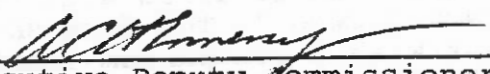


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| TO:   | <b>ENGINEERING INSTRUCTION</b>   |  |
| Director,<br>Preliminary Plan Review Bureau | NEW YORK STATE DEPARTMENT OF TRANSPORTATION  |  |
| <b>SUPERSEDED BY EI 77-027</b>              | <b>OVERTIME DISPENSATION</b>   |  |
| <b>EFFECTIVE 6/6/1977</b>                   | Subject Code: 7-30   |  |
| Distribution:                               | <input checked="" type="checkbox"/> Main Office <input checked="" type="checkbox"/> Regions <input type="checkbox"/> Special | Code: <u>EI 76-32</u><br>Date: <u>4/28/76</u><br>Supersedes: |
| APPROVED:                                   | <br>Executive Deputy Commissioner           |  |

Article 8, Section 220, of the Labor Law provides for the granting of dispensation only where sufficient laborers, workmen, and mechanics are not available to carry on the work expeditiously if the work were to be restricted to eight hours per day and five days per week and where the work must be expedited for the "preservation of the contract site and for the protection of the life and limb of the persons using same." In administering this law, the New York State Department of Labor has the responsibility to assess the availability of sufficient personnel in the various labor classifications while the Department of Jurisdiction, D.O.T. in this instance, needs to certify as to the emergency nature of the work.

The Certifications on the bottom of form PW-30, while not sufficiently descriptive, is intended to certify to such emergency for the preservation of the site and protection of the public. In the past, the Certification has generally been routinely signed at the Regional level on the basis that all projects interfere with traffic and, therefore, should be expedited in the interests of public safety. It has been determined that this is not a proper application of the intent of the Labor Law, and all projects and operations thereon must, in the future, be reviewed against the criteria of an emergency for the preservation of the site and protection of the public. Such application is deemed by the Labor Department to be particularly important during the current period of high unemployment.

This Instruction is intended to provide guidelines for the processing of overtime dispensation consistent with the present State policy to take all effective measures toward increased employment in the State. This Department has secured an informal agreement with the Department of Labor whereby we may obtain overtime dispensation for critical projects or operations on a case by case basis provided overall employment is not materially affected. Thus, our reviews must be critical and our certifications as to the need for overtime dispensation must be sufficiently restrictive if this agreement is to be executed satisfactorily and in accordance with the responsibilities of both agencies. Otherwise, we may anticipate a uniform denial by the Labor Department of all overtime dispensation requests in the future.

Subject: OVERTIME DISPENSATION

### A. General Considerations

1. Where dispensation has already been granted by the Labor Department for the duration of the contract, such authorizations will continue to be effective without revocation.
2. Regions should immediately discontinue simply signing the certification at the bottom of form PW-30. The words, "the above-described public work project" should be replaced with "the operations described in the attached memo." The form should be forwarded to the Labor Department with a memorandum limiting the request for overtime dispensation in accordance with the guidelines stipulated herein. Preferably, the contractor should initially limit his request in the same manner.
3. Overtime dispensation requests may be advanced for all operations only for emergency projects such as flood damage and slide stabilization. All other contracts should restrict overtime only to critical operations.
4. Where and when a contractor can advance his work via multiple shifts, overtime dispensation should not be critical to the public interest. This applies to the long period of daylight after July 1st as well as to confined operations where lighting equipment is feasible.
5. General excavation and drainage work do not fall into the emergency category except where necessary to improve a detour or other emergency situation.
6. Aside from emergencies, there are situations where overtime dispensation is necessary for the reasonable or feasible progress of the work so that the overall project may be expedited in the interest of public safety. Such situations are limited to the following:
  - a. Bituminous and cement concrete paving operations including the placement, compaction, and finishing of the material. These should be limited to ten hours per day. Twelve hour dispensation for paving operations will generally be denied by the Labor Department until further notice.
  - b. Major structural concrete pours which are too large to be placed within an eight hour day and where construction joints are not permissible or desirable.
  - c. Operations within a cofferdam or excavation where continual heavy pumping is necessary.
  - d. Other foreseeable emergency type situations which have prior main office concurrence.

Subject: OVERTIME DISPENSATION

B. Projects Let Prior to April 1, 1976

These projects are covered by a Special Notice to Bidders which alert all bidders to the suspension of previous automatic approvals of overtime dispensation requests. Where overtime dispensation has already been granted, they will continue in effect without revocation. However, new requests will be subject to the foregoing guidelines and limitations.

C. Projects Let After April 1, 1976

These projects will be covered by the following Special Note which will appear in the bid proposals for all contracts:

SPECIAL NOTE TO BIDDERS  
IN RELATION TO OVERTIME DISPENSATION

All bidders, in submitting their bids, should base their bids and work progression on the assumption that Labor Dispensation pursuant to Articles 8 and 8A of the New York State Labor Law, for any workmen, laborers, and mechanics to work more than 8 hours in any one calendar day or more than five days in any one week will not be granted for any operation for the contract duration. Subsequent to award, where it is determined to be in the best interest of the public, the Department may process, for approval by the New York State Department of Labor, Overtime Dispensation on certain specific operations and, in the event approval is granted, there shall be no adjustment therefor in any bid prices.

Since the bids are to be based on the assumption that no Labor Dispensation will be granted, the limitations to be placed on overtime dispensation requests should be generally more restrictive than the foregoing guidelines. In this way, the Labor Department's objectives of restricting overtime to achieve greater employment can be staged on a reasonable basis and with minimal hardship to our contracting industry.

D. Summary of Procedure

1. The foregoing guidelines should be discussed with contractors and subcontractors before their submission of form PW-30 and they should be encouraged to limit their requests in accordance therewith.

Subject: OVERTIME DISPENSATION

2. The Region should replace the certification at the bottom of form PW-30 with an attached memo stipulating the operations and conditions for which the Region certifies that overtime is necessary in the public interest. Typical statements include:
  - a. Placement of tremie seal, west abutment footing and deck slab on Bridge #1 over \_\_\_\_\_ river, Station 121+00.
  - b. Placement of detour and structure to bypass Bridge #2 washed out by recent flood and restore traffic operations.
3. The Regions should consult the Construction Subdivision before denying dispensation for all operations on a contract, in situations where a dispute with the contractor exists regarding the need for overtime for any specific operation, and in situations which do not fall within the foregoing guidelines.

This Instruction is effective immediately.