

**DECISION**

18186 Agazaria  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-197645

DATE: May 21, 1981

MATTER OF: Compensation for Overtime

**DIGEST:** Department of the Interior, Bureau of Land Management, is advised that although annual premium pay under 5 U.S.C. § 5545(c)(2) for administratively uncontrollable overtime and overtime compensation under 5 U.S.C. § 5542(a) for regularly scheduled overtime are mutually exclusive, an employee may receive both forms of compensation if the criteria for each are met, provided that the employee may not receive both forms of compensation for the same work.

[Entitlement to] This is in response to a request by Mr. Frank Gregg, Director of the Bureau of Land Management, Department of the Interior, as to whether an employee of the Bureau may receive both premium pay under ~~5 U.S.C. § 5542(a)~~ for regularly scheduled overtime and ~~under Section 5545(c)~~ for administratively uncontrollable overtime.

We are advised that the employee concerned is in charge of the investigation of an oil and gas leasing program. As part of the investigation this employee reviews each lease proposed for issuance. We are advised that while the number of leases subject to review is not controllable, the time for making the review is controllable. The Director advises that in his judgment the lease review will have to be conducted outside of normal duty hours as the employee involved will have to devote his normal duty hours entirely to the investigation. Accordingly, if otherwise proper, a tour of duty will be established for the employee for the hours 7:45 a.m. to 7:15 p.m. from Monday through Friday. In addition to his regularly scheduled hours of work the employee will perform some uncontrollable investigative work on weekends. We have also been informally advised that the employee is currently authorized payment of premium pay on an annual basis under 5 U.S.C. § 5545(c)(2) for administratively uncontrollable overtime. Thus, we are asked whether the employee may receive premium pay for the uncontrollable overtime together with overtime compensation for regularly scheduled overtime hours of work.

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Section 5545(c)(2) of title 5, United States Code, provides for payment for administratively uncontrollable overtime as follows:

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

\* \* \* \* \*

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

The applicable regulation contained in 5 C.F.R. 550.153 (1980) states that it must be inherent in the nature of the position that the hours of duty cannot be controlled administratively.

In contrast to administratively uncontrollable overtime, "regularly scheduled" overtime is compensable under 5 U.S.C. § 5542(a) at one and one-half times the hourly rate with certain limitations based on the minimum rate for grade GS-10. Section 5542(a) describes such overtime as follows:

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"(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 \* \* \* in excess of 8 hours in a day, performed by an employee are overtime work\* \* \*."

We have held that the term "regularly scheduled" refers to work which is duly authorized in advance and scheduled to recur on successive days or after specific intervals. 48 Comp. Gen. 334 (1968), 52 Comp. Gen. 319 (1972). This is to be distinguished from work which is scheduled on a day-to-day or hour-to-hour basis, where the amount of overtime varies with no discernible pattern. See Sky Marshal Program, B-151168, May 25, 1976, and Customs Special Agents, B-191512, October 27, 1978.

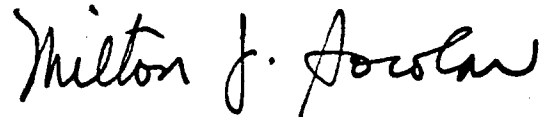
The lack of management control and the employee's discretion to work overtime are requirements for administratively uncontrollable overtime but hourly overtime under 5 U.S.C. § 5542(a) must be planned and scheduled by management. Thus, the two types of compensation are mutually exclusive. B-197645, July 7, 1980. That is, an employee may not select which form of compensation he wishes to receive for the same type of work nor receive both forms of compensation for the same work. See 52 Comp. Gen. 319, and Sky Marshal Program, *supra*. See also Burich v. United States, 177 Ct. Cl. 139, at 145 (1966). However, an employee may receive both forms of compensation provided that the criteria governing both forms have been separately met. 52 Comp. Gen. 319, and 48 Comp. Gen. 334.

Accordingly, in the described circumstances it appears appropriate for the Bureau of Land Management to authorize the employee annual premium pay under 5 U.S.C. § 5545(c)(2) for administratively uncontrollable overtime and overtime compensation under 5 U.S.C. § 5542(a) for regularly scheduled overtime.

We note that with regard to any regularly scheduled work between the hours of 6 p.m. and 6 a.m. the employee

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would also be entitled to the payment of night premium pay under 5 U.S.C. § 5545(a). See 5 C.F.R. 550.121 and 550.122.

A handwritten signature in black ink, reading "Milton J. Fowler". The signature is written in a cursive style with a large initial "M".

Acting Comptroller General  
of the United States