

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—113th Cong., 2d Sess.

S. 1691

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.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. TESTER (for himself and Mr. MCCAIN)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

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

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

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

8 (1) to strengthen U.S. Customs and Border
9 Protection and ensure that border patrol agents are
10 sufficiently ready to conduct necessary work and will
11 perform overtime hours in excess of a 40-hour work-

1 week based on the needs of U.S. Customs and Bor-
2 der Protection; and

3 (2) to ensure U.S. Customs and Border Protec-
4 tion has the flexibility to cover shift changes and re-
5 tains the right to assign scheduled and unscheduled
6 work for mission requirements and planning based
7 on operational need.

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

11 **“§ 5550. Border patrol rate of pay**

12 “(a) DEFINITIONS.—In this section—

13 “(1) the term ‘basic border patrol rate of pay’
14 means the hourly rate of basic pay of the applicable
15 border patrol, as determined without regard to this
16 section;

17 “(2) the term ‘border patrol agent’ means an
18 individual who is appointed to a position assigned to
19 the Border Patrol Enforcement classification series
20 1896 or any successor series, consistent with classi-
21 fication standards established by the Office of Per-
22 sonnel Management;

23 “(3) the term ‘level 1 border patrol rate of pay’
24 means the hourly rate of pay equal to 1.25 times the

1 otherwise applicable hourly rate of basic pay of the
2 applicable border patrol agent;

3 “(4) the term ‘level 2 border patrol rate of pay’
4 means the hourly rate of pay equal to 1.125 times
5 the otherwise applicable hourly rate of basic pay of
6 the applicable border patrol agent; and

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

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

10 “(1) VOLUNTARY ELECTION.—

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

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

19 “(ii) the level 2 border patrol rate of
20 pay; or

21 “(iii) the basic border patrol rate of
22 pay, with additional overtime assigned as
23 needed by U.S. Customs and Border Pro-
24 tection.

1 “(B) REGULATIONS.—The Director of the
2 Office of Personnel Management shall promul-
3 gate regulations establishing procedures for
4 elections under subparagraph (A).

5 “(C) INFORMATION REGARDING ELEC-
6 TION.—Not later than 60 days before the first
7 day of each year beginning after the date of en-
8 actment of this section, U.S. Customs and Bor-
9 der Protection shall provide each border patrol
10 agent with information regarding each type of
11 election available under subparagraph (A) and
12 how to make such an election.

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

15 “(i) a border patrol agent who fails to
16 make a timely election under subparagraph
17 (A) shall be assigned to the level 1 border
18 patrol rate of pay;

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

22 “(iii) if at any time U.S. Customs and
23 Border Protection concludes that a border
24 patrol agent is unable to perform overtime
25 on a daily basis in accordance with this

1 section, U.S. Customs and Border Protec-
2 tion shall assign the border patrol agent to
3 the basic border patrol rate of pay until
4 such time as U.S. Customs and Border
5 Protection determines that the border pa-
6 trol agent is able to perform scheduled
7 overtime on a daily basis; and

8 “(iv) a border patrol agent may be as-
9 signed to the level 1 border patrol rate of
10 pay or the level 2 border patrol rate of pay
11 in accordance with subparagraph (E).

12 “(E) FLEXIBILITY.—

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

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

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

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

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

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

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

10 “(G) PAY ASSIGNMENT CONTINUITY.—

11 “(i) IN GENERAL.—Not later than 1
12 year after the date of enactment of the
13 Border Patrol Agent Pay Reform Act of
14 2014, and in consultation with the Office
15 of Personnel Management, U.S. Customs
16 and Border Protection shall develop and
17 implement a plan to ensure, to the greatest
18 extent practicable, that the assignment of
19 a border patrol agent under this section
20 during the 3 years of service before the
21 border patrol agent becomes eligible for
22 immediate retirement are consistent with
23 the average border patrol rate of pay level
24 to which the border patrol agent has been

1 assigned during the course of the career of
2 the border patrol agent.

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

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

17 “(iv) GAO REVIEW.—Not later than 6
18 months after U.S. Customs and Border
19 Protection issues the plan required under
20 clause (i), the Comptroller General of the
21 United States shall submit to the appro-
22 priate committees of Congress a report on
23 the effectiveness of the plan in ensuring
24 that border patrol agents are not able to

1 artificially enhance their retirement annu-
2 ities.

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

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

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

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

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

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

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

7 “(ii) 2 additional hours of scheduled
8 overtime during each day the agent per-
9 forms work under clause (i);

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

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

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

24 “(ii) any compensatory time off;

1 “(D) 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 100 hours during a work period, as deter-
5 mined in accordance with section 5542(g);

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

13 “(F) if the border patrol agent is absent
14 during scheduled overtime described in subpara-
15 graph (A)(ii)—

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

20 “(ii) any overtime work applied to-
21 ward the obligation under clause (i) shall
22 not be credited as overtime work under
23 any other provision of law; and

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

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

4 “(ii) for any advanced training in ad-
5 dition to the advanced training described
6 in clause (i), shall be paid at the basic bor-
7 der patrol rate of pay.

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

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

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

17 “(ii) 1 additional hour of scheduled
18 overtime during each day the agent per-
19 forms work under clause (i);

20 “(B) for paid hours of regular time de-
21 scribed in subparagraph (A)(i), the border pa-
22 trol agent shall receive pay at the level 2 border
23 patrol rate of pay;

24 “(C) compensation for the hours of regu-
25 larly scheduled overtime work described in sub-

1 paragraph (A)(ii) is provided indirectly through
2 the 12.5 percent supplement within the level 2
3 border patrol rate of pay, and the border patrol
4 agent may not receive for such hours—

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

9 “(ii) any compensatory time off;

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

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

22 “(F) if the border patrol agent is absent
23 during scheduled overtime described in subpara-
24 graph (A)(ii)—

1 “(i) the border patrol agent shall ac-
2 cruce an obligation to perform other over-
3 time work for each hour (or part thereof)
4 the border patrol agency is absent; and

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

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

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

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

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

21 “(A) the border patrol agent shall have a
22 regular tour of duty consisting of 5 workdays
23 per week with 8 hours of regular time per work-
24 day; and

1 “(B) 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 80 hours during a work period, as deter-
5 mined in accordance with section 5542(g).

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

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

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

20 “(B) section 5546(d) shall not apply and
21 instead eligibility for pay for, and the rate of
22 pay for, any overtime work on a Sunday or a
23 designated holiday shall be determined in ac-
24 cordance with this section and section 5542(g);

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

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

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

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

13 “(A) purposes of sections 5595(c),
14 8114(e), 8331(3)(I), and 8704(c);

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

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

20 “(2) shall not be treated as part of basic pay
21 for the purposes of calculating overtime pay, night
22 pay, Sunday pay, or holiday pay under section 5542,
23 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-
25STITUTION.—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 “(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 (i) the Committee on Homeland Secu-
13 rity and Governmental Affairs and the
14 Committee on Appropriations of the House
15 of Representatives.

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

19 (1) limit the right of U.S. Customs and Border
20 Protection to assign both scheduled and unscheduled
21 work to a border patrol agent based on the needs of
22 U.S. Customs and Border Protection in excess of the
23 hours of work normally applicable under the election
24 of the border patrol agent, regardless of what the
25 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.