



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Nuclear Regulatory Commission--Rescheduling
Commissioners' Pay Days

File: B-237963

Date: June 28, 1990

DIGEST

The Nuclear Regulatory Commission may administratively reschedule its Commissioners' pay days that occur on holidays and weekends to the preceding working day. However, the prohibition against advance payments, 31 U.S.C. § 3324 (1982), prohibits the advance payment of salary to federal employees. Therefore, the amount paid on such a rescheduled pay day may not include an advance payment of salary.

DECISION

An official of the Nuclear Regulatory Commission (NRC) asks whether the NRC may reschedule its Commissioners' pay days that occur on holidays or weekends to the preceding work day. We do not object to such an arrangement as long as it does not result in an advance payment of salary.

BACKGROUND

Under its current pay schedule, the NRC pays its Commissioners on the fifteenth and the last day of each month. Strict adherence to that schedule causes some pay days to occur on holidays and weekends. When a pay day occurs on such a nonworking day, the Commissioners cannot cash their checks or receive credit for Thrift Savings Plan contributions until the following workday (which could cause a significant loss of earnings on those contributions). Therefore, officials at the NRC propose to reschedule such pay days to the day before the holiday or weekend.

DISCUSSION

Under the Executive Schedule, Congress fixed the rate of pay for members of the NRC on an annual basis. 5 U.S.C. §§ 5313, 5314 (1989). As such, the Commissioners are excluded from coverage under the pay provisions in 5 U.S.C. § 5504. See B-195402, Nov. 7, 1979. Therefore, 5 U.S.C. § 5505 governs the computation of their salaries. See B-120604, Aug. 30, 1976. Section 5505 reads as follows:

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"The pay period for an individual in the service of the United States whose pay is monthly or annual covers one calendar month, and the following rules for division of time and computation of pay for services performed govern:

"(1) A month's pay is one-twelfth of a year's pay.

"(2) A day's pay is one-thirtieth of a month's pay.

"(3) The 31st day of a calendar month is ignored in computing pay, except that one day's pay is forfeited for one day's unauthorized absence on the 31st day of a calendar month.

"(4) For each day of the month elapsing before entering the service, one day's pay is deducted from the first month's pay of the individual.

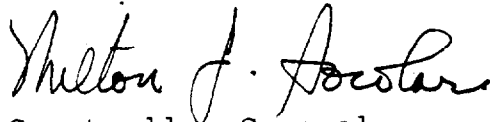
"This section does not apply to an employee whose pay is computed under section 5504(b) of this title."

Previously, we have held that, while an agency should ordinarily pay an individual under section 5505 on a monthly basis, it may administratively choose to pay him on a semi-monthly basis as long as it calculates the actual rate of pay on the monthly basis. 47 Comp. Gen. 485 (1968). Further, we have found no law or regulation prohibiting the NRC from administratively establishing the Commissioners' pay days as proposed. However, the actual rate of pay must be calculated on a monthly basis as required by section 5505.

We note that unless authorized by a specific appropriation or other law, an agency may not pay an individual for services before the individual performs them. 31 U.S.C. § 3324 (1982). Previously, we have held this prohibition to apply to the payment of salary to federal employees. 58 Comp. Gen. 646 (1979). In 58 Comp. Gen. 646, we did not object to a Treasury proposal to authorize agencies to make partial salary payments to new employees prior to the end of a pay period as long as the payments were limited to payment for work actually performed and did not represent advance payments.

Similarly, in this case, we do not object to NRC's proposal. However, since Congress has not authorized NRC in its annual appropriation or any other law to make advance payments of

salary to NRC Commissioners, NRC may only pay the Commissioners for work actually performed. Therefore, NRC may not include in payments made prior to the end of a pay period salary applicable to days remaining in the pay period.

for 
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