

which such employee is entitled by virtue of such employee's civilian employment with the Government.

(c) Any amount payable under this section to an employee shall be paid—

- (1) by such employee's employing agency;
- (2) from the appropriation or fund which would be used to pay the employee if such employee were in a pay status; and
- (3) to the extent practicable, at the same time and in the same manner as would basic pay if such employee's civilian employment had not been interrupted.

(d) The Office of Personnel Management shall, in consultation with Secretary of Defense, prescribe any regulations necessary to carry out the preceding provisions of this section.

(e)(1) The head of each agency referred to in section 2302(a)(2)(C)(ii) shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of such agency.

(2) The Administrator of the Federal Aviation Administration shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of that agency.

(f) For purposes of this section—

(1) the terms “employee”, “Federal Government”, and “uniformed services” have the same respective meanings as given those terms in section 4303 of title 38;

(2) the term “employing agency”, as used with respect to an employee entitled to any payments under this section, means the agency or other entity of the Government (including an agency referred to in section 2302(a)(2)(C)(ii)) with respect to which such employee has reemployment rights under chapter 43 of title 38; and

(3) the term “basic pay” includes any amount payable under section 5304.

(Added Pub. L. 111–8, div. D, title VII, §751(a), Mar. 11, 2009, 123 Stat. 693; amended Pub. L. 111–117, div. C, title VII, §745(a), Dec. 16, 2009, 123 Stat. 3219; Pub. L. 115–232, div. A, title VI, §605, Aug. 13, 2018, 132 Stat. 1795.)

#### Editorial Notes

##### AMENDMENTS

2018—Subsec. (a). Pub. L. 115–232 inserted “section 12304b of title 10 or” after “under” in introductory provisions.

2009—Subsec. (b). Pub. L. 111–117 added subsec. (b) and struck out former subsec. (b), which read as follows:

“(b)(1) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee's civilian employment had not been interrupted)—

“(A) during which such employee is entitled to reemployment rights under chapter 43 of title 38 with respect to the position from which such employee is absent (as referred to in subsection (a)); and

“(B) for which such employee does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee's civilian employment with the Government.

“(2) For purposes of this section, the period during which an employee is entitled to reemployment rights under chapter 43 of title 38—

“(A) shall be determined disregarding the provisions of section 4312(d) of title 38; and

“(B) shall include any period of time specified in section 4312(e) of title 38 within which an employee may report or apply for employment or reemployment following completion of service on active duty to which called or ordered as described in subsection (a).”

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–117, div. C, title VII, §745(b), Dec. 16, 2009, 123 Stat. 3219, provided that: “The amendments made by this section [amending this section] shall take effect on the first day of the first applicable pay period beginning on or after the date of the enactment of this Act [Dec. 16, 2009].”

##### EFFECTIVE DATE

Pub. L. 111–8, div. D, title VII, §751(c), Mar. 11, 2009, 123 Stat. 695, provided that: “The amendments made by this section [enacting this section] shall apply with respect to pay periods (as described in section 5538(b) of title 5, United States Code, as amended by this section) beginning on or after the date of enactment of this Act [Mar. 11, 2009].”

#### SUBCHAPTER V—PREMIUM PAY

#### § 5541. Definitions

For the purpose of this subchapter—

(1) “agency” means—

- (A) an Executive agency;
- (B) a military department;
- (C) an agency in the judicial branch;
- (D) the Library of Congress;
- (E) the Botanic Garden;
- (F) the Office of the Architect of the Capitol; and
- (G) the government of the District of Columbia;

(2) “employee” means—

- (A) an employee in or under an Executive agency;
- (B) an individual employed by the government of the District of Columbia; and
- (C) an employee in or under the judicial branch, the Library of Congress, the Botanic Garden, and the Office of the Architect of the Capitol, who occupies a position subject to chapter 51 and subchapter III of chapter 53 of this title;

but does not include—

- (i) a justice or judge of the United States;
- (ii) the head of an agency other than the government of the District of Columbia;
- (iii) a teacher, school official, or employee of the Board of Education of the District of Columbia, whose pay is fixed under chapter 15 of title 31, District of Columbia Code;
- (iv) a member of—

(I) the Metropolitan Police or the Fire Department of the District of Columbia; or

(II) a member of the United States Park Police, other than for purposes of section <sup>1</sup> 5545(a) and 5546;

(v) a student-employee as defined by section 5351 of this title;

[(vi) Repealed. Pub. L. 91–375, §6(c)(16), Aug. 12, 1970, 84 Stat. 776;]

<sup>1</sup> So in original. Probably should be “sections”.

(vii) an employee outside the continental United States or in Alaska who is paid in accordance with local native prevailing wage rates for the area in which employed;

(viii) an employee of the Tennessee Valley Authority;

(ix) an individual to whom section 1291(a)<sup>2</sup> of title 50, appendix, applies;

(x) an employee of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives;

(xi) an employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under subchapter IV of chapter 53 of this title, or by a wage board or similar administrative authority serving the same purpose, except as provided by section 5544 or 5550b of this title;

(xii) an employee of the Transportation Corps of the Army on a vessel operated by the United States, a vessel employee of the Environmental Science Services Administration, or a vessel employee of the Department of the Interior;

(xiii) a “teacher” or an individual holding a “teaching position” as defined by section 901 of title 20;

(xiv) a Foreign Service officer;

(xv) a member of the Senior Foreign Service;

(xvi) member of the Senior Executive Service; or

(xvii) a member of the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service; and

(3) “law enforcement officer” means an employee who—

(A) is a law enforcement officer within the meaning of section 8331(20) or 8401(17);

(B) in the case of an employee who holds a supervisory or administrative position and is subject to subchapter III of chapter 83, but who does not qualify to be considered a law enforcement officer within the meaning of section 8331(20), would so qualify if such employee had transferred directly to such position after serving as a law enforcement officer within the meaning of such section;

(C) in the case of an employee who holds a supervisory or administrative position and is subject to chapter 84, but who does not qualify to be considered a law enforcement officer within the meaning of section 8401(17), would so qualify if such employee had transferred directly to such position after performing duties described in section 8401(17)(A) and (B) for at least 3 years; and

(D) in the case of an employee who is not subject to subchapter III of chapter 83 or chapter 84—

(i) holds a position that the Office of Personnel Management determines would satisfy subparagraph (A), (B), or (C) if the employee were subject to subchapter III of chapter 83 or chapter 84; or

(ii) is a special agent in the Diplomatic Security Service.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 485; Pub. L. 90-83, §1(4), Sept. 11, 1967, 81 Stat. 196; Pub. L.

91-375, §6(c)(16), Aug. 12, 1970, 84 Stat. 776; Pub. L. 92-392, §4, Aug. 14, 1972, 86 Stat. 573; Pub. L. 94-183, §2(22), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95-105, title IV, §412(a)(1), Aug. 17, 1977, 91 Stat. 855; Pub. L. 95-426, title II, §204(b)(5)(B), Oct. 7, 1978, 92 Stat. 974; Pub. L. 95-454, title IV, §408(a)(2), Oct. 13, 1978, 92 Stat. 1173; Pub. L. 96-70, title III, §3302(e)(1), Sept. 27, 1979, 93 Stat. 498; Pub. L. 96-465, title II, §2304, Oct. 17, 1980, 94 Stat. 2165; Pub. L. 100-325, §2(i)(1), May 30, 1988, 102 Stat. 582; Pub. L. 101-509, title V, §529 [title IV, §411(a)], Nov. 5, 1990, 104 Stat. 1427, 1469; Pub. L. 102-378, §2(40)(A)–(C), Oct. 2, 1992, 106 Stat. 1351; Pub. L. 104-201, div. C, title XXXV, §3548(a)(6), Sept. 23, 1996, 110 Stat. 2869; Pub. L. 110-181, div. A, title XI, §1111(b), Jan. 28, 2008, 122 Stat. 360; Pub. L. 111-282, §4(c)(2), Oct. 15, 2010, 124 Stat. 3043.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 901(a), (d), (e).	June 30, 1945, ch. 212 §101(a), (d), (e), 59 Stat. 295, 296. Sept. 1, 1954, ch. 1208, §202(a), 68 Stat. 1109.
.....	5 U.S.C. 902 (less clause (1) and last sentence of (a)).	June 30, 1945, ch. 212, §102 (less clause (1) and last sentence of (a)), 59 Stat. 296. May 24, 1946, ch. 270, §8(a), 60 Stat. 218. Aug. 4, 1947, ch. 452, §1, 61 Stat. 727. Aug. 18, 1959, Pub. L. 86-168, §202(c) 73 Stat. 389.
.....	5 U.S.C. 2358(a) (as applicable to the Federal Employees Pay Act of 1945, as amended).	July 17, 1959, Pub. L. 86-91, §10(a) (as applicable to the Federal Employees Pay Act of 1945, as amended), 73 Stat. 217.

The section is revised as a definition section. The provisions of former section 901(d) are omitted as unnecessary because the sections referred to state their application and there is no need to restate the application here.

In paragraph (1), the terms “Executive agency” and “military department” are substituted for the references in former section 901(a) and (e) to the executive branch, including Government-owned or controlled corporations, and the General Accounting Office in view of the definitions in sections 105 and 102.

In paragraph (2)(iii), the words “chapter 15 of title 31, District of Columbia Code” are substituted for the reference in former section 902(a)(4) to “the Teachers Salary Act of June 4, 1924, as amended” on authority of the provisions contained therein. Enumeration of the individuals to which the provisions apply are added.

In paragraph (2)(iv), the provisions of former section 902(a)(5) and (b)(6) are combined.

In paragraph (2)(v), the words “student-employee as defined by section 5351 of this title” are coextensive with and substituted for the enumeration of the employees in former section 902(a)(6).

In paragraph (2)(iv), (vi), (vii), (viii), (ix), (xi), and (xii), the reference to former section 947 is omitted as that section was repealed by the Act of Sept. 12, 1950, ch. 946, §301(85), 64 Stat. 843.

In paragraph (2)(xii), the reference to former section 946 is omitted as unnecessary since that section is not carried into this subchapter. The words “Panama Canal Company” are substituted for “Panama Railroad Company” on authority of the Act of Sept. 2, 1950, ch. 1049, §2(a)(2), 64 Stat. 1038.

In paragraph (2)(xiii), the words “as defined by section 901 of title 20” are added on authority of former section 2351, which section is scheduled for transfer to section 901 of title 20.

<sup>2</sup> See References in Text note below.

The exception for officers and employees of the Inland Waterways Corporation in former section 902(b)(3) is omitted on authority of the Act of July 19, 1963, Pub. L. 88-67, 77 Stat. 81.

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

### Editorial Notes

#### REFERENCES IN TEXT

Section 1291(a) of title 50, appendix, referred to in par. (2)(C)(ix), is section 1(a) of act Mar. 24, 1943, ch. 26, 57 Stat. 45, which was classified to section 1291(a) of the former Appendix to Title 50, War and National Defense, prior to editorial reclassification as section 4701(a) of Title 50.

#### AMENDMENTS

2010—Par. (2)(iv)(II). Pub. L. 111-282 struck out “a member of the United States Secret Service Uniformed Division,” before “a member of the United States Park Police”.

2008—Par. (2)(xi). Pub. L. 110-181 substituted “section 5544 or 5550b” for “section 5544”.

1996—Par. (2)(xii). Pub. L. 104-201 inserted “or” after “Services Administration,” and struck out “, or a vessel employee of the Panama Canal Commission” after “Interior”.

1992—Par. (3). Pub. L. 102-378 added par. (3).

1990—Par. (2)(iv). Pub. L. 101-509 amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: “a member of the Metropolitan Police, the Fire Department of the District of Columbia, the United States Park Police, or the Executive Protective Service”.

1988—Par. (2)(xvii). Pub. L. 100-325 added cl. (xvii).

1980—Par. (2)(xiv). Pub. L. 96-465 struck out “within the meaning of section 401 of the Foreign Service Act of 1946” after “officer”.

Par. (2)(xv). Pub. L. 96-465 substituted “a member of the Senior Foreign Service” for “a ‘Foreign Service information officer’ as provided for by the first section of the Act entitled ‘An Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps’, approved August 20, 1968”.

1979—Par. (2)(xii). Pub. L. 96-70 substituted “Commission” for “Company”.

1978—Par. (2)(xvi). Pub. L. 95-454 added cl. (xvi).

Par. (2)(xv). Pub. L. 95-426 substituted “International Communication Agency” for “United States Information Agency”.

1977—Par. (2)(xiv), (xv). Pub. L. 95-105 added cls. (xiv) and (xv).

1975—Par. (2)(iv). Pub. L. 94-183 substituted “Executive Protective Service” for “White House Police”.

1972—Par. (2)(xi). Pub. L. 92-392 substituted “pay” for “basic pay” and provided for determination of pay under subchapter IV of chapter 53 of this title.

1970—Par. (2)(vi). Pub. L. 91-375 repealed cl. (vi) which excluded an employee in the postal field service from definition of “employee”.

1967—Par. (2)(xii). Pub. L. 90-83 substituted “Environmental Science Services Administration” for “Coast and Geodetic Survey”. See Historical and Revision Notes under section 2101 of this title.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-282 effective on first day of first pay period which begins after Oct. 15, 2010, see section 5 of Pub. L. 111-282, set out as a note under section 5102 of this title.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title XI, §1111(c), Jan. 28, 2008, 122 Stat. 360, provided that: “The amendments made by

this section [amending this section and section 5550b of this title] shall take effect on the earlier of—

“(1) the effective date of any regulations prescribed to carry out such amendments; or

“(2) the 90th day after the date of the enactment of this Act [Jan. 28, 2008].”

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-378 effective as of first day of first applicable pay period beginning on or after Oct. 2, 1992, see section 9(b)(9) of Pub. L. 102-378, set out as a note under section 6303 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-509, title V, §529 [title IV, §411(b)], Nov. 5, 1990, 104 Stat. 1427, 1469, provided that: “The amendment made by this section [amending this section] shall be effective on January 1, 1992.”

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96-70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

#### EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

Pub. L. 95-426, title II, §204(b)(5)(B), Oct. 7, 1978, 92 Stat. 974, provided that the amendment made by such section 204(b)(5)(B) is effective Oct. 1, 1978.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Section 412(a)(2) of Pub. L. 95-105 provided that: “The amendments made by paragraph (1) [amending this section] shall take effect on October 1, 1978.”

#### EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92-392, set out as an Effective Date note under section 5341 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

#### SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-329, title VI, §633(a), Sept. 30, 1994, 108 Stat. 2425, provided that: “This section [enacting section 5545a of this title, amending sections 5542 and 5547 of this title and section 213 of Title 29, Labor, and enacting provisions set out as notes under section 5545a of this title] may be cited as the ‘Law Enforcement Availability Pay Act of 1994’.”

#### AVAILABILITY OF PREMIUM PAY FOR ATTORNEYS EMPLOYED IN DEPARTMENT OF JUSTICE

Pub. L. 106-113, div. B, §1000(a)(1) [title I, §115], Nov. 29, 1999, 113 Stat. 1535, 1501A-21, provided that:

“(a) None of the funds made available by this or any other Act may be used to pay premium pay under title 5, United States Code, sections 5542-5549, to any indi-

vidual employed as an attorney, including an Assistant United States Attorney, in the Department of Justice for any work performed on or after the date of the enactment of this Act [Nov. 29, 1999].

“(b) Notwithstanding any other provision of law, neither the United States nor any individual or entity acting on its behalf shall be liable for premium pay under title 5, United States Code, sections 5542–5549, for any work performed on or after the date of the enactment of this Act [Nov. 29, 1999] by any individual employed as an attorney in the Department of Justice, including an Assistant United States Attorney.”

[Pub. L. 106–553, §1(a)(2) [title I, §111], Dec. 21, 2000, 114 Stat. 2762, 2762A–68, provided that: “Section 115 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2000 (as enacted into law by section 1000(a)(1) of Public Law 106–113) [set out above] shall apply hereafter.”]

#### SENSE OF CONGRESS RELATING TO LAW ENFORCEMENT OFFICER PROVISIONS

Pub. L. 102–378, §2(40)(D), Oct. 2, 1992, 106 Stat. 1351, provided that: “It is the sense of the Congress that—

“(i) the provisions of section 5541(3) of title 5, United States Code (as added by section 2(40)(C) of this Act)—

“(I) are enacted only for the purposes of pay and not for the purposes of retirement;

“(II) do not reflect any intent of the Congress to change retirement eligibility standards for law enforcement officers; and

“(ii) law enforcement officers in primary positions have different retirement eligibility standards than employees in supervisory or administrative positions because of the different requirements in their responsibilities.”

#### PAYMENT OF BONUSES FOR FOREIGN LANGUAGE CAPABILITIES

Pub. L. 100–690, title VI, §6401, Nov. 18, 1988, 102 Stat. 4370, as amended by Pub. L. 101–509, title V, §529 [title IV, §408(c)], Nov. 5, 1990, 104 Stat. 1427, 1468, provided that:

“(a) IN GENERAL.—Notwithstanding any other provision of law, the Drug Enforcement Administration and the Federal Bureau of Investigation are authorized on and after October 1, 1988, to pay bonuses up to 25 percent of base pay to employees of the Drug Enforcement Administration and the Federal Bureau of Investigation who possess and make substantial use of one or more languages, other than English, in the performance of their official duties. The Administrator of the Drug Enforcement Administration and the Director of the Federal Bureau of Investigation shall develop such policies as necessary to implement the payment of these bonuses.

“(b) LIMITATION.—The provisions of this section shall apply only to an employee who has received a bonus under this section before January 1, 1992. The provisions of subchapter III of chapter 45 of title 5, United States Code, shall apply to any employee who would otherwise be eligible to receive a bonus under this section, on and after such date.”

### Executive Documents

#### TRANSFER OF FUNCTIONS

Environmental Science Services Administration in Department of Commerce, including offices of Administrator and Deputy Administrator thereof, abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to this title, which created National Oceanic and Atmospheric Administration in Department of Commerce and transferred personnel, property, records, and unexpended balances of funds of Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. Components of Environmental Science Services Administration thus trans-

ferred included Weather Bureau [now National Weather Service], Coast and Geodetic Survey [now National Ocean Survey], Environmental Data Service, National Environmental Satellite Center, and ESSA Research Laboratories.

### § 5542. Overtime rates; computation

(a) For full-time, part-time and intermittent tours of duty, hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or (with the exception of an employee engaged in professional or technical engineering or scientific activities for whom the first 40 hours of duty in an administrative workweek is the basic workweek and an employee whose basic pay exceeds the minimum rate for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) for whom the first 40 hours of duty in an administrative workweek is the basic workweek) in excess of 8 hours in a day, performed by an employee are overtime work and shall be paid for, except as otherwise provided by this subchapter, at the following rates:

(1) For an employee whose basic pay is at a rate which does not exceed the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(2) For an employee whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to the greater of one and one-half times the hourly rate of the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) or the hourly rate of basic pay of the employee, and all that amount is premium pay.

(3) Notwithstanding paragraphs (1) and (2) of this subsection for an employee of the Department of Transportation who occupies a non-managerial position in GS–14 or under and, as determined by the Secretary of Transportation,

(A) the duties of which are critical to the immediate daily operation of the air traffic control system, directly affect aviation safety, and involve physical or mental strain or hardship;

(B) in which overtime work is therefore unusually taxing; and

(C) in which operating requirements cannot be met without substantial overtime work;

the overtime hourly rate of pay is an amount equal to one and one-half times the hourly

rate of basic pay of the employee, and all that amount is premium pay.

(4) Notwithstanding paragraph (2) of this subsection, for an employee who is a law enforcement officer, and whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to the greater of—

(A) one and one-half times the minimum hourly rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

(B) the hourly rate of basic pay of the employee,

and all that amount is premium pay.

(5) Notwithstanding paragraphs (1) and (2), for an employee of the Department of the Interior or the United States Forest Service in the Department of Agriculture engaged in emergency wildland fire suppression activities, the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(6)(A) Notwithstanding paragraphs (1) and (2), for an employee of the Department of the Navy who is assigned to temporary duty outside the United States to perform work aboard, or dockside in direct support of, naval vessels and who would be nonexempt under the Fair Labor Standards Act of 1938 but for the application of the foreign area exemption in section 13(f) of that Act (29 U.S.C. 213(f)), the employee shall be coded and paid overtime as if the employee's exemption status under that Act is the same as it is at the employee's permanent duty station.

(B) Subparagraph (A) shall expire on September 30, 2026.

(b) For the purpose of this subchapter—

(1) unscheduled overtime work performed by an employee on a day when work was not scheduled for him, or for which he is required to return to his place of employment, is deemed at least 2 hours in duration; and

(2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless—

(A) the time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or

(B) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such event to his or her official-duty station.

(c) Subsection (a) shall not apply to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor<sup>1</sup> Standards Act of 1938. In the case of an employee who would, were it not for the preceding sentence, be subject to this section, the Office of Personnel Management shall by regulation prescribe what hours shall be deemed to be hours of work and what hours of work shall be deemed to be overtime hours for the purpose of such section 7 so as to ensure that no employee receives less pay by reason of the preceding sentence.

(d) In applying subsection (a) of this section with respect to any criminal investigator who is paid availability pay under section 5545a—

(1) such investigator shall be compensated under such subsection (a), at the rates there provided, for overtime work which is scheduled in advance of the administrative workweek—

(A) in excess of 10 hours on a day during such investigator's basic 40 hour workweek; or

(B) on a day outside such investigator's basic 40 hour workweek; and

(2) such investigator shall be compensated for all other overtime work under section 5545a.

(e) Notwithstanding subsection (d)(1) of this section, all hours of overtime work scheduled in advance of the administrative workweek shall be compensated under subsection (a) if that work involves duties as authorized by section 3056(a) of title 18 or section 37(a)(3) of the State Department Basic Authorities Act of 1956, and if the investigator performs, on that same day, at least 2 hours of overtime work not scheduled in advance of the administrative workweek.

(f) In applying subsection (a) of this section with respect to a firefighter who is subject to section 5545b—

(1) such subsection shall be deemed to apply to hours of work officially ordered or approved in excess of 106 hours in a biweekly pay period, or, if the agency establishes a weekly basis for overtime pay computation, in excess of 53 hours in an administrative workweek; and

(2) the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay under section 5545b(b)(1)(A) or (c)(1)(B), as applicable, and such overtime hourly rate of pay may not be less than such hourly rate of basic pay in applying the limitation on the overtime rate provided in paragraph (2) of such subsection (a).

(g) In applying subsection (a) with respect to a border patrol agent covered by section 5550, the following rules apply:

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

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

(B) the border patrol agent—

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

<sup>1</sup> So in original. Probably should be capitalized.

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

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

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

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

(B) the border patrol agent—

(i) shall receive pay at the overtime hourly rate of pay (as determined in accordance with paragraphs (1) and (2) of subsection (a)) for hours of overtime work that are officially ordered or approved in advance of the workweek; and

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

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

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

(B) the border patrol agent—

(i) shall receive pay at the overtime hourly rate of pay (as determined in accordance with paragraphs (1) and (2) of subsection (a)) for hours of overtime work that are officially ordered or approved in advance of the workweek; and

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

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

(B) U.S. Customs and Border Protection may, as it determines appropriate, waive the limitation under subparagraph (A) for an individual border patrol agent for hours of irregular or occasional overtime work, but such waiver must be approved in writing in advance of the performance of any such work for which compensatory time off is earned under paragraph (1)(B)(ii), (2)(B)(ii), or (3)(B)(ii). If a waiver request by a border patrol agent is denied, the border patrol agent may not be ordered to perform the associated overtime work.

(5) A border patrol agent—

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

(B) shall use any hours of compensatory time off not later than the end of the 26th

pay period after the pay period during which the compensatory time off was earned;

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

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

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

(F) shall not be credited with compensatory time off if the value of such time off would cause the aggregate premium pay of the border patrol agent to exceed the limitation established under section 5547 in the period in which it was earned.

(h)(1)(A) Notwithstanding any other provision of this section or section 5545b, any hours worked by a firefighter under a qualified trade-of-time arrangement shall be disregarded for purposes of any determination relating to eligibility for, or the amount of, any overtime pay under this section, including overtime pay under the Fair Labor Standards Act in accordance with subsection (c).

(B) The Director of the Office of Personnel Management—

(i) shall identify the situations in which a firefighter shall be deemed to have worked hours actually worked by a substituting firefighter under a qualified trade-of-time arrangement; and

(ii) may adopt necessary policies governing the treatment of both a substituting and substituted firefighter under a qualified trade-of-time arrangement, without regard to how those firefighters would otherwise be treated under other provisions of law or regulation.

(2) In this subsection—

(A) the term “firefighter” means an employee—

(i) the work schedule of whom includes 24-hour duty shifts; and

(ii) who—

(I) is a firefighter, as defined in section 8331(21) or 8401(14);

(II) in the case of an employee who holds a supervisory or administrative position and is subject to subchapter III of chapter 83, but who does not qualify to be considered a firefighter within the meaning of section 8331(21), would so qualify if such employee had transferred directly to such position after serving as a firefighter within the meaning of such section;

(III) in the case of an employee who holds a supervisory or administrative position and is subject to chapter 84, but who does not qualify to be considered a firefighter within the meaning of section 8401(14), would so qualify if such employee had transferred directly to such position after performing duties described in sec-

tion 8401(14)(A) and (B) for at least 3 years; and

(IV) in the case of an employee who is not subject to subchapter III of chapter 83 or chapter 84, holds a position that the Office of Personnel Management determines would satisfy subclause (I), (II), or (III) if the employee were subject to subchapter III of chapter 83 or chapter 84; and

(B) the term “qualified trade-of-time arrangement” means an arrangement under which 2 firefighters who are subject to the supervision of the same fire chief agree, solely at their option and with the approval of the employing agency, to substitute for one another during scheduled work hours in the performance of work in the same capacity.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 485; Pub. L. 90-83, §1(24), Sept. 11, 1967, 81 Stat. 200; Pub. L. 90-206, title II, §222(a), Dec. 16, 1967, 81 Stat. 641; Pub. L. 90-556, §1, Oct. 10, 1968, 82 Stat. 969; Pub. L. 92-194, Dec. 15, 1971, 85 Stat. 648; Pub. L. 98-473, title I, §101(c) [title III, §322], Oct. 12, 1984, 98 Stat. 1837, 1874; Pub. L. 101-509, title V, §529 [title I, §101(b)(3)(E)], title II, §210(1), title IV, §410(a)], Nov. 5, 1990, 104 Stat. 1427, 1439, 1460, 1468; Pub. L. 102-378, §2(41), Oct. 2, 1992, 106 Stat. 1352; Pub. L. 103-329, title VI, §633(c), Sept. 30, 1994, 108 Stat. 2427; Pub. L. 104-52, title V, §531, Nov. 19, 1995, 109 Stat. 496; Pub. L. 105-277, div. A, §101(b) [title IV, §407(c)(2)], (h) [title VI, §628(a)(1)], div. G, subdiv. B, title XXIII, §2316(c)(2), Oct. 21, 1998, 112 Stat. 2681-50, 2681-102, 2681-480, 2681-519, 2681-829; Pub. L. 106-558, §2(a), Dec. 21, 2000, 114 Stat. 2776; Pub. L. 108-136, div. A, title XI, §1121, Nov. 24, 2003, 117 Stat. 1636; Pub. L. 111-383, div. A, title XI, §1105(a), Jan. 7, 2011, 124 Stat. 4383; Pub. L. 113-277, §2(c)(1), Dec. 18, 2014, 128 Stat. 3002; Pub. L. 113-291, div. A, title XI, §1106(a), Dec. 19, 2014, 128 Stat. 3526; Pub. L. 114-92, div. A, title XI, §1103, Nov. 25, 2015, 129 Stat. 1022; Pub. L. 114-328, div. A, title XI, §1108, Dec. 23, 2016, 130 Stat. 2449; Pub. L. 115-91, div. A, title XI, §1109, Dec. 12, 2017, 131 Stat. 1631; Pub. L. 115-232, div. A, title XI, §1103, Aug. 13, 2018, 132 Stat. 2001; Pub. L. 116-283, div. A, title XI, §1113, Jan. 1, 2021, 134 Stat. 3894; Pub. L. 117-81, div. A, title XI, §§1108, 1110, Dec. 27, 2021, 135 Stat. 1951, 1952.)

#### HISTORICAL AND REVISION NOTES 1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a) .....	5 U.S.C. 911.	June 30, 1945, ch. 212, §201, 59 Stat. 296. Sept. 1, 1954, ch. 1208, §203, 68 Stat. 1109.
(b) .....	5 U.S.C. 912a. 5 U.S.C. 912b.	Sept. 1, 1954, ch. 1208, §205(b), 68 Stat. 1110.

In subsection (a)(1), and (2), the word “officer” is omitted as included in “employee”. The word “scheduled” is omitted since section 603 of the Act of Oct. 11, 1962, Pub. L. 87-793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity. References to the “Classification Act of 1949, as amended” are omitted as unnecessary.

In subsection (b), former sections 912a and 912b are combined and restated.

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

#### 1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
5542(a) .....	5 App.: 911.	July 18, 1966, Pub. L. 89-504, §404(a), 80 Stat. 297.

The words “of the Classification Act of 1949, as amended” are omitted as unnecessary.

#### Editorial Notes

##### REFERENCES IN TEXT

GS-10 and GS-14, referred to in subsec. (a), are contained in the General Schedule which is set out under section 5332 of this title.

The Fair Labor Standards Act of 1938, referred to in subsec. (a)(6)(A), is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

Section 7 of the Fair Labor Standards Act of 1938, referred to in subsec. (c), is classified to section 207 of Title 29, Labor.

Section 37(a)(3) of the State Department Basic Authorities Act of 1956, referred to in subsec. (e), is classified to section 2709(a)(3) of Title 22, Foreign Relations and Intercourse.

The Fair Labor Standards Act, referred to in subsec. (h)(1)(A), probably means the Fair Labor Standards Act of 1938, act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

##### AMENDMENTS

2021—Subsec. (a)(6)(A). Pub. L. 117-81, §1108, inserted “outside the United States” after “temporary duty” and “of 1938” after “Fair Labor Standards Act” and substituted “naval vessels” for “the nuclear aircraft carrier that is forward deployed in Japan” and “the employee shall be coded and paid overtime as if the employee’s exemption status under that Act is the same as it is at the employee’s permanent duty station.” for “the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.”

Subsec. (a)(6)(B). Pub. L. 116-283 substituted “September 30, 2026” for “September 30, 2021”.

Subsec. (h). Pub. L. 117-81, §1110, added subsec. (h).

2018—Subsec. (a)(6)(B). Pub. L. 115-232 substituted “September 30, 2021” for “September 30, 2019”.

2017—Subsec. (a)(6)(B). Pub. L. 115-91 substituted “September 30, 2019” for “September 30, 2018”.

2016—Subsec. (a)(6)(B). Pub. L. 114-328 substituted “September 30, 2018” for “September 30, 2017”.

2015—Subsec. (a)(6)(B). Pub. L. 114-92 substituted “September 30, 2017” for “September 30, 2015”.

2014—Subsec. (a)(6)(B). Pub. L. 113-291 substituted “2015” for “2014”.

Subsec. (g). Pub. L. 113-277 added subsec. (g).

2011—Subsec. (a)(6). Pub. L. 111-383 added par. (6).

2003—Subsec. (a)(2). Pub. L. 108-136 inserted “the greater of” before “one and one-half” and “or the hourly rate of basic pay of the employee” before “, and all that amount”.

2000—Subsec. (a)(5). Pub. L. 106-558 added par. (5).

1998—Subsec. (e). Pub. L. 105-277, §101(b) [title IV, §407(c)(2)] and §2316(c)(2), amended subsec. (e) identically, substituting “title 18 or section 37(a)(3) of the State Department Basic Authorities Act of 1956,” for “title 18, United States Code.”

Subsec. (f). Pub. L. 105-277, §101(h) [title VI, §628(a)(1)], added subsec. (f).

1995—Subsec. (e). Pub. L. 104-52 added subsec. (e).

1994—Subsec. (d). Pub. L. 103-329 added subsec. (d).

1992—Subsec. (a)(4). Pub. L. 102-378, §2(41)(A), substituted “officer,” for “officer (within the meaning of

section 8331(20) or 8401(17)),” and realigned margin of closing provision.

Subsec. (c). Pub. L. 102-378, §2(41)(B), amended second sentence generally. Prior to amendment, second sentence read as follows: “In the case of an employee who would, were it not for the preceding sentence, be subject to this section, hours of work in excess of 8 hours in a day shall be deemed to be overtime hours for the purposes of such section 7 and hours in a paid nonwork status shall be deemed to be hours of work.”

1990—Subsec. (a). Pub. L. 101-509, §529 [title I, §101(b)(3)(E)], inserted “(including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law)” after “GS-10” wherever appearing.

Subsec. (a)(4). Pub. L. 101-509, §529 [title IV, §410(a)], added par. (4).

Subsec. (c). Pub. L. 101-509, §529 [title II, §210(1)], added subsec. (c).

1984—Subsec. (b)(2)(B)(iv). Pub. L. 98-473 inserted “, including travel by an employee to such an event and the return of such employee from such event to his or her official-duty station”.

1971—Subsec. (a). Pub. L. 92-194 substituted “For full-time, part-time and intermittent tours of duty, hours” for “Hours”.

1968—Subsec. (a)(3). Pub. L. 90-556 added par. (3).

1967—Subsec. (b)(2)(B). Pub. L. 90-206 designated existing provisions as cls. (i) and (iii) and added cls. (ii) and (iv).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-277, §2(i), as added by Pub. L. 114-13, §1(a), May 19, 2015, 129 Stat. 197, provided that: “Subsections (b), (c), (d), and (g) [enacting section 5550 of this title, amending this section and sections 5547 and 8331 of this title and section 213 of Title 29, Labor, and enacting provisions set out as a note under section 5550 of this title], and the amendments made by such subsections, shall take effect on the first day of the first pay period beginning on or after January 1, 2016, except that—

“(1) any provision in section 5550(b) of title 5, United States Code, as added by subsection (b), relating to administering elections and making advance assignments to a regular tour of duty shall be applicable before such effective date to the extent determined necessary by the Director of the Office of Personnel Management; and

“(2) the Director may issue regulations as necessary prior to such effective date.”

[Pub. L. 114-13, §1(b), May 19, 2015, 129 Stat. 197, provided that: “The amendment made by subsection (a) [enacting section 2(i) of Pub. L. 113-277, set out above] shall be deemed to have been enacted on the date of enactment of the Border Patrol Agent Pay Reform Act of 2014 (Public Law 113-277) [approved Dec. 18, 2014].”]

##### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-558, §2(b), Dec. 21, 2000, 114 Stat. 2777, as amended by Pub. L. 107-20, title II, §2605, July 24, 2001, 115 Stat. 178, provided that: “The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Dec. 21, 2000].”

##### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-277, div. A, §101(b) [title IV, §407(d)], div. G, subdiv. B, title XXIII, §2316(d), Oct. 21, 1998, 112 Stat. 2681-50, 2681-102, 2681-829, provided that: “The amendments made by this section [amending this section and section 5545a of this title] shall take effect on the first day of the first applicable pay period—

“(1) which begins on or after the 90th day following the date of the enactment of this Act [Oct. 21, 1998]; and

“(2) on which date all regulations necessary to carry out such amendments are (in the judgment of

the Director of the Office of Personnel Management and the Secretary of State) in effect.” [Jan. 29, 1999, see 64 F.R. 4517.]

Amendment by section 101(h) [title VI, §628(a)(1)] of Pub. L. 105-277 effective on first day of first applicable pay period which begins on or after Oct. 1, 1998, see section 101(h) [title VI, §628(e)] of Pub. L. 105-277, set out as a note under section 4109 of this title.

##### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-329 effective first day of first applicable pay period beginning on or after 30th day following Sept. 30, 1994, with exceptions relating to criminal investigators employed in Offices of Inspectors General, see section 633(e) of Pub. L. 103-329, set out as an Effective Date note under section 5545a of this title.

##### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-378 effective as of first day of first applicable pay period beginning on or after Oct. 2, 1992, see section 9(b)(9) of Pub. L. 102-378, set out as a note under section 6303 of this title.

##### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 529 [title I, §101(b)(3)(E), title II, §210(1)] of Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

##### EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90-556, §3, Oct. 10, 1968, 82 Stat. 969, provided that: “The amendments made by this Act [amending this section and section 5545 of this title] shall take effect on the first day of the first pay period which begins on or after the thirtieth day after the date of enactment of this Act [Oct. 10, 1968].”

##### EFFECTIVE DATE OF 1967 AMENDMENT

Pub. L. 90-206, title II, §220(a)(4), Dec. 16, 1967, 81 Stat. 639, provided that, except as otherwise expressly provided: “Sections 222 [enacting section 5733 of this title and amending this section, section 5544 of this title, section 3571 of Title 39, The Postal Service], and 223 [enacting section 5345 of this title] shall become effective thirty days after the date of enactment of this title [Dec. 16, 1967].”

#### REGULATIONS

Pub. L. 113-277, §2(h), Dec. 18, 2014, 128 Stat. 3005, provided that: “The Director of the Office of Personnel Management shall promulgate regulations to carry out this Act [see section 1 of Pub. L. 113-277, set out as a Short Title of 2014 Amendment note under section 101 of this title] and the amendments made by this Act.”

#### RULES OF CONSTRUCTION

Pub. L. 113-277, §2(f), Dec. 18, 2014, 128 Stat. 3004, provided that: “Nothing in this section [enacting section 5550 of this title, amending this section and sections 5547 and 8331 of this title and section 213 of Title 29, Labor, and enacting provisions set out as notes under this section and section 5550 of this title] or the amendments made by this section shall be construed to—

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

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

“(3) exempt a border patrol agent from any limitations on pay, earnings, or compensation, including



the limitations under section 5547 of title 5, United States Code.”

#### BORDER PATROL RATE OF PAY

Pub. L. 113-277, §2(a), Dec. 18, 2014, 128 Stat. 2995, provided that:

“(a) PURPOSE.—The purposes of this Act [see section 1 of Pub. L. 113-277, set out as a Short Title of 2014 Amendment note under section 101 of this title] are—

“(1) to strengthen U.S. Customs and Border Protection and ensure that border patrol agents are sufficiently ready to conduct necessary work and will perform overtime hours in excess of a 40-hour workweek based on the needs of U.S. Customs and Border Protection; and

“(2) to ensure U.S. Customs and Border Protection has the flexibility to cover shift changes and retains the right to assign scheduled and unscheduled work for mission requirements and planning based on operational need.”

#### § 5543. Compensatory time off

(a) The head of an agency may—

(1) on request of an employee, grant the employee compensatory time off from his scheduled tour of duty instead of payment under section 5542 or section 7 of the Fair Labor Standards Act of 1938 for an equal amount of time spent in irregular or occasional overtime work; and

(2) provide that an employee whose rate of basic pay is in excess of the maximum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) shall be granted compensatory time off from his scheduled tour of duty equal to the amount of time spent in irregular or occasional overtime work instead of being paid for that work under section 5542 of this title.

(b) The head of an agency may, on request of an employee, grant the employee compensatory time off from the employee's scheduled tour of duty instead of payment under section 5544 or section 7 of the Fair Labor Standards Act of 1938 for an equal amount of time spent in irregular or occasional overtime work. An agency head may not require an employee to be compensated for overtime work with an equivalent amount of compensatory time-off from the employee's tour of duty.

(c) The Architect of the Capitol may grant an employee paid on an annual basis compensatory time off from duty instead of overtime pay for overtime work.

(d)(1) The appropriate Secretary may, on request of an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c), grant such employee compensatory time off from duty instead of overtime pay for overtime work.

(2) For purposes of this subsection, the term “appropriate Secretary” means—

(A) with respect to an employee of a nonappropriated fund instrumentality of the Department of Defense, the Secretary of Defense; and

(B) with respect to an employee of a nonappropriated fund instrumentality of the

Coast Guard, the Secretary of the Executive department in which it is operating.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 486; Pub. L. 90-83, §1(25), Sept. 11, 1967, 81 Stat. 200; Pub. L. 101-509, title V, §529 [title I, §101(b)(3)(E), title II, §210(2)], Nov. 5, 1990, 104 Stat. 1427, 1439, 1460; Pub. L. 104-201, div. A, title XVI, §1610(a), Sept. 23, 1996, 110 Stat. 2738; Pub. L. 109-163, div. A, title VI, §674, Jan. 6, 2006, 119 Stat. 3319.)

#### HISTORICAL AND REVISION NOTES 1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 912.	June 30, 1945, ch. 212, §202, 59 Stat. 297. May 24, 1946, ch. 270, §9, 60 Stat. 218. Sept. 1, 1954, ch. 1208, §204, 68 Stat. 1109.

In subsection (a), the words “head of an agency” are substituted for “head of any department, independent establishment, or agency, including Government-owned or controlled corporations, or of the municipal government of the District of Columbia, or the head of any legislative or judicial agency to which this subchapter applies” because of the definition of “agency” and the application stated in section 5541.

In subsection (a)(1), the word “officer” is omitted as included in “employee”.

In subsection (a)(2), the words “at his own discretion” are omitted as unnecessary in view of the permissive nature of the authority. The word “officer” is omitted as included in “employee”. The word “scheduled” is omitted since section 603 of the Act of Oct. 11, 1962, Pub. L. 87-793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity. Reference to the “Classification Act of 1949, as amended” is omitted as unnecessary.

In subsection (b), the words “in his discretion” are omitted as unnecessary in view of the permissive nature of the authority. The words “overtime work” are substituted for “any work in excess of forty hours in any regularly scheduled administrative workweek” because of the definition of “overtime work” in section 5542(a).

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

#### 1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
5543(a)(2) ...	5 App.: 912.	July 18, 1966, Pub. L. 89-504, §404(b), 80 Stat. 297.

#### Editorial Notes

##### REFERENCES IN TEXT

Section 7 of the Fair Labor Standards Act of 1938, referred to in subsecs. (a)(1) and (b), is classified to section 207 of Title 29, Labor.

GS-10, referred to in subsec. (a)(2), is contained in the General Schedule which is set out under section 5332 of this title.

##### AMENDMENTS

2006—Subsec. (d). Pub. L. 109-163 added subsec. (d).

1996—Subsecs. (b), (c). Pub. L. 104-201 added subsec. (b) and redesignated former subsec. (b) as (c).

1990—Subsec. (a)(1). Pub. L. 101-509, §529 [title II, §210(2)], inserted “under section 5542 or section 7 of the Fair Labor Standards Act of 1938” after “payment”.

Subsec. (a)(2). Pub. L. 101-509, §529 [title I, §101(b)(3)(E)], inserted “(including any applicable local-

ity-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law)" after "GS-10".

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

#### § 5544. Wage-board overtime and Sunday rates; computation

(a) An employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under section 5343 or 5349 of this title, or by a wage board or similar administrative authority serving the same purpose, is entitled to overtime pay for overtime work in excess of 8 hours a day or 40 hours a week. However, an employee subject to this subsection who regularly is required to remain at or within the confines of his post of duty in excess of 8 hours a day in a standby or on-call status is entitled to overtime pay only for hours of duty, exclusive of eating and sleeping time, in excess of 40 a week. The overtime hourly rate of pay is computed as follows:

(1) If the basic rate of pay of the employee is fixed on a basis other than an annual or monthly basis, multiply the basic hourly rate of pay by not less than one and one-half.

(2) If the basic rate of pay of the employee is fixed on an annual basis, divide the basic annual rate of pay by 2,087, and multiply the quotient by one and one-half.

(3) If the basic rate of pay of the employee is fixed on a monthly basis, multiply the basic monthly rate of pay by 12 to derive a basic annual rate of pay, divide the basic annual rate of pay by 2,087, and multiply the quotient by one and one-half.

An employee subject to this subsection whose regular work schedule includes an 8-hour period of service a part of which is on Sunday is entitled to additional pay at the rate of 25 percent of his hourly rate of basic pay for each hour of work performed during that 8-hour period of service. For employees serving outside the United States in areas where Sunday is a routine workday and another day of the week is officially recognized as the day of rest and worship, the Secretary of State may designate the officially recognized day of rest and worship as the day with respect to which the preceding sentence shall apply instead of Sunday. Time spent in a travel status away from the official duty station of an employee subject to this subsection is not hours of work unless the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively (including travel by the employee to such event and the return of the employee from such event to the employee's official duty station). The first and third sen-

tences of this subsection shall not be applicable to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938. In the case of an employee who would, were it not for the preceding sentence, be subject to the first and third sentences of this subsection, the Office of Personnel Management shall by regulation prescribe what hours shall be deemed to be hours of work and what hours of work shall be deemed to be overtime hours for the purpose of such section 7 so as to ensure that no employee receives less pay by reason of the preceding sentence.

(b) An employee under the Office of the Architect of the Capitol who is paid on a daily or hourly basis and who is not subject to chapter 51 and subchapter III of chapter 53 of this title is entitled to overtime pay for overtime work in accordance with subsection (a) of this section. The overtime hourly rate of pay is computed in accordance with subsection (a)(1) of this section.

(c) The provisions of this section, including the last two sentences of subsection (a) and the provisions of section 5543(b), shall apply to a prevailing rate employee described in section 5342(a)(2)(B).

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 486; Pub. L. 90-83, §1(26)(A), Sept. 11, 1967, 81 Stat. 200; Pub. L. 90-206, title II, §222(d), Dec. 16, 1967, 81 Stat. 641; Pub. L. 92-392, §5, Aug. 19, 1972, 86 Stat. 573; Pub. L. 101-509, title V, §529 [title II, §210(3)], Nov. 5, 1990, 104 Stat. 1427, 1460; Pub. L. 102-378, §2(42), Oct. 2, 1992, 106 Stat. 1352; Pub. L. 104-201, div. A, title XVI, §1610(b), Sept. 23, 1996, 110 Stat. 2738; Pub. L. 105-277, div. G, subdiv. B, title XXIII, §2317(1), Oct. 21, 1998, 112 Stat. 2681-829; Pub. L. 110-181, div. A, title XI, §1110, Jan. 28, 2008, 122 Stat. 360.)

#### HISTORICAL AND REVISION NOTES 1966 ACT

Derivation	U.S. Code	Revised Statutes and Statutes at Large
(a) .....	5 U.S.C. 673c (2d proviso).	Mar. 28, 1934, ch. 102, §23 (proviso), 48 Stat. 522.
	5 U.S.C. 913.	Aug. 13, 1962, Pub. L. 87-581, §201 (2d proviso), 76 Stat. 360.
		June 30, 1945, ch. 212, §203, 59 Stat. 297.
		Sept. 1, 1954, ch. 1208, §205(a), 68 Stat. 1109.
(b) .....	5 U.S.C. 933 (as applicable to 5 U.S.C. 673c).	June 30, 1945, ch. 212, §503 (as applicable to §23 of the Act of Mar. 28, 1934, ch. 102, 48 Stat. 522, as amended), 59 Stat. 301.

In subsection (a), former sections 673c (2d proviso) and 913 are combined and restated for clarity and conciseness. The last 28 words of section 205(a) of the Act of Sept. 1, 1954, 68 Stat. 1109, are omitted as executed and covered by technical section 8.

Subsection (b) is restated to conform to subsection (a). In former section 933, the words "Classification Act of 1949" were substituted for "Classification Act of 1923" on authority of section 1106(a) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 972.

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

## 1967 ACT

Section of title 5	Source (U.S. Code)	Source (Statutes at Large)
5544(a) .....	5 App.: 673c (last proviso of 1st par.).	July 18, 1966, Pub. L. 89-504, § 405(f), 80 Stat. 298.

The words “a part of which is on Sunday” are coextensive with and substituted for “any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday.” The words “is entitled to additional pay” are coextensive with and substituted for “shall be paid extra compensation.”

**Editorial Notes**

## REFERENCES IN TEXT

Section 7 of the Fair Labor Standards Act of 1938, referred to in subsec. (a), is classified to section 207 of Title 29, Labor.

## AMENDMENTS

2008—Subsec. (a). Pub. L. 110-181, in third sentence of concluding provisions, substituted “administratively (including travel by the employee to such event and the return of the employee from such event to the employee’s official duty station).” for “administratively.”

1998—Subsec. (a). Pub. L. 105-277, which directed the amendment of subsec. (a) by inserting after the fourth sentence “For employees serving outside the United States in areas where Sunday is a routine workday and another day of the week is officially recognized as the day of rest and worship, the Secretary of State may designate the officially recognized day of rest and worship as the day with respect to which the preceding sentence shall apply instead of Sunday.”, was executed by making the insertion after the first sentence of the concluding provisions, to reflect the probable intent of Congress.

1996—Subsec. (c). Pub. L. 104-201 inserted “and the provisions of section 5543(b)” after “the last two sentences of subsection (a)”.

1992—Subsec. (a). Pub. L. 102-378, § 2(42)(B), amended last two sentences generally. Prior to amendment, last two sentences read as follows: “This section, other than the sixth sentence, shall not be applicable to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938. In the case of an employee who would, were it not for the preceding sentence, be subject to this section, hours of work in excess of 8 hours in a day shall be deemed to be overtime hours for the purposes of such section 7 and hours in a paid nonwork status shall be deemed to be hours of work.”

Subsec. (a)(2), (3). Pub. L. 102-378, § 2(42)(A), substituted “2,087” for “2,080”.

Subsec. (c). Pub. L. 102-378, § 2(42)(C), added subsec. (c).

1990—Subsec. (a). Pub. L. 101-509 inserted at end “This section, other than the sixth sentence, shall not be applicable to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938. In the case of an employee who would, were it not for the preceding sentence, be subject to this section, hours of work in excess of 8 hours in a day shall be deemed to be overtime hours for the purposes of such section 7 and hours in a paid nonwork status shall be deemed to be hours of work.”

1972—Subsec. (a). Pub. L. 92-392 substituted “pay” for “basic pay” and provided for determination of pay under section 5343 or 5349 of this title.

1967—Subsec. (a). Pub. L. 90-206 provided that time spent in a travel status away from the official duty station could not qualify as hours of work unless the travel involved the performance of work while traveling, was incident to travel involving the performance of work while traveling, carried out under arduous conditions, or resulting from an event which could not be scheduled or controlled administratively.

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-378 effective as of first day of first applicable pay period beginning on or after Oct. 2, 1992, see section 9(b)(9) of Pub. L. 102-378, set out as a note under section 6303 of this title.

## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

## EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92-392, set out as an Effective Date note under section 5341 of this title.

## EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-206 effective thirty days after Dec. 16, 1967, see section 220(a)(4) of Pub. L. 90-206, set out as a note under section 5542 of this title.

## CANAL ZONE EMPLOYEES

Pub. L. 85-550, § 17(3), July 25, 1958, 72 Stat. 411, provided that nothing in Pub. L. 85-550, which related to wage and employment practices of the Government of the United States in the Canal Zone, should affect the applicability of former sections 673c and 913 of this title [covered by this section] to those classes of employees, within the scope of former sections 673c and 913 of this title [covered by this section] on July 25, 1958.

**§ 5545. Night, standby, irregular, and hazardous duty differential**

(a) Except as provided by subsection (b) of this section, nightwork is regularly scheduled work between the hours of 6:00 p.m. and 6:00 a.m., and includes—

- (1) periods of absence with pay during these hours due to holidays; and
- (2) periods of leave with pay during these hours if the periods of leave with pay during a pay period total less than 8 hours.

Except as otherwise provided by subsection (c) of this section, an employee is entitled to pay for nightwork at his rate of basic pay plus premium pay amounting to 10 percent of that basic rate. This subsection and subsection (b) of this section do not modify section 5141 of title 31, or other statute authorizing additional pay for nightwork.

(b) The head of an agency may designate a time after 6:00 p.m. and a time before 6:00 a.m. as the beginning and end, respectively, of nightwork for the purpose of subsection (a) of this section, at a post outside the United States where the customary hours of business extend into the hours of nightwork provided by subsection (a) of this section.

(c) The head of an agency, with the approval of the Office of Personnel Management, may provide that—

- (1) an employee in a position requiring him regularly to remain at, or within the confines of, his station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work, shall receive premium

pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for irregular, unscheduled overtime duty in excess of his regularly scheduled weekly tour. Premium pay under this paragraph is determined as an appropriate percentage, not in excess of 25 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) (or, for a position described in section 5542(a)(3) of this title, of the basic pay of the position), by taking into consideration the number of hours of actual work required in the position, the number of hours required in a standby status at or within the confines of the station, the extent to which the duties of the position are made more onerous by night, Sunday, or holiday work, or by being extended over periods of more than 40 hours a week, and other relevant factors; or

(2) an employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled overtime duty with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for regularly scheduled overtime, night, and Sunday duty, and for holiday duty. Premium pay under this paragraph is an appropriate percentage, not less than 10 percent nor more than 25 percent, of the rate of basic pay for the position, as determined by taking into consideration the frequency and duration of irregular, unscheduled overtime duty required in the position.

(d) The Office shall establish a schedule or schedules of pay differentials for duty involving unusual physical hardship or hazard, and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970. Under such regulations as the Office may prescribe, and for such minimum periods as it determines appropriate, an employee to whom chapter 51 and subchapter III of chapter 53 of this title applies is entitled to be paid the appropriate differential for any period in which he is subjected to physical hardship or hazard not usually involved in carrying out the duties of his position. However, the pay differential—

(1) does not apply to an employee in a position the classification of which takes into account the degree of physical hardship or hazard involved in the performance of the duties thereof, except—

(A) an employee in an occupational series covering positions for which the primary duties involve the prevention, control, suppression, or management of wildland fires, as determined by the Office; and

(B) in such other circumstances as the Office may by regulation prescribe; and

(2) may not exceed an amount equal to 25 percent of the rate of basic pay applicable to the employee.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 487; Pub. L. 90-83, §1(27), Sept. 11, 1967, 81 Stat. 200; Pub. L. 90-206, title II, §217, Dec. 16, 1967, 81 Stat. 638; Pub. L. 90-556, §2, Oct. 10, 1968, 82 Stat. 969; Pub. L. 91-231, §8, Apr. 15, 1970, 84 Stat. 198; Pub. L. 94-183, §2(23), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-54, §2(a)(32), Aug. 14, 1979, 93 Stat. 383; Pub. L. 97-258, §3(a)(13), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 101-173, §1(a), Nov. 27, 1989, 103 Stat. 1292; Pub. L. 101-509, title V, §529 [title I, §101(b)(3)(E), title II, §203], Nov. 5, 1990, 104 Stat. 1427, 1439, 1456; Pub. L. 102-378, §3(2), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 108-136, div. A, title XI, §1122(b), Nov. 24, 2003, 117 Stat. 1637; Pub. L. 117-58, div. D, title VIII, §40803(d)(2), Nov. 15, 2021, 135 Stat. 1100.)

#### HISTORICAL AND REVISION NOTES 1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a), (b) .....	5 U.S.C. 921.	June 30, 1945, ch. 212, §301, 59 Stat. 298. May 24, 1946, ch. 270, §10, 60 Stat. 218. Sept. 1, 1954, ch. 1208, §206, 68 Stat. 1110.
(c) .....	5 U.S.C. 926.	Sept. 1, 1954, ch. 1208, §208(a), 68 Stat. 1111. July 18, 1958, Pub. L. 85-525, 72 Stat. 363.

In subsection (b), the words “head of an agency” are substituted for “head of any department, independent establishment, or agency, including Government-owned or controlled corporations” because of the definition of “agency” and the application stated in section 5541. The words “the United States” are substituted for “the several States and the District of Columbia”.

In subsection (c), the words “head of an agency” are substituted for “head of any department, independent establishment, or agency, including Government-owned or controlled corporations, or of the municipal government of the District of Columbia” because of the definition of “agency” and the application stated in section 5541. The word “officer” is omitted as included in “employee”. The word “scheduled” is omitted since section 603 of the Act of Oct. 11, 1962, Pub. L. 87-793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity. Reference to the “Classification Act of 1949, as amended” is omitted as unnecessary.

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

#### 1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
5545(c) .....	5 App.: 926.	July 18, 1966, Pub. L. 89-504 §§404(c), 405(d), (e), 80 Stat. 297, 298.
5545(d) .....	5 App.: 1134.	July 19, 1966, Pub. L. 89-512, §1, 80 Stat. 318.

In the second sentence of subsection (d), the words “Under such regulations as the Commission may prescribe, and for such minimum periods as it determines appropriate” are substituted for clauses (3) and (4) of the third sentence of 5 App. U.S.C. 1134. That require-

ment in clause (4) that the Commission prescribe regulations is codified in 5 U.S.C. 5548(b) by section 1 (32) of this bill. The words “an employee to whom chapter 51 and subchapter III of chapter 53 of this title applies is entitled to be paid the appropriate differential” are substituted for “The appropriate differential shall be paid to any officer or employee to whom this Act applies” to reflect the codification of that act (Classification Act of 1949) in title 5, United States Code, and to conform with the definitions applicable.

In subsection (d)(1), the words “does not apply to an employee” are substituted for “shall not be applicable with respect to any officer or employee.”

In subsection (d)(2), the words “may not . . . applicable to the employee” are substituted for “shall not . . . applicable with respect to such officer or employee”.

### Editorial Notes

#### REFERENCES IN TEXT

GS-10, referred to in subsec. (c)(1), is contained in the General Schedule which is set out under section 5332 of this title.

The Occupational Safety and Health Act of 1970, referred to in subsec. (d), is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

#### AMENDMENTS

2021—Subsec. (d)(1). Pub. L. 117-58 substituted “except—” and subpars. (A) and (B) for “except in such circumstances as the Office may by regulation prescribe; and”.

2003—Subsec. (d). Pub. L. 108-136 inserted before period at end of first sentence “, and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970”.

1992—Subsec. (d). Pub. L. 102-378 made technical correction to directory language of Pub. L. 101-509, § 529 [title II, § 203]. See 1990 Amendment note below.

1990—Subsec. (c)(1). Pub. L. 101-509, § 529 [title I, § 101(b)(3)(E)], inserted “(including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law)” after “GS-10”.

Subsec. (d). Pub. L. 101-509, § 529 [title II, § 203], as amended by Pub. L. 102-378, struck out “irregular or intermittent” before “duty involving unusual” in first sentence and inserted “, except in such circumstances as the Office may by regulation prescribe” after “thereof” in par. (1).

1989—Subsec. (c)(2). Pub. L. 101-173 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “an employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled, overtime duty with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for regularly scheduled overtime, night, and Sunday duty, and for holiday duty. Premium pay under this paragraph is determined as an appropriate percentage, not less than 10 percent nor more than 25 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS-10, by taking into consideration the frequency and duration of irregular unscheduled overtime duty required in the position.”

1982—Subsec. (a). Pub. L. 97-258 substituted “section 5141” for “section 180”.

1979—Subsec. (c)(2). Pub. L. 96-54 substituted “percent” for “per centum” wherever appearing.

1978—Subsecs. (c), (d). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission” wherever appearing.

1975—Pub. L. 94-183 struck out “Sunday,” after “Night,” in section catchline.

1970—Subsec. (c)(2). Pub. L. 91-231 corrected the system of premium compensation of employees whose work schedules cannot be administratively controlled by providing for separate treatment for irregular, unscheduled, and overtime duty on one hand and for duty at night, on Sundays, and on holidays on the other.

1968—Subsec. (c)(1). Pub. L. 90-556 inserted “(or, for a position described in section 5542(a)(3) of this title, of the basic pay of the position)” after “GS-10”.

1967—Subsec. (e)(2). Pub. L. 90-206 substituted “not less than 10 percent nor more than 25 percent” for “not in excess of 15 percent”.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2003 AMENDMENT

Subject to any vested constitutional property rights, any administrative or judicial determination after Nov. 24, 2003, concerning backpay for a differential established under subsec. (d) of this section to be based on occupational safety and health standards described in the amendments made by subsections (a) and (b) of section 1122 of Pub. L. 108-136, amending this section and section 5343 of this title, see section 1122(c) of Pub. L. 108-136, set out as a note under section 5343 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-173, § 1(b), Nov. 27, 1989, 103 Stat. 1292, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to overtime duty performed on or after the first day of the first applicable pay period beginning after September 30, 1990.”

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-231 effective Apr. 15, 1970, see section 9(b) of Pub. L. 91-231, formerly set out in a 1970 Increase in Pay Rates note under section 5332 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-556 effective on first day of first pay period beginning on or after thirtieth day after Oct. 10, 1968, see section 3 of Pub. L. 90-556, set out as a note under section 5542 of this title.

#### EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-206 effective at beginning of first pay period which begins on or after Dec. 16, 1967, see section 220(a)(3) of Pub. L. 90-206, set out as a note under section 603 of Title 28, Judiciary and Judicial Procedure.

#### WAGE RATE REQUIREMENTS

For provisions relating to rates of wages to be paid to laborers and mechanics on projects for construction,

alteration, or repair work funded under div. D or an amendment by div. D of Pub. L. 117-58, including authority of Secretary of Labor, see section 18851 of Title 42, The Public Health and Welfare.

**§ 5545a. Availability pay for criminal investigators**

(a) For purposes of this section—

(1) the term “available” refers to the availability of a criminal investigator and means that an investigator shall be considered generally and reasonably accessible by the agency employing such investigator to perform unscheduled duty based on the needs of an agency;

(2) the term “criminal investigator” means a law enforcement officer as defined under section 5541(3) (other than an officer occupying a position under title II of Public Law 99-399, subject to subsection (k)) who is required to—

(A) possess a knowledge of investigative techniques, laws of evidence, rules of criminal procedure, and precedent court decisions concerning admissibility of evidence, constitutional rights, search and seizure, and related issues;

(B) recognize, develop, and present evidence that reconstructs events, sequences and time elements for presentation in various legal hearings and court proceedings;

(C) demonstrate skills in applying surveillance techniques, undercover work, and advising and assisting the United States Attorney in and out of court;

(D) demonstrate the ability to apply the full range of knowledge, skills, and abilities necessary for cases which are complex and unfold over a long period of time (as distinguished from certain other occupations that require the use of some investigative techniques in short-term situations that may end in arrest or detention);

(E) possess knowledge of criminal laws and Federal rules of procedure which apply to cases involving crimes against the United States, including—

- (i) knowledge of the elements of a crime;
- (ii) evidence required to prove the crime;
- (iii) decisions involving arrest authority;
- (iv) methods of criminal operations; and
- (v) availability of detection devices; and

(F) possess the ability to follow leads that indicate a crime will be committed rather than initiate an investigation after a crime is committed;

(3) the term “unscheduled duty” means hours of duty a criminal investigator works, or is determined to be available for work, that are not—

(A) part of the 40 hours in the basic work week of the investigator; or

(B) overtime hours paid under section 5542; and

(4) the term “regular work day” means each day in the investigator’s basic work week during which the investigator works at least 4 hours that are not overtime hours paid under section 5542 or hours considered part of section 5545a.

(b) The purpose of this section is to provide premium pay to criminal investigators to ensure

the availability of criminal investigators for unscheduled duty in excess of a 40 hour work week based on the needs of the employing agency.

(c) Each criminal investigator shall be paid availability pay as provided under this section. Availability pay shall be paid to ensure the availability of the investigator for unscheduled duty. The investigator is generally responsible for recognizing, without supervision, circumstances which require the investigator to be on duty or be available for unscheduled duty based on the needs of the agency. Availability pay provided to a criminal investigator for such unscheduled duty shall be paid instead of premium pay provided by other provisions of this subchapter, except premium pay for regularly scheduled overtime work as provided under section 5542, night duty, Sunday duty, and holiday duty.

(d)(1) A criminal investigator shall be paid availability pay, if the average of hours described under paragraph (2)(A) and (B) is equal to or greater than 2 hours.

(2) The hours referred to under paragraph (1) are—

(A) the annual average of unscheduled duty hours worked by the investigator in excess of each regular work day; and

(B) the annual average of unscheduled duty hours such investigator is available to work on each regular work day upon request of the employing agency.

(3) Unscheduled duty hours which are worked by an investigator on days that are not regular work days shall be considered in the calculation of the annual average of unscheduled duty hours worked or available for purposes of certification.

(4) An investigator shall be considered to be available when the investigator cannot reasonably and generally be accessible due to a status or assignment which is the result of an agency direction, order, or approval as provided under subsection (f)(1).

(e)(1) Each criminal investigator receiving availability pay under this section and the appropriate supervisory officer, to be designated by the head of the agency, shall make an annual certification to the head of the agency that the investigator has met, and is expected to meet, the requirements of subsection (d). The head of a law enforcement agency may prescribe regulations necessary to administer this subsection.

(2) Involuntary reduction in pay resulting from a denial of certification under paragraph (1) shall be a reduction in pay for purposes of section 7512(4) of this title.

(f)(1) A criminal investigator who is eligible for availability pay shall receive such pay during any period such investigator is—

(A) attending agency sanctioned training;

(B) on agency approved sick leave or annual leave;

(C) on agency ordered travel status; or

(D) on excused absence with pay for relocation purposes.

(2) Notwithstanding paragraph (1)(A), agencies or departments may provide availability pay to investigators during training which is considered initial, basic training usually provided in the first year of service.

(3) Agencies or departments may provide availability pay to investigators when on excused absence with pay, except as provided in paragraph (1)(D).

(g) Section 5545(c) shall not apply to any criminal investigator who is paid availability pay under this section.

(h) Availability pay under this section shall be—

(1) 25 percent of the rate of basic pay for the position; and

(2) treated as part of the basic pay for purposes of—

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

(B) such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe.

(i) The provisions of subsections (a)–(h) providing for availability pay shall apply to any employee of the U.S. Customs and Border Protection's Air and Marine Operations, or any successor organization, who is a law enforcement officer as defined under section 5541(3). For the purpose of this section, section 5542(d) of this title, and section 13(a)(16) and (b)(30) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(16) and (b)(30)), such employee shall be deemed to be a criminal investigator as defined in this section. The Office of Personnel Management may prescribe regulations to carry out this subsection.

(j) Notwithstanding any other provision of this section, any Office of Inspector General which employs fewer than 5 criminal investigators may elect not to cover such criminal investigators under this section.

(k)(1) For purposes of this section, the term “criminal investigator” includes a special agent occupying a position under title II of Public Law 99–399 if such special agent—

(A) meets the definition of such term under paragraph (2) of subsection (a) (applied disregarding the parenthetical matter before subparagraph (A) thereof); and

(B) such special agent satisfies the requirements of subsection (d) without taking into account any hours described in paragraph (2)(B) thereof.

(2) In applying subsection (h) with respect to a special agent under this subsection—

(A) any reference in such subsection to “basic pay” shall be considered to include amounts designated as “salary”;

(B) paragraph (2)(A) of such subsection shall be considered to include (in addition to the provisions of law specified therein) sections 609(b)(1), 805, 806, and 856 of the Foreign Service Act of 1980; and

(C) paragraph (2)(B) of such subsection shall be applied by substituting for “Office of Personnel Management” the following: “Office of Personnel Management or the Secretary of State (to the extent that matters exclusively within the jurisdiction of the Secretary are concerned)”.

(Added Pub. L. 103–329, title VI, § 633(b)(1), Sept. 30, 1994, 108 Stat. 2425; amended Pub. L. 104–19, title I, §§ 901, 902(a), July 27, 1995, 109 Stat. 230;

Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 659 [title II, § 206(b)(2)]], Sept. 30, 1996, 110 Stat. 3009–314, 3009–372, 3009–378; Pub. L. 105–277, div. A, § 101(b) [title IV, § 407(a), (c)(1)], div. G, subd. B, title XXIII, § 2316(a), (c)(1), Oct. 21, 1998, 112 Stat. 2681–50, 2681–101, 2681–102, 2681–828; Pub. L. 114–250, § 1(a), Dec. 8, 2016, 130 Stat. 1001.)

### Editorial Notes

#### REFERENCES IN TEXT

Title II of Public Law 99–399, referred to in subsecs. (a)(2) and (k)(1), is title II of Pub. L. 99–399, Aug. 27, 1986, 100 Stat. 858, which is classified generally to subchapter II (§ 4821 et seq.) of chapter 58 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 4801 of Title 22 and Tables.

Sections 609(b)(1), 805, 806, and 856 of the Foreign Service Act of 1980, referred to in subsec. (k)(2)(B), are classified to sections 4009(b)(1), 4045, 4046, and 4071e, respectively, of Title 22, Foreign Relations and Intercourse.

#### AMENDMENTS

2016—Subsec. (i). Pub. L. 114–250 substituted “apply to any employee of the U.S. Customs and Border Protection's Air and Marine Operations, or any successor organization,” for “apply to a pilot employed by the United States Customs Service” and “such employee” for “such pilot”.

1998—Subsec. (a)(2). Pub. L. 105–277, § 101(b) [title IV, § 407(c)(1)] and § 2316(c)(1), amended subsec. (a)(2) identically, substituting “Public Law 99–399, subject to subsection (k)” for “Public Law 99–399” in introductory provisions.

Subsec. (k). Pub. L. 105–277, § 101(b) [title IV, § 407(a)] and § 2316(a), amended section identically, adding subsec. (k).

1996—Subsec. (h)(2)(A). Pub. L. 104–208 struck out “8431,” after “8331(3).”

1995—Subsec. (a)(2). Pub. L. 104–19, § 901(1)(A), inserted “who” before “is required to” in introductory provisions.

Subsec. (a)(2)(E)(v). Pub. L. 104–19, § 901(1)(B), inserted “and” at end.

Subsec. (i). Pub. L. 104–19, § 902(a), added subsec. (i).

Subsec. (j). Pub. L. 104–19, § 901(2), added subsec. (j).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–250, § 1(b), Dec. 8, 2016, 130 Stat. 1001, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the first day of the first applicable pay period beginning on or after the date that is 14 days after the date of enactment of this Act [Dec. 8, 2016].”

#### EFFECTIVE DATE OF 1998 AMENDMENT

For effective date of amendment by Pub. L. 105–277, see section 101(b) [title IV, § 407(d)] and section 2316(d) of Pub. L. 105–277, set out as a note under section 5542 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 659 [title II, § 207]], Sept. 30, 1996, 110 Stat. 3009–314, 3009–378, provided that: “This title [title II (§§ 201–207) of section 659 of section 101(f) of Pub. L. 104–208, amending this section and sections 8351, 8401, 8433, 8435, and 8440a to 8440c of this title, repealing section 8431 of this title, enacting provisions set out as notes under sections 8401 and 8433 of this title, and amending provisions set out as a note under section 5343 of this title] shall take effect on the date of the enactment of this Act [Sept. 30, 1996] and withdrawals and elections as provided under

the amendments made by this title shall be made at the earliest practicable date as determined by the Executive Director in regulations.”

#### EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104-19, title I, §902(b), July 27, 1995, 109 Stat. 230, provided that: “The amendment made by subsection (a) of this section [amending this section] shall take effect on the first day of the first applicable pay period which begins on or after the 30th day following the date of enactment of this Act [July 27, 1995].”

#### EFFECTIVE DATE

Pub. L. 103-329, title VI, §633(e), Sept. 30, 1994, 108 Stat. 2428, provided that: “The amendments made by this section [enacting this section and amending sections 5542 and 5547 of this title and section 213 of Title 29, Labor] shall take effect on the first day of the first applicable pay period which begins on or after the later of October 1, 1994, or the 30th day following the date of enactment of this Act [Sept. 30, 1994], except that:

“(1) Criminal investigators, employed in Offices of Inspectors General, who are not receiving administratively uncontrollable overtime compensation or who are receiving such premium pay at a rate less than 25 percent prior to the date of enactment of this Act, may implement availability pay at any time prior to September 30, 1995, after which date availability pay as authorized under this section shall be provided to such criminal investigators.

“(2) Criminal investigators, employed by Offices of Inspectors General, who are receiving administratively uncontrollable overtime at a rate less than 25 percent, shall continue to receive this compensation at the same rate or higher until availability pay compensation is provided, which shall be no later than the last pay period ending on or before September 30, 1995.”

#### IMPLEMENTATION

Pub. L. 105-277, div. A, §101(b) [title IV, §407(b)], div. G, subdiv. B, title XXIII, §2316(b), Oct. 21, 1998, 112 Stat. 2681-50, 2681-102, 2681-828, provided that: “Not later than the date on which the amendments made by this section [amending this section and section 5542 of this title] take effect [see Effective Date of 1998 Amendment note set out above], each special agent of the Diplomatic Security Service who satisfies the requirements of subsection (k)(1) of section 5545a of title 5, United States Code, as amended by this section, and the appropriate supervisory officer, to be designated by the Secretary of State, shall make an initial certification to the Secretary of State that the special agent is expected to meet the requirements of subsection (d) of such section 5545a. The Secretary of State may prescribe procedures necessary to administer this subsection.”

#### TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107-296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114-125, and section 802(b) of Pub. L. 114-125, set out as a note under section 211 of Title 6.

#### CERTIFICATION OF CRIMINAL INVESTIGATORS

Pub. L. 103-329, title VI, §633(f), Sept. 30, 1994, 108 Stat. 2428, provided that: “Not later than the effective date of this section [see Effective Date note above],

each criminal investigator under section 5545a of title 5, United States Code, as added by this section, and the appropriate supervisory officer, to be designated by the head of the agency, shall make an initial certification to the head of the agency that the criminal investigator is expected to meet the requirements of subsection (d) of such section 5545a. The head of a law enforcement agency may prescribe procedures necessary to administer this paragraph.”

#### § 5545b. Pay for firefighters

(a) This section applies to an employee whose position is classified in the firefighter occupation in conformance with the GS-081 standard published by the Office of Personnel Management, and whose normal work schedule, as in effect throughout the year, consists of regular tours of duty which average at least 106 hours per biweekly pay period.

(b)(1) If the regular tour of duty of a firefighter subject to this section generally consists of 24-hour shifts, rather than a basic 40-hour workweek (as determined under regulations prescribed by the Office of Personnel Management), section 5504(b) shall be applied as follows in computing pay—

(A) paragraph (1) of such section shall be deemed to require that the annual rate be divided by 2756 to derive the hourly rate; and

(B) the computation of such firefighter's daily, weekly, or biweekly rate shall be based on the hourly rate under subparagraph (A);

(2) For the purpose of sections 5595(c), 5941, 8331(3), and 8704(c), and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe, the basic pay of a firefighter subject to this subsection shall include an amount equal to the firefighter's basic hourly rate (as computed under paragraph (1)(A)) for all hours in such firefighter's regular tour of duty (including overtime hours).

(c)(1) If the regular tour of duty of a firefighter subject to this section includes a basic 40-hour workweek (as determined under regulations prescribed by the Office of Personnel Management), section 5504(b) shall be applied as follows in computing pay—

(A) the provisions of such section shall apply to the hours within the basic 40-hour workweek;

(B) for hours outside the basic 40-hour workweek, such section shall be deemed to require that the hourly rate be derived by dividing the annual rate by 2756; and

(C) the computation of such firefighter's daily, weekly, or biweekly rate shall be based on subparagraphs (A) and (B), as each applies to the hours involved.

(2) For purposes of sections 5595(c), 5941, 8331(3), and 8704(c), and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe, the basic pay of a firefighter subject to this subsection shall include—

(A) an amount computed under paragraph (1)(A) for the hours within the basic 40-hour workweek; and

(B) an amount equal to the firefighter's basic hourly rate (as computed under paragraph (1)(B)) for all hours outside the basic 40-



hour workweek that are within such firefighter's regular tour of duty (including overtime hours).

(d)(1) A firefighter who is subject to this section shall receive overtime pay in accordance with section 5542, but shall not receive premium pay provided by other provisions of this subchapter.

(2) For the purpose of applying section 7(k) of the Fair Labor Standards Act of 1938 to a firefighter who is subject to this section, no violation referred to in such section 7(k) shall be deemed to have occurred if the requirements of section 5542(a) are met, applying section 5542(a) as provided in subsection (f) of that section: *Provided*, That the overtime hourly rate of pay for such firefighter shall in all cases be an amount equal to one and one-half times the firefighter's hourly rate of basic pay under subsection (b)(1)(A) or (c)(1)(B) of this section, as applicable.

(3) The Office of Personnel Management may prescribe regulations, with respect to firefighters subject to this section, that would permit an agency to reduce or eliminate the variation in the amount of firefighters' biweekly pay caused by work scheduling cycles that result in varying hours in the regular tours of duty from pay period to pay period. Under such regulations, the pay that a firefighter would otherwise receive for regular tours of duty over the work scheduling cycle shall, to the extent practicable, remain unaffected.

(4) Notwithstanding section 8114(e)(1), overtime pay for a firefighter subject to this section for hours in a regular tour of duty shall be included in any computation of pay under section 8114.

(Added Pub. L. 105-277, div. A, §101(h) [title VI, §628(a)(2)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-519; amended Pub. L. 106-554, §1(a)(3) [title VI, §641(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-169.)

### Editorial Notes

#### REFERENCES IN TEXT

Section 7(k) of the Fair Labor Standards Act of 1938, referred to in subsec. (d)(2), is classified to section 207(k) of Title 29, Labor.

#### AMENDMENTS

2000—Subsec. (d)(4). Pub. L. 106-554 added par. (4).

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-554, §1(a)(3) [title VI, §641(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-169, provided that: "The amendment in subsection (a) [amending this section] shall be effective as if it had been enacted as part of the Federal Firefighters Overtime Pay Reform Act of 1998 [Pub. L. 105-277, div. A, §101(h) [title VI, §628]] (112 Stat. 2681-519)."

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE

Section effective on first day of first applicable pay period which begins on or after Oct. 1, 1998, see section 101(h) [title VI, §628(e)] of Pub. L. 105-277, set out as an Effective Date of 1998 Amendment note under section 4109 of this title.

#### REGULATIONS

Pub. L. 105-277, div. A, §101(h) [title VI, §628(f)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-521, provided that: "Under regulations prescribed by the Office of Personnel Management, a firefighter subject to section 5545b of title 5, United States Code, as added by this section, whose regular tours of duty average 60 hours or less per workweek and do not include a basic 40-hour workweek, shall, upon implementation of this section, be granted an increase in basic pay equal to 2 step-increases of the applicable General Schedule grade, and such increase shall not be an equivalent increase in pay. If such increase results in a change to a longer waiting period for the firefighter's next step increase, the firefighter shall be credited with an additional year of service for the purpose of such waiting period. If such increase results in a rate of basic pay which is above the maximum rate of the applicable grade, such resulting pay rate shall be treated as a retained rate of basic pay in accordance with section 5363 of title 5, United States Code."

#### ELIGIBILITY FOR PAY INCREASE

Pub. L. 106-31, title III, §3032, May 21, 1999, 113 Stat. 104, provided that:

"(a) The treatment provided to firefighters under section 628(f) of the Treasury and General Government Appropriations Act, 1999 (as included in section 101(h) of division A of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277)) [set out as a note above] shall be provided to any firefighter who—

"(1) on the effective date of section 5545b of title 5, United States Code [see Effective Date note above]—

"(A) was subject to such section; and

"(B) had a regular tour of duty that averaged more than 60 hours per week; and

"(2) before December 31, 1999, is involuntarily moved without a break in service from the regular tour of duty under paragraph (1) to a regular tour of duty that—

"(A) averages 60 hours or less per week; and

"(B) does not include a basic 40-hour workweek.

"(b) Subsection (a) shall apply to firefighters described under that subsection as of the effective date of section 5545b of title 5, United States Code.

"(c) The Office of Personnel Management may prescribe regulations necessary to implement this section."

#### NO REDUCTION IN REGULAR PAY

Pub. L. 105-277, div. A, §101(h) [title VI, §628(g)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-521, provided that: "Under regulations prescribed by the Office of Personnel Management, the regular pay (over the established work scheduling cycle) of a firefighter subject to section 5545b of title 5, United States Code, as added by this section, shall not be reduced as a result of the implementation of this section."

### § 5546. Pay for Sunday and holiday work

(a) An employee who performs work during a regularly scheduled 8-hour period of service which is not overtime work as defined by section 5542(a) of this title a part of which is performed on Sunday is entitled to pay for the entire period of service at the rate of his basic pay, plus premium pay at a rate equal to 25 percent of his rate of basic pay. For employees serving outside the United States in areas where Sunday is a routine workday and another day of the week is officially recognized as the day of rest and worship, the Secretary of State may designate the officially recognized day of rest and worship as the day with respect to which the preceding sentence shall apply instead of Sunday.

(b) An employee who performs work on a holiday designated by Federal statute, Executive order, or with respect to an employee of the government of the District of Columbia, by order of the District of Columbia Council, is entitled to pay at the rate of his basic pay, plus premium pay at a rate equal to the rate of his basic pay, for that holiday work which is not—

(1) in excess of 8 hours; or

(2) overtime work as defined by section 5542(a) of this title.

(c) An employee who is required to perform any work on a designated holiday is entitled to pay for at least 2 hours of holiday work.

(d) An employee who performs overtime work as defined by section 5542(a) of this title on a Sunday or a designated holiday is entitled to pay for that overtime work in accordance with section 5542(a) of this title.

(e) Premium pay under this section is in addition to premium pay which may be due for the same work under section 5545(a) and (b) of this title, providing premium pay for nightwork.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 488; Pub. L. 90-83, §1(29), Sept. 11, 1967, 81 Stat. 201; Pub. L. 90-623, §1(13), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 105-277, div. G, subdiv. B, title XXIII, §2317(2), Oct. 21, 1998, 112 Stat. 2681-829.)

#### HISTORICAL AND REVISION NOTES 1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 922.	June 30, 1945, ch. 212, §302, 59 Stat. 298. May 24, 1946, ch. 270, §11, 60 Stat. 218. Sept. 1, 1954, ch. 1208, §207, 68 Stat. 1110. July 18, 1966, Pub. L. 89-554, §1, 72 Stat. 377.

In subsections (a) and (b), the word “officer” is omitted as included in “employee”.

In subsections (b) and (c), the word “designated” is substituted for “such a” and “such” in former section 922(b) and (c) to identify the holiday as one designated by statute, Executive order, or the Board of Commissioners of the District of Columbia.

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

#### 1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
5546(a) .....	5 App.: 921a.	July 18, 1966, Pub. L. 89-504, §405(b)(1), (c), 80 Stat. 297.

In subsection (a), the words “An employee who performs work . . . is entitled to pay . . . at the rate of his basic pay” are coextensive with and substituted for “Any . . . service . . . performed . . . shall be compensated . . . at the rate of basic compensation of the officer or employee performing such work.” The words “section 5542(a) of this title” are substituted for “section 201 of this Act” to reflect the codification of that section in title 5, United States Code. The words “between midnight Saturday and midnight Sunday” are coextensive with and substituted for “within the period commencing at midnight Saturday and ending at midnight Sunday”.

#### Editorial Notes

##### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-277 inserted at end “For employees serving outside the United States in areas where Sunday is a routine workday and another day of the week is officially recognized as the day of rest and worship, the Secretary of State may designate the officially recognized day of rest and worship as the day with respect to which the preceding sentence shall apply instead of Sunday.”

1968—Subsec. (b). Pub. L. 90-623, §1(13)(A), substituted “District of Columbia Council” for “Board of Commissioners of the District of Columbia”.

Subsec. (d). Pub. L. 90-623, §1(13)(B), substituted “5542(a)” for “5442(a)”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-623 intended to restate without substantive change the law in effect on Oct. 22, 1968, but amendment of subsec. (d) of this section by section 1(13)(B) of Pub. L. 90-623 effective as of Sept. 6, 1966, for all purposes, see section 6 of Pub. L. 90-623, set out as a note under section 5334 of this title.

##### TRANSFER OF FUNCTIONS

District of Columbia Council, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93-198, title VII, §711, Dec. 24, 1973, 87 Stat. 818, and replaced by Council of District of Columbia, as provided by section 401 of Pub. L. 93-198.

##### CONDITION OF PERFORMANCE

Pub. L. 105-277, div. A, §101(h) [title VI, §624], Oct. 21, 1998, 112 Stat. 2681-480, 2681-518, provided that: “Notwithstanding any other provision of law, no part of any funds provided by this Act or any other Act beginning in fiscal year 1999 and thereafter shall be available for paying Sunday premium pay to any employee unless such employee actually performed work during the time corresponding to such premium pay.”

Similar provisions were contained in the following prior appropriations act:

Pub. L. 105-61, title VI, §636, Oct. 10, 1997, 111 Stat. 1316.

#### § 5546a. Differential pay for certain employees of the Federal Aviation Administration and the Department of Defense

(a) The Administrator of the Federal Aviation Administration (hereafter in this section referred to as the “Administrator”) and the Secretary of Defense (hereafter in this section referred to as the “Secretary”) may pay premium pay at the rate of 5 per centum of the applicable rate of basic pay to—

(1) any employee of the Federal Aviation Administration or the Department of Defense who is—

(A) occupying a position in the air traffic controller series classified not lower than GS-9 and located in an air traffic control center or terminal or in a flight service station;

(B) assigned to a position classified not lower than GS-09 or WG-10 located in an airway facilities sector; or

(C) assigned to a flight inspection crew-member position classified not lower than GS-11 located in a flight inspection field office,

the duties of whose position are determined by the Administrator or the Secretary to be di-

rectly involved in or responsible for the operation and maintenance of the air traffic control system; and

(2) any employee of the Federal Aviation Administration or the Department of Defense who is assigned to a flight test pilot position classified not lower than GS-12 located in a region or center, the duties of whose position are determined by the Administrator or the Secretary to be unusually taxing, physically or mentally, and to be critical to the advancement of aviation safety; and

(3) any employee of the Federal Aviation Administration who occupies a position at the Federal Aviation Administration Academy, Oklahoma City, Oklahoma, the duties of which are determined by the Administrator to require the individual to be actively engaged in or directly responsible for training employees to perform the duties of a position described in subparagraph (a); (b); or (c) or paragraph (1) of this subsection, and who, immediately prior to assuming such position at such Academy, occupied a position referred to in subparagraph (a), (b), or (c) of paragraph (1) of this subsection.

(b) The premium pay payable under any subsection of this section is in addition to basic pay and to premium pay payable under any other subsection of this section and any other provision of this subchapter.

(c)(1) The Administrator or the Secretary may pay premium pay to any employee of the Federal Aviation Administration or the Department of Defense who—

(A) is an air traffic controller located in an air traffic control center or terminal;

(B) is not required as a condition of employment to be certified by the Administrator or the Secretary as proficient and medically qualified to perform duties including the separation and control of air traffic; and

(C) is so certified.

(2) Premium pay paid under paragraph (1) of this subsection shall be paid at the rate of 1.6 per centum of the applicable rate of basic pay for so long as such employee is so certified.

(d)(1) The Administrator or the Secretary may pay premium pay to any air traffic controller of the Federal Aviation Administration or the Department of Defense who is assigned by the Administrator or the Secretary to provide on-the-job training to another air traffic controller while such other air traffic controller is directly involved in the separation and control of live air traffic.

(2) Premium pay paid under paragraph (1) of this subsection shall be paid at the rate of 10 per centum of the applicable hourly rate of basic pay times the number of hours and portion of an hour during which the air traffic controller of the Federal Aviation Administration or the Department of Defense provides on-the-job training.

(e)(1) The Administrator or the Secretary may pay premium pay to any air traffic controller or flight service station specialist of the Federal Aviation Administration or the Department of Defense who, while working a regularly scheduled eight-hour period of service, is required by

his supervisor to work during the fourth through sixth hour of such period without a break of thirty minutes for a meal.

(2) Premium pay paid under paragraph (1) of this subsection shall be paid at the rate of 50 per centum of one-half of the applicable hourly rate of basic pay.

(f)(1) The Administrator or the Secretary shall prescribe standards for determining which air traffic controllers and other employees of the Federal Aviation Administration or the Department of Defense are to be paid premium pay under this section.

(2) The Administrator and the Secretary may prescribe such rules as he determines are necessary to carry out the provisions of this section.

(Added Pub. L. 97-276, § 151(c)(1), (d), Oct. 2, 1982, 96 Stat. 1200, 1201; amended Pub. L. 97-377, title I, § 145(a), formerly § 145, Dec. 21, 1982, 96 Stat. 1917, renumbered Pub. L. 98-78, title III, § 320(1), Aug. 15, 1983, 97 Stat. 473; Pub. L. 98-525, title XV, § 1537(c)(1)-(6)(A), Oct. 19, 1984, 98 Stat. 2635, 2636.)

### Editorial Notes

#### AMENDMENTS

1984—Pub. L. 98-525, § 1537(c)(6)(A), inserted “and the Department of Defense” in section catchline.

Subsec. (a). Pub. L. 98-525, § 1537(c)(1)(A), inserted “and the Secretary of Defense (hereafter in this section referred to as the ‘Secretary’)” in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 98-525, § 1537(c)(1)(B), inserted “or the Department of Defense” in provisions preceding subpar. (A) and “or the Secretary” in provisions following subpar. (C).

Subsec. (a)(2). Pub. L. 98-525, § 1537(c)(1)(C), inserted “or the Department of Defense” and “or the Secretary”.

Subsecs. (c)(1), (d), (e)(1), (f)(1). Pub. L. 98-525, § 1537(c)(2)-(5)(A), inserted “or the Secretary” after “Administrator” wherever appearing, and “or the Department of Defense” after “Administration” wherever appearing.

Subsec. (f)(2). Pub. L. 98-525, § 1537(c)(5)(B), inserted “and the Secretary”.

1982—Subsec. (a)(3). Pub. L. 97-377 added par. (3).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective Oct. 1, 1984, see section 1537(f) of Pub. L. 98-525, set out as a note under section 4109 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-377, title I, § 145(b), as added by Pub. L. 98-78, title III, § 320(2), Aug. 15, 1983, 97 Stat. 473, provided that: “The amendment made by subsection (a) of this section [amending this section] shall be effective as of 5 o'clock ante meridian eastern daylight time, August 3, 1981.”

#### EFFECTIVE DATE

Pub. L. 97-276, § 151(h)(1), Oct. 2, 1982, 96 Stat. 1202, provided that:

“(1) The amendments made by subsections 152 [151] (b), (c), (e), and (g) of this joint resolution [enacting subsecs. (a) and (b) of this section and amending sections 5532, 5547, and 8344 of this title] shall take effect at 5 o'clock ante meridian eastern daylight time, August 3, 1981.

“(2) The amendments made by subsection 152 [151] (a) and subsection 152 [151] (d) of this joint resolution [en-

acting subsecs. (c)–(f) of this section and amending section 4109 of this title] shall take effect on the first day of the first applicable pay period beginning after the date of the enactment of this joint resolution [Oct. 2, 1982].”

#### § 5547. Limitation on premium pay

(a) An employee may be paid premium pay under sections 5542, 5545(a), (b), and (c), 5545a, 5546(a) and (b), and 5550 only to the extent that the payment does not cause the aggregate of basic pay and such premium pay for any pay period for such employee to exceed the greater of—

(1) the maximum rate of basic pay payable for GS-15 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

(2) the rate payable for level V of the Executive Schedule.

(b)(1) Subject to regulations prescribed by the Office of Personnel Management, subsection (a) shall not apply to an employee who is paid premium pay by reason of work in connection with an emergency (including a wildfire emergency) that involves a direct threat to life or property, including work performed in the aftermath of such an emergency.

(2) Notwithstanding paragraph (1), no employee referred to in such paragraph may be paid premium pay under the provisions of law cited in subsection (a) if, or to the extent that, the aggregate of the basic pay and premium pay under those provisions for such employee would, in any calendar year, exceed the greater of—

(A) the maximum rate of basic pay payable for GS-15 in effect at the end of such calendar year (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

(B) the rate payable for level V of the Executive Schedule in effect at the end of such calendar year.

(3) Subject to regulations prescribed by the Office of Personnel Management, the head of an agency may determine that subsection (a) shall not apply to an employee who is paid premium pay to perform work that is critical to the mission of the agency. Such employees may be paid premium pay under the provisions of law cited in subsection (a) if, or to the extent that, the aggregate of the basic pay and premium pay under those provisions for such employee would not, in any calendar year, exceed the greater of—

(A) the maximum rate of basic pay payable for GS-15 in effect at the end of such calendar year (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

(B) the rate payable for level V of the Executive Schedule in effect at the end of such calendar year.

(c) The Office of Personnel Management shall prescribe regulations governing the methods of applying subsection (b)(2) and (b)(3) to employ-

ees who receive premium pay under section 5545(c) or 5545a, or to firefighters covered by section 5545b who receive overtime pay for hours in their regular tour of duty, and the method of payment to such employees. Such regulations may limit the payment of such premium pay on a biweekly basis.

(d) This section shall not apply to any employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under section 5546a.

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

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 488; Pub. L. 90–83, §1(31), Sept. 11, 1967, 81 Stat. 201; Pub. L. 97–276, §151(e), Oct. 2, 1982, 96 Stat. 1201; Pub. L. 98–525, title XV, §1537(d), Oct. 19, 1984, 98 Stat. 2636; Pub. L. 100–523, §2, Oct. 24, 1988, 102 Stat. 2605; Pub. L. 101–509, title V, §529 [title II, §204, title IV, §410(b)], Nov. 5, 1990, 104 Stat. 1427, 1456, 1469; Pub. L. 102–378, §2(43), Oct. 2, 1992, 106 Stat. 1352; Pub. L. 103–329, title VI, §633(b)(2), Sept. 30, 1994, 108 Stat. 2427; Pub. L. 107–107, div. A, title XI, §1114(a), Dec. 28, 2001, 115 Stat. 1239; Pub. L. 113–277, §2(g)(1), Dec. 18, 2014, 128 Stat. 3005.)

#### HISTORICAL AND REVISION NOTES 1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 943.	June 30, 1945, ch. 212, §603, 59 Stat. 302. May 24, 1946, ch. 270, §7(a), 60 Stat. 218. July 3, 1948, ch. 830, §303(a), 62 Stat. 1268. Sept. 1, 1954, ch. 1208, §209, 68 Stat. 1112.

Former section 943(a), (b) is combined and restated for clarity and conciseness. The word “officer” is omitted as included in “employee”. The word “scheduled” is omitted since section 603 of the Act of Oct. 11, 1962, Pub. L. 87–793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity. Reference to the “Classification Act of 1949, as amended” is omitted as unnecessary.

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

#### 1967 ACT

In the codification of 5 U.S.C. 5547, the words “premium pay under this subchapter” were substituted for “premium compensation provided by this Act” appearing in the source statute—section 603 of the Federal Employees Pay Act of 1945, as amended (former 5 U.S.C. 943). This amendment of 5 U.S.C. 5547 is made for clarity and precision of reference and in recognition that the source statutes for certain sections of subchapter V of chapter 55 of title 5 include statutes that were not a part of the Federal Employees Pay Act of 1949. Specifically, 5 U.S.C. 5544(a) is based in part on section 23 (2d proviso) of the act of March 28, 1934, as amended by 76 Stat. 360; and 5 U.S.C. 5545(d) is based on section 804 of the Classification Act of 1949, as added by Public Law 89–512, 80 Stat. 318. Also, 5 U.S.C. 5541(2)(xi) in effect excludes employees subject to 5 U.S.C. 5544 from the operation of 5 U.S.C. 5547.

**Editorial Notes**

## REFERENCES IN TEXT

GS-15, referred to in subsecs. (a)(1) and (b)(2)(A), (3)(A), is contained in the General Schedule which is set out under section 5332 of this title.

Level V of the Executive Schedule, referred to in subsecs. (a)(2) and (b)(2)(B), (3)(B), is set out in section 5316 of this title.

## AMENDMENTS

2014—Subsec. (a). Pub. L. 113-277, §2(g)(1)(A), struck out “and” before “5546(a) and (b)” and inserted “, and 5550” after “5546(a) and (b)”.

Subsec. (e). Pub. L. 113-277, §2(g)(1)(B), added subsec. (e).

2001—Pub. L. 107-107 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

“(a) An employee may be paid premium pay under sections 5542, 5545(a), (b), and (c), 5545a, and 5546(a) and (b) of this title only to the extent that the payment does not cause his aggregate rate of pay for any pay period to exceed the maximum rate for GS-15 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law). The first sentence of this subsection shall not apply to any employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under section 5546a of this title.

“(b)(1) Subject to regulations prescribed by the Office of Personnel Management, the first sentence of subsection (a) shall not apply to an employee who is paid premium pay by reason of work in connection with an emergency which involves a direct threat to life or property, including a forest wildfire emergency.

“(2) Notwithstanding paragraph (1), no employee referred to in such paragraph may be paid premium pay under the provisions of law cited in the first sentence of subsection (a) if, or to the extent that, the aggregate of such employee’s basic pay and premium pay under those provisions would, in any calendar year, exceed the maximum rate payable for GS-15 in effect at the end of such calendar year.

“(c)(1) Subsections (a) and (b) shall not apply to a law enforcement officer.

“(2) A law enforcement officer may be paid premium pay under the provisions of law cited in the first sentence of subsection (a) only to the extent that the payment does not cause the officer’s aggregate rate of pay for any pay period to exceed the lesser of—

“(A) 150 percent of the minimum rate payable for GS-15 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

“(B) the rate payable for level V of the Executive Schedule.”

1994—Subsec. (a). Pub. L. 103-329 inserted “5545a,” after “5545(a), (b), and (c).”.

1992—Subsec. (c)(3). Pub. L. 102-378 struck out par. (3) which read as follows: “For the purposes of this subsection, ‘law enforcement officer’ means any law enforcement officer within the meaning of section 8331(20) or section 8401(17).”

1990—Subsec. (a). Pub. L. 101-509, §529 [title II, §204(1)], inserted “(including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law)” after “GS-15”.

Subsec. (b). Pub. L. 101-509, §529 [title II, §204(2)], amended subsec. (b) generally, substituting present provisions for former provisions consisting of pars. (1) to (3) that related to pay of forest firefighters working on forest wildfire emergencies.

Subsec. (c). Pub. L. 101-509, §529 [title IV, §410(b)], added subsec. (c).

1988—Pub. L. 100-523 amended section generally, designating existing provisions as subsec. (a) and adding subsec. (b).

1984—Pub. L. 98-525 inserted “or the Department of Defense”.

1982—Pub. L. 97-276 inserted provision directing that first sentence of this section not apply to any employee of Federal Aviation Administration who is paid premium pay under section 5546a of this title.

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-277 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 a note under section 5542 of this title.

## EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title XI, §1114(c), Dec. 28, 2001, 115 Stat. 1240, provided that: “The amendments made by subsections (a) and (b) [amending this section and provisions set out as a note under this section] shall take effect on the first day of the first pay period beginning on or after the date that is 120 days following the date of enactment of this Act [Dec. 28, 2001].”

## EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-329 effective first day of first applicable pay period beginning on or after 30th day following Sept. 30, 1994, with exceptions relating to criminal investigators employed in Offices of Inspectors General, see section 633(e) of Pub. L. 103-329, set out as an Effective Date note under section 5545a of this title.

## EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-378 effective as of first day of first applicable pay period beginning on or after Oct. 2, 1992, see section 9(b)(9) of Pub. L. 102-378, set out as a note under section 6303 of this title.

## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 529 [title II, §204] of Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective Oct. 1, 1984, see section 1537(f) of Pub. L. 98-525, set out as a note under section 4109 of this title.

## EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-276 effective at 5 o’clock ante meridian eastern daylight time, Aug. 3, 1981, see section 151(h)(1) of Pub. L. 97-276, set out as an Effective Date note under section 5546a of this title.

## SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-523, §1, Oct. 24, 1988, 102 Stat. 2605, provided: “That this Act [amending this section] may be cited as the ‘Forest Wildfire Emergency Pay Equity Act of 1988’.”

## OVERTIME PAY EXCEPTION FOR PROTECTIVE SERVICES

Pub. L. 118-31, div. F, title LXII, §6232, Dec. 22, 2023, 137 Stat. 983, provided that:

“(a) COVERED EMPLOYEE DEFINED.—In this section, the term ‘covered employee’ means any individual employed by, and conducting protective services on behalf of, the Diplomatic Security Service for an individual.

“(b) EXCEPTION TO THE LIMITATION ON PREMIUM PAY FOR PROTECTIVE SERVICES.—Notwithstanding the re-

strictions contained in section 5547 of title 5, United States Code, any covered employee may receive premium pay for overtime officially ordered or approved and performed while conducting protective security functions in excess of the annual equivalent of the limitation on the rate of pay contained in section 5547(a) of such title, except that such premium pay shall not be payable to an employee to the extent that such aggregate amount would exceed the rate of basic pay payable for a position at level II of the Executive Schedule under section 5313 of such title.

“(c) TREATMENT OF ADDITIONAL PAY.—If the application of subsection (b) results in the payment of additional premium pay to a covered employee of a type that is normally creditable as basic pay for retirement or any other purpose, that additional pay shall not—

“(1) be considered to be basic pay of the covered employee for any purpose; or

“(2) be used in computing a lump-sum payment to the covered employee for accumulated and accrued annual leave under section 5551 or section 5552 of title 5, United States Code.

“(d) AGGREGATE LIMIT.—With respect to the application of section 5307 of title 5, United States Code, the payment of any additional premium pay to a covered employee as a result of subsection (b) shall not be counted as part of the aggregate compensation of the covered employee.

“(e) REPORT.—

“(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this division [Dec. 22, 2023], the Secretary [of State] shall submit to the appropriate committees of Congress a report describing the steps the Department [of State] is taking to address the increased protective service demands placed upon individuals by the Diplomatic Security Service.

“(2) ELEMENTS.—The report required under paragraph (1) shall include the following elements:

“(A) An analysis of the current operational demands and staffing levels.

“(B) Recommended strategies for reducing overtime requirements, including—

“(i) hiring additional personnel;

“(ii) solutions such that sufficient resources are available throughout each year without the need for waivers of premium pay limitations;

“(iii) redistribution of workload; and

“(iv) other improvements in operational efficiency.

“(3) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term ‘appropriate committees of Congress’ means—

“(A) the appropriate congressional committees [Committee on Foreign Relations of the Senate and Committee on Foreign Affairs of the House of Representatives];

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

“(C) the Committee on Oversight and Accountability and the Committee on Appropriations of the House of Representatives.

“(f) EFFECTIVE DATE.—This section shall take effect as if enacted on Jan[uary] 1, 2023.

“(g) SUNSET.—This section shall terminate on December 31, 2025.”

#### PREMIUM PAY WAIVER FOR CERTAIN EMPLOYEES ENGAGED IN EMERGENCY WILDLAND FIRE SUPPRESSION ACTIVITIES

Pub. L. 117–43, div. B, title VII, §1701, Sept. 30, 2021, 135 Stat. 367, as amended by Pub. L. 117–103, div. HH, title VI, §601, Mar. 15, 2022, 136 Stat. 1116; Pub. L. 117–328, div. G, title IV, §440, Dec. 29, 2022, 136 Stat. 4832, provided that:

“(a)(1) If services performed by the designated employees under paragraph (2) of this subsection at the Department of the Interior or the Department of Agriculture during 2021 or 2022 or 2023 are determined by the Secretary of the Interior or the Secretary of Agri-

culture, as applicable, to be primarily related to emergency wildland fire suppression activities, any premium pay for such services shall be disregarded in calculating the aggregate of such employee’s basic pay and premium pay for purposes of a limitation under section 5547(a) of title 5, United States Code, or under any other provision of law, whether such employee’s pay is paid on a biweekly or calendar year basis. Any Services during a given calendar year that generate payments payable in the subsequent calendar year shall be disregarded in applying this subsection.

“(2) The premium pay waiver under paragraph (1) of this subsection shall apply to individuals serving as wildland firefighters and as fire management response officials, including regional fire directors, deputy regional fire directors, agency officials who directly oversee fire operations, and fire management officers, and individuals serving on incident management teams (IMTs), at the National Interagency Fire Center (NIFC), at Geographic Area Coordinating Centers (GACCs), and at Operations centers.

“(3) The Departments of the Interior and Agriculture shall provide a report to Congress detailing the number of positions, including by occupation, grade, and the aggregate pay by type of pay for each individual who receives pay authorized under subsection (a)(1).

“(b) Any overtime pay for services described in subsection (a) that is payable under an authority outside of title 5, United States Code, shall be disregarded in calculating any annual limit on the amount of overtime pay payable in 2021 or 2022 or 2023.

“(c) Any pay that is disregarded under either subsection (a) or (b) shall be disregarded in calculating such employee’s aggregate pay for purposes of applying the limitation in section 5307 of title 5, United States Code, during 2021 or 2022 or 2023.

“(d)(1) Pay that is disregarded under subsection (a) or (b) shall not cause the aggregate of the employee’s basic pay and premium pay for the applicable calendar year to exceed the rate of basic pay payable for a position at level II of the Executive Schedule under section 5313 of title 5, United States Code, as in effect at the end of such calendar year.

“(2) For purposes of applying this subsection to an employee who would otherwise be subject to the premium pay limits established under section 5547 of title 5, United States Code, ‘premium pay’ means the premium pay paid under the provisions of law cited in section 5547(a).

“(3) For purposes of applying this subsection to an employee under a premium pay limit established under an authority other than section 5547 of title 5, United States Code, the agency responsible for administering such limit shall determine what payments are considered premium pay.

“(4) For the purpose of applying this subsection, ‘basic pay’ includes any applicable locality-based comparability payment under section 5304 of title 5, United States Code, any applicable special rate supplement under section 5305 of such title, or any equivalent payment under a similar provision of law.

“(e) This section shall take effect as if enacted on January 1, 2021.

“(f) If application of this section results in the payment of additional premium pay to a covered employee of a type that is normally creditable as basic pay for retirement or any other purpose, that additional pay shall not—

“(1) be considered to be basic pay of the covered employee for any purpose; or

“(2) be used in computing a lump-sum payment to the covered employee for accumulated and accrued annual leave under section 5551 or section 5552 of title 5, United States Code, or other similar provision of law.

“(g) Not later than 45 days after the date of enactment of this Act [Sept. 30, 2021], the Secretary of the Interior and Secretary of Agriculture shall jointly provide to the Committees on Appropriations of the House of Representatives and the Senate, the Senate Com-

mittee on Agriculture[,] Nutrition[,] and Forestry, the House of Representatives Committee on Agriculture, the Senate Committee on Energy and Natural Resources, the House of Representatives Committee on Natural Resources, Senate Committee on Homeland Security and Governmental Affairs, and the House of Representatives Committee on Oversight and Reform [now Committee on Oversight and Accountability], a framework to modernize the wildland firefighting workforce beginning in fiscal year 2022.”

**PREMIUM PAY AUTHORITY FOR SERVICES RELATED TO PREPARATION, PREVENTION, OR RESPONSE TO CORONAVIRUS**

Pub. L. 116-260, div. M, title III, §303, Dec. 27, 2020, 134 Stat. 1922, provided that:

“(a) If services performed by an employee during 2020 and 2021 are determined by the head of the agency to be primarily related to preparation, prevention, or response to coronavirus, any premium pay for such services shall be disregarded in calculating the aggregate of such employee’s basic pay and premium pay for purposes of a limitation under section 5547(a) of title 5, United States Code, or under any other provision of law, whether such employees pay is paid on a biweekly or calendar year basis.

“(b) Any overtime pay for such services shall be disregarded in calculating any annual limit on the amount of overtime pay payable in a calendar or fiscal year.

“(c) With regard to such services, any pay that is disregarded under either subsection (a) or (b) shall be disregarded in calculating such employee’s aggregate pay for purposes of the limitation in section 5307 of such title 5.

“(d)(1) Pay that is disregarded under subsection (a) or (b) shall not cause the aggregate of the employee’s basic pay and premium pay for the applicable calendar year to exceed the rate of basic pay payable for a position at level II of the Executive Schedule under section 5313 of title 5, United States Code, as in effect at the end of such calendar year.

“(2) For purposes of applying this subsection to an employee who would otherwise be subject to the premium pay limits established under section 5547 of title 5, United States Code, ‘premium pay’ means the premium pay paid under the provisions of law cited in section 5547(a).

“(3) For purposes of applying this subsection to an employee under a premium pay limit established under an authority other than section 5547 of title 5, United States Code, the agency responsible for administering such limit shall determine what payments are considered premium pay.

“(e) This section shall take effect as if enacted on February 2, 2020.

“(f) If application of this section results in the payment of additional premium pay to a covered employee of a type that is normally creditable as basic pay for retirement or any other purpose, that additional pay shall not—

“(1) be considered to be basic pay of the covered employee for any purpose; or

“(2) be used in computing a lump-sum payment to the covered employee for accumulated and accrued annual leave under section 5551 or section 5552 of title 5, United States Code.”

[For definition of “coronavirus” as used in section 303 of Pub. L. 116-260, set out above, see section 8 of Pub. L. 116-260, set out below.]

Similar provisions were contained in the following prior appropriation act:

Pub. L. 116-136, div. B, title VIII, §18110, Mar. 27, 2020, 134 Stat. 572.

Pub. L. 116-136, div. B, title VI, §16003, Mar. 27, 2020, 134 Stat. 544, provided that:

“(a) **PREMIUM PAY AUTHORITY.**—If services performed during fiscal year 2020 are determined by the head of the agency to be primarily related to preparation, pre-

vention, or response to coronavirus, any premium pay that is funded, either directly or through reimbursement, by the Federal Emergency Management Agency shall be exempted from the aggregate of basic pay and premium pay calculated under section 5547(a) of title 5, United States Code, and any other provision of law limiting the aggregate amount of premium pay payable on a biweekly or calendar year basis.

“(b) **OVERTIME AUTHORITY.**—Any overtime that is funded for such services described in subsection (a), either directly or through reimbursement, by the Federal Emergency Management Agency shall be exempted from any annual limit on the amount of overtime payable in a calendar or fiscal year.

“(c) **APPLICABILITY OF AGGREGATE LIMITATION ON PAY.**—In determining whether an employee’s pay exceeds the applicable annual rate of basic pay payable under section 5307 of title 5, United States Code, the head of an Executive agency shall not include pay exempted under this section.

“(d) **LIMITATION OF PAY AUTHORITY.**—Pay exempted from otherwise applicable limits under subsection (a) shall not cause the aggregate pay earned for the calendar year in which the exempted pay is earned to exceed the rate of basic pay payable for a position at level II of the Executive Schedule under section 5313 of title 5, United States Code.

“(e) **EFFECTIVE DATE.**—This section shall take effect as if enacted on January 1, 2020.”

**OVERTIME PAY FOR PROTECTIVE SERVICES**

Pub. L. 114-311, Dec. 16, 2016, 130 Stat. 1531, as amended by Pub. L. 115-160, §2(a)(1), Apr. 3, 2018, 132 Stat. 1246; Pub. L. 115-383, §2(a), Dec. 21, 2018, 132 Stat. 5121; Pub. L. 116-269, §2(a), Dec. 30, 2020, 134 Stat. 3323, provided that:

**“SECTION 1. SHORT TITLE.**

“This Act may be cited as the ‘Overtime Pay for Protective Services Act of 2016’.

**“SEC. 2. PREMIUM PAY EXCEPTION DURING 2016 THROUGH 2023 FOR PROTECTIVE SERVICES.**

“(a) **DEFINITION.**—In this section, the term ‘covered employee’ means any officer, employee, or agent employed by the United States Secret Service who performs protective services for an individual or event protected by the United States Secret Service during any of calendar years 2016 through 2023.

“(b) **EXCEPTION TO THE LIMITATION ON PREMIUM PAY FOR PROTECTIVE SERVICES.**—

“(1) **IN GENERAL.**—Notwithstanding any other provision of law, including section 5547(a) of title 5, United States Code, and only to the extent that an appropriation is provided specifically in an appropriations Act for premium pay for a given calendar year in excess of the annual equivalent of the limitation on the rate of pay contained in section 5547(a), any covered employee may receive premium pay during each of calendar years 2016 through 2023, to the extent provided under section 118 of the Treasury and General Government Appropriations Act, 2001 (5 U.S.C. 5547 note).

“(2) **TECHNICAL AND CONFORMING AMENDMENT.**—[Amended section 1(a)(3) [title I, §118] of Pub. L. 106-554, set out below.]

“(c) **TREATMENT OF ADDITIONAL PAY.**—If subsection (b) results in the payment of additional premium pay to a covered employee of a type that is normally creditable as basic pay for retirement or any other purpose, that additional pay shall not—

“(1) be considered to be basic pay of the covered employee for any purpose; or

“(2) be used in computing a lump-sum payment to the covered employee for accumulated and accrued annual leave under section 5551 or section 5552 of title 5, United States Code.

“(d) **AGGREGATE LIMIT.**—With respect to the application of section 5307 of title 5, United States Code, the payment of any additional premium pay to a covered

employee as a result of subsection (b) shall not be counted as part of the aggregate compensation of the covered employee.

“(e) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect as if enacted on December 31, 2015.”

[Pub. L. 115–160, §2(b), Apr. 3, 2018, 132 Stat. 1246, provided that: “The amendments made by subsection (a) [amending Pub. L. 114–311, set out above, and section 1(a)(3) [title I, §118] of Pub. L. 106–554, set out below] shall take effect as if enacted on December 31, 2016.”]

#### PREMIUM PAY FOR PROTECTIVE SERVICES OF UNITED STATES SECRET SERVICE

Pub. L. 106–554, §1(a)(3) [title I, §118], Dec. 21, 2000, 114 Stat. 2763, 2763A–134, as amended by Pub. L. 107–107, div. A, title XI, §1114(b), Dec. 28, 2001, 115 Stat. 1240; Pub. L. 114–311, §2(b)(2), Dec. 16, 2016, 130 Stat. 1531; Pub. L. 115–160, §2(a)(2), Apr. 3, 2018, 132 Stat. 1246, provided that: “Hereafter, funds made available by this or any other Act may be used to pay premium pay for protective services authorized by section 3056(a) or 3056A of title 18, United States Code, without regard to the restrictions contained in section 5547 of title 5, United States Code, except that such premium pay shall not be payable to an employee to the extent that the aggregate of the employee’s basic and premium pay for the year would otherwise exceed the annual equivalent of that limitation or, if the employee qualifies for an exception to such limitation under section 2(b)(1) of the Overtime Pay for Protective Services Act of 2016 [Pub. L. 114–311, set out above], to the extent that such aggregate amount would exceed the rate of basic pay payable for a position at level II of the Executive Schedule under section 5313 of title 5, United States Code. The term premium pay refers to the provisions of law cited in the first sentence of section 5547(a) of title 5, United States Code. Payment of additional premium pay payable under this section may be made in a lump sum on the last payday of the calendar year.”

Similar provisions were contained in Pub. L. 106–58, title I, §118, Sept. 29, 1999, 113 Stat. 441.

[Pub. L. 115–160, §2(b), Apr. 3, 2018, 132 Stat. 1246, provided that: “The amendments made by subsection (a) [amending Pub. L. 114–311 and section 1(a)(3) [title I, §118] of Pub. L. 106–554, set out above] shall take effect as if enacted on December 31, 2016.”]

[For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

#### DEFINITION OF CORONAVIRUS IN PUB. L. 116–260

Pub. L. 116–260, §8, Dec. 27, 2020, 134 Stat. 1185, provided that: “In divisions A through M of this Act [divs. A to M of Pub. L. 116–260, see Tables for classification], the term ‘coronavirus’ means SARS-CoV-2 or another coronavirus with pandemic potential.”

### § 5548. Regulations

(a) The Office of Personnel Management may prescribe regulations, subject to the approval of the President, necessary for the administration of this subchapter, except section 5545(d), insofar as this subchapter affects employees in or under an Executive agency.

(b) The Office shall prescribe regulations necessary for the administration of section 5545(d).

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 488; Pub. L. 90–83, §1(32), Sept. 11, 1967, 81 Stat. 201; Pub. L. 92–392, §12, Aug. 19, 1972, 86 Stat. 575; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92

Stat. 1224; Pub. L. 102–378, §2(44)(C), Oct. 2, 1992, 106 Stat. 1352.)

#### HISTORICAL AND REVISION NOTES 1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 945.	June 30, 1945, ch. 212, §605, 59 Stat. 304.

The words “an Executive agency” are substituted for “the executive branch of the Government” to conform to the definition in section 105. Applicability of this section to employees of the General Accounting Office is based on former section 933a.

The remainder of the authority is covered by sections 5504 and 6101.

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

#### 1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
5548(b) .....	5 App.: 1072 (as applicable to 5 App.: 1134.)  5 App.: 1134(4) (6th through 9th words).	Oct. 28, 1949, ch. 782, §1101 (as applicable to §804, added July 19, 1966, Pub. L. 89–512, §1, 80 Stat. 318), 63 Stat. 971. July 19, 1966, Pub. L. 89–512, §1 “Sec. 804(4) (6th through 9th words)”, 80 Stat. 318.

This section consolidates into 5 U.S.C. 5548(b) general regulatory authority granted to the Civil Service Commission by section 1101 of the Classification Act of 1949 (as applicable to sec. 804 of that act, added by Public Law 89–512) and the specific requirement in section 804(4) of that act that the Commission prescribe regulations.

### Editorial Notes

#### AMENDMENTS

1992—Subsec. (b). Pub. L. 102–378 substituted “section 5545(d)” for “sections 5545(d) and 5550 of this title”.

1978—Subsecs. (a), (b). Pub. L. 95–454 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission”.

1972—Subsec. (a). Pub. L. 92–392, §12(a), struck out reference to section 5544 of this title.

Subsec. (b). Pub. L. 92–392, §12(b), inserted reference to section 5550 of this title.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

#### EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92–392, set out as an Effective Date note under section 5341 of this title.

### Executive Documents

#### DELEGATION OF FUNCTIONS

Function vested in Office of Personnel Management under this section to be performed without approval of President, see section 1(1) of Ex. Ord. No. 11228, June 14, 1965, 30 F.R. 7739, set out as a note under section 301 of Title 3, The President.



### § 5549. Effect on other statutes

This subchapter does not prevent payment for overtime services or for Sunday or holiday work under any of the following statutes—

- (1) section 10703 of the Farm Security and Rural Investment Act of 2002;
- (2) sections 1353a and 1353b of title 8;
- (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.

#### Editorial Notes

##### 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 clas-

sification 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,

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

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

(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 action 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 overtime 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.

(h) **SPECIAL OVERTIME PAY FOR GS-12 BORDER PATROL AGENTS.**—

(1) **IN GENERAL.**—Notwithstanding paragraphs (1)(F), (2)(C), and (3)(C) of subsection (b), a border patrol agent encumbering a position at grade GS-12 shall receive a special overtime payment under this subsection for hours of regularly scheduled work described in paragraph (2)(A)(ii) or (3)(A)(ii) of subsection (b), as applicable, that are credited to the agent through actual performance of work, crediting under rules for canine agents under subsection (b)(1)(F), or substitution of overtime hours in the same work period under subsection (f)(2)(A), except that no such payment may be made for periods of absence resulting in an hours obligation under paragraph (3) or (4) of subsection (f).

(2) **COMPUTATION.**—The special overtime payment authorized under paragraph (1) shall be computed by multiplying the credited hours by 50 percent of the border patrol agent's hourly rate of basic pay, rounded to the nearest cent.

(3) **LIMITATIONS.**—The special overtime payment authorized under paragraph (1)—

(A) is not considered basic pay for retirement under section 8331(3) or 8401(4) or for any other purpose;

(B) is not payable during periods of paid leave or other paid time off; and

(C) is not considered in computing an agent's lump-sum annual leave payment under sections 5551 and 5552.

(Pub. L. 113-277, §2(b), Dec. 18, 2014, 128 Stat. 2995; Pub. L. 118-31, div. E, title LII, §5201, Dec. 22, 2023, 137 Stat. 939.)

### Editorial Notes

#### 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.

GS–12, referred to in subsec. (h), is contained in the General Schedule which is set out under section 5332 of this title.

#### 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.

#### AMENDMENTS

2023—Subsec. (h). Pub. L. 118–31 added subsec. (h).

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019. Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

##### 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 Office) shall prescribe the regulations referred to in subsection (a) of this section.

(c) Regulations under this section may provide for such exceptions as may be necessary to efficiently carry out the mission of the agency or agencies involved.

(Added Pub. L. 95–390, title IV, §401(a), Sept. 29, 1978, 92 Stat. 762; amended Pub. L. 96–54, §2(a)(14), (15), Aug. 14, 1979, 93 Stat. 382.)

#### Editorial Notes

##### REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (a), is the date of enactment of Pub. L. 95–390, which was approved Sept. 29, 1978.

##### AMENDMENTS

1979—Subsecs. (a), (b). Pub. L. 96–54 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 305 of this title.

#### § 5550b. Compensatory time off for travel

(a) Notwithstanding any provision of section 5542(b)(2) or 5544(a), each hour spent by an employee in travel status away from the official duty station of the employee, that is not otherwise compensable, shall be treated as an hour of work or employment for purposes of calculating compensatory time off.

(b) An employee who has any hours treated as hours of work or employment for purposes of calculating compensatory time under subsection (a), shall not be entitled to payment for any such hours that are unused as compensatory time.

(Added Pub. L. 108–411, title II, §203(a), Oct. 30, 2004, 118 Stat. 2313; amended Pub. L. 110–181, div. A, title XI, §1111(a), Jan. 28, 2008, 122 Stat. 360.)

#### Editorial Notes

##### AMENDMENTS

2008—Subsec. (a). Pub. L. 110–181 substituted “any provision of section 5542(b)(2) or 5544(a),” for “section 5542(b)(2),”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–181 effective on the earlier of the effective date of any regulations prescribed to carry out amendments by section 1111 of Pub. L. 110–181 or the 90th day after Jan. 28, 2008, see section 1111(c) of Pub. L. 110–181, set out as a note under section 5541 of this title.

##### EFFECTIVE DATE

Pub. L. 108–411, title II, §203(c), Oct. 30, 2004, 118 Stat. 2313, provided that: “The amendments made by this section [enacting this section] shall take effect on the earlier of—

“(1) the effective date of any regulations prescribed to carry out such amendments; or

“(2) the 90th day after the date of the enactment of this Act [Oct. 30, 2004].”

##### COMPENSATORY TIME OFF FOR TRAVEL FOR DEPARTMENT OF JUSTICE ATTORNEYS

Pub. L. 109–425, §1, Dec. 20, 2006, 120 Stat. 2910, provided that:

“(a) IN GENERAL.—Attorneys employed by the Department of Justice (including assistant United States attorneys) shall be eligible for compensatory time off for travel under section 5550b of title 5, United States Code, without regard to any provision of section 115 of the Departments of Commerce, Justice, and State, the

Judiciary, and Related Agencies Appropriations Act, 2000 (as enacted into law by section 1000(a)(1) of Public Law 106-113 and reenacted by section 111 of the Department of Justice Appropriations Act, 2001 (as enacted into law by appendix B of Public Law 106-553) [set out as a note under section 5541 of this title]).

“(b) APPLICABILITY.—Subsection (a) shall apply with respect to time spent in travel status on or after the date of the enactment of this Act [Dec. 20, 2006].”

#### SUBCHAPTER VI—PAYMENT FOR ACCUMULATED AND ACCRUED LEAVE

### § 5551. Lump-sum payment for accumulated and accrued leave on separation

(a) An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, who is separated from the service, is transferred to a position described under section 6301(2)(B)(xiii) of this title, or elects to receive a lump-sum payment for leave under section 5552 of this title, is entitled to receive a lump-sum payment for accumulated and current accrued annual or vacation leave to which he is entitled by statute. The lump-sum payment shall equal the pay (excluding any differential under section 5925 and any allowance under section 5928) the employee or individual would have received had he remained in the service until expiration of the period of the annual or vacation leave. The lump-sum payment is considered pay for taxation purposes only. The period of leave used for calculating the lump-sum payment shall not be extended due to any holiday occurring after separation. For the purposes of this subsection, movement to employment described in section 2105(c) shall not be deemed separation from the service in the case of an employee whose annual leave is transferred under section 6308(b).

(b) The accumulated and current accrued annual leave to which an officer excepted from subchapter I of chapter 63 of this title by section 6301(2)(x)-(xiii) of this title, is entitled immediately before the date he is excepted under that section shall be liquidated by a lump-sum payment in accordance with subsection (a) of this section or subchapter VIII of this chapter, except that the payment is based on the rate of pay which he was receiving immediately before the date on which section 6301(2)(x)-(xiii) of this title became applicable to him.

(c)(1) Annual leave that is restored to an employee of the Department of Defense under section 6304(d) of this title by reason of the operation of paragraph (3) of such section and remains unused upon the transfer of the employee to a position described in paragraph (2) shall be liquidated by payment of a lump-sum for such leave to the employee upon the transfer.

(2) A position referred to in paragraph (1) is a position in a department or agency of the Federal Government outside the Department of Defense or a Department of Defense position that is not located at a Department of Defense installation being closed or realigned as described in section 6304(d)(3) of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 488; Pub. L. 93-181, §1, Dec. 14, 1973, 87 Stat. 705; Pub. L. 95-519, §2, Oct. 25, 1978, 92 Stat. 1819; Pub. L. 96-499, title IV, §402(a), Dec. 5, 1980, 94 Stat. 2605;

Pub. L. 101-508, title VII, §7202(g), Nov. 5, 1990, 104 Stat. 1388-336; Pub. L. 102-138, title I, §147(b)(1), Oct. 28, 1991, 105 Stat. 669; Pub. L. 104-201, div. A, title XVI, §1611(a), Sept. 23, 1996, 110 Stat. 2738; Pub. L. 106-518, title III, §310, Nov. 13, 2000, 114 Stat. 2420.)

#### HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
(a) .....	5 U.S.C. 61b (1st, 2d, and 6th sentences).	Dec. 21, 1944, ch. 632, §1 (less 1st proviso, and less so much of last sentence as precedes 2d proviso), 58 Stat. 845. July 2, 1953, ch. 178, §4(a) (1st and 5th sentences), 67 Stat. 137.
(b) .....	5 U.S.C. 2061a(a).	July 2, 1953, ch. 178, §2(a), 67 Stat. 136.

In subsection (a), the words “An employee as defined by section 2105 of this title” are coextensive with and substituted for “civilian officer or employee of the Federal Government”. Reference to “section 1474 of Appendix to Title 50, is omitted in view of the repeal of that section by the Act of July 24, 1956, ch. 671, §5(a)(3), 70 Stat. 606. The words “and shall not be subject to retirement deductions” are omitted and carried into section 8331(3).

In subsection (b)(2), reference to the limitation imposed by section 5 of the Act of July 2, 1953, ch. 178, 67 Stat. 138, is omitted as obsolete since the limitation was eliminated by the Act of Sept. 2, 1958, Pub. L. 85-914, §1, 72 Stat. 1761.

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

#### Editorial Notes

##### AMENDMENTS

2000—Subsec. (a). Pub. L. 106-518 substituted “, is transferred to a position described under section 6301(2)(B)(xiii) of this title, or elects” for “or elects” in first sentence.

1996—Subsec. (c). Pub. L. 104-201 added subsec. (c).

1991—Subsec. (a). Pub. L. 102-138 inserted “(excluding any differential under section 5925 and any allowance under section 5928)” after “pay” in second sentence.

1990—Subsec. (a). Pub. L. 101-508 inserted at end “For the purposes of this subsection, movement to employment described in section 2105(c) shall not be deemed separation from the service in the case of an employee whose annual leave is transferred under section 6308(b).”

1980—Subsec. (a). Pub. L. 96-499 provided that the period of leave used for calculating the lump-sum payment was not to be extended due to any holiday occurring after separation.

1978—Subsec. (b). Pub. L. 95-519 substituted “6301(2)(x)-(xiii)” for “6301(2)(x)-(xii)” in two places.

1973—Subsec. (a). Pub. L. 93-181 struck out exception clause that the lump-sum payment may not exceed pay for a period of annual or vacation leave in excess of 30 days or the number of days carried over to his credit at the beginning of the leave year in which entitlement to payment occurs, whichever is greater.

Subsec. (b). Pub. L. 93-181 struck out second exception clause that the payment is made without regard to the limitation in subsec. (a) of this section on the amount of leave compensable.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-201, div. A, title XVI, §1611(b), Sept. 23, 1996, 110 Stat. 2739, provided that: “Subsection (c) of