

113TH CONGRESS
1ST SESSION

H. R. 3463

To amend title 5, United States Code, to ensure proper manpower on the United States border and to provide for reforms to rates of pay for Border Patrol agents.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 13, 2013

Mr. CHAFFETZ (for himself, Mrs. MILLER of Michigan, Mr. FARENTHOLD, Mr. O'ROURKE, Mr. BARBER, and Ms. JACKSON LEE) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To amend title 5, United States Code, to ensure proper manpower on the United States border and to provide for reforms to rates of pay for Border Patrol agents.

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 Pay Re-
5 form Act of 2013”.

6 **SEC. 2. BORDER PATROL RATE OF PAY.**

7 (a) PURPOSE.—The purposes of this section are—

1 (1) to strengthen the U.S. Customs and Border
2 Protection and to ensure that Border Patrol agents
3 are sufficiently ready to conduct necessary work and
4 will perform overtime hours in excess of a 40-hour
5 workweek based on the needs of the employing agen-
6 cy; and

7 (2) to ensure that U.S. Customs and Border
8 Protection has the flexibility to cover shift changes
9 and retains the right to assign scheduled and un-
10 scheduled work for mission requirements and plan-
11 ning based on operational need.

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

15 **“§ 5550. Border patrol rate of pay**

16 “(a) DEFINITIONS.—In this section—

17 “(1) the term ‘available to work’, as used with
18 respect to a Border Patrol agent, means that such
19 agent is generally and reasonably accessible by U.S.
20 Customs and Border Protection to perform unsched-
21 uled duty based on the needs of U.S. Customs and
22 Border Protection;

23 “(2) the term ‘Border Patrol agent’ means an
24 individual who is performing functions included
25 under position classification series 1896 (Border Pa-

1 trol Enforcement) of the Office of Personnel Man-
2 agement, or any successor thereto, including, in the
3 case of an individual performing the aforementioned
4 functions, while such individual is performing cov-
5 ered border patrol activities;

6 “(3) the term ‘covered border patrol activities’,
7 as used with respect to a Border Patrol agent,
8 means—

9 “(A) detecting and preventing illegal entry
10 and smuggling of aliens, commercial goods, nar-
11 cotics, weapons, or contraband into the United
12 States;

13 “(B) arresting individuals suspected of
14 conduct described in subparagraph (A);

15 “(C) attending training authorized by U.S.
16 Customs and Border Protection;

17 “(D) being on approved annual, sick, or
18 administrative leave;

19 “(E) being on ordered travel status;

20 “(F) being on official time, within the
21 meaning of section 7131;

22 “(G) being on excused absence with pay
23 for relocation purposes;

24 “(H) being on light duty due to injury or
25 disability;

1 “(I) performing administrative duties or
2 mission critical work assignments while main-
3 taining law enforcement authority;

4 “(J) caring for the canine assigned to the
5 Border Patrol agent, which may not exceed 1
6 hour per day; or

7 “(K) engaging in an activity similar to an
8 activity described in any of the preceding sub-
9 paragraphs while temporarily away from the
10 regular duty assignment of the Border Patrol
11 agent;

12 “(4) the term ‘level 1 border patrol rate of pay’,
13 as used with respect to a Border Patrol agent,
14 means the rate equal to 1.25 times the hourly rate
15 of basic pay otherwise applicable to such agent;

16 “(5) the term ‘level 2 border patrol rate of pay’,
17 as used with respect to a Border Patrol agent,
18 means the rate equal to 1.125 times the hourly rate
19 of basic pay otherwise applicable to such agent; and

20 “(6) the term ‘work period’ means a 14-day bi-
21 weekly pay period.

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

23 “(1) VOLUNTARY ELECTION.—

24 “(A) IN GENERAL.—Not later than 30
25 days before the first day of each year beginning

1 after the date of enactment of this section, a
2 Border Patrol agent shall make an election as
3 to whether such agent shall, for such year—

4 “(i) be assigned to the level 1 border
5 patrol rate of pay;

6 “(ii) be assigned to the level 2 border
7 patrol rate of pay; or

8 “(iii) decline both the level 1 and the
9 level 2 border patrol rates of pay.

10 “(B) PROCEDURES.—The Director of the
11 Office of Personnel Management shall establish
12 procedures for an election under subparagraph
13 (A).

14 “(C) INFORMATION REGARDING ELEC-
15 TION.—Not later than 60 days before the first
16 day of each year beginning after the date of the
17 enactment of this section, U.S. Customs and
18 Border Protection shall provide each Border
19 Patrol agent with information regarding each
20 type of election available under subparagraph
21 (A) and how to make such an election.

22 “(D) FAILURE TO ELECT.—A Border Pa-
23 trol agent who fails to make a timely election
24 under subparagraph (A) shall be deemed to
25 have made an election under clause (i) thereof.

1 “(E) SENSE OF CONGRESS.—It is the
2 sense of Congress that U.S. Customs and Bor-
3 der Protection should take such action as is
4 necessary to ensure that not more than 10 per-
5 cent of the Border Patrol agents stationed at a
6 location decline to be assigned to the level 1
7 border patrol rate of pay or the level 2 border
8 patrol rate of pay.

9 “(2) LEVEL 1 BORDER PATROL RATE OF PAY.—
10 For a Border Patrol agent who has in effect an elec-
11 tion under paragraph (1)(A)(i)—

12 “(A) the Border Patrol agent shall be
13 scheduled to work for 5 days per week—

14 “(i) 8 hours of regular time per day;
15 and

16 “(ii) 2 additional hours of scheduled
17 overtime on each day such agent is sched-
18 uled to work under clause (i);

19 “(B) for the hours of regular time work
20 described in subparagraph (A)(i), the Border
21 Patrol agent shall receive pay at the level 1 bor-
22 der patrol rate of pay;

23 “(C) for the hours of regularly scheduled
24 overtime work described in subparagraph

1 (A)(ii), the Border Patrol agent shall not re-
2 ceive—

3 “(i) additional compensation under
4 this section or any other provision of law;
5 or

6 “(ii) compensatory time off;

7 “(D) any hours during which the Border
8 Patrol agent is available to work during a work
9 period shall be included in the hours of regular
10 time or regularly scheduled overtime scheduled
11 under subparagraph (A);

12 “(E) the Border Patrol agent shall receive
13 compensatory time off or pay at the overtime
14 hourly rate of pay for hours of work in excess
15 of 100 hours during a work period, as deter-
16 mined in accordance with section 5542(a)(7);
17 and

18 “(F) the Border Patrol agent shall be
19 charged leave in increments of 8 hours for 1
20 shift of leave, regardless of the length of the
21 shift.

22 “(3) LEVEL 2 BORDER PATROL RATE OF PAY.—
23 For a Border Patrol agent who has in effect an elec-
24 tion under paragraph (1)(A)(ii)—

1 “(A) the Border Patrol agent shall be
2 scheduled to work for 5 days per week—

3 “(i) 8 hours of regular time per day;
4 and

5 “(ii) 1 additional hour of scheduled
6 overtime during on each day such agent is
7 scheduled to work under clause (i);

8 “(B) for the hours of regular time work
9 described in subparagraph (A)(i), the Border
10 Patrol agent shall receive pay at the level 2 bor-
11 der patrol rate of pay;

12 “(C) for the hours of regularly scheduled
13 overtime work described in subparagraph
14 (A)(ii), the Border Patrol agent shall not re-
15 ceive—

16 “(i) additional compensation under
17 this section or any other provision of law;
18 or

19 “(ii) compensatory time off;

20 “(D) any hours during which the Border
21 Patrol agent is available to work during a work
22 period shall be included in the hours of regular
23 time or regularly scheduled overtime scheduled
24 under subparagraph (A);

1 “(E) the Border Patrol agent shall receive
2 compensatory time off or pay at the overtime
3 hourly rate of pay for hours of work in excess
4 of 90 hours during a work period, as deter-
5 mined in accordance with section 5542(a)(7);
6 and

7 “(F) the Border Patrol agent shall be
8 charged leave in increments of 8 hours for 1
9 shift of leave, regardless of the length of the
10 shift.

11 “(4) BASIC BORDER PATROL RATE OF PAY.—
12 For a Border Patrol agent who has in effect an elec-
13 tion under paragraph (1)(A)(iii)—

14 “(A) the Border Patrol agent shall be
15 scheduled to work 8 hours of regular time per
16 day, 5 days per week;

17 “(B) any hours during which the Border
18 Patrol agent is available to work during a work
19 period shall be included in the hours of regular
20 time scheduled under subparagraph (A); and

21 “(C) the Border Patrol agent shall receive
22 compensatory time off or pay at the overtime
23 hourly rate of pay for hours of work in excess
24 of 80 hours during a work period, as deter-
25 mined in accordance with section 5542(a)(7).

1 “(c) ELIGIBILITY FOR OTHER PREMIUM PAY.—A
2 Border Patrol agent—

3 “(1) shall receive premium pay for night work
4 in accordance with subsections (a) and (b) of section
5 5545 and Sunday and holiday pay in accordance
6 with section 5546, without regard to the election of
7 the Border Patrol agent under subsection (b)(1)(A),
8 except that section 5546(d) shall not apply and eligi-
9 bility for pay for, and the rate of pay for, any over-
10 time work shall be determined in accordance with
11 this section and section 5542(a)(7); and

12 “(2) shall not be eligible for any other form of
13 premium pay under this title, except as provided in
14 section 5542(a)(7).

15 “(d) TREATMENT AS BASIC PAY.—Any pay received
16 at the level 1 border patrol rate of pay or the level 2 border
17 patrol rate of pay or pay described in subsection (b)(3)(B)
18 shall be treated as part of basic pay for—

19 “(1) purposes of sections 5595(c), 8114(e),
20 8331(3), and 8704(c);

21 “(2) any other purpose that the Office of Per-
22 sonnel Management may by regulation prescribe;
23 and

24 “(3) any other purpose expressly provided for
25 by law.

1 “(e) AUTHORITY TO REQUIRE OVERTIME WORK.—
2 Nothing in this section shall be construed to limit the au-
3 thority of U.S. Customs and Border Protection to require
4 a Border Patrol agent to perform hours of overtime work
5 in accordance with the needs of U.S. Customs and Border
6 Protection, including if needed in the event of a local or
7 national emergency.”.

8 (c) OVERTIME WORK.—Section 5542(a) of title 5,
9 United States Code, is amended by adding at the end the
10 following:

11 “(7)(A) In this paragraph, the term ‘Border Patrol
12 agent’ has the meaning given such term in section 5550.

13 “(B) Notwithstanding the matter preceding para-
14 graph (1) or paragraphs (1) and (2), for a Border Patrol
15 agent who has in effect an election to be assigned to the
16 level 1 border patrol rate of pay under section
17 5550(b)(1)(A)(i)—

18 “(i) except as provided in subparagraph (E),
19 hours of work in excess of 100 hours during a 14-
20 day biweekly pay period shall be overtime work; and

21 “(ii) the Border Patrol agent—

22 “(I) shall receive pay at the overtime hour-
23 ly rate of pay (as determined in accordance
24 with paragraphs (1) and (2)) for hours of over-

1 time work that are officially ordered or ap-
2 proved in advance of the work assignment; and

3 “(II) shall receive compensatory time off
4 for any hours of overtime work that are not
5 hours of overtime work described in subclause
6 (I).

7 “(C) Notwithstanding the matter preceding para-
8 graph (1) or paragraphs (1) and (2), for a Border Patrol
9 agent who has in effect an election to be eligible for the
10 level 2 border patrol rate of pay under section
11 5550(b)(1)(A)(ii)—

12 “(i) except as provided in subparagraph (E),
13 hours of work in excess of 90 hours during a 14-day
14 biweekly pay period shall be overtime work; and

15 “(ii) the Border Patrol agent—

16 “(I) shall receive pay at the overtime hour-
17 ly rate of pay (as determined in accordance
18 with paragraphs (1) and (2)) for hours of over-
19 time work that are officially ordered or ap-
20 proved in advance of the work assignment; and

21 “(II) shall receive compensatory time off
22 for any hours of overtime work that are not
23 hours of overtime work described in subclause
24 (I).

1 “(D) Notwithstanding the matter preceding para-
2 graph (1) or paragraphs (1) and (2), for a Border Patrol
3 agent who has in effect an election under section
4 5550(b)(1)(A)(iii)—

5 “(i) except as provided in subparagraph (E),
6 hours of work in excess of 80 hours during a 14-day
7 biweekly pay period shall be overtime work; and

8 “(ii) the Border Patrol agent—

9 “(I) shall receive pay at the overtime hour-
10 ly rate of pay (as determined in accordance
11 with paragraphs (1) and (2)) for hours of over-
12 time work that are officially ordered or ap-
13 proved in advance of the work assignment; and

14 “(II) shall receive compensatory time off
15 for any hours of overtime work that are not
16 hours of overtime work described in subclause
17 (I).

18 “(E)(i) Except as provided in clause (ii), during a
19 14-day biweekly pay period, a Border Patrol agent shall
20 not perform and may not receive compensatory time off
21 for more than 8 hours of overtime work.

22 “(ii) U.S. Customs and Border Protection may, as
23 it determines appropriate, waive the limitation under
24 clause (i) for hours of overtime work, but such waiver
25 must be approved in advance of any work being performed

1 that would be subject to compensatory time under sub-
 2 section (B)(ii)(II), (C)(ii)(II), or (D)(ii)(II).

3 “(F) A Border Patrol agent—

4 “(i) may not earn more than 240 hours of com-
 5 pensatory time off during a year; and

6 “(ii) shall use any hours of compensatory time
 7 off not later than 1 year after the date on which the
 8 compensatory time off is accrued.”.

9 (d) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

14 (B) in paragraph (17), by striking the pe-
 15 riod at the end and inserting “; or”; and

16 (C) by adding at the end the following:

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

20 (2) The table of sections for chapter 55 of title
 21 5, United States Code, is amended by inserting after
 22 the item relating to section 5549 the following:

“5550. Border patrol rate of pay.”.

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