



**U.S. Customs and  
Border Protection**

**Via Electronic Mail**

**APR 30 2015**

Brandon Judd  
National President  
National Border Patrol Council

**SUBJECT: Border Patrol Agent Pay Reform Act and Federal Labor Standards Act  
Exemption**

Mr. Judd:

U.S. Customs and Border Protection (CBP) was recently advised by the U.S. Office of Personnel Management (OPM) that section 2(g)(2) of the Border Patrol Agent Pay Reform Act (BPAPRA) of 2014 (Public Law 113-277, December 18, 2014) immediately exempted all GS-1896 Border Patrol Agents (BPAs) from the minimum wage overtime provisions of the Federal Labor Standards Act (FLSA).

As a result, FLSA payments will not be processed or included in paychecks for Border Patrol Agents beginning in pay period 08 (April 19, 2015-May 2, 2015) of Fiscal Year 2015. CBP will also be taking steps to correct the FLSA status of Border Patrol Agents in CBP's human resources and payroll systems. In accordance with applicable law, any payments of FLSA overtime (whether or not under administratively uncontrollable overtime) made from the effective date of BPAPRA until the pay systems are fully corrected are erroneous payments of pay or allowances.

In the February 18, 2015 Administratively Uncontrollable Overtime Directive notice to the National Border Patrol Council (NBPC), CBP declared its intent, in compliance with OPM guidance and applicable regulations found in 5 CFR § 550.141-162, which prohibits the use of excludable days, to cease the use of excludable days when calculating the weekly average of irregular and occasional overtime.

While this serves as CBP's formal notice to NBPC concerning the decision to immediately cease these practices, CBP stands ready to bargain with NBPC over the procedures and appropriate arrangements associated with this decision on a post-implementation basis.

Further correspondence regarding this matter may be addressed to René Pierce at (202) 863-6276 or by email at [Renee.Pierce@cbp.dhs.gov](mailto:Renee.Pierce@cbp.dhs.gov).

Sincerely,



for

Barry Carpenter  
(A) Director, Labor-Management Relations

cc: Philip Carpio, Associate Chief Counsel, Ethics, Labor & Employment, CBP  
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