

116TH CONGRESS  
1ST SESSION

# H. R. 1392

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

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2019

Mr. HURD of Texas (for himself, Ms. TORRES SMALL of New Mexico, and Mr. CUELLAR) introduced the following bill; which was referred to the Committee on Oversight and Reform

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## A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Border Patrol Agent  
5 Pay Reform Amendments Act of 2019”.

6 **SEC. 2. AMENDMENTS TO THE BORDER PATROL AGENT PAY**  
7 **REFORM ACT OF 2014.**

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

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

3 (2) in subsection (b)(1)—

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

16 (B) in subparagraph (C), by striking “Not  
17 later than 60 days before the first day of each  
18 year beginning after the date of enactment of  
19 this section” and inserting in its place “Not  
20 later than November 1 of each year”;

21 (C) in subparagraph (D)—

22 (i) by amending clause (iv) to read as  
23 follows:

24 “(iv) a border patrol agent shall be  
25 assigned a basic border patrol rate of pay

1 during the period of initial training (in-  
2 cluding initial orientation sessions, basic  
3 training, and other preparatory activities)  
4 prior to the agent’s first regular work as-  
5 signment; and”;

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

8 (D) in subparagraph (E)—

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

11 (ii) in clause (ii), by striking “the  
12 analysis conducted under section 2(e) of  
13 the Border Patrol Agent Pay Reform Act  
14 of 2014” and inserting in its place “a writ-  
15 ten staffing analysis”; and

16 (iii) by adding at the end the fol-  
17 lowing:

18 “(iv) EXCLUSION OF CERTAIN EM-  
19 PLOYEES.—In applying any percentage  
20 limit under clause (i) or (ii) to a location  
21 population, U.S. Customs and Border Pro-  
22 tection shall exclude from such population  
23 any border patrol agent who is assigned a  
24 basic border patrol rate of pay under sub-  
25 paragraph (D)(iii) or (D)(iv) or who would

1 reach the premium pay cap under section  
2 5547 if assigned a level 1 border patrol  
3 rate of pay.

4 “(v) APPLICATION FREQUENCY.—The  
5 10 percent limit under clause (i) or an al-  
6 ternative percentage limit under a waiver  
7 under clause (ii) shall be applied at the be-  
8 ginning of the first pay period beginning  
9 on or after January 1 each year.”; and

10 (E) by striking subparagraph (G);

11 (3) in subsection (b)(2)—

12 (A) by amending subparagraph (C)(i) to  
13 read as follows:

14 “(i) any compensation under this sec-  
15 tion or any other provision of law in addi-  
16 tion to the compensation provided under  
17 subparagraph (B); or”;

18 (B) in subparagraph (E)—

19 (i) by striking “paid leave” and in-  
20 serting “leave”; and

21 (ii) by striking “absent from work”  
22 and inserting “excused from work”;

23 (C) in subparagraph (F)(ii), by striking  
24 “and”;

1 (D) by amending subparagraph (G) to  
2 read as follows:

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

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

16 “(H) a border patrol agent may choose to  
17 reduce any debt of obligated overtime hours  
18 that the agent has incurred by applying any ac-  
19 crued compensatory time off for travel pursuant  
20 to section 5550b, and such compensatory time  
21 off for travel may be applied towards such debt  
22 only after other forms of overtime or earned  
23 compensatory time credited to the border patrol  
24 agent have been exhausted.”;

25 (4) in subsection (b)(3)—

1 (A) by amending subparagraph (C)(i) to  
2 read as follows:

3 “(i) any compensation under this sec-  
4 tion or any other provision of law in addi-  
5 tion to the compensation provided under  
6 subparagraph (B); or”;

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

9 (C) in subparagraph (F)(ii), by striking  
10 “and”;

11 (D) by amending subparagraph (G) to  
12 read as follows:

13 “(G) if the border patrol agent participates  
14 in a full day of advanced training but does not  
15 perform the entire required amount of sched-  
16 uled overtime work under subparagraph (A)(ii)  
17 on that day, the border patrol agent shall be  
18 deemed to have performed scheduled overtime  
19 work during nonwork periods to the extent nec-  
20 essary to reach the required amount, but such  
21 deemed credit may be applied to no more than  
22 90 hours in a calendar year; otherwise, the  
23 agent shall accrue a debt of hours for scheduled  
24 overtime not worked on such a day; and”;

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

1           “(H) a border patrol agent may choose to  
2           reduce any debt of obligated overtime hours  
3           that the agent has incurred by applying any ac-  
4           crued compensatory time off for travel pursuant  
5           to section 5550b; such compensatory time off  
6           for travel may be applied towards such debt  
7           only after other forms of overtime or earned  
8           compensatory time credited to the border patrol  
9           agent have been exhausted.”;

10           (5) by amending subsection (d) to read as fol-  
11           lows:

12           “(d) TREATMENT AS BASIC PAY.—

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

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

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

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

6           “(D) subject to paragraph (2) and any  
7 limitation established under paragraph (3), any  
8 other purpose that the Director of the Office of  
9 Personnel Management may by regulation pre-  
10 scribe.

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

15           “(A) overtime pay, night pay, Sunday pay,  
16 or holiday pay under section 5542, 5545, or  
17 5546;

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

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

23           “(3) LIMITATIONS.—

24           “(A) IN GENERAL.—During the control pe-  
25 riod described in subparagraph (B), the amount



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

16 “(B) CONTROL PERIOD.—For the purposes  
17 of applying subparagraph (A), the control pe-  
18 riod described in this subparagraph is the pe-  
19 riod that begins 3 years before the date a bor-  
20 der patrol agent will meet age and service re-  
21 quirements associated with entitlement to an  
22 immediate annuity and continues throughout  
23 the remainder of the individual's career as a  
24 border patrol agent.

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

20          “(4) ANNUAL LEAVE PAYMENT.—For the pur-  
21          pose of computing an agent’s lump-sum annual leave  
22          payment under section 5551 or 5552, the pay the  
23          agent is projected to receive shall include a deemed  
24          overtime supplement derived under this paragraph.  
25          Such overtime supplement shall be based on the

1 lower of the agent’s actual overtime supplement per-  
2 centage in effect at separation or the average per-  
3 centage of the agent’s overtime supplement over the  
4 26 full biweekly pay periods immediately preceding  
5 that separation, and shall not exceed the amount  
6 that is or would be payable under the premium pay  
7 limitation in section 5547.”;

8 (6) in subsection (f)—

9 (A) in the heading of such subsection, by  
10 striking “AND SUBSTITUTION OF HOURS” and  
11 inserting “DURING REGULAR TIME; ABSENCES  
12 DURING SCHEDULED OVERTIME”; and

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

14 “(5) APPLICATION.—

15 “(A) LIMITATION ON SUBSTITUTION.—

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

22 “(B) LEAVE WITHOUT PAY.—As provided  
23 in paragraphs (2)(A)(ii) and (3)(A)(ii) of sub-  
24 section (b), a border patrol agent shall incur no  
25 scheduled overtime obligation on a day when

1 the agent has a full day of leave without pay.”;

2 and

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

4 “(h) ALTERNATIVE WORK SCHEDULES.—

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

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

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

22 “(i) 8 workdays including 9 hours of  
23 regular time per workday and 1 additional  
24 hour of scheduled overtime for each day

1 the agent performs work during regular  
2 time; and

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

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

17 “(3) BASIC BORDER PATROL AGENT.—A border  
18 patrol agent receiving a basic border patrol rate of  
19 pay may, in lieu of the standard work schedule de-  
20 scribed in subsection (b)(4)(A), be assigned to an al-  
21 ternative work schedule that is a regular tour of  
22 duty consisting of 4 workdays per week with 10  
23 hours of regular time per workday.

24 “(4) SUNDAY PAY; PREMIUM PAY.—A border  
25 patrol agent assigned to an alternative work sched-

1       ule under this subsection, may receive, as applica-  
2       ble—

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

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

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

16              “(5) APPLICATION.—For purposes of admin-  
17              istering sections 6303(a), 6304, 6307(a) and (d),  
18              6323, 6326, 6327, and 8339(m), in the case of an  
19              employee assigned to an alternative work schedule  
20              under this subsection, references to a day or work-  
21              day (or to multiples or parts thereof) contained in  
22              such sections shall be considered to be references to  
23              8 hours (or to the respective multiples or parts  
24              thereof).

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

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

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

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

14       (b) OVERTIME RATES.—Section 5542(g)(5) of title  
15 5, United States Code, is amended—

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

19               (2) by amending subparagraph (E) to read as  
20 follows:

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

24       (c) PREMIUM PAY CAP.—Section 5547(c) of title 5,  
25 United States Code, is amended by inserting after “duty,”

1 the following: “or to border patrol agents who receive an  
2 overtime supplement for overtime hours within their reg-  
3 ular tour of duty under section 5550,”.

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

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

13 **SEC. 3. EFFECTIVE DATE.**

14 The amendments made by section 2 shall take effect  
15 on the first day of the first pay period beginning on or  
16 after the day that is 90 days after the date of the enact-  
17 ment of this Act.

○