

WEST VIRGINIA DIVISION OF HIGHWAYS
ADMINISTRATIVE OPERATING PROCEDURES
SECTION III, CHAPTER 13

SECTION TITLE: PAYROLL/PERSONNEL

CHAPTER TITLE: OVERTIME CLASSIFICATION AND PAY

I. INTRODUCTION

Effective: 7/16/2008

This procedure is to apply federal labor standards, as specified in the Fair Labor Standards Act (FLSA) and the Code of Federal Regulations (CFR), regarding eligibility for premium overtime pay to the employees of the Division of Highways. It specifies positions that are considered clearly ineligible from premium overtime pay within the organizational hierarchy, and those considered clearly eligible for such. Further, it specifies a process by which the overtime status of all other positions will be determined. Such determinations will be made based on FLSA regulations and the West Virginia Division of Personnel's FLSA Interpretive Bulletin.

II. POLICIES

A. Overtime Classification and Pay Definitions

1. Compensatory Time: Time off from work, without loss of pay, granted in return for an equal number of hours worked in excess of the standard hours for a given pay period.
2. Exempt: Not entitled to premium overtime compensation otherwise required by the Fair Labor Standards Act.
3. Non-Exempt: Entitled to premium overtime compensations required by the Fair Labor Standards Act.
4. Premium Overtime: Payment for hours worked in excess of 40 in a workweek, computed at the rate of one and one half times an employee's regular hourly rate for the pay period in which the overtime work occurs.
5. Regular Overtime Hours: Hours worked by certain exempt employees in excess of 40 in a workweek, computed at the employee's standard hourly rate.

6. Excess Hours: Non-work hours paid in excess of 40 in a workweek, computed at the employee's hourly rate for the pay period in which the hours occur.
7. Straight Time Rate: An employee's standard hourly rate of pay.

B. Exempt Employees

The positions listed below, by virtue of the inherent and traditional duties associated therewith, are considered to fall within the Executive and/or Administrative exemption under the Fair Labor Standards Act, and therefore exempt from premium overtime compensation (see below)

- C and H level Staff
- District Engineers/Managers
- Division Directors
- Assistant District Engineers
- District Comptrollers
- District Equipment Supervisors
- District Right of Way Manager
- District Administrative Services Managers
- County Highway Administrators
- Assistant District Maintenance Engineers (Maintenance Assistants)
- District Area Construction Engineers

In addition to these positions, the exemptions provided for by the Act will be applied by the agency to other positions pursuant to individualized duties test examinations as described in Section II., item D.

C. Non-Exempt Employees

Employees who do not meet the Executive, Administrative, Professional and Computer Employees exemptions under the FLSA and the federal regulations are considered nonexempt and therefore eligible for premium overtime pay. Such employees typically:

- Perform non-administrative duties, and have no supervisory responsibilities, and do not hold any professional licensure or primarily perform work in a field requiring advanced knowledge.
- Do not possess a post-secondary education or post baccalaureate degree in law, accounting, engineering, or architecture.
- Do not primarily perform computer systems design, analysis or programming duties.

D. Tested Positions

All positions not falling in the exempt and non-exempt categories described above will be subject to an FLSA test as outlined in the West Virginia Division of Personnel White

Collar Exemption Worksheet. The test will be conducted at the time an employee is hired or enters a new position, or at such time as an employee or agency manager requests an updated FLSA test.

E. Payment to Exempt Employees

Exempt employees specifically identified in Section IIB, except as noted below, and those identified through the test process provided for in Section IID, will receive either straight time pay or compensatory time for hours in excess of forty (40) per week. The form of compensation for such hours is at the discretion of the employee. [Form DOT129](#), Payroll/Benefits Transaction, is used by employees to declare their method of compensation (straight time or compensatory time). Employees are limited to one selection per calendar year. An employee's accumulated compensatory time balance may not exceed a maximum at any one time of 240 hours. Compensatory hours must be used prior to separation from employment, or they are forfeited.

Employees occupying the following exempt positions will receive neither straight time pay nor compensatory time for excess hours worked:

- C & H Level Staff
- District Engineer/Manager
- Division Directors