

- (3) sections 261,<sup>1</sup> 267, 1450, 1451, 1451a,<sup>1</sup> and 1452 of title 19;
- (4) sections 2111 and 2112 of title 46; and
- (5) section 154(f)(3) of title 47.

However, an employee may not receive premium pay under this subchapter for the same services for which he is paid under one of these statutes. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 488; Pub. L. 98-89, §3(a), Aug. 26, 1983, 97 Stat. 599; Pub. L. 107-171, title X, §10703(c)(4), May 13, 2002, 116 Stat. 518.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 941.	June 30, 1945, ch. 212, §601, 59 Stat. 302.

In paragraph (2), the words “sections 1353a and 1353b of title 8” are substituted for “sections 342c and 342d of this title” to reflect the scheduled transfer of those sections to title 8.

In paragraph (5), the words “section 154(f)(3) of title 47” are substituted for “section 154(f)(2) of title 47” on authority of the Act of July 16, 1952, ch. 879, §3(b), 66 Stat. 711, which redesignated subsection (f)(2) as (f)(3).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 10703 of the Farm Security and Rural Investment Act of 2002, referred to in par. (1), is section 10703 of Pub. L. 107-171, which enacted section 2219a of Title 7, Agriculture, amended this section and sections 468 and 695 of Title 21, Food and Drugs, and repealed section 394 of Title 7.

Section 261 of title 19, referred to in par. (3), was omitted from the Code in the general revision of section 5 of act Feb. 13, 1911, ch. 46, by Pub. L. 103-66, title XIII, §13811(a), Aug. 10, 1993, 107 Stat. 668.

Section 1451a of title 19, referred to in par. (3), was repealed by Pub. L. 103-66, title XIII, §13811(b)(1), Aug. 10, 1993, 107 Stat. 670.

AMENDMENTS

2002—Par. (1). Pub. L. 107-171 added par. (1) and struck out former par. (1) which read as follows: “section 394 of title 7.”

1983—Par. (4). Pub. L. 98-89 substituted “sections 2111 and 2112 of title 46” for “section 382b of title 46”.

**§ 5550. Border patrol rate of pay**

(a) DEFINITIONS.—In this section—

- (1) the term “basic border patrol rate of pay” means the hourly rate of basic pay of the applicable border patrol, as determined without regard to this section;
- (2) the term “border patrol agent” means an individual who is appointed to a position assigned to the Border Patrol Enforcement classification series 1896 or any successor series, consistent with classification standards established by the Office of Personnel Management;
- (3) the term “level 1 border patrol rate of pay” means the hourly rate of pay equal to 1.25 times the otherwise applicable hourly rate of basic pay of the applicable border patrol agent;
- (4) the term “level 2 border patrol rate of pay” means the hourly rate of pay equal to

- 1.125 times the otherwise applicable hourly rate of basic pay of the applicable border patrol agent; and
- (5) the term “work period” means a 14-day biweekly pay period.

(b) RECEIPT OF BORDER PATROL RATE OF PAY.—(1) VOLUNTARY ELECTION.—

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

- (i) the level 1 border patrol rate of pay;
  - (ii) the level 2 border patrol rate of pay;
- or

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

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

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

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

- (i) a border patrol agent who fails to make a timely election under subparagraph (A) shall be assigned to the level 1 border patrol rate of pay;
- (ii) a border patrol agent who is assigned a canine shall be assigned to the level 1 border patrol rate of pay;
- (iii) if at any time U.S. Customs and Border Protection concludes that a border patrol agent is unable to perform overtime on a daily basis in accordance with this section, U.S. Customs and Border Protection shall assign the border patrol agent to the basic border patrol rate of pay until such time as U.S. Customs and Border Protection determines that the border patrol agent is able to perform scheduled overtime on a daily basis;
- (iv) unless the analysis conducted under section 2(e) of the Border Patrol Agent Pay Reform Act of 2014 indicates that, in order to more adequately fulfill the operational requirements of U.S. Customs and Border Protection, such border patrol agents should be allowed to elect or be assigned to the level 1 border patrol rate of pay or the level 2 border patrol rate of pay, a border patrol agent shall be assigned to the basic border patrol rate of pay if the agent works—
  - (I) at U.S. Customs and Border Protection headquarters;
  - (II) as a training instructor at a U.S. Customs and Border Protection training facility;
  - (III) in an administrative position; or
  - (IV) as a fitness instructor; and

<sup>1</sup> See References in Text note below.

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

(E) FLEXIBILITY.—

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

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

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

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

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

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

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

(G) PAY ASSIGNMENT CONTINUITY.—

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

(ii) IMPLEMENTATION.—Notwithstanding any other provision of law, U.S. Customs and Border Protection may take such ac-

tion as is necessary, including the unilateral assignment of border patrol agents to the level 1 border patrol rate of pay, the level 2 border patrol rate of pay, or the basic border patrol rate of pay, to implement the plan developed under this subparagraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) any compensatory time off;

(D) the border patrol agent shall receive compensatory time off or pay at the over-

time hourly rate of pay for hours of work in excess of 100 hours during a work period, as determined in accordance with section 5542(g);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) any compensatory time off;

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

(E) the border patrol agent shall be charged corresponding amounts of paid leave, compensatory time off, or other paid time off for each hour (or part thereof) the

agent is excused from work during regular time (except that full days off for military leave shall be charged when required);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) REGULAR TIME.—

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

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

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

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

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

(2) OVERTIME WORK.—

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

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

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

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

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

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

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

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

(Pub. L. 113-277, §2(b), Dec. 18, 2014, 128 Stat. 2995.)

#### REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (b)(1)(A), (C), is the date of enactment of Pub. L. 113-277, which was approved Dec. 18, 2014.

Section 2(e) of the Border Patrol Agent Pay Reform Act of 2014, referred to in subsec. (b)(1)(D)(iv), (E)(ii), is section 2(e) of Pub. L. 113-277, Dec. 18, 2014, 128 Stat. 3003, which related to comprehensive staffing analysis and is not classified to the Code.

The date of enactment of the Border Patrol Agent Pay Reform Act of 2014, referred to in subsec. (b)(1)(G)(i), is the date of enactment of Pub. L. 113-277, which was approved Dec. 18, 2014.

#### PRIOR PROVISIONS

A prior section 5550, added Pub. L. 92-392, §10(a), Aug. 19, 1972, 86 Stat. 574, related to pay for Sunday and overtime work for employees of nonappropriated fund instrumentalities, prior to repeal by Pub. L. 102-378, §2(44)(A), Oct. 2, 1992, 106 Stat. 1352.

#### EFFECTIVE DATE

Section effective on the first day of the first pay period beginning on or after Jan. 1, 2016, subject to certain exceptions, see section 2(i) of Pub. L. 113-277, set out as an Effective Date of 2014 Amendment note under section 5542 of this title.

#### MINIMIZATION OF OVERTIME

Pub. L. 113-277, §2(c)(2), Dec. 18, 2014, 128 Stat. 3003, provided that: “U.S. Customs and Border Protection shall, to the maximum extent practicable, avoid the use of scheduled overtime work by border patrol agents.”

[Section 2(c)(2) of Pub. L. 113-277, set out above, effective on the first day of the first pay period beginning on or after Jan. 1, 2016, with exception, see section 2(i) of Pub. L. 113-277, set out as an Effective Date of 2014 Amendment note under section 5542 of this title.]

#### § 5550a. Compensatory time off for religious observances

(a) Not later than 30 days after the date of the enactment of this section, the Office of Personnel Management shall prescribe regulations providing for work schedules under which an employee whose personal religious beliefs require the abstention from work during certain periods of time, may elect to engage in overtime work for time lost for meeting those religious requirements. Any employee who so elects such overtime work shall be granted equal compensatory time off from his scheduled tour of duty (in lieu of overtime pay) for such religious reasons, notwithstanding any other provision of law.

(b) In the case of any agency described in subparagraphs (C) through (G) of section 5541(1) of this title, the head of such agency (in lieu of the