Fair Labor Standards Act (FLSA) Designation Worksheet (5 CFR Part 551)

(Complete Worksheet in conjunction with *Instructions for Completing the FLSA Designation Worksheet*)

Position Title/Pay Plan/Series/Grade: Wildland Fire (Aviation), GS-0456-09
Position Number/Organization/Organization Code: DX05100

I. Foreign Exemption (§551.212) and/or Exemption of employees receiving availability pay (§551.213)

If any of the boxes in this section are marked, the employee/position is Exempt and the remaining sections need not be applied. See §551.104 for definition of Exempt Area. Refer to §551.212 when administering employees/positions meeting the criteria for foreign exemption.

- ☐ The employee is permanently stationed in an exempt area and spends all hours of work in a given workweek in one or more exempt areas (foreign exemption)
- ☐ The employee is not permanently stationed in an exempt area, but spends all hours of work in a given workweek in one or more exempt areas (foreign exemption)
- ☐ Criminal investigator receiving availability pay under §550.181(a), as provided in 29 U.S.C. 213(a)(16)
- ☐ Pilot employed by U.S. Customs and Border Protection or its successor who is a law enforcement officer as explained in §551.213(b)

II. Salary based Nonexemption (§551.203) and/or Nonexemption of certain employees (§551.204)

If any of the boxes in this section are marked, the employee/position is Nonexempt **if**: 1) none of the boxes in Section I are checked; and 2) §551.208(c) Practice of law, §551.208(d) Practice of medicine, or §551.208(h) Teachers, do not apply to the employee/position.

- ☐ Annual rate of basic pay is less than $23,660
- ☐ Equipment operating or protective occupations (nonsupervisory)
- ☐ Clerical occupations (nonsupervisory)
- ☐ Technician work below GS-09 and many, but not all, of those positions that are at or above GS-09 (nonsupervisory)
- ☐ Nonsupervisory employees in the Federal Wage System (or comparable systems)
- ☐ Employee/position requires highly specialized, technical skills and knowledge that can only be acquired through prolonged job training and experience, such as Air Traffic Control or Aircraft Operation (applies to nonsupervisory white-collar employees).

III. Exemption Criteria. The employee/position is Exempt from FLSA if the primary duties meet the "terms and spirit" of one or more of the exemption criteria below (see General Principles §551.202).

- ☐ **Primary Duty:** the duty that constitutes the major part (over 50 percent) of an employee's work. A duty constituting less than 50 percent of an employee's work may be credited as the primary duty if the work: 1) constitutes a substantial, regular part of the work assigned and performed; 2) is the reason for the existence of the position; and 3) is clearly exempt work in terms of the basic nature of the work, the frequency with which the employee must exercise discretion and independent judgment, and the significance of the decisions made. (§551.104 *Primary Duty*)

A. Executive Exemption (§551.205) – all three boxes must be checked to apply this exemption criteria

- ☐ Primary duty is management (defined by §551.104 Management) of a Federal agency or any subdivision thereof;
- ☐ Customarily and regularly directs the work of two or more other employees – must have "operating authority" over employees. This does not include those who merely assist the manager or supervise in the manager's absence; AND
- ☐ Has authority to hire or fire other employees OR whose suggestions and recommendations of such are given <u>particular weight</u>.
  - <u>Particular Weight</u>: When the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees are: 1) part of the employee's job duties; 2) regular and recurring in frequency; and 3) regularly relied upon for decision making, even if higher level manager's recommendations have more importance and if the employee does not have authority to make the ultimate decision as to the "supervised" employee's change in status.

B. Administrative Exemption (§551.206) – both boxes must be checked to apply this exemption criteria

- ☐ Primary duty is the performance of office or non-manual work directly related to the <u>management or general business operations</u>, as distinguished from production functions, of the employer or the employer's customers;
  - <u>Management or general business operations</u>: to meet this requirement, the employee must perform work directly related to assisting with the running or servicing of the "business." Examples include: finance, accounting, budgeting, auditing, purchasing, procurement, safety and health, human resource management, computer network and database administration, legal and regulatory compliance. Depending upon the purpose of the work and the organizational context (line or staff), work in certain occupations may be either exempt or nonexempt (§551.206(h)).
- ☐ Primary duty includes the exercise of <u>discretion and independent judgment</u> on matters of significance.
  - <u>Discretion and independent judgment</u>: implies that the employee has authority to make an independent choice, even if the decisions or recommendations are reviewed at a higher level and, upon occasion, revised or reversed. Examples include, but are not limited to: 1) authority to formulate, affect, interpret, or implement mgmt. policies or operating practices; 2) carries out

major assignments; 3) performs work that affects the organization's operations to a substantial degree; 4) authority to commit the employer in matters that have significant financial impact; 5) authority to waive or deviate from established policies and procedures without prior approval; 6) authority to negotiate and bind the organization on significant matters; 7) provides consultation or expert advice to mgmt.; 8) involved in planning long or short-term objectives; 9) investigates and resolves matters of significance on behalf of mgmt.; and 10) represents the organization in handling complaints, arbitrating disputes, or resolving grievances. (§551.206(b) and (c))

C. Professional Exemption (§551.207) – to apply this exemption criteria, must check the "Primary Duty" box AND all the boxes of at least one of the two Professionals or Computer Employees listed below

☐ Primary duty must be the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

1. Learned Professionals (§551.208) – all boxes must be checked to apply this exemption criteria

☐ Primary duty must be the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; AND

☐ Perform work requiring advanced knowledge (cannot be attained at high school level) which is predominantly intellectual in character and includes work requiring the consistent exercise of discretion and judgment; AND

☐ The advanced knowledge must be in a field of science or learning which includes the traditional professions of physical, chemical, and biological sciences, accounting, actuarial computation, engineering, architecture, law, medicine, theology, teaching, and other occupations as distinguished from mechanical arts or skilled trades; AND

☐ The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction which restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. On unusual occasions, engineering technicians performing work comparable to that performed by professional engineers on the basis of advanced knowledge may also be exempt (§551.208(3)(f)); however, they are also an example of an occupation that would not meet this particular criteria (§551.208(3)).

2. Creative Professionals (§551.209) – must check the box in order to apply this exemption criteria

☐ Primary duty must be the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual, mechanical, or physical work. Examples include actors, musicians, composers, conductors, soloists. Painters who, at most, are given the subject matter of their painting and writers who choose their own subject may also be included. Employees engaged in the work of newspapers, magazines, television, or other media are not exempt creative professionals if they only collect, organize, and record information that is routine or already public.

3. Computer Employees (§551.210) – all boxes must be checked to apply this exemption criteria

☐ Employee's annual salary is not less than $23,660 (proposed to be $47,476), **or** hourly pay rate is not less than $27.63; and

☐ The employee must work as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field, performing duties described under primary duties below; and

☐ Primary duty must consist of: 1) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications; 2) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; 3) the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; **OR** 4) a combination of the aforementioned duties, the performance of which requires the same level of skills.

☐ The computer employee exemption does not include employees engaged in the manufacture or repair of computer hardware and related equipment and does not include employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs, and who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations. Check this box if position does NOT include these duties.

Final Designation of FLSA Exemption Status: Non Exempt ◉ or Exempt ○

If Exempt, provide justification, including citing the applicable exemption criteria:

This position does not meet exemption criteria found in 5 CFR 551 and is determined to be non-exempt from the overtime provisions of the Fair Labor Standards Act (FLSA).

Name and Title of Evaluator: Kara Platt, Senior Classification Program Analyst

Signature: _____ Digitally signed by KARA PLATT Date: 2024.07.19 08:38:50 -04'00'

Date of Determination: 7/19/24

Note: FLSA determinations can temporarily change due to temporary activities as described in §551.211 (performing different work or duties for a temporary period of time); §551.215 (fire protection activities); or §551.216 (law enforcement activities).