

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 individual 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 transferred 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 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

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

(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 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).

(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 per-

forming 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 section 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

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	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”.