

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

Section of title 5	Source (U.S. Code)	Source (Statutes at Large)
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 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”.

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 sentences 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;