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	U· S· DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: PER-4 Transmittal Number: 795 Date: JUL 30 1993

Subject: Application of Fair Labor Standards Act (FLSA)

Approval: [signature] **Title:** Acting Director

1. Purpose. This Directive provides policy guidance to all of the Office of Surface Mining Reclamation and Enforcement (OSM) employees with respect to applying the Fair Labor Standards Act (FLSA) to OSM positions.

2. Definitions.

Nonexempt Positions - Positions are nonexempt when they do not meet exemption criteria under FLSA. Positions properly classified at the GS-4 level or below are nonexempt. Positions properly classified at the GS-5 level through GS-10 level should be nonexempt if the positions are not executive, administrative, or professional as defined in the 5 CFR Part 551, Subpart B.

Exempt Positions - Positions are exempt when they meet the exemption criteria under FLSA. These positions are primarily concerned with executive, administrative, or professional work. This involves managerial or supervisory responsibilities, the formulation or execution of management policies, or any other professional work which is intellectual in nature, requires specialized training, and requires significant exercise of independent judgment. (This exemption criteria is further defined in the 5 CFR Part 551, Subpart B.)

3. Summary of Changes. This Directive incorporates a major change in how overtime is to be computed for employees covered by the FLSA and pay administration resulting from the Federal Employees Pay Comparability Act of 1990 (FEPCA).

4. Policy/Procedure.

a. This Directive establishes agency policy with respect to applying FLSA criteria to positions and coding position descriptions to reflect FLSA determinations. The primary importance of FLSA determinations relates to employee eligibility for overtime pay under the Act, and the application of the Federal minimum wage to general schedule employees.

b. All positions in OSM must be designated exempt or nonexempt in accordance with definitions specified above and in 5 CFR Part 551 and Federal Personnel Manual (FPM) Letter 551-24 dated January 14, 1992. Title 5 of the CFR provides the criteria for making exemption determinations and FPM Letter 551-24 outlines changes in FLSA pay administration resulting from the FEPCA. Exemption determinations will be documented on the position description cover sheet (Optional Form 8), Item 7 for each position. The Servicing Personnel Offices make the final determination regarding whether a position will be designated as exempt or nonexempt. Examples of exempt and nonexempt positions within OSM are provided on the attachment. This list does not represent all positions within OSM and there may be variations to the examples identified.

c. All factors relating to FLSA determinations should be disclosed in the position descriptions to help avoid erroneous FLSA determinations and unlawful overtime payments or entitlements to backpay.

d. Positions classified at the GS-5 through GS-10 level are exempt only if the executive, administrative, or professional exemption criteria of Title 5 of the CFR is met. In addition to the primary duty criterion that applies to all employees, employees in positions at the GS-5 or GS-6 level must spend 80 percent or more of the worktime in a representative workweek on supervisory, administrative, or professional functions, and work that is an essential part of those functions.

e. Section 210 of the FEPCA changed the requirement for computing overtime pay for employees covered under FLSA (nonexempt employees). FEPCA eliminated the requirement that overtime pay be calculated under both Title 5 United States Code and FLSA. Overtime pay for nonexempt employees is now computed and paid only under FLSA.

5. Reporting Requirements. None.

6. References. Federal Personnel Manual (FPM) Letter 551-24, dated January 14, 1992, and 5 CFR Part 551, Subpart B, dated January 1, 1993.

7. Effect on Other Documents. OSM Directive - Compensation for Overtime (PER-2).

8. Effective Date. Upon Issuance.

9. Contact. Chief, Branch of Employment and Classification, Division of Personnel, (202) 208-2953 or FTS 9-1-202-208-2953.

10. Keywords. Nonexempt, exempt, executive, administrative, professional, overtime, Title 5 CFR, FEPCA.

11. List of Appendices. Appendix 1 - "Examples of Exempt/ Nonexempt Positions Within OSM."

Attachment

Appendix 1

EXAMPLES OF EXEMPT/NONEXEMPT
POSITIONS WITHIN OSM

EXEMPT

Administrative Officer	GS-341-9/11/12
Auditor	GS-511-11/12
Budget Analyst	GS-345-11/12/13/14
Collection Specialist	GS-501-9/11/12
Computer Specialist	GS-334-9/11/12/13
Construction Inspector	GS-809-8
Employee Development Specialist	GS-235-11/12
Equal Employment Specialist	GS-260-9/11/12/13
Hydrologist	GS-1315-11/12/13
Management Analyst	GS-343-11/12
Mining Engineer	GS-880-11/12/13
Mining Engineering Technician	GS-802-8/9/10/11
Natural Resource Specialist	GS-401-11/12/13
Operating Accountant	GS-510-11/12
Personnel Management Specialist	GS-201-11/12/13
Personnel Staffing Specialist	GS-212-11/12/13
Physical Scientist	GS-1301-11/12/13/14
Program Analyst	GS-343-11/12/13/14
Regulatory Program Specialist	GS-301-11/12/13
State Program Specialist	GS-301-11/12/13
Supervisory/Managerial Positions	All Grade Levels
Surface Mining Reclamation Specialist	GS-1801-9/11/12

Nonexempt

Accounting Technician	GS-525-5/6
Audit Assistant	GS-503-5/6
Clerical Assistant (OA)	GS-303-4/5
Clerk (OA)	GS-303-5
Computer Clerk	GS-335-3/4/5
Computer Assistant	GS-335-5/6/7
Office Automation Clerk	GS-326-3/4
Personnel Assistant (OA)	GS-203-6/7/8
Personnel Clerk (OA)	GS-203-3/4/5
Procurement Clerk	GS-1106-5
Program Assistant	GS-303-4/5/6
Secretary (OA)	GS-318-4/5/6/7/8
Supply Technician	GS-2005-4/5
Voucher Examiner	GS-540-3/4/5