

HISTORICAL AND REVISION NOTES—CONTINUED
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(b)	5 U.S.C. 933 (as applicable to 5 U.S.C. 673c).	June 30, 1945, ch. 212, § 503 (as applicable to § 23 of the Act of Mar. 28, 1934, ch. 102, 48 Stat. 522, as amended), 59 Stat. 301.

In subsection (a), former sections 673c (2d proviso) and 913 are combined and restated for clarity and conciseness. The last 28 words of section 205(a) of the Act of Sept. 1, 1954, 68 Stat. 1109, are omitted as executed and covered by technical section 8.

Subsection (b) is restated to conform to subsection (a). In former section 933, the words “Classification Act of 1949” were substituted for “Classification Act of 1923” on authority of section 1106(a) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 972.

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

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
5544(a)	5 App.: 673c (last proviso of 1st par.).	July 18, 1966, Pub. L. 89-504, § 405(f), 80 Stat. 298.

The words “a part of which is on Sunday” are coextensive with and substituted for “any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday.” The words “is entitled to additional pay” are coextensive with and substituted for “shall be paid extra compensation.”

REFERENCES IN TEXT

Section 7 of the Fair Labor Standards Act of 1938, referred to in subsec. (a), is classified to section 207 of Title 29, Labor.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-181, in third sentence of concluding provisions, substituted “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)” for “administratively.”

1998—Subsec. (a). Pub. L. 105-277, which directed the amendment of subsec. (a) by inserting after the fourth sentence “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.”, was executed by making the insertion after the first sentence of the concluding provisions, to reflect the probable intent of Congress.

1996—Subsec. (c). Pub. L. 104-201 inserted “and the provisions of section 5543(b)” after “the last two sentences of subsection (a)”.

1992—Subsec. (a). Pub. L. 102-378, §2(42)(B), amended last two sentences generally. Prior to amendment, last two sentences read as follows: “This section, other than the sixth sentence, 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 this section, hours of work in excess of 8 hours in a day shall be deemed to be overtime hours for the purposes of such section 7 and hours in a paid nonwork status shall be deemed to be hours of work.”

Subsec. (a)(2), (3). Pub. L. 102-378, §2(42)(A), substituted “2,087” for “2,080”.

Subsec. (c). Pub. L. 102-378, §2(42)(C), added subsec. (c).

1990—Subsec. (a). Pub. L. 101-509 inserted at end “This section, other than the sixth sentence, 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 this section, hours of work in excess of 8 hours in a day shall be deemed to be overtime hours for the purposes of such section 7 and hours in a paid nonwork status shall be deemed to be hours of work.”

1972—Subsec. (a). Pub. L. 92-392 substituted “pay” for “basic pay” and provided for determination of pay under section 5343 or 5349 of this title.

1967—Subsec. (a). Pub. L. 90-206 provided that time spent in a travel status away from the official duty station could not qualify as hours of work unless the travel involved the performance of work while traveling, was incident to travel involving the performance of work while traveling, carried out under arduous conditions, or resulting from an event which could not be scheduled or controlled administratively.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-378 effective as of first day of first applicable pay period beginning on or after Oct. 2, 1992, see section 9(b)(9) of Pub. L. 102-378, set out as a note under section 6303 of this title.

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.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92-392, set out as an Effective Date note under section 5341 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-206 effective thirty days after Dec. 16, 1967, see section 220(a)(4) of Pub. L. 90-206, set out as a note under section 5542 of this title.

CANAL ZONE EMPLOYEES

Pub. L. 85-550, §17(3), July 25, 1958, 72 Stat. 411, provided that nothing in Pub. L. 85-550, which related to wage and employment practices of the Government of the United States in the Canal Zone, should affect the applicability of former sections 673c and 913 of this title [covered by this section] to those classes of employees, within the scope of former sections 673c and 913 of this title [covered by this section] on July 25, 1958.

§ 5545. Night, standby, irregular, and hazardous duty differential

(a) Except as provided by subsection (b) of this section, nightwork is regularly scheduled work between the hours of 6:00 p.m. and 6:00 a.m., and includes—

(1) periods of absence with pay during these hours due to holidays; and

(2) periods of leave with pay during these hours if the periods of leave with pay during a pay period total less than 8 hours.

Except as otherwise provided by subsection (c) of this section, an employee is entitled to pay for nightwork at his rate of basic pay plus premium pay amounting to 10 percent of that basic rate. This subsection and subsection (b) of this section do not modify section 5141 of title 31, or

other statute authorizing additional pay for nightwork.

(b) The head of an agency may designate a time after 6:00 p.m. and a time before 6:00 a.m. as the beginning and end, respectively, of nightwork for the purpose of subsection (a) of this section, at a post outside the United States where the customary hours of business extend into the hours of nightwork provided by subsection (a) of this section.

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

(1) an employee in a position requiring him regularly to remain at, or within the confines of, his station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for irregular, unscheduled overtime duty in excess of his regularly scheduled weekly tour. Premium pay under this paragraph is determined as an appropriate percentage, not in excess of 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 (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) (or, for a position described in section 5542(a)(3) of this title, of the basic pay of the position), by taking into consideration the number of hours of actual work required in the position, the number of hours required in a standby status at or within the confines of the station, the extent to which the duties of the position are made more onerous by night, Sunday, or holiday work, or by being extended over periods of more than 40 hours a week, and other relevant factors; or

(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 the employee 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 an appropriate percentage, not less than 10 percent nor more than 25 percent, of the rate of basic pay for the position, as determined by taking into consideration the frequency and duration of irregular, unscheduled overtime duty required in the position.

(d) The Office shall establish a schedule or schedules of pay differentials for duty involving unusual physical hardship or hazard, and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970. Under such

regulations as the Office may prescribe, and for such minimum periods as it determines appropriate, an employee to whom chapter 51 and subchapter III of chapter 53 of this title applies is entitled to be paid the appropriate differential for any period in which he is subjected to physical hardship or hazard not usually involved in carrying out the duties of his position. However, the pay differential—

(1) does not apply to an employee in a position the classification of which takes into account the degree of physical hardship or hazard involved in the performance of the duties thereof, except in such circumstances as the Office may by regulation prescribe; and

(2) may not exceed an amount equal to 25 percent of the rate of basic pay applicable to the employee.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 487; Pub. L. 90-83, §1(27), Sept. 11, 1967, 81 Stat. 200; Pub. L. 90-206, title II, §217, Dec. 16, 1967, 81 Stat. 638; Pub. L. 90-556, §2, Oct. 10, 1968, 82 Stat. 969; Pub. L. 91-231, §8, Apr. 15, 1970, 84 Stat. 198; Pub. L. 94-183, §2(23), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-54, §2(a)(32), Aug. 14, 1979, 93 Stat. 383; Pub. L. 97-258, §3(a)(13), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 101-173, §1(a), Nov. 27, 1989, 103 Stat. 1292; Pub. L. 101-509, title V, §529 [title I, §101(b)(3)(E), title II, §203], Nov. 5, 1990, 104 Stat. 1427, 1439, 1456; Pub. L. 102-378, §3(2), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 108-136, div. A, title XI, §1122(b), Nov. 24, 2003, 117 Stat. 1637.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a), (b)	5 U.S.C. 921.	June 30, 1945, ch. 212, §301, 59 Stat. 298. May 24, 1946, ch. 270, §10, 60 Stat. 218. Sept. 1, 1954, ch. 1208, §206, 68 Stat. 1110.
(c)	5 U.S.C. 926.	Sept. 1, 1954, ch. 1208, §208(a), 68 Stat. 1111. July 18, 1958, Pub. L. 85-525, 72 Stat. 363.

In subsection (b), the words “head of an agency” are substituted for “head of any department, independent establishment, or agency, including Government-owned or controlled corporations” because of the definition of “agency” and the application stated in section 5541. The words “the United States” are substituted for “the several States and the District of Columbia”.

In subsection (c), 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” because of the definition of “agency” and the application stated in section 5541. 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.

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)
5545(c)	5 App.: 926.	July 18, 1966, Pub. L. 89-504 §§ 404(c), 405(d), (e), 80 Stat. 297, 298.
5545(d)	5 App.: 1134.	July 19, 1966, Pub. L. 89-512, § 1, 80 Stat. 318.

In the second sentence of subsection (d), the words “Under such regulations as the Commission may prescribe, and for such minimum periods as it determines appropriate” are substituted for clauses (3) and (4) of the third sentence of 5 App. U.S.C. 1134. That requirement in clause (4) that the Commission prescribe regulations is codified in 5 U.S.C. 5548(b) by section 1 (32) of this bill. The words “an employee to whom chapter 51 and subchapter III of chapter 53 of this title applies is entitled to be paid the appropriate differential” are substituted for “The appropriate differential shall be paid to any officer or employee to whom this Act applies” to reflect the codification of that act (Classification Act of 1949) in title 5, United States Code, and to conform with the definitions applicable.

In subsection (d)(1), the words “does not apply to an employee” are substituted for “shall not be applicable with respect to any officer or employee.”

In subsection (d)(2), the words “may not . . . applicable to the employee” are substituted for “shall not . . . applicable with respect to such officer or employee”.

REFERENCES IN TEXT

GS-10, referred to in subsec. (c)(1), is contained in the General Schedule which is set out under section 5332 of this title.

The Occupational Safety and Health Act of 1970, referred to in subsec. (d), is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

AMENDMENTS

2003—Subsec. (d). Pub. L. 108-136 inserted before period at end of first sentence “, and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970”.

1992—Subsec. (d). Pub. L. 102-378 made technical correction to directory language of Pub. L. 101-509, § 529 [title II, § 203]. See 1990 Amendment note below.

1990—Subsec. (c)(1). 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”.

Subsec. (d). Pub. L. 101-509, § 529 [title II, § 203], as amended by Pub. L. 102-378, struck out “irregular or intermittent” before “duty involving unusual” in first sentence and inserted “, except in such circumstances as the Office may by regulation prescribe” after “thereof” in par. (1).

1989—Subsec. (c)(2). Pub. L. 101-173 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “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.”

1982—Subsec. (a). Pub. L. 97-258 substituted “section 5141” for “section 180”.

1979—Subsec. (c)(2). Pub. L. 96-54 substituted “percent” for “per centum” wherever appearing.

1978—Subsecs. (c), (d). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission” wherever appearing.

1975—Pub. L. 94-183 struck out “Sunday,” after “Night,” in section catchline.

1970—Subsec. (c)(2). Pub. L. 91-231 corrected the system of premium compensation of employees whose work schedules cannot be administratively controlled by providing for separate treatment for irregular, unscheduled, and overtime duty on one hand and for duty at night, on Sundays, and on holidays on the other.

1968—Subsec. (c)(1). Pub. L. 90-556 inserted “(or, for a position described in section 5542(a)(3) of this title, of the basic pay of the position)” after “GS-10”.

1967—Subsec. (e)(2). Pub. L. 90-206 substituted “not less than 10 percent nor more than 25 percent” for “not in excess of 15 percent”.

EFFECTIVE DATE OF 2003 AMENDMENT

Subject to any vested constitutional property rights, any administrative or judicial determination after Nov. 24, 2003, concerning backpay for a differential established under subsec. (d) of this section to be based on occupational safety and health standards described in the amendments made by subsections (a) and (b) of section 1122 of Pub. L. 108-136, amending this section and section 5343 of this title, see section 1122(c) of Pub. L. 108-136, set out as a note under section 5343 of this title.

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.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-173, § 1(b), Nov. 27, 1989, 103 Stat. 1292, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to overtime duty performed on or after the first day of the first applicable pay period beginning after September 30, 1990.”

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-231 effective Apr. 15, 1970, see section 9(b) of Pub. L. 91-231, formerly set out in a 1970 Increase in Pay Rates note under section 5332 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-556 effective on first day of first pay period beginning on or after thirtieth day after Oct. 10, 1968, see section 3 of Pub. L. 90-556, set out as a note under section 5542 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-206 effective at beginning of first pay period which begins on or after Dec. 16, 1967,

see section 220(a)(3) of Pub. L. 90-206, set out as a note under section 603 of Title 28, Judiciary and Judicial Procedure.

§ 5545a. Availability pay for criminal investigators

(a) For purposes of this section—

(1) the term “available” refers to the availability of a criminal investigator and means that an investigator shall be considered generally and reasonably accessible by the agency employing such investigator to perform unscheduled duty based on the needs of an agency;

(2) the term “criminal investigator” means a law enforcement officer as defined under section 5541(3) (other than an officer occupying a position under title II of Public Law 99-399, subject to subsection (k)) who is required to—

(A) possess a knowledge of investigative techniques, laws of evidence, rules of criminal procedure, and precedent court decisions concerning admissibility of evidence, constitutional rights, search and seizure, and related issues;

(B) recognize, develop, and present evidence that reconstructs events, sequences and time elements for presentation in various legal hearings and court proceedings;

(C) demonstrate skills in applying surveillance techniques, undercover work, and advising and assisting the United States Attorney in and out of court;

(D) demonstrate the ability to apply the full range of knowledge, skills, and abilities necessary for cases which are complex and unfold over a long period of time (as distinguished from certain other occupations that require the use of some investigative techniques in short-term situations that may end in arrest or detention);

(E) possess knowledge of criminal laws and Federal rules of procedure which apply to cases involving crimes against the United States, including—

- (i) knowledge of the elements of a crime;
- (ii) evidence required to prove the crime;
- (iii) decisions involving arrest authority;
- (iv) methods of criminal operations; and
- (v) availability of detection devices; and

(F) possess the ability to follow leads that indicate a crime will be committed rather than initiate an investigation after a crime is committed;

(3) the term “unscheduled duty” means hours of duty a criminal investigator works, or is determined to be available for work, that are not—

(A) part of the 40 hours in the basic work week of the investigator; or

(B) overtime hours paid under section 5542; and

(4) the term “regular work day” means each day in the investigator’s basic work week during which the investigator works at least 4 hours that are not overtime hours paid under section 5542 or hours considered part of section 5545a.

(b) The purpose of this section is to provide premium pay to criminal investigators to ensure

the availability of criminal investigators for unscheduled duty in excess of a 40 hour work week based on the needs of the employing agency.

(c) Each criminal investigator shall be paid availability pay as provided under this section. Availability pay shall be paid to ensure the availability of the investigator for unscheduled duty. The investigator is generally responsible for recognizing, without supervision, circumstances which require the investigator to be on duty or be available for unscheduled duty based on the needs of the agency. Availability pay provided to a criminal investigator for such unscheduled duty shall be paid instead of premium pay provided by other provisions of this subchapter, except premium pay for regularly scheduled overtime work as provided under section 5542, night duty, Sunday duty, and holiday duty.

(d)(1) A criminal investigator shall be paid availability pay, if the average of hours described under paragraph (2)(A) and (B) is equal to or greater than 2 hours.

(2) The hours referred to under paragraph (1) are—

(A) the annual average of unscheduled duty hours worked by the investigator in excess of each regular work day; and

(B) the annual average of unscheduled duty hours such investigator is available to work on each regular work day upon request of the employing agency.

(3) Unscheduled duty hours which are worked by an investigator on days that are not regular work days shall be considered in the calculation of the annual average of unscheduled duty hours worked or available for purposes of certification.

(4) An investigator shall be considered to be available when the investigator cannot reasonably and generally be accessible due to a status or assignment which is the result of an agency direction, order, or approval as provided under subsection (f)(1).

(e)(1) Each criminal investigator receiving availability pay under this section and the appropriate supervisory officer, to be designated by the head of the agency, shall make an annual certification to the head of the agency that the investigator has met, and is expected to meet, the requirements of subsection (d). The head of a law enforcement agency may prescribe regulations necessary to administer this subsection.

(2) Involuntary reduction in pay resulting from a denial of certification under paragraph (1) shall be a reduction in pay for purposes of section 7512(4) of this title.

(f)(1) A criminal investigator who is eligible for availability pay shall receive such pay during any period such investigator is—

(A) attending agency sanctioned training;

(B) on agency approved sick leave or annual leave;

(C) on agency ordered travel status; or

(D) on excused absence with pay for relocation purposes.

(2) Notwithstanding paragraph (1)(A), agencies or departments may provide availability pay to investigators during training which is considered initial, basic training usually provided in the first year of service.