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Congress of the United States

U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS

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July 6, 2004

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TO: Members, Committee on Ways and Means

FR: Bill Thomas, Chairman

RE: Subcommittee on Trade Report

The Subcommittee on Trade marked up H.R. 4418, the "Customs Border Security and Trade Agencies Authorization Act of 2004," on June 24, 2004. H.R. 4418 was ordered favorably reported to the Full Committee, as amended, by voice vote.

Pursuant to Committee Rule 11, Subcommittee Chairman Crane submitted a Subcommittee Report to the Full Committee on Tuesday, July 6, 2004. Attached is a copy of the Subcommittee Report.

PHILIP M. CRANE, ILLINOIS, CHAIRMAN
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Congress of the United States
House of Representatives

COMMITTEE ON WAYS AND MEANS

WASHINGTON, DC 20515

SUBCOMMITTEE ON TRADE

July 6, 2004

The Honorable William M. Thomas
Chairman, Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

On June 24, 2004, the Subcommittee on Trade ordered favorably reported to the Full Committee, H.R. 4418, the "Customs Border Security and Trade Agencies Authorization Act of 2004," as amended, by voice vote.

The "Customs Border Security and Trade Agencies Authorization Act of 2004" will authorize funding for the Office of the United States Trade Representative, the U.S. International Trade Commission, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement.

Transmitted herein, in accordance with Committee Rule 11, is a report containing a comparison with present law, a section-by-section analysis of the proposed changes, a section-by-section justification, and a draft statement of the budget effects of the measure.

Sincerely,

Phil Crane
Chairman

**Mr. Crane, from the Subcommittee on Trade, Committee on Ways and Means,
submitted the following**

REPORT

[To accompany H.R. 4418]

[Including cost estimate of the Congressional Budget Office]

The Subcommittee on Trade of the Committee on Ways and Means, to which was referred the bill (H.R. 4418) to authorize appropriations for fiscal years 2005 and 2006 for U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, the Office of the United States Trade Representative, the United States International Trade Commission, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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I. INTRODUCTION

A. PURPOSE AND SUMMARY

H.R. 4418 would authorize funding for U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), the Office of the United States Trade Representative (USTR), and the United States International Trade Commission (ITC).

B. BACKGROUND

1. AUTHORIZATION OF APPROPRIATIONS

The Subcommittee on Trade of the Committee on Ways and Means has adopted a two-year authorization process to provide CBP, ICE, USTR, and the ITC with guidance as they plan their budgets and to provide Subcommittee guidance in the appropriations process. In preparing H.R. 4418, the Subcommittee considered the President's budget for FY 2005 and relied upon estimates of increases consistent with past practice as a guide for FY 2006. Funding for the former U.S. Customs Service, USTR, and the ITC was authorized through FY 2004 in the Trade Act of 2002 (P.L. 107-210).

2. REORGANIZATION OF THE U.S. CUSTOMS SERVICE IN THE DEPARTMENT OF HOMELAND SECURITY

On November 25, 2002, the President signed into law legislation (P.L. 107-296) creating a new Department of Homeland Security (DHS). This law transferred the U.S. Customs Service to the Department of Homeland Security under the authority of the Under Secretary for Border and Transportation Security. Authority for customs revenue functions is retained by the Secretary of the Treasury, administered by the Commissioner of U.S. Customs and Border Protection under the terms of a delegation of authority order.

On March 1, 2003, the former U.S. Customs Service was divided into two new agencies within DHS. Customs inspectors, canine enforcement officers, and import specialists were merged with immigration inspectors, border patrol agents, and agriculture inspectors to create CBP. Customs investigators and personnel in the air and marine operations were merged with immigration investigators, Federal air marshals, and members of the Federal protective service to create ICE.

The legislation transferring the U.S. Customs Service to the Department of Homeland Security prohibits DHS from taking actions to "consolidate, discontinue, or

diminish” customs revenue functions, “reduce the staffing level, or reduce the resources attributable to such functions.” In the July 12, 2002 letter from the Committee on Ways and Means transmitting the views and recommendations of the Committee on the legislation establishing the new Department, the Committee noted, “It is also important to ensure that revenue continues to be collected and that goods keep moving across the border with little delay in order to maintain delicately balanced commercial schedules and operations.”

3. CUSTOMS MODERNIZATION

The current customs automation system, the Automated Commercial System (ACS), is an aging system that has experienced several “brownouts.” In August 2001, the systems integration contractor began work on the Automated Commercial Environment (ACE), a single integrated system that will replace ACS. Unlike ACS, ACE will use modern standards, processes, techniques, and language, and will be compatible with commercial software.

The first ACE participants were 41 initial importer accounts representing 17% of the total value of imports. CBP predicts that by the end of 2004, the number of ACE users will reach 20,000 and the number of ACE accounts will reach 1,100. While ACE is designed to be rolled out in eight phases over a period ending in September 2007, the program has faced both schedule and cost challenges.

In addition, CBP is in the process of integrating the International Trade Data System (ITDS) with ACE. ITDS was chartered in 1995 to facilitate information processing for businesses by accommodating the many federal agencies that need access to international trade data. Currently, traders are required to provide this information to each individual agency using a variety of different automated systems, a multitude of paper forms, or a combination of systems and forms. With ITDS, traders will submit standard electronic data for imports or exports only once to ITDS. ITDS will distribute this standard data to the pertinent Federal agencies that have an interest in the transaction for their selectivity and risk assessment. ITDS will provide only that data necessary to an agency’s mission. Agency participation in ITDS is voluntary, and many agencies have not yet chosen to participate, including the U.S. Coast Guard, the Transportation Security Administration, and the Office of Foreign Assets Control.

4. CUSTOMS USER FEES AND COST ACCOUNTING SYSTEMS

The Trade Act of 2002 requires the U.S. Customs Service to develop a cost accounting system to explain its expenditures effectively. Such a system would put customs operations in compliance with the core financial system requirements of the Joint Financial Management Improvement Program (JFMIP), a joint and cooperative

undertaking of the U.S. Department of the Treasury, the General Accounting Office, the Office of Management and Budget, and the Office of Personnel Management to improve financial management practices in government. Prior to the imposition of this requirement, the Committee noted in its report to accompany H.R. 3129, the Customs Border Security Act of 2001, that “the Customs Service is currently unable to answer fundamental questions about how it spends money.”

An effective cost accounting system is important to ensure that fees collected under the authority of paragraphs (1) through (8) of the Consolidated Omnibus Budget Reconciliation Act of 1985 are used only for their intended purpose. Section 413 of the legislation establishing DHS prohibits the use of these funds by any other agency or office of the Department. These fees are paid by commercial interests in return for specific commercial services. In the letter from the Committee on Ways and Means transmitting the views and recommendations of the Committee on the legislation establishing the new Department, the Committee noted, “It would be inappropriate and potentially inconsistent with the United States trade obligation for importers to pay fees that subsidize non-commercial functions of the new Department of Homeland Security. For these reasons, the Committee believes that fees should continue to be spent only on activities already defined in 19 U.S.C. 58c.”

C. LEGISLATIVE HISTORY

On May 20, 2004, Congressman Philip M. Crane, (R-IL), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, introduced H.R. 4418, the “Customs Border Security Act of 2004,” a bill to authorize appropriations for fiscal years 2005 and 2006 for the CBP, ICE, USTR, and the ITC, and for other purposes. Congressmen Rangel (D-NY), Shaw (R-FL), Levin (D-MI), and Ramstad (R-MN) cosponsored the legislation. On June 17, 2004, the Subcommittee on Trade held a public hearing on Customs budget authorizations and other customs issues. On June 24, 2004, the Subcommittee on Trade held a formal mark-up session and ordered favorably reported to the full committee H.R. 4418, the “Customs Border Security and Trade Agencies Authorization Act of 2004,” as amended, by voice vote.

II. SECTION-BY-SECTION SUMMARY

Sec. 1. Short title

Current Law:

No provision.

Explanation of Provision:

Section 1 provides that the act may be cited as the “Customs Border Security and Trade Agencies Authorization Act of 2004.”

Reason for Change:

The section identifies the short title for the bill.

TITLE I--BUREAU OF CUSTOMS AND BORDER PROTECTION AND BUREAU
OF IMMIGRATION AND CUSTOMS ENFORCEMENT

Subtitle A--Authorization of Appropriations; Related Provisions

Sec. 101. Authorization of appropriations.

Current Law:

Section 301(b)(1) of the Customs Procedural and Simplification Act of 1978 (19 U.S.C. 2075(b)) provides the statutory basis for authorization of appropriations of the former U.S. Customs Service. The most recent authorization of appropriations for the U.S. Customs Service (under section 311 of the Trade Act of 2002) provided \$1,365,456,000 for noncommercial operations, \$1,642,602,000 for commercial operations, and \$170,829,000 for air and marine interdiction for FY 2003, and \$1,399,592,400 for noncommercial operations, \$1,683,667,050 for commercial operations, and \$175,099,725 for air and marine interdiction for FY 2004.

Explanation of Provision:

Section 101(a) would amend section 301 of the Customs Procedural Reform and Simplification Act of 1978 to make technical and conforming changes reflecting the division of the former U.S. Customs Service into CBP and ICE and its incorporation into DHS.

Section 101(b) would amend section 301 of the Customs Procedural Reform and Simplification Act of 1978 to authorize appropriations for salaries and expenses of CBP for fiscal year 2005 of \$6,203,000,000 and for fiscal year 2006 of \$6,469,729,000. It would require funds authorized for CBP with respect to customs revenue functions to be appropriated from the Customs User Fee Account. It would further authorize appropriations for salaries and expenses of ICE for fiscal year 2005 of \$4,011,000,000 and for fiscal year 2006 of \$4,335,891,000.

Reason for Change:

The incorporation of the former U.S. Customs Service into DHS and the subsequent division of the former U.S. Customs Service into CBP and ICE necessitated changes to the underlying statutory framework to reflect the new structure. The Committee notes that the information regarding the split between noncommercial and commercial operations provided in the past by the former U.S. Customs Service was not meaningful. The information was not the result of the collection of cost data on a continual basis. Rather, the Customs Service apportioned its budget through this artificial division based upon an outdated ad hoc survey performed years ago. The survey estimated a certain percentage of the Customs Service's activities that were commercial-related. Based upon that conclusion, the Customs Service merely multiplied its overall budget by that static percentage to arrive at its estimation from year to year. The Subcommittee believes that this methodology is woefully inadequate because actual costs for various functions change from year to year. For this reason, the Committee required the Customs Service to develop an adequate cost accounting system in section 334 of the Trade Act of 2002 (P.L. 107-210). However, it appears that the successor agencies, CBP and ICE, have not implemented such a cost accounting system. Accordingly, the Subcommittee has addressed this issue again in section 102 of the legislation.

Funding authorized by this section is equal to the President's budget request for FY 2005 and provides an increase for FY 2006 that is equal to the percentage increase requested in FY 2005. These funding levels would provide adequate and appropriate resources for CBP and ICE to play their important security roles while still maintaining sufficient resources to support their critical trade facilitation functions.

Sec. 102. Establishment and implementation of cost accounting system; reports.

Current Law:

Section 334 of the Trade Act of 2002 required the former U.S. Customs Service to establish and implement a cost accounting system for expenses incurred in both commercial and noncommercial operations of the Customs Service, including an identification of expenses based on the type of operation, the port at which the operation took place, the amount of time spent on the operation by personnel of the Customs Service, and any other appropriate classification necessary to provide for an accurate and complete accounting of the expenses by September 30, 2003.

Explanation of Provision:

Section 102 would amend the requirement in section 334 of the Trade Act of 2002 to require CBP and ICE to establish by September 30, 2005, cost accounting systems that can distinguish between commercial and noncommercial operations, and expenses incurred in administering and enforcing the customs laws of the United States and the federal immigration laws. The section would further require the accounting systems to identify expenses based on the type of operation and the amount of time spent on the operation by personnel of the relevant agency. The section would also require reports: (1) by the Commissioner of Customs and the Assistant Secretary for United States Immigration and Customs Enforcement on a quarterly basis on the progress of implementing the cost accounting systems and on an annual basis itemizing the expenses once the accounting systems are in place; and (2) by the Inspector General of DHS not later than March 31, 2006, on the level of compliance with this section.

Reason for Change:

As discussed above, the previous methodology used by the Customs Service to estimate costs for commercial versus noncommercial operation has been unsatisfactory and inadequate. While current law required the Customs Service to establish and implement an adequate cost accounting system, the Subcommittee is disappointed that CBP and ICE have indicated that they do not have a cost accounting system that can provide the information required by law. Section 102 would reiterate the requirement originally imposed in the Trade Act of 2002, clarify that this requirement applies to both CBP and ICE, and require reports by the Inspector General to monitor compliance by these agencies with the requirements of this section. The Subcommittee intends to monitor progress closely.

Sec. 103. Study and report relating to customs user fees.

Current Law:

No provision.

Explanation of Provision:

Section 103(a) would require the Comptroller General to conduct a study on the extent to which the amount of the customs user fees approximates the cost of services provided, beginning 180 days after the date on which the cost accounting systems described in Section 102 are fully implemented.

Section 103(b) would require the Comptroller General to report to the Committee on Ways and Means and the Committee on Finance within one year of the implementation of the cost accounting systems described in Section 102 on the results of

the study required in Section 103(a) and any recommendations for the appropriate amount of customs user fees.

Reason for Change:

Section 336 of the Trade Act of 2002 required the Comptroller General to conduct a study on the extent to which the amount of the customs user fees approximates the cost of services provided. The Comptroller General released the required report in which he concluded that it was impossible to determine whether the amount of the fees approximated the costs of services provided because the Customs Service did not have an adequate cost accounting system in place to determine the costs of services provided. As noted above, the Subcommittee is very concerned about the lack of such an accounting system. This section would require a follow-up report by the Comptroller General once the cost accounting system required by Section 102 is implemented.

Subtitle B--Technical amendments relating to entry and protest

Sections 111-118

Current Law:

In the past, importers paid duties on each entry as the entry was processed. Under the recently implemented periodic payment system, CBP allows participating importers to pay of duties on a monthly basis.

Explanation of Provision:

Sections 111 through 118 are technical amendments dealing with reconfigured entries. The reconfigured entry process would allow importers to separate individual shipments from a larger entry if there are disputes about the individual shipments.

Reason for Change:

Allowing individual shipments to be separated from a larger entry paid on a periodic basis would facilitate trade by allowing undisputed shipments to be processed expeditiously.

Subtitle C--Miscellaneous Provisions

Sec. 121. Designation of San Antonio International Airport for Customs processing of certain private aircraft arriving in the United States.

Current Law:

Section 1453(a) of the Tariff Suspension and Trade Act of 2000 required the Commissioner of the Customs Service to designate the San Antonio International Airport as an airport in which private aircraft can land for processing by the Customs Service for a period of two years beginning with the date of enactment of that Act (November 9, 2000).

Explanation of Provision:

Section 121 would extend the designation of San Antonio International Airport for customs processing of private aircraft arriving in the United States for four years effective November 9, 2002.

Reason for Change:

The designation of the San Antonio International Airport lapsed on November 9, 2002, and this provision would extend that designation through November 9, 2006.

Sec. 122. Authority for the establishment of Integrated Border Inspection Areas at the United States-Canada border.

Current Law:

Section 127 of the Treasury Department Appropriations Act of 2003 (P.L. 108-7) contains this provision.

Explanation of Provision:

Section 122 would require the Commissioner of Customs to seek to establish Integrated Border Inspection Areas on either side of the United States-Canada border in which U.S. Customs officers can inspect vehicles entering the United States from Canada before they enter the United States, or Canadian Customs officers can inspect vehicles entering Canada from the United States before they enter Canada.

Reason for Change:

The inclusion of this provision in the Treasury Appropriations Act of 2003 was a stopgap measure to authorize an important security program at a time when an

appropriate authorizing bill was not available. This section would include this program in the appropriate authorizing legislation.

Sec. 123. Designation of foreign law enforcement officers.

Current Law:

Section 127 of the Treasury Department Appropriations Act of 2003 (P.L. 108-7) contains this provision.

Explanation of Provision:

Section 123 would amend Section 401(i) of the Tariff Act of 1930 to provide for inspections and preclearance in foreign countries and to authorize the Secretary of State to enter into agreements with foreign countries for the stationing of foreign customs and agriculture inspection officers in the United States.

Reason for Change:

The inclusion of this provision in the Treasury Appropriations Act of 2003 was a stopgap measure to authorize an important security program at a time when an appropriate authorizing bill was not available. This section includes this program in the appropriate authorizing legislation.

Sec. 124. Customs services.

Current Law:

No provision.

Explanation of Provision:

Section 124 amends section 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 to permit CBP to provide services for charter air carriers for flights arriving after normal operating hours upon their request and at their expense.

Reason for Change:

Under current law, CBP is not authorized to provide services for charter air carriers for flights arriving under normal operating hours. This provision would permit CBP at its discretion to provide these services if appropriate and charge the cost of the provision of the services to the charter air carriers.

Sec. 125. Sense of Congress on interpretation of textile and apparel provisions.

Current Law:

No provision.

Explanation of Provision:

Section 125 expresses the sense of Congress that CBP should interpret provisions of the African Growth and Opportunity Act (AGOA), the Andean Trade Preference Act (ATPA), and the Caribbean Basin Economic Recovery Act (CBERA) relating to preferential treatment of textile and apparel articles broadly in order to expand trade by maximizing opportunities for imports of such articles from eligible beneficiary countries.

Reason for Change:

The Subcommittee has noted the frequent frustration of Congressional intent by CBP decisions implementing AGOA, ATPA, and CBERA. Congress has been forced to revisit many issues in the original AGOA legislation and reverse decisions by the Executive Branch that have denied benefits to imports that Congress fully intended to cover. This provision admonishes CBP to recognize the importance of interpreting the AGOA, ATPA, and CBERA laws in a trade-liberalizing manner.

Sec. 126. Technical amendments.

Current Law:

Section 505(a) of the Tariff Act of 1930 requires importers to deposit estimated duties and fees on entries of merchandise within 10 working days of entry or release. Section 13031(b)(9)(A) of the Consolidated Budget Omnibus Reconciliation Act of 1985 restricts the ability to collect fees under the section to imports valued at “less than \$2000.” Section 13031(b)(9)(A)(ii) requires an express consignment carrier facility or centralized hub facility to reimburse the Customs Service for the cost of services provided by the Customs Service for the facility during the fiscal year.

Explanation of Provision:

Section 126(a) would amend section 505(a) of the Tariff Act of 1930 to increase the time period for importers to make periodic payments from 10 working days to 12 working days and would permit participating importers to deposit estimated duties and

fees for entries of merchandise no later than 15 working days following the month in which the merchandise is entered or released, whichever comes first.

Section 126(b) would amend section 13031(b)(9)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985 to change the threshold for the merchandise processing fee from "less than \$2,000" to "\$2,000 or less" and to create a user fee for express courier facilities.

Reason for Change:

Both importers and CBP have requested the change from 10 working days to 12 working days as necessary for administrability of the periodic payment system. The change from "less than \$2000" to "\$2000 or less" is at the request of CBP to facilitate the administrability of the fee. The creation of the user fee for entries at express courier facilities makes the treatment of entries at those facilities more consistent with the treatment at other ports of entry.

TITLE II--OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Sec. 201. Authorization of appropriations.

Current Law:

The statutory authority for budget authorization for USTR is section 141(g)(1) of the Trade Act of 1974 (19 U.S.C. 2171(g)(1)). The most recent authorization of appropriations for USTR was under section 361 of the Trade Act of 2002 (P.L. 107-210). Under 19 U.S.C. 2171, Congress has adopted a two-year authorization process to provide USTR with guidance as it plans its budget and to provide Subcommittee guidance in the appropriation process.

Explanation of Provision:

This section would authorize appropriations for fiscal years 2005 and 2006 for the Office of the United States Trade Representative (USTR) of \$39,552,000 per year. It would authorize an additional \$2 million per year for the appointment of additional staff in the Office of the General Counsel and the Office of Monitoring and Enforcement of USTR.

Reason for Change:

The legislation would authorize the full amount of the President's budget request for USTR. It would further authorize an earmark of \$2 million per year for the specific purpose of additional staff for the Office of General Counsel and the Office of Monitoring and Enforcement of USTR in light of the vital functions performed by these offices and their corresponding need for additional staff. The Subcommittee believes that this earmark would provide sufficient funding for USTR to address a variety of needs that will best enable U.S. companies, farmers, and workers to benefit from the trade agreements to which the United States is party.

TITLE III--UNITED STATES INTERNATIONAL TRADE COMMISSION

Sec. 301. Authorization of appropriations.

Current Law:

The statutory authority for budget authorization for the ITC is section 330(e)(2)(A) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)(A)). The most recent authorization of appropriations for the ITC was under section 371 of the Trade Act of 2002 (P.L. 107-210). Under 19 U.S.C. 1330, Congress has adopted a two-year authorization process to provide the ITC with guidance as it plans its budget and to provide Subcommittee guidance in the appropriation process.

Explanation of Provision:

The provision would authorize appropriations for the ITC of \$61,700,000 for fiscal year 2005 and \$65,278,000 for fiscal year 2006.

Reason for Change:

The legislation authorizes the full amount of the ITC's budget request for fiscal year 2005. The Subcommittee notes in particular that the ITC provides valuable advice as to the probable economic effects of U.S. trade agreements and miscellaneous tariff legislation considered by Congress.

III. VOTES OF THE SUBCOMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means, Subcommittee on Trade, in its consideration of the bill, H.R. 4418.

A. MOTION TO REPORT THE BILL

The bill, H.R. 4418, was ordered favorably reported to the Full Committee, as amended, by voice vote (with a quorum present).

B. VOTES ON AMENDMENTS

An amendment in the nature of a substitute offered by Chairman Crane was agreed to by voice vote. Congressman Levin offered an amendment to the amendment in the nature of a substitute, which was defeated by a recorded vote of 8 nays to 3 yeas. The vote was as follows:

<u>Representative</u>	<u>Yea</u>	<u>Nay</u>	<u>Present</u>	<u>Representative</u>	<u>Yea</u>	<u>Nay</u>	<u>Present</u>
Mr. Crane		X		Mr. Levin	X		
Mr. Shaw		X		Mr. Rangel			
Mr. Houghton		X		Mr. Neal	X		
Mr. Camp		X		Mr. Jefferson			
Mr. Ramstad		X		Mr. Becerra	X		
Ms. Dunn				Mr. Tanner			
Mr. Herger		X					
Mr. English		X					
Mr. Nussle		X					

IV. BUDGET EFFECTS OF THE BILL

A. SUBCOMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of this bill, H.R. 4418 as amended and reported: The Subcommittee agrees with the preliminary estimate furnished by the Congressional Budget Office (CBO) on H.R. 4418, set forth below.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Subcommittee states that H.R. 4418 does not include any new budget authority or tax expenditures.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office,

on a preliminary and incomplete basis, staff of the Congressional Budget Office estimate that H.R. 4418 does not include any new budget authority or tax expenditures.