

(see E.B. 8-3)

ENGINEERING INSTRUCTION

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

TO:

Director,
Preliminary Plan Review Bureau

SUBJECT: OVERTIME DISPENSATION

Subject Code: 7-30

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[Signature]
Executive Deputy Commissioner

A. **PURPOSE** The purpose of this Instruction is to provide current guidelines for processing Labor Dispensation applications, Form PW-30.

B. **BACKGROUND** Subdivision 2 of Section 220 of the Labor Law provides that no laborer, workman or mechanic in the employ of a contractor, sub-contractor or other person engaged on public work contracts shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency, including fire, flood or danger to life or property. Such emergency is deemed to include situations in which sufficient laborers, workmen and mechanics cannot be employed to carry on public work expeditiously within such restrictions and the progression of the work is necessary in the judgment of the Industrial Commissioner for the preservation of the contract site and for protection of the life and limb of the persons using the contract site. The jurisdiction for granting a dispensation permitting laborers, workmen and mechanics to work overtime rests with the Industrial Commissioner, though the department of jurisdiction is required to certify to him that the work is of an important nature and that a delay in carrying it out would result in serious disadvantage to the public. This subdivision also states: "Time lost in any week because of inclement weather by employees engaged in the construction, reconstruction and maintenance of highways outside of the limits of cities and villages may be made up during that week and/or the succeeding three weeks."

Previous to April, 1976, the certification at the bottom of Form PW-30 was routinely signed at the Regional level on the basis that, generally, all projects affect traffic operations and, therefore, should be expedited in the interests of public safety and convenience. With increasing high unemployment rates, the Industrial Commissioner has become increasingly more restrictive in the approval of Labor Dispensation on the basis that ample labor should be available to operate multiple shifts to accelerate contract progress as an alternative to the use of overtime. Accordingly, a special note has been included in all D.O.T. contract proposals for projects let after April 1, 1976, alerting all bidders to the restrictions on overtime and cautioning that all bids are to be based on the assumption that the use of overtime will not be approved. However, the complete denial of all requests for the use of overtime could result in certain excessive costs and public disbenefits without any effect on employment. This argument prevailed in recent discussions with the Industrial Commissioner to the point where we may anticipate relaxation of absolute restrictions in a very limited number of special situations, as described below. In accordance with such informal agreement, the Regions should

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carefully restrict all applications which are to be advanced within the defined criteria so that we may continue to retain such flexibility without the burden of excessive and fruitless paperwork.

C. GUIDELINES

1. Overtime Work Without Need For Labor Dispensation

In informal discussions with representatives of the N.Y.S. Department of Labor, we were advised that contractors may work overtime without the need for an approved Labor Dispensation in the following typical situations:

- a. Structural concrete pours which cannot be completed within the normal work day without undesirable construction joints.
- b. Special emergency operations of no more than a week's duration; such as, cofferdam or excavation operations under pumping conditions, installation of temporary traffic control devices for prompt protection of traffic, and work of short duration to protect the public or the contract site from imminent damage or accident.
- c. Support activities for small amounts of paving work of no greater than one week's duration. Such activities include finishing, compaction, and setting form rail. However, the actual placement of asphalt or cement concrete material should not exceed the normal eight hour work period without dispensation. Support activities of longer duration require dispensation which, currently, would generally not be approved.

2. Labor Dispensation Which May Be Favorably Considered

Where the aforementioned Special Note regarding overtime restrictions is included in the Contract Proposal (Projects let after April 1, 1976,) the Regions should deny in the first instance all applications for dispensation except those in the following categories:

- a. There may be operations, such as flood damage, structural failure, or other emergency projects, which need to be expedited even beyond the utilization of multiple shifts, to preserve life or property. The contractor may apply for such operations only, not for all operations on the project.
- b. Paving operations generally lead to the restoration of safe and convenient roadways for the general public. On such basis, the Industrial Commissioner may consider applications for overtime for support activities only, provided that the actual placement of asphaltic or cement concrete is limited to the eight hour shift prescribed by the Labor Law. Such support activities include preparation of equipment and site before paving operations begin each day, finishing, compaction, and application of curing material. Such support activities of long duration require dispensation as contrasted with the short term activities in paragraph C-1c.

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3. Applications to be Denied at Regional Level

Contractors should be advised that overtime requests will generally be denied by the Industrial Commissioner and that the alternative use of multiple shifts should be considered to the fullest extent feasible. All applications should be screened and restricted at the Regional level in accordance with the foregoing guidelines. Otherwise, there will be needless paperwork leading to less favorable consideration by the Industrial Commissioner of meritorious applications. The intent of the current slight relaxation in the overtime policy is to safeguard the public interest in terms of safety and the preservation of property. The economics of construction operations is not a consideration.

D. Processing Procedure

1. The contractor's application for dispensation, Form PW-30, must delineate the specific operations by location for which overtime is requested and should be limited to the foregoing guidelines. It should be accompanied by justification, including:
 - a. Consideration of other alternatives such as multiple shifts.
 - b. Amount of time to be saved in terms of progress of the critical work activity.
 - c. Public benefits to be accrued.
 - d. Disbenefits to the public in the event of disapproval.
2. The Region should analyze such requests, reject and return to the contractor those which do not meet the foregoing guidelines, and forward those which have merit directly to the Construction Subdivision, for processing to the Labor Department, with a supporting memorandum covering the points in paragraph D-1. Applications are no longer to be forwarded directly to the Labor Department.

It is expected that all applications for overtime will be carefully screened at the Regional level so that only a very limited number of valid applications in the public interest will need to be supported by the Construction Subdivision and processed for special consideration.