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SEPTEMBER 19, 2014

Referred to the Committee on Oversight and Government Reform, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

AN ACT

To amend title 5, United States Code, to improve the security of the United States border and to provide for reforms and 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Border Patrol Agent
3 Pay Reform Act of 2014”.

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

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

6 (1) to strengthen U.S. Customs and Border
7 Protection and ensure that border patrol agents are
8 sufficiently ready to conduct necessary work and will
9 perform overtime hours in excess of a 40-hour work-
10 week based on the needs of U.S. Customs and Bor-
11 der Protection; and

12 (2) to ensure U.S. Customs and Border Protec-
13 tion has the flexibility to cover shift changes and re-
14 tains the right to assign scheduled and unscheduled
15 work for mission requirements and planning based
16 on operational need.

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

20 **“§ 5550. Border patrol rate of pay**

21 “(a) DEFINITIONS.—In this section—

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

1 “(2) the term ‘border patrol agent’ means an
2 individual who is appointed to a position assigned to
3 the Border Patrol Enforcement classification series
4 1896 or any successor series, consistent with classi-
5 fication standards established by the Office of Per-
6 sonnel Management;

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

11 “(4) the term ‘level 2 border patrol rate of pay’
12 means the hourly rate of pay equal to 1.125 times
13 the otherwise applicable hourly rate of basic pay of
14 the applicable border patrol agent; and

15 “(5) the term ‘work period’ means a 14-day bi-
16 weekly pay period.

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

18 “(1) VOLUNTARY ELECTION.—

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

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

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

5 “(iii) the basic border patrol rate of
6 pay, with additional overtime assigned as
7 needed by U.S. Customs and Border Pro-
8 tection.

9 “(B) REGULATIONS.—The Director of the
10 Office of Personnel Management shall promul-
11 gate regulations establishing procedures for
12 elections under subparagraph (A).

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

21 “(D) ASSIGNMENT IN LIEU OF ELEC-
22 TION.—Notwithstanding subparagraph (A)—

23 “(i) a border patrol agent who fails to
24 make a timely election under subparagraph

1 (A) shall be assigned to the level 1 border
2 patrol rate of pay;

3 “(ii) a border patrol agent who is as-
4 signed a canine shall be assigned to the
5 level 1 border patrol rate of pay;

6 “(iii) if at any time U.S. Customs and
7 Border Protection concludes that a border
8 patrol agent is unable to perform overtime
9 on a daily basis in accordance with this
10 section, U.S. Customs and Border Protec-
11 tion shall assign the border patrol agent to
12 the basic border patrol rate of pay until
13 such time as U.S. Customs and Border
14 Protection determines that the border pa-
15 trol agent is able to perform scheduled
16 overtime on a daily basis;

17 “(iv) unless the analysis conducted
18 under section 2(e) of the Border Patrol
19 Agent Pay Reform Act of 2014 indicates
20 that, in order to more adequately fulfill the
21 operational requirements of U.S. Customs
22 and Border Protection, such border patrol
23 agents should be allowed to elect or be as-
24 signed to the level 1 border patrol rate of
25 pay or the level 2 border patrol rate of

1 pay, a border patrol agent shall be as-
2 signed to the basic border patrol rate of
3 pay if the agent works—

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

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

9 “(III) in an administrative posi-
10 tion; or

11 “(IV) as a fitness instructor; and

12 “(v) a border patrol agent may be as-
13 signed to the level 1 border patrol rate of
14 pay or the level 2 border patrol rate of pay
15 in accordance with subparagraph (E).

16 “(E) FLEXIBILITY.—

17 “(i) IN GENERAL.—Except as pro-
18 vided in clauses (ii) and (iii), and notwith-
19 standing any other provision of law, U.S.
20 Customs and Border Protection shall take
21 such action as is necessary, including the
22 unilateral assignment of border patrol
23 agents to the level 1 border patrol rate of
24 pay or the level 2 border patrol rate of
25 pay, to ensure that not more than 10 per-

1 cent of the border patrol agents stationed
2 at a location are assigned to the level 2
3 border patrol rate of pay or the basic bor-
4 der patrol rate of pay.

5 “(ii) WAIVER.—U.S. Customs and
6 Border Protection may waive the limitation
7 under clause (i) on the percent of border
8 patrol agents stationed at a location who
9 are assigned to the level 2 border patrol
10 rate of pay or the basic border patrol rate
11 of pay if, based on the analysis conducted
12 under section 2(e) of the Border Patrol
13 Agent Pay Reform Act of 2014, U.S. Cus-
14 toms and Border Protection determines it
15 may do so and adequately fulfill its oper-
16 ational requirements.

17 “(iii) CERTAIN LOCATIONS.—Clause
18 (i) shall not apply to border patrol agents
19 working at the headquarters of U.S. Cus-
20 toms and Border Protection or a training
21 location of U.S. Customs and Border Pro-
22 tection.

23 “(F) CANINE CARE.—For a border patrol
24 agent assigned to provide care for a canine and

1 assigned to the level 1 border patrol rate of pay
2 in accordance with subparagraph (D)(ii)—

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

5 “(ii) for the purposes of scheduled
6 overtime under paragraph (2)(A)(ii), such
7 care shall be counted as 1 hour of sched-
8 uled overtime on each regular workday
9 without regard to the actual duration of
10 such care or whether such care occurs on
11 the regular workday; and

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

14 “(G) PAY ASSIGNMENT CONTINUITY.—

15 “(i) IN GENERAL.—Not later than 1
16 year after the date of enactment of the
17 Border Patrol Agent Pay Reform Act of
18 2014, and in consultation with the Office
19 of Personnel Management, U.S. Customs
20 and Border Protection shall develop and
21 implement a plan to ensure, to the greatest
22 extent practicable, that the assignment of
23 a border patrol agent under this section
24 during the 3 years of service before the
25 border patrol agent becomes eligible for

1 immediate retirement are consistent with
2 the average border patrol rate of pay level
3 to which the border patrol agent has been
4 assigned during the course of the career of
5 the border patrol agent.

6 “(ii) IMPLEMENTATION.—Notwith-
7 standing any other provision of law, U.S.
8 Customs and Border Protection may take
9 such action as is necessary, including the
10 unilateral assignment of border patrol
11 agents to the level 1 border patrol rate of
12 pay, the level 2 border patrol rate of pay,
13 or the basic border patrol rate of pay, to
14 implement the plan developed under this
15 subparagraph.

16 “(iii) REPORTING.—U.S. Customs
17 and Border Protection shall submit the
18 plan developed under clause (i) to the ap-
19 propriate committees of Congress.

20 “(iv) GAO REVIEW.—Not later than 6
21 months after U.S. Customs and Border
22 Protection issues the plan required under
23 clause (i), the Comptroller General of the
24 United States shall submit to the appro-
25 priate committees of Congress a report on

1 the effectiveness of the plan in ensuring
2 that border patrol agents are not able to
3 artificially enhance their retirement annu-
4 ities.

5 “(v) DEFINITION.—In this subpara-
6 graph, the term ‘appropriate committees of
7 Congress’ means—

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

12 “(II) the Committee on Home-
13 land Security, the Committee on
14 Oversight and Government Reform,
15 and the Committee on Appropriations
16 of the House of Representatives.

17 “(vi) RULE OF CONSTRUCTION.—
18 Nothing in this subparagraph shall be con-
19 strued to limit the ability of U.S. Customs
20 and Border Protection to assign border pa-
21 trol agents to border patrol rates of pay as
22 necessary to meet operational require-
23 ments.

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

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

7 “(i) 8 hours of regular time per work-
8 day, which may be interrupted by an un-
9 paid off-duty meal break; and

10 “(ii) 2 additional hours of scheduled
11 overtime during each day the agent per-
12 forms work under clause (i);

13 “(B) for paid hours of regular time de-
14 scribed in subparagraph (A)(i), the border pa-
15 trol agent shall receive pay at the level 1 border
16 patrol rate of pay;

17 “(C) compensation for the hours of regu-
18 larly scheduled overtime work described in sub-
19 paragraph (A)(ii) is provided indirectly through
20 the 25 percent supplement within the level 1
21 border patrol rate of pay, and the border patrol
22 agent may not receive for such hours—

23 “(i) any compensation in addition to
24 the compensation under subparagraph (B)

1 under this section or any other provision of
2 law; or

3 “(ii) any compensatory time off;

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

9 “(E) the border patrol agent shall be
10 charged corresponding amounts of paid leave,
11 compensatory time off, or other paid time off
12 for each hour (or part thereof) the agent is ab-
13 sent from work during regular time (except that
14 full days off for military leave shall be charged
15 when required);

16 “(F) if the border patrol agent is absent
17 during scheduled overtime described in subpara-
18 graph (A)(ii)—

19 “(i) the border patrol agent shall ac-
20 crue an obligation to perform other over-
21 time work for each hour (or part thereof)
22 the border patrol agent is absent; and

23 “(ii) any overtime work applied to-
24 ward the obligation under clause (i) shall

1 not be credited as overtime work under
2 any other provision of law; and

3 “(G) for the purposes of advanced train-
4 ing, the border patrol agent—

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

8 “(ii) for any advanced training in ad-
9 dition to the advanced training described
10 in clause (i), shall be paid at the basic bor-
11 der patrol rate of pay.

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

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

18 “(i) 8 hours of regular time per work-
19 day, which may be interrupted by an un-
20 paid off-duty meal break; and

21 “(ii) 1 additional hour of scheduled
22 overtime during each day the agent per-
23 forms work under clause (i);

24 “(B) for paid hours of regular time de-
25 scribed in subparagraph (A)(i), the border pa-

1 trol agent shall receive pay at the level 2 border
2 patrol rate of pay;

3 “(C) compensation for the hours of regu-
4 larly scheduled overtime work described in sub-
5 paragraph (A)(ii) is provided indirectly through
6 the 12.5 percent supplement within the level 2
7 border patrol rate of pay, and the border patrol
8 agent may not receive for such hours—

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

13 “(ii) any compensatory time off;

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

19 “(E) the border patrol agent shall be
20 charged corresponding amounts of paid leave,
21 compensatory time off, or other paid time off
22 for each hour (or part thereof) the agent is ex-
23 cused from work during regular time (except
24 that full days off for military leave shall be
25 charged when required);

1 “(F) if the border patrol agent is absent
2 during scheduled overtime described in subpara-
3 graph (A)(ii)—

4 “(i) the border patrol agent shall ac-
5 crue an obligation to perform other over-
6 time work for each hour (or part thereof)
7 the border patrol agent is absent; and

8 “(ii) any overtime work applied to-
9 ward the obligation under clause (i) shall
10 not be credited as overtime work under
11 any other provision of law; and

12 “(G) for the purposes of advanced train-
13 ing, the border patrol agent—

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

17 “(ii) for any advanced training in ad-
18 dition to the advanced training described
19 in clause (i), shall be paid at the basic bor-
20 der patrol rate of pay.

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

24 “(A) the border patrol agent shall have a
25 regular tour of duty consisting of 5 workdays

1 per week with 8 hours of regular time per work-
2 day; and

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

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

10 “(1) shall receive premium pay for nightwork in
11 accordance with subsections (a) and (b) of section
12 5545 and Sunday and holiday pay in accordance
13 with section 5546, without regard to the rate of pay
14 to which the border patrol agent is assigned under
15 this section, except that—

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

22 “(B) section 5546(d) shall not apply and
23 instead eligibility for pay for, and the rate of
24 pay for, any overtime work on a Sunday or a

1 designated holiday shall be determined in ac-
2 cordance with this section and section 5542(g);

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

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

8 “(d) TREATMENT AS BASIC PAY.—Any pay in addi-
9 tion to the basic border patrol rate of pay for a border
10 patrol agent resulting from application of the level 1 bor-
11 der patrol rate of pay or the level 2 border patrol rate
12 of pay—

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

15 “(A) purposes of sections 5595(e),
16 8114(e), 8331(3)(I), and 8704(c);

17 “(B) any other purpose that the Director
18 of the Office of Personnel Management may by
19 regulation prescribe; and

20 “(C) any other purpose expressly provided
21 for by law; and

22 “(2) shall not be treated as part of basic pay
23 for the purposes of calculating overtime pay, night
24 pay, Sunday pay, or holiday pay under section 5542,
25 5545, or 5546.

1 “(e) TRAVEL TIME.—Travel time to and from home
2 and duty station by a border patrol agent shall not be con-
3 sidered hours of work under any provision of law.

4 “(f) LEAVE WITHOUT PAY AND SUBSTITUTION OF
5 HOURS.—

6 “(1) REGULAR TIME.—

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

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

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

19 “(B) PRIORITY FOR SAME DAY WORK.—In
20 substituting hours of work under subparagraph
21 (A), work performed on the same day as the pe-
22 riod of leave without pay shall be substituted
23 first.

24 “(C) PRIORITY FOR REGULAR TIME SUB-
25 STITUTION.—Hours of work shall be sub-

1 stituted for regular time work under this para-
2 graph before being substituted for scheduled
3 overtime under paragraphs (2), (3), and (4).

4 “(2) OVERTIME WORK.—

5 “(A) IN GENERAL.—For a period of ab-
6 sence during scheduled overtime (as described
7 in paragraph (2)(F) or (3)(F) of subsection
8 (b)) within a work period, an equal period of
9 additional work in the same work period—

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

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

14 “(B) PRIORITY FOR SAME DAY WORK.—In
15 substituting hours of work under subparagraph
16 (A), work performed on the same day as the pe-
17 riod of absence shall be substituted first.

18 “(3) APPLICATION OF COMPENSATORY TIME.—

19 If a border patrol agent does not have sufficient ad-
20 ditional work in a work period to substitute for all
21 periods of absence during scheduled overtime (as de-
22 scribed in paragraph (2)(F) or (3)(F) of subsection
23 (b)) within that work period, any accrued compen-
24 satory time off under section 5542(g) shall be ap-
25 plied to satisfy the hours obligation.

1 “(4) INSUFFICIENT HOURS.—If a border patrol
2 agent has a remaining hours obligation of scheduled
3 overtime after applying paragraphs (2) and (3), any
4 additional work in subsequent work periods that
5 would otherwise be credited under section 5542(g)
6 shall be applied towards the hours obligation until
7 that obligation is satisfied.

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

15 (c) OVERTIME WORK.—

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

19 “(g) In applying subsection (a) with respect to a bor-
20 der patrol agent covered by section 5550, the following
21 rules apply:

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

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

4 “(B) the border patrol agent—

5 “(i) shall receive pay at the overtime
6 hourly rate of pay (as determined in ac-
7 cordance with paragraphs (1) and (2) of
8 subsection (a)) for hours of overtime work
9 that are officially ordered or approved in
10 advance of the workweek; and

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

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

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

23 “(B) the border patrol agent—

24 “(i) shall receive pay at the overtime
25 hourly rate of pay (as determined in ac-

1 cordance with paragraphs (1) and (2) of
2 subsection (a)) for hours of overtime work
3 that are officially ordered or approved in
4 advance of the workweek; and

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

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

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

17 “(B) the border patrol agent—

18 “(i) shall receive pay at the overtime
19 hourly rate of pay (as determined in ac-
20 cordance with paragraphs (1) and (2) of
21 subsection (a)) for hours of overtime work
22 that are officially ordered or approved in
23 advance of the workweek; and

24 “(ii) except as provided in paragraphs
25 (4) and (5), shall receive compensatory

1 time off for an equal amount of time spent
2 performing overtime work that is not over-
3 time work described in clause (i).

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

8 “(B) U.S. Customs and Border Protection may,
9 as it determines appropriate, waive the limitation
10 under subparagraph (A) for an individual border pa-
11 trol agent for hours of irregular or occasional over-
12 time work, but such waiver must be approved in
13 writing in advance of the performance of any such
14 work for which compensatory time off is earned
15 under paragraph (1)(B)(ii), (2)(B)(ii), or (3)(B)(ii).
16 If a waiver request by a border patrol agent is de-
17 nied, the border patrol agent may not be ordered to
18 perform the associated overtime work.

19 “(5) A border patrol agent—

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

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

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

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

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

16 “(F) shall not be credited with compen-
17 satory time off if the value of such time off
18 would cause the aggregate premium pay of the
19 border patrol agent to exceed the limitation es-
20 tablished under section 5547 in the period in
21 which it was earned.”.

22 (2) MINIMIZATION OF OVERTIME.—U.S. Cus-
23 toms and Border Protection shall, to the maximum
24 extent practicable, avoid the use of scheduled over-
25 time work by border patrol agents.

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

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

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

6 (3) by inserting a new subparagraph after sub-
7 paragraph (H) as follows:

8 “(I) with respect to a border pa-
9 trol agent, the amount of supple-
10 mental pay received through applica-
11 tion of the level 1 border patrol rate
12 of pay or the level 2 border patrol
13 rate of pay for scheduled overtime
14 within the regular tour of duty of the
15 border patrol agent as provided in
16 section 5550;” and

17 (4) in the undesignated matter following sub-
18 paragraph (H), by striking “subparagraphs (B)
19 through (H)” and inserting “subparagraphs (B)
20 through (I)”.

21 (e) COMPREHENSIVE STAFFING ANALYSIS.—

22 (1) IN GENERAL.—Not later than 1 year after
23 the date of enactment of this Act, U.S. Customs and
24 Border Protection shall conduct a comprehensive

1 analysis, and submit to the Comptroller General of
2 the United States a report, that—

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

7 (B) estimates the cost of the staffing re-
8 quirements at each Border Patrol duty station;
9 and

10 (C) includes—

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

13 (I) the duties assigned to each
14 position;

15 (II) how the duties relate to the
16 operational requirements of U.S. Bor-
17 der Patrol; and

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

23 (ii) the metrics used to determine the
24 number of hours of work performed at

1 each Border Patrol station, broken down
2 by the type of hours worked;

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

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

11 (v) an analysis that compares the cost
12 of assigning the full-time equivalent hours
13 needed to meet the operational require-
14 ments of U.S. Border Patrol to existing
15 border patrol agents through higher rates
16 of pay versus recruiting, hiring, training,
17 and deploying additional border patrol
18 agents.

19 (2) INDEPENDENT VALIDATOR.—Not later than
20 90 days after the date on which the Comptroller
21 General receives the report under paragraph (1), the
22 Comptroller General shall submit to the appropriate
23 committees of Congress a report that—

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

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

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

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

12 (B) the Committee on Oversight and Gov-
13 ernment Reform and the Committee on Appro-
14 priations of the House of Representatives.

15 (f) RULES OF CONSTRUCTION.—Nothing in this sec-
16 tion or the amendments made by this section shall be con-
17 strued to—

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

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

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

9 (g) TECHNICAL AND CONFORMING AMENDMENTS.—

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

12 (A) in subsection (a), in the matter pre-
13 ceding paragraph (1)—

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

15 and

16 (ii) by inserting “, and 5550” after
17 “5546 (a) and (b)”; and

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

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

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

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

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

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

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

9 (3) The table of sections for chapter 55 of title
10 5, United States Code, is amended by inserting after
11 the item relating to section 5549 the following:

“5550. Border patrol rate of pay.”.

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

15 **SEC. 3. CYBERSECURITY RECRUITMENT AND RETENTION.**

16 (a) IN GENERAL.—At the end of subtitle C of title
17 II of the Homeland Security Act of 2002 (6 U.S.C. 141
18 et seq.), add the following:

19 **“SEC. 226. CYBERSECURITY RECRUITMENT AND RETEN-**
20 **TION.**

21 “(a) DEFINITIONS.—In this section:

22 “(1) APPROPRIATE COMMITTEES OF CON-
23 GRESS.—The term ‘appropriate committees of Con-
24 gress’ means the Committee on Homeland Security
25 and Governmental Affairs and the Committee on

1 Appropriations of the Senate and the Committee on
2 Homeland Security and the Committee on Appro-
3 priations of the House of Representatives.

4 “(2) COLLECTIVE BARGAINING AGREEMENT.—
5 The term ‘collective bargaining agreement’ has the
6 meaning given that term in section 7103(a)(8) of
7 title 5, United States Code.

8 “(3) EXCEPTED SERVICE.—The term ‘excepted
9 service’ has the meaning given that term in section
10 2103 of title 5, United States Code.

11 “(4) PREFERENCE ELIGIBLE.—The term ‘pref-
12 erence eligible’ has the meaning given that term in
13 section 2108 of title 5, United States Code.

14 “(5) QUALIFIED POSITION.—The term ‘quali-
15 fied position’ means a position, designated by the
16 Secretary for the purpose of this section, in which
17 the incumbent performs, manages, or supervises
18 functions that execute the responsibilities of the De-
19 partment relating to cybersecurity.

20 “(6) SENIOR EXECUTIVE SERVICE.—The term
21 ‘Senior Executive Service’ has the meaning given
22 that term in section 2101a of title 5, United States
23 Code.

24 “(b) GENERAL AUTHORITY.—

1 “(1) ESTABLISH POSITIONS, APPOINT PER-
2 SONNEL, AND FIX RATES OF PAY.—

3 “(A) GENERAL AUTHORITY.—The Sec-
4 retary may—

5 “(i) establish, as positions in the ex-
6 cepted service, such qualified positions in
7 the Department as the Secretary deter-
8 mines necessary to carry out the respon-
9 sibilities of the Department relating to cy-
10 bersecurity, including positions formerly
11 identified as—

12 “(I) senior level positions des-
13 ignated under section 5376 of title 5,
14 United States Code; and

15 “(II) positions in the Senior Ex-
16 ecutive Service;

17 “(ii) appoint an individual to a quali-
18 fied position (after taking into consider-
19 ation the availability of preference eligibles
20 for appointment to the position); and

21 “(iii) subject to the requirements of
22 paragraphs (2) and (3), fix the compensa-
23 tion of an individual for service in a quali-
24 fied position.

1 “(B) CONSTRUCTION WITH OTHER
2 LAWS.—The authority of the Secretary under
3 this subsection applies without regard to the
4 provisions of any other law relating to the ap-
5 pointment, number, classification, or compensa-
6 tion of employees.

7 “(2) BASIC PAY.—

8 “(A) AUTHORITY TO FIX RATES OF BASIC
9 PAY.—In accordance with this section, the Sec-
10 retary shall fix the rates of basic pay for any
11 qualified position established under paragraph
12 (1) in relation to the rates of pay provided for
13 employees in comparable positions in the De-
14 partment of Defense and subject to the same
15 limitations on maximum rates of pay estab-
16 lished for such employees by law or regulation.

17 “(B) PREVAILING RATE SYSTEMS.—The
18 Secretary may, consistent with section 5341 of
19 title 5, United States Code, adopt such provi-
20 sions of that title as provide for prevailing rate
21 systems of basic pay and may apply those pro-
22 visions to qualified positions for employees in or
23 under which the Department may employ indi-
24 viduals described by section 5342(a)(2)(A) of
25 that title.

1 “(3) ADDITIONAL COMPENSATION, INCENTIVES,
2 AND ALLOWANCES.—

3 “(A) ADDITIONAL COMPENSATION BASED
4 ON TITLE 5 AUTHORITIES.—The Secretary may
5 provide employees in qualified positions com-
6 pensation (in addition to basic pay), including
7 benefits, incentives, and allowances, consistent
8 with, and not in excess of the level authorized
9 for, comparable positions authorized by title 5,
10 United States Code.

11 “(B) ALLOWANCES IN NONFOREIGN
12 AREAS.—An employee in a qualified position
13 whose rate of basic pay is fixed under para-
14 graph (2)(A) shall be eligible for an allowance
15 under section 5941 of title 5, United States
16 Code, on the same basis and to the same extent
17 as if the employee was an employee covered by
18 such section 5941, including eligibility condi-
19 tions, allowance rates, and all other terms and
20 conditions in law or regulation.

21 “(4) PLAN FOR EXECUTION OF AUTHORI-
22 TIES.—Not later than 120 days after the date of en-
23 actment of this section, the Secretary shall submit a
24 report to the appropriate committees of Congress

1 with a plan for the use of the authorities provided
2 under this subsection.

3 “(5) COLLECTIVE BARGAINING AGREEMENTS.—
4 Nothing in paragraph (1) may be construed to im-
5 pair the continued effectiveness of a collective bar-
6 gaining agreement with respect to an office, compo-
7 nent, subcomponent, or equivalent of the Depart-
8 ment that is a successor to an office, component,
9 subcomponent, or equivalent of the Department cov-
10 ered by the agreement before the succession.

11 “(6) REQUIRED REGULATIONS.—The Secretary,
12 in coordination with the Director of the Office of
13 Personnel Management, shall prescribe regulations
14 for the administration of this section.

15 “(c) ANNUAL REPORT.—Not later than 1 year after
16 the date of enactment of this section, and every year there-
17 after for 4 years, the Secretary shall submit to the appro-
18 priate committees of Congress a detailed report that—

19 “(1) discusses the process used by the Sec-
20 retary in accepting applications, assessing can-
21 didates, ensuring adherence to veterans’ preference,
22 and selecting applicants for vacancies to be filled by
23 an individual for a qualified position;

24 “(2) describes—

1 “(A) how the Secretary plans to fulfill the
2 critical need of the Department to recruit and
3 retain employees in qualified positions;

4 “(B) the measures that will be used to
5 measure progress; and

6 “(C) any actions taken during the report-
7 ing period to fulfill such critical need;

8 “(3) discusses how the planning and actions
9 taken under paragraph (2) are integrated into the
10 strategic workforce planning of the Department;

11 “(4) provides metrics on actions occurring dur-
12 ing the reporting period, including—

13 “(A) the number of employees in qualified
14 positions hired by occupation and grade and
15 level or pay band;

16 “(B) the placement of employees in quali-
17 fied positions by directorate and office within
18 the Department;

19 “(C) the total number of veterans hired;

20 “(D) the number of separations of employ-
21 ees in qualified positions by occupation and
22 grade and level or pay band;

23 “(E) the number of retirements of employ-
24 ees in qualified positions by occupation and
25 grade and level or pay band; and

1 “(F) the number and amounts of recruit-
2 ment, relocation, and retention incentives paid
3 to employees in qualified positions by occupa-
4 tion and grade and level or pay band; and

5 “(5) describes the training provided to super-
6 visors of employees in qualified positions at the De-
7 partment on the use of the new authorities.

8 “(d) THREE-YEAR PROBATIONARY PERIOD.—The
9 probationary period for all employees hired under the au-
10 thority established in this section shall be 3 years.

11 “(e) INCUMBENTS OF EXISTING COMPETITIVE SERV-
12 ICE POSITIONS.—

13 “(1) IN GENERAL.—An individual serving in a
14 position on the date of enactment of this section
15 that is selected to be converted to a position in the
16 excepted service under this section shall have the
17 right to refuse such conversion.

18 “(2) SUBSEQUENT CONVERSION.—After the
19 date on which an individual who refuses a conversion
20 under paragraph (1) stops serving in the position se-
21 lected to be converted, the position may be converted
22 to a position in the excepted service.

23 “(f) STUDY AND REPORT.—Not later than 120 days
24 after the date of enactment of this section, the National
25 Protection and Programs Directorate shall submit a re-

1 port regarding the availability of, and benefits (including
2 cost savings and security) of using, cybersecurity per-
3 sonnel and facilities outside of the National Capital Re-
4 gion (as defined in section 2674 of title 10, United States
5 Code) to serve the Federal and national need to—

6 “(1) the Subcommittee on Homeland Security
7 of the Committee on Appropriations and the Com-
8 mittee on Homeland Security and Governmental Af-
9 fairs of the Senate; and

10 “(2) the Subcommittee on Homeland Security
11 of the Committee on Appropriations and the Com-
12 mittee on Homeland Security of the House of Rep-
13 resentatives.”.

14 (b) CONFORMING AMENDMENT.—Section 3132(a)(2)
15 of title 5, United States Code, is amended in the matter
16 following subparagraph (E)—

17 (1) in clause (i), by striking “or” at the end;

18 (2) in clause (ii), by inserting “or” after the
19 semicolon; and

20 (3) by inserting after clause (ii) the following:

21 “(iii) any position established as a qualified po-
22 sition in the excepted service by the Secretary of
23 Homeland Security under section 226 of the Home-
24 land Security Act of 2002;”.

1 (c) TABLE OF CONTENTS AMENDMENT.—The table
 2 of contents in section 1(b) of the Homeland Security Act
 3 of 2002 (6 U.S.C. 101 et seq.) is amended by inserting
 4 after the item relating to section 225 the following:

“Sec. 226. Cybersecurity recruitment and retention.”.

5 **SEC. 4. HOMELAND SECURITY CYBERSECURITY WORK-**
 6 **FORCE ASSESSMENT.**

7 (a) SHORT TITLE.—This section may be cited as the
 8 “Homeland Security Cybersecurity Workforce Assessment
 9 Act”.

10 (b) DEFINITIONS.—In this section:

11 (1) APPROPRIATE CONGRESSIONAL COMMIT-
 12 TEES.—The term “appropriate congressional com-
 13 mittees” means—

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

16 (B) the Committee on Homeland Security
 17 of the House of Representatives; and

18 (C) the Committee on House Administra-
 19 tion of the House of Representatives.

20 (2) CYBERSECURITY WORK CATEGORY; DATA
 21 ELEMENT CODE; SPECIALTY AREA.—The terms “Cy-
 22 bersecurity Work Category”, “Data Element Code”,
 23 and “Specialty Area” have the meanings given such
 24 terms in the Office of Personnel Management’s
 25 Guide to Data Standards.

1 (3) DEPARTMENT.—The term “Department”
2 means the Department of Homeland Security.

3 (4) DIRECTOR.—The term “Director” means
4 the Director of the Office of Personnel Management.

5 (5) SECRETARY.—The term “Secretary” means
6 the Secretary of Homeland Security.

7 (c) NATIONAL CYBERSECURITY WORKFORCE MEAS-
8 UREMENT INITIATIVE.—

9 (1) IN GENERAL.—The Secretary shall—

10 (A) identify all cybersecurity workforce po-
11 sitions within the Department;

12 (B) determine the primary Cybersecurity
13 Work Category and Specialty Area of such posi-
14 tions; and

15 (C) assign the corresponding Data Ele-
16 ment Code, as set forth in the Office of Per-
17 sonnel Management’s Guide to Data Standards
18 which is aligned with the National Initiative for
19 Cybersecurity Education’s National Cybersecu-
20 rity Workforce Framework report, in accord-
21 ance with paragraph (2).

22 (2) EMPLOYMENT CODES.—

23 (A) PROCEDURES.—Not later than 90
24 days after the date of the enactment of this
25 Act, the Secretary shall establish procedures—

1 (i) to identify open positions that in-
2 clude cybersecurity functions (as defined in
3 the OPM Guide to Data Standards); and

4 (ii) to assign the appropriate employ-
5 ment code to each such position, using
6 agreed standards and definitions.

7 (B) CODE ASSIGNMENTS.—Not later than
8 9 months after the date of the enactment of
9 this Act, the Secretary shall assign the appro-
10 priate employment code to—

11 (i) each employee within the Depart-
12 ment who carries out cybersecurity func-
13 tions; and

14 (ii) each open position within the De-
15 partment that have been identified as hav-
16 ing cybersecurity functions.

17 (3) PROGRESS REPORT.—Not later than 1 year
18 after the date of the enactment of this Act, the Di-
19 rector shall submit a progress report on the imple-
20 mentation of this subsection to the appropriate con-
21 gressional committees.

22 (d) IDENTIFICATION OF CYBERSECURITY SPECIALTY
23 AREAS OF CRITICAL NEED.—

24 (1) IN GENERAL.—Beginning not later than 1
25 year after the date on which the employment codes

1 are assigned to employees pursuant to subsection
2 (c)(2)(B), and annually through 2021, the Sec-
3 retary, in consultation with the Director, shall—

4 (A) identify Cybersecurity Work Categories
5 and Specialty Areas of critical need in the De-
6 partment's cybersecurity workforce; and

7 (B) submit a report to the Director that—

8 (i) describes the Cybersecurity Work
9 Categories and Specialty Areas identified
10 under subparagraph (A); and

11 (ii) substantiates the critical need des-
12 ignations.

13 (2) GUIDANCE.—The Director shall provide the
14 Secretary with timely guidance for identifying Cy-
15 bersecurity Work Categories and Specialty Areas of
16 critical need, including—

17 (A) current Cybersecurity Work Categories
18 and Specialty Areas with acute skill shortages;
19 and

20 (B) Cybersecurity Work Categories and
21 Specialty Areas with emerging skill shortages.

22 (3) CYBERSECURITY CRITICAL NEEDS RE-
23 PORT.—Not later than 18 months after the date of
24 the enactment of this Act, the Secretary, in con-
25 sultation with the Director, shall—

1 (A) identify Specialty Areas of critical need
2 for cybersecurity workforce across the Depart-
3 ment; and

4 (B) submit a progress report on the imple-
5 mentation of this subsection to the appropriate
6 congressional committees.

7 (e) GOVERNMENT ACCOUNTABILITY OFFICE STATUS
8 REPORTS.—The Comptroller General of the United States
9 shall—

10 (1) analyze and monitor the implementation of
11 subsections (c) and (d); and

12 (2) not later than 3 years after the date of the
13 enactment of this Act, submit a report to the appro-
14 priate congressional committees that describes the
15 status of such implementation.

Passed the Senate September 18, 2014.

Attest: NANCY ERICKSON,
Secretary.