morale is not realistic.

Consideration of the offered compensation and reimbursement alternatives without simultaneous consideration of the resulting impact on additional cost to the Government, deviations in average employee yearly earnings, employee morale, job attractiveness and recruitment difficulties, is not practicable. To reasonably evaluate the merits and disadvantages of the proposed alternatives would require an extensive, comparative study of the results of each individual alternative and the results of each possible combination of the five compensation and four reimbursement alternatives. As the short deadline available for replying to the report does not provide sufficient time to perform the necessary study, we cannot comment on the merits and disadvantages of the proposals. It is recommended, however, that such a study be performed by the GAO and the results be included in its final report to the Congress.

[34]

In general we concur with the recommendations on page 6 with respect to developing a uniform set of regulations for applying the existing overtime laws. The difficulties in doing so should not, however, be underrated. One of the reasons why the regulations of the agencies differ is because their missions differ, their approaches to carrying out their respective missions differ, and the number and caliber of personnel differ. Another is the great diversity of circumstances and situations in which premium pay may be or is applicable. Still another is the varying attitudes of a number of employee organizations on this subject. Whether the Civil Service Commission, the Office of Management and Budget or, for that matter, any other organization can find sufficient common ground among these diverse factors to produce uniform regulations that are workable is at the very least debatable.

GAO recommends that Congress enact one premium pay law that would be applicable to the four inspection agencies. To insure uniformity, the responsibility for developing implementing regulations would be placed in one agency such as the Civil Service Commission. Again, we concur in general with this recommendation.

Specific Items

1. Determine in accordance with the Federal Employees Pay Act of 1945. There are two objections. First, it would discriminate against Federal employees because FEPA rates are lower than those paid in private industry for work performed on Sundays or holidays. Second, it would make the assignment of inspectors to Sunday and holiday work much more difficult. The inspector must hold himself available for assignment for the entire day regardless of the number of hours worked. Many such assignments are for the convenience of a party-in-interest, not because they are absolutely required to be performed on that day. Finally, many inspectors willingly work long hours of overtime because it is financially attractive to do so. Lessen that incentive and they will be discouraged to accept frequent assignments. It is unlikely that we would be in a position to order men to work beyond a reasonable number of hours.
2. The same as No. 1 with some liberalizing modifications such as removing the maximum overtime rate (GS-10) and allowing travel time to be included. This is an improvement but the same basic objections still apply, and the morale and union problems for both are awesome to contemplate.
3. Put on an administratively uncontrollable basis which requires a substantial amount of irregular, unscheduled overtime. This is not really applicable. Inspector overtime occurs because there is neither sufficient personnel nor justification to man all ports 24 hours per day, and because carriers and others choose to request services outside of regular hours.
4. Provide overtime scales similar to those paid employees in comparable (?) non-Government occupations such as ground personnel of commercial airlines. It is not clear why airline ground personnel was chosen as an example. However, to be equitable one would also have to consider the overtime rates paid longshoremen, rail yard workers, and truck drivers, and somehow strike a balance. This might be very difficult indeed, and the problem would remain of Customs or any other agency's

APPENDIX II

authority to order personnel to work overtime, and their willingness to accept unlimited overtime at other than the present premium rates.

5. Permit scheduling of Sunday as part of the basic work for which a 25% premium would be paid and provide that overtime be computed at twice the basic rate for each hour worked. This would require an increase in the Customs inspection force of approximately 25% or an additional 1,000 to 1,200 positions. The cost, at today's pay scales would be on the order of \$16 to \$19 million, and this would only cover Sundays and holidays.

GAO also recommends that Congress establish a uniform method of reimbursement and identifies a number of possible alternatives:

1. No charge to the parties-in-interest. This would require an enormous increase in Customs' budget and personnel. Not only would the Government have to pay for the services now being provided, but service would have to be available 24 hours a day, 7 days a week at all ports and stations.
2. Require the parties in interest to pay the full cost of all inspection services except those at border crossings, regardless of the time service is provided, the agency providing the service and, for aircraft arrivals, whether the flight is scheduled, unscheduled, or chartered. Does this mean during regular hours of service as well as during overtime hours? If so, the increased costs to the parties-in-interest would be substantial. If not, it generally reflects current practice.
3. Same as No. 2 but limit charges to private aircraft and vessels during premium pay periods and retain the \$25 limit as provided in present law. This again would require substantial increases in budget and personnel.
4. Require that there be established at each port of entry specific days and times during which the full cost of inspection services by any of the four agencies be charged to the parties-in-interest. This appears to be the present practice.

Specific comments on the contents of the Report

[See GAO note 1, p. 57.]

[6]

[See GAO
note 2,
p. 57.]

Page 10. The opening statement on premium pay does not recognize that many overtime services are provided purely for the convenience of the carrier, and not from some overwhelming necessity over which the carrier has no control. Examples include situations where the rescheduling of aircraft arrivals by as little as 1 hour would either substantially reduce, or eliminate, the need for overtime services; night and early morning boardings of vessels arriving from foreign at a time when absolutely no commercial activity can take place and the Customs services can just as easily be provided at 8 a.m., the following morning.

The statement that "Sunday is not scheduled as part of the inspectors' basic workweek" is correct. However, the implication is that this is an administrative determination. It is not. The Supreme Court ruled in 1944 (The Myers Case) that Sundays could not be included in the basic workweek. This should be made clear.

[See GAO note 1, p. 57.]

[6]

[See GAO
note 2,
p. 57.]

Page 15. Hours of service at international airports of arrival are based on published airline schedules which are usually changed only twice a year to coincide with the semiannual changes in standard and daylight time, and because these schedules are reasonably dependable and afford the basis upon which the available personnel can be assigned with the greatest efficiency. The arrival of charters, second-sections, and private aircraft while usually known in advance is not sufficiently dependable to schedule tours of duty to cover such arrivals.

APPENDIX II

Most management-labor agreements with employee associations, for example, provide for a minimum 2 weeks advance notice in assignments. In the circumstances there is no alternative but to cover such arrivals on overtime. In this connection, it might be mentioned that the arrival of vessels, while usually known in advance, is even less dependable. An offshore fog may delay the arrival of a vessel for as much as a week.

The statement that aircraft and vessel operators arriving outside regular hours of service cannot realistically detain their passengers is true. The statement that they have no option, in these circumstances, but to request overtime services is also true. What is not true is that they have no option as to their arrival time.

[See GAO note 1, p. 57.]

[11]

[See GAO note 2, p. 57.] Page 23. The assignment schedules at Logan on a "typical" Sunday in September 1972, are only intelligible if related to the number, passenger loads, and times of arrival of the scheduled and nonscheduled arrivals. All were correctly paid the same amount of overtime but there could be very sound reasons for the amount of time actually worked.

[13]

[See GAO note 2, p. 57.] Page 24. Hours of service at border ports. This is an oversimplification. While it is true that Sunday hours usually correspond to weekday hours, it is not so on the Canadian Border when hours of service are adjusted seasonally to correspond to the traffic. Sunday hours may or may not

correspond to weekday hours. Generally speaking, the hours of service in the summer are much longer than in the winter at less than 24-hour ports. Also it should be noted that the inspection services have no control over the traffic nor does any carrier since most of the traffic is composed of private vehicles. This is not true at airports and sea-ports where the carrier does have some control over arrival times.

In the remarks on Sunday and holiday compensation it should be made clear that an inspector who receives 16 hours of pay for 1 hour's work must be available for additional assignments during an 8-hour period for which he would receive no additional compensation. Only at the expiry of the first 8-hour period, would he be entitled to additional compensation if called out for another assignment, and they would continue to be on call during the second 8-hour period.

[13]

[See GAO note 2, p. 57.] Page 25. The same remarks as above apply here. In this connection, it should be noted that "on call" means an inspector must stay at home or be where he can be reached for the entire period. While it is not the same thing as being at work, it is not the same as not being at work.

It is true that 4 hours of call-back time are allowed when called back after completion of an 8-hour Sunday assignment period. It is also true that such occasions are extremely rare. It is much more frequent to call a second inspector if one is available.

[14]

[See GAO note 2, p. 57.] Page 26. The same remarks as above apply to the table on this page. It is true but completely misleading.

[28]

[See GAO note 2, p. 57.] Page 41. The section on commercial and other Federal overtime practices should note that neither group is normally assigned repetitively to uncontrollable overtime assignments, day after day, Sunday after Sunday, weekend and weekout.

[See GAO note 1, p. 57.]

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[34]

[See GAO Page 51. We are in general agreement with the conclusion. However, note 2, ever, we believe (1) that appropriate weight should be accorded p. 57.] the fact that most overtime services are performed by Customs and Immigration officers and not Agriculture and Public Health officers, and (2) that Joint Regulations issued by the four inspection agencies would be preferable to CSC regulations because overtime is not only a question of pay but also of operations with which the agencies themselves are the most familiar.

[See GAO note 1, p. 57.]

[43]

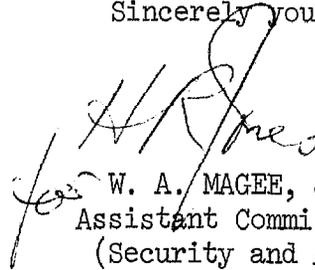
[See GAO Page 58. With reference to the cost of overtime services provided at border crossings, the statement should make it clear p. 57.] that the "charge" is paid for by the Government (i.e., non-reimbursable overtime), not that there is no need for a change in the law prohibiting such charge. The prohibition is in charging the public for the services.

[See GAO note 1, p. 57.]

Finally, it should be brought to the attention of GAO that Customs does try to administratively control abuses of reimbursable overtime. Headquarters Circular INS-2-MI x FIS-4-MI dated November 8, 1968, sets forth in great detail overtime policy. One of the major problems is that increasing workloads are absorbed by overtime assignments rather than by manpower.

and budget increases. Regular hours of service are based on the need for service and the manpower available for assignment. It has seldom been adequate. Inspectors are required to work long and arduous hours and even though there are periods when no work may be accomplished, he is required to be away from his home and family, eat and sleep irregularly, get up in the middle of the night, and be subject to long periods without proper rest or relaxation - so much so that in a few instances inspectors have actually rebelled at further overtime assignments.

Sincerely yours,



W. A. MAGEE, JR.
Assistant Commissioner
(Security and Audit)

Mr. Wilbur R. DeZerne
Director, Office of Audit
Department of the Treasury
Washington, D.C. 20220



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

OCT 18 1974

Mr. Victor L. Lowe
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Lowe:

This letter responds to your request for comments on the GAO draft report entitled, "Review of Payments for Overtime Services of Federal Agencies at U.S. Ports-of-Entry."

We agree with the recommendation that the Secretaries of Treasury; Agriculture; Health, Education and Welfare; and the Attorney General develop uniform regulations on pay for overtime, Sunday, and holiday work for inspectors at ports-of-entry to the extent permitted under current law. We also agree with the recommendation that the Civil Service Commission and Office of Management and Budget assist with the development of the above-mentioned uniform regulations. However, we recognize that any change in the current administrative regulations which implement the Act of 1931 would be met with strong opposition from employee organizations such as the American Federation of Government Employees, unless such changes result in additional pay or a reduction of the required hours of work while retaining the same pay. For this reason we find it difficult to anticipate that more uniform pay administration regulations can be developed by the four agencies without increasing the overall cost of overtime under the existing law.

In view of the above foreseeable difficulties, the Department agrees with the GAO proposal that Congress enact one premium pay law which would be applicable to the four inspection agencies for services performed at

GAO note: Deleted comments relate to matters discussed in the draft report but omitted from this final report.

ports-of-entry. Our views concerning the merits and disadvantages of the various alternatives suggested by GAO for consideration by Congress in establishing a uniform premium pay law are presented immediately after each alternative.

The first alternative suggests "legislation which would provide that the overtime, Sunday, and holiday pay of inspectors performing services at the ports-of-entry would be determined in accordance with the Federal Employees Pay Act of 1945, as amended."

We believe the merits of this alternative are that it:

1. Provides uniform premium pay comparable with the majority of Federal civilian employees.
2. Permits greater use and flexibility of manpower. Inspection personnel now often decline or ignore opportunities for promotion to higher grades for which they are qualified because transfer to other positions result in lower gross pay per annum.

The disadvantages of this alternative are that it:

1. Discontinues employee benefits attained by statute more than a half century ago. It seems unlikely that the Congress would repeal such legislation unless superseded by legislation of equal or greater benefit to the employee.
2. Does not provide adequate compensation for the work performed. Inspection personnel are available for duty day or night, weekdays, Sundays, or holidays, at the need of the traveling public entering the country via highway, ferryboat, steamship, aircraft, or train in all kinds of weather without commensurate consideration for the employee's personal and family life. The job requires that the employee be on standby for callout any hour of the day or night, any day of the year. The inspection employee is the first to greet the traveler from abroad;

APPENDIX II

he must be pleasant and at the same time thorough and discreet in conducting intensive examinations. His duty is at times hazardous to his health and life. He earns the extra compensation payable under the Act of March 2, 1931.

GAO's second alternative is the "same as 1 with some modifications such as removing the limitation which restricts overtime payments to the minimum overtime rate of a GS-10 employee and providing that inspectors be paid for travel time when called back to duty after completing their regular tour of duty or on days they are not scheduled to work."

We have no comments to offer on the merits of this alternative.

The disadvantage of this alternative is that it recognizes the extra compensation benefits of the Federal Employees Pay Act of 1945, as amended, are inadequate by offering additional benefits not now specified in the 1945 Act. The 1931 Act has these benefits available to inspection personnel now, under current law and INS regulations.

The third alternative suggests "legislation similar to that applicable to Federal employees who work administratively uncontrollable overtime which requires a substantial amount of irregular, unscheduled overtime duty."

We have no comments to offer on the merits of this alternative.

The disadvantage of this alternative is that the overtime pay hourly rate under 5 U.S.C. 5545(c) is generally only equal to or less than the base pay hourly rate, which is truly an inadequate rate. At this time there is pending in the U.S. District Court, Tucson, Arizona, a suit brought by over 500 Border Patrol Agents seeking a more adequate overtime rate than is now paid under 5 U.S.C. 5545(c).

The fourth alternative suggests "legislation which would provide overtime payments similar to those paid to employees in comparable non-Government occupations such as ground personnel of commercial airlines."

We have no comments to offer on the merits of this alternative.

The disadvantages of this alternative are that:

1. Commercial airline ground personnel duties are not comparable with those of Federal inspection personnel in a law enforcement agency.
2. The three airlines cited have varying rates.
3. If inspection personnel extra compensation benefits are compared to industry pay, we believe benefits under the 1931 Act would appear inadequate because of triple pay for Sunday duty in parts of the private sector, more holidays being recognized for pay purposes in parts of the private sector, and the present 1931 Act limitation of two and one-half days' pay for overtime duty between 5 p.m. and 8 a.m.

The fifth alternative suggests "legislation which would provide for overtime payments similar to those paid to Public Health Inspectors, i.e., permit the scheduling of Sunday as part of the employees basic workweek for which the employee would receive a 25 percent premium and provide that overtime payments be computed at twice the employees basic rate for each hour worked."

We have no comments to offer on the merits or disadvantages of this alternative. However, the wording in this alternative wherein it states "permit the scheduling of Sunday as part of the employees basic workweek" could be interpreted as implying that the Act of 1931 prohibits Sunday scheduling. The Act of 1931 does not prohibit the scheduling of Sunday as part of the employees basic workweek. Excluding Sunday from the employees basic workweek was an administrative determination made by INS. The 25 percent premium pay for scheduled Sunday duty is not considered adequate for inspection personnel; whereas the overtime rate suggested is similar to the present rate under the 1931 Act.

We also concur with GAO's final proposal that Congress enact legislation establishing a uniform policy on the charges to be made to the parties-in-interest for the inspection services performed at ports-of-entry.

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Our views on the alternatives that GAO identified for the Congress to consider in establishing a uniform reimbursement policy are presented after each alternative.

The first alternative suggests that there be "no charge to the parties-in-interest for any inspection services."

We believe this alternative would be contrary to the user charges statute (31 U.S.C. 483a). The current user charges statute requires the establishment of fees to be collected from beneficiaries of special services. In recent years, efforts to establish or increase fees charged for special services rendered for the benefit of individuals have been encouraged. The 1931 Act established charges to be levied on beneficiaries for inspection services rendered at night, on Sundays, and on holidays. In principle, the charge for inspection services set in the 1931 Act is similar to the user charges statute. In another respect, charging parties-in-interest for arrivals at night, Sundays, and holidays encourages incoming traffic to arrive during no-charge periods, namely 8 a.m. to 5 p.m. daily. If the charges were eliminated, traffic patterns might change considerably causing overtime costs to increase. In addition, INS would lose over \$6,000,000 annually in reimbursement revenue.

The second alternative is to "require the parties-in-interest to pay the full cost of all inspection services, except those at border crossings, which are generally nonreimbursable under the present laws, regardless of the time the service is provided, the agency providing the service, and, for aircraft arrivals, whether the flight is scheduled, unscheduled, or chartered."

This alternative would support efforts for uniformity. It would also eliminate the main variance presently existing between INS's practice of waiving charges for arrivals "on schedule," and the Customs Services's practice of not waiving charges for arrivals "on schedule."

The third alternative provides for the "same as 2 but limit charges to operators of private aircraft and vessels to inspections during premium pay periods and retain the \$25 limit on such charges as provided in present law."

We favor limiting charges to operators of private aircraft and vessels as covered under current law.

The fourth alternative is to "require that there be established at each port-of-entry specific days and times during which the full cost of inspection services performed by any of the four agencies would be charged to the parties-in-interest."

We have no objection to specifying days and times during which the full cost of inspection would be recovered provided charges to operators of private aircraft and vessels are limited as proposed in the third alternative.

[See GAO note, p. 68.]

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As a suggestion, we believe it would be beneficial if the laws applicable to the compensation paid inspectors of the four agencies for night overtime services and work on Sundays and holidays were cited verbatim in the report. Knowledge of the laws would be of assistance to those individuals not familiar with the various provisions of each.

We appreciate the opportunity to express our views on this report. Should you have any further questions, please feel free to contact us.

Sincerely,


Glen E. Pommerening
Assistant Attorney General
for Administration

UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
WASHINGTON, D.C. 20250

Subject: GAO Report B - 114898: Review of Payments for Overtime
Services of Federal Agencies at U.S. Ports-of-Entry.

JUN 23 1

To: Henry Eschwege
Director
Resources and Economic Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Thank you for giving this agency the opportunity to review and make comment on the draft of your proposed report to the Congress: "Review of Payments for Overtime Services of Federal Agencies at U.S. Ports-of-Entry." We have completed our review and submit the following comment

1) The report accurately reflects how this agency administers overtime payments to our port-of-entry inspectors. It correctly states how user charges are levied for those payments which are reimbursable. Since the data were collected in FY 1972, however, changes in inspection practices, reduction of "free" cargo inspection time and pay increases have appreciably increased the amount of reimbursable overtime charges as well as the amount of premium pay earned by our inspectors.

2) It has been the policy of the Department for many years that uniform premium pay rate for all border clearance agencies be established by appropriate legislation. This agency supports this policy wholeheartedly since we recognize the inequities our employees encounter as a result of the diverse premium pay procedures used by the different clearance agencies.

3) In line with this policy, this agency would cooperate in any review of our premium pay regulations with a view toward uniformity with the other agencies involved. It must be recognized, however, that the regulations are not set by this agency but by the Secretary of Agriculture with the advice and counsel of his Office of Personnel. Any revision in this area, therefore, would have to be spearheaded by that office.

It would seem that any move toward uniformity, other than one arrived at by legislation, would require compromise on the part of the respective Secretaries. As reflected in your draft audit, our port-of-entry inspectors receive less premium pay than inspectors from two of the other three agencies involved, therefore, it would seem that compromise on the part of Agriculture requires more generous payments.

APPENDIX II

While much of the more generous payments would be covered by increased user charges, such increases would be met with growing resistance from industry. That part of the more generous payments not covered by user charges may have to be met by increased budget requests.

Given these obstacles and the differing premium pay histories of the four agencies, a review at the Secretarial level would seem to have limited possibilities of achieving significant uniformity.

4) The comments in paragraph (3) of this letter apply in general to the issue of a Secretarial review of our regulations pertaining to the reimbursability of the cost of inspection services. However, since our reimbursement rate already includes a charge for indirect costs, it would be unnecessary for this agency to change its rate to recover all costs. In this area the lead office would be the Department's Office of Management and Finance.

5) As stated earlier, this agency supports the enactment of appropriate legislation to establish uniform premium pay and reimbursability regulations. Of the alternatives offered for the consideration of Congress in your draft report, this agency would favor alternative 2 on page 52a but would urge that it be amended to include a provision for double time on Sunday:

[See GAO
note.]

"Legislation which would provide that the overtime, Sunday and holiday pay of inspectors performing services at the ports-of-entry would be determined in accordance with the Federal Employees Pay Act of 1945, as amended, with some modifications such as removing the limitation which restricts overtime payments to the minimum overtime rate of a GS-10 employee and providing that inspectors be paid for travel time when called back to duty after completing their regular tour of duty or on days they are not scheduled to work."

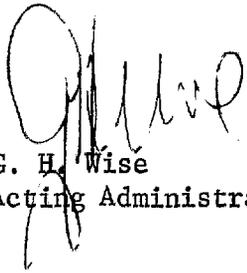
[43]

[See GAO
note.]

and alternative 4 on page 61:

"Require that there be established at each port-of-entry specific days and times during which the full cost of inspection services performed by any of the four agencies would be charged to the parties-in-interest."

We appreciate the opportunity to comment on this draft and stand ready to cooperate in any additional activities you may request.


G. H. Wise
Acting Administrator

GAO note: Numbers in brackets refer to the final report.



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

JUL 19 1974

Mr. Gregory J. Ahart, Director
Manpower and Welfare Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

The Secretary asked that I respond to your request for the Department's views on your draft report entitled, "Review of Payments for Overtime Services of Federal Agencies at U.S. Ports-of-Entry."

We concur with the conclusion reached in the report on the desirability of a uniform premium pay system for all Federal agencies conducting inspections at ports-of-entry. Department representatives will be pleased to cooperate with other interested agencies in developing a more uniform premium pay system. However, the successful resolution of this situation will depend on whether various problems as pointed out in the report can be worked out. Also, we suggest that the Civil Service Commission be designated as the lead agency to bring the various agencies together to discuss this situation.

Thank you for the opportunity to comment on this report in draft form.

Sincerely yours,


John D. Young
Assistant Secretary, Comptroller

APPENDIX III

PRINCIPAL OFFICIALS
 RESPONSIBLE FOR ADMINISTERING
 ACTIVITIES DISCUSSED IN THIS REPORT

	<u>Tenure of office</u>	
	<u>From</u>	<u>To</u>
SECRETARY OF THE TREASURY:		
William E. Simon	Apr. 1974	Present
George P. Shultz	June 1972	Apr. 1974
John B. Connally	Feb. 1971	June 1972
ATTORNEY GENERAL OF THE UNITED STATES:		
William B. Saxbe	Jan. 1974	Present
Robert H. Bork (acting)	Oct. 1973	Jan. 1974
Elliot L. Richardson	Apr. 1973	Oct. 1973
Richard G. Kleindienst	June 1972	Apr. 1973
Richard G. Kleindienst (acting)	Feb. 1972	June 1972
John N. Mitchell	Jan. 1969	Feb. 1972
SECRETARY OF AGRICULTURE:		
Earl L. Butz	Dec. 1971	Present
Clifford M. Hardin	Jan. 1969	Nov. 1971
SECRETARY OF HEALTH, EDUCATION, AND WELFARE:		
Caspar W. Weinberger	Feb. 1973	Present
Elliot L. Richardson	June 1970	Jan. 1973

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