



MAR 30 2023

The Honorable Kevin McCarthy  
Speaker of the House of Representatives  
Washington, DC 20515

Dear Mr. Speaker:

Enclosed is a legislative proposal that, if enacted, would create a comprehensive, equitable, and modernized compensation structure for the Federal wildland fire management workforce.

As the frequency and intensity of catastrophic wildfires increase, Federal wildland firefighters have been stretched to their limits by the need to operate at an unsustainable tempo. President Biden has committed, in response, to build a more robust and resilient wildland firefighting workforce that is fairly compensated for the difficult and dangerous work they do. The President's fiscal year (FY) 2024 budget supports this commitment by proposing comprehensive reform for the wildland fire management workforce that will permanently increase pay, improve mental and physical health support, add more permanent hires, and expand housing options.

The enclosed legislative proposal, which is fully supported by funding requested in the FY 2024 budget, reflects a coordinated effort by the Department of the Interior, Department of Agriculture, and Office of Personnel Management. Enactment of this proposal by FY 2024 will ensure that a permanent solution to increase pay for wildland firefighters is authorized by the time temporary pay enhancements provided by the Bipartisan Infrastructure Law are expected to run out at the end of FY 2023.

Specifically, the enclosed legislative proposal will:

1. significantly increase base pay by establishing special pay rates at all grade levels for Federal wildland firefighters in the General Schedule and the Federal Wage System;
2. ensure those deployed to certain wildland fire incidents receive pay for all hours mobilized by providing a new form of premium pay, incident standby premium pay;
3. provide for enhanced pay management oversight by establishing a streamlined pay cap while also giving the Secretaries of the Interior and Agriculture the ability to waive the application of limitations on premium pay earned for certain wildland fire activities under certain conditions; and
4. support wildland firefighter physical and mental well-being by allowing appropriate periods of paid rest and recuperation leave following the completion of service during certain wildland fire activities.

We recommend that this proposal be introduced, referred to the appropriate committee for consideration, and enacted.

The Office of Management and Budget advises that it has no objection to the presentation of this legislative proposal to Congress and that its enactment would be in accord with the President's program.

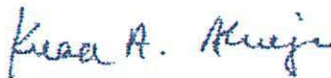
Sincerely,



Deb Haaland  
Secretary of the Interior

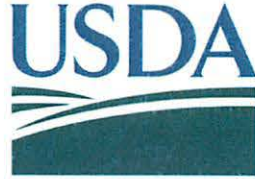


Thomas J. Vilsack  
Secretary of Agriculture



Kiran Ahuja  
Director, Office of Personnel Management

Enclosures



MAR 30 2023

The Honorable Kamala Harris  
President of the Senate  
Washington, DC 20510

Dear Madam President:

Enclosed is a legislative proposal that, if enacted, would create a comprehensive, equitable, and modernized compensation structure for the Federal wildland fire management workforce.

As the frequency and intensity of catastrophic wildfires increase, Federal wildland firefighters have been stretched to their limits by the need to operate at an unsustainable tempo. President Biden has committed, in response, to build a more robust and resilient wildland firefighting workforce that is fairly compensated for the difficult and dangerous work they do. The President's fiscal year (FY) 2024 budget supports this commitment by proposing comprehensive reform for the wildland fire management workforce that will permanently increase pay, improve mental and physical health support, add more permanent hires, and expand housing options.

The enclosed legislative proposal, which is fully supported by funding requested in the FY 2024 budget, reflects a coordinated effort by the Department of the Interior, Department of Agriculture, and Office of Personnel Management. Enactment of this proposal by FY 2024 will ensure that a permanent solution to increase pay for wildland firefighters is authorized by the time temporary pay enhancements provided by the Bipartisan Infrastructure Law are expected to run out at the end of FY 2023.

Specifically, the enclosed legislative proposal will:

1. significantly increase base pay by establishing special pay rates at all grade levels for Federal wildland firefighters in the General Schedule and the Federal Wage System;
2. ensure those deployed to certain wildland fire incidents receive pay for all hours mobilized by providing a new form of premium pay, incident standby premium pay;
3. provide for enhanced pay management oversight by establishing a streamlined pay cap while also giving the Secretaries of the Interior and Agriculture the ability to waive the application of limitations on premium pay earned for certain wildland fire activities under certain conditions; and
4. support wildland firefighter physical and mental well-being by allowing appropriate periods of paid rest and recuperation leave following the completion of service during certain wildland fire activities.



We recommend that this proposal be introduced, referred to the appropriate committee for consideration, and enacted.

The Office of Management and Budget advises that it has no objection to the presentation of this legislative proposal to Congress and that its enactment would be in accord with the President's program.

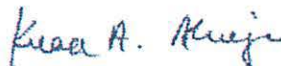
Sincerely,



Deb Haaland  
Secretary of the Interior



Thomas J. Vilsack  
Secretary of Agriculture



Kiran Ahuja  
Director, Office of Personnel Management

Enclosures

**SEC. 101. SPECIAL BASE PAY RATES FOR WILDLAND FIREFIGHTERS.**

(a) Subchapter III of chapter 53 of title 5, United States Code, is amended by inserting after section 5332 the following new section:

**“§ 5332a. Special base rates of pay for wildland firefighters**

“(a) For the purpose of this section—

“(1) the term ‘firefighter’ means an employee who—

“(A) is a firefighter within the meaning of section 8331(21) or section 8401(14);

“(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 firefighter within the meaning of section 8331(21), would otherwise qualify if the employee had transferred directly to such position after serving as a firefighter within the meaning of that 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 firefighter within the meaning of section 8401(14), would otherwise qualify if the employee had transferred directly to such position after performing duties described in section 8401(14)(A) 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, 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;

“(2) the term ‘General Schedule base rate’ means an annual rate of basic pay established under section 5332, before any additions such as a locality-based comparability payment under section 5304 or 5304a or a special rate supplement under section 5305;

“(3) the term ‘special base rate’ means an annual rate of basic pay payable to a wildland firefighter, before any additions or reductions, that replaces the General Schedule base rate otherwise applicable to the wildland firefighter and that is administered in the same manner as General Schedule base rates; and

“(4) the term ‘wildland firefighter’ means a firefighter employed by the Forest Service or the Department of the Interior whose duties primarily relate to fires occurring in forests, range lands, or other wildlands, as opposed to structural fires.

“(b)(1) Notwithstanding section 5332, a wildland firefighter is entitled to a special base rate of pay at grades 1 through 15. This special base rate shall replace the otherwise applicable General Schedule base rate and shall be basic pay for all purposes, including the purpose of

computing a locality-based comparability payment under section 5304 or 5304a. Such special base rates shall be computed as described in paragraph (2) and adjusted at the time of adjustments in the General Schedule.

“(2) The special base rates for a wildland firefighter shall be derived by increasing the otherwise applicable General Schedule base rate by the applicable percentage for the wildland firefighter’s grade as shown below and rounding the result to the nearest whole dollar:

- “GS-1 42 percent
- “GS-2 39 percent
- “GS-3 36 percent
- “GS-4 33 percent
- “GS-5 30 percent
- “GS-6 27 percent
- “GS-7 24 percent
- “GS-8 21 percent
- “GS-9 18 percent
- “GS-10 15 percent
- “GS-11 12 percent
- “GS-12 9 percent
- “GS-13 6 percent
- “GS-14 3 percent
- “GS-15 1.5 percent.

“(3) When the special base rate is expressed as an hourly, daily, weekly, or biweekly rate, the rate is computed from the appropriate annual rate of basic pay derived under paragraph (2) in accordance with the rules prescribed by section 5504(b).”

(b) The amendments made by subsections (a) and (d) shall be effective on the first day of the first applicable pay period beginning on or after October 1, 2023.

(c) The table of sections for chapter 53 of title 5, United States Code, is amended by inserting after the item relating to section 5332 the following new item:

“5332a. Special base rates of pay for wildland firefighters.”

(d) Subchapter IV of chapter 53, United States Code, is amended by adding at the end of section 5343 the following subsection:

“(g) For prevailing rate employees described in section 5342(a)(2)(A) who qualify as a ‘wildland firefighter’ based on the definitions of ‘firefighter’ and ‘wildland firefighter’ in section 5332a(a), the Secretary of Agriculture or the Secretary of the Interior (as applicable) shall increase the wage rates of such employees by amounts (determined at the sole and exclusive discretion of the applicable Secretary after consultation with the other Secretary) that are generally consistent with the percentage increases given to wildland firefighters in the General Schedule under section 5332a. Such an increased wage rate shall be basic pay for the same purposes as the wage rate otherwise established under this section. An increase under this subsection may not cause an employee’s wage rate to increase beyond a rate that would produce an annualized rate in excess of the annual rate for level IV of the Executive Schedule.”

#### **SEC. 102. WILDLAND FIRE INCIDENT STANDBY PREMIUM PAY.**

(a) Subchapter V of chapter 55 of title 5, United States Code is amended by inserting after section 5545b the following new section:

#### **“§ 5545c. Incident standby premium pay for employees engaged in wildland firefighting**

“(a) For purposes of this section—

“(1) the term ‘covered employee’ means an employee of the Forest Service or the Department of the Interior who—

“(A) qualifies as a wildland firefighter based on the definitions of ‘firefighter’ and ‘wildland firefighter’ in section 5332a(a); or

“(B) is certified by the applicable agency to perform wildland fire incident related duties during the period such employee is assigned to a qualifying incident;

“(2) the term ‘designated sleep and rest period’ means the hours during an incident deployment that a covered employee is deemed to be in sleep or rest status for pay computation purposes, regardless of actual hours spent in that status;

“(3) the term ‘incident standby premium pay’ means pay to which a covered employee is entitled under subsection (c);

“(4) the term ‘prescribed fire incident’ means a wildland fire originating from a planned ignition in accordance with applicable laws, policies, and regulations to meet specific objectives;

“(5) the term ‘qualifying incident’ means a wildfire incident, a prescribed fire incident, or a severity incident, but excludes an initial response incident involving a single operational period of less than 36 hours (unless a longer period is approved by an authorized agency official due to exceptional circumstances) if the employee is in continual work status with no designated sleep and rest period established by the agency;

“(6) the term ‘severity incident’ means an incident in which a covered employee is pre-positioned in an area where conditions indicate there is a high risk of wildfires; and

“(7) the term ‘wildfire incident’ means a wildland fire originating from an unplanned ignition, such as lightning, volcanos, unauthorized and accidental human-caused fires, and prescribed fires that are declared wildfires.

“(b) A covered employee is eligible for incident standby premium pay under this section when meeting all of the following conditions:

“(1) The employee is deployed to the field by the employing agency to respond to a qualifying incident.

“(2) The employee is placed by the employing agency in continuous duty status during the incident deployment.

“(3) Any periods of sleeping and resting occur in a field location associated with the duty assignment.

“(c) A covered employee who meets the conditions in subsection (b) is entitled to incident standby premium pay for designated sleep and rest periods, and such pay shall be the only compensation payable to the employee for those periods, notwithstanding any other law. Such premium pay shall be paid at an hourly rate equal to 50 percent of the employee’s hourly rate of basic pay, rounded to the nearest whole cent. In determining an employee’s minimum wage and overtime pay entitlements under the Fair Labor Standards Act, incident standby premium pay and associated hours shall be disregarded.

“(d) A covered employee’s designated sleep and rest periods shall be fixed at 9 hours for every 24-hour duty period associated with a qualifying incident, including necessary travel time. If the hours of an incident deployment are not an exact multiple of 24-hour periods, the ratio of 9/24 shall be multiplied by hours for the less-than-24-hours period of duty to derive the designated sleep and rest period for that duty period, with the result rounded to the nearest fractional increment established by the agency in tracking hours of work.



“(e) Incident standby premium pay under this section—

“(1) is not considered part of the basic pay of an employee for any purpose;

“(2) may not be considered in determining an employee’s lump-sum payment for accumulated and accrued annual leave under section 5551 or section 5552;

“(3) may not be used in determining pay under section 8114 (related to workers’ compensation); and

“(4) may not be considered in determining pay for hours of paid leave or other paid time off during which the premium pay is not payable.”

(b) Subchapter V of chapter 55 of title 5, United States Code, is further amended—

(1) in section 5544, by—

(A) adding the following:

“(d) A prevailing rate employee described in section 5342(a)(2)(A) shall receive incident standby premium pay under the same terms and conditions that apply to a covered employee under section 5545c if such employee is employed by the Forest Service or the Department of the Interior and—

“(1) qualifies as a wildland firefighter based on the definitions of ‘firefighter’ and ‘wildland firefighter’ in section 5332a(a); or

“(2) is certified by the applicable agency to perform wildland fire incident related duties during the period such employee is assigned to a qualifying incident (as defined in section 5545c(a)(5)).”

(B) amending the section heading to read: “Wage-board overtime, Sunday rates, and other premium pay”;

(2) in section 5545, by adding at the end the following:

“(e) For an employee of the Forest Service or the Department of the Interior who is temporarily deployed to perform wildland fire incident related duties, subsection (c)(2) shall not apply to hours during such temporary deployment notwithstanding any other provision of law.”;

(3) in section 5545a, by adding at the end the following:

“(l) For an employee of the Forest Service or the Department of the Interior who is temporarily deployed to perform wildland fire incident related duties, subsection (c)(2) shall not apply to hours during such temporary deployment notwithstanding any other provision of law.”; and

(4) in section 5547(a), by inserting “5545c,” after “5545a.”

(c) The amendments made by this section shall be effective on the first day of the first applicable pay period beginning on or after October 1, 2023.

(d) The table of sections for chapter 55 of title 5, United States Code, is amended by—

(1) amending the item relating to section 5544 to read as follows:

“5544. Wage-board overtime, Sunday rates, and other premium pay.”; and

(2) inserting after the item relating to section 5545b the following new item:

“5545c. Incident standby premium pay for employees engaged in wildland firefighting.”

### **SEC. 103. SPECIAL LIMITATIONS ON PAY FOR WILDLAND FIREFIGHTERS.**

(a) Subchapter V of chapter 55 of title 5, United States Code (as amended by this Act), is further amended—

(1) by inserting after section 5547 the following new section:

#### **“§ 5547a. Special limitations on premium pay for employees engaged in wildland firefighting**

“(a) For purposes of this section—

“(1) the term ‘covered employee’ means an employee of the Forest Service or the Department of the Interior who—

“(A) qualifies as a wildland firefighter based on the definitions of ‘firefighter’ and ‘wildland firefighter’ in section 5332a(a); or

“(B) is certified by the applicable agency to perform wildland fire incident related duties during the period such employee is assigned to a qualifying incident;

“(2) the term ‘covered services’ means services performed by an employee that are determined by the Secretary of the Interior or the Secretary of Agriculture, as applicable, to primarily involve emergency wildfire suppression activities, including any periods of duty when the employee is sleeping or resting during an extended period of deployment to engage in those activities;

“(3) the term ‘emergency wildland fire suppression activities’ means initial-response and extended-response activities that directly relate to suppression of a wildfire, including activities associated with a severity incident but excluding activities associated with a prescribed fire incident (as those terms are defined section 5545c); and

“(4) the term ‘premium pay’ means the premium pay paid under the provisions of law cited in section 5547(a), except as otherwise provided in subsection (h).

“(b) Any premium pay earned by a covered employee for covered services shall be disregarded in calculating the aggregate of such employee’s basic pay and premium pay for purposes of applying a limitation under section 5547.

“(c) Any premium pay that is disregarded under subsection (b) shall be disregarded in calculating such employee’s aggregate pay for purposes of applying the limitation in section 5307.

“(d) Pay that is disregarded under subsection (b) may not be paid to the extent it would cause the aggregate of the employee’s basic pay, premium pay, and hazard pay under section 5545(d) payable in 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, as in effect at the end of such calendar year. Any premium pay that is subject to a biweekly limitation under section 5547(c) must be paid first before other premium pay in applying the level II limitation.

“(e) Application of the limit in subsection (d) or subsection (h) to a covered employee may be waived at the sole and exclusive discretion of the Secretary of the Interior or the Secretary of Agriculture, as applicable. Before authorizing such a waiver for employees of their respective agencies, each Secretary, after consulting with the other Secretary, shall prescribe criteria that will be applied in making a determination to grant a waiver.

“(f) Any additional pay resulting from application of this section may not be used in computing a lump-sum payment for accumulated and accrued annual leave under section 5551 or section 5552.

“(g) The Departments of the Interior and Agriculture shall maintain records that document uses of the authority provided by this section.

“(h)(1) For prevailing rate employees described in section 5342(a)(2)(A) who meet the requirements in subsection (a)(1) to qualify as a covered employee, premium pay may not be paid to the extent it would cause the aggregate of the employee’s basic pay and premium pay in 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, as in effect at the end of such calendar year.

“(2) For the purposes of this subsection, the term ‘basic pay’ means wages, environmental differential pay, and night shift differential pay, and the term ‘premium pay’ means overtime pay, Sunday premium pay, and holiday premium pay.”; and

(2) in section 5541(2)(xi), by inserting “, section 5547a(h),” after “section 5544”.

(b) For the purpose of applying section 5547 and section 1701 of division B of Public Law 117-43 (5 U.S.C. 5547 note), as amended by section 601 of division HH of the Public Law 117-103 and section 440 of division G of the Public Law 117-328 in calendar year 2023, incident standby premium pay shall be included in premium pay that is subject to the limits established in those sections.

(c) The amendments made by subsection (a) shall take effect on the first day of the first pay period that has a payment date in January 2024. Subsection (b) shall be effective on the first day of the first applicable pay period beginning on or after October 1, 2023.

(d) The table of sections for chapter 55 of title 5, United States Code, is further amended by inserting after the item for section 5547 the following new item:

“5547a. Special limitations on premium pay for employees engaged in wildland firefighting.”

**SEC. 104. REST AND RECUPERATION LEAVE FOR EMPLOYEES ENGAGED IN WILDLAND FIREFIGHTING.**

(a) Subchapter II of chapter 63 of title 5, United States Code is amended by inserting after section 6329d the following new section:

**“§ 6329e. Rest and recuperation leave for employees engaged in wildland firefighting**

“(a) DEFINITIONS.—For purposes of this section—

“(1) the term ‘applicable Secretary’ means the Secretary of Agriculture or the Secretary of the Interior;

“(2) the term ‘covered employee’ means an employee of the Forest Service or the Department of the Interior who—

“(A) qualifies as a ‘wildland firefighter’ based on the definitions of ‘firefighter’ and ‘wildland firefighter’ in section 5332a(a) (applying the definition of ‘employee’ in section 6301(2) in lieu of the definition of ‘employee’ in section 5331(a))”; or

“(B) is certified by the applicable agency to perform wildland fire incident related duties during the period such employee is assigned to a qualifying incident; and

“(3) the term ‘qualifying incident’ has the meaning given that term in section 5545c(a)(5).

“(b) A covered employee may receive paid rest and recuperation leave following the completion of service under a qualifying incident, subject to policies established at the sole and exclusive discretion of the Secretary of the Agriculture or the Secretary of the Interior, as applicable. Each Secretary shall prescribe such policies after consulting with the other Secretary.

“(c) Rest and recuperation leave granted under this section shall be used during scheduled hours within the covered employee’s tour of duty established for leave-charging purposes and shall be paid in the same manner as annual leave. Rest and recuperation leave must be used immediately after a qualifying incident and may not be set aside for later use. A covered employee may not receive any payment for unused rest and recuperation leave.



“(d) A covered employee with an intermittent work schedule shall be excused from duty during the same period of time that other covered employees in the same circumstances are entitled to rest and recuperation leave and shall receive a payment as if the covered employee with an intermittent work schedule were entitled to rest and recuperation leave under subsections (b) and (c).”

(b) The amendments made by subsection (a) shall be effective on the first day of the first applicable pay period beginning on or after October 1, 2023.

(c) The table of sections for subchapter II of chapter 63 of title 5, United States Code, is amended by inserting after the item relating to section 6329d the following new item:

“6329e. Rest and recuperation leave for employees engaged in wildland firefighting.”

## **Section-by-Section Analysis**

### **Section 101. Special Base Pay Rates for Wildland Firefighters.**

Subsection (a) of section 101 would add a new section, 5332a, to subchapter III of chapter 53 of title 5, United States Code. Section 5332a would establish special base rates of pay for wildland firefighters in the General Schedule (GS) pay system at all grade levels. Those special base rates would supplant the lower GS base rates that are normally applicable at those grades, resulting in pay increases ranging from 1.5 to 42 percent, with the highest increase at GS-1 and with increases getting progressively smaller at higher grades. This meets the objective of increasing base salary for wildland firefighters, decreasing market value difference, to improve recruitment and retention.

Subsection (a) of section 5332a includes definitions of particular terms used in the section. This includes definitions of “firefighter”, “General Schedule base rate”, “special base rate”, and “wildland firefighter”. These definitions are necessary for clarification of covered personnel and specific terms.

Subsection (b) of section 5332a describes the special base rates that would apply to wildland firefighters and specifies those rates are basic pay for all purposes, including the purpose of computing locality payments. A special base rate is computed by increasing a General Schedule base rate by the applicable percentage for the applicable grade and is adjusted at the time of adjustments in the General Schedule. The annual special base rate would be converted to an hourly, daily, weekly, or biweekly rate in accordance with the rules prescribed by 5 U.S.C. 5504(b)—the provisions that address computation of pay. This language provides a complete special pay table to address all GS grade levels and steps providing increased clarity and inclusion.

Subsection (b) of section 101 specifies the effective date of the new section 5332a is the first day of the first applicable pay period beginning on or after October 1, 2023. Subsection (b) also provides that the new subsection (g) in 5 U.S.C. 5343 (see amendment made by subsection (d) below) is effective on the same date. This language provides for standard implementation across the proposed legislative package that is cohesive with current fiscal practice and budgetary systems.

Subsection (c) of section 101 makes a conforming amendment to add section 5332a to the table of contents of chapter 53 of title 5 of the United States Code.

Subsection (d) of section 101 adds a new subsection (g) in 5 U.S.C. 5343, which provides the Secretary of Agriculture and the Secretary of the Interior with authority to determine the amount of increases in wage rates for blue collar employees who are wildland firefighters (as defined in section 5332a(a)) that are generally consistent with the percentage increases given to General Schedule wildland firefighters through the section 5332a special base rates. Just as locality rates paid on top of the section 5332a special base rates are subject to an EX-IV cap, the increased wage rates under subsection (d) would be subject to an EX-IV cap.

## **Section 102. Wildland Fire Incident Standby Premium Pay.**

Subsection (a) of section 102 would add a new section, 5545c, to subchapter V of chapter 55 of title 5, United States Code. Section 5545c would establish a new form of premium pay, incident standby premium pay, for wildland firefighters and certain other employees of the USDA Forest Service or the Department of the Interior who are deployed to the field for extended periods to respond to certain incidents related to wildfire suppression and management. Incident standby premium pay would provide a 50 percent premium for designated sleep and rest hours as complete compensation for those hours. This would provide wildland fire personnel compensation for all hours engaged in longer-duration mobilization. The compensation is necessary for variable scheduling, duration, conditions, and often remoteness of response to wildland fire incidents, and enhances safety by keeping employees in duty status throughout assignments.

Subsection (a) of section 5545c includes definitions of particular terms used in the section. This includes definitions of “covered employee”, “designated sleep and rest period”, “incident standby premium pay”, “prescribed fire incident”, “qualifying incident”, “severity incident”; and “wildfire incident”. These definitions reduce ambiguity of terminology and provide clarity for the types of incidents in which this premium pay is applicable. The premium pay would be available to wildland firefighters as previously defined and other supporting employees who are certified to participate but are not regular wildland firefighters, thereby providing equity. Additionally, this provides the premium pay for wildfires and prescribed fires, providing better consistency of compensation for work performed across different types of wildland fire incidents.

Subsection (b) of section 5545c establishes the conditions under which a covered employee would be eligible for incident standby premium pay. The subsection makes clear that all of the conditions listed must be met by an employee in order for the employee to qualify for incident standby premium pay. This section maintains consistency with extended deployment conditions.

Subsection (c) of section 5545c specifies that a covered employee is entitled to incident standby premium pay for designated sleep and rest periods and that, notwithstanding any other law, the pay shall be the sole and complete compensation for those periods. It also provides specific guidance on computation of incident standby premium pay (at an hourly rate equal to 50 percent of the employee’s hourly rate of basic pay) and treatment of this premium pay in determining minimum wage and overtime pay entitlements under the Fair Labor Standards Act.

Subsection (d) of section 5545c would fix a covered employee’s designated sleep and rest periods at 9 hours for every 24-hour duty period associated with a qualifying incident. This includes any necessary travel time. It provides specific guidance for computation of hours of an incident deployment that are not exact multiples of 24-hour periods. This aids in standardizing compensation hours providing increased efficiency of implementation and simplifies computation. Management flexibility for fatigue mitigation is increased without financially penalizing the employee.

Subsection (e) of section 5545c provides that incident standby premium pay authorized by this section is not considered part of the basic pay of any employee and may not be considered in determining a lump-sum payment for accumulated and accrued annual leave under sections 5551 or 5552 or in determining pay under section 8114, relating to worker compensation. It may not be considered in determining pay for hours of paid leave or other paid time off during which the premium pay is not payable.

Subsection (b) of section 102 would make other amendments to 5 U.S.C. chapter 55, subchapter V.

Subsection (b)(1) amends 5 U.S.C. 5544 to authorize the payment of an incident standby premium to blue collar employees engaged in wildland firefighting (including certified supporting “militia” employees) on the same terms and conditions that apply under section 5545c. For example, the section 5544 incident standby premium pay would be the sole and complete compensation for designated sleep and rest periods. Like other premium pay for blue collar employees, section 5544 incident standby premium pay would not be considered in applying the section 5547 premium pay caps.

Subsections (b)(2) and (b)(3) add provisions in 5 U.S.C. 5545 and 5545a, respectively, to address the rare scenario in which a “militia” employee is normally receiving administratively uncontrollable overtime (AUO) under 5 U.S.C. 5545(c)(2) or law enforcement availability pay (LEAP) under 5 U.S.C. 5545a. The new provisions would make clear that, notwithstanding the normal rules of the AUO and LEAP laws, hours of duty during temporary periods when an employee is deployed to perform wildland fire incident duties are not considered to be covered by the AUO and LEAP laws. Among other things, this means that payments of AUO and LEAP would be suspended during the temporary deployment period—i.e., any basic hours during that period would not be multiplied by the applicable AUO or LEAP percentage. Also, no hours during the temporary deployment would be counted as AUO or LEAP hours used in computing average hours.

Subsection (b)(4) adds the new section 5545c to the list of authorities included in applying the limitation on premium pay in subsection (a) of 5 U.S.C. 5547. The new incident standby premium pay proposed under this new section 5545c must be listed in section 5547(a) in order to be counted in applying the pay caps in section 5547.

Subsection (c) of section 102 specifies that the effective date of the amendments made by section 102 is the first day of the first applicable pay period beginning on or after October 1, 2023. This provides for standard implementation across the proposed legislative package that is cohesive with current fiscal practice and budgetary systems.

Subsection (d) of section 102 makes conforming amendments to the table of contents for chapter 55 of title 5 of the United States Code—amending the title of section 5544 and adding an item for section 5545c.



### **Section 103. Special Limitations on Pay for Wildland Firefighters.**

Subsection (a) of section 103 would add a new section, 5547a, to subchapter V of chapter 55 of title 5, United States Code. Section 5547a would waive application of regular premium pay caps for certain employees performing wildfire suppression activities. Overtime pay and other premium pay earned for those wildfire suppression activities would be disregarded in applying the regular premium pay caps in 5 U.S.C. 5547, but that exempted premium pay, along with hazard pay, would be subject to a special annual premium pay cap linked to level II of the Executive Schedule. The intent is to provide the applicable Secretary authority to waive regular premium pay caps in order to maintain and fairly compensate employees for continued incident response. This provides fiscal control while accounting for the new special base salary table and a new type of premium pay.

Subsection (a) of section 5547a includes definitions of particular terms used in the section. This includes definitions of “covered employee”, “covered services”, “emergency wildland fire suppression activities”, and “premium pay”. These definitions are necessary to clarify which employees and services are covered by the special premium pay caps established under the section.

Subsection (b) of section 5547a provides that premium pay earned by a covered employee for covered services is to be disregarded in calculating the aggregate of basic pay and premium pay for purposes of applying the limitations in section 5547. This waiver does not affect the payment of AUO or LEAP to certain “militia” employees, since sections 5545 and 5545a are being amended so that the AUO and LEAP laws do not apply during incident deployments; AUO and LEAP for hours outside of incident deployment periods would continue to be subject to the biweekly premium pay cap in 5 U.S.C. 5547.

Subsection (c) of section 5547a provides that premium pay that is disregarded under subsection (b) shall also be disregarded in calculating the employee’s aggregate pay for purposes of applying the limitation on certain payments in section 5307. This is required language to waive the annual earning limitation.

Subsection (d) of section 5547a provides that the pay that is disregarded under subsection (b) of the new section may not be paid if it causes the aggregate of the employee’s basic pay, premium pay, and hazard pay that is payable in 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, as in effect at the end of the calendar year (\$212,100 in 2023). Subsection (d) also addresses the prioritization of certain premium payments in applying the EX-II limit. This effectively establishes a new annual earning limitation, for pay associated with wildfire response, to compensate employees fairly for continued participation in extreme years. This assists in maintaining vital positions for complex incidents.

Subsection (e) of section 5547a provides that the limitations in subsections (d) and (h) of the new section may be waived at the sole and exclusive discretion of the Secretary of the Interior or the Secretary of Agriculture, as applicable. Before authorizing such a waiver, the Secretaries are to each prescribe criteria, after consultation with each other, to be applied in making a determination to grant such a waiver. During exceptional years, such as those with high

international support and extreme national response, employees may continue to be compensated for incident support. Secretary consultation ensures equity in application across agencies. This allows greater efficiency through Secretary discretion rather than annual congressional request.

Subsection (f) of section 5547a provides that any additional pay earned by a covered employee because of the higher pay caps established under section 5547a is not to be used in computing a lump-sum payment to the employee for accumulated and accrued annual leave under sections 5551 (relating to separation from federal service) or 5552 (relating to entering active duty in the armed forces). This follows current practice established by temporary premium pay cap legislation.

Subsection (g) of section 5547a requires the Departments of the Interior and Agriculture to maintain records documenting the use of this new authority. This provides fiscal accountability and a control mechanism even though the number of affected employees is expected to be small and the cost increase relatively low based on previous analysis.

Subsection (h) of section 5547a establishes a parallel EX-II limit for blue collar employees engaged in wildland firefighting, since subsections (a) through (g) are focused on General Schedule employees to whom section 5547 premium pay caps apply. Under subsection (h), premium pay may not be paid to the extent it would cause the aggregate of a covered blue collar employee's basic pay and premium pay in the applicable calendar year to exceed the EX-II rate in effect at the end of such calendar year. (As provided in subsection (e), the EX-II limit may be waived.) Definitions of the terms "basic pay" and "premium pay" used in subsection (h) are provided. Subsection (h) also amends 5 U.S.C. 5541(2)(xi) so that section 5547a(h) applies to blue collar employees.

Subsection (b) of section 103 provides that, for the purpose of applying the limitations under section 5547 and section 1701 of division B of Public Law 117-43 (5 U.S.C. 5547 note), as amended, in calendar year 2023, incident standby premium pay shall be included in premium pay that is subject to the limits established in those sections.

Subsection (c) of section 103 specifies that the effective date of the amendment made in subsection (a) of new section 5547a is the first day of the first pay period that has a payment date in calendar year 2024. It further provides that the effective date of the amendment made in subsection (b) of new section 5547a is the first day of the first applicable pay period beginning on or after October 1, 2023. This provides for standard implementation across the proposed legislative package that is cohesive with current fiscal practice and budgetary systems.

Subsection (d) of section 103 makes a conforming amendment to add section 5547a to the table of contents of chapter 55 of title 5 of the United States Code.

#### **Section 104. Rest and Recuperation Leave for Employees Engaged in Wildland Firefighting.**

Subsection (a) of section 104 would add a new section, 6329e, to subchapter II of chapter 63 of title 5, United States Code. Section 6329e would establish a new paid leave benefit to support the physical and mental health and well-being of Federal employees engaged in wildland

firefighting. Specifically, section 6329e would provide paid rest and recuperation leave for certain employees who are deployed for extended periods to respond to a qualifying incident related to wildland firefighting. This section would be administered by the Secretary of Agriculture and the Secretary of the Interior.

Subsection (a) of section 6329e provides definitions. The term “covered employee” identifies who is potentially eligible for rest and recuperation leave. A covered employee is an employee (as defined in section 6301(2)) of the Forest Service or the Department of the Interior who is (1) a wildland firefighter in a position where the primary duties meet the conditions for firefighter retirement benefits (see new section 5332a(a)(1)) or (2) any other employee (often referred to as a “militia” employee) who is certified and assigned by the employing agency to perform wildland fire incident related duties during a qualifying incident. The term “qualifying incident” is defined by reference to a new section 5545c(a)(5); it refers to a wildfire incident, a prescribed fire incident, or a severity incident, but excludes an initial response incident.

Subsection (b) of section 6329e provides authority for a covered employee to receive rest and recuperation leave after completion of service under a qualifying incident under policies prescribed at the sole and exclusive discretion of the Secretary of the Agriculture or the Secretary of the Interior, as applicable. Among other things, those policies may establish requirements for minimum periods of qualifying service and the amount of leave to be granted for various scenarios.

Subsection (c) of section 6329e specifies that rest and recuperation leave must be used during scheduled hours within the covered employee’s tour of duty established for leave-charging purposes and must be paid in the same manner as annual leave. Among other things, the “same manner” requirement would mean that the rest and recuperation leave (1) cannot be used on a holiday or other non-workday; (2) is used and paid using the same fractional hourly increments as annual leave (1/10 or 1/4 of an hour, as applicable); and (3) is paid at the same hourly rate at which annual leave is paid. Subsection (c) also provides that rest and recuperation leave must be used immediately after a qualifying incident and may not be set aside for later use. Finally, subsection (c) provides that no payment may be made to an employee for unused rest and recuperation leave.

Subsection (d) of section 6329e excuses a covered employee with an intermittent work schedule from duty for the same period of time that other covered employees in the same circumstances are placed on rest and recuperation leave. Since intermittent employees are not eligible for leave, subsection (d) also provides authority to provide a special payment to them that is equivalent to the rest and recuperation leave payment provided to employees who are eligible for leave and in the same circumstances.

Subsection (b) of section 104 provides that section 6329e shall be effective on the first day of the first applicable pay period beginning on or after October 1, 2023.

Subsection (c) of section 104 makes a conforming amendment to add section 6329e to the table of contents for chapter 63 of title 5.