

115TH CONGRESS
2D SESSION

H. R. 5896

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27, 2018

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

AN ACT

To amend title 5, United States Code, to modify the authority for pay and work schedules of border patrol agents, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Border Patrol Agent
3 Pay Reform Amendments Act of 2018”.

4 **SEC. 2. AMENDMENTS TO THE BORDER PATROL AGENT PAY**
5 **REFORM ACT OF 2014.**

6 (a) BORDER PATROL AGENT PAY.—Section 5550 of
7 title 5, United States Code, is amended—

8 (1) in subsection (a)(1), by inserting “agent”
9 after “applicable border patrol”;

10 (2) in subsection (b)(1)—

11 (A) in subparagraph (A), by striking “Not
12 later than 30 days before the first day of each
13 year beginning after the date of enactment of
14 this section, a border patrol agent shall make
15 an election whether the border patrol agent
16 shall, for that year, be assigned to” and insert-
17 ing “Not later than December 1 of each year,
18 a border patrol agent shall make an election
19 whether the border patrol agent shall, for the
20 next annual period beginning on the first day of
21 the first pay period that commences on or after
22 January 1, be assigned to”;

23 (B) in subparagraph (C), by striking “Not
24 later than 60 days before the first day of each
25 year beginning after the date of enactment of

1 this section” and inserting in its place “Not
2 later than November 1 of each year”;

3 (C) in subparagraph (D)—

4 (i) by amending clause (iv) to read as
5 follows:

6 “(iv) a border patrol agent shall be
7 assigned a basic border patrol rate of pay
8 during the period of initial training (in-
9 cluding initial orientation sessions, basic
10 training, and other preparatory activities)
11 prior to the agent’s first regular work as-
12 signment; and”;

13 (ii) in clause (v), by striking “or the
14 level 2 border patrol rate of pay”;

15 (D) in subparagraph (E)—

16 (i) in clause (i), by striking “or the
17 level 2 border patrol rate of pay”;

18 (ii) in clause (ii), by striking “the
19 analysis conducted under section 2(e) of
20 the Border Patrol Agent Pay Reform Act
21 of 2014” and inserting in its place “a writ-
22 ten staffing analysis”; and

23 (iii) by adding at the end the fol-
24 lowing:

1 “(iv) EXCLUSION OF CERTAIN EM-
2 PLOYEES.—In applying any percentage
3 limit under clause (i) or (ii) to a location
4 population, U.S. Customs and Border Pro-
5 tection shall exclude from such population
6 any border patrol agent who is assigned a
7 basic border patrol rate of pay under sub-
8 paragraph (D)(iii) or (D)(iv) or who would
9 reach the premium pay cap under section
10 5547 if assigned a level 1 border patrol
11 rate of pay.

12 “(v) APPLICATION FREQUENCY.—The
13 10 percent limit under clause (i) or an al-
14 ternative percentage limit under a waiver
15 under clause (ii) shall be applied at the be-
16 ginning of the first pay period beginning
17 on or after January 1 each year.”;

18 (E) by striking subparagraph (G);

19 (3) in subsection (b)(2)—

20 (A) by amending subparagraph (C)(i) to
21 read as follows:

22 “(i) any compensation under this sec-
23 tion or any other provision of law in addi-
24 tion to the compensation provided under
25 subparagraph (B); or”;

1 (B) in subparagraph (E)—

2 (i) by striking “paid leave” and in-
3 serting “leave”; and

4 (ii) by striking “absent from work”
5 and inserting “excused from work”;

6 (C) in subparagraph (F)(ii), by striking
7 “and”;

8 (D) by amending subparagraph (G) to
9 read as follows:

10 “(G) if the border patrol agent participates
11 in a full day of advanced training but does not
12 perform the entire required amount of sched-
13 uled overtime work under subparagraph (A)(ii)
14 on that day, the border patrol agent shall be
15 deemed to have performed scheduled overtime
16 work during nonwork periods to the extent nec-
17 essary to reach the required amount, but such
18 deemed credit may be applied to no more than
19 180 hours in a calendar year; otherwise, the
20 agent shall accrue a debt of hours for scheduled
21 overtime not worked on such a day; and”;

22 (E) by adding at the end the following:

23 “(H) a border patrol agent may choose to
24 reduce any debt of obligated overtime hours
25 that the agent has incurred by applying any ac-

1 crued compensatory time off for travel pursuant
2 to section 5550b, and such compensatory time
3 off for travel may be applied towards such debt
4 only after other forms of overtime or earned
5 compensatory time credited to the border patrol
6 agent have been exhausted.”;

7 (4) in subsection (b)(3)—

8 (A) by amending subparagraph (C)(i) to
9 read as follows:

10 “(i) any compensation under this sec-
11 tion or any other provision of law in addi-
12 tion to the compensation provided under
13 subparagraph (B); or”;

14 (B) in subparagraph (E), by striking “paid
15 leave” and inserting “leave”;

16 (C) in subparagraph (F)(ii), by striking
17 “and”;

18 (D) by amending subparagraph (G) to
19 read as follows:

20 “(G) if the border patrol agent participates
21 in a full day of advanced training but does not
22 perform the entire required amount of sched-
23 uled overtime work under subparagraph (A)(ii)
24 on that day, the border patrol agent shall be
25 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”;

(E) by adding at the end the following:

“(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.”;

(5) by amending subsection (d) to read as follows:

“(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—

1 “(A) except as otherwise provided in para-
2 graph (3), for purposes of the definitions in sec-
3 tion 8331(3) and 8401(4) and the provisions in
4 chapters 83 and 84 that rely on those defini-
5 tions (consistent with section 8331(3)(I));

6 “(B) except as otherwise provided in para-
7 graph (3), for purposes of sections 5595(c) and
8 8704(c);

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

11 “(D) subject to paragraph (2) and any
12 limitation established under paragraph (3), any
13 other purpose that the Director of the Office of
14 Personnel Management may by regulation pre-
15 scribe.

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

20 “(A) overtime pay, night pay, Sunday pay,
21 or holiday pay under section 5542, 5545, or
22 5546;

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

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

3 “(3) LIMITATIONS.—

4 “(A) IN GENERAL.—During the control pe-
5 riod described in subparagraph (B), the amount
6 of the overtime supplement that is considered
7 basic pay under paragraphs (1)(A) and (1)(B)
8 may not exceed the amount derived by multi-
9 plying the border patrol agent’s basic border
10 patrol rate of pay by the percentage rep-
11 resenting the agent’s career average of assigned
12 overtime supplement percentages (including 0
13 percent for periods of time during which no
14 overtime supplement was payable). That career
15 average percentage is computed without regard
16 to the effect of the limitation on premium pay
17 under section 5547, but the premium pay limi-
18 tation remains applicable in determining the
19 dollar amount of any overtime supplement com-
20 puted using the career average percentage.

21 “(B) CONTROL PERIOD.—For the purposes
22 of applying subparagraph (A), the control pe-
23 riod described in this subparagraph is the pe-
24 riod that begins 3 years before the date a bor-
25 der patrol agent will meet age and service re-

1 quirements associated with entitlement to an
2 immediate annuity and continues throughout
3 the remainder of the individual's career as a
4 border patrol agent.

5 “(C) ASSIGNED OVERTIME SUPPLEMENT
6 PERCENTAGES.—For the purpose of applying
7 subparagraph (A), a border patrol agent's ini-
8 tial career average of assigned overtime supple-
9 ment percentages is the average for the border
10 patrol agent's career (excluding any period of
11 initial training prior to the agent's first regular
12 work assignment) prior to the beginning of the
13 control period described in subparagraph (B).
14 During such control period, the career average
15 shall be recomputed at the end of each annual
16 period (as described in subsection (b)(1)(A)). In
17 computing such career average, any periods of
18 service as a border patrol agent prior to the
19 first day of the first pay period beginning on or
20 after January 1, 2016, shall be included, and
21 the agent's assigned overtime supplement dur-
22 ing such periods shall be deemed to be 25 per-
23 cent.

24 “(4) ANNUAL LEAVE PAYMENT.—For the pur-
25 pose of computing an agent's lump-sum annual leave

1 payment under section 5551 or 5552, the pay the
2 agent is projected to receive shall include a deemed
3 overtime supplement derived under this paragraph.
4 Such overtime supplement shall be based on the
5 lower of the agent's actual overtime supplement per-
6 centage in effect at separation or the average per-
7 centage of the agent's overtime supplement over the
8 26 full biweekly pay periods immediately preceding
9 that separation, and shall not exceed the amount
10 that is or would be payable under the premium pay
11 limitation in section 5547.”;

12 (6) in subsection (f)—

13 (A) in the heading of such subsection, by
14 striking “AND SUBSTITUTION OF HOURS” and
15 inserting “DURING REGULAR TIME; ABSENCES
16 DURING SCHEDULED OVERTIME”; and

17 (B) by adding at the end the following:

18 “(5) APPLICATION.—

19 “(A) LIMITATION ON SUBSTITUTION.—

20 Notwithstanding paragraph (1), scheduled over-
21 time (as described in paragraph (2)(A)(ii) or
22 (3)(A)(ii) of subsection (b)) may not be sub-
23 stituted for leave without pay on a day when a
24 border patrol agent has a full day of leave with-
25 out pay.

1 “(B) LEAVE WITHOUT PAY.—As provided
2 in paragraphs (2)(A)(ii) and (3)(A)(ii) of sub-
3 section (b), a border patrol agent shall incur no
4 scheduled overtime obligation on a day when
5 the agent has a full day of leave without pay.”;
6 and

7 (7) by adding at the end the following:

8 “(h) ALTERNATIVE WORK SCHEDULES.—

9 “(1) IN GENERAL.—Notwithstanding any other
10 provision in this section or section 6101, U.S. Cus-
11 toms and Border Protection may assign a border pa-
12 trol agent an alternative work schedule as described
13 in this subsection, subject to any regulations pre-
14 scribed by the Director of the Office of Personnel
15 Management. No alternative work schedule may be
16 established under subchapter II of chapter 61.

17 “(2) LEVEL 2 BORDER PATROL AGENT.—A bor-
18 der patrol agent receiving a level 2 border patrol
19 rate of pay may, in lieu of the standard work sched-
20 ule described in subsection (b)(3)(A), be assigned to
21 an alternative work schedule under the following
22 terms and conditions:

23 “(A) The alternative work schedule shall
24 be a regular tour of duty consisting of 9 work-
25 days per biweekly pay period, with—

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

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

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

20 “(3) BASIC BORDER PATROL AGENT.—A border
21 patrol agent receiving a basic border patrol rate of
22 pay may, in lieu of the standard work schedule de-
23 scribed in subsection (b)(4)(A), be assigned to an al-
24 ternative work schedule that is a regular tour of

1 duty consisting of 4 workdays per week with 10
2 hours of regular time per workday.

3 “(4) SUNDAY PAY; PREMIUM PAY.—A border
4 patrol agent assigned to an alternative work sched-
5 ule under this subsection, may receive, as applica-
6 ble—

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

10 “(B) premium pay for work on a holiday
11 for no more than 8 hours of regular time asso-
12 ciated with a given holiday, consistent with sec-
13 tion 5546(b); and

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

20 “(5) APPLICATION.—For purposes of admin-
21 istering sections 6303(a), 6304, 6307(a) and (d),
22 6323, 6326, 6327, and 8339(m), in the case of an
23 employee assigned to an alternative work schedule
24 under this subsection, references to a day or work-
25 day (or to multiples or parts thereof) contained in

1 such sections shall be considered to be references to
2 8 hours (or to the respective multiples or parts
3 thereof).

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

7 “(1) elections and assignments of a border pa-
8 trol rate of pay for newly hired border patrol agents
9 who complete initial training during an annual pe-
10 riod;

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

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

17 (b) OVERTIME RATES.—Section 5542(g)(5) of title
18 5, United States Code, is amended—

19 (1) in subparagraph (A), by striking “leave
20 year” and inserting “an annual period, as described
21 in section 5550(b)(1)(A)”; and

22 (2) by amending subparagraph (E) to read as
23 follows:

1 “(E) shall not receive credit towards com-
2 putation of the border patrol agent’s annuity
3 based on unused compensatory time off; and”.

4 (c) PREMIUM PAY CAP.—Section 5547(c) of title 5,
5 United States Code, is amended by inserting after “duty,”
6 the following: “or to border patrol agents who receive an
7 overtime supplement for overtime hours within their reg-
8 ular tour of duty under section 5550,”.

9 (d) BASIC PAY FOR RETIREMENT.—Section
10 8331(3)(I) of title 5, United States Code, is amended by
11 adding before the semicolon at the end the following: “,
12 subject to the limitation prescribed in section 5550(d)(3)”.

13 (e) SCHEDULED OVERTIME WORK.—Section 2(c)(2)
14 of the Border Patrol Agent Pay Reform Act of 2014 (Pub-
15 lic Law 113–277) is amended by inserting after “sched-
16 uled overtime work” the following: “(other than scheduled
17 overtime work within the regular tour of duty)”.

18 **SEC. 3. EFFECTIVE DATE.**

19 The amendments made by section 2 shall take effect
20 on the first day of the first pay period beginning on or

1 after the day that is 90 days after the date of the enact-
2 ment of this Act.

Passed the House of Representatives September 26,
2018.

Attest:

KAREN L. HAAS,

Clerk.