

BORDER PATROL AGENT PAY REFORM AMENDMENTS
ACT OF 2018

SEPTEMBER 25, 2018.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. GOWDY, from the Committee on Oversight and Government
Reform, submitted the following

R E P O R T

[To accompany H.R. 5896]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom
was referred the bill (H.R. 5896) to amend title 5, United States
Code, to modify the authority for pay and work schedules of border
patrol agents, and for other purposes, having considered the same,
report favorably thereon with amendments and recommend that
the bill as amended do pass.

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The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 2, line 1, strike “(1) IN GENERAL.—” (and promote each subparagraph and clause by 1 level, respectively).

Page 6, line 7, strike “(V)” and insert “(IV)”.

Page 15, line 7, strike “(i)” and insert “(h)”.

Page 17, line 2, strike the quotation marks and the second period.

Page 17, after line 2, insert the following:

“(4) SUNDAY PAY; PREMIUM PAY.—A border patrol agent assigned to an alternative work schedule under this subsection, may receive, as applicable—

“(A) Sunday pay for no more than 8 hours of regular time associated with a given Sunday, consistent with section 5546(a);

“(B) premium pay for work on a holiday for no more than 8 hours of regular time associated with a given holiday, consistent with section 5546(b); and

“(C) basic pay for all regular time hours that qualify for holiday time off pay when an agent is relieved or prevented from working during such regular time on a day designated as a holiday by Federal statute or Executive order.

“(5) APPLICATION.—For purposes of administering sections 6303(a), 6304, 6307(a) and (d), 6323, 6326, 6327, and 8339(m), in the case of an employee assigned to an alternative work schedule under this subsection, references to a day or workday (or to multiples or parts thereof) contained in such sections shall be considered to be references to 8 hours (or to the respective multiples or parts thereof).

“(i) REGULATIONS.—The Director of the Office of Personnel Management shall promulgate regulations to carry out this section, including regulations governing—

“(1) elections and assignments of a border patrol rate of pay for newly hired border patrol agents who complete initial training during an annual period;

“(2) situations in which an agent receives more than one type of border patrol rate of pay in a biweekly pay period or is employed as a border patrol agent for only part of a biweekly pay period; and

“(3) the treatment of hours that are substituted for nonpay status hours during regular time.”.

Page 17, strike lines 3 through 18.

SUMMARY AND PURPOSE OF LEGISLATION

H.R. 5896, the Border Patrol Agent Pay Reform Amendments Act of 2018, revises aspects of the *Border Patrol Agent Pay Reform Act of 2014*, including Border Patrol staffing analyses, tours of duty for certain employees, monetary compensation for canine care, advanced training, travel compensatory time, the retirement control

period, leave without pay, and alternative work schedules, among other changes. The purpose of the legislation is to address implementation issues related to the 2014 law and additional concerns raised by Border Patrol agents.

BACKGROUND AND NEED FOR LEGISLATION

The Border Patrol, a component of the Department of Homeland Security’s U.S. Customs and Border Protection (CBP), is a law enforcement agency responsible for preventing the entry of terrorists and terrorist weapons into the United States between official ports of entry. The agency’s mission also includes the enforcement of immigration laws and the detection, interdiction, and apprehension of those who attempt to illegally enter or smuggle people or contraband, including illicit drugs, across U.S. borders. The Border Patrol guards nearly 6,000 miles of land bordering Canada and Mexico and more than 2,000 miles of coastal waters around Florida and Puerto Rico.¹

Prior Border Patrol administration of its overtime system, including use of administratively uncontrollable overtime (AUO),² resulted in overtime payment abuses at the agency.³ In response, on December 18, 2014, Congress enacted the *Border Patrol Agent Pay Reform Act of 2014* (BPAPRA).⁴ BPAPRA simplified the pay system for employees of the Border Patrol by creating a new system that “results in more hours worked by agents, provides more reliable schedules and paychecks for agents, and saves taxpayers money.”⁵

Under BPAPRA, agents choose one of three tours of duty commensurate with the amount of scheduled overtime the agents elect or are assigned to work. The tours are:

- Level 1—Agents work 100 hours per biweekly pay period and receive 125 percent of their otherwise applicable basic pay (80 hours of regular work and 20 hours of scheduled overtime).⁶ This equates to a ten-hour day during a five-day work week with a 25 percent overtime supplement payment.
- Level 2—Agents work 90 hours per biweekly pay period and receive 112.5 percent of their otherwise applicable basic pay (80 hours of regular work and 10 hours of scheduled overtime).⁷ This equates to a nine-hour day during a five-day work week with a 12.5 percent overtime supplement payment.
- Basic—Agents work 80 hours per biweekly pay period and receive their otherwise applicable basic pay.⁸ This equates to an eight-hour day during a five-day work week.

¹*Border Patrol Overview*, <https://www.cbp.gov/border-security/along-us-borders/overview> (last visited June 6, 2018).

²Administratively uncontrollable overtime is a type of premium pay intended to compensate eligible federal employees for substantial amounts of irregular, unscheduled overtime that cannot be controlled administratively. 5 U.S.C. § 5545(c).

³*See Abuse of Overtime at DHS: Padding Paychecks and Pensions at Taxpayer Expense: Hearing Before the Subcomm. on Nat’l Sec., H. Comm. on Oversight & Gov’t Reform*, 113th Cong. (Nov. 20, 2013); *See also* S. COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFAIRS, BORDER PATROL AGENT PAY REFORM ACT 4–8, 113th Cong. (Aug. 26, 2014) (S. Rep. 113–248) [hereinafter S. Rep. 113–248].

⁴Border Patrol Agent Pay Reform Act of 2014, Pub. L. No. 113–277, 128 Stat. 2995, 3010 [hereinafter Border Patrol Agent Pay Reform Act of 2014].

⁵S. Rep. 113–248 at 8.

⁶5 U.S.C. § 5550(b)(2).

⁷5 U.S.C. § 5550(b)(3).

⁸5 U.S.C. § 5550(b)(4).

No additional compensation beyond that provided under the BPAPRA levels is authorized for the scheduled overtime required on the selected tour of duty.⁹ AUO and overtime under the *Fair Labor Standards Act* is prohibited.¹⁰ Any unscheduled overtime that must be worked by agents beyond the level they elected in their tour of duty is rewarded with compensatory time off (up to ten hours per biweekly pay period but not to exceed 240 hours in a year).¹¹ Scheduled overtime beyond that which is required in an agent's tour of duty can be compensated under section 5542 of title 5, United States Code, but doing so is highly discouraged.¹²

BPAPRA was supported by the Obama Administration, as well as the National Border Patrol Council (NBPC), the exclusive bargaining representative of Border Patrol agents.¹³ As then-Border Patrol Deputy Chief Ronald Vitiello testified, the new law would create “a system that controls costs, fairly compensates certain agents for irregular and necessary work, and maximizes agent capability for critical law enforcement and border security responsibilities.”¹⁴ It passed both the Senate and House of Representatives by voice vote.¹⁵

BPAPRA assigned the Office of Personnel Management (OPM) responsibility for promulgating and implementing regulations.¹⁶ As OPM worked with CBP to execute the changes mandated by the law, the agencies determined statutory changes were necessary to address implementation challenges, as well as to generally improve the human capital management system at CBP.¹⁷ The initial implementation process culminated in a joint CBP and OPM suggestion to Congress to amend aspects of BPAPRA in November of 2016.¹⁸ Separately, the NBPC identified three main issues with BPAPRA that Border Patrol agents felt needed to be addressed: compensation for canine care, alternative work schedules, and leave without pay overtime obligations.¹⁹

The Border Patrol Agent Pay Reform Amendments Act of 2018 is a compromise measure intended to address issues identified by the implementing agencies, as well as the NBPC. Components of the bill, as reported by the Committee, include:

- *Staffing Analysis.* Under BPAPRA, no more than 10 percent of Border Patrol agents at any given location are allowed to work less than 100 hours in a biweekly pay period by electing the level 2 or basic tours of duty.²⁰ This staffing floor may be waived if a one-time staffing assessment required by BPAPRA demonstrates the Border Patrol needs less hours to

⁹ 5 U.S.C. §§ 5550(b)(2)(C); (3)(C).

¹⁰ 29 U.S.C. § 213(a)(18); 5 U.S.C. § 5550(c)(2).

¹¹ 5 U.S.C. § 5542(g).

¹² *Id.*; Border Patrol Agent Pay Reform Act of 2014 at 2(c)(2).

¹³ *Border Security: Examining the Implications of S. 1691, the Border Patrol Pay Reform Act of 2013: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 113th Cong. 5–8 (June 9, 2014) (statements of Ronald Vitiello, Deputy Chief, Border Patrol, and Brandon Judd, President, National Border Patrol Council).

¹⁴ *Id.*, at 6 (statement of Ronald Vitiello, Deputy Chief, Border Patrol).

¹⁵ 134 CONG. REC. S5862–72 (Sept. 18, 2014); 150 CONG. REC. H8945–49 (Dec. 10, 2014).

¹⁶ Border Patrol Agent Pay Reform Act of 2014 at § 2(h).

¹⁷ See Email from Office of Personnel Mgmt. staff to majority staff, H. Comm. on Oversight & Gov't Reform (Nov. 10, 2016, 11:41 a.m.) (on file with the Committee).

¹⁸ OFFICE OF PERSONNEL MGMT. & U.S. CUSTOMS AND BORDER PROTECTION, TECHNICAL ASSISTANCE ON THE BORDER PATROL AGENT PAY REFORM ACT OF 2014 (Nov. 7, 2016) [hereinafter “OPM & CBP Joint Technical Assistance”].

¹⁹ See e.g. Briefing by McAllister & Quinn staff to majority staff, H. Comm. on Oversight & Gov't Reform (Apr. 18, 2016) [hereinafter “McAllister & Quinn Briefing”].

²⁰ 5 U.S.C. § 5550(b)(1)(E).

be worked in order to meet its operational requirements.²¹ However, in order to give CBP additional flexibility, H.R. 5896 allows CBP to conduct future staffing analyses, thus allowing the agency to adjust the staffing floor based on future operational requirements.

- *Tour of Duty Election for Certain Employees.* H.R. 5896 allows agents performing work at CBP headquarters, as a training instructor, or in an administrative or fitness instructor position to elect level 1 or 2 tours of duty. Under BPAPRA, agents in these positions are currently required to be assigned to the basic tour of duty unless the staffing analysis indicated a need for agents in these positions to work additional hours.²² However, the OPM and CBP joint technical assistance identified this requirement as a disincentive for agents to take these important positions, and CBP previously waived the requirement due to the findings of its January 2016 staffing analysis.²³

- *Canine Care.* According to NBPC, there are nearly 1,000 agent-canine teams deployed in the Border Patrol.²⁴ BPAPRA makes clear that Border Patrol agents assigned to care for canines must be placed at the level 1 tour of duty.²⁵ Additionally, it specifies the associated level 1 rate of pay covers all care the agent must give to the canine and no other pay shall be given for such care.²⁶ However, it does allow a canine handler to receive one hour of credit toward the agent's overtime obligations each work day, effectively allowing the agent to work a nine-hour day.²⁷ NBPC identified the prohibition on monetary compensation for canine care, specifically on non-work days, as problematic for agents. NBPC told Committee staff canine handlers historically received one hour of overtime pay per day for care of the canine at home.²⁸ NBPC estimates the monetary prohibition for care on non-workdays has led to a \$1,700 decrease in canine handler agent pay per year since the enactment of BPAPRA, and told Committee staff agents were beginning to kennel their canines due to lack of compensation for care, which can bring additional costs to CBP while reducing canine effectiveness and availability for field operations.²⁹ H.R. 5896 adjusts agent compensation for care of canines by allowing agents to receive overtime compensation for canine care under 5 U.S.C. 5542. On a work day, if the agent does not use the one-hour canine care credit under BPAPRA, he or she may receive overtime compensation for that credit. On a non-work day, the agent will receive one hour of overtime compensation.

²¹ *Id.* The staffing analysis was completed on January 19, 2016.

²² 5 U.S.C. § 5550(b)(1)(D)(iv).

²³ OPM & CBP Joint Technical Assistance; *see also* U.S. CUSTOMS AND BORDER PROTECTION, COMPREHENSIVE BORDER PATROL STAFFING ANALYSIS: REPORT TO COMPTROLLER GENERAL OF THE UNITED STATES (Jan. 19, 2016).

²⁴ McAllister & Quinn Briefing.

²⁵ 5 U.S.C. § 5550(b)(1)(D)(ii).

²⁶ 5 U.S.C. § 5550(b)(1)(F).

²⁷ *Id.*

²⁸ Memorandum from Woodley & McGillivray LLP to Nat'l Border Patrol Council staff, *NBPC Revisions to the Border Patrol Agent Pay Reform Technical Amendments Act of 2017* (Mar. 9, 2018) (on file with the Committee).

²⁹ *Id.*; Briefing by Nat'l Border Patrol Council staff to majority staff, H. Comm. on Oversight & Gov't Reform (Aug. 23, 2017) [hereinafter NBPC Briefing].

- *Advanced Training.* Under BPAPRA, agents at the level 1 or level 2 tours of duty may be assigned to advanced training up to a period of 60 days while continuing to receive the compensation assigned to their respective tours of duty. This applies regardless of whether the agent meets the scheduled overtime obligations necessary. Any additional advanced training over the limit results in the agent earning pay under the basic rate of pay.³⁰ The joint technical assistance from OPM and CBP identified the need to avoid penalizing agents who perform their scheduled overtime obligation on a day of advanced training, and to allow an agent to accrue a scheduled overtime debt in lieu of being paid at the lower basic border patrol rate for advanced training above the 60-day limit.³¹ H.R. 5896 allows an agent to accrue a debt of hours for scheduled overtime not worked after the agent reaches the advanced training limit. Furthermore, it converts and raises the 60-day limit to a limit of 180 hours (approximately 90 days) for those on the level 1 tour of duty and a limit of 90 hours (approximately 60 days) for those on a level 2 tour of duty. Thus, agents can get credit for partially meeting a scheduled overtime requirement through the performance of actual work.

- *Travel Compensatory Time.* BPAPRA did not expressly allow compensatory time off for travel to be applied toward an agent's scheduled overtime debt, even though it allows other forms of overtime and earned compensatory time to apply.³² H.R. 5896 allows compensatory time off for travel to count toward an agent's scheduled overtime debt.

- *Retirement Control Period.* BPAPRA contains a pay assignment continuity provision, under which CBP is required to ensure, to the greatest extent practicable, the tour assignment of a Border Patrol agent during the control period is consistent with the career average overtime supplement.³³ The control period begins three years before an agent becomes eligible for immediate retirement, which generally captures the period during which agents could be earning their high three average salary, which determines their retirement annuity. In its place, H.R. 5896 adds provisions to limit the retirement creditability of the overtime supplement during the control period based on the career average overtime supplement. This allows CBP to maximize agent effectiveness during the last three years of an agent's service while still ensuring agents do not artificially enhance their retirement pay.

- *Leave Without Pay.* BPAPRA creates a substitution arrangement whereby scheduled overtime within the regular tour of duty is substituted for leave without pay (LWOP) during regular time in the same biweekly pay period.³⁴ The substitution arrangement generates additional basic pay, an increased overtime supplement, and additional agency Thrift Savings Plan contributions, but can also create additional debt of obligated overtime hours, since scheduled overtime on other

³⁰ 5 U.S.C. §§ 5550(b)(2)(G), 5550(b)(3)(G).

³¹ OPM & CBP Joint Technical Assistance.

³² 5 U.S.C. §§ 5550(b)(2)(D), 5550(b)(3)(D).

³³ 5 U.S.C. § 5550(b)(1)(G).

³⁴ 5 U.S.C. § 5550(f)(1)(A).

non-LWOP days is substituted for LWOP periods. NBPC communicated to Committee staff agents would prefer receiving less pay during a pay period while on LWOP—which agents take to, among other things, fulfill National Guard duties—in exchange for no overtime debt accrual.³⁵ H.R. 5896 makes clear agents on LWOP shall not receive pay and shall not accrue an overtime debt.

- *Alternative Work Schedules.* BPAPRA makes clear Border Patrol agents must work a five day work week.³⁶ This is a departure from past Border Patrol practice, as NBPC told Committee staff agents have worked alternative work schedules for nearly 40 years.³⁷ Alternative work schedules allow CBP to partner agents who are on different tours of duty and are consistent with CBP’s preference for agents to work ten-hour shifts.³⁸ H.R. 5896 allows agents who elect the level 2 or basic tours of duty to work ten-hour shifts for nine or eight days per biweekly pay period, respectively. Agents will still work the entire number of hours they would otherwise work under a standard schedule.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the previous section.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee’s performance goal or objective of this bill is to amend title 5, United States Code, to modify the authority for pay and work schedules of Border Patrol agents, and for other purposes.

LEGISLATIVE HISTORY

On May 21, 2018, Representative Will Hurd (R–TX) introduced H.R. 5896, the Border Patrol Agent Pay Reform Amendments Act of 2018, with Representatives Filemon Vela (D–TX) and Martha McSally (R–AZ). H.R. 5896 was referred to the Committee on Oversight and Government Reform. The Committee considered H.R. 5896 at a business meeting on May 23, 2018, and ordered the bill favorably reported with an amendment by voice vote.

Senator Jon Tester (D–MT) introduced S. 2338, a similar bill to H.R. 5896, on January 25, 2018. The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs.

³⁵ NBPC Briefing.

³⁶ 5 U.S.C. §§ 5550(b)(2)(A); (b)(3)(A); (b)(4)(A).

³⁷ NBPC Briefing.

³⁸ See S. Rep. 113–248 at 5.

COMMITTEE CONSIDERATION

On May 23, 2018, the Committee met in open session and, with a quorum being present, ordered the bill favorably reported with an amendment by voice vote.

ROLL CALL VOTES

There were no roll call votes requested or conducted during Committee consideration of H.R. 5896.

EXPLANATION OF AMENDMENTS

During Committee consideration of the bill, Representative Will Hurd (R-TX), the sponsor of the bill, offered an amendment that fixed two technical references in the bill. The amendment also added instructions for applying certain pay provisions to Border Patrol agents on alternative work schedules at the level 2 and basic rates of pay/tours of duty. Finally, it clarified the Office of Personnel Management has the authority to regulate implementation of the *Border Patrol Agent Pay Reform Act of 2014*. The Hurd amendment was adopted by voice vote.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill amends title 5, United States Code, to modify the authority for pay and work schedules of Border Patrol agents. As such, this bill does not relate to employment or access to public services and accommodations in the legislative branch.

DUPLICATION OF FEDERAL PROGRAMS

In accordance with clause 2(c)(5) of rule XIII no provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

Section 2(a)(2) of the bill codifies a requirement that the Office of Personnel Management promulgate regulations to carry out the Border Patrol Agent Pay Reform Act of 2014 and the amendments made by this bill.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of Section 5(b) of the appendix to title 5, United States Code.

UNFUNDED MANDATES STATEMENT

Pursuant to section 423 of the *Congressional Budget Act of 1974*, the Committee has included a letter received from the Congressional Budget Office below.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the House of Representatives.

COMMITTEE ESTIMATE

Pursuant to clause 3(d)(2)(B) of rule XIII of the Rules of the House of Representatives, the Committee includes below a cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act of 1974*.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the House of Representatives, the cost estimate prepared by the Congressional Budget Office and submitted pursuant to section 402 of the Congressional Budget Act of 1974 is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 25, 2018.

Hon. TREY GOWDY,
*Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5896, the Border Patrol Agent Pay Reform Amendments Act of 2018.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 5896—Border Patrol Agent Pay Reform Amendments Act of 2018

H.R. 5896 would change the calculation of overtime compensation for agents of the border patrol in Customs and Border Protection (CBP). Specifically, the bill would increase—by up to 14 hours for each pay period—the overtime compensation available to agents who handle canines. That change would take effect 90 days after enactment.

Currently about 900 canine handlers work in the border patrol. Using information from CBP, CBO expects that implementing H.R. 5896 would increase pay for each handler by about \$14,000 per year, on average. Thus, CBO estimates that implementing the bill would cost about \$10 million in fiscal year 2019 and about \$13 mil-

lion annually thereafter, assuming enactment near the end of 2018 and appropriation of the necessary amounts. Most of the bill's other changes to overtime pay could result in small costs or savings to CBP.

H.R. 5896 also would affect direct spending and revenues; therefore, pay-as-you-go procedures apply. The bill would set a limit on the amount of overtime that can be credited toward retirement for border patrol agents during their control period (the three years leading up to eligibility for retirement). Enacting the bill would probably affect direct spending for retirement benefits and revenues related to retirement contributions made by CBP agents but, based on information from the agency, CBO estimates that such effects would not be significant over the 2019–2028 period.

CBO estimates that enacting H.R. 5896 would not significantly affect direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 5896 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contacts for this estimate are Amber Marcelino (for retirement effects) and Mark Grabowicz (for other effects). The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 establishes the short title of the bill.

Sec. 2. Amendments to the Border Patrol Agent Pay Reform Act of 2014

Section 2 amends section 5550 of title 5, United States Code, to make technical and clarifying changes related to the timeline for the Border Patrol agent tour of duty election. These changes are consistent with OPM regulations implementing the original law.

The section removes the requirement for Border Patrol agents serving at Customs and Border Protection (CBP) headquarters as a training instructor, in an administrative position, or as a fitness instructor be placed on the basic tour of duty. Consistent with OPM regulations, it requires newly hired agents to be placed on the basic tour of duty until they complete initial training.

The section fixes a drafting error, which allowed CBP to unilaterally assign Border Patrol agents to the “level 2” tour of duty to ensure not more than ten percent of the agents at a particular location are assigned to the level 2 or basic tours of duty. Additionally, CBP can now waive the ten percent limitation based on future written staffing analyses, not just the one analysis completed under section 2(e) of the original law. The ten percent limitation does not apply to agents unable to perform overtime as determined by CBP; any new agents assigned to the basic rate of pay until completion of initial training; and any agents who would be limited by the statutory premium pay cap at 5 U.S.C. 5547, if they continue on the level 1 rate of pay. Finally, the ten percent limitation should be applied at the beginning of the first pay period beginning on or after January of each year, consistent with existing CBP practice.

The section allows Border Patrol agents assigned as canine handlers to receive overtime pay for canine care under 5 U.S.C. 5542(g). On a workday, the agent can receive up to one hour of overtime pay if the agent does not use this canine care credit to reduce his or her scheduled overtime obligation. On a non-workday, the agent receives one hour of overtime pay for his or her canine care credit. Before it can be paid, the canine care credit must first be applied to cover a period of absence during regular time or scheduled overtime if the absence is within the work period in which the canine care credit was generated. The canine care credit must also be applied to cover a debt of obligated overtime hours before it may be paid.

The section allows Border Patrol agents to incur an overtime debt in lieu of a decrease in pay for days in which the agent is in advanced training and unable to perform sufficient scheduled overtime. Furthermore, it converts and raises the 60-day limit before such debt accrues under current law to an hour-based limit—180 hours (approximately 90 days) for those on the level 1 tour of duty and 90 hours (approximately 60 days) for those on a level 2 tour of duty.

The section allows Border Patrol agents to reduce any debt of scheduled overtime hours they have incurred by applying accrued compensatory time off for travel. The agent must use all other types of overtime or earned compensatory time off credited to the agent before he or she may use compensatory time off for travel.

The section removes the requirement for CBP to limit a Border Patrol agent's tour of duty to control retirement benefits. In exchange, it limits the amount of an overtime supplement treated as retirement-creditable basic pay during an agent's potential high-three period ("control period"). This approach means regular tours of duty are assigned during an agent's control period based on employee elections in the same way as during other periods of the agent's career. This gives CBP more stability and control over management of the agent workforce based on operational requirements.

The section clarifies a Border Patrol agent who takes leave without pay may not receive his or her normal tour of duty pay during such time. In exchange, the agent does not accrue a scheduled overtime debt. The amount of pay the agent would normally receive in a pay period must be reduced proportional to the amount of time the agent does not work while on leave without pay.

The section allows CBP to assign agents at the level 2 or basic tours of duty to alternative work schedules. An agent at the level 2 tour of duty will work nine days per biweekly pay period. The agent's workday will be lengthened to meet the regular time and scheduled overtime obligations required of other level 2 agents. An agent at the basic tour of duty will work four days per week. The agent's workday is lengthened to meet the regular time obligations required of other agents at the basic tour of duty. Sunday premium pay and holiday premium pay for regular time are limited to eight hours, which is the normal limit. Holiday time off pay applies to all regular time hours that constitute holiday work, which is the normal rule.

The section clarifies the authority of the Director of the Office of Personnel Management to promulgate regulations to carry out the

Border Patrol Agent Pay Reform Act of 2014 and the amendments made by this Act.

The section amends 5 U.S.C. 5542 to clarify unused compensatory time off shall not be credited toward an annuity computation. Used compensatory time off may apply since an agent receives basic pay when compensatory time off is used.

The section amends 5 U.S.C. 5547 to clarify the overtime supplement for Border Patrol agents is always subject to the biweekly premium pay cap, consistent with the treatment of other retirement-creditable premium payments, such as administratively uncontrollable overtime and law enforcement availability pay.

The section amends the Border Patrol Agent Pay Reform Act of 2014 to clarify CBP should not use scheduled overtime work by Border Patrol agents outside of an agent's regular tour. Scheduled overtime within an agent's regular tour is required under the statute.

Sec. 3. Effective date

The amendments made by this Act apply on the first day of the first pay period beginning on or after the day that is 90 days after the date of enactment of this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

SUBPART D—PAY AND ALLOWANCES

* * * * *

CHAPTER 55—PAY ADMINISTRATION

* * * * *

SUBCHAPTER V—PREMIUM PAY

* * * * *

§ 5542. Overtime rates; computation

(a) For full-time, part-time and intermittent tours of duty, hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or (with the exception of an employee engaged in professional or technical engineering or scientific activities for whom the first 40 hours of duty in an administrative workweek

is the basic workweek and an employee whose basic pay exceeds the minimum rate for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) for whom the first 40 hours of duty in an administrative workweek is the basic workweek) in excess of 8 hours in a day, performed by an employee are overtime work and shall be paid for, except as otherwise provided by this subchapter, at the following rates:

(1) For an employee whose basic pay is at a rate which does not exceed the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(2) For an employee whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to the greater of one and one-half times the hourly rate of the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), or the hourly rate of basic pay of the employee and all that amount is premium pay.

(3) Notwithstanding paragraphs (1) and (2) of this subsection for an employee of the Department of Transportation who occupies a nonmanagerial position in GS-14 or under and, as determined by the Secretary of Transportation,

(A) the duties of which 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;

(B) in which overtime work is therefore unusually taxing; and

(C) in which operating requirements cannot be met without substantial overtime work;

the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(4) Notwithstanding paragraph (2) of this subsection, for an employee who is a law enforcement officer, and whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to the greater of—

(A) one and one-half times the minimum hourly rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or simi-

lar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

(B) the hourly rate of basic pay of the employee, and all that amount is premium pay.

(5) Notwithstanding paragraphs (1) and (2), for an employee of the Department of the Interior or the United States Forest Service in the Department of Agriculture engaged in emergency wildland fire suppression activities, the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(6)(A) Notwithstanding paragraphs (1) and (2), for an employee of the Department of the Navy who is assigned to temporary duty to perform work aboard, or dockside in direct support of, the nuclear aircraft carrier that is forward deployed in Japan and who would be nonexempt under the Fair Labor Standards Act but for the application of the foreign area exemption in section 13(f) of that Act (29 U.S.C. 213(f)), the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(B) Subparagraph (A) shall expire on September 30, 2019.

(b) For the purpose of this subchapter—

(1) unscheduled overtime work performed by an employee on a day when work was not scheduled for him, or for which he is required to return to his place of employment, is deemed at least 2 hours in duration; and

(2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless—

(A) the time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or

(B) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such event to his or her official-duty station.

(c) Subsection (a) shall not apply to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938. In the case of an employee who would, were it not for the preceding sentence, be subject to this section, the Office of Personnel Management shall by regulation prescribe what hours shall be deemed to be hours of work and what hours of work shall be deemed to be overtime hours for the purpose of such section 7 so as to ensure that no employee receives less pay by reason of the preceding sentence.

(d) In applying subsection (a) of this section with respect to any criminal investigator who is paid availability pay under section 5545a—

(1) such investigator shall be compensated under such subsection (a), at the rates there provided, for overtime work

which is scheduled in advance of the administrative workweek—

- (A) in excess of 10 hours on a day during such investigator's basic 40 hour workweek; or
- (B) on a day outside such investigator's basic 40 hour workweek; and
- (2) such investigator shall be compensated for all other overtime work under section 5545a.

(e) Notwithstanding subsection (d)(1) of this section, all hours of overtime work scheduled in advance of the administrative workweek shall be compensated under subsection (a) if that work involves duties as authorized by section 3056(a) of title 18 or section 37(a)(3) of the State Department Basic Authorities Act of 1956, and if the investigator performs, on that same day, at least 2 hours of overtime work not scheduled in advance of the administrative workweek.

(f) In applying subsection (a) of this section with respect to a firefighter who is subject to section 5545b—

(1) such subsection shall be deemed to apply to hours of work officially ordered or approved in excess of 106 hours in a biweekly pay period, or, if the agency establishes a weekly basis for overtime pay computation, in excess of 53 hours in an administrative workweek; and

(2) the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay under section 5545b (b)(1)(A) or (c)(1)(B), as applicable, and such overtime hourly rate of pay may not be less than such hourly rate of basic pay in applying the limitation on the overtime rate provided in paragraph (2) of such subsection (a).

(g) In applying subsection (a) with respect to a border patrol agent covered by section 5550, the following rules apply:

(1) Notwithstanding the matter preceding paragraph (1) in subsection (a), for a border patrol agent who is assigned to the level 1 border patrol rate of pay under section 5550—

(A) hours of work in excess of 100 hours during a 14-day biweekly pay period shall be overtime work; and

(B) the border patrol agent—

(i) shall receive pay at the overtime hourly rate of pay (as determined in accordance with paragraphs (1) and (2) of subsection (a)) for hours of overtime work that are officially ordered or approved in advance of the workweek; and

(ii) except as provided in paragraphs (4) and (5), shall receive compensatory time off for an equal amount of time spent performing overtime work that is not overtime work described in clause (i).

(2) Notwithstanding the matter preceding paragraph (1) in subsection (a), for a border patrol agent who is assigned to the level 2 border patrol rate of pay under section 5550—

(A) hours of work in excess of 90 hours during a 14-day biweekly pay period shall be overtime work; and

(B) the border patrol agent—

(i) shall receive pay at the overtime hourly rate of pay (as determined in accordance with paragraphs (1) and (2) of subsection (a)) for hours of overtime work

that are officially ordered or approved in advance of the workweek; and

(ii) except as provided in paragraphs (4) and (5), shall receive compensatory time off for an equal amount of time spent performing overtime work that is not overtime work described in clause (i).

(3) Notwithstanding the matter preceding paragraph (1) in subsection (a), for a border patrol agent who is assigned to the basic border patrol rate of pay under section 5550—

(A) hours of work in excess of 80 hours during a 14-day biweekly pay period shall be overtime work; and

(B) the border patrol agent—

(i) shall receive pay at the overtime hourly rate of pay (as determined in accordance with paragraphs (1) and (2) of subsection (a)) for hours of overtime work that are officially ordered or approved in advance of the workweek; and

(ii) except as provided in paragraphs (4) and (5), shall receive compensatory time off for an equal amount of time spent performing overtime work that is not overtime work described in clause (i).

(4)(A) Except as provided in subparagraph (B), during a 14-day biweekly pay period, a border patrol agent may not earn compensatory time off for more than 10 hours of overtime work.

(B) U.S. Customs and Border Protection may, as it determines appropriate, waive the limitation under subparagraph (A) for an individual border patrol agent for hours of irregular or occasional overtime work, but such waiver must be approved in writing in advance of the performance of any such work for which compensatory time off is earned under paragraph (1)(B)(ii), (2)(B)(ii), or (3)(B)(ii). If a waiver request by a border patrol agent is denied, the border patrol agent may not be ordered to perform the associated overtime work.

(5) A border patrol agent—

(A) may not earn more than 240 hours of compensatory time off during a **[leave year]** *an annual period, as described in section 5550(b)(1)(A)*;

(B) shall use any hours of compensatory time off not later than the end of the 26th pay period after the pay period during which the compensatory time off was earned;

(C) shall be required to use 1 hour of compensatory time off for each hour of regular time not worked for which the border patrol agent is not on paid leave or other paid time off or does not substitute time in accordance with section 5550(f);

(D) shall forfeit any compensatory time off not used in accordance with this paragraph and, regardless of circumstances, shall not be entitled to any cash value for compensatory time earned under section 5550;

[(E) shall not receive credit towards the computation of the annuity of the border patrol agent for compensatory time, whether used or not; and]

(E) shall not receive credit towards computation of the border patrol agent's annuity based on unused compensatory time off; and

(F) shall not be credited with compensatory time off if the value of such time off would cause the aggregate premium pay of the border patrol agent to exceed the limitation established under section 5547 in the period in which it was earned.

* * * * *

§ 5547. Limitation on premium pay

(a) An employee may be paid premium pay under sections 5542, 5545 (a), (b), and (c), 5545a, 5546 (a) and (b), and 5550 only to the extent that the payment does not cause the aggregate of basic pay and such premium pay for any pay period for such employee to exceed the greater of—

(1) the maximum rate of basic pay payable for GS-15 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

(2) the rate payable for level V of the Executive Schedule.

(b)(1) Subject to regulations prescribed by the Office of Personnel Management, subsection (a) shall not apply to an employee who is paid premium pay by reason of work in connection with an emergency (including a wildfire emergency) that involves a direct threat to life or property, including work performed in the aftermath of such an emergency.

(2) Notwithstanding paragraph (1), no employee referred to in such paragraph may be paid premium pay under the provisions of law cited in subsection (a) if, or to the extent that, the aggregate of the basic pay and premium pay under those provisions for such employee would, in any calendar year, exceed the greater of—

(A) the maximum rate of basic pay payable for GS-15 in effect at the end of such calendar year (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

(B) the rate payable for level V of the Executive Schedule in effect at the end of such calendar year.

(3) Subject to regulations prescribed by the Office of Personnel Management, the head of an agency may determine that subsection (a) shall not apply to an employee who is paid premium pay to perform work that is critical to the mission of the agency. Such employees may be paid premium pay under the provisions of law cited in subsection (a) if, or to the extent that, the aggregate of the basic pay and premium pay under those provisions for such employee would not, in any calendar year, exceed the greater of—

(A) the maximum rate of basic pay payable for GS-15 in effect at the end of such calendar year (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

(B) the rate payable for level V of the Executive Schedule in effect at the end of such calendar year.

(c) The Office of Personnel Management shall prescribe regulations governing the methods of applying subsection (b)(2) and (b)(3) to employees who receive premium pay under section 5545(c) or 5545a, or to firefighters covered by section 5545b who receive overtime pay for hours in their regular tour of duty, *or to border patrol agents who receive an overtime supplement for overtime hours within their regular tour of duty under section 5550*, and the method of payment to such employees. Such regulations may limit the payment of such premium pay on a biweekly basis.

(d) This section shall not apply to any employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under section 5546a.

(e) Any supplemental pay resulting from receipt of the level 1 border patrol rate of pay or the level 2 border patrol rate of pay under section 5550 shall be considered premium pay in applying this section.

* * * * *

§ 5550. Border patrol rate of pay

(a) DEFINITIONS.—In this section—

(1) the term “basic border patrol rate of pay” means the hourly rate of basic pay of the applicable border patrol agent, as determined without regard to this section;

(2) the term “border patrol agent” means an individual who is appointed to a position assigned to the Border Patrol Enforcement classification series 1896 or any successor series, consistent with classification standards established by the Office of Personnel Management;

(3) the term “level 1 border patrol rate of pay” means the hourly rate of pay equal to 1.25 times the otherwise applicable hourly rate of basic pay of the applicable border patrol agent;

(4) the term “level 2 border patrol rate of pay” means the hourly rate of pay equal to 1.125 times the otherwise applicable hourly rate of basic pay of the applicable border patrol agent; and

(5) the term “work period” means a 14-day biweekly pay period.

(b) RECEIPT OF BORDER PATROL RATE OF PAY.—

(1) VOLUNTARY ELECTION.—

(A) IN GENERAL.—~~Not later than 30 days before the first day of each year beginning after the date of enactment of this section, a border patrol agent shall make an election whether the border patrol agent shall, for that year, be assigned to~~ *Not later than December 1 of each year, a border patrol agent shall make an election whether the border patrol agent shall, for the next annual period beginning on the first day of the first pay period that commences on or after January 1, be assigned to—*

- (i) the level 1 border patrol rate of pay;
- (ii) the level 2 border patrol rate of pay; or
- (iii) the basic border patrol rate of pay, with additional overtime assigned as needed by U.S. Customs and Border Protection.

(B) REGULATIONS.—The Director of the Office of Personnel Management shall promulgate regulations establishing procedures for elections under subparagraph (A).

(C) INFORMATION REGARDING ELECTION.—**Not later than 60 days before the first day of each year beginning after the date of enactment of this section** *Not later than November 1 of each year*, U.S. Customs and Border Protection shall provide each border patrol agent with information regarding each type of election available under subparagraph (A) and how to make such an election.

(D) ASSIGNMENT IN LIEU OF ELECTION.—Notwithstanding subparagraph (A)—

(i) a border patrol agent who fails to make a timely election under subparagraph (A) shall be assigned to the level 1 border patrol rate of pay;

(ii) a border patrol agent who is assigned a canine shall be assigned to the level 1 border patrol rate of pay;

(iii) if at any time U.S. Customs and Border Protection concludes that a border patrol agent is unable to perform overtime on a daily basis in accordance with this section, U.S. Customs and Border Protection shall assign the border patrol agent to the basic border patrol rate of pay until such time as U.S. Customs and Border Protection determines that the border patrol agent is able to perform scheduled overtime on a daily basis;

[(iv) unless the analysis conducted under section 2(e) of the Border Patrol Agent Pay Reform Act of 2014 indicates that, in order to more adequately fulfill the operational requirements of U.S. Customs and Border Protection, such border patrol agents should be allowed to elect or be assigned to the level 1 border patrol rate of pay or the level 2 border patrol rate of pay, a border patrol agent shall be assigned to the basic border patrol rate of pay if the agent works—

[(I) at U.S. Customs and Border Protection headquarters;

[(II) as a training instructor at a U.S. Customs and Border Protection training facility;

[(III) in an administrative position; or

[(IV) as a fitness instructor; and]

(iv) a border patrol agent shall be assigned a basic border patrol rate of pay during the period of initial training (including initial orientation sessions, basic training, and other preparatory activities) prior to the agent's first regular work assignment; and

(v) a border patrol agent may be assigned to the level 1 border patrol rate of pay **for the level 2 border patrol rate of pay** in accordance with subparagraph (E).

(E) FLEXIBILITY.—

(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), and notwithstanding any other provision of law, U.S. Customs and Border Protection shall take

such action as is necessary, including the unilateral assignment of border patrol agents to the level 1 border patrol rate of pay [or the level 2 border patrol rate of pay], to ensure that not more than 10 percent of the border patrol agents stationed at a location are assigned to the level 2 border patrol rate of pay or the basic border patrol rate of pay.

(ii) **WAIVER.**—U.S. Customs and Border Protection may waive the limitation under clause (i) on the percent of border patrol agents stationed at a location who are assigned to the level 2 border patrol rate of pay or the basic border patrol rate of pay if, based on [the analysis conducted under section 2(e) of the Border Patrol Agent Pay Reform Act of 2014] *a written staffing analysis*, U.S. Customs and Border Protection determines it may do so and adequately fulfill its operational requirements.

(iii) **CERTAIN LOCATIONS.**—Clause (i) shall not apply to border patrol agents working at the headquarters of U.S. Customs and Border Protection or a training location of U.S. Customs and Border Protection.

(iv) **EXCLUSION OF CERTAIN EMPLOYEES.**—*In applying any percentage limit under clause (i) or (ii) to a location population, U.S. Customs and Border Protection shall exclude from such population any border patrol agent who is assigned a basic border patrol rate of pay under subparagraph (D)(iii) or (D)(iv) or who would reach the premium pay cap under section 5547 if assigned a level 1 border patrol rate of pay.*

(v) **APPLICATION FREQUENCY.**—*The 10 percent limit under clause (i) or an alternative percentage limit under a waiver under clause (ii) shall be applied at the beginning of the first pay period beginning on or after January 1 each year.*

[(F) **CANINE CARE.**—For a border patrol agent assigned to provide care for a canine and assigned to the level 1 border patrol rate of pay in accordance with subparagraph (D)(ii)—

[(i) that rate of pay covers all such care;

[(ii) for the purposes of scheduled overtime under paragraph (2)(A)(ii), such care shall be counted as 1 hour of scheduled overtime on each regular workday without regard to the actual duration of such care or whether such care occurs on the regular workday; and

[(iii) no other pay shall be paid to the border patrol agent for such care.

[(G) **PAY ASSIGNMENT CONTINUITY.**—

[(i) **IN GENERAL.**—Not later than 1 year after the date of enactment of the Border Patrol Agent Pay Reform Act of 2014, and in consultation with the Office of Personnel Management, U.S. Customs and Border Protection shall develop and implement a plan to ensure, to the greatest extent practicable, that the assignment of a border patrol agent under this section during the 3 years of service before the border patrol

agent becomes eligible for immediate retirement are consistent with the average border patrol rate of pay level to which the border patrol agent has been assigned during the course of the career of the border patrol agent.

[(ii) IMPLEMENTATION.—Notwithstanding any other provision of law, U.S. Customs and Border Protection may take such action as is necessary, including the unilateral assignment of border patrol agents to the level 1 border patrol rate of pay, the level 2 border patrol rate of pay, or the basic border patrol rate of pay, to implement the plan developed under this subparagraph.

[(iii) REPORTING.—U.S. Customs and Border Protection shall submit the plan developed under clause (i) to the appropriate committees of Congress.

[(iv) GAO REVIEW.—Not later than 6 months after U.S. Customs and Border Protection issues the plan required under clause (i), the Comptroller General of the United States shall submit to the appropriate committees of Congress a report on the effectiveness of the plan in ensuring that border patrol agents are not able to artificially enhance their retirement annuities.

[(v) DEFINITION.—In this subparagraph, the term “appropriate committees of Congress” means—

[(I) the Committee on Homeland Security and Governmental Affairs and the Committee on Appropriations of the Senate; and

[(II) the Committee on Homeland Security, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives.

[(vi) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to limit the ability of U.S. Customs and Border Protection to assign border patrol agents to border patrol rates of pay as necessary to meet operational requirements.]

(F) CANINE CARE.—(i) *For a border patrol agent assigned to provide care for a canine while not on duty and assigned to the level 1 border patrol rate of pay in accordance with subparagraph (D)(ii)—*

(I) that rate of pay covers all such care and no other pay shall be paid to the border patrol agent for such care except as set forth in subclauses (II) through (V);

(II) the agent shall be credited with 1 hour of such care for each calendar day on which such care occurs (without regard to the actual duration of such care);

(III) canine care hours credited under subclause (II) on a day when the agent performs regular time work under paragraph (2)(A)(i) shall—

(aa) be counted as up to 1 hour of scheduled overtime (as described in paragraph (2)(A)(ii)) on that work day if the agent has not completed 2 hours of scheduled overtime (excluding the canine

care hour credited under clause (ii)) on that workday; or

(bb) be counted as up to 1 hour of overtime work that is officially ordered or approved in advance of the workweek under section 5542(g) based on the amount of canine care credit for the workday that is not converted to scheduled overtime under item (aa);

(IV) canine care hours credited under subclause (II) on a day when the agent does not perform regular time work under paragraph (2)(A)(i) shall be counted as 1 hour of overtime work that is officially ordered or approved in advance of the workweek under section 5542(g); and

(V) notwithstanding subclauses (III)(bb) and (IV), overtime work credited under those subclauses is subject to substitution or application as provided in paragraph (2)(F) and subsection (f) as follows:

(aa) Substitution for periods of absence during regular time or scheduled overtime (as described in paragraph (2)(A)(ii)) within the same work period in which the canine care credit was generated.

(bb) Application towards a debt of obligated overtime hours.

(ii) Canine care hours credited under subclauses (III) or (IV) shall not be credited as overtime work under any other provision of law.

(2) **LEVEL 1 BORDER PATROL RATE OF PAY.**—For a border patrol agent who is assigned to the level 1 border patrol rate of pay—

(A) the border patrol agent shall have a regular tour of duty consisting of 5 workdays per week with—

(i) 8 hours of regular time per workday, which may be interrupted by an unpaid off-duty meal break; and

(ii) 2 additional hours of scheduled overtime during each day the agent performs work under clause (i);

(B) for paid hours of regular time described in subparagraph (A)(i), the border patrol agent shall receive pay at the level 1 border patrol rate of pay;

(C) compensation for the hours of regularly scheduled overtime work described in subparagraph (A)(ii) is provided indirectly through the 25 percent supplement within the level 1 border patrol rate of pay, and the border patrol agent may not receive for such hours—

[(i) any compensation in addition to the compensation under subparagraph (B) under this section or any other provision of law; or]

(i) any compensation under this section or any other provision of law in addition to the compensation provided under subparagraph (B); or

(ii) any compensatory time off;

(D) the border patrol agent shall receive compensatory time off or pay at the overtime hourly rate of pay for hours of work in excess of 100 hours during a work period, as determined in accordance with section 5542(g);

(E) the border patrol agent shall be charged corresponding amounts of **【paid leave】** *leave*, compensatory time off, or other paid time off for each hour (or part thereof) the agent is **【absent from work】** *excused from work* during regular time (except that full days off for military leave shall be charged when required);

(F) if the border patrol agent is absent during scheduled overtime described in subparagraph (A)(ii)—

(i) the border patrol agent shall accrue an obligation to perform other overtime work for each hour (or part thereof) the border patrol agent is absent; and

(ii) any overtime work applied toward the obligation under clause (i) shall not be credited as overtime work under any other provision of law; **【and】**

【(G) for the purposes of advanced training, the border patrol agent—

【(i) shall be paid at the level 1 border patrol rate of pay for the first 60 days of advanced training in a calendar year; and

【(ii) for any advanced training in addition to the advanced training described in clause (i), shall be paid at the basic border patrol rate of pay.】

(G) if the border patrol agent participates in a full day of advanced training but does not perform the entire required amount of scheduled overtime work under subparagraph (A)(ii) on that day, the border patrol agent shall be deemed to have performed scheduled overtime work during nonwork periods to the extent necessary to reach the required amount, but such deemed credit may be applied to no more than 180 hours in a calendar year; otherwise, the agent shall accrue a debt of hours for scheduled overtime not worked on such a day; and

(H) a border patrol agent may choose to reduce any debt of obligated overtime hours that the agent has incurred by applying any accrued compensatory time off for travel pursuant to section 5550b, and such compensatory time off for travel may be applied towards such debt only after other forms of overtime or earned compensatory time credited to the border patrol agent have been exhausted.

(3) **LEVEL 2 BORDER PATROL RATE OF PAY.**—For a border patrol agent who is assigned to the level 2 border patrol rate of pay—

(A) the border patrol agent shall have a regular tour of duty consisting of 5 workdays per week with—

(i) 8 hours of regular time per workday, which may be interrupted by an unpaid off-duty meal break; and

(ii) 1 additional hour of scheduled overtime during each day the agent performs work under clause (i);

(B) for paid hours of regular time described in subparagraph (A)(i), the border patrol agent shall receive pay at the level 2 border patrol rate of pay;

(C) compensation for the hours of regularly scheduled overtime work described in subparagraph (A)(ii) is provided indirectly through the 12.5 percent supplement with—

in the level 2 border patrol rate of pay, and the border patrol agent may not receive for such hours—

[(i) any compensation in addition to the compensation under subparagraph (B) under this section or any other provision of law; or]

(i) any compensation under this section or any other provision of law in addition to the compensation provided under subparagraph (B); or

(ii) any compensatory time off;

(D) the border patrol agent shall receive compensatory time off or pay at the overtime hourly rate of pay for hours of work in excess of 90 hours during a work period, as determined in accordance with section 5542(g);

(E) the border patrol agent shall be charged corresponding amounts of [paid leave] *leave*, compensatory time off, or other paid time off for each hour (or part thereof) the agent is excused from work during regular time (except that full days off for military leave shall be charged when required);

(F) if the border patrol agent is absent during scheduled overtime described in subparagraph (A)(ii)—

(i) the border patrol agent shall accrue an obligation to perform other overtime work for each hour (or part thereof) the border patrol agent is absent; and

(ii) any overtime work applied toward the obligation under clause (i) shall not be credited as overtime work under any other provision of law; [and]

[(G) for the purposes of advanced training, the border patrol agent—

[(i) shall be paid at the level 2 border patrol rate of pay for the first 60 days of advanced training in a calendar year; and

[(ii) for any advanced training in addition to the advanced training described in clause (i), shall be paid at the basic border patrol rate of pay.]]

(G) if the border patrol agent participates in a full day of advanced training but does not perform the entire required amount of scheduled overtime work under subparagraph (A)(ii) on that day, the border patrol agent shall be deemed to have performed scheduled overtime work during nonwork periods to the extent necessary to reach the required amount, but such deemed credit may be applied to no more than 90 hours in a calendar year; otherwise, the agent shall accrue a debt of hours for scheduled overtime not worked on such a day; and

(H) a border patrol agent may choose to reduce any debt of obligated overtime hours that the agent has incurred by applying any accrued compensatory time off for travel pursuant to section 5550b; such compensatory time off for travel may be applied towards such debt only after other forms of overtime or earned compensatory time credited to the border patrol agent have been exhausted.

(4) BASIC BORDER PATROL RATE OF PAY.—For a border patrol agent who is assigned to the basic border patrol rate of pay—

(A) the border patrol agent shall have a regular tour of duty consisting of 5 workdays per week with 8 hours of regular time per workday; and

(B) the border patrol agent shall receive compensatory time off or pay at the overtime hourly rate of pay for hours of work in excess of 80 hours during a work period, as determined in accordance with section 5542(g).

(c) **ELIGIBILITY FOR OTHER PREMIUM PAY.**—A border patrol agent—

(1) shall receive premium pay for nightwork in accordance with subsections (a) and (b) of section 5545 and Sunday and holiday pay in accordance with section 5546, without regard to the rate of pay to which the border patrol agent is assigned under this section, except that—

(A) no premium pay for night, Sunday, or holiday work shall be provided for hours of regularly scheduled overtime work described in paragraph (2)(A)(ii) or (3)(A)(ii) of subsection (b), consistent with the requirements of paragraph (2)(C) or (3)(C) of subsection (b); and

(B) section 5546(d) shall not apply and instead eligibility for pay for, and the rate of pay for, any overtime work on a Sunday or a designated holiday shall be determined in accordance with this section and section 5542(g);

(2) except as provided in paragraph (3) or section 5542(g), shall not be eligible for any other form of premium pay under this title; and

(3) shall be eligible for hazardous duty pay in accordance with section 5545(d).

[(d) **TREATMENT AS BASIC PAY.**—Any pay in addition to the basic border patrol rate of pay for a border patrol agent resulting from application of the level 1 border patrol rate of pay or the level 2 border patrol rate of pay—

[(1) subject to paragraph (2), shall be treated as part of basic pay solely for—

[(A) purposes of sections 5595(c), 8114(e), 8331(3)(I), and 8704(c);

[(B) any other purpose that the Director of the Office of Personnel Management may by regulation prescribe; and

[(C) any other purpose expressly provided for by law; and

[(2) shall not be treated as part of basic pay for the purposes of calculating overtime pay, night pay, Sunday pay, or holiday pay under section 5542, 5545, or 5546.]]

(d) **TREATMENT AS BASIC PAY.**—

(1) *IN GENERAL.*—Any overtime supplement in addition to the basic border patrol rate of pay for a border patrol agent resulting from application of the level 1 border patrol rate of pay or the level 2 border patrol rate of pay shall be treated as part of basic pay only—

(A) except as otherwise provided in paragraph (3), for purposes of the definitions in section 8331(3) and 8401(4) and the provisions in chapters 83 and 84 that rely on those definitions (consistent with section 8331(3)(I));

(B) except as otherwise provided in paragraph (3), for purposes of sections 5595(c) and 8704(c);

(C) for the purpose of section 8114(e); and

(D) subject to paragraph (2) and any limitation established under paragraph (3), any other purpose that the Director of the Office of Personnel Management may by regulation prescribe.

(2) *EXCLUSIONS.*—The overtime supplement described in paragraph (1) shall not be treated as part of basic pay for purposes not covered by that paragraph, including the purposes of calculating—

(A) overtime pay, night pay, Sunday pay, or holiday pay under section 5542, 5545, or 5546;

(B) locality-based comparability payments under section 5304 or special rate supplements under section 5305; or

(C) cost-of-living allowances in nonforeign areas under section 5941.

(3) *LIMITATIONS.*—

(A) *IN GENERAL.*—During the control period described in subparagraph (B), the amount of the overtime supplement that is considered basic pay under paragraphs (1)(A) and (1)(B) may not exceed the amount derived by multiplying the border patrol agent's basic border patrol rate of pay by the percentage representing the agent's career average of assigned overtime supplement percentages (including 0 percent for periods of time during which no overtime supplement was payable). That career average percentage is computed without regard to the effect of the limitation on premium pay under section 5547, but the premium pay limitation remains applicable in determining the dollar amount of any overtime supplement computed using the career average percentage.

(B) *CONTROL PERIOD.*—For the purposes of applying subparagraph (A), the control period described in this subparagraph is the period that begins 3 years before the date a border patrol agent will meet age and service requirements associated with entitlement to an immediate annuity and continues throughout the remainder of the individual's career as a border patrol agent.

(C) *ASSIGNED OVERTIME SUPPLEMENT PERCENTAGES.*—For the purpose of applying subparagraph (A), a border patrol agent's initial career average of assigned overtime supplement percentages is the average for the border patrol agent's career (excluding any period of initial training prior to the agent's first regular work assignment) prior to the beginning of the control period described in subparagraph (B). During such control period, the career average shall be recomputed at the end of each annual period (as described in subsection (b)(1)(A)). In computing such career average, any periods of service as a border patrol agent prior to the first day of the first pay period beginning on or after January 1, 2016, shall be included, and the agent's assigned overtime supplement during such periods shall be deemed to be 25 percent.

(4) *ANNUAL LEAVE PAYMENT.*—For the purpose of computing an agent's lump-sum annual leave payment under section 5551 or 5552, the pay the agent is projected to receive shall include

a deemed overtime supplement derived under this paragraph. Such overtime supplement shall be based on the lower of the agent's actual overtime supplement percentage in effect at separation or the average percentage of the agent's overtime supplement over the 26 full biweekly pay periods immediately preceding that separation, and shall not exceed the amount that is or would be payable under the premium pay limitation in section 5547.

(e) TRAVEL TIME.—Travel time to and from home and duty station by a border patrol agent shall not be considered hours of work under any provision of law.

(f) LEAVE WITHOUT PAY [AND SUBSTITUTION OF HOURS] DURING REGULAR TIME; ABSENCES DURING SCHEDULED OVERTIME.—

(1) REGULAR TIME.—

(A) IN GENERAL.—For a period of leave without pay during the regular time of a border patrol agent (as described in paragraph (2)(A)(i), (3)(A)(i), or (4)(A) of subsection (b)) within a work period, an equal period of work outside the regular time of the border patrol agent, but in the same work period—

(i) shall be substituted and paid for at the rate applicable for the regular time; and

(ii) shall not be credited as overtime hours for any purpose.

(B) PRIORITY FOR SAME DAY WORK.—In substituting hours of work under subparagraph (A), work performed on the same day as the period of leave without pay shall be substituted first.

(C) PRIORITY FOR REGULAR TIME SUBSTITUTION.—Hours of work shall be substituted for regular time work under this paragraph before being substituted for scheduled overtime under paragraphs (2), (3), and (4).

(2) OVERTIME WORK.—

(A) IN GENERAL.—For a period of absence during scheduled overtime (as described in paragraph (2)(F) or (3)(F) of subsection (b)) within a work period, an equal period of additional work in the same work period—

(i) shall be substituted and credited as scheduled overtime; and

(ii) shall not be credited as overtime hours under any other provision of law.

(B) PRIORITY FOR SAME DAY WORK.—In substituting hours of work under subparagraph (A), work performed on the same day as the period of absence shall be substituted first.

(3) APPLICATION OF COMPENSATORY TIME.—If a border patrol agent does not have sufficient additional work in a work period to substitute for all periods of absence during scheduled overtime (as described in paragraph (2)(F) or (3)(F) of subsection (b)) within that work period, any accrued compensatory time off under section 5542(g) shall be applied to satisfy the hours obligation.

(4) INSUFFICIENT HOURS.—If a border patrol agent has a remaining hours obligation of scheduled overtime after applying paragraphs (2) and (3), any additional work in subsequent

work periods that would otherwise be credited under section 5542(g) shall be applied towards the hours obligation until that obligation is satisfied.

(5) *SPECIAL RULES FOR LEAVE WITHOUT PAY.*—

(A) *AT LEAST 1 WORKDAY.*—If a border patrol agent takes leave without pay for a period of at least 1 workday, the agent shall not receive any pay for the hours during which the border patrol agent took leave without pay.

(B) *NO ACCRUAL OF OVERTIME DEBT.*—A border patrol agent shall not accrue an overtime debt for any full workdays during which a border patrol agent uses leave without pay, regardless of the border patrol rate of pay to which the border patrol agent is assigned.

(C) *CALCULATION OF PAY.*—For pay periods during which a border patrol agent takes 1 or more full days of leave without pay, the amount of border patrol pay that the agent would normally receive shall be reduced proportionally by the amount of overtime hours that the agent has not worked due to being on leave without pay. The total amount of border patrol pay that a border patrol agent would normally receive in a pay period described in the preceding sentence shall be decreased based on the percentage of work days for which the border patrol agent takes leave without pay.

(g) *AUTHORITY TO REQUIRE OVERTIME WORK.*—Nothing in this section shall be construed to limit the authority of U.S. Customs and Border Protection to require a border patrol agent to perform hours of overtime work in accordance with the needs of U.S. Customs and Border Protection, including if needed in the event of a local or national emergency.

(h) *ALTERNATIVE WORK SCHEDULES.*—

(1) *IN GENERAL.*—Notwithstanding any other provision in this section or section 6101, U.S. Customs and Border Protection may assign a border patrol agent an alternative work schedule as described in this subsection, subject to any regulations prescribed by the Director of the Office of Personnel Management. No alternative work schedule may be established under subchapter II of chapter 61.

(2) *LEVEL 2 BORDER PATROL AGENT.*—A border patrol agent receiving a level 2 border patrol rate of pay may, in lieu of the standard work schedule described in subsection (b)(3)(A), be assigned to an alternative work schedule under the following terms and conditions:

(A) *The alternative work schedule shall be a regular tour of duty consisting of 9 workdays per biweekly pay period, with—*

(i) *8 workdays including 9 hours of regular time per workday and 1 additional hour of scheduled overtime for each day the agent performs work during regular time; and*

(ii) *1 workday including 8 hours of regular time per workday and 2 additional hours of scheduled overtime when the agent performs work during such regular time.*

(B) Subparagraphs (B) through (H) of subsection (b)(3) shall continue to apply to an agent assigned to an alternative work schedule under this paragraph. References in this section to regular time under subsection (b)(3)(A)(i) and scheduled overtime under subsection (b)(3)(A)(ii) shall be deemed to be references to regular time and scheduled overtime described in subparagraph (A), respectively.

(3) **BASIC BORDER PATROL AGENT.**—A border patrol agent receiving a basic border patrol rate of pay may, in lieu of the standard work schedule described in subsection (b)(4)(A), be assigned to an alternative work schedule that is a regular tour of duty consisting of 4 workdays per week with 10 hours of regular time per workday.

(4) **SUNDAY PAY; PREMIUM PAY.**—A border patrol agent assigned to an alternative work schedule under this subsection, may receive, as applicable—

(A) Sunday pay for no more than 8 hours of regular time associated with a given Sunday, consistent with section 5546(a);

(B) premium pay for work on a holiday for no more than 8 hours of regular time associated with a given holiday, consistent with section 5546(b); and

(C) basic pay for all regular time hours that qualify for holiday time off pay when an agent is relieved or prevented from working during such regular time on a day designated as a holiday by Federal statute or Executive order.

(5) **APPLICATION.**—For purposes of administering sections 6303(a), 6304, 6307(a) and (d), 6323, 6326, 6327, and 8339(m), in the case of an employee assigned to an alternative work schedule under this subsection, references to a day or workday (or to multiples or parts thereof) contained in such sections shall be considered to be references to 8 hours (or to the respective multiples or parts thereof).

(i) **REGULATIONS.**—The Director of the Office of Personnel Management shall promulgate regulations to carry out this section, including regulations governing—

(1) elections and assignments of a border patrol rate of pay for newly hired border patrol agents who complete initial training during an annual period;

(2) situations in which an agent receives more than one type of border patrol rate of pay in a biweekly pay period or is employed as a border patrol agent for only part of a biweekly pay period; and

(3) the treatment of hours that are substituted for nonpay status hours during regular time.

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SUBPART G—INSURANCE AND ANNUITIES

* * * * *

CHAPTER 83—RETIREMENT

* * * * *

SUBCHAPTER III—CIVIL SERVICE RETIREMENT

§ 8331. Definitions

For the purpose of this subchapter—

(1) “employee” means—

(A) an employee as defined by section 2105 of this title;

(B) the Architect of the Capitol, an employee of the Architect of the Capitol, and an employee of the Botanic Garden;

(C) a Congressional employee as defined by section 2107 of this title (other than the Architect of the Capitol, an employee of the Architect of the Capitol, and an employee of the Botanic Garden), after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter;

(D) a temporary Congressional employee appointed at an annual rate of pay, after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter;

(E) a United States Commissioner whose total pay for services performed as Commissioner is not less than \$3,000 in each of the last 3 consecutive calendar years ending after December 31, 1954;

(F) an individual employed by a county committee established under section 590h(b) of title 16;

(G) an individual first employed by the government of the District of Columbia before October 1, 1987;

(H) an individual employed by Gallaudet College;

(I) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);

(J) an alien (i) who was previously employed by the Government, (ii) who is employed full time by a foreign government for the purpose of protecting or furthering the interests of the United States during an interruption of diplomatic or consular relations, and (iii) for whose services reimbursement is made to the foreign government by the United States;

(K) an individual appointed to a position on the office staff of a former President, or a former Vice President under section 5 of the Presidential Transition Act of 1963, as amended (78 Stat. 153), who immediately before the date of such appointment was an employee as defined under any other subparagraph of this paragraph; and

(L) an employee described in section 2105(c) who has made an election under section 8347(q)(1) to remain covered under this subchapter;

but does not include—

(i) a justice or judge of the United States as defined by section 451 of title 28;

(ii) an employee subject to another retirement system for Government employees (besides any employee excluded by clause (x), but including any employee who has made an election under section 8347(q)(2) to remain covered by a re-

tirement system established for employees described in section 2105(c));

(iii) an employee or group of employees in or under an Executive agency excluded by the Office of Personnel Management under section 8347(g) of this title;

(iv) an individual or group of individuals employed by the government of the District of Columbia excluded by the Office under section 8347(h) of this title;

(v) an employee of the Administrative Office of the United States Courts, the Federal Judicial Center, or a court named by section 610 of title 28, excluded by the Director of the Administrative Office under section 8347(o) of this title;

(vi) a construction employee or other temporary, part-time, or intermittent employee of the Tennessee Valley Authority;

(vii) an employee under the Office of the Architect of the Capitol excluded by the Architect of the Capitol under section 8347(i) of this title;

(viii) an employee under the Library of Congress excluded by the Librarian of Congress under section 8347(j) of this title;

(ix) a student-employee as defined by section 5351 of this title;

(x) an employee subject to the Federal Employees' Retirement System;

(xi) an employee under the Botanic Garden excluded by the Director or Acting Director of the Botanic Garden under section 8347(l) of this title; or

(xii) a member of the Foreign Service (as described in section 103(6) of the Foreign Service Act of 1980), appointed after December 31, 1987.

Notwithstanding this paragraph, the employment of a teacher in the recess period between two school years in a position other than a teaching position in which he served immediately before the recess period does not qualify the individual as an employee for the purpose of this subchapter. For the purpose of the preceding sentence, "teacher" and "teaching position" have the meanings given them by section 901 of title 20;

(2) "Member" means a Member of Congress as defined by section 2106 of this title, after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter, but does not include any such Member of Congress who is subject to the Federal Employees' Retirement System or who makes an election under section 8401(20) of this title not to be subject to such System;

(3) "basic pay" includes—

(A) the amount a Member received from April 1, 1954, to February 28, 1955, as expense allowance under section 601(b) of the Legislative Reorganization Act of 1946 (60 Stat. 850), as amended; and that amount from January 3, 1953, to March 31, 1954, if deposit is made therefor as provided by section 8334 of this title;

(B) additional pay provided by—

- (i) subsection (a) of section 60e-7 of title 2 and the provisions of law referred to by that subsection; and
- (ii) sections 60e-8, 60e-9, 60e-10, 60e-11, 60e-12, 60e-13, and 60e-14 of title 2;
- (C) premium pay under section 5545(c)(1) of this title;
- (D) with respect to a law enforcement officer, premium pay under section 5545(c)(2) of this title;
- (E) availability pay—
 - (i) received by a criminal investigator under section 5545a of this title; or
 - (ii) received after September 11, 2001, by a Federal air marshal of the Department of Transportation, subject to all restrictions and earning limitations imposed on criminal investigators under section 5545a;
- (F) pay as provided in section 5545b (b)(2) and (c)(2);
- (G) with respect to a customs officer (referred to in subsection (e)(1) of section 5 of the Act of February 13, 1911), compensation for overtime inspectional services provided for under subsection (a) of such section 5, but not to exceed 50 percent of any statutory maximum in overtime pay for customs officers which is in effect for the year involved;
- (H) any amount received under section 5948 (relating to physicians comparability allowances); and
- (I) with respect to a border patrol agent, the amount of supplemental pay received through application of the level 1 border patrol rate of pay or the level 2 border patrol rate of pay for scheduled overtime within the regular tour of duty of the border patrol agent as provided in section 5550, *subject to the limitation prescribed in section 5550(d)(3)*;

but does not include bonuses, allowances, overtime pay, military pay, pay given in addition to the base pay of the position as fixed by law or regulation except as provided by subparagraphs (B) through (I) of this paragraph retroactive pay under section 5344 of this title in the case of a retired or deceased employee, uniform allowances under section 5901 of this title, or lump-sum leave payments under subchapter VI of chapter 55 of this title. For an employee paid on a fee basis, the maximum amount of basic pay which may be used is \$10,000;

(4) “average pay” means the largest annual rate resulting from averaging an employee’s or Member’s rates of basic pay in effect over any 3 consecutive years of creditable service or, in the case of an annuity under subsection (d) or (e)(1) of section 8341 of this title based on service of less than 3 years, over the total service, with each rate weighted by the time it was in effect;

(5) “Fund” means the Civil Service Retirement and Disability Fund;

(7) “Government” means the Government of the United States, the government of the District of Columbia, Gallaudet University, and, in the case of an employee described in paragraph (1)(L), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c);

(8) “lump-sum credit” means the unrefunded amount consisting of—

(A) retirement deductions made from the basic pay of an employee or Member;

(B) amounts deposited by an employee or Member covering earlier service, including any amounts deposited under section 8334(j) of this title; and

(C) interest on the deductions and deposits at 4 percent a year to December 31, 1947, and 3 percent a year thereafter compounded annually to December 31, 1956, or, in the case of an employee or Member separated or transferred to a position in which he does not continue subject to this subchapter before he has completed 5 years of civilian service, to the date of the separation or transfer;

but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for the fractional part of a month in the total service;

(9) “annuitant” means a former employee or Member who, on the basis of his service, meets all requirements of this subchapter for title to annuity and files claim therefor;

(10) “survivor” means an individual entitled to annuity under this subchapter based on the service of a deceased employee, Member, or annuitant;

(11) “survivor annuitant” means a survivor who files claim for annuity;

(12) “service” means employment creditable under section 8332 of this title;

(13) “military service” means honorable active service—

(A) in the armed forces;

(B) in the Regular or Reserve Corps of the Public Health Service after June 30, 1960; or

(C) as a commissioned officer of the Environmental Science Services Administration after June 30, 1961;

and includes service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, but does not include service in the National Guard except when ordered to active duty in the service of the United States or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990;

(14) “Member service” means service as a Member and includes the period from the date of the beginning of the term for which elected or appointed to the date on which he takes office as a Member;

(15) “price index” means the Consumer Price Index (all items - United States city average) published monthly by the Bureau of Labor Statistics;

(16) “base month” means the month for which the price index showed a percent rise forming the basis for a cost-of-living annuity increase;

(17) “normal-cost percentage” means the entry-age normal cost computed by the Office of Personnel Management in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and expressed as a level percentage of aggregate basic pay;

(18) “Fund balance” means the current net assets of the Fund available for payment of benefits, as determined by the Office in accordance with appropriate accounting standards, but does not include any amount attributable to—

(A) the Federal Employees’ Retirement System; or

(B) contributions made under the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of any individual who became subject to the Federal Employees’ Retirement System;

(19) “unfunded liability” means the estimated excess of the present value of all benefits payable from the Fund to employees and Members, and former employees and Members, subject to this subchapter, and to their survivors, over the sum of—

(A) the present value of deductions to be withheld from the future basic pay of employees and Members currently subject to this subchapter and of future agency contributions to be made in their behalf; plus

(B) the present value of Government payments to the Fund under section 8348(f) of this title; plus

(C) the Fund balance as of the date the unfunded liability is determined;

(20) “law enforcement officer” means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this paragraph, “detention” includes the duties of—

(A) employees of the Bureau of Prisons and Federal Prison Industries, Incorporated;

(B) employees of the Public Health Service assigned to the field service of the Bureau of Prisons or of the Federal Prison Industries, Incorporated;

(C) employees in the field service at Army or Navy disciplinary barracks or at confinement and rehabilitation facilities operated by any of the armed forces; and

(D) employees of the Department of Corrections of the District of Columbia, its industries and utilities;

whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniformed Code of Military Justice (chapter 47 of title 10) require frequent (as determined by the appropriate administrative authority with the concurrence of the Office) direct contact with these individuals in their detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation;

(21) “firefighter” means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and

use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position;

(22) “bankruptcy judge” means an individual—

(A) who is appointed under section 34 of the Bankruptcy Act (11 U.S.C. 62) or under section 404(d) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549), and—

(i) who is serving as a United States bankruptcy judge on March 31, 1984; or

(ii) whose service as a United States bankruptcy judge at any time in the period beginning on October 1, 1979, and ending on July 10, 1984, is terminated by reason of death or disability; or

(B) who is appointed as a bankruptcy judge under section 152 of title 28;

(23) “former spouse” means a former spouse of an individual—

(A) if such individual performed at least 18 months of civilian service covered under this subchapter as an employee or Member, and

(B) if the former spouse was married to such individual for at least 9 months;

(24) “Indian court” means an Indian court as defined by section 201(3) of the Act entitled “An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes”, approved April 11, 1968 (25 U.S.C. 1301(3); 82 Stat. 77);

(25) “magistrate judge” or “United States magistrate judge” means an individual appointed under section 631 of title 28;

(26) “Court of Federal Claims judge” means a judge of the United States Court of Federal Claims who is appointed under chapter 7 of title 28 or who has served under section 167 of the Federal Courts Improvement Act of 1982;

(27) “Nuclear materials courier”—

(A) means an employee of the Department of Energy, the duties of whose position are primarily to transport, and provide armed escort and protection during transit of, nuclear weapons, nuclear weapon components, strategic quantities of special nuclear materials or other materials related to national security; and

(B) includes an employee who is transferred directly to a supervisory or administrative position within the same Department of Energy organization, after performing duties referred to in subparagraph (A) for at least 3 years;

(28) “Government physician” has the meaning given that term under section 5948;

(29) “dynamic assumptions” means economic assumptions that are used in determining actuarial costs and liabilities of a retirement system and in anticipating the effects of long-term future—

(A) investment yields;

(B) increases in rates of basic pay; and

(C) rates of price inflation;

(30) the term “air traffic controller” or “controller” means—

(A) a controller within the meaning of section 2109(1);
and

(B) a civilian employee of the Department of Transportation or the Department of Defense who is the immediate supervisor of a person described in section 2109(1)(B);

(31) “customs and border protection officer” means an employee in the Department of Homeland Security (A) who holds a position within the GS-1895 job series (determined applying the criteria in effect as of September 1, 2007) or any successor position, and (B) whose duties include activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry, including any such employee who is transferred directly to a supervisory or administrative position in the Department of Homeland Security after performing such duties (as described in subparagraph (B)) in 1 or more positions (as described in subparagraph (A)) for at least 3 years; and

(32) “Director” means the Director of the Office of Personnel Management.

* * * * *

BORDER PATROL AGENT PAY REFORM ACT OF 2014

* * * * *

SEC. 2. BORDER PATROL RATE OF PAY.

(a) PURPOSE.—The purposes of this Act are—

(1) to strengthen U.S. Customs and Border Protection and ensure that border patrol agents are sufficiently ready to conduct necessary work and will perform overtime hours in excess of a 40-hour workweek based on the needs of U.S. Customs and Border Protection; and

(2) to ensure U.S. Customs and Border Protection has the flexibility to cover shift changes and retains the right to assign scheduled and unscheduled work for mission requirements and planning based on operational need.

(b) RATES OF PAY.—Subchapter V of chapter 55 of title 5, United States Code, is amended by inserting after section 5549 the following:

“SEC. 5550. Border patrol rate of pay

“(a) DEFINITIONS.—In this section—

“(1) the term ‘basic border patrol rate of pay’ means the hourly rate of basic pay of the applicable border patrol, as determined without regard to this section;

“(2) the term ‘border patrol agent’ means an individual who is appointed to a position assigned to the Border Patrol Enforcement classification series 1896 or any successor series, consistent with classification standards established by the Office of Personnel Management;

“(3) the term ‘level 1 border patrol rate of pay’ means the hourly rate of pay equal to 1.25 times the otherwise applicable hourly rate of basic pay of the applicable border patrol agent;

“(4) the term ‘level 2 border patrol rate of pay’ means the hourly rate of pay equal to 1.125 times the otherwise applica-

ble hourly rate of basic pay of the applicable border patrol agent; and

“(5) the term ‘work period’ means a 14-day biweekly pay period.

“(b) RECEIPT OF BORDER PATROL RATE OF PAY.—

“(1) VOLUNTARY ELECTION.—

“(A) IN GENERAL.—Not later than 30 days before the first day of each year beginning after the date of enactment of this section, a border patrol agent shall make an election whether the border patrol agent shall, for that year, be assigned to—

“(i) the level 1 border patrol rate of pay;

“(ii) the level 2 border patrol rate of pay; or

“(iii) the basic border patrol rate of pay, with additional overtime assigned as needed by U.S. Customs and Border Protection.

“(B) REGULATIONS.—The Director of the Office of Personnel Management shall promulgate regulations establishing procedures for elections under subparagraph (A).

“(C) INFORMATION REGARDING ELECTION.—Not later than 60 days before the first day of each year beginning after the date of enactment of this section, U.S. Customs and Border Protection shall provide each border patrol agent with information regarding each type of election available under subparagraph (A) and how to make such an election.

“(D) ASSIGNMENT IN LIEU OF ELECTION.—Notwithstanding subparagraph (A)—

“(i) a border patrol agent who fails to make a timely election under subparagraph (A) shall be assigned to the level 1 border patrol rate of pay;

“(ii) a border patrol agent who is assigned a canine shall be assigned to the level 1 border patrol rate of pay;

“(iii) if at any time U.S. Customs and Border Protection concludes that a border patrol agent is unable to perform overtime on a daily basis in accordance with this section, U.S. Customs and Border Protection shall assign the border patrol agent to the basic border patrol rate of pay until such time as U.S. Customs and Border Protection determines that the border patrol agent is able to perform scheduled overtime on a daily basis;

“(iv) unless the analysis conducted under section 2(e) of the Border Patrol Agent Pay Reform Act of 2014 indicates that, in order to more adequately fulfill the operational requirements of U.S. Customs and Border Protection, such border patrol agents should be allowed to elect or be assigned to the level 1 border patrol rate of pay or the level 2 border patrol rate of pay, a border patrol agent shall be assigned to the basic border patrol rate of pay if the agent works—

“(I) at U.S. Customs and Border Protection headquarters;

“(II) as a training instructor at a U.S. Customs and Border Protection training facility;

“(III) in an administrative position; or

“(IV) as a fitness instructor; and

“(v) a border patrol agent may be assigned to the level 1 border patrol rate of pay or the level 2 border patrol rate of pay in accordance with subparagraph (E).

“(E) FLEXIBILITY.—

“(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), and notwithstanding any other provision of law, U.S. Customs and Border Protection shall take such action as is necessary, including the unilateral assignment of border patrol agents to the level 1 border patrol rate of pay or the level 2 border patrol rate of pay, to ensure that not more than 10 percent of the border patrol agents stationed at a location are assigned to the level 2 border patrol rate of pay or the basic border patrol rate of pay.

“(ii) WAIVER.—U.S. Customs and Border Protection may waive the limitation under clause (i) on the percent of border patrol agents stationed at a location who are assigned to the level 2 border patrol rate of pay or the basic border patrol rate of pay if, based on the analysis conducted under section 2(e) of the Border Patrol Agent Pay Reform Act of 2014, U.S. Customs and Border Protection determines it may do so and adequately fulfill its operational requirements.

“(iii) CERTAIN LOCATIONS.—Clause (i) shall not apply to border patrol agents working at the headquarters of U.S. Customs and Border Protection or a training location of U.S. Customs and Border Protection.

“(F) CANINE CARE.—For a border patrol agent assigned to provide care for a canine and assigned to the level 1 border patrol rate of pay in accordance with subparagraph (D)(ii)—

“(i) that rate of pay covers all such care;

“(ii) for the purposes of scheduled overtime under paragraph (2)(A)(ii), such care shall be counted as 1 hour of scheduled overtime on each regular workday without regard to the actual duration of such care or whether such care occurs on the regular workday; and

“(iii) no other pay shall be paid to the border patrol agent for such care.

“(G) PAY ASSIGNMENT CONTINUITY.—

“(i) IN GENERAL.—Not later than 1 year after the date of enactment of the Border Patrol Agent Pay Reform Act of 2014, and in consultation with the Office of Personnel Management, U.S. Customs and Border Protection shall develop and implement a plan to ensure, to the greatest extent practicable, that the assignment of a border patrol agent under this section during the 3 years of service before the border patrol agent becomes eligible for immediate retirement are consistent with the average border patrol rate of pay level to which the border patrol agent has been as-

signed during the course of the career of the border patrol agent.

“(ii) IMPLEMENTATION.—Notwithstanding any other provision of law, U.S. Customs and Border Protection may take such action as is necessary, including the unilateral assignment of border patrol agents to the level 1 border patrol rate of pay, the level 2 border patrol rate of pay, or the basic border patrol rate of pay, to implement the plan developed under this subparagraph.

“(iii) REPORTING.—U.S. Customs and Border Protection shall submit the plan developed under clause (i) to the appropriate committees of Congress.

“(iv) GAO REVIEW.—Not later than 6 months after U.S. Customs and Border Protection issues the plan required under clause (i), the Comptroller General of the United States shall submit to the appropriate committees of Congress a report on the effectiveness of the plan in ensuring that border patrol agents are not able to artificially enhance their retirement annuities.

“(v) DEFINITION.—In this subparagraph, the term ‘appropriate committees of Congress’ means—

“(I) the Committee on Homeland Security and Governmental Affairs and the Committee on Appropriations of the Senate; and

“(II) the Committee on Homeland Security, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives.

“(vi) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to limit the ability of U.S. Customs and Border Protection to assign border patrol agents to border patrol rates of pay as necessary to meet operational requirements.

“(2) LEVEL 1 BORDER PATROL RATE OF PAY.—For a border patrol agent who is assigned to the level 1 border patrol rate of pay—

“(A) the border patrol agent shall have a regular tour of duty consisting of 5 workdays per week with—

“(i) 8 hours of regular time per workday, which may be interrupted by an unpaid off-duty meal break; and

“(ii) 2 additional hours of scheduled overtime during each day the agent performs work under clause (i);

“(B) for paid hours of regular time described in subparagraph (A)(i), the border patrol agent shall receive pay at the level 1 border patrol rate of pay;

“(C) compensation for the hours of regularly scheduled overtime work described in subparagraph (A)(ii) is provided indirectly through the 25 percent supplement within the level 1 border patrol rate of pay, and the border patrol agent may not receive for such hours—

“(i) any compensation in addition to the compensation under subparagraph (B) under this section or any other provision of law; or

“(ii) any compensatory time off;

“(D) the border patrol agent shall receive compensatory time off or pay at the overtime hourly rate of pay for hours of work in excess of 100 hours during a work period, as determined in accordance with section 5542(g);

“(E) the border patrol agent shall be charged corresponding amounts of paid leave, compensatory time off, or other paid time off for each hour (or part thereof) the agent is absent from work during regular time (except that full days off for military leave shall be charged when required);

“(F) if the border patrol agent is absent during scheduled overtime described in subparagraph (A)(ii)—

“(i) the border patrol agent shall accrue an obligation to perform other overtime work for each hour (or part thereof) the border patrol agent is absent; and

“(ii) any overtime work applied toward the obligation under clause (i) shall not be credited as overtime work under any other provision of law; and

“(G) for the purposes of advanced training, the border patrol agent—

“(i) shall be paid at the level 1 border patrol rate of pay for the first 60 days of advanced training in a calendar year; and

“(ii) for any advanced training in addition to the advanced training described in clause (i), shall be paid at the basic border patrol rate of pay.

“(3) LEVEL 2 BORDER PATROL RATE OF PAY.—For a border patrol agent who is assigned to the level 2 border patrol rate of pay—

“(A) the border patrol agent shall have a regular tour of duty consisting of 5 workdays per week with—

“(i) 8 hours of regular time per workday, which may be interrupted by an unpaid off-duty meal break; and

“(ii) 1 additional hour of scheduled overtime during each day the agent performs work under clause (i);

“(B) for paid hours of regular time described in subparagraph (A)(i), the border patrol agent shall receive pay at the level 2 border patrol rate of pay;

“(C) compensation for the hours of regularly scheduled overtime work described in subparagraph (A)(ii) is provided indirectly through the 12.5 percent supplement within the level 2 border patrol rate of pay, and the border patrol agent may not receive for such hours—

“(i) any compensation in addition to the compensation under subparagraph (B) under this section or any other provision of law; or

“(ii) any compensatory time off;

“(D) the border patrol agent shall receive compensatory time off or pay at the overtime hourly rate of pay for hours of work in excess of 90 hours during a work period, as determined in accordance with section 5542(g);

“(E) the border patrol agent shall be charged corresponding amounts of paid leave, compensatory time off, or other paid time off for each hour (or part thereof) the agent is excused from work during regular time (except

that full days off for military leave shall be charged when required);

“(F) if the border patrol agent is absent during scheduled overtime described in subparagraph (A)(ii)—

“(i) the border patrol agent shall accrue an obligation to perform other overtime work for each hour (or part thereof) the border patrol agent is absent; and

“(ii) any overtime work applied toward the obligation under clause (i) shall not be credited as overtime work under any other provision of law; and

“(G) for the purposes of advanced training, the border patrol agent—

“(i) shall be paid at the level 2 border patrol rate of pay for the first 60 days of advanced training in a calendar year; and

“(ii) for any advanced training in addition to the advanced training described in clause (i), shall be paid at the basic border patrol rate of pay.

“(4) BASIC BORDER PATROL RATE OF PAY.—For a border patrol agent who is assigned to the basic border patrol rate of pay—

“(A) the border patrol agent shall have a regular tour of duty consisting of 5 workdays per week with 8 hours of regular time per workday; and

“(B) the border patrol agent shall receive compensatory time off or pay at the overtime hourly rate of pay for hours of work in excess of 80 hours during a work period, as determined in accordance with section 5542(g).

“(c) ELIGIBILITY FOR OTHER PREMIUM PAY.—A border patrol agent—

“(1) shall receive premium pay for nightwork in accordance with subsections (a) and (b) of section 5545 and Sunday and holiday pay in accordance with section 5546, without regard to the rate of pay to which the border patrol agent is assigned under this section, except that—

“(A) no premium pay for night, Sunday, or holiday work shall be provided for hours of regularly scheduled overtime work described in paragraph (2)(A)(ii) or (3)(A)(ii) of subsection (b), consistent with the requirements of paragraph (2)(C) or (3)(C) of subsection (b); and

“(B) section 5546(d) shall not apply and instead eligibility for pay for, and the rate of pay for, any overtime work on a Sunday or a designated holiday shall be determined in accordance with this section and section 5542(g);

“(2) except as provided in paragraph (3) or section 5542(g), shall not be eligible for any other form of premium pay under this title; and

“(3) shall be eligible for hazardous duty pay in accordance with section 5545(d).

“(d) TREATMENT AS BASIC PAY.—Any pay in addition to the basic border patrol rate of pay for a border patrol agent resulting from application of the level 1 border patrol rate of pay or the level 2 border patrol rate of pay—

“(1) subject to paragraph (2), shall be treated as part of basic pay solely for—

- “(A) purposes of sections 5595(c), 8114(e), 8331(3)(I), and 8704(c);
- “(B) any other purpose that the Director of the Office of Personnel Management may by regulation prescribe; and
- “(C) any other purpose expressly provided for by law; and
- “(2) shall not be treated as part of basic pay for the purposes of calculating overtime pay, night pay, Sunday pay, or holiday pay under section 5542, 5545, or 5546.
- “(e) TRAVEL TIME.—Travel time to and from home and duty station by a border patrol agent shall not be considered hours of work under any provision of law.
- “(f) LEAVE WITHOUT PAY AND SUBSTITUTION OF HOURS.—
 - “(1) REGULAR TIME.—
 - “(A) IN GENERAL.—For a period of leave without pay during the regular time of a border patrol agent (as described in paragraph (2)(A)(i), (3)(A)(i), or (4)(A) of subsection (b)) within a work period, an equal period of work outside the regular time of the border patrol agent, but in the same work period—
 - “(i) shall be substituted and paid for at the rate applicable for the regular time; and
 - “(ii) shall not be credited as overtime hours for any purpose.
 - “(B) PRIORITY FOR SAME DAY WORK.—In substituting hours of work under subparagraph (A), work performed on the same day as the period of leave without pay shall be substituted first.
 - “(C) PRIORITY FOR REGULAR TIME SUBSTITUTION.—Hours of work shall be substituted for regular time work under this paragraph before being substituted for scheduled overtime under paragraphs (2), (3), and (4).
 - “(2) OVERTIME WORK.—
 - “(A) IN GENERAL.—For a period of absence during scheduled overtime (as described in paragraph (2)(F) or (3)(F) of subsection (b)) within a work period, an equal period of additional work in the same work period—
 - “(i) shall be substituted and credited as scheduled overtime; and
 - “(ii) shall not be credited as overtime hours under any other provision of law.
 - “(B) PRIORITY FOR SAME DAY WORK.—In substituting hours of work under subparagraph (A), work performed on the same day as the period of absence shall be substituted first.
 - “(3) APPLICATION OF COMPENSATORY TIME.—If a border patrol agent does not have sufficient additional work in a work period to substitute for all periods of absence during scheduled overtime (as described in paragraph (2)(F) or (3)(F) of subsection (b)) within that work period, any accrued compensatory time off under section 5542(g) shall be applied to satisfy the hours obligation.
 - “(4) INSUFFICIENT HOURS.—If a border patrol agent has a remaining hours obligation of scheduled overtime after applying paragraphs (2) and (3), any additional work in subsequent

work periods that would otherwise be credited under section 5542(g) shall be applied towards the hours obligation until that obligation is satisfied.

“(g) AUTHORITY TO REQUIRE OVERTIME WORK.—Nothing in this section shall be construed to limit the authority of U.S. Customs and Border Protection to require a border patrol agent to perform hours of overtime work in accordance with the needs of U.S. Customs and Border Protection, including if needed in the event of a local or national emergency.”.

(c) OVERTIME WORK.—

(1) IN GENERAL.—Section 5542 of title 5, United States Code, is amended by adding at the end the following:

“(g) In applying subsection (a) with respect to a border patrol agent covered by section 5550, the following rules apply:

“(1) Notwithstanding the matter preceding paragraph (1) in subsection (a), for a border patrol agent who is assigned to the level 1 border patrol rate of pay under section 5550—

“(A) hours of work in excess of 100 hours during a 14-day biweekly pay period shall be overtime work; and

“(B) the border patrol agent—

“(i) shall receive pay at the overtime hourly rate of pay (as determined in accordance with paragraphs (1) and (2) of subsection (a)) for hours of overtime work that are officially ordered or approved in advance of the workweek; and

“(ii) except as provided in paragraphs (4) and (5), shall receive compensatory time off for an equal amount of time spent performing overtime work that is not overtime work described in clause (i).

“(2) Notwithstanding the matter preceding paragraph (1) in subsection (a), for a border patrol agent who is assigned to the level 2 border patrol rate of pay under section 5550—

“(A) hours of work in excess of 90 hours during a 14-day biweekly pay period shall be overtime work; and

“(B) the border patrol agent—

“(i) shall receive pay at the overtime hourly rate of pay (as determined in accordance with paragraphs (1) and (2) of subsection (a)) for hours of overtime work that are officially ordered or approved in advance of the workweek; and

“(ii) except as provided in paragraphs (4) and (5), shall receive compensatory time off for an equal amount of time spent performing overtime work that is not overtime work described in clause (i).

“(3) Notwithstanding the matter preceding paragraph (1) in subsection (a), for a border patrol agent who is assigned to the basic border patrol rate of pay under section 5550—

“(A) hours of work in excess of 80 hours during a 14-day biweekly pay period shall be overtime work; and

“(B) the border patrol agent—

“(i) shall receive pay at the overtime hourly rate of pay (as determined in accordance with paragraphs (1) and (2) of subsection (a)) for hours of overtime work that are officially ordered or approved in advance of the workweek; and

“(ii) except as provided in paragraphs (4) and (5), shall receive compensatory time off for an equal amount of time spent performing overtime work that is not overtime work described in clause (i).

“(4)(A) Except as provided in subparagraph (B), during a 14-day biweekly pay period, a border patrol agent may not earn compensatory time off for more than 10 hours of overtime work.

“(B) U.S. Customs and Border Protection may, as it determines appropriate, waive the limitation under subparagraph (A) for an individual border patrol agent for hours of irregular or occasional overtime work, but such waiver must be approved in writing in advance of the performance of any such work for which compensatory time off is earned under paragraph (1)(B)(ii), (2)(B)(ii), or (3)(B)(ii). If a waiver request by a border patrol agent is denied, the border patrol agent may not be ordered to perform the associated overtime work.

“(5) A border patrol agent—

“(A) may not earn more than 240 hours of compensatory time off during a leave year;

“(B) shall use any hours of compensatory time off not later than the end of the 26th pay period after the pay period during which the compensatory time off was earned;

“(C) shall be required to use 1 hour of compensatory time off for each hour of regular time not worked for which the border patrol agent is not on paid leave or other paid time off or does not substitute time in accordance with section 5550(f);

“(D) shall forfeit any compensatory time off not used in accordance with this paragraph and, regardless of circumstances, shall not be entitled to any cash value for compensatory time earned under section 5550;

“(E) shall not receive credit towards the computation of the annuity of the border patrol agent for compensatory time, whether used or not; and

“(F) shall not be credited with compensatory time off if the value of such time off would cause the aggregate premium pay of the border patrol agent to exceed the limitation established under section 5547 in the period in which it was earned.”.

(2) MINIMIZATION OF OVERTIME.—U.S. Customs and Border Protection shall, to the maximum extent practicable, avoid the use of scheduled overtime work (*other than scheduled overtime work within the regular tour of duty*) by border patrol agents.

(d) RETIREMENT.—Section 8331(3) of title 5, United States Code, is amended—

(1) in subparagraph (G), by striking “and”;

(2) in subparagraph (H), by inserting “and” after the semicolon;

(3) by inserting a new subparagraph after subparagraph (H) as follows:

“(I) with respect to a border patrol agent, the amount of supplemental pay received through application of the level 1 border patrol rate of pay or

the level 2 border patrol rate of pay for scheduled overtime within the regular tour of duty of the border patrol agent as provided in section 5550; and

(4) in the undesignated matter following subparagraph (H), by striking “subparagraphs (B) through (H)” and inserting “subparagraphs (B) through (I)”.

(e) COMPREHENSIVE STAFFING ANALYSIS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, U.S. Customs and Border Protection shall conduct a comprehensive analysis, and submit to the Comptroller General of the United States a report, that—

(A) examines the staffing requirements for U.S. Border Patrol to most effectively meet its operational requirements at each Border Patrol duty station;

(B) estimates the cost of the staffing requirements at each Border Patrol duty station; and

(C) includes—

(i) a position-by-position review at each Border Patrol station to determine—

(I) the duties assigned to each position;

(II) how the duties relate to the operational requirements of U.S. Border Patrol; and

(III) the number of hours border patrol agents in that position would need to work each pay period to meet the operational requirements of U.S. Border Patrol;

(ii) the metrics used to determine the number of hours of work performed at each Border Patrol station, broken down by the type of hours worked;

(iii) a cost analysis of the most recent full fiscal year by the type of full-time equivalent hours worked;

(iv) a cost estimate by the type of full-time equivalent hours expected to be worked during the first full fiscal year after the date of enactment of this Act; and

(v) an analysis that compares the cost of assigning the full-time equivalent hours needed to meet the operational requirements of U.S. Border Patrol to existing border patrol agents through higher rates of pay versus recruiting, hiring, training, and deploying additional border patrol agents.

(2) INDEPENDENT VALIDATOR.—Not later than 90 days after the date on which the Comptroller General receives the report under paragraph (1), the Comptroller General shall submit to the appropriate committees of Congress a report that—

(A) examines the methodology used by U.S. Customs and Border Protection to carry out the analysis; and

(B) indicates whether the Comptroller General concurs with the findings in the report under paragraph (1).

(3) DEFINITION.—In this subsection, the term “appropriate committees of Congress” means—

(A) the Committee on Homeland Security and Governmental Affairs and the Committee on Appropriations of the Senate; and

(B) the Committee on Oversight and Government Reform and the Committee on Appropriations of the House of Representatives.

(f) RULES OF CONSTRUCTION.—Nothing in this section or the amendments made by this section shall be construed to—

(1) limit the right of U.S. Customs and Border Protection to assign both scheduled and unscheduled work to a border patrol agent based on the needs of U.S. Customs and Border Protection in excess of the hours of work normally applicable under the election of the border patrol agent, regardless of what the border patrol agent might otherwise have elected;

(2) require compensation of a border patrol agent other than for hours during which the border patrol agent is actually performing work or using approved paid leave or other paid time off; or

(3) exempt a border patrol agent from any limitations on pay, earnings, or compensation, including the limitations under section 5547 of title 5, United States Code.

(g) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 5547 of title 5, United States Code is amended by—

(A) in subsection (a), in the matter preceding paragraph

(1)—

(i) by striking, “and” before “5546”; and

(ii) by inserting “, and 5550” after “5546 (a) and (b)”; and

(B) by adding at the end the following:

“(e) Any supplemental pay resulting from receipt of the level 1 border patrol rate of pay or the level 2 border patrol rate of pay under section 5550 shall be considered premium pay in applying this section.”.

(2) Section 13(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)) is amended—

(A) in paragraph (16), by striking “or” after the semicolon;

(B) in paragraph (17), by striking the period at the end and inserting “; or”; and

(C) by adding at the end the following:

“(18) any employee who is a border patrol agent, as defined in section 5550(a) of title 5, United States Code.”.

(3) The table of sections for chapter 55 of title 5, United States Code, is amended by inserting after the item relating to section 5549 the following:

“5550. Border patrol rate of pay.”.

(h) REGULATIONS.—The Director of the Office of Personnel Management shall promulgate regulations to carry out this Act and the amendments made by this Act.

(i) EFFECTIVE DATE.—Subsections (b), (c), (d), and (g), and the amendments made by such subsections, shall take effect on the first day of the first pay period beginning on or after January 1, 2016, except that—

(1) any provision in section 5550(b) of title 5, United States Code, as added by subsection (b), relating to administering elections and making advance assignments to a regular tour of duty shall be applicable before such effective date to the extent

determined necessary by the Director of the Office of Personnel Management; and

(2) the Director may issue regulations as necessary prior to such effective date.

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