

NARRATIVE SUMMARY
OF MEETINGS OF
DAR COUNCIL

DATE OF REPORT: 09/03/91

RECORD NUMBER: 39

DAR CASE NUMBER: 87-118

DAR CASE TITLE:

COSTS, TRAVEL

SYNOPSIS OF CASE:

DOE ASKS THAT TRAVEL COSTS BE UPDATED TO REFLECT ALL REQUIREMENTS OF P.L. 99-324 (CHANGES FAC 86-19, ITEM III).

SYNOPSIS OF MEETINGS:

7/12/89--CASE HANDED OUT TO CAAC AND SCHD FOR--7/26/89. 7/26/89--CAAC APVS CHANGES TO DARC POSITION. AWT COORD WITH DARC. 8/9/89--DARC RCVS CAAC REVS AND SCHD FOR--8/16/89. 8/16/89--DARC CNSDRS CASE AND SCHD FOR--8/23/89. 8/23/89--DARC APVS CAAC REVS. A1 TO DO LTR TO CAAC. 8/30/89--DARC RCVS A1 DRAFT LTR TO CAAC. O4 TO DO. 9/13/89--DARC RCVS O2 REPT DUE. O2 TO DO LTR OF TRANSMITTAL. A2 TO DO LEGAL MEMO BY--9/20/89. 9/20/89--DARC CNSDRS CASE. 9/27/89--O5 TO DO REPT, A2 TO DO LEGAL MEMO. REPT DUE--9/27/89. 9/15/89--DARC SENDS PROPOSED RULE CVGE TO CAAC. AWT CAAC REPLY. 4/17/90--CAAC APVS PROPOSED RULE. WILL SEND TO FAR SEC FOR FED REG NOTICE. 6/13/90--FED REG PUBL PROPOSED RULE AT 55 FR 24068. PUB CMT PERIOD ENDS--8/13/90. 8/14/90--PUB CMT PERIOD ENDED ON 8/13/90. FAR SEC TO PUT PUB CMT PKG TOGETHER. 9/12/90--PUB CMTS HANDED OUT TO DARC. A1 TO TASK CCP CMTE TO RVW. REPT DUE--10/17/90. 9/13/90--CCP CMTE TASKED TO RVW PUB CMTS. REPT DUE--10/17/90. 10/17/90--REPT DUE EXTENDED TO--10/24/90. 10/24/90--RCV'D AND SCHD CCP CMTE REPT OF 10/17/90 FOR--11/7/90. 11/7/90--DARC RCVS FINAL RULE CVGE. EM TOP COORD WITH CPF ANDS SEND TO CAAC. 11/29/90--DRAFT MEMO TO DASD(P) SENT TO O1 TO RVW. 12/7/90--FINAL RULE CVGE SENT TO CAAC. 2/6/91--CASE HANDED OUT TO CAAC AND SCHD FOR--2/20/91. 2/20/91--CAAC APVS FINAL RULE. 3/8/91--FAR FINAL RULE SENT TO FAR SEC FOR FUTURE FAC. 8/22/91--FAR F/RULE PUBL AT 56 FR 41728, FAC 90-7, ITEM X.

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PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205-6 is amended by adding paragraph (j)(3)(v); by revising the first sentence of paragraph (j)(4); and by redesignating paragraph (o)(4) as (o)(5) and adding a new paragraph (o)(4) to read as follows:

31.205-6 Compensation for personal services.

(j)(3) * * *

(v) Increased pension costs resulting from the withdrawal of assets from a pension fund and transfer to another employee benefit plan fund are unallowable except to the extent authorized by an advance agreement. The advance agreement shall:

(A) State the amount of the Government's equitable share in the gross amount withdrawn; and

(B) Provide that the Government receive a credit equal to the amount of the Government's equitable share of the gross withdrawal. If a transfer is made without such an agreement, paragraph (j)(4) of this subsection will apply to the transfer as a constructive withdrawal and receipt of the funds by the contractor.

(4) *Termination of defined benefit pension plans.* When excess or surplus assets revert to the contractor as a result of termination of a defined benefit pension plan, or such assets are constructively received by it for any reason, the contractor shall make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. * * *

(o)(4) Costs of postretirement benefits attributable to past service ("transition obligation") as defined in Financial Accounting Standards Board Statement 106, paragraph 110, are allowable subject to the following limitation: The allowable amount of such costs assignable to a contractor fiscal year cannot exceed the amount of such costs which would be assigned to that contractor fiscal year under the delayed recognition methodology described in paragraphs 112 and 113 of Statement 106.

[FR Doc. 91-19705 Filed 8-21-91; 8:45 am] BILLING CODE 9820-34-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

RIN 9000-AD98

[FAR Case 90-26; Item X]

Federal Acquisition Regulation; Travel Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending FAR 31.205-46 to prevent the erroneous interpretation that the maximum allowable contractor per diem costs must be calculated in the same manner as the "lodgings-plus" method contained in the Federal Travel Regulations.

EFFECTIVE DATE: September 23, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-7, FAR case 90-26.

SUPPLEMENTARY INFORMATION:

A. Background
Travel Costs

A notice of a proposed rule to clarify the travel cost principle at FAR 31.205-46 was published in the Federal Register on June 13, 1990 (55 FR 24068). Public comments received were considered by both Councils and several changes were made in the development of the final rule. The purpose of this rule is to make it clear that while downward adjustments form the Government's maximum per diem rates are generally appropriate on partial travel days or on days when no lodging costs have been incurred, contractors are not required to calculate these adjustments in accordance with Government travel regulations. Contractors may instead utilize their own travel policy procedures, so long as the result constitutes a reasonable charge to the contract.

B. Regulatory Flexibility Act

DOD, GSA, and NASA certify that the final rule in FAC 90-7 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the final rule does not impose any recordkeeping requirements or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.* Under the current rules of the FAR, particularly the clauses at 52.215-2, "Audit-Negotiation," and 52.216-7, "Allowable Costs and Payment," offerors and contractors are required to maintain, and provide access to, records sufficient to permit the Government to determine the allowability and reasonableness of costs.

D. Public Comments

On June 13, 1990, a proposed rule was published in the Federal Register (55 FR 24068). Comments received from 18 individuals and organizations were considered by the Councils; several changes were made in the development of the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: July 24, 1991.

Albert A. Vicchiolla,
Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 31 is amended as set forth below:

1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 31.205-46 is amended in paragraph (a)(1) by removing the words "paragraphs (b) through (f) of" and inserting in their place "the limitations contained in"; by revising paragraph (a)(4); and adding paragraph (a)(6) to read as follows:

31.205-46 Travel costs.

(a) * * *

87-118

(4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in subdivisions (a)(2)(i), (ii), and (iii) of this subsection in their entirety. Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein.

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection generally would not constitute a reasonable daily charge—

- (f) When no lodging costs are incurred; and/or
(ii) On partial travel days (e.g., day of departure and return).

Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.

[FR Doc. 91-19706 Filed 8-21-91; 8:45 am]
BILLING CODE 9920-34-M

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 45
[FAR Case 91-21; Item XI]

Federal Acquisition Regulation; Screening of Contractor Inventory

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to revise the Federal Acquisition Regulation (FAR) to update FAR subpart 45.6, Reporting, Redistribution, and Disposal of Contractor Inventory, to conform with changes to the Federal Property Management Regulations (FPMR) and the Federal Information Resource Management Regulation (FIRMR).

EFFECTIVE DATE: September 23, 1991.
FOR FURTHER INFORMATION CONTACT: For information pertaining to this case, contact Ms. Jeritta Parnell at (202) 501-082. For general information, contact

Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4736. Please cite FAC 90-7, FAR case 91-21.

SUPPLEMENTARY INFORMATION:
A. Background
Screening of Contractor Inventory

The General Services Administration, which has the management responsibility for its Federal Supply Service's program for excess personal property, has requested amendments to section 45.608 of the Federal Acquisition Regulation. The amendments to 45.608 are necessary to increase the threshold for screening of contractor inventory to be consistent with the Federal Property Management Regulations (FPMR).

B. Public Comments and Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAC 90-7, FAR case 91-21, in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is inapplicable, since the amendments to FAR subpart 45.6 do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 45

Government procurement.
Dated: July 24, 1991.
Albert A. Viochiolla,
Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 45 is amended as set forth below:

1. The authority citation for 48 CFR part 45 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 45—GOVERNMENT PROPERTY

45.608-5 [Amended]

2. Section 45.608-5 is amended in paragraph (c)(3)(iv) by removing the words "\$500 or less," and inserting in their place "less than \$1,000 (\$500 for furniture)."; and in paragraph (c)(3)(v) by removing the words "more than

\$500," and inserting in their place "\$1,000 or more (\$500 for furniture).";

45.608-1 [Amended]

3. Section 45.608-1(b) is amended in the second column, first entry of Table 45-1 by removing the words "in excess of \$500" and inserting in their place "valued at \$1,000 or more (\$500 for furniture)"; and in the second column, third entry, by removing the words "\$500 or less" and inserting in their place "less than \$1,000 (\$500 for furniture)".

45.608-2 [Amended]

4. Section 45.608-2 is amended in paragraph (a) by removing the words "in excess of \$500" and inserting in their place "of \$1,000 or more (\$500 for furniture)".

5. Section 45.608-5(d) is revised to read as follows:

45.608-5 Special items screening.

(d) Procedures for automatic data processing equipment (ADPE). See the FIRMR (41 CFR part 201-33).

6. Section 45.608-8(b) is amended by revising Item 5 to read as follows:

45.608-8 Report of excess personal property (3F 120).

(b) * * *
Item 5, To. Enter the name(s) address(es) and of the screening agencies or the GSA regional office serving the geographic area in which the property is located.

[FR Doc. 91-19707 Filed 8-21-91; 8:45 am]
BILLING CODE 9920-34-M

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 50
[FAR Case 91-22; Item XII]

Federal Acquisition Regulation; Extraordinary Contractual Actions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR);
Travel Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 31.205-46 to clarify the maximum allowable contractor per diem travel costs.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 13, 1990, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., room 4041, Washington, DC 20405. Please cite FAR Case 90-26 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR Case 90-26.

SUPPLEMENTARY INFORMATION:**A. Background**

It has come to the attention of the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory

Council that FAR 31.205-46(a)(4) has been erroneously interpreted to mean that the maximum allowable contractor per diem travel costs must be calculated in the same manner as the "lodging-plus" method contained in the Federal Travel Regulations. The FAR Councils never intended to impose Government administrative procedures upon contractors. Accordingly, it is proposed that subparagraph (d)(4) be grammatically rearranged to prevent erroneous interpretation.

Another minor editorial correction recognizes that subparagraph (a)(1) contains allowability criteria.

A new subparagraph (a)(6) is proposed to define reasonable per diem costs for partial travel days and when no lodging costs are incurred. Appropriate downward adjustments in maximum per diem rates are generally required under these circumstances.

B. Regulatory Flexibility Act

The proposed revisions to FAR 31.205-46 are not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) because they merely improve language that has been erroneously interpreted and further define cost reasonableness in specific circumstances. No change in meaning or existing interpretations of reasonableness is intended.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: June 6, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 31 be amended as set forth below:

**PART 31—CONTRACT COST
PRINCIPLES AND PROCEDURES**

1. The authority citation for 48 CFR parts 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Section 31.205-46 is amended by revising the first sentence in paragraph (a)(1); by revising paragraph (a)(4); and by adding paragraph (a)(6) to read as follows:

§ 31.205-46 Travel costs.

(a)(1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable subject to the limitations contained in this subsection. * * *

(4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in subdivisions (a)(2)(i), (ii), and (iii) in their entirety. Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein. * * *

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection do not constitute a reasonable daily charge when no lodging costs are incurred and on partial travel days (e.g., day of departure and return).

[FR Doc. 90-13702 Filed 6-12-90; 8:45 am]

BILLING CODE 9830-34-M



General Services Administration
Office of Acquisition Policy
Washington, DC 20405

87-118

June 19, 1991

MEMORANDUM FOR CLAUDIA NAUGLE
EXECUTIVE EDITOR
DEFENSE ACQUISITION REGULATIONS SYSTEM
OUSD (A) c/o 3D139 PENTAGON,
WASHINGTON, DC 20301-3000

FROM:

(b)(6)

FAR SECRETARIAT *ZA*

SUBJECT:

FAC 90-6, Federal Register copy and looseleaf
pages (DRAFT COPY)

Attached hereto is FAC 90-6, ready for your review,
correction, and/or comment. Please handle expeditiously and
return this copy to the Secretariat within the next week. *→ 90-07*

We are striving for a publication date of July 15, 1991, and
your attention is greatly appreciated.

If you have any questions, I may be reached at

(b)(2)

Attachments

<u>Item</u>	<u>Subject</u>	<u>FAR Case</u>	<u>DAR Case</u>	<u>Analyst</u>
I	Threshold Requirements (Final)	90-51	89-400	(b)(6)
II	Small Purchase Limitation (Interim)	91-19	90-306	(b)(6)
III	Prescription for Delivery Clauses (Final)	90-38	90-421	(b)(6)
IV	Award Without Discussions (Interim)	91-29	90-302	(b)(6)
V	Commercial Pricing Certificate (Interim)	91-25	90-304	(b)(6)
VI	Nonavailability Exception to the Buy American Act (Final)	91-23	90-435	(b)(6)
VII	Indian-Owned Economic Enterprises (Interim)	91-28	88-342	(b)(6)
VIII	Cost Accounting Standards; Cost Impact Proposals (Final)	89-34	88-95	(b)(6)
✓ IX	Travel Costs (Final)	90-26	87-118	(b)(6)
X	Screening of Contractor Inventory (Final)	91-21	89-053	(b)(6)
XI	Extraordinary Contractual Actions (Final)	91-22	90-044	(b)(6)
XII	Contract Security Classification Specification (Final)	91-33	91-712	(b)(6)

FAC 90-6

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FAC 90-6

Federal Acquisition Circular (FAC) 90-6 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Threshold Requirements (FAR Case 90-51)

This change raises the threshold, revises the prescription for the clause 52.202-1, and makes other editorial changes.

Replacement pages: 2-1, 2-2, 3-19, 3-20, 52-5 and 52-6.

Item II—Small Purchase Limitation (FAR Case 91-19)

FAR 5.101(a) and 5.205(d)(1) are amended to eliminate the requirement to synopsise contract actions between \$10,000 and \$25,000; 13.104(g) is revised to refer to 5.101(a)(2) for public display requirements; 19.702 and 19.708 are amended to refer to the small purchase limitation instead of \$10,000. The clause at 52.219-8 is no longer applicable for small purchases.

Replacement pages: 5-1 through 5-4, 13-1, 13-2, 19-33, 19-34, 19-37, 19-38, 52-315, and 52-316.

Item III—Prescription for Delivery Clauses (FAR Case 90-38)

The prescription for the delivery clauses, 52.212-1, Time of Delivery, and 52.212-2, Desired and Required Time of Delivery, are revised to permit their use in all contract types, except for construction and architect-engineering contracts.

Replacement pages: 12-1, 12-2, 52-25 through 52-26.2, 52-307, and 52-308.

Item IV—Award Without Discussions (FAR Case 91-29)

Sections 14.201-9(e)(3), 15.406-5(c), and 15.605(e) have been amended to require solicitations to include all evaluation factors and any significant subfactors (including noncost and nonprice related factors); 14.503-1(a)(4) has been amended to require requests for technical proposals to include all evaluation factors and any significant subfactors; 15.610(a) has been revised to indicate that, for DOD, NASA and the Coast Guard, discussions are not required for an acquisition provided the intent to award without discussion is stated in the solicitation; 15.612(c)(4) has been revised to require source selection plans to include any significant subfactors that will be evaluated; 52.215-16 has been revised to add two alternate paragraphs for use by DOD, NASA and

the Coast Guard; the prescription at 15.407(d)(4) has been revised to reflect the alternates.

Replacement pages: 14-5, 14-6, 14-19 through 14-21, 15-5 through 15-8.1, 15-13 through 15-18, 52-45 through 52-48, 52-311, 52-312, and 52-312.1.

Item V—Commercial Pricing Certificate (FAR Case 91-25)

Sections 15.813-1, 15.813-2, 15.813-3, 15.813-6, and 52.215-32 are amended to eliminate the requirements for application of commercial pricing certification policies to contracts awarded by DOD, NASA, and the Coast Guard.

Replacement pages: 15-35 through 15-41, and 52-49 through 52-54.1.

Item VI—Nonavailability Exception to the Buy American Act (FAR Case 91-23)

FAR 25.102(b) is revised to allow contracting officers to make determinations in certain circumstances when domestic materials and supplies are not available.

Replacement pages: 25-1 through 25-8.

Item VII—Indian-Owned Economic Enterprises (FAR Case 91-28)

FAR Subpart 26.1, Indian Incentive Program, and the clause at 52.226-1 are added to allow contractors to recover certain costs of subcontracting with Indian organizations and Indian-owned economic enterprises.

Replacement pages: Structure of the FAR to the Subpart Level, pages 3 and 4, Table of Contents, Part 26, 26-1, 52-119 through 52-122.1, 52-321, and 52-322.

Item VIII—Cost Accounting Standards; Cost Impact Proposals (FAR Case 89-34)

FAR 30.602-1 through 30.602-3 are revised and 52.230-4 is amended to clarify the responsibilities of the Government and contractors regarding Cost Accounting Standards cost impact statements.

Replacement pages: 30-73 through 30-77, 52-157, and 52-158.

*** ITEM IX—Travel Costs (FAR Case 90-26)**

FAR 31.205-46 is amended to clarify that appropriate downward adjustments from the Government's maximum per diem rates would normally be required on partial travel days or on days when no lodging costs have been incurred, before such charges can be considered reasonable. However, contractors are not required to calculate these adjustments in accordance with Government travel regulations and may, instead, utilize their own travel policy procedures, so long as the result constitutes a reasonable charge.

Replacement pages: 31-37 through 31-42.

Item X—Screening of Contractor Inventory (FAR Case 91-21)

The Federal Acquisition Regulation (FAR) is revised to update sections 45.606-5, 45.608-1, 45.608-2, 45.608-5, and 45.608-8 of Subpart 45.6, Reporting, Redistribution, and Disposal of Contractor Inventory, to conform with changes in the Federal Property Management Regulations (FPMR) and the Federal Information Resources Management Regulation (FIRMR).

Replacement pages: 45-23 through 45-29.

*** Item XI—Extraordinary Contractual Actions (FAR Case 91-22)**

This final rule amends the FAR by deleting the coverage in 50.103, Deviations, and placing the section in "reserve" status. Both Councils have determined that the coverage in Subpart 1.4—Deviations to the FAR, provides adequate policies and procedures for authorizing deviations from the FAR.

Replacement pages: Table of Contents, Part 50, 50-1 and 50-2.

Item XII—Contract Security Classification Specification (FAR Case 91-33)

Section 53.303 is amended by replacing the JAN 1978 edition of DD Form 254 with the DEC 1990 edition.

Replacement pages: 53-211 and 53-212.

Item XIII—Technical Amendments

Technical amendments have been made to FAR sections 4.602(b), 5.202(a)(4), 7.306, 8.404(b), 8.703, 12.300, 12.302 and 12.303, 30.201-4(c)(1), 43.104(b), 52.219-15, 52.225-13(c), 52.228-5(b)(1), 52.232-1, 52.236-21, 52.236-21(d), 52.246-2(i)(2), and 52.301 (clause entry 52.219-14) to update information, to correct grammatical errors, and to correct inaccuracies. Part III of Appendix A to Part 30 has been moved from the end of Part 30 to the end of Appendix A, and the part heading at the top of page 31-29 of the looseleaf has been corrected.

1. Section 4.602 is amended by revising the second sentence of paragraph (b) to read as follows:

4.602 Federal Procurement Data System.

* * * * *

(b) *** This manual (available at no charge from the General Services Administration, Federal Procurement Data Center, 7th & D Streets, SW, Room 5652, Washington, DC 20407, telephone (202) 401-1529, FTS 441-1529, FAX (202) 401-1546) provides the necessary instruction to the data collection point in each agency as to what data are required and how often to provide the data.

* * * * *

5.202 [Technical amendment]

2. Section 5.202 is amended in paragraph (a)(4) by removing the reference "5.205(e)" and inserting in its place "5.205(f)".

7.306 [Technical amendment]

3. Section 7.306 is amended in the introductory text by adding an "s" to the end of the word "differ".

8.404 [Technical amendment]

4. Section 8.404 is amended in paragraph (b) by removing the acronym "FIRMR" and replacing it with "FPMR".

5. Section 8.703 is amended by revising the second sentence of paragraph (a) to read as follows:

8.703 Procurement List.

(a) *** Copies of the Procurement List may be obtained by submitting GSA Form 457 to the General Services Administration, Centralized Mailing List Service (7CAIL), P.O. Box 17077, 819 Taylor Street, Fort Worth, TX 76102-0077. ***

* * * * *

12.300, 12.302. and 12.303 [Technical amendments]

6. Sections 12.300, 12.302 and 12.303 are amended by removing the reference "15 CFR 350" and inserting in its place "15 CFR 700" in the following places:

- i. The introductory text of 12.300
- ii. In 12.302:
 - A. Paragraph (c), and
 - B. Paragraph (e) (twice).
- iii. In 12.303:
 - A. Paragraphs (d) (1) (twice) , and (d) (2) and (3), and
 - B. Paragraph (g).

30.201-4 [Technical amendment]

7. Section 30.201-4 is amended in paragraph (c) (1) by removing the word "that" and inserting in its place "than".

43.104 [Technical amendment]

8. Section 43.104 is amended in paragraph (b) by removing the reference "43.106" and inserting in its place "43.107".

52.219-15 [Technical amendment]

9. Section 52.219-15 is amended in the clause title by removing the words "(JUN 1989)" and inserting in their place "(APR 1991)"; and in paragraph (a) (3), in the definition of "Public or private organization for the handicapped", by adding the word "which" before the word "employs".

52.225-13 [Technical amendment]

10. Section 52.225-13 is amended in paragraph (c) by removing the comma after the word "Persons".

52.228-5 [Technical amendment]

11. Section 52.228-5 is amended in paragraph (b) (1) by removing the word "prescribe".

52.232-1 [Technical amendment]

12. Section 52.232-1 is amended in the introductory text by adding the word "supply" after the first use of the term "fixed-price".

52.236-21 [Technical amendment]

13. Section 52.236-21 is amended in the introductory text by removing the reference "36.520" and inserting in its place "36.521"; and in paragraph (d) of the clause by adding the word "or" after the first use of the word "subcontractor,".

52.246-2 [Technical amendment]

14. Section 52.246-2 is amended in the first sentence of paragraph (i)(2) of the clause by adding "'s" to the first use of the word "Government".

52.301 [Technical amendment]

15. Section 52.301 is amended in the first column of the Table at entry 52.219-14 by removing the reference "19.811(e)" and inserting in its place "19.811-3(e)".

Replacement pages: 4-3, 4-4, 5-1, 5-2, 7-7, 7-8, 8-9, 8-10, 8-15, 8-16, 12-3 through 12-6, 30-3, 30-4, Part III of Appendix A to Part 30, III-1 and III-2, 43-1, 43-2, 52-83, 52-84, 52-119, 52-120, 52-145, 52-146, 52-159, 52-160, 52-197, 52-198, 52-237, 52-238, 52-317, and 52-318.

FAC 90-6

Filing Instructions

Remove Pages

Structure of the FAR
to the Subpart Level
(pp. 3 & 4)

2-1 and 2-2

3-19 and 3-20

4-3 and 4-4

5-1 thru 5-4

7-7 and 7-8

8-9 and 8-10
8-15 and 8-16

12-1 thru 12-6

13-1 and 13-2

14-5 and 14-6
14-19 thru 14-21

15-5 thru 15-8.1
15-13 thru 15-18
15-35 thru 15-42

(Clearance)

19-33 and 19-34
19-37 and 19-38

25-1 thru 25-8

TOC, Part 26
26-1

30-3 and 30-4
30-73 thru 30-78
Appendix A to Part 30

31-29 and 31-30
31-37 thru 31-42

43-1 and 43-2

Replace Pages

Structure of the FAR
to the Subpart Level
(pp. 3 & 4)

2-1 and 2-2

3-19 and 3-20

4-3 and 4-4

5-1 thru 5-4

7-7 and 7-8

8-9 and 8-10
8-15 and 8-16

12-1 thru 12-6

13-1 and 13-2

14-5 and 14-6
14-19 thru 14-21

15-5 thru 15-8.1
15-13 thru 15-18
15-35 thru 15-41

19-33 and 19-34
19-37 and 19-38

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TOC, Part 26
26-1

30-3 and 30-4
30-73 thru 30-77
Appendix A to Part 30
III-1 and III-2

31-29 and 31-30
31-37 thru 31-42

43-1 and 43-2

Filing Instructions

Remove Pages

45-23 thru 45-30

TOC, Part 50
50-1 and 50-2

52-5 and 52-6
52-25 thru 52-26.2
52-45 thru 52-54.1 (52-50 - Clearance)
52-83 and 52-84
52-119 thru 52-122
52-145 and 52-146
52-157 thru 52-160
52-197 and 52-198
52-237 and 52-238
52-307 and 52-308
52-311 thru 52-312.1
52-315 thru 52-318
52-321 and 52-322

53-211 and 52-212

Replace Pages

45-23 thru 45-29

TOC, Part 50
50-1 and 50-2

52-5 and 52-6
52-25 thru 52-26.2
52-45 thru 52-54.1
52-83 and 52-84
52-119 thru 52-122.1
52-145 and 52-146
52-157 thru 52-160
52-197 and 52-198
52-237 and 52-238
52-307 and 52-308
52-311 thru 52-312.1
52-315 thru 52-318
52-321 and 52-322

53-211 and 52-212

DRAFT

[BILLING CODE 6820-34]

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

RIN 9000-AD98

[FAR Case 90-26]

Federal Acquisition Regulation; Travel Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending FAR 31.205-46 to prevent the erroneous interpretation that the maximum allowable contractor per diem costs must be calculated in the same manner as the "lodgings-plus" method contained in the Federal Travel Regulations.

DATES: Effective Date: [Enter date 30 days after publication date in Federal Register.]

ADDRESSES: Interested parties should submit written comments to:

General Services Administration
FAR Secretariat (VRS)
18th & F Streets, NW, Room 4041
Washington, DC 20405

Please cite FAC 90-6, FAR Case 90-26, in all correspondence related to this issue.

JUN 18 1991

FOR FURTHER INFORMATION CONTACT: (b)(6) at (b)(2)

(b)(2) in reference to this FAR case. For general information, contact (b)(6), FAR Secretariat, Room 4041, GS Building, Washington, DC 20405 (b)(2). Please cite FAC 90-6, FAR Case 90-26.

SUPPLEMENTARY INFORMATION:

A. Background

Travel Costs (FAR Case 90-26)

A notice of the proposed rule to clarify the travel cost principle at FAR 31.205-46 was published in the Federal Register on June 13, 1990 (55 FR 24068). Public comments received were considered by both Councils and several changes were made in the development of the final rule. The purpose of this rule is to make it clear that while downward adjustments from the Government's maximum per diem rates are generally appropriate on partial travel days or on days when no lodging costs have been incurred, contractors are not required to calculate these adjustments in accordance with Government travel regulations. Contractors may instead utilize their own travel policy procedures, so long as the result constitutes a reasonable charge to the contract.

B. Regulatory Flexibility Act

FAR Case 90-26

The final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because such entities generally do not have cost or incentive contracts where

the allowability of costs is a major concern. An initial regulatory flexibility analysis was not performed, but public comments were solicited at 55 FR 24068 dated June 13, 1990. One comment suggested that the rule would have an economic impact on small entities under the Regulatory Flexibility Act. The Councils were unable to address the issue because the comment did not explain how the rule would have an adverse economic impact on small entities.

C. Paperwork Reduction Act

FAR Case 90-26

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the final rule does not impose any recordkeeping requirements or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq. Under the current rules of the FAR, particularly the clauses at 52.215-2, "Audit-Negotiation," and 52.216-7, "Allowable Costs and Payment," offerors and contractors are required to maintain, and provide access to, records sufficient to permit the Government to determine the allowability and reasonableness of costs.

D. Public Comments

FAR Case 90-26

On June 13, 1990, a proposed rule was published in the Federal Register (55 FR 24068). Comments received from 18 individuals and organizations were considered by the Councils; several changes were made in the development of the final rule.

List of Subjects in 48 CFR Part 31:

Government procurement.

Dated:

**ALBERT A. VICCHIOLLA,
Director,
Office of Federal
Acquisition Policy.**

Therefore, 48 CFR Part 31 is amended as set forth below:

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 31.205-46 is amended in paragraph (a) (1) by removing the words "paragraphs (b) through (f) of" and inserting in their place "the limitations contained in"; by revising paragraph (a) (4); and adding paragraph (a) (6) to read as follows:

31.205-46 Travel costs.

(a) ***

(4) Subparagraphs (a) (2) and (a) (3) of this subsection do not incorporate the regulations cited in subdivisions (a) (2) (i), (ii), and (iii) of this subsection in their entirety. Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein.

* * * * *

(6) The maximum per diem rates referenced in subparagraph (a) (2) of this subsection generally would not constitute a reasonable daily charge—

(i) When no lodging costs are incurred; and/or

(ii) On partial travel days (e.g., day of departure and return).

Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these

adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.

* * * * *

taxes, fringe benefits, occupancy costs, and immediate supervision costs.

(2) If settlement expenses are significant, a cost account or work order shall be established to separately identify and accumulate them.

(h) *Subcontractor claims.* Subcontractor claims, including the allocable portion of the claims common to the contract and to other work of the contractor, are generally allowable. An appropriate share of the contractor's indirect expense may be allocated to the amount of settlements with subcontractors; provided, that the amount allocated is reasonably proportionate to the relative benefits received and is otherwise consistent with 31.201-4 and 31.203(c). The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

31.205-43 Trade, business, technical and professional activity costs.

The following types of costs are allowable:

(a) Memberships in trade, business, technical, and professional organizations.

(b) Subscriptions to trade, business, professional, or other technical periodicals.

(c) When the principal purpose of a meeting, conference, symposium, or seminar is the dissemination of trade, business, technical or professional information or the stimulation of production or improved productivity—

(1) Costs of organizing, setting up, and sponsoring the meetings, symposia, etc., including rental of meeting facilities, transportation, subsistence, and incidental costs;

(2) Costs of attendance by contractor employees, including travel costs (see 31.205-46); and

(3) Costs of attendance by individuals who are not employees of the contractor, *provided* (i) such costs are not also reimbursed to the individual by the employing company or organization, and (ii) the individuals attendance is essential to achieve the purpose of the conference, meeting, symposium, etc.

31.205-44 Training and education costs.

(a) *Allowable costs.* Training and education costs are allowable to the extent indicated below.

(b) *Vocational training.* Costs of preparing and maintaining a noncollege level program of instruction, including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, are allowable. These costs include (1) salaries or wages of trainees (excluding overtime compensation), (2) salaries of the director of training and staff when the training program is conducted by the contractor, (3) tuition and fees when the training is in an institution not operated by the contractor, and/or (4) training materials and textbooks.

(c) *Part-time college level education.* Allowable costs of part-time college education at an undergraduate or postgraduate level, including that provided at the contractor's own facilities, are limited to—

(1) Fees and tuition charged by the educational institution, or, instead of tuition, instructors' salaries and the related share of indirect cost of the educational institution, to the extent that the sum thereof is not in excess of the tuition that would have been paid to the participating educational institution;

(2) Salaries and related costs of instructors who are employees of the contractor;

(3) Training materials and textbooks; and

(4) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours. In unusual cases, the period may be extended (see paragraph (h) of this subsection).

(d) *Full-time education.* Costs of tuition, fees, training materials and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the contractor's own facilities, at a postgraduate but not undergraduate college level, are allowable only when the course or degree pursued is related to the field in which the employee is working or may reasonably be expected to work and are limited to a total period not to exceed 2 school years or the length of the degree program, whichever is less, for each employee so trained.

(e) *Specialized programs.* Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of managers or to prepare employees for such positions are allowable. Such costs include enrollment fees and related charges and employees' salaries, subsistence, training materials, textbooks, and travel. Costs allowable under this paragraph do not include costs for courses that are part of a degree-oriented curriculum, which are only allowable pursuant to paragraphs (c) and (d) of this subsection.

(f) *Other expenses.* Maintenance expense and normal depreciation or fair rental on facilities owned or leased by the contractor for training purposes are allowable in accordance with 31.205-11, 31.205-17, 31.205-24, and 31.205-36.

(g) *Grants.* Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, and fellowships are considered contributions and are unallowable.

(h) *Advance agreements.*

(1) Training and education costs in excess of those otherwise allowable under paragraphs (c) and (d) of this subsection, including subsistence, salaries or any other emoluments, may be allowed to the extent set forth in an advance agreement negotiated under 31.109. To be considered for an advance agreement, the contractor must

demonstrate that the costs are consistently incurred under an established managerial, engineering, or scientific training and education program, and that the course or degree pursued is related to the field in which the employees are now working or may reasonably be expected to work. Before entering into the advance agreement, the contracting officer shall give consideration to such factors as—

- (i) The length of employees' service with the contractor;
- (ii) Employees' past performance and potential;
- (iii) Whether employees are in formal development programs; and
- (iv) The total number of participating employees.

(2) Any advance agreement must include a provision requiring the contractor to refund to the Government training and education costs for employees who resign within 12 months of completion of such training or education for reasons within an employee's control.

(i) *Training or education costs for other than bona-fide employees.* Costs of tuition, fees, textbooks, and similar or related benefits provided for other than bona-fide employees are unallowable, except that the costs incurred for educating employee dependents (primary and secondary level studies) when the employee is working in a foreign country where public education is not available and where suitable private education is inordinately expensive may be included in overseas differential.

(i) *Employee dependent education plans.* Costs of college plans for employee dependents are unallowable.

31.205-45 Transportation costs.

Allowable transportation costs include freight, express, cartage, and postage charges relating to goods purchased, in process, or delivered. When these costs can be identified with the items involved, they may be directly costed as transportation costs or added to the cost of such items. When identification with the materials received cannot be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the contractor follows a consistent and equitable procedure. Outbound freight, if reimbursable under the terms of the contract, shall be treated as a direct cost.

31.205-46 Travel costs.

(a)(1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable subject to the limitations contained in this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.

(2) Except as provided in subparagraph (a)(3) of this subsection, costs incurred for lodging, meals, and incidental expenses (as defined in the regulations cited in (a)(2)(i) through (iii) of this subparagraph) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the—

(i) Federal Travel Regulations, prescribed by the General Services Administration, for travel in the conterminous 48 United States, available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 022-001-81003-7;

(ii) Joint Travel Regulations, Volume 2, DoD Civilian Personnel, Appendix A, prescribed by the Department of Defense, for travel in Alaska, Hawaii, The Commonwealth of Puerto Rico, and territories and possessions of the United States, available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 908-010-00000-1; or

(iii) Standardized Regulations (Government Civilians, Foreign Areas), Section 925, "Maximum Travel Per Diem Allowances for Foreign Areas," prescribed by the Department of State, for travel in areas not covered in (a)(2)(i) and (ii) of this subparagraph, available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 744-008-00000-0.

(3) In special or unusual situations, actual costs in excess of the above-referenced maximum per diem rates are allowable provided that such amounts do not exceed the higher amounts authorized for Federal civilian employees as permitted in the regulations referenced in (a)(2)(i), (ii), or (iii) of this subsection. For such higher amounts to be allowable, all of the following conditions must be met:

(i) One of the conditions warranting approval of the actual expense method, as set forth in the regulations referenced in paragraphs (a)(2)(i), (ii), or (iii) of this subsection, must exist.

(ii) A written justification for use of the higher amounts must be approved by an officer of the contractor's organization or designee to ensure that the authority is properly administered and controlled to prevent abuse.

(iii) If it becomes necessary to exercise the authority to use the higher actual expense method repetitively or on a continuing basis in a particular area, the contractor must obtain advance approval from the contracting officer.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205-47

(iv) Documentation to support actual costs incurred shall be in accordance with the contractor's established practices provided that a receipt is required for each expenditure in excess of \$25.00. The approved justification required by (a)(3)(ii) and, if applicable, (a)(3)(iii) of this subparagraph must be retained.

(4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in subdivisions (a)(2)(i), (ii), and (iii) of this subsection in their entirety. Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein.

(5) An advance agreement (see 31.109) with respect to compliance with subparagraphs (a)(2) and (a)(3) of this subsection may be useful and desirable.

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection generally would not constitute a reasonable daily charge—

- (i) When no lodging costs are incurred; and/or
- (ii) On partial travel days (e.g., day of departure and return).

Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.

(b) Travel costs incurred in the normal course of overall administration of the business are allowable and shall be treated as indirect costs.

(c) Travel costs directly attributable to specific contract performance are allowable and may be charged to the contract under 31.202.

(d) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

(e)(1) "Cost of travel by contractor-owned, -leased, or -chartered aircraft," as used in this paragraph, includes the cost of lease, charter, operation (including personnel), maintenance, depreciation, insurance, and other related costs.

(2) The costs of travel by contractor-owned, -leased, or -chartered aircraft are limited to the standard airfare described in paragraph (d) of this subsection for

the flight destination unless travel by such aircraft is specifically required by contract specification, term, or condition, or a higher amount is approved by the contracting officer. A higher amount may be agreed to when one or more of the circumstances for justifying higher than standard airfare listed in paragraph (d) of this subsection are applicable, or when an advance agreement under subparagraph (e)(3) of this subsection has been executed. In all cases, travel by contractor-owned, -leased, or -chartered aircraft must be fully documented and justified. For each contractor-owned, -leased, or -chartered aircraft used for any business purpose which is charged or allocated, directly or indirectly, to a Government contract, the contractor must maintain and make available manifest/logs for all flights on such company aircraft. As a minimum, the manifest/log shall indicate—

- (i) Date, time, and points of departure;
- (ii) Destination, date, and time of arrival;
- (iii) Name of each passenger and relationship to the contractor;
- (iv) Authorization for trip; and
- (v) Purpose of trip.

(3) Where an advance agreement is proposed (see 31.109), consideration may be given to the following:

- (i) Whether scheduled commercial airlines or other suitable, less costly, travel facilities are available at reasonable times, with reasonable frequency, and serve the required destinations conveniently.
- (ii) Whether increased flexibility in scheduling results in time savings and more effective use of personnel that would outweigh additional travel costs.

(f) Costs of contractor-owned or -leased automobiles, as used in this paragraph, include the costs of lease, operation (including personnel), maintenance, depreciation, insurance, etc. These costs are allowable, if reasonable, to the extent that the automobiles are used for company business. That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is compensation for personal services and is unallowable as stated in 31.205-6(m)(2).

31.205-47 Costs related to legal and other proceedings.

(a) *Definitions.* "Conviction," as used in this subsection, is defined in 9.403.

"Costs," include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; all elements of compensation, related costs, and expenses of employees, officers, and directors; and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding which bears a direct relationship to the proceedings.

"Fraud," as used in this subsection, means (1) acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents, (2) acts which constitute a cause for debarment or suspension under 9.406-2(a) and 9.407-2(a) and (3) acts which violate the False Claims Act, 31 U.S.C., sections 3729-3731, or the Anti-Kickback Act, 41 U.S.C., sections 51 and 54.

"Penalty," does not include restitution, reimbursement, or compensatory damages.

"Proceeding," includes an investigation.

(b) Costs incurred in connection with any proceeding brought by Federal, State, local or foreign Government for violation of, or a failure to comply with, law or regulation by the contractor (including its agents or employees) are unallowable if a result is—

(1) In a criminal proceeding, a conviction;

(2) In a civil or administrative proceeding, either a finding of contractor liability or imposition of a monetary penalty;

(3) A final decision by an appropriate official of an executive agency to—

(i) Debar or suspend the contractor;

(ii) Rescind or void a contract; or

(iii) Terminate a contract for default by reason of a violation or failure to comply with a law or regulation.

(4) Disposition of the matter by consent or compromise if the proceeding could have led to any of the outcomes listed in subparagraphs (b)(1) through (3) of this subsection (but see paragraphs (c) and (d) of this subsection); or

(5) Not covered by subparagraphs (b)(1) through (4) of this subsection, but where the underlying alleged contractor misconduct was the same as that which led to a different proceeding whose costs are unallowable by reason of subparagraphs (b)(1) through (4) of this subsection.

(c) To the extent they are not otherwise unallowable, costs incurred in connection with any proceeding under paragraph (b) of this subsection commenced by the United States that is resolved by consent or compromise pursuant to an agreement entered into between the contractor and the United States, and which are unallowable solely because of paragraph (b) of this subsection, may be allowed to the extent specifically provided in such agreement.

(d) To the extent that they are not otherwise unallowable, costs incurred in connection with any proceeding under paragraph (b) of this subsection commenced by a State, local, or foreign government may be allowable when the contracting officer (or other official specified in agency procedures) determines, that the costs were incurred either:

(1) As a direct result of a specific term or condition of a Federal contract; or

(2) As a result of compliance with specific written direction of the cognizant contracting officer.

(e) Costs incurred in connection with proceedings described in paragraph (b) of this subsection, but which are not made unallowable by that paragraph, may be allowable to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and

(3) The percentage of costs allowed does not exceed the percentage determined to be appropriate considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. However, if an agreement reached under paragraph (c) of this subsection has explicitly considered this 80 percent rule, then the full amount of costs resulting from that agreement shall be allowable.

(f) Costs not covered elsewhere in this subsection are unallowable if incurred in connection with—

(1) Defense against Government claims or appeals or the prosecution of claims or appeals against the Government (see 33.201).

(2) Organization, reorganization, (including mergers and acquisitions) or resisting mergers and acquisitions (see also 31.205-27).

(3) Defense of antitrust suits.

(4) Defense of suits brought by employees or ex-employees of the contractor under section 2 of the Major Fraud Act of 1988 where the contractor was found liable or settled.

(5) Costs of legal, accounting, and consultant services and directly associated costs incurred in connection with the defense or prosecution of lawsuits or appeals between contractors arising from either (1) an agreement or contract concerning a teaming arrangement, a joint venture, or similar arrangement of shared interest; or (2) dual sourcing, coproduction, or similar programs, are unallowable, except when (i) incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer, or (ii) when agreed to in writing by the contracting officer.

(6) Patent infringement litigation, unless otherwise provided for in the contract.

(7) Representation of, or assistance to, individuals, groups, or legal entities which the contractor is not legally bound to provide, arising from an action where the participant was convicted of violation of a law or regulation or was found liable in a civil or administrative proceeding.

(g) Costs which may be unallowable under 31.205-47, including directly associated costs, shall be segregated and accounted for by the contractor separately. During the pendency of any proceeding covered by paragraph (b) and subparagraphs (f)(4) and (f)(7) of this subsection, the contracting officer shall generally withhold payment of such costs. However, if in the best interests of the Government, the contracting officer may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the contractor to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

31.205-48 Deferred research and development costs.

"Research and development," as used in this subsection, means the type of technical effort which is described in 31.205-18 but which is sponsored by, or required in performance of, a contract or grant. Research and development costs (including amounts capitalized) that were incurred before the award of a particular contract are unallowable except when allowable as precontract costs. In addition, when costs are incurred in excess of either the price of a contract or amount of a grant for research and development effort, such excess may not be allocated as a cost to any other Government contract.

31.205-49 Goodwill.

Goodwill, an unidentifiable intangible asset, originates under the purchase method of accounting for a business combination when the price paid by the acquiring company exceeds the sum of the identifiable individual assets acquired less liabilities assumed, based upon their fair values. The excess is commonly referred to as goodwill. Goodwill may arise from the acquisition of a company as a whole or a portion thereof. Any costs for amortization, expensing, write-off, or write-down of goodwill (however represented) are unallowable.

31.205-50 Executive lobbying costs.

Costs incurred in attempting to improperly influence (see FAR 3.401), either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a regulatory or contract matter are unallowable.

31.205-51 Costs of alcoholic beverages.

Costs of alcoholic beverages are unallowable.

31.205-52 Asset valuations resulting from business combinations.

When the purchase method of accounting for a business combination is used, allowable amortization, cost of money, and depreciation shall be limited to the total of the amounts that would have been allowed had the combination not taken place.

SUBPART 31.3—CONTRACTS WITH EDUCATIONAL INSTITUTIONS

31.301 Purpose.

This subpart provides the principles for determining the cost of research and development, training, and other work performed by educational institutions under contracts with the Government.

31.302 General.

Office of Management and Budget (OMB) Circular No. A-21, Cost Principles for Educational Institutions, revised, provides principles for determining the costs applicable to research and development, training, and other work performed by educational institutions under contracts with the Government.

31.303 Requirements.

(a) Contracts that refer to this Subpart 31.3 for determining allowable costs under contracts with educational institutions shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-21 in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost.

SUBPARTS 31.4 - 31.5—RESERVED

SUBPART 31.6—CONTRACTS WITH STATE, LOCAL, AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS

31.601 Purpose.

This subpart provides the principles for determining allowable cost of contracts and subcontracts with State, local, and federally recognized Indian tribal governments.

31.602 General.

Office of Management and Budget (OMB) Circular No. A-87, Cost Principles for State and Local Governments, Revised, sets forth the principles for determining the allowable costs of contracts and subcontracts with State, local, and federally recognized Indian tribal governments. These principles are for cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in financing a particular contract.

31.603 Requirements.

(a) Contracts that refer to this Subpart 31.6 for determining allowable costs under contracts with State, local and Indian tribal governments shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of

31.701

OMB Circular A-87 which is in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost.

SUBPART 31.7—CONTRACTS WITH NONPROFIT ORGANIZATIONS

31.701 Purpose.

This subpart provides the principles for determining the cost applicable to work performed by nonprofit organizations under contracts with the Government. A nonprofit organization, for purpose of identification, is defined as a business entity organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any

FEDERAL ACQUISITION REGULATION (FAR)

candidate for public office, and which are exempt from Federal income taxation under section 501 of the Internal Revenue Code.

31.702 General.

Office of Management and Budget (OMB) Circular No. A-122, Cost Principles for Nonprofit Organizations, sets forth principles for determining the costs applicable to work performed by nonprofit organizations under contracts (also applies to grants and other agreements) with the Government.

31.703 Requirements.

(a) Contracts which refer to this Subpart 31.7 for determining allowable costs shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-122 in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost.

**DEFENSE ACQUISITION REGULATION SYSTEM
MEMO**

April 26, 1991

MEMORANDUM FOR DIRECTOR, DAR COUNCIL

SUBJECT: Legislative Cases

I need to correct a misunderstanding on two of my cases--

1. **DAR Case 87-118, Travel Costs**--is not a legislative case. This case arose out of a DOE interpretation of Pub. L. 99-234 which led them to conclude that we had not fully implemented the law. Implementation was, in fact, accomplished in FAC 84-19 on July 31, 1986 under DAR Case 85-230. This case is a follow-on to 85-230. I thought the history of the case (before we deleted it) explained this. We should have never had it on the list of legislative cases. I apologize for the perception that this is a legislative case and that we missed the implementation date. Can we delete it from the list of legislative cases? I am going to leave it on the list.

2. **DAR Case 90-313, IR&D Costs**--this was in the FY 91 Authorization Act. I need to correct two misunderstandings--first, while the FY 91 Authorization Act was enacted on November 5, 1991, there is no specific statutory implementation date for this provision of the Act. Second, and for that reason, Carole Covey and the Cost Principles Committee, as confirmed by the DAR Council, felt there was no urgency to this case and we could publish a proposed versus an interim rule. In the absence of a statutory date, the effective statutory date is "upon enactment".

The second case raises an issue which we need to resolve. **When a statute is enacted on a certain date but there are no specific implementation dates for certain provisions** within the Act, I suggest that we establish **reasonable** implementation dates on a case-by-case basis. Whoever brings it to the table to open a new case will tell us what they believe would be a **reasonable** implementation date. This would take into consideration complexity, any necessary coordination, current Committee workload, etc. The DAR Council would agree on a **"target implementation date"**. For FAR cases, we would tell the CAAC, up-front, what date we decided upon. This would give us something to shoot for and bring some discipline into the process without making us look as if we're not implementing the law in a timely fashion. What do you think? We are not permitted to do this...because it is effective "upon enactment" unless otherwise stated. I have talked with house and senate staffers and they have agreed to do a better job of including dates that are reasonable.

**DEFENSE ACQUISITION REGULATION SYSTEM
MEMO**

April 26, 1991

MEMORANDUM FOR DIRECTOR, DAR COUNCIL

SUBJECT: Legislative Cases

I need to correct a misunderstanding on two of my cases--

1. **DAR Case 87-118, Travel Costs**--is not a legislative case. This case arose out of a DOE interpretation of Pub. L. 99-234 which led them to conclude that we had not fully implemented the law. Implementation was, in fact, accomplished in FAC 84-19 on July 31, 1986 under DAR Case 85-230. This case is a follow-on to 85-230. I thought the history of the case (before we deleted it) explained this. We should have never had it on the list of legislative cases. I apologize for the perception that this is a legislative case and that we missed the implementation date. Can we delete it from the list of legislative cases?

2. **DAR Case 90-313, IR&D Costs**--this was in the FY 91 Authorization Act. I need to correct two misunderstandings--first, while the FY 91 Authorization Act was enacted on November 5, 1991, there is no specific statutory implementation date for this provision of the Act. Second, and for that reason, Carole Covey and the Cost Principles Committee, as confirmed by the DAR Council, felt there was no urgency to this case and we could publish a proposed versus an interim rule.

The second case raises an issue which we need to resolve. **When a statute is enacted on a certain date but there are no specific implementation dates for certain provisions** within the Act, I suggest that we establish **reasonable** implementation dates on a case-by-case basis. Whoever brings it to the table to open a new case will tell us what they believe would be a **reasonable** implementation date. This would take into consideration complexity, any necessary coordination, current Committee workload, etc. The DAR Council would agree on a **"target implementation date"**. For FAR cases, we would tell the CAAC, up-front, what date we decided upon. This would give us something to shoot for and bring some discipline into the process without making us look as if we're not implementing the law in a timely fashion. What do you think?

(b)(6)

Procurement Analyst



General Services Administration
Office of Acquisition Policy
Washington, DC 20405

DARc

March 8, 1991

MEMORANDUM FOR FAR SECRETARIAT

THRU: BEVERLY FAYSON

FROM: ALBERT A. VICCHIOLLA *AV*
CHAIRMAN
CIVILIAN AGENCY
ACQUISITION COUNCIL

SUBJECT Travel Costs, FAR Case 90-26,
(CAAC Case 88-37)(DAR Case 87-118)

Please arrange for publication of the enclosed case as a final rule. The CAAC approved the case on February 20, 1991 as recommended by the DARC in the enclosed December 7, 1990, memorandum to the CAAC Chairman.

Please contact [redacted] if there are any questions.

Enclosures

cc: Director, DARC

REVISED FINAL RULE

Note: Baseline is proposed rule; changes noted in ~~strike-through~~ text and bold [].

31.205-46 Travel costs.

(a)(1) No change from proposed rule.

* * * * *

(4) No change from proposed rule.

* * * * *

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection ~~do~~ **[generally would]** not constitute a reasonable daily charge ~~when~~**--**

- (i) **When]** no lodging costs are incurred[,] and[/or
- (ii) **O]** ~~on~~ partial travel days (e.g., day of departure and return).

[Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.]

"CLEAN" FINAL RULE

31.205-46 Travel costs.

(a)(1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable subject to the limitations contained in this subsection. * * *

* * * * *

(4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in subdivisions (a)(2)(i), (ii), and (iii) in their entirety. Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein.

* * * * *

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection generally would not constitute a reasonable daily charge--

- (i) When no lodging costs are incurred, and/or
- (ii) On partial travel days (e.g., day of departure and return).

Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.

FEDERAL REGISTER NOTICE

**DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

48 CFR Part 31

**Federal Acquisition Regulation
Subsection 31.205-46, Travel Costs**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

Action: Final Rule

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council have agreed on a final rule amending FAR 31.205-46 to prevent the erroneous interpretation that the maximum allowable contractor per diem costs must be calculated in the same manner as the "lodging-plus" method contained in the Federal Travel Regulations.

EFFECTIVE DATE:

FOR FURTHER INFORMATION CONTACT: (b)(6) Office of Federal Acquisition Policy, Room 4041, GS Building, Washington, DC 20405, (b)(2) Please cite FAR Case ____.

SUPPLEMENTARY INFORMATION:

A. Background

A notice of the proposed rule to clarify the travel cost principle at FAR 31.205-46 was published in the Federal Register on June 13, 1990 (55 FR 24068). Public comments received were considered by both Councils, and several changes were made in the development of the final rule. The purpose of this rule is to make it clear that while downward adjustments from the Government's maximum per diem rates are generally appropriate on partial travel days or on days when no lodging costs have been incurred, contractors are not required to calculate these adjustments in accordance with Government travel regulations. Contractors may instead utilize their own travel policy procedures, so long as the result constitutes a reasonable charge to the contract.

B. Regulatory Flexibility Act

The final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because such entities generally do not have cost or incentive contracts where the allowability of costs is a major concern. An initial regulatory flexibility analysis was not performed but

public comments were solicited at 55 FR 24068 dated June 13, 1990. One comment suggested that the rule would have an economic impact on small entities under the Regulatory Flexibility Act. The Councils were unable to address the issue, because the comment did not explain how the rule would have an adverse economic impact on small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the final rule does not impose any recordkeeping requirements or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.* Under the current rules of the FAR, particularly the clauses at 52.215-2, "Audit-Negotiation," and 52.216-7, "Allowable Costs and Payment," offerors and contractors are required to maintain, and provide access to, records sufficient to permit the Government to determine the allowability and reasonableness of costs.

D. Public Comments

On June 13, 1990, a proposed rule was published in the Federal Register (55 FR 24068). Comments received from 18 individuals and organizations were considered by the Councils; several changes were made in the development of the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

ALBERT A. VICCHIOLLA
Director, Office of Federal Acquisition
and Regulatory Policy

Therefore, 48 CFR Part 31 is amended as follows:

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c), 10 U.S.C. Chapter 137, and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Subsection 31.205-46 is amended by

FAC INTRODUCTORY ITEM

ITEM XXX - TRAVEL COSTS

FAR 31.205-46 is revised to clarify that appropriate downward adjustments from the Government's maximum per diem rates would normally be required on partial travel days or on days when no lodging costs have been incurred, before such charges can be considered reasonable. However, contractors are not required to calculate these adjustments in accordance with Government travel regulations, and may instead utilize their own travel policy procedures, so long as the result constitutes a reasonable charge.



General Services Administration
Office of Acquisition Policy
Washington, DC 20405

February 1, 1991

MEMORANDUM FOR CAAC MEMBERS

FROM: *fr* ALBERT A. VICCHIOLLA *by [Signature]*
CHAIRMAN
CIVILIAN AGENCY
ACQUISITION COUNCIL

SUBJECT: CAAC Case 88-37, Travel Costs (DAR Case 87-118)
(FAR Case 90-26)

The DARC recommended approval of a final rule revision to the Travel Cost Principle, FAR 31.205-46, in the enclosed memorandum dated December 7, 1990. The recommended change is at Tab A of that memorandum and discussion of the rationals for the change is in the enclosed October 17, 1990, Cost Principles Committee report.

We recommend approval of the final rule as submitted by the ~~CAAC~~ ^{DARC}.

Questions may be directed to (b)(6) at (b)(2).

Enclosures



THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-8000

PRODUCTION AND
LOGISTICS
P/DARS

07 DEC 1990

In reply refer to
DAR Case: 87-118
CAAC Case: 88-037

MEMORANDUM FOR MR. ALBERT VICCHIOLLA, CHAIRMAN
CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT: Travel Costs

We have agreed to the attached final rule revising FAR 31.205-46 to prevent the erroneous interpretation that the maximum allowable contractor per diem travel costs must be calculated in the same manner as the "lodging-plus" method contained in the Federal Travel Regulations. We made no change to 31.205-46(a) (1) and (4), as published in the proposed rule, but made several changes to 31.205-46(a) (6) after considering public comments submitted in response to the Federal Register Notice of June 13, 1990 (55 FR 24068). These are discussed below.

We rewrote 31.205-46(a) (6) to make it clear that while downward adjustments from the Government's maximum per diem rates are generally appropriate on partial travel days, or on days when no lodging costs have been incurred, we are not requiring contractors to calculate these adjustments in accordance with Government travel regulations. Contractors may instead use their own travel policy procedures, as long as the result is only a reasonable charge to the contract.

Our clarification substitutes the words "generally would" for "do" in the first sentence of 31.205-46; adds a statement that "appropriate downward adjustments...would normally be required..." when no lodging costs are incurred or when the travel day is a partial travel day; and, states that the calculations need not be made in accordance with any Government travel regulations but must result in a reasonable charge.

"Reasonableness" is determined in accordance with FAR 31.201-3, which in paragraph (b) provides the CO some criteria by which to reach a determination of whether a specific cost is

DEC 11 1990

reasonable. These include (but are not limited to): accepted industry practices; whether the cost is generally recognized as ordinary and necessary for the conduct of the contractor's business; whether the cost results from significant deviations from the contractor's established practices; and, the contractor's overall responsibility to the public and others.

If your Council agrees with our final rule, please forward it to the FAR Secretariat for publication. A Federal Register Notice and FAC Intro Item are attached. Our case manager is (b)(6)

(b)(6)

(b)(2)



Nancy L. Ladd
Colonel, USAF,
Director, Defense
Acquisition Regulatory System

Attachments

REVISED FINAL RULE

Note: Baseline is proposed rule; changes noted in ~~strike-thru~~ text and bold [].

31.205-46 Travel costs.

(a)(1) No change from proposed rule.

* * * * *

(4) No change from proposed rule.

* * * * *

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection ~~do~~ [generally would] not constitute a reasonable daily charge ~~when~~--

(i) ~~When~~ no lodging costs are incurred[,] and/[or

(ii) ~~O]~~ on partial travel days (e.g., day of departure and return).

[Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.]

"CLEAN" FINAL RULE

31.205-46 Travel costs.

(a)(1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable subject to the limitations contained in this subsection. * * *

* * * * *

(4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in subdivisions (a)(2)(i), (ii), and (iii) in their entirety. Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein.

* * * * *

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection generally would not constitute a reasonable daily charge--

(i) When no lodging costs are incurred, and/or

(ii) On partial travel days (e.g., day of departure and return).

Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.

FEDERAL REGISTER NOTICE

**DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

48 CFR Part 31

**Federal Acquisition Regulation
Subsection 31.205-46, Travel Costs**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

Action: Final Rule

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council have agreed on a final rule amending FAR 31.205-46 to prevent the erroneous interpretation that the maximum allowable contractor per diem costs must be calculated in the same manner as the "lodging-plus" method contained in the Federal Travel Regulations.

EFFECTIVE DATE:

FOR FURTHER INFORMATION CONTACT: (b)(6) Office of Federal Acquisition Policy, Room 4041, GS Building, Washington, DC 20405, (b)(2). Please cite FAR Case __-__.

SUPPLEMENTARY INFORMATION:

A. Background

A notice of the proposed rule to clarify the travel cost principle at FAR 31.205-46 was published in the Federal Register on June 13, 1990 (55 FR 24068). Public comments received were considered by both Councils, and several changes were made in the development of the final rule. The purpose of this rule is to make it clear that while downward adjustments from the Government's maximum per diem rates are generally appropriate on partial travel days or on days when no lodging costs have been incurred, contractors are not required to calculate these adjustments in accordance with Government travel regulations. Contractors may instead utilize their own travel policy procedures, so long as the result constitutes a reasonable charge to the contract.

B. Regulatory Flexibility Act

The final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because such entities generally do not have cost or incentive contracts where the allowability of costs is a major concern. An initial regulatory flexibility analysis was not performed but

public comments were solicited at 55 FR 24068 dated June 13, 1990. One comment suggested that the rule would have an economic impact on small entities under the Regulatory Flexibility Act. The Councils were unable to address the issue because the comment did not explain how the rule would have an adverse economic impact on small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the final rule does not impose any recordkeeping requirements or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.* Under the current rules of the FAR, particularly the clauses at 52.215-2, "Audit-Negotiation," and 52.216-7, "Allowable Costs and Payment," offerors and contractors are required to maintain, and provide access to, records sufficient to permit the Government to determine the allowability and reasonableness of costs.

D. Public Comments

On June 13, 1990, a proposed rule was published in the Federal Register (55 FR 24068). Comments received from 18 individuals and organizations were considered by the Councils; several changes were made in the development of the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

ALBERT A. VICCHIOLLA
Director, Office of Federal Acquisition
and Regulatory Policy

Therefore, 48 CFR Part 31 is amended as follows:

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c), 10 U.S.C. Chapter 137, and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Subsection 31.205-46 is amended by

FAC INTRODUCTORY ITEM

ITEM XXX - TRAVEL COSTS

FAR 31.205-46 is revised to clarify that appropriate downward adjustments from the Government's maximum per diem rates would normally be required on partial travel days or on days when no lodging costs have been incurred, before such charges can be considered reasonable. However, contractors are not required to calculate these adjustments in accordance with Government travel regulations, and may instead utilize their own travel policy procedures, so long as the result constitutes a reasonable charge.



DEPARTMENT OF THE ARMY
HEADQUARTERS, U. S. ARMY MATERIEL COMMAND
5001 EISENHOWER AVENUE, ALEXANDRIA, VA 22333-0001



DAR Staff
Case 87-118

17 October 1990

MEMORANDUM FOR THE DIRECTOR, DAR COUNCIL

SUBJECT: DAR Case 87-118, Travel Costs

I. PROBLEM:

To review the public comments received and make recommendations based on them as to the need for changes to the proposed rule published in the Federal Register, dated June 13, 1990.

II. RECOMMENDATION:

That the proposed rule which amends Federal Acquisition Regulation (FAR) Subsection 31.205-46, Travel Costs, be revised and published as a final rule as set forth in TAB A.

III. DISCUSSION:

A. Background.

With the enactment of Public Law 99-234, the Federal Civilian Employee and Contractor Travel Expenses Act of 1985, contractor travel costs were limited to the rates and amounts payable to Federal travelers. Title II, Section 201 of the Act, states that: "Under any contract with any executive agency, costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by subchapter I of chapter 57 of title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any provision of such subchapter." Subchapter I of chapter 5 states that Federal travelers are entitled to per diem, reimbursement of actual expenses, or a combination thereof, as determined by the General Services Administration (GSA) (5 U.S.C. 5702(a)(1)), and that for travel consuming less than a full day, payments shall be allocated as prescribed by GSA (5 U.S.C. 5702(a)(3)).

The FAR cost principle for Travel Costs was revised in Federal Acquisition Circular (FAC) 84-19, dated July 31, 1986, to implement Public Law 99-234. In September 1987, the Department of Energy (DOE) recommended that the Travel Cost Principle be further revised because it believed the revisions

to FAR 31.205-46 did not fully conform to the Public Law 99-234 requirements. The DOE's position was that the revisions to FAR 31.205-46 had inappropriately extended to contractors the flexibility for determining reimbursement methodology (actuals, per diem, or combination).

The DOE contended that the statute had reserved that right to the Administrator of the GSA, and that GSA had established a "lodging-plus" system for Federal travelers. To allow contractors to elect one of three methods would result in contractor employee travel expenses that may exceed the "rates and amounts" set for Federal employees. The DOE used as an illustration a case where partial day travel would occur (departure and return on the same day). A "lodging-plus" system would limit a Federal traveler to a meals and incidental expense (M&IE) amount when lodging had not occurred. However, if a contractor chose to establish a "per diem" system (otherwise often referred to as a "flat-rate" system), the contractor traveler may inappropriately receive greater reimbursement for a partial day than a Federal traveler under similar circumstances.

From September 1987 to June 1990, when this proposed rule was issued in the Federal Register, the Defense Acquisition Regulatory Council (DARC) and the Civilian Agency Acquisition Council (CAAC) worked to reach agreement on adequate language to address the DOE's concerns. The Councils determined that a cost reduction was appropriate for partial days; however, the calculation of the cost reduction, in accordance with the Government's "lodging-plus" system, was not to be levied on contractors.

The proposed rule, issued June 13, 1990, stated that "FAR 31.205-46(a)(4) has been erroneously interpreted to mean that the maximum allowable contractor per diem travel costs must be calculated in the same manner as the "lodging-plus" method contained in the Federal Travel Regulations. The FAR Councils never intended to impose Government administrative procedures upon contractors." Accordingly, subparagraph (d)(4) was grammatically rearranged to prevent erroneous interpretation. The proposed rule also included a new subparagraph (a)(6) to define reasonable per diem costs for partial travel days and days when no lodging costs are incurred. The preamble to the proposed rule stated that "Appropriate downward adjustments in maximum per diem rates are generally required under these circumstances."

B. Committee comments.

Eighteen comments were received in response to the

proposed rule, of which there was one non-concur and six partial-concurs. A list of the commenters and a matrix of the comments is attached as Tab B. All of the negative comments dealt specifically with subparagraph (a)(6). Based on a review of the comments, the Committee is recommending a revision of the subparagraph to provide clarification of its intent. The comments focused on six major areas:

(1) Additional administrative burden.

Four commenters believed that implementation of subparagraph (a)(6) would impose an additional administrative burden on contractors. Thiokol stated that the proposed guidance was in direct conflict with the FAR Councils' intent to not impose Government administrative procedures upon contractors and that additional documentation and calculations would be required to support maximum expenditures on partial days. Corning Incorporated (Corning) stated that, where the contractor's percentage of government sales and number of affected employees are small, time-consuming administrative procedures to effect adjustments outweigh financial benefits to the Government. The Aerospace Industries Association (AIA) and National Security Industrial Association (NSIA) believed the rule implies "separate ceilings" for meals and incidentals on partial travel days when no lodging costs are incurred, and that establishing such a system would be exceedingly burdensome and expensive in light of the benefits to be derived. Mr. Anthony P. DeStefano, C.P.A., suggested that the proposed rule would have an adverse economic impact on small entities under the Regulatory Flexibility Act (RFA).

Committee comments:

Subparagraph (a)(6) was not written to impose an additional administrative burden on contractors, nor was it written to imply that separate ceilings for M&IE and lodging were mandatory. When Title II, Section 201 of Public Law 99-234 was implemented in FAC 84-19, the DARC and the CAAC had agreed that the "maximum" per diem rate applied because it was believed that use of a single ceiling complies with the intent of Congress and would be less complicated and administratively burdensome. However, the law did require that contractor travel expenses not exceed the rates and amounts set by subchapter I of chapter 57 of title 5. Section 5702(a)(3) of chapter 57, title 5, states that "For travel consuming less than a full day, the payment prescribed by regulation shall be allocated in such manner as the Administrator may prescribe." This statement clearly suggests that some prorating of the maximum per diem rate is appropriate on partial days. While the Councils agreed that Government administrative procedures

contained in the Federal Travel Regulations would not be required for contractors (i.e., separate ceilings, or M&IE daily rates allocated by quarter-day increments), that decision does not abrogate the need to appropriately adjust the maximum per diem rate in situations where partial days occur or no lodging costs have been incurred. Subparagraph (a)(6) has, therefore, been rewritten to state that while adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations they must result in a reasonable charge. The determination of reasonableness will be determined, as with all cost principles, in accordance with FAR 31.201-3, Determining reasonableness. Concerning the comment on RFA, Mr. DeStefano did not explain how the rule would have an adverse economic impact and, therefore, the Committee is unable to address his concern.

(2) Ambiguous language.

Three commenters suggested that the proposed language in subparagraph (a)(6) was ambiguous. Mr. Anthony P. DeStefano, Corning and Motorola Inc. (Motorola) posed various partial day scenarios and requested clarification (e.g., does the rule require quarter-day increment allocations for M&IE). Motorola also stated that the conjunction "and" between "...lodging costs are incurred and on partial travel days..." is confusing and can be interpreted as meaning both situations must occur together in order for a downward adjustment to be applicable.

Committee comments:

As stated in (1) above, the Councils have not imposed Government administrative travel procedures on contractors. The revisions to subparagraph (a)(6) recommended for the final rule will make clear that adjustments need not be calculated in accordance with Government travel regulations, but must result in a reasonable charge. Also, the conjunction "and" has been replaced by the words "and/or." In addition, the Committee recommends that the FAC background section include a statement that reasonableness will be determined in accordance with FAR 31.201-3.

(3) Reasonableness versus allowability.

Three commenters stated that subparagraph (a)(6) focused on what is not reasonable, rather than what is reasonable or allowable on partial days or days when no lodging expenses are incurred. Thiokol believes the rule will invite interpretive disputes as to what constitutes reasonable per diem charges. Litton believes the rule should give criteria to guide contractors in deciding what the maximum allowable per diem

should be. The Department of Defense, Inspector General (DOD/IG) stated that the rule should contain guidance on how to determine reasonableness, and that the language included in the Background section of the proposed rule, "appropriate downward adjustments...." should be included in subparagraph (a)(6).

Committee comments:

The Committee does not agree that a rule based on reasonableness will invite a rash of interpretive disputes. A reasonableness determination is one of the normal elements considered for all cost principles. The Committee also does not believe that subparagraph (a)(6) needs to include criteria to guide contractors in deciding what adjustment to the maximum per diem should be made. When Public Law 99-234 was initially implemented, a decision was made not to force the Government administrative procedures on contractors so that they would have the flexibility to establish procedures consistent with their own practices. The Committee does agree, however, that the area of "reasonableness" should be clarified in the final rule and has appropriately modified subparagraph (a)(6) to include a statement that "Appropriate downward adjustments from the maximum per diem rates would normally be required...."

(4) Materiality of costs should be considered.

Two commenters believe that "materiality" should be a consideration in determining unallowable travel costs. Corning referenced a Defense Contract Audit Agency document entitled "Audit Guidance on Implementing the Cost Principle on Per Diem Costs (DAR Case 85-230)" which quoted Cost Accounting Standard 405.50(c) concerning consideration of materiality in the identification of unallowable costs. Corning recommended a simplified estimating technique, which incorporates a sampling approach, be explicitly included in the travel cost regulation. Corning also proposed that the Administrative Contracting Officer (ACO) be given discretion in the regulation to negotiate formal agreements with contractors fixing their estimation formula for excluding travel cost unallowables, either permanently or for long periods of time. The AIA/NSIA suggested that "the concept of materiality must be addressed by the DARC before implementing the proposed change," and that the "unallowable costs to be gained by the Government are significantly outweighed by the substantial costs of implementation, maintenance, segregation, reporting and audit of costs." Furthermore, the AIA/NSIA believe that subparagraph (a)(6) should be deleted in its entirety, and that reliance on reasonableness determinations can be negotiated by each contractor through the use of advance agreements.

Committee comments:

The Committee agrees that in some situations Corning's approach (i.e., sampling techniques) may be appropriate; however, the Committee does not agree that the approach is appropriate for all contractors. In addition, the Committee does not agree that the regulation needs to contain specific authority for the ACO to negotiate formal agreements. The ACO has always had the discretion to enter into special agreements. As stated in the Committee's July 18, 1986 report, the Committee does not endorse any particular method or system to determine reasonable costs for lodging, meals and incidental expenses, so long as those costs do not exceed the maximum per diem rate or amount as set forth in the Federal Travel Regulations. The AIA/NSIA proposal that subparagraph (a)(6) is not needed because advance agreements can be negotiated is correct on the surface, but it does not take into consideration that clarification is required since some contractors have been under the mistaken impression that no adjustment to the maximum per diem amount is required in these particular situations.

(5) Downward adjustment should not be applied to M&IE.

Two commenters believe that subparagraph (a)(6) should be exclusive for lodging cost adjustments only. Corning stated that special procedures would have to be established on how to make adjustments for meals. The AIA/NSIA stated that adjustments for lodging are appropriate and easy to compute, however, adjustments for meals would involve maintaining and reviewing departure and arrival times to compute whether meals were reasonable. The AIA/NSIA also believe that requiring adjustments for meals has the effect of establishing separate ceilings for lodging and meals, which is contrary to the Government's previous statement that a single ceiling was appropriate.

Committee comments:

The Committee is at a loss to understand why the commenters believe an adjustment is appropriate when no lodging costs have been incurred, but an adjustment is not appropriate when a traveler departs at 4 p.m. and has not incurred breakfast or lunch costs. The purpose of Public Law 99-234 was to limit contractor travel expenses to no more than the maximum amount allowed for Federal travelers. The maximum amount establishes the ceiling which shall be considered to be reasonable and allowable; it does not establish a presumption that all costs are reasonable and allowable as long as they do not exceed the maximum amount. Making adjustments for meals may well require a contractor to revise its travel procedures

to ensure that allowable travel expenses are also reasonable; however, reasonableness determinations are a fundamental element for all cost principles. Furthermore, contractors have not been required to implement the Government's detailed administrative procedures and, therefore, have the flexibility to establish procedures which accommodate the contractor's travel policy. The AIA/NSIA comment that adjustments for meals will have the effect of establishing separate ceilings is correct, but not for the reason stated. Adjustments for lodging will automatically establish the remaining amount as a ceiling for M&IE. It should also be noted that when the Government established the maximum per diem amount as a "single ceiling," the purpose was to not restrict contractors to the identical rates and amounts for lodging or M&IE that Government travelers are subject to. Rather, contractors were afforded the privilege to allocate the maximum per diem amount between "lodging," "meals" or "incidental" expenses as appropriate for each contractor.

C. Summary:

Based on the public comments, the Committee has revised subparagraph (a)(6) to clarify that appropriate downward adjustments to the maximum per diem rates and amounts would normally be required under certain circumstances, and the adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations so long as they result in a reasonable charge. All members of the Committee concur with the contents of this report.



Dale R. Siman
Chairman, Cost Principles Committee

DOD Members

Paul Schill, Air Force
Mike Righi, Navy
Barry Turner, DCAA
Chris Werner, OSD(P)
Don Reiter, DLA

Other Members

Jerry Olson, GSA
Gwen Cowan, DOE
Joe LeCren, NASA

Attachments:

Tab A - Recommended Revision to FAR 31.205-46.
Tab B - List of commenters and matrix of comments.

31.205-46 Travel costs.

(a)(1) No change

* * * * *

(a)(4) No change

* * * * *

(a)(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection do [generally would] not constitute a reasonable daily charge when no lodging costs are incurred and[or] on partial travel days (e.g., day of departure and return). [Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.]

Underline = Deleted text
Brackets = New text

The proposed rule is the baseline for the changes.

Public comments received on DAR case 87-118, Travel Costs

	<u>No Comment or Concur</u>	<u>Non- Concur</u>	<u>Partially Concur</u>
1. Anthony P. DeStefano, CPA			X
2. National Endowment for the Humanities	X		
3. United States Information Agency	X		
4. Armed Forces Communications & Electronics Assoc. (AFCEA)	X		
5. Thiokol		X	
6. U.S. National Labor Relations Board	X		
7. Litton			X
8. Federal Deposit Insurance Corp	X		
9. Central Intelligence Agency	X		
10. Corning Inc.			X
11. U.S. Dept of Justice	X		
12. Agency for International Development	X		
13. AIA, NSIA			X
14. American Defense Preparedness Association	X		
15. IG, DOD			X
16. Motorola Inc.			X
17. Dept of Veterans Affairs	X		
18. GSA, Office of Acquisition Policy	X		
	<hr/>	<hr/>	<hr/>
	11	1	6

SUMMARY OF PUBLIC COMMENTS

DAR Case 87-118

1. Additional administrative burden

- Adverse economic impact on small entities under the Regulatory Flexibility Act. (1)
- Proposed guidance in direct conflict with FAR Council's intent to not impose Government administrative procedures upon contractors. Will require additional documentation and calculations to support maximum expenditures for partial days. (5)
- Where the contractor's percentage of government sales and number of affected employees are small, time-consuming administrative procedures to effect adjustments outweighs financial benefits to the government. (10)
- The rule implies "separate ceilings" for meals and incidentals on partial travel days when no lodging costs are incurred. Establishing such a system would be exceedingly burdensome and expensive in light of the benefits to be derived. (13)

2. Ambiguous language

- A literal reading suggests a person who leaves at 7a.m. and returns at 6p.m. may not get reimbursed for three meals. (1)
- Government regulations break days into quarters for meal reimbursements. Is intent of rule to require same for contractors? (10)
- The word "and" is ambiguous. Two interpretations: (1) when lodging costs have not been incurred, meals are not reasonable and therefore unallowable, or (2) on partial travel days where lodging costs have not been incurred, meals are not reasonable and therefore unallowable. (16)

3. Rule establishes reasonableness standard rather than allowability standard

- Rule will invite interpretive disputes as to what constitutes reasonable per diem charges on days when no lodging expenses are incurred and on partial travel days. (5)
- Rule states what is not reasonable; should give criteria to guide contractors in deciding what the maximum allowable per diem should be in those circumstances. (7)
- Rule states what is not reasonable; should contain guidance on how to determine reasonableness. (15)

4. Materiality of costs should be considered.

- Endorse simplified estimating approach...reference DCAA document entitled "Audit Guidance on Implementing the Cost Principle on Per Diem Costs" (CAS 405.50(c)). (10)

- Use sampling technique, develop formula of the unallowable travel costs to the related total travel costs and use to estimate "unallowable costs". (10)
 - Would agreed-upon formula satisfy stringent requirements of the Certificate of Indirect Costs?
 - ACOs should be given discretion in the regulation to negotiate formal agreements with government contractors fixing their estimation formula for excluding these travel cost unallowables either permanently or for long periods of time (3 years).
- The perceived additional unallowable costs to be gained by the Government are significantly outweighed by the substantial costs of implementation, maintenance, segregation, reporting and audit of costs. (13)

5. Downward adjustment should not be applicable to meals

- Subparagraph (a)(6) should explicitly limit its impact to the lodging cost adjustment only. Special procedures would have to be established on how to make adjustments for meals. (10)
- Adjustments for meals has the effect of establishing separate ceilings for lodging and meals (like the Government). When the per diem ceilings were established in 1986, the July 18, 1986 Committee report stated that a single maximum ceiling would apply because it complies with the intent of Congress and would be less complicated and administratively burdensome. Adjustments for lodging are appropriate and easy to compute, adjustments for meals would involve maintaining and reviewing departure and arrival times to compute whether meals were reasonable. (13)

6. Alternative language proposed by commenters

For subparagraph (a)(6): "The maximum per diem rates referenced in subparagraph (a)(2) of this subsection or any other per diem rates do not apply to those partial travel days or travel days where lodging costs are not incurred. The basis for a determination of reasonableness should be in accordance with 31.201-3, Determining Reasonableness." (13)

For subparagraph (a)(2): "Except as provided in subparagraph (a)(3) of this subsection, costs incurred for lodging, meals and incidental expenses (as defined in the regulations cited in (a)(2)(i) through (iii) of this subparagraph) shall be considered to be reasonable and allowable only to the extent that these expenses in total do not exceed on a daily basis the maximum per diem rates..." (15)

For subparagraph (a)(6): "Appropriate downward adjustments in maximum per diem rates are generally required under these circumstances. These adjustments should be calculated consistent with the contractor's established policies and procedures and result in a logical reasonable reimbursement." (15)

For subparagraph (a)(6): "The maximum per diem rates may not constitute a reasonable daily charge when an employee is in travel status for a part day. Generally, a reduction to the maximum per diem rates is appropriate under these circumstances." (16)

Case Management Record

IHPS

DAR Case No. 87-118	CAAC No. 88-037	Original		Date
		Updated	✓	DEC. 12, 1990
Title <i>Travel Costs</i>				
Reference <i>Director, DARC ltr to CAAC dtd 7 Dec 90</i>				
Synopsis <i>We made some minor editorial changes to the final rule at 31.205-46(a)(6) which is a compromise between what the Committee wanted and what the DARC wanted.</i>				
Priority	Submitted By	Originator Code	Case Manager	
	06		06	
Keywords				
Case References				
FAR Cites	<i>31.205-46</i>			
DFARS Cites				
Cognizant Committees				
DAR STAFF - (b)(6)				
Recommendation <i>FYI</i>				
Notes				



THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301-8000

PRODUCTION AND
LOGISTICS
P/DARS

07 DEC 1990

In reply refer to
DAR Case: 87-118
CAAC Case: 88-037

MEMORANDUM FOR MR. ALBERT VICCHIOLLA, CHAIRMAN
CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT: Travel Costs

We have agreed to the attached final rule revising FAR 31.205-46 to prevent the erroneous interpretation that the maximum allowable contractor per diem travel costs must be calculated in the same manner as the "lodging-plus" method contained in the Federal Travel Regulations. We made no change to 31.205-46(a) (1) and (4), as published in the proposed rule, but made several changes to 31.205-46(a) (6) after considering public comments submitted in response to the Federal Register Notice of June 13, 1990 (55 FR 24068). These are discussed below.

We rewrote 31.205-46(a) (6) to make it clear that while downward adjustments from the Government's maximum per diem rates are generally appropriate on partial travel days, or on days when no lodging costs have been incurred, we are not requiring contractors to calculate these adjustments in accordance with Government travel regulations. Contractors may instead use their own travel policy procedures, as long as the result is only a reasonable charge to the contract.

Our clarification substitutes the words "generally would" for "do" in the first sentence of 31.205-46; adds a statement that "appropriate downward adjustments...would normally be required..." when no lodging costs are incurred or when the travel day is a partial travel day; and, states that the calculations need not be made in accordance with any Government travel regulations but must result in a reasonable charge.

"Reasonableness" is determined in accordance with FAR 31.201-3, which in paragraph (b) provides the CO some criteria by which to reach a determination of whether a specific cost is

reasonable. These include (but are not limited to): accepted industry practices; whether the cost is generally recognized as ordinary and necessary for the conduct of the contractor's business; whether the cost results from significant deviations from the contractor's established practices; and, the contractor's overall responsibility to the public and others.

If your Council agrees with our final rule, please forward it to the FAR Secretariat for publication. A Federal Register Notice and FAC Intro Item are attached. Our case manager is (b)(6)

(b)(6)

(b)(2)



Nancy P. Ladd
Colonel, USAF,
Director, Defense

Acquisition Regulatory System

Attachments

REVISED FINAL RULE

Note: Baseline is proposed rule; changes noted in ~~strike-thru~~ text and bold [].

31.205-46 Travel costs.

(a)(1) No change from proposed rule.

* * * * *

(4) No change from proposed rule.

* * * * *

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection ~~do~~ [generally would] not constitute a reasonable daily charge ~~when~~--

(i) ~~When~~ no lodging costs are incurred[,] and[/or

(ii) ~~O] on~~ partial travel days (e.g., day of departure and return).

[Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.]

"CLEAN" FINAL RULE

31.205-46 Travel costs.

(a)(1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable subject to the limitations contained in this subsection. * * *

* * * * *

(4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in subdivisions (a)(2)(i), (ii), and (iii) in their entirety. Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein.

* * * * *

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection generally would not constitute a reasonable daily charge--

(i) When no lodging costs are incurred, and/or

(ii) On partial travel days (e.g., day of departure and return).

Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.

FEDERAL REGISTER NOTICE

**DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

48 CFR Part 31

**Federal Acquisition Regulation
Subsection 31.205-46, Travel Costs**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

Action: Final Rule

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council have agreed on a final rule amending FAR 31.205-46 to prevent the erroneous interpretation that the maximum allowable contractor per diem costs must be calculated in the same manner as the "lodging-plus" method contained in the Federal Travel Regulations.

EFFECTIVE DATE:

FOR FURTHER INFORMATION CONTACT: (b)(6) Office of Federal Acquisition Policy, Room 4041, GS Building, Washington, DC 20405. (b)(2). Please cite FAR Case ____.

SUPPLEMENTARY INFORMATION:

A. Background

A notice of the proposed rule to clarify the travel cost principle at FAR 31.205-46 was published in the Federal Register on June 13, 1990 (55 FR 24068). Public comments received were considered by both Councils, and several changes were made in the development of the final rule. The purpose of this rule is to make it clear that while downward adjustments from the Government's maximum per diem rates are generally appropriate on partial travel days or on days when no lodging costs have been incurred, contractors are not required to calculate these adjustments in accordance with Government travel regulations. Contractors may instead utilize their own travel policy procedures, so long as the result constitutes a reasonable charge to the contract.

B. Regulatory Flexibility Act

The final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because such entities generally do not have cost or incentive contracts where the allowability of costs is a major concern. An initial regulatory flexibility analysis was not performed but

public comments were solicited at 55 FR 24068 dated June 13, 1990. One comment suggested that the rule would have an economic impact on small entities under the Regulatory Flexibility Act. The Councils were unable to address the issue because the comment did not explain how the rule would have an adverse economic impact on small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the final rule does not impose any recordkeeping requirements or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.* Under the current rules of the FAR, particularly the clauses at 52.215-2, "Audit-Negotiation," and 52.216-7, "Allowable Costs and Payment," offerors and contractors are required to maintain, and provide access to, records sufficient to permit the Government to determine the allowability and reasonableness of costs.

D. Public Comments

On June 13, 1990, a proposed rule was published in the Federal Register (55 FR 24068). Comments received from 18 individuals and organizations were considered by the Councils; several changes were made in the development of the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

ALBERT A. VICCHIOLLA
Director, Office of Federal Acquisition
and Regulatory Policy

Therefore, 48 CFR Part 31 is amended as follows:

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c), 10 U.S.C. Chapter 137, and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Subsection 31.205-46 is amended by

FACINTRODUCTORY ITEM

ITEM XXX - TRAVEL COSTS

FAR 31.205-46 is revised to clarify that appropriate downward adjustments from the Government's maximum per diem rates would normally be required on partial travel days or on days when no lodging costs have been incurred, before such charges can be considered reasonable. However, contractors are not required to calculate these adjustments in accordance with Government travel regulations, and may instead utilize their own travel policy procedures, so long as the result constitutes a reasonable charge.

Nancy... "reasonableness" is determined in accordance with FAR 31.201-3, which in paragraph (b) provides the CO some criteria by which to reach a determination of whether a specific cost is reasonable. These include (but are not limited to): accepted industry practices; whether the cost is generally recognized as ordinary and necessary for the conduct of the contractor's business; whether the cost results from significant deviations from the contractor's established practices; and, the contractor's overall responsibility to the public and others (e.g. his/her's conscionable actions). My background statement for the Fed Reg Notice at one time said that "as with all cost principles, reasonableness would be determined in accordance with FAR 31.201-3, Determining reasonableness," but between Chris Werner, Dale Siman, and myself, we thought this was a bit redundant. If you think it may help, we can add it to the letter to the CAAC. Does this answer your question? 12/07/90

(b)(6) ...please answer one little question for me....how does the CO determine if it is a "reasonable charge"? (b)(6)

P/DARS

In reply refer to
DAR Case: 87-118
CAAC Case: 88-037

MEMORANDUM FOR MR. ALBERT VICCHIOLLA, CHAIRMAN
CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT: Travel Costs

We have agreed to the attached final rule revising FAR 31.205-46 to prevent the erroneous interpretation that the maximum allowable contractor per diem travel costs must be calculated in the same manner as the "lodging-plus" method contained in the Federal Travel Regulations. We made no change to 31.205-46(a) (1) and (4), as published in the proposed rule, but made several changes to 31.205-46(a) (6) after considering public comments submitted in response to the Federal Register Notice of June 13, 1990 (55 FR 24068). These are discussed below.

We rewrote 31.205-46(a) (6) to make it clear that while downward adjustments from the Government's maximum per diem rates

are generally appropriate on partial travel days, or on days when no lodging costs have been incurred, we are not requiring contractors to calculate these adjustments in accordance with Government travel regulations. Contractors may instead use their own travel policy procedures, as long as the result is only a reasonable charge to the contract.

Our clarification substitutes the words "generally would" for "do" in the first sentence of 31.205-46; adds a statement that "appropriate downward adjustments...would normally be required..." when no lodging costs are incurred or when the travel day is a partial travel day; and, states that the calculations need not be made in accordance with any Government travel regulations but must result in a reasonable charge.

If your Council agrees with our final rule, please forward it to the FAR Secretariat for publication. A Federal Register Notice and FAC Intro Item are attached. Our case manager is (b)(6)

(b)(6)

(b)(2)

Nancy L. Ladd
Colonel, USAF,
Director, Defense
Acquisition Regulatory System

Attachments

Draft 11/28/90
12/07/90 - 01
says do not see

Defense Acquisition Regulatory System

MEMO

November 26, 1990
a8

To: Mrs. Spector
Thru: Mrs. Carol Covey

Subject: Travel Costs (DAR Case 87-118)

I would like your approval to send this draft final FAR rule to the CAAC for their consideration and approval.

To recap some details, we initiated this case in 1987 after DOE suggested that the FAR travel cost principle at FAR 31.205-46 did not fully conform to the requirements of Public Law 99-234, the Federal Civilian Employee and Contractor Travel Expenses Act of 1986. As discussed in the Cost Principles Committee report (atch 1), the Act limited contractor travel costs to the rates and amounts payable to Federal travelers, as determined by GSA. DOE interpreted this to mean that the maximum allowable contractor per diem costs were set by GSA and that the contractor's costs for partial travel days must be calculated in the same manner as GSA prescribes in the Federal Travel Regulations for federal travelers. DOE also held that the cost principle was ambiguous because by referencing only the maximum per diem rates, without requiring GSA's prescribed allocation for partial travel days, contractor travelers could receive greater reimbursement for a partial travel day than a Federal traveler under similar circumstances.

After considering the issues raised by DOE, both the DAR and the CAA Councils determined that while a cost reduction was appropriate for partial travel days, it was not appropriate to require contractors to use the Government's methodology for calculating such a reduction. We published a proposed rule to clarify the coverage on June 13, 1990, stating that the cost principle had been erroneously interpreted to require contractors to calculate costs in the same manner as prescribed by GSA for Federal travelers. The public comment period ended on August 13, 1990, and after considering public comments, the Cost Principles Committee provided its recommendation for a final rule on October 17, 1990.

The Committee made several changes to 31.205-46(a)(6) to further clarify that while downward adjustments from the Government's maximum per diem rate are generally appropriate on partial travel days (e.g. day of departure/day of return) or on days when no lodging costs are incurred, contractors are not required to calculate these adjustments in accordance with Government travel regulations. Contractors may use their own travel policy procedures, as long as the result constitutes a reasonable

charge to the contract. The Committee recommended no changes to paragraphs 31.205-46(a)(1) and (a)(4) from what was published in the proposed rule.

The DAR Council, in considering the Committee's recommendation for a revised final rule, tried to clarify the Committee's language by making several editorial changes to 31.205-46(a)(6). My case manager, Eric Mens, did not fully agree with the DAR Council's changes. Carol Covey preferred the Committee version. As a result, Eric developed a compromise version which keeps intact the Committee's recommended language while also adopting some of the DAR Council's editorial changes (Atch 2). The Committee Chairman agrees with the compromise language and Carol Covey also finds it acceptable.

May I have your approval to process this rule (atch 3) for CAAC review/approval?

Nancy L. Ladd, Lt Colonel, USAF
Director, Defense Acquisition
Regulatory Council

Attachments

Message Envelope

Postmark: Thu Nov 29, 1990 10:20 am

Sender: Post Office

To: (b)(6)

cc:

Type of information: None

Tags: Certified

Subject: Your message to (b)(6) on Nov 29, 1990 9:50 am
concerning 'Any factual errors?' was viewed on Nov 29, 1990 10:11 am.

Changes noted on attached.

Defense Acquisition Regulatory System

MEMO

November 26, 1990

To: Mrs. Spector
Thru: Mrs. Carol Covey

Subject: Travel Costs (DAR Case 87-118)

I would like your approval to send this draft final FAR rule to the CAAC for their consideration and approval.

To recap some details, we initiated this case in 1987 ^{Civilian} after DOE suggested that the FAR travel cost principle at FAR 31.205-46 did not fully conform to the requirements of Public Law 99-234, the Federal Employee and Contractor Travel Expenses Act of 1986. As discussed in the Cost Principles Committee report (atch 1), the Act limited contractor travel costs to the rates and amounts payable to Federal travelers, as determined by GSA. DOE interpreted this to mean that the maximum allowable contractor per diem costs were set by GSA and that the contractor's costs for partial travel days must be calculated in the same manner as GSA prescribes in the Federal Travel Regulations for federal travelers. DOE also held that the cost principle was ambiguous because by referencing only the maximum per diem rates, without requiring GSA's prescribed allocation for partial travel days, contractor travelers could receive greater reimbursement for a partial travel day than a Federal traveler under similar circumstances.

After considering the issues raised by DOE, both the DAR and the CAA Councils determined that while a cost reduction was appropriate for partial travel days, it was not appropriate to require contractors to use the Government's methodology for calculating such a reduction. We published a proposed rule to clarify the coverage on June 13, 1990, stating that the cost principle had been erroneously interpreted to require contractors to calculate costs in the same manner as prescribed by GSA for Federal travelers.

The DAR Council, in considering this case, tried to clarify the Cost Principles Committee's language by making several editorial changes. My case manager, Eric Mens, did not fully agree with the DAR Council's changes. Carol Covey preferred the Committee version. As a result, Eric developed a compromise version which keeps intact the Committee's recommended language while also adopting some of the DAR Council's editorial changes (Atch 2). The Committee Chairman agrees with the compromise language and Carol Covey also finds it acceptable.



DEPARTMENT OF THE ARMY
HEADQUARTERS, U. S. ARMY MATERIEL COMMAND
5001 EISENHOWER AVENUE, ALEXANDRIA, VA 22333-0001



DAR Staff
Case 87-118

17 October 1990

MEMORANDUM FOR THE DIRECTOR, DAR COUNCIL

SUBJECT: DAR Case 87-118, Travel Costs

I. PROBLEM:

To review the public comments received and make recommendations based on them as to the need for changes to the proposed rule published in the Federal Register, dated June 13, 1990.

II. RECOMMENDATION:

That the proposed rule which amends Federal Acquisition Regulation (FAR) Subsection 31.205-46, Travel Costs, be revised and published as a final rule as set forth in TAB A.

III. DISCUSSION:

A. Background.

With the enactment of Public Law 99-234, the Federal Civilian Employee and Contractor Travel Expenses Act of 1985, contractor travel costs were limited to the rates and amounts payable to Federal travelers. Title II, Section 201 of the Act, states that: "Under any contract with any executive agency, costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by subchapter I of chapter 57 of title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any provision of such subchapter." Subchapter I of chapter 5 states that Federal travelers are entitled to per diem, reimbursement of actual expenses, or a combination thereof, as determined by the General Services Administration (GSA) (5 U.S.C. 5702(a)(1)), and that for travel consuming less than a full day, payments shall be allocated as prescribed by GSA (5 U.S.C. 5702(a)(3)).

The FAR cost principle for Travel Costs was revised in Federal Acquisition Circular (FAC) 84-19, dated July 31, 1986, to implement Public Law 99-234. In September 1987, the Department of Energy (DOE) recommended that the Travel Cost Principle be further revised because it believed the revisions

to FAR 31.205-46 did not fully conform to the Public Law 99-234 requirements. The DOE's position was that the revisions to FAR 31.205-46 had inappropriately extended to contractors the flexibility for determining reimbursement methodology (actuals, per diem, or combination).

The DOE contended that the statute had reserved that right to the Administrator of the GSA, and that GSA had established a "lodging-plus" system for Federal travelers. To allow contractors to elect one of three methods would result in contractor employee travel expenses that may exceed the "rates and amounts" set for Federal employees. The DOE used as an illustration a case where partial day travel would occur (departure and return on the same day). A "lodging-plus" system would limit a Federal traveler to a meals and incidental expense (M&IE) amount when lodging had not occurred. However, if a contractor chose to establish a "per diem" system (otherwise often referred to as a "flat-rate" system), the contractor traveler may inappropriately receive greater reimbursement for a partial day than a Federal traveler under similar circumstances.

From September 1987 to June 1990, when this proposed rule was issued in the Federal Register, the Defense Acquisition Regulatory Council (DARC) and the Civilian Agency Acquisition Council (CAAC) worked to reach agreement on adequate language to address the DOE's concerns. The Councils determined that a cost reduction was appropriate for partial days; however, the calculation of the cost reduction, in accordance with the Government's "lodging-plus" system, was not to be levied on contractors.

The proposed rule, issued June 13, 1990, stated that "FAR 31.205-46(a)(4) has been erroneously interpreted to mean that the maximum allowable contractor per diem travel costs must be calculated in the same manner as the "lodging-plus" method contained in the Federal Travel Regulations. The FAR Councils never intended to impose Government administrative procedures upon contractors." Accordingly, subparagraph (d)(4) was grammatically rearranged to prevent erroneous interpretation. The proposed rule also included a new subparagraph (a)(6) to define reasonable per diem costs for partial travel days and days when no lodging costs are incurred. The preamble to the proposed rule stated that "Appropriate downward adjustments in maximum per diem rates are generally required under these circumstances."

B. Committee comments.

Eighteen comments were received in response to the

proposed rule, of which there was one non-concur and six partial-concurs. A list of the commenters and a matrix of the comments is attached as Tab B. All of the negative comments dealt specifically with subparagraph (a)(6). Based on a review of the comments, the Committee is recommending a revision of the subparagraph to provide clarification of its intent. The comments focused on six major areas:

(1) Additional administrative burden.

Four commenters believed that implementation of subparagraph (a)(6) would impose an additional administrative burden on contractors. Thiokol stated that the proposed guidance was in direct conflict with the FAR Councils' intent to not impose Government administrative procedures upon contractors and that additional documentation and calculations would be required to support maximum expenditures on partial days. Corning Incorporated (Corning) stated that, where the contractor's percentage of government sales and number of affected employees are small, time-consuming administrative procedures to effect adjustments outweigh financial benefits to the Government. The Aerospace Industries Association (AIA) and National Security Industrial Association (NSIA) believed the rule implies "separate ceilings" for meals and incidentals on partial travel days when no lodging costs are incurred, and that establishing such a system would be exceedingly burdensome and expensive in light of the benefits to be derived. Mr. Anthony P. DeStefano, C.P.A., suggested that the proposed rule would have an adverse economic impact on small entities under the Regulatory Flexibility Act (RFA).

Committee comments:

Subparagraph (a)(6) was not written to impose an additional administrative burden on contractors, nor was it written to imply that separate ceilings for M&IE and lodging were mandatory. When Title II, Section 201 of Public Law 99-234 was implemented in FAC 84-19, the DARC and the CAAC had agreed that the "maximum" per diem rate applied because it was believed that use of a single ceiling complies with the intent of Congress and would be less complicated and administratively burdensome. However, the law did require that contractor travel expenses not exceed the rates and amounts set by subchapter I of chapter 57 of title 5. Section 5702(a)(3) of chapter 57, title 5, states that "For travel consuming less than a full day, the payment prescribed by regulation shall be allocated in such manner as the Administrator may prescribe." This statement clearly suggests that some prorating of the maximum per diem rate is appropriate on partial days. While the Councils agreed that Government administrative procedures

contained in the Federal Travel Regulations would not be required for contractors (i.e., separate ceilings, or M&IE daily rates allocated by quarter-day increments), that decision does not abrogate the need to appropriately adjust the maximum per diem rate in situations where partial days occur or no lodging costs have been incurred. Subparagraph (a)(6) has, therefore, been rewritten to state that while adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations they must result in a reasonable charge. The determination of reasonableness will be determined, as with all cost principles, in accordance with FAR 31.201-3, Determining reasonableness. Concerning the comment on RFA, Mr. DeStefano did not explain how the rule would have an adverse economic impact and, therefore, the Committee is unable to address his concern.

(2) Ambiguous language.

Three commenters suggested that the proposed language in subparagraph (a)(6) was ambiguous. Mr. Anthony P. DeStefano, Corning and Motorola Inc. (Motorola) posed various partial day scenarios and requested clarification (e.g., does the rule require quarter-day increment allocations for M&IE). Motorola also stated that the conjunction "and" between "...lodging costs are incurred and on partial travel days..." is confusing and can be interpreted as meaning both situations must occur together in order for a downward adjustment to be applicable.

Committee comments:

As stated in (1) above, the Councils have not imposed Government administrative travel procedures on contractors. The revisions to subparagraph (a)(6) recommended for the final rule will make clear that adjustments need not be calculated in accordance with Government travel regulations, but must result in a reasonable charge. Also, the conjunction "and" has been replaced by the words "and/or." In addition, the Committee recommends that the FAC background section include a statement that reasonableness will be determined in accordance with FAR 31.201-3.

(3) Reasonableness versus allowability.

Three commenters stated that subparagraph (a)(6) focused on what is not reasonable, rather than what is reasonable or allowable on partial days or days when no lodging expenses are incurred. Thiokol believes the rule will invite interpretive disputes as to what constitutes reasonable per diem charges. Litton believes the rule should give criteria to guide contractors in deciding what the maximum allowable per diem

should be. The Department of Defense, Inspector General (DOD/IG) stated that the rule should contain guidance on how to determine reasonableness, and that the language included in the Background section of the proposed rule, "appropriate downward adjustments...", should be included in subparagraph (a)(6).

Committee comments:

The Committee does not agree that a rule based on reasonableness will invite a rash of interpretive disputes. A reasonableness determination is one of the normal elements considered for all cost principles. The Committee also does not believe that subparagraph (a)(6) needs to include criteria to guide contractors in deciding what adjustment to the maximum per diem should be made. When Public Law 99-234 was initially implemented, a decision was made not to force the Government administrative procedures on contractors so that they would have the flexibility to establish procedures consistent with their own practices. The Committee does agree, however, that the area of "reasonableness" should be clarified in the final rule and has appropriately modified subparagraph (a)(6) to include a statement that "Appropriate downward adjustments from the maximum per diem rates would normally be required...."

(4) Materiality of costs should be considered.

Two commenters believe that "materiality" should be a consideration in determining unallowable travel costs. Corning referenced a Defense Contract Audit Agency document entitled "Audit Guidance on Implementing the Cost Principle on Per Diem Costs (DAR Case 85-230)" which quoted Cost Accounting Standard 405.50(c) concerning consideration of materiality in the identification of unallowable costs. Corning recommended a simplified estimating technique, which incorporates a sampling approach, be explicitly included in the travel cost regulation. Corning also proposed that the Administrative Contracting Officer (ACO) be given discretion in the regulation to negotiate formal agreements with contractors fixing their estimation formula for excluding travel cost unallowables, either permanently or for long periods of time. The AIA/NSIA suggested that "the concept of materiality must be addressed by the DARC before implementing the proposed change," and that the "unallowable costs to be gained by the Government are significantly outweighed by the substantial costs of implementation, maintenance, segregation, reporting and audit of costs." Furthermore, the AIA/NSIA believe that subparagraph (a)(6) should be deleted in its entirety, and that reliance on reasonableness determinations can be negotiated by each contractor through the use of advance agreements.

Committee comments:

The Committee agrees that in some situations Corning's approach (i.e., sampling techniques) may be appropriate; however, the Committee does not agree that the approach is appropriate for all contractors. In addition, the Committee does not agree that the regulation needs to contain specific authority for the ACO to negotiate formal agreements. The ACO has always had the discretion to enter into special agreements. As stated in the Committee's July 18, 1986 report, the Committee does not endorse any particular method or system to determine reasonable costs for lodging, meals and incidental expenses, so long as those costs do not exceed the maximum per diem rate or amount as set forth in the Federal Travel Regulations. The AIA/NSIA proposal that subparagraph (a)(6) is not needed because advance agreements can be negotiated is correct on the surface, but it does not take into consideration that clarification is required since some contractors have been under the mistaken impression that no adjustment to the maximum per diem amount is required in these particular situations.

(5) Downward adjustment should not be applied to M&IE.

Two commenters believe that subparagraph (a)(6) should be exclusive for lodging cost adjustments only. Corning stated that special procedures would have to be established on how to make adjustments for meals. The AIA/NSIA stated that adjustments for lodging are appropriate and easy to compute, however, adjustments for meals would involve maintaining and reviewing departure and arrival times to compute whether meals were reasonable. The AIA/NSIA also believe that requiring adjustments for meals has the effect of establishing separate ceilings for lodging and meals, which is contrary to the Government's previous statement that a single ceiling was appropriate.

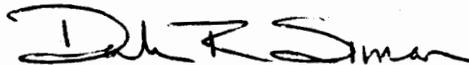
Committee comments:

The Committee is at a loss to understand why the commenters believe an adjustment is appropriate when no lodging costs have been incurred, but an adjustment is not appropriate when a traveler departs at 4 p.m. and has not incurred breakfast or lunch costs. The purpose of Public Law 99-234 was to limit contractor travel expenses to no more than the maximum amount allowed for Federal travelers. The maximum amount establishes the ceiling which shall be considered to be reasonable and allowable; it does not establish a presumption that all costs are reasonable and allowable as long as they do not exceed the maximum amount. Making adjustments for meals may well require a contractor to revise its travel procedures

to ensure that allowable travel expenses are also reasonable; however, reasonableness determinations are a fundamental element for all cost principles. Furthermore, contractors have not been required to implement the Government's detailed administrative procedures and, therefore, have the flexibility to establish procedures which accommodate the contractor's travel policy. The AIA/NSIA comment that adjustments for meals will have the effect of establishing separate ceilings is correct, but not for the reason stated. Adjustments for lodging will automatically establish the remaining amount as a ceiling for M&IE. It should also be noted that when the Government established the maximum per diem amount as a "single ceiling," the purpose was to not restrict contractors to the identical rates and amounts for lodging or M&IE that Government travelers are subject to. Rather, contractors were afforded the privilege to allocate the maximum per diem amount between "lodging," "meals" or "incidental" expenses as appropriate for each contractor.

C. Summary:

Based on the public comments, the Committee has revised subparagraph (a)(6) to clarify that appropriate downward adjustments to the maximum per diem rates and amounts would normally be required under certain circumstances, and the adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations so long as they result in a reasonable charge. All members of the Committee concur with the contents of this report.



Dale R. Siman
Chairman, Cost Principles Committee

DOD Members

Paul Schill, Air Force
Mike Righi, Navy
Barry Turner, DCAA
Chris Werner, OSD(P)
Don Reiter, DLA

Other Members

Jerry Olson, GSA
Gwen Cowan, DOE
Joe LeCren, NASA

Attachments:

Tab A - Recommended Revision to FAR 31.205-46.
Tab B - List of commenters and matrix of comments.

31.205-46 Travel costs.

(a)(1) No change

* * * * *

(a)(4) No change

* * * * *

(a)(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection do [generally would] not constitute a reasonable daily charge when no lodging costs are incurred and[/or] on partial travel days (e.g., day of departure and return). [Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.]

Underline = Deleted text
Brackets = New text

The proposed rule is the baseline for the changes.

Public comments received on DAR case 87-118, Travel Costs

	<u>No Comment or Concur</u>	<u>Non- Concur</u>	<u>Partially Concur</u>
1. Anthony P. DeStefano, CPA			X
2. National Endowment for the Humanities	X		
3. United States Information Agency	X		
4. Armed Forces Communications & Electronics Assoc. (AFCEA)	X		
5. Thiokol		X	
6. U.S. National Labor Relations Board	X		
7. Litton			X
8. Federal Deposit Insurance Corp	X		
9. Central Intelligence Agency	X		
10. Corning Inc.			X
11. U.S. Dept of Justice	X		
12. Agency for International Development	X		
13. AIA, NSIA			X
14. American Defense Preparedness Association	X		
15. IG, DOD			X
16. Motorola Inc.			X
17. Dept of Veterans Affairs	X		
18. GSA, Office of Acquisition Policy	X		
	11	1	6

SUMMARY OF PUBLIC COMMENTS

DAR Case 87-118

1. Additional administrative burden

- Adverse economic impact on small entities under the Regulatory Flexibility Act. (1)
- Proposed guidance in direct conflict with FAR Council's intent to not impose Government administrative procedures upon contractors. Will require additional documentation and calculations to support maximum expenditures for partial days. (5)
- Where the contractor's percentage of government sales and number of affected employees are small, time-consuming administrative procedures to effect adjustments outweighs financial benefits to the government. (10)
- The rule implies "separate ceilings" for meals and incidentals on partial travel days when no lodging costs are incurred. Establishing such a system would be exceedingly burdensome and expensive in light of the benefits to be derived. (13)

2. Ambiguous language

- A literal reading suggests a person who leaves at 7a.m. and returns at 6p.m. may not get reimbursed for three meals. (1)
- Government regulations break days into quarters for meal reimbursements. Is intent of rule to require same for contractors? (10)
- The word "and" is ambiguous. Two interpretations: (1) when lodging costs have not been incurred, meals are not reasonable and therefore unallowable, or (2) on partial travel days where lodging costs have not been incurred, meals are not reasonable and therefore unallowable. (16)

3. Rule establishes reasonableness standard rather than allowability standard

- Rule will invite interpretive disputes as to what constitutes reasonable per diem charges on days when no lodging expenses are incurred and on partial travel days. (5)
- Rule states what is not reasonable; should give criteria to guide contractors in deciding what the maximum allowable per diem should be in those circumstances. (7)
- Rule states what is not reasonable; should contain guidance on how to determine reasonableness. (15)

4. Materiality of costs should be considered.

- Endorse simplified estimating approach...reference DCAA document entitled "Audit Guidance on Implementing the Cost Principle on Per Diem Costs" (CAS 405.50(c)). (10)

- Use sampling technique, develop formula of the unallowable travel costs to the related total travel costs and use to estimate "unallowable costs". (10)
 - Would agreed-upon formula satisfy stringent requirements of the Certificate of Indirect Costs?
 - ACOs should be given discretion in the regulation to negotiate formal agreements with government contractors fixing their estimation formula for excluding these travel cost unallowables either permanently or for long periods of time (3 years).
- The perceived additional unallowable costs to be gained by the Government are significantly outweighed by the substantial costs of implementation, maintenance, segregation, reporting and audit of costs. (13)

5. Downward adjustment should not be applicable to meals

- Subparagraph (a)(6) should explicitly limit its impact to the lodging cost adjustment only. Special procedures would have to be established on how to make adjustments for meals. (10)
- Adjustments for meals has the effect of establishing separate ceilings for lodging and meals (like the Government). When the per diem ceilings were established in 1986, the July 18, 1986 Committee report stated that a single maximum ceiling would apply because it complies with the intent of Congress and would be less complicated and administratively burdensome. Adjustments for lodging are appropriate and easy to compute, adjustments for meals would involve maintaining and reviewing departure and arrival times to compute whether meals were reasonable. (13)

6. Alternative language proposed by commenters

For subparagraph (a)(6): "The maximum per diem rates referenced in subparagraph (a)(2) of this subsection or any other per diem rates do not apply to those partial travel days or travel days where lodging costs are not incurred. The basis for a determination of reasonableness should be in accordance with 31.201-3, Determining Reasonableness." (13)

For subparagraph (a)(2): "Except as provided in subparagraph (a)(3) of this subsection, costs incurred for lodging, meals and incidental expenses (as defined in the regulations cited in (a)(2)(i) through (iii) of this subparagraph) shall be considered to be reasonable and allowable only to the extent that these expenses in total do not exceed on a daily basis the maximum per diem rates..." (15)

For subparagraph (a)(6): "Appropriate downward adjustments in maximum per diem rates are generally required under these circumstances. These adjustments should be calculated consistent with the contractor's established policies and procedures and result in a logical reasonable reimbursement." (15)

For subparagraph (a)(6): "The maximum per diem rates may not constitute a reasonable daily charge when an employee is in travel status for a part day. Generally, a reduction to the maximum per diem rates is appropriate under these circumstances." (16)

Committee Recommendation

31.205-46 Travel costs.

* * * * *

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection generally would not constitute a reasonable daily charge when no lodging costs are incurred and/or on partial travel days (e.g., day of departure and return). Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.

DARC Version

31.205-46 Travel costs.

* * * * *

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection generally would not constitute a reasonable daily charge when--

- (i) No lodging costs are incurred, or
- (ii) The travel day is a partial travel day (e.g., day of departure and return).

Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.

Compromise Version (CCP Chair and CPF concur)

31.205-46 Travel costs.

* * * * *

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection generally would not constitute a reasonable daily charge--

- (i) When no lodging costs are incurred, and/or
- (ii) On partial travel days (e.g., day of departure and return).

Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.

REVISED FINAL RULE

Note: Baseline is proposed rule; changes noted in ~~strike-thru~~ text and bold [].

31.205-46 Travel costs.

(a)(1) No change from proposed rule.

* * * * *

(4) No change from proposed rule.

* * * * *

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection ~~do~~ [generally would] not constitute a reasonable daily charge ~~when~~--

(i) ~~When~~ no lodging costs are incurred[,] and[/or

(ii) ~~O]~~ on partial travel days (e.g., day of departure and return).

[Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.]

"CLEAN" FINAL RULE

31.205-46 Travel costs.

(a)(1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable subject to the limitations contained in this subsection. * * *

* * * * *

(4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in subdivisions (a)(2)(i), (ii), and (iii) in their entirety. Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein.

* * * * *

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection generally would not constitute a reasonable daily charge--

(i) When no lodging costs are incurred, and/or

(ii) On partial travel days (e.g., day of departure and return).

Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.

Message Envelope

XXXXXXXX: ITD NOV 28 1990 9:00 am Sender: Post Office

To
cc:

Type of information: None
Tags: Certified

Subject: Your message to (b)(6) on Nov 28, 1990 3:54 pm
concerning 'DAR Case 87-118' was viewed on Nov 29, 1990 8:50 am.

concerned 11/29/90

November 28, 1990

To: (b)(6) DASD(P)/CPF

From: (b)(6) DASD(P)/DARS

Subj: DAR Case 87-118

I feel I'm flogging a dead horse but after careful consideration, I have to change my earlier position on this case. I've drafted a compromise version between what the Committee recommended and what the DAR Council decided. I think this compromise keeps intact the Committee's recommended language, while at the same time retaining some of the minor editorial changes the DAR Council wanted.

I've shown this version to Dale Siman and he concurs. I have not shown this to my bosses but I doubt they'll disagree with the compromise approach, if you and I can agree. If I can sell it to you and Carol, I will indicate in our memo to Mrs. Spector that this is a compromise version and that CPF concurs. Can I have your comments/concurrence?

Committee Recommendation

31.205-46 Travel costs.

* * * * *

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection generally would not constitute a reasonable daily charge when no lodging costs are incurred and/or on partial travel days (e.g. day of departure and return). Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.

DARC Version

31.205-46 Travel costs.

* * * * *

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection generally would not constitute a reasonable daily charge when--

- (i) No lodging costs are incurred, or
- (ii) The travel day is a partial travel day (e.g. day of departure and return).

Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.

Compromise Version

31.205-46 Travel costs.

* * * * *

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection generally would not constitute a reasonable daily charge--

- (i) When no lodging costs are incurred, and/or
- (ii) On partial travel days (e.g. day of departure and return).

Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.

TELEFAX TRANSMISSION SHEET

<u>FROM:</u>	<u>TO:</u>
NAME: (b)(6)	NAME: (b)(6)
OFFICE: DASD (P) / DARS	OFFICE: AMC PP-P
PHONE: (b)(2)	PHONE: (b)(2)
DATE/TIME: 28 Nov 90	FAX NO: [REDACTED]

#Pages (incl Transmission Sheet) 1

SUBJECT:

DAR Case 87-118

REMARKS/INSTRUCTIONS:

As we discussed - please call.

concurd 11/28/90

(b)(6) I E-mailed you 3 documents today on this case (87-118)--a draft letter to the CAAC; a proposed Federal Register Notice; and, a FAC Intro item. I E-mailed the coverage to you on Nov. 8, 1990. If you and Carol Covey concur, I will draft a short notice to Mrs. Spector telling her that we agree on the coverage, as changed by the DAR Council, and letting her know that we are sending this final rule to the CAAC for consideration. Can I have your comments and concurrence by early next week? Thanks... (b)(6) DARS, 11/15/90.

Message Envelope

Draft package
to (b)(6) CPF
on 11/15/90

Postmark: Thu Nov 15, 1990 2:15 pm Sender: Post Office
To: (b)(6)
cc:

Type of information: None
Tags: Certified

Subject: Your message to (b)(6) on Nov 15, 1990 1:37 pm
concerning 'DC 87-118' was viewed on Nov 15, 1990 2:06 pm.

Message Envelope

Postmark: Thu Nov 15, 1990 2:18 pm Sender: Post Office

To: [REDACTED]

cc:

Type of information: None

Tags: Certified

Subject: Your message to (b)(6) on Nov 15, 1990 1:26 pm
concerning '#1-Ltr to CAAC' was viewed on Nov 15, 1990 2:09 pm.

Message Envelope

Postmark: Thu Nov 15, 1990 2:17 pm Sender: Post Office

To: (b)(6)

cc:

Type of information: None

Tags: Certified

Subject: Your message to (b)(6) on Nov 15, 1990 1:27 pm
concerning '#2-FR Notice' was viewed on Nov 15, 1990 2:08 pm.

Message Envelope

Postmark: Thu Nov 15, 1990 2:16 pm

Sender: Post Office

To: (b)(6)

cc:

Type of information: None

Tags: Certified

Subject: Your message to (b)(6) on Nov 15, 1990 1:28 pm
concerning '#3-FAC intro was (b)(6) on Nov 15, 1990 2:07 pm.

*A dtdl CPF (Chris Warner)
changes 11/26/90*

P/DARS

In reply refer to
DAR Case: 87-118
CAAC Case: 88-037

MEMORANDUM FOR MR. ALBERT VICCHIOLLA, CHAIRMAN
CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT: Travel Costs

We have agreed to the attached final rule revising FAR 31.205-46 to prevent the erroneous interpretation that the maximum allowable contractor per diem travel costs must be calculated in the same manner as the "lodging-plus" method contained in the Federal Travel Regulations. We made no change to 31.205-46(a) (1) and (4), as published in the proposed rule, but did make several changes to 31.205-46(a) (6) after considering the public comments submitted in response to the Federal Register Notice of June 13, 1990 (55 FR 24068). These are discussed below.

We rewrote 31.205-46(a) (6) to make it clear that while downward adjustments from the Government's maximum per diem rates are generally appropriate on partial travel days or on days when no lodging costs have been incurred, we are not requiring contractors to calculate these adjustments in accordance with Government travel regulations. Contractors may instead ~~continue~~ utilize^e their own travel policy procedures, so long as the result constitutes a reasonable charge to the contract.

Our clarification substitutes the words "generally would" for "do" in the first sentence of 31.205-46; adds a statement that "appropriate downward adjustments...would normally be required..." when no lodging costs are incurred or when the travel day is a partial travel day; and, states that the calculations need not be made in accordance with any Government travel regulations but must result in a reasonable charge.

FEDERAL REGISTER NOTICE

**DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

48 CFR Part 31

**Federal Acquisition Regulation
Subsection 31.205-46, Travel Costs**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

Action: Final Rule

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council have agreed on a final rule amending FAR 31.205-46 to prevent the erroneous interpretation that the maximum allowable contractor per diem costs must be calculated in the same manner as the "lodging-plus" method contained in the Federal Travel Regulations.

EFFECTIVE DATE:

FOR FURTHER INFORMATION CONTACT: (b)(6) Office of Federal Acquisition Policy, Room 4041, GS Building, Washington, DC 20405, (b)(2). Please cite FAR Case __-__.

SUPPLEMENTARY INFORMATION:

A. Background

A notice of the proposed rule to clarify the travel cost principle at FAR 31.205-46 was published in the Federal Register on June 13, 1990 (55 FR 24068). Public comments received were considered by both Councils, and several changes were made in the development of the final rule. The purpose of this rule is to make it clear that while downward adjustments from the Government's maximum per diem rates are generally appropriate on partial travel days or on days when no lodging costs have been incurred, contractors are not required to calculate these adjustments in accordance with Government travel regulations. Contractors may instead ~~continue~~ utilize their own travel policy procedures, so long as the result constitutes a reasonable charge to the contract.

B. Regulatory Flexibility Act

The final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because such entities generally do not have cost or incentive contracts where the allowability of costs is a major concern. An initial regulatory flexibility analysis was not performed but

*Chris Warner, CPF
Changes 11/26/90*

P/DARS

In reply refer to
DAR Case: 87-118
CAAC Case: 88-037

^{MR.}
MEMORANDUM FOR ALBERT VICCHIOLLA, CHAIRMAN
CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT: Travel Costs

We have agreed to the attached final rule revising FAR 31.205-46 to prevent the erroneous interpretation that the maximum allowable contractor per diem travel costs must be calculated in the same manner as the "lodging-plus" method contained in the Federal Travel Regulations. We made no change to 31.205-46(a) (1) and (4), as published in the proposed rule, but did make several changes to 31.205-46(a) (6) after considering the public comments submitted in response to the Federal Register Notice of June 13, 1990 (55 FR 24068). These are discussed below.

We rewrote 31.205-46(a) (6) to make it clear that while downward adjustments from the Government's maximum per diem rates are generally appropriate on partial travel days or on days when no lodging costs have been incurred, we are not requiring contractors to calculate these adjustments in accordance with Government travel regulations. Contractors may instead continue utilizing their own travel policy procedures, so long as the result constitutes a reasonable charge to the contract.

Our clarification substitutes the words "generally would" for "do" in the first sentence of 31.205-46; adds a statement that "appropriate downward adjustments...would normally be required..." when no lodging costs are incurred or when the travel day is a partial travel day; and, states that the calculations need not be made in accordance with any Government travel regulations but must result in a reasonable charge.

If your Council agrees with our final rule, please forward it to the FAR Secretariat for publication. A Federal Register Notice and [redacted] are attached. Our case manager is [redacted]

[redacted]

Nancy L. Ladd
Colonel (sel) USAF,
Director, Defense
Acquisition Regulatory System

Attachments

FEDERAL REGISTER NOTICE

**DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

48 CFR Part 31

**Federal Acquisition Regulation
Subsection 31.205-46, Travel Costs**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

Action: Final Rule

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council have agreed on a final rule amending FAR 31.205-46 to prevent the erroneous interpretation that the maximum allowable contractor per diem costs must be calculated in the same manner as the "lodging-plus" method contained in the Federal Travel Regulations.

EFFECTIVE DATE:

FOR FURTHER INFORMATION CONTACT: (b)(6) Office of Federal Acquisition Policy, Room 4041, GS Building, Washington, DC 20405, (b)(2) Please cite FAR Case ___-__.

SUPPLEMENTARY INFORMATION:

A. Background

A notice of the proposed rule to clarify the travel cost principle at FAR 31.205-46 was published in the Federal Register on June 13, 1990 (55 FR 24068). Public comments received were considered by both Councils, and several changes were made in the development of the final rule. The purpose of this rule is to make it clear that while downward adjustments from the Government's maximum per diem rates are generally appropriate on partial travel days or on days when no lodging costs have been incurred, contractors are not required to calculate these adjustments in accordance with Government travel regulations. Contractors may instead continue utilizing their own travel policy procedures, so long as the result constitutes a reasonable charge to the contract.

B. Regulatory Flexibility Act

The final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because such entities generally do not have cost or incentive contracts where the allowability of costs is a major concern. An initial regulatory flexibility analysis was not performed but

public comments were solicited at 55 FR 24068 dated June 13, 1990. One comment suggested that the rule would have an economic impact on small entities under the Regulatory Flexibility Act. The Councils were unable to address the issue because the comment did not explain how the rule would have an adverse economic impact on small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the final rule does not impose any recordkeeping requirements or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.* Under the current rules of the FAR, particularly the clauses at 52.215-2, "Audit-Negotiation," and 52.216-7, "Allowable Costs and Payment," offerors and contractors are required to maintain, and provide access to, records sufficient to permit the Government to determine the allowability and reasonableness of costs.

D. Public Comments

On June 13, 1990, a proposed rule was published in the Federal Register (55 FR 24068). Comments received from 18 individuals and organizations were considered by the Councils; several changes were made in the development of the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

ALBERT A. VICCHIOLLA
Director, Office of Federal Acquisition
and Regulatory Policy

Therefore, 48 CFR Part 31 is amended as follows:

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c), 10 U.S.C. Chapter 137, and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Subsection 31.205-46 is amended by

FAC INTRODUCTORY ITEM

ITEM XXX - TRAVEL COSTS

FAR 31.205-46 is revised to clarify that appropriate downward adjustments from the Government's maximum per diem rates would normally be required on partial travel days or on days when no lodging costs have been incurred, before such charges can be considered reasonable. However, contractors are not required to calculate these adjustments in accordance with Government travel regulations, and may instead utilize their own travel policy procedures, so long as the result constitutes a reasonable charge.

FACSIMILE TRANSMISSION FORM

<u>FROM:</u>	<u>TO:</u>
NAME: (b)(6)	NAME: [REDACTED]
OFFICE: DASD (P) /DARS	OFFICE: AMC PP-P
PHONE: (b)(2)	PHONE: (b)(2)
DATE: 14 NOV 90	FAX NO: (b)(2)

#Pages (incl Transmission Sheet) 7

SUBJECT:
DAR Case 87-118, Travel Cost

REMARKS/INSTRUCTIONS:
As discussed -- any comments?

SAME ATTACH AS 11/15/90

P/DARS

In reply refer to
DAR Case: 87-118
CAAC Case: 88-037

MEMORANDUM FOR ALBERT VICCHIOLLA, CHAIRMAN
CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT: Travel Costs

We have agreed to the attached final rule revising FAR 31.205-46 to prevent the erroneous interpretation that the maximum allowable contractor per diem travel costs must be calculated in the same manner as the "lodging-plus" method contained in the Federal Travel Regulations. We made no change to 31.205-46(a) (1) and (4) but did make several changes to 31.205-46(a) (6) following public comments responding to the Federal Register Notice of June 13, 1990 (55 FR 24068). These are discussed below.

imposing any cost
which accommodates
We rewrote 31.205-46(a) (6) to make it clear that we are not ~~forcing~~ Government administrative procedures on contractors and that contractors have the flexibility to establish procedures ~~consistent with their own practices~~ *travel policies*. While some proration of the maximum per diem rate is appropriate on partial days or when no lodging costs have been incurred, we do not require contractors to calculate adjustments in accordance with the Federal Travel or the Joint Travel Regulations. The end result must, however, be a reasonable charge to the contract.

} make consistent w/ FAC item and FR "background"

Our clarification substitutes the words "generally would" for "do" in the first sentence of 31.205-46; adds a statement that "appropriate downward adjustments...would normally be required..." when no lodging costs are incurred or when the travel day is a partial travel day; and, states that the calculations need not be made in accordance with any Government travel regulations but must result in a reasonable charge.

If your Council agrees with our final rule, please forward it to the FAR Secretariat for publication. A Federal Register Notice and FAR Order are attached. Our case manager is (b)(6)

(b)(6)

Nancy L. Ladd
Colonel (sel) USAF,
Director, Defense
Acquisition Regulatory System

Attachments

FEDERAL REGISTER NOTICE

**DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

48 CFR Part 31

**Federal Acquisition Regulation
Subsection 31.205-46, Travel Costs**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

Action: Final Rule

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council have agreed on a final rule amending FAR 31.205-46 to prevent the erroneous interpretation that the maximum allowable contractor per diem costs must be calculated in the same manner as the "lodging-plus" method contained in the Federal Travel Regulations.

EFFECTIVE DATE:

FOR FURTHER INFORMATION CONTACT: (b)(6) Office of Federal Acquisition Policy, Room 4041, GS Building, Washington, DC 20405, (b)(2). Please cite FAR Case ___-___.

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B. Regulatory Flexibility Act

The final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because such entities generally do not have cost or incentive contracts where the allowability

of costs is a major concern. An initial regulatory flexibility analysis was not performed but public comments were solicited at 55 FR 24068 dated June 13, 1990. One comment suggested that the rule would have an economic impact on small entities under the Regulatory Flexibility Act. The Councils were unable to address the issue because the comment did not explain how the rule would have an adverse economic impact on small entities.

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D. Public Comments

On June 13, 1990, a proposed rule was published in the Federal Register (55 FR 24068). Comments received from 18 individuals and organizations were considered by the Councils; several changes were made in the development of the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

ALBERT A. VICCHIOLLA
Director, Office of Federal Acquisition
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Therefore, 48 CFR Part 31 is amended as follows:

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PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

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FAC INTRODUCTORY ITEM

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Nov. 8, 1990

To: DASD (P) /CPF)
From: DASD (P) /DARS

As we discussed today, here is what the DAR Council agreed to yesterday. I've sent a copy to Dale Siman--doesn't appear to be substantive change. Do you agree with the changes?

Note: Baseline is Committee text with DAR Council changes in strike thru text and bold [].

31.205-46 Travel costs.

(a) (1) No change

* * * * *

(4) No change

* * * * *

(6) The maximum per diem rates referenced in subparagraph (a) (2) of this subsection generally would not constitute a reasonable daily charge when[--

(i) N]no lodging costs are incurred[,] and/or

[(ii) The travel day is a] en partial travel days (e.g. day of departure and return).

Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.

"CLEAN" FINAL RULE

31.205-46 Travel costs.

(a) (1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable subject to the limitations contained in this subsection. * * *

* * * * *

(4) Subparagraphs (a) (2) and (a) (3) of this subsection do not incorporate the regulations cited in subdivisions (a) (2) (i), (ii), and (iii) in their entirety. Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein.

* * * * *

(6) The maximum per diem rates referenced in subparagraph (a) (2) of this subsection generally would not constitute a reasonable daily charge when--

(i) No lodging costs are incurred, or

(ii) The travel day is a partial travel day (e.g. day of departure and return).

Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.

Note: Baseline is Committee text with DAR Council changes in ~~strike thru~~ text and bold [].

31.205-46 Travel costs.

(a)(1) No change

* * * * *

(4) No change

* * * * *

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection generally would not constitute a reasonable daily charge when--

(i) ~~N]no~~ lodging costs are incurred[,] ~~and/or~~

[(ii) The travel day is a] ~~en~~ partial travel days (e.g. day of departure and return).

Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.

"CLEAN" FINAL RULE

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(a)(1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable subject to the limitations contained in this subsection. * * *

* * * * *

(4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in subdivisions (a)(2)(i), (ii), and (iii) in their entirety. Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein.

* * * * *

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection generally would not constitute a reasonable daily charge when--

(i) No lodging costs are incurred, or

(ii) The travel day is a partial travel day (e.g. day of departure and return).

Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.

TELEFAX TRANSMISSION SHEET

FROM:

TO:

NAME: (b)(6)

NAME: (b)(6)

OFFICE: DASD (P) / DARS

OFFICE: AMC - PP-P

PHONE: (b)(2)

PHONE: (b)(2)

DATE/TIME: 11/08/90

FAX NO: (b)(2)

#Pages (incl Transmission Sheet) 2

SUBJECT:

DAR Case 87-118

REMARKS/INSTRUCTIONS:

As discussed. I've sent [redacted] a copy.

is: and/or the convention — no convention

only (i) ~~is~~ no lodging costs are incurred, or
change (ii) ~~is~~ the travel day is a partial travel day (e.g.

~~DARE~~ — generally would not be required because of add-on sentence

1730

OFFICIAL CASE RECORD

Date: 7 Nov 90 DAR Case: 87-118 CAAC Case: 88-037

Case Title: Travel Costs

Originator: Sponsor: Committee: CCP

DAR Manager: CAAC Staffer:

Statutory Basis: P.L. 99-234 FAR/DFARS: 31.205-46

Outside Interest (Circle): IG OFFPP OMB DCAA GAO Industry Other

Action Scheduled: Discuss Cmte report dtd 17 Oct 90 and Cmte recommendation for a revised final rule. Case initiated at the request of DOE to clarify previous revisions to the cost principle to implement Pub. L. 99-234, made by FAC 84-19, dtd 31 Jul 86. The final rule says a cost reduction for partial travel days is appropriate, that they need not be made using any federal methodology for adjustment but that the final result must be a reasonable change. Recommended approach for final rule. Discussions:

Actions Taken/Taskings:

O-6 will coordinate final wording with CPF

CAAC Update: Approved final Rule with Edits

CASE MANAGEMENT REPORT

24 OCT 1990

live

DAR CASE NO. 87-118	CAAC NO.	ORIGINAL _____ UPDATED XX	DATE 10-19-90
TITLE: TRAVEL COSTS			
REFERENCE: CCP CMTE REPORT 17 OCT 90, ENCL			
SYNOPSIS: ANALYSIS OF PUBLIC COMMENTS & RECOMMENDATION FOR FINAL RULE (FAR).			
PRIORITY	SUBMITTED BY A-ONE	SPONSOR A	ORIGINATOR DAR STAFF MANAGER [REDACTED]
KEYWORDS			
CASE REFERENCES			
FAR CITES			
DFARS CITES			
COMMITTEE(S) CCP			
RECOMMENDATION: DISCUSS 11-7-90			
NOTES:			



DEPARTMENT OF THE ARMY
HEADQUARTERS, U. S. ARMY MATERIEL COMMAND
5001 EISENHOWER AVENUE, ALEXANDRIA, VA 22333-0001



DAR Staff
Case 87-118

17 October 1990

MEMORANDUM FOR THE DIRECTOR, DAR COUNCIL

SUBJECT: DAR Case 87-118, Travel Costs

I. PROBLEM:

To review the public comments received and make recommendations based on them as to the need for changes to the proposed rule published in the Federal Register, dated June 13, 1990.

II. RECOMMENDATION:

That the proposed rule which amends Federal Acquisition Regulation (FAR) Subsection 31.205-46, Travel Costs, be revised and published as a final rule as set forth in TAB A.

III. DISCUSSION:

A. Background.

With the enactment of Public Law 99-234, the Federal Civilian Employee and Contractor Travel Expenses Act of 1985, contractor travel costs were limited to the rates and amounts payable to Federal travelers. Title II, Section 201 of the Act, states that: "Under any contract with any executive agency, costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by subchapter I of chapter 57 of title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any provision of such subchapter." Subchapter I of chapter 5 states that Federal travelers are entitled to per diem, reimbursement of actual expenses, or a combination thereof, as determined by the General Services Administration (GSA) (5 U.S.C. 5702(a)(1)), and that for travel consuming less than a full day, payments shall be allocated as prescribed by GSA (5 U.S.C. 5702(a)(3)).

The FAR cost principle for Travel Costs was revised in Federal Acquisition Circular (FAC) 84-19, dated July 31, 1986, to implement Public Law 99-234. In September 1987, the Department of Energy (DOE) recommended that the Travel Cost Principle be further revised because it believed the revisions

to FAR 31.205-46 did not fully conform to the Public Law 99-234 requirements. The DOE's position was that the revisions to FAR 31.205-46 had inappropriately extended to contractors the flexibility for determining reimbursement methodology (actuals, per diem, or combination).

The DOE contended that the statute had reserved that right to the Administrator of the GSA, and that GSA had established a "lodging-plus" system for Federal travelers. To allow contractors to elect one of three methods would result in contractor employee travel expenses that may exceed the "rates and amounts" set for Federal employees. The DOE used as an illustration a case where partial day travel would occur (departure and return on the same day). A "lodging-plus" system would limit a Federal traveler to a meals and incidental expense (M&IE) amount when lodging had not occurred. However, if a contractor chose to establish a "per diem" system (otherwise often referred to as a "flat-rate" system), the contractor traveler may inappropriately receive greater reimbursement for a partial day than a Federal traveler under similar circumstances.

From September 1987 to June 1990, when this proposed rule was issued in the Federal Register, the Defense Acquisition Regulatory Council (DARC) and the Civilian Agency Acquisition Council (CAAC) worked to reach agreement on adequate language to address the DOE's concerns. The Councils determined that a cost reduction was appropriate for partial days; however, the calculation of the cost reduction, in accordance with the Government's "lodging-plus" system, was not to be levied on contractors.

The proposed rule, issued June 13, 1990, stated that "FAR 31.205-46(a)(4) has been erroneously interpreted to mean that the maximum allowable contractor per diem travel costs must be calculated in the same manner as the "lodging-plus" method contained in the Federal Travel Regulations. The FAR Councils never intended to impose Government administrative procedures upon contractors." Accordingly, subparagraph (d)(4) was grammatically rearranged to prevent erroneous interpretation. The proposed rule also included a new subparagraph (a)(6) to define reasonable per diem costs for partial travel days and days when no lodging costs are incurred. The preamble to the proposed rule stated that "Appropriate downward adjustments in maximum per diem rates are generally required under these circumstances."

B. Committee comments.

Eighteen comments were received in response to the

proposed rule, of which there was one non-concur and six partial-concurs. A list of the commenters and a matrix of the comments is attached as Tab B. All of the negative comments dealt specifically with subparagraph (a)(6). Based on a review of the comments, the Committee is recommending a revision of the subparagraph to provide clarification of its intent. The comments focused on six major areas:

(1) Additional administrative burden.

Four commenters believed that implementation of subparagraph (a)(6) would impose an additional administrative burden on contractors. Thiokol stated that the proposed guidance was in direct conflict with the FAR Councils' intent to not impose Government administrative procedures upon contractors and that additional documentation and calculations would be required to support maximum expenditures on partial days. Corning Incorporated (Corning) stated that, where the contractor's percentage of government sales and number of affected employees are small, time-consuming administrative procedures to effect adjustments outweigh financial benefits to the Government. The Aerospace Industries Association (AIA) and National Security Industrial Association (NSIA) believed the rule implies "separate ceilings" for meals and incidentals on partial travel days when no lodging costs are incurred, and that establishing such a system would be exceedingly burdensome and expensive in light of the benefits to be derived. Mr. Anthony P. DeStefano, C.P.A., suggested that the proposed rule would have an adverse economic impact on small entities under the Regulatory Flexibility Act (RFA).

Committee comments:

Subparagraph (a)(6) was not written to impose an additional administrative burden on contractors, nor was it written to imply that separate ceilings for M&IE and lodging were mandatory. When Title II, Section 201 of Public Law 99-234 was implemented in FAC 84-19, the DARC and the CAAC had agreed that the "maximum" per diem rate applied because it was believed that use of a single ceiling complies with the intent of Congress and would be less complicated and administratively burdensome. However, the law did require that contractor travel expenses not exceed the rates and amounts set by subchapter I of chapter 57 of title 5. Section 5702(a)(3) of chapter 57, title 5, states that "For travel consuming less than a full day, the payment prescribed by regulation shall be allocated in such manner as the Administrator may prescribe." This statement clearly suggests that some prorating of the maximum per diem rate is appropriate on partial days. While the Councils agreed that Government administrative procedures

contained in the Federal Travel Regulations would not be required for contractors (i.e., separate ceilings, or M&IE daily rates allocated by quarter-day increments), that decision does not abrogate the need to appropriately adjust the maximum per diem rate in situations where partial days occur or no lodging costs have been incurred. Subparagraph (a)(6) has, therefore, been rewritten to state that while adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations they must result in a reasonable charge. The determination of reasonableness will be determined, as with all cost principles, in accordance with FAR 31.201-3, Determining reasonableness. Concerning the comment on RFA, Mr. DeStefano did not explain how the rule would have an adverse economic impact and, therefore, the Committee is unable to address his concern.

(2) Ambiguous language.

Three commenters suggested that the proposed language in subparagraph (a)(6) was ambiguous. Mr. Anthony P. DeStefano, Corning and Motorola Inc. (Motorola) posed various partial day scenarios and requested clarification (e.g., does the rule require quarter-day increment allocations for M&IE). Motorola also stated that the conjunction "and" between "...lodging costs are incurred and on partial travel days..." is confusing and can be interpreted as meaning both situations must occur together in order for a downward adjustment to be applicable.

Committee comments:

As stated in (1) above, the Councils have not imposed Government administrative travel procedures on contractors. The revisions to subparagraph (a)(6) recommended for the final rule will make clear that adjustments need not be calculated in accordance with Government travel regulations, but must result in a reasonable charge. Also, the conjunction "and" has been replaced by the words "and/or." In addition, the Committee recommends that the FAC background section include a statement that reasonableness will be determined in accordance with FAR 31.201-3.

(3) Reasonableness versus allowability.

Three commenters stated that subparagraph (a)(6) focused on what is not reasonable, rather than what is reasonable or allowable on partial days or days when no lodging expenses are incurred. Thiokol believes the rule will invite interpretive disputes as to what constitutes reasonable per diem charges. Litton believes the rule should give criteria to guide contractors in deciding what the maximum allowable per diem

should be. The Department of Defense, Inspector General (DOD/IG) stated that the rule should contain guidance on how to determine reasonableness, and that the language included in the Background section of the proposed rule, "appropriate downward adjustments...", should be included in subparagraph (a)(6).

Committee comments:

The Committee does not agree that a rule based on reasonableness will invite a rash of interpretive disputes. A reasonableness determination is one of the normal elements considered for all cost principles. The Committee also does not believe that subparagraph (a)(6) needs to include criteria to guide contractors in deciding what adjustment to the maximum per diem should be made. When Public Law 99-234 was initially implemented, a decision was made not to force the Government administrative procedures on contractors so that they would have the flexibility to establish procedures consistent with their own practices. The Committee does agree, however, that the area of "reasonableness" should be clarified in the final rule and has appropriately modified subparagraph (a)(6) to include a statement that "Appropriate downward adjustments from the maximum per diem rates would normally be required...."

(4) Materiality of costs should be considered.

Two commenters believe that "materiality" should be a consideration in determining unallowable travel costs. Corning referenced a Defense Contract Audit Agency document entitled "Audit Guidance on Implementing the Cost Principle on Per Diem Costs (DAR Case 85-230)" which quoted Cost Accounting Standard 405.50(c) concerning consideration of materiality in the identification of unallowable costs. Corning recommended a simplified estimating technique, which incorporates a sampling approach, be explicitly included in the travel cost regulation. Corning also proposed that the Administrative Contracting Officer (ACO) be given discretion in the regulation to negotiate formal agreements with contractors fixing their estimation formula for excluding travel cost unallowables, either permanently or for long periods of time. The AIA/NSIA suggested that "the concept of materiality must be addressed by the DARC before implementing the proposed change," and that the "unallowable costs to be gained by the Government are significantly outweighed by the substantial costs of implementation, maintenance, segregation, reporting and audit of costs." Furthermore, the AIA/NSIA believe that subparagraph (a)(6) should be deleted in its entirety, and that reliance on reasonableness determinations can be negotiated by each contractor through the use of advance agreements.

Committee comments:

The Committee agrees that in some situations Corning's approach (i.e., sampling techniques) may be appropriate; however, the Committee does not agree that the approach is appropriate for all contractors. In addition, the Committee does not agree that the regulation needs to contain specific authority for the ACO to negotiate formal agreements. The ACO has always had the discretion to enter into special agreements. As stated in the Committee's July 18, 1986 report, the Committee does not endorse any particular method or system to determine reasonable costs for lodging, meals and incidental expenses, so long as those costs do not exceed the maximum per diem rate or amount as set forth in the Federal Travel Regulations. The AIA/NSIA proposal that subparagraph (a)(6) is not needed because advance agreements can be negotiated is correct on the surface, but it does not take into consideration that clarification is required since some contractors have been under the mistaken impression that no adjustment to the maximum per diem amount is required in these particular situations.

(5) Downward adjustment should not be applied to M&IE.

Two commenters believe that subparagraph (a)(6) should be exclusive for lodging cost adjustments only. Corning stated that special procedures would have to be established on how to make adjustments for meals. The AIA/NSIA stated that adjustments for lodging are appropriate and easy to compute, however, adjustments for meals would involve maintaining and reviewing departure and arrival times to compute whether meals were reasonable. The AIA/NSIA also believe that requiring adjustments for meals has the effect of establishing separate ceilings for lodging and meals, which is contrary to the Government's previous statement that a single ceiling was appropriate.

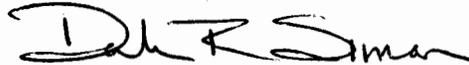
Committee comments:

The Committee is at a loss to understand why the commenters believe an adjustment is appropriate when no lodging costs have been incurred, but an adjustment is not appropriate when a traveler departs at 4 p.m. and has not incurred breakfast or lunch costs. The purpose of Public Law 99-234 was to limit contractor travel expenses to no more than the maximum amount allowed for Federal travelers. The maximum amount establishes the ceiling which shall be considered to be reasonable and allowable; it does not establish a presumption that all costs are reasonable and allowable as long as they do not exceed the maximum amount. Making adjustments for meals may well require a contractor to revise its travel procedures

to ensure that allowable travel expenses are also reasonable; however, reasonableness determinations are a fundamental element for all cost principles. Furthermore, contractors have not been required to implement the Government's detailed administrative procedures and, therefore, have the flexibility to establish procedures which accommodate the contractor's travel policy. The AIA/NSIA comment that adjustments for meals will have the effect of establishing separate ceilings is correct, but not for the reason stated. Adjustments for lodging will automatically establish the remaining amount as a ceiling for M&IE. It should also be noted that when the Government established the maximum per diem amount as a "single ceiling," the purpose was to not restrict contractors to the identical rates and amounts for lodging or M&IE that Government travelers are subject to. Rather, contractors were afforded the privilege to allocate the maximum per diem amount between "lodging," "meals" or "incidental" expenses as appropriate for each contractor.

C. Summary:

Based on the public comments, the Committee has revised subparagraph (a)(6) to clarify that appropriate downward adjustments to the maximum per diem rates and amounts would normally be required under certain circumstances, and the adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations so long as they result in a reasonable charge. All members of the Committee concur with the contents of this report.



Dale R. Siman
Chairman, Cost Principles Committee

DOD Members

Paul Schill, Air Force
Mike Righi, Navy
Barry Turner, DCAA
Chris Werner, OSD(P)
Don Reiter, DLA

Other Members

Jerry Olson, GSA
Gwen Cowan, DOE
Joe LeCren, NASA

Attachments:

Tab A - Recommended Revision to FAR 31.205-46.
Tab B - List of commenters and matrix of comments.

31.205-46 Travel costs.

(a)(1) No change

* * * * *

(a)(4) No change

* * * * *

(a)(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection do [generally would] not constitute a reasonable daily charge when no lodging costs are incurred and[/or] on partial travel days (e.g., day of departure and return). [Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulations or Joint Travel Regulations, they must result in a reasonable charge.]

Underline = Deleted text
Brackets = New text

The proposed rule is the baseline for the changes.

Public comments received on DAR case 87-118, Travel Costs

	<u>No Comment or Concur</u>	<u>Non- Concur</u>	<u>Partially Concur</u>
1. Anthony P. DeStefano, CPA			X
2. National Endowment for the Humanities	X		
3. United States Information Agency	X		
4. Armed Forces Communications & Electronics Assoc. (AFCEA)	X		
5. Thiokol		X	
6. U.S. National Labor Relations Board	X		
7. Litton			X
8. Federal Deposit Insurance Corp	X		
9. Central Intelligence Agency	X		
10. Corning Inc.			X
11. U.S. Dept of Justice	X		
12. Agency for International Development	X		
13. AIA, NSIA			X
14. American Defense Preparedness Association	X		
15. IG, DOD			X
16. Motorola Inc.			X
17. Dept of Veterans Affairs	X		
18. GSA, Office of Acquisition Policy	X		
	<hr/>	<hr/>	<hr/>
	11	1	6

SUMMARY OF PUBLIC COMMENTS

DAR Case 87-118

1. Additional administrative burden

- Adverse economic impact on small entities under the Regulatory Flexibility Act. (1)
- Proposed guidance in direct conflict with FAR Council's intent to not impose Government administrative procedures upon contractors. Will require additional documentation and calculations to support maximum expenditures for partial days. (5)
- Where the contractor's percentage of government sales and number of affected employees are small, time-consuming administrative procedures to effect adjustments outweighs financial benefits to the government. (10)
- The rule implies "separate ceilings" for meals and incidentals on partial travel days when no lodging costs are incurred. Establishing such a system would be exceedingly burdensome and expensive in light of the benefits to be derived. (13)

2. Ambiguous language

- A literal reading suggests a person who leaves at 7a.m. and returns at 6p.m. may not get reimbursed for three meals. (1)
- Government regulations break days into quarters for meal reimbursements. Is intent of rule to require same for contractors? (10)
- The word "and" is ambiguous. Two interpretations: (1) when lodging costs have not been incurred, meals are not reasonable and therefore unallowable, or (2) on partial travel days where lodging costs have not been incurred, meals are not reasonable and therefore unallowable. (16)

3. Rule establishes reasonableness standard rather than allowability standard

- Rule will invite interpretive disputes as to what constitutes reasonable per diem charges on days when no lodging expenses are incurred and on partial travel days. (5)
- Rule states what is not reasonable; should give criteria to guide contractors in deciding what the maximum allowable per diem should be in those circumstances. (7)
- Rule states what is not reasonable; should contain guidance on how to determine reasonableness. (15)

4. Materiality of costs should be considered.

- Endorse simplified estimating approach...reference DCAA document entitled "Audit Guidance on Implementing the Cost Principle on Per Diem Costs" (CAS 405.50(c)). (10)

- Use sampling technique, develop formula of the unallowable travel costs to the related total travel costs and use to estimate "unallowable costs". (10)
 - Would agreed-upon formula satisfy stringent requirements of the Certificate of Indirect Costs?
 - ACOs should be given discretion in the regulation to negotiate formal agreements with government contractors fixing their estimation formula for excluding these travel cost unallowables either permanently or for long periods of time (3 years).
- The perceived additional unallowable costs to be gained by the Government are significantly outweighed by the substantial costs of implementation, maintenance, segregation, reporting and audit of costs. (13)

5. Downward adjustment should not be applicable to meals

- Subparagraph (a)(6) should explicitly limit its impact to the lodging cost adjustment only. Special procedures would have to be established on how to make adjustments for meals. (10)
- Adjustments for meals has the effect of establishing separate ceilings for lodging and meals (like the Government). When the per diem ceilings were established in 1986, the July 18, 1986 Committee report stated that a single maximum ceiling would apply because it complies with the intent of Congress and would be less complicated and administratively burdensome. Adjustments for lodging are appropriate and easy to compute, adjustments for meals would involve maintaining and reviewing departure and arrival times to compute whether meals were reasonable. (13)

6. Alternative language proposed by commenters

For subparagraph (a)(6): "The maximum per diem rates referenced in subparagraph (a)(2) of this subsection or any other per diem rates do not apply to those partial travel days or travel days where lodging costs are not incurred. The basis for a determination of reasonableness should be in accordance with 31.201-3, Determining Reasonableness." (13)

For subparagraph (a)(2): "Except as provided in subparagraph (a)(3) of this subsection, costs incurred for lodging, meals and incidental expenses (as defined in the regulations cited in (a)(2)(i) through (iii) of this subparagraph) shall be considered to be reasonable and allowable only to the extent that these expenses in total do not exceed on a daily basis the maximum per diem rates..." (15)

For subparagraph (a)(6): "Appropriate downward adjustments in maximum per diem rates are generally required under these circumstances. These adjustments should be calculated consistent with the contractor's established policies and procedures and result in a logical reasonable reimbursement." (15)

For subparagraph (a)(6): "The maximum per diem rates may not constitute a reasonable daily charge when an employee is in travel status for a part day. Generally, a reduction to the maximum per diem rates is appropriate under these circumstances." (16)

ID # *
RECORD 35
DCASE 87-118
CASE REF _____
TITLE _____
SYNOPSIS _____
NO _____
CAA-NO _____
FAR-NO _____
COUN _____
PRI _____
MOL _____
ORIG _____
REG _____
PI _____
RULE _____
C/F _____
PROG _____
PDATE 09
HISTORY (ADD PREVIOUS PROG & PDATE) 11 09/13/90
DAR STAFF EM
CM A
LAST DATE 10/24/90
LAST ACTION Cost Principles report on Pub Cnts + final rule rec
NEXT ACTION DARL to Discuss ^{Cost Principles} CCP Cmte report of 17 Oct 90
NEXT DATE 11/17/90
DUE DATE _____
OPR _____
WORK REDUCT _____
FLEX _____

AGENDA (1 Ret Due 2 Replans 3 New Case 4 Docket 5 TClean 6 Discuss 7 Time Con
8 CAPURE)

10:51



DIRECTORATE FOR TRANSPORTATION POLICY
OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE FOR
PRODUCTION AND LOGISTICS
WASHINGTON, DC 20301-8000

TO:	FAX:		FROM	
	NAME:			
	OFFICE:	PHONE:		

REMARKS: (b)(6)

Per our discussion.
Ken

TOTAL PAGES (INCLUDING THIS PAGE): 2 DATE: 6/21/90

Reference: Deputy Secretary of Defense memorandum, dated November 11, 1989

The General Services Administration has ruled that frequent flyer mileage and related promotional mileage credits, obtained on official travel, may be used to defray official travel costs and for upgrades of service on official travel.

On page 2, (paragraph d) of the referenced memorandum, change the paragraph to read:

"d. Frequent flyer mileage and related promotional mileage credits may be accrued for official travel by DoD personnel who desire to participate in frequent flyer programs on a voluntary basis. Under no circumstances may credits earned with official travel be used for personal travel. Credits earned during official travel are a result of government expenditures and the first consideration should be given to redeeming credits to defray official travel costs. Credits also may be used for accommodation upgrades while on official travel."

Donald J. Atwood
Donald J. Atwood



THE DEPUTY SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

26 MAR 1990

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
 CHAIRMAN OF THE JOINT CHIEFS OF STAFF
 UNDER SECRETARIES OF DEFENSE
 ASSISTANT SECRETARIES OF DEFENSE
 COMPTROLLER
 GENERAL COUNSEL
 INSPECTOR GENERAL
 DIRECTOR, OPERATIONAL TEST AND EVALUATION
 ASSISTANTS TO THE SECRETARY OF DEFENSE
 DIRECTOR, ADMINISTRATION AND MANAGEMENT
 DIRECTORS OF THE DEFENSE AGENCIES
 COMMANDERS OF UNIFIED AND SPECIFIED COMMANDS

SUBJECT: Use of Official Transportation

Reference: Deputy Secretary of Defense memorandum, dated
 November 11, 1989

The General Services Administration has ruled that frequent flyer mileage and related promotional mileage credits, obtained on official travel, may be used to defray official travel costs and for upgrades of service on official travel.

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Donald J. Atwood

Donald J. Atwood

Case Management Record

Info

DAR Case No. 87-1181	CAAC No.	Original		Date
		Updated	✓	23 May 90
Title <i>Travel Costs</i>				
Reference <i>CAAC ltr to FAR Secretariat dtd 7 May 90</i>				
Synopsis <i>CAAC approved 11 Apr 90. Forwarded for publication as a proposed rule.</i>				
Priority	Submitted By 05	Originator Code		Case Manager
Keywords				
Case References				
FAR Cites				
DFARS Cites				
Cognizant Committees				
DAR STAFF - (b)(6)				
Recommendation <i>FYI</i>				
Notes <i>Note on Director, DAR C ltr dtd 15 Sep 89 reflects Director's concurrence on 4/19/90 with CAAC position that OMB clearance on paperwork burden is not necessary.</i>				



General Services Administration
Office of Acquisition Policy
Washington, DC 20405



MAY 7 1990

MEMORANDUM FOR FAR SECRETARIAT

FROM:

Albert A. Vicchiolla
ALBERT A. VICCHIOLLA
CHAIRMAN
CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT:

FAR Case 90-26, Travel Costs
(CAAC Case 88-31, DAR Case 87-118)

Please arrange for publication of the enclosed case as a proposed rule. The CAAC approved the case on April 11, 1990, as submitted by the DARC in its September 15, 1989, memorandum.

Please contact (b)(6) on (b)(2) if there are any questions.

Enclosures

cc: Director, DARC



General Services Administration
Office of Acquisition Policy
Washington, DC 20405

*FAR Case
90-26*

MAR 20 1990

MEMORANDUM FOR CAAC MEMBERS

FROM: *Albert A. Vicchiolla*
ALBERT A. VICCHIOLLA
CHAIRMAN
CIVILIAN AGENCY
ACQUISITION COUNCIL

SUBJECT: CAAC Case 88-37, Travel Costs (DAR Case 87-118)

The CAAC recommended in its July 28, 1989, letter that the DARC approve a revision to the Travel Cost Principle on the basis of a DOE recommendation. The DARC advised the CAAC in its September 15, 1989, memorandum that they approved a portion of the change that was recommended by the CAAC and requested that the CAAC publish the revision as a proposed rule.

After review of the DARC request, DOE recommended in the enclosed October 18, 1989, letter that further revisions to the cost principle be made. We recommend that the CAAC approve the revision submitted by the DARC and that the rule be published for public comment. The enclosed FAR Staff analysis provides rationale for our recommendation.

Questions may be directed to (b)(6) at (b)(2).

Enclosure

CHRONOLOGY OF MAJOR EVENTS
ON TRAVEL COST PRINCIPLE CHANGE

July 1986 -- The FAR cost principle for Travel Costs was revised in FAC 84-19 in order to implement 41 USC 420 Section 24. That statute limits allowable contractor employee travel cost charged to contracts to no more than the rates and amounts set by the Administrator of GSA for travel by Government employees.

September 1987 -- The Department of Energy recommended that the Travel Cost Principle be further revised because they believed the law had not been fully implemented in the FAR. Case is assigned to Cost Principles committee for disposition.

March 4, 1988 -- Cost Principles Committee report to DARC rejecting DOE proposal.

April 18, 1988 -- DARC submits Cost Principles committee position to CAAC for its approval.

June 22, 1988 -- CAAC approves DARC position, rejects FAR Staff recommendation and accepts DOE proposal in principal, crafts compromise on cost for partial day of travel.

July 5, 1988 -- CAAC compromise position sent to DARC for its approval.

July 21, 1988 -- The DARC memo to CAAC disagreeing with CAAC compromise position.

July 28, 1989 -- CAAC requests again that DARC consider CAAC compromise on basis on new information provided by DOE.

September 15, 1989 -- DARC accepts compromise position with slight change.

October 18, 1989 -- DOE letter to CAAC Chairman proposing third alternative.



THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-6000

PRODUCTION AND
LOGISTICS

(P) DARS

15 SEP 1989

In reply refer to
DAR Case: 87-118

MEMORANDUM FOR MR. HARRY S. ROSINSKI, ACTING CHAIRMAN
CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT: Travel Costs, CAAC Case 88-37

The DAR Council has reviewed your July 28, 1989 letter in which you requested the addition of a paragraph (a) (6) to 31.205-46.

The DAR Council has approved inclusion of the additional paragraph, except for the last sentence, which should be deleted. There may be circumstances when a downward adjustment would not be appropriate, and therefore it should not be mandated.

The DAR Council believes that with the addition of the new paragraph, the rule would now require approval of OMB under the Paperwork Reduction Act. We assume that the CAA Council will prepare the necessary request for OMB approval.

If the CAA Council agrees with the DAR Council's recommendation, the case should be forwarded to the FAR Secretariat for publication of a proposed rule.

Nancy L Ladd
Nancy L. Ladd, Lt Col, USAF
Acting Director, Defense Acquisition
Regulatory Council

Per discussion 5/2/90 J. Clem, FARs, and E. Mens, DARS, there is no paperwork burden associated with this case.

SEP 25 1989

FAR STAFF ANALYSIS
CAAC CASE 88-37
TRAVEL COSTS

PROBLEM:

The DARC has recommended a revision to the change to subparagraph (a) (6) of the Travel cost principle which was approved by the CAAC. DOE has proposed a third version of the change.

RECOMMENDATION:

That the DARC recommended revision to the cost principle be approved by the CAAC and published for public comment as a proposed rule.

BACKGROUND:

This case began as a DOE proposal which was presented to the DARC for their concurrence. The Cost Principles Committee recommended and the DARC agreed that the DOE proposal should not be adopted but rather that another change should be made (unrelated editorial matter) to the Travel cost principle. The CAAC agreed with the DARC editorial revision and offered a revised, compromise version of the DOE change to the DARC for reconsideration. After numerous meetings and conversations over the subject between the CAAC and DARC, the matter was considered for presentation to the TROIKA for resolution. In the meantime, DOE generated additional supporting information and the DARC again considered the case. As a result of the additional DOE information, the DARC approved the essential portion of the CAAC compromise FAR change. However, DOE's analysis of the DARC compromise proposal indicates that DOE wants to return to its original recommendation. This FAR staff analysis supports approval of the DARC compromise proposal.

DISCUSSION:

DOE PROPOSAL

The coverage recommended for adoption by the DOE adds two requirements to the proposed rule. First, it requires a cost reduction when actual employee lodging costs are below the FTR specified maximum costs. Second it also requires a cost reduction to be calculated in a particular manner (as opposed to any manner acceptable to the contracting ting officer) when a the travel is for less than a full day. We do not concur with either proposed revision.

The first revision would effectively eliminate the use of flat rate per diem as a means of determining allowable contractor employee travel cost. This is directly in contradiction to the mutual decision made by the DARC and CAAC when the current cost

principle coverage was approved. The councils reviewed and rejected a DOE proposal at that time to base the allowable cost exclusively on the complicated rules used to determine reimbursable per diem expenses for Government employees. This decision should not be revisited. (See the May 17, 1988 FAR Staff memorandum to the CAAC on this case for further discussion.)

The second revision proposed by DOE requires a reduction to be made calculated as an "allocation of the FTR specified maximum meals and incidental expense rate...." This proposal has two problems. First, it also appears to require use of the FTR amounts at a lower level of detail than the maximum flat rate per diem rate that was approved for use by both councils. Second, irrespective of the decision of the councils not to use this low level of detail from the FTR's, we do not think it is appropriate to limit this reduction calculation to only one method. Contractors and contracting officers should be free to choose whatever method that makes sense in their situation. Moreover, as the DARC points out, there may be cases where a reduction would not be required because of offsetting additional expenses.

DOD PROPOSAL

The DARC proposes to adopt the change approved by the CAAC with the exception of deletion of the last sentence of paragraph (a) (6). They contend that the last sentence requires a reduction in all cases where a full days travel has not occurred or when there is no lodging costs. A reduction in all such cases is not always reasonable according to the DARC. We agree that there may be cases where there is no lodging costs but where no reduction is necessary. For example, if an employee incurs a very high (but reasonable) incidental expense but incurs no lodging expense, it may be perfectly reasonable to reimburse the contractor for the maximum permissible per diem rate without a reduction. Granted, such case will likely be rare, but, as written, the coverage approved by the CAAC would demand a reduction even though one may not be reasonable.

On the other hand, even with deletion of the second sentence from the CAAC rule, unless a contractor can show why a reduction is not reasonable, the first sentence would demand a cost reduction in cases where no lodging costs are incurred or on a partial travel day. We concur with the DARC recommendation.

ATTACHMENTS

1. Comparison of recommended cost principle revisions (paragraph (a) (6))
2. Copy of FTR per diem rates

COMPARISON OF PROPOSED TRAVEL
COST PRINCIPLE REVISIONS

CAAC, JULY 1989

(a)(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection do not constitute a reasonable daily charge when no lodging costs are incurred and on partial travel days (e. g. day of departure and return). In such circumstances appropriate downward adjustments are required when determining reasonable costs.

DARC, SEPTEMBER 1989

(a)(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection do not constitute a reasonable daily charge when no lodging costs are incurred and on partial travel days (e. g. day of departure and return).

DOE, OCTOBER 1989

(a)(6) The maximum per diem rates referenced in (a)(2) of this subsection do not constitute a reasonable daily charge when no lodging costs are incurred, when actual lodging costs are below the FTR specified maximum lodging amounts and on partial travel days (e.g., on days of departure and return an appropriate allocation of the FTR specified maximum meals and incidental expense rate is required).

FEDERAL TRAVEL REGULATION
Chapter 301—Travel Allowances

Appendix A

Appendix A To Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

The maximum rates listed below are prescribed under § 301-7.2 of this regulation for reimbursement of subsistence expenses incurred during official travel within CONUS (the continental United States). The amount shown in column (a) is the maximum that will be reimbursed for lodging expenses including applicable taxes. The M&IE rate shown in column (b) is a fixed amount allowed for meals and incidental expenses related to subsistence. The per diem payment calculated in accordance with Part 301-7 for lodging expenses plus the M&IE rate may not exceed the maximum per diem rate shown in column (c).

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate (c)
Key city ¹	Country and/or other defined location ^{2, 3}					
CONUS, Standard rate.....		\$40		\$26		\$66
(Applies to all locations within CONUS not specifically listed below or encompassed by the boundary definition of a listed point. However, the standard CONUS rate applies to all locations within CONUS, including those defined below, under certain specified travel circumstances and for certain relocation subsistence allowances. See Parts 301-7, 302-2, 302-4, and 302-5 of this title.						
ALABAMA						
Anniston.....	Calhoun.....	41		26		67
Birmingham.....	Jefferson.....	50		26		76
Gulf Shores.....	Baldwin.....	42		26		68
Huntsville.....	Madison.....	48		26		74
Montgomery.....	Montgomery.....	43		26		69
Sheffield.....	Colbert.....	63		26		89
ARIZONA						
Chino.....	Apache.....	44		26		70
Kayenta.....	Navajo.....	56		26		82
Page/Flagstaff.....	Coconino.....	47		26		73
Phoenix/Scottsdale.....	Maricopa.....	52		26		78
Prescott.....	Yavapai.....	48		26		74
Sierra Vista.....	Cochise.....	43		26		69
Tucson.....	Pima; Davis-Monthan AFB.....	48		26		74
Yuma.....	Yuma.....	43		26		69
ARKANSAS						
Fort Smith.....	Sebastian.....	44		26		70
Helena.....	Phillips.....	47		26		73
Hot Springs.....	Garland.....	45		26		71
Little Rock.....	Pulaski.....	48		26		74
CALIFORNIA						
Chico.....	Butte.....	46		26		72
Death Valley.....	Inyo.....	88		34		122
El Centro.....	Imperial.....	46		26		72
Fresno.....	Fresno.....	50		26		76
Los Angeles.....	Los Angeles, Kern, Orange & Ventura Counties; Edwards AFB; Naval Weapons Center & Ordnance Test Station, China Lake.....	80		34		114
Modesto.....	Stanislaus.....	50		26		76
Monterey.....	Monterey.....	66		26		92
Oakland.....	Alameda, Contra Costa & Marin.....	64		34		98
Palm Springs.....	Riverside.....	72		34		106
Redding.....	Shasta.....	51		26		77
Sacramento.....	Sacramento.....	54		34		88



Department of Energy
Washington, DC 20585

October 18, 1989

Mr. Albert A. Vicchiolla
Chairman, Civilian Agency Acquisition Council
Office of Acquisition Policy
General Services Administration
Washington, D.C. 20405

Dear Mr. Vicchiolla:

The following comments are in response to the September 15, 1989, memorandum from the Defence Acquisition Regulatory (DAR) Council concerning a Civilian Agency Acquisition Council (CAAC) requested language change to the Federal Acquisition Regulation (FAR) travel cost principle. This case, 87-118, emanated from the Department of Energy's (DOE'S) September 17, 1987, request that the FAR travel cost principle be conformed with the Federal Civilian Employee And Contractor Travel Expense Act of 1985 (Public Law 99-234).

The DOE appreciates the DAR Council's consideration of the issues raised and the approved language change. We ask, however, that our remaining concerns, discussed below, be considered before the cost principle is amended.

We believe the DAR Council's proposed change would resolve part of our concerns but it still does not fully clarify how reasonable contractor employee travel costs are to be determined when the employee's actual lodging cost falls below the maximum lodging amount established for Federal travelers.

Section 201 of Pub. L. 99-234 provides that under any contract, the costs for travel, including lodging, subsistence and incidental expenses, shall be reasonable only to the extent they do not exceed the rates and amounts set by subchapter I of Chapter 57 of Title 5. That subchapter provides Federal travelers are entitled to per diem, reimbursement of actual expenses, or a combination thereof, as determined by the General Services Administration (GSA) (5 U.S.C. 5702(a)(1)) and that for travel consuming less than a full day, payments shall be allocated as prescribed by GSA (5 U.S.C. 5702(a)(3)).

The Administrator of GSA established a lodgings plus system, in the Federal Travel Regulations (FTR's), that provides Federal travelers will be paid their actual lodging costs, up to specified maximum lodging amounts, plus a specified allowance for meals and incidental expenses (M&IE) which must be prorated on

partial travel days. The maximum lodging amounts plus the M&IE rates when added together equal the maximum per diem rates (MPDR's) payable to Federal travelers. In the FTR, these three maximum limits (rates and amounts) are individually scheduled by localities. The FTR also provides an extensive set of rules for reducing these maximum rates and amounts on partial travel days or when no lodging costs are incurred.

The FAR travel cost principle essentially provides that contractors may select any travel cost reimbursement methodology (actual, per-diem or a combination thereof) provided contractor employee travel costs "do not exceed the MPDR's" set for Federal travelers (in the FTR) and the resulting charges are "reasonable."

The issue raised by DOE, based on what DOE perceives to be the intent of the Pub. L. 99-234, is that the cost principle is just not clear on how the two provisos, "do not exceed MPDR's" and "reasonable," are to be implemented. For example, does use of the MPDR's, as specified in the third column of the FTR published schedules, result in a reasonable daily charge or must the MPDR's be adjusted downward, on a daily basis, on partial travel days and/or for days when actual lodging costs are less than the FTR specified maximum lodging amounts? The DOE believes that the FTR specified MPDR's do not represent reasonable cost on partial travel days or days when actual lodging cost is less than the FTR specified maximum lodging amounts. In such circumstances, appropriate downward adjustments to the MPDR's are required, on a daily basis, in order to determine if contractor travel charges can be considered reasonable under the law.

The DOE objective is not to invoke all of the FTR's detailed adjustment procedures (approximations will do). Rather DOE's objective is to clarify that, in order for travel costs to be considered reasonable, the MPDR's must be appropriately reduced on partial travel days or on days when actual lodging costs are less than the maximum lodging amount included in the MPDR's. This would facilitate contract audits by reducing the need for judgmental auditor interpretations on reasonableness and thereby minimize ensuing after-the-fact altercations with contractors.

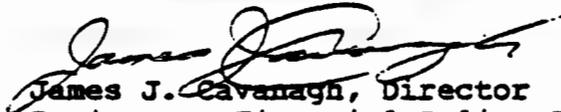
As proposed, the DAR Council's approved language change would clarify that downward adjustments are required only on days when no lodging costs are incurred and on partial travel days. However, the cost principle would remain unclear as to whether downward adjustments are also required when actual lodging costs are less than the maximum lodging amounts set in the FTR which constitutes part of the maximum per diem rate.

We believe that we must be able to answer the public's questions as to whether contractors should be reimbursed the full maximum per diem rate amount on days when their employees actual lodging costs are below the FTR specified maximum lodging amounts? That is, can the delta between a contractor employee's actual lodging costs and the FTR maximum lodging amount be reimbursed or offset by higher costs incurred for meals and incidental expenses? We think not! For Federal travelers, such reimbursements or offsets are not permissible. This becomes a real issue for those contractors that, under the present cost principle, elect to pay contractor employee travel expenses based on the use of flat per diem rates equal to the MPDR's and lodging receipts are not required.

Accordingly, DOE requests that the "approved" cost principle language change be expanded to cite the following:

(a) (6) The maximum per diem rates referenced in (a) (2) of this subsection do not constitute a reasonable daily charge when no lodging costs are incurred, when actual lodging costs are below the FTR specified maximum lodging amounts and on partial travel days (e.g., on days of departure and return an appropriate allocation of the FTR specified maximum meals and incidental expense rate is required).

Inquiries may be directed to (b)(6) at (b)(2).


James J. Cavanagh, Director
Business & Financial Policy Division
Office of Policy
Procurement and Assistance
Management

RECOMMENDED REVISION TO FAR 31.205-46

31.205-46 Travel costs.

(a) (1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable subject to ~~paragraphs (b) through (f)~~ of [the limitations contained in] this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.

(a)(2) and (a)(3) - No change.

(4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in (a)(2)(i), (ii), and (iii) in their entirety. ~~Only the coverage in the referenced regulations dealing with special or unusual situations, the maximum per diem rates, and [the] definitions of lodging, meals, and incidental expenses [, and the regulatory coverage dealing with special or unusual situations]~~ are incorporated herein.

(a)(5) No change

(a)(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection do not constitute a reasonable daily charge when no lodging costs are incurred and on partial travel days (e. g. day of departure and return).

PROPOSED FEDERAL REGISTER NOTICE

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31 (Federal Acquisition Circular 84-XX)

Federal Acquisition Regulation (FAR); Travel costs.

AGENCIES: Department of Defense (DoD); General Services Administration (GSA); and National Aeronautics and Space Administration (NASA).

ACTION: ^{Proposed} ~~Final~~ rule. (60 day comment period)

SUMMARY: Federal Acquisition Circular 84-XX amends the Federal Acquisition Regulation (FAR) 31.205-46, Travel costs.

EFFECTIVE DATE: _____.

FOR FURTHER INFORMATION CONTACT: _____ FAR
Secretariat (VRS), 18th & F Streets, N.W., Room 4041, Washington,
DC 20405. Telephone (b)(2) _____.

SUPPLEMENTARY INFORMATION:

A. Background.

It has come to the attention of the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council that subparagraph 31.205-46(a)(4) has been erroneously interpreted to mean that the maximum allowable contractor per diem travel costs must be calculated in the same manner as the "lodgings-plus" method contained in the Federal Travel Regulations which applies to Federal employees. There was and remains no intent to impose Government administrative procedures upon contractors. Accordingly, ^{it is proposed that} the subparagraph ~~has been~~ ^{be} grammatically rearranged to prevent erroneous interpretation.

Another minor editorial correction recognizes that paragraph (a) contains allowability criteria.

A new subparagraph 31.205-6(a)(2) is proposed to define reasonable per diem costs when no lodging costs are incurred and on partial travel days. Appropriate downward adjustments in maximum per diem rates are generally required under these circumstances. ~~Since these revisions only correct coverage already in the FAR they are not "significant revisions" in accordance with Subpart 1.5 of the FAR therefore, public comments need not be solicited.~~

B. Regulatory Flexibility Act.

^{proposed} These revisions to FAR 31.205-46 ~~do not~~ ^{are not expected to} have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because they merely improve language that has been erroneously interpreted. ~~No change in coverage or meaning is intended, or made.~~ ^(and further define cost reasonableness in specific circumstances. For existing interpretations of reasonableness.)

C. Paperwork Reduction Act.

This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

RECOMMENDED FAC PREAMBLE

Item No. _____ - Travel Costs.

It has come to the attention of the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council that subparagraph 31.205-46(a)(4) has been erroneously interpreted to mean that the maximum allowable contractor per diem travel costs must be calculated in the same manner as the "lodgings-plus" method contained in the Federal Travel Regulations which applies to Federal employees. There was and remains no intent to impose Government administrative procedures upon contractors. Accordingly, the subparagraph has been grammatically rearranged to prevent erroneous interpretation. Another minor editorial correction recognizes that paragraph (a) contains allowability criteria.

~~Since these revisions only correct coverage already in the FAR, they are not "significant revisions" in accordance with Subpart 1.5 of the FAR. Therefore, public comments need not be solicited.~~

Unnoted
in FAC i-
Already
backlog

DEFENSE ACQUISITION REGULATORY SYSTEM

MEMO

April 19, 1990

TO: (b)(6)

SUBJECT: DAR Case 87-118, Travel Costs

(b)(6) called to say the CAAC approved this case at its meeting this week. The proposed rule is in accordance with your letter of September 15, 1989. However--the CAAC apparently does not agree that OMB clearance for paperwork burden is necessary, as (b)(6) recommends against doing the approval request to OMB.

The third paragraph of your letter says the DARC believes the rule will now require approval of OMB under the Paperwork Reduction Act. A CMR in the file indicates you discussed this issue with Fran Brownell of DCAA. (b)(6) said the coverage would create a burden for contractors who do not already have a system for tracking costs for partial day per diem.

Do you want me to tell (b)(6) that our position is still as expressed in our Sep 89 letter? If it is, what is the impact on publishing this proposed rule?

If we go along with the CAAC, we may hear about it during the public comment period. What then--who gets stuck doing the OMB clearance? Is it the CAAC, the Committee, or me? I don't want to be the "stuckee."

Please let me know your thoughts. I've given you a hard-copy of the pertinent documents for you to look at.

Thanks for your quick response on this issue.

(b)(6)

*Nancy says go
w/ CAAC position
4/19*

Case Management Record

DAR Case No. 87-118	CAAC No.	Original Updated	<input checked="" type="checkbox"/>	Date 9/11/89
Title TRAVEL COSTS				
Reference				
Synopsis O ₂ Report Due on.				
Priority	Submitted By O ₂	Originator Code	Case Manager A ₁	
Keywords				
Case References				
FAR Cites				
DFARS Cites				
Cognizant Committees				
Recommendation Table clear 9/20				

Notes

The question was, if we accepted CAAC's (b)(6) on treatment of per diem for partial travel days, would we be creating a burden for contractors? I discussed with DEAA member to Cost Principles crite, (b)(6) She felt the language on reasonableness^{now} already clear and most contractors already have a system for partial day per diem. She did feel would be a burden for those contractors who do not have such a system.



THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-8000

PRODUCTION AND
LOGISTICS
(P) DARS

15 SEP 1989

In reply refer to
DAR Case: 87-118

MEMORANDUM FOR MR. HARRY S. ROSINSKI, ACTING CHAIRMAN
CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT: Travel Costs, CAAC Case 88-37

The DAR Council has reviewed your July 28, 1989 letter in which you requested the addition of a paragraph (a) (6) to 31.205-46.

The DAR Council has approved inclusion of the additional paragraph, except for the last sentence, which should be deleted. There may be circumstances when a downward adjustment would not be appropriate, and therefore it should not be mandated.

The DAR Council believes that with the addition of the new paragraph, the rule would now require approval of OMB under the Paperwork Reduction Act. We assume that the CAA Council will prepare the necessary request for OMB approval.

If the CAA Council agrees with the DAR Council's recommendation, the case should be forwarded to the FAR Secretariat for publication of a proposed rule.

Nancy L Ladd
Nancy L. Ladd, Lt Col, USAF
Acting Director, Defense Acquisition
Regulatory Council

Case Management Record

DISC

DAR Case No. 87-118	CAAC No.	Original Updated	Date 8/8
Title Travel Costs			
Reference CAAC memo of 7/28/89			
Synopsis CAAC submit revisions to DARCC position			
Priority	Submitted By Oy	Originator Code	Case Manager A
Keywords			
Case References			
FAR Cites			
DFARS Cites			
Cognizant Committees	CCP		
Recommendation	Discussion Aug 16		
Notes			



General Services Administration
Office of Acquisition Policy
Washington, DC 20405



28

Lt. Col. Nancy L. Ladd
Acting Director
Defense Acquisition
Regulatory Council
ASD(P&L)DASD(P)DARS
c/o 3D139, The Pentagon
Washington, DC 20301-3026

SUBJECT: DAR Case 87-118, Travel Costs (CAAC Case 88-37)

Dear Colonel Ladd:

The subject case was approved by the CAAC at its meeting of June 22, 1988, as shown on the attached markup of the rule that had been approved by the DARC. The principal difference between the rule approved by the DARC and the rule approved by the CAAC lays in the addition by the CAAC of paragraph (a)(6) as follows:

(a)(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection do not constitute a reasonable daily charge when no lodging costs are incurred and on partial travel days (e.g. day of departure and return). In such circumstances appropriate downward adjustments are required when determining reasonable costs.

At the time the proposed CAAC revision was considered by the DARC, you stated that the DARC did not believe there was sufficient evidence of existence of a problem to warrant making the change suggested by the CAAC. Accordingly, the case was referred back to the CAAC for its approval sans the additional paragraph (a)(6). Although the Department of Energy (DOE) had advised the CAAC that it was experiencing significant difficulties establishing advance agreements to implement the new FAR cost principle coverage with its major contractors, specific examples of questionable contractor activity to clearly demonstrate the need for the added paragraph (a)(6) were not available at that time.

Unfortunately, we now have examples of problems supporting the need for the new paragraph. Recent audits performed by the DOE Inspector General (IG) have revealed that excessive contractor per diem costs appear to have been charged to some DOE contracts primarily because the current FAR cost principle does not address what constitutes reasonable travel costs on partial travel days.

As a direct result of this ambiguity, DOE is continuing to encounter contractor resistance. Under the FAR cost principle, contractors may elect to base their travel costs on per diem, actual expenses or a combination thereof, provided the method used results in a reasonable charge. However, specifies on partial travel days are not provided in the cost principle.

The DOE experience has been that some of its major contractors elected to establish flat rate per diem systems with fixed daily per diem rates equal to the Federal Travel Regulations (FTR) specified maximum per diem rates. Those contractors believe that such fixed rates provide reasonable daily reimbursements to the traveler and that further adjustments are not required on partial travel days or days when no lodging costs are incurred. In their opinion, the FAR cost principle only requires that contractor reimbursements for travel, on a daily basis, do not exceed the daily maximum per diem rates specified in the FTR. They argue the cost principle does not require further reductions of the FTR per diem rates for partial travel days.

In their own defense, these DOE contractors pointed out to DOE IG auditors and to DOE contracting officers that the Department of Defense was not requiring any such reduction on its DoD contracts. They also maintained that other contractors had informed them that some DoD organizations have been allowing flat per diem costs without reductions for partial travel days. Some DOE contracting officers accepted this incorrect interpretation after confirming the FAR interpretation with their DoD counterparts.

At present, it appears the existing cost principle is not being interpreted and implemented in a uniform manner by Government and/or contractor personnel and some activities have been allowing costs that the councils do not intend to be allowed.

We request that the DARC reconsider the revisions approved by the CAAC in order to clarify that the cost principle does require adjustments to the FTR rates on partial travel days or when no lodging expenses are incurred.

If the DARC concurs with the revisions to the case, it will be published in the Federal Register as a proposed rule. Questions may be directed to (b)(6) at (b)(2) or (b)(6) (DOE), at (b)(2)

Sincerely,


HARRY S. ROSINSKI
Acting Chairman
Civilian Agency
Acquisition Council

Enclosure

RECOMMENDED REVISION TO FAR 31.205-46

31.205-46 Travel costs.

(a) (1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable subject to paragraphs (b) through (f) of [the limitations contained in] this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.

(a)(2) and (a)(3) - No change.

(4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in (a)(2)(i), (ii), and (iii) in their entirety. Only the coverage in the referenced regulations dealing with special or unusual situations, the maximum per diem rates, and [the] definitions of lodging, meals, and incidental expenses [, and the regulatory coverage dealing with special or unusual situations] are incorporated herein.

(a)(5) through (f) - No change.

[(a)(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection do not constitute a reasonable daily charge when no lodging costs are incurred and on partial travel days (eg. day of departure and return). ~~It is not necessary and not always true that such circumstances require appropriate adjustments when determining reasonable costs.~~]
[] = language added.
words lined out = language deleted.

(b) thru (f) - no change

~~reasonable~~

~~not necessary and not always true~~

PROPOSED FEDERAL REGISTER NOTICE

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31 (Federal Acquisition Circular 84-XX)

Federal Acquisition Regulation (FAR); Travel costs.

AGENCIES: Department of Defense (DoD); General Services Administration (GSA); and National Aeronautics and Space Administration (NASA).

ACTION: ^{Proposed} ~~Final~~ rule. (60 day comment period)

SUMMARY: Federal Acquisition Circular 84-XX amends the Federal Acquisition Regulation (FAR) 31.205-46, Travel costs.

EFFECTIVE DATE: _____.

FOR FURTHER INFORMATION CONTACT: (b)(6) FAR
Secretariat (VRS), 18th & F Streets N.W., Room 4041, Washington,
DC 20405. Telephone (b)(2)

SUPPLEMENTARY INFORMATION:

A. Background.

It has come to the attention of the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council that subparagraph 31.205-46(a)(4) has been erroneously interpreted to mean that the maximum allowable contractor per diem travel costs must be calculated in the same manner as the "lodgings-plus" method contained in the Federal Travel Regulations which applies to Federal employees. There was and remains no intent to impose Government administrative procedures upon contractors. Accordingly, ^{it is proposed that} the subparagraph ~~has been~~ ^{be} grammatically rearranged to prevent erroneous interpretation.

Another minor editorial correction recognizes that paragraph (a) contains allowability criteria.

A new subparagraph 31.205-6(a)(c) is proposed to define
~~Since these revisions only correct coverage already in the~~ ✓
~~reasonable per diem costs when no lodging costs are incurred~~ ✓
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~~and on partial travel days. Appropriate downward adjustments in maximum~~
~~Subpart 1.5 of the FAR. Therefore, public comments need not be~~ ✓
~~per diem rates are required under these circumstances.~~
~~solicited.~~

B. Regulatory Flexibility Act.

proposed *are not expected to* ✓
These ^{proposed} revisions to FAR 31.205-46 ~~do not~~ have a significant
economic impact on a substantial number of small entities under
the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because
they merely improve language that has been erroneously
(and further define cost reasonableness in specific circumstances.)
interpreted. ~~No change in coverage or meaning is intended, or~~ ✓
~~made.~~ *(or existing interpretations of reasonableness)*

C. Paperwork Reduction Act.

This rule does not contain information collection
requirements which require the approval of OMB under 44 U.S.C.
3501 et seq.

RECOMMENDED REVISION TO FAR 31.205-46

31.205-46 Travel costs.

(a) (1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable subject to ~~paragraphs (b) through (f)~~ of [the limitations contained in] this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.

(a)(2) and (a)(3) - No change.

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(a)(5) ~~through (f)~~ - No change.

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[] = language added.
~~words lined out~~ = language deleted.

(b) thru (f) - no change

PROPOSED FEDERAL REGISTER NOTICE

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

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AGENCIES: Department of Defense (DoD); General Services Administration (GSA); and National Aeronautics and Space Administration (NASA).

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EFFECTIVE DATE: _____.

FOR FURTHER INFORMATION CONTACT: (b)(6) FAR
Secretariat (VRS), 18th & F Streets N.W., Room 4041, Washington,
DC 20405. Telephone (b)(2)

SUPPLEMENTARY INFORMATION:

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per diem rates are required under these circumstances.
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B. Regulatory Flexibility Act.

proposed These ^{proposed} revisions to FAR 31.205-46 *are not expected to* ~~do not~~ have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because they merely improve language that has been erroneously *(and further define cost reasonableness in specific circumstances.)* interpreted. ~~No change in coverage or meaning is intended. or~~
(or existing interpretations of reasonableness)
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RECOMMENDED REVISION TO FAR 31.205-46

31.205-46 Travel costs.

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(a)(2) and (a)(3) - No change.

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(a)(5) ~~through (f)~~ - No change.

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PROPOSED FEDERAL REGISTER NOTICE

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31 (Federal Acquisition Circular 84-XX)

Federal Acquisition Regulation (FAR); Travel costs.

AGENCIES: Department of Defense (DoD); General Services Administration (GSA); and National Aeronautics and Space Administration (NASA).

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EFFECTIVE DATE: _____.

FOR FURTHER INFORMATION CONTACT: (b)(6) FAR Secretariat (VRS), 18th & F Streets, N.W., Room 4041, Washington, DC 20405. Telephone (b)(2)

SUPPLEMENTARY INFORMATION:

A. Background.

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~~FAR, they are not "significant revisions" in accordance with~~ ✓
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~~per diem rates are required under these circumstances.~~
~~solicited.~~

B. Regulatory Flexibility Act.

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These ¹revisions to FAR 31.205-46 ~~do not~~ have a significant
economic impact on a substantial number of small entities under
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(or existing interpretations of reasonableness)
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C. Paperwork Reduction Act.

This rule does not contain information collection
requirements which require the approval of OMB under 44 U.S.C.
3501 et seq.

Case Management Record

DAR Case No. 87-118	CAAC No.	Original <input checked="" type="checkbox"/>	Date 25 SEPTEMBER 89
Updated <input type="checkbox"/>			
Title TRAVEL COSTS			
Reference			
Synopsis LEGAL OPINION			
Priority	Submitted By A2	Originator Code	Case Manager
Keywords			
Case References			
FAR Cites			
DFARS Cites			
Cognizant Committees			
Recommendation 04 - Annulate CAM - Give to O-S			
Notes			



DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, DC 20310-0104



26 September 1989

MEMORANDUM FOR THE DIRECTOR, DAR COUNCIL

SUBJECT: Travel Costs (DAR Case 87-118)

I have reviewed the subject case. It is my opinion that the changes made to the FAR cost principle on travel costs are legally sufficient and meet the requirements of Public Law 99-234.

The underlying legal issue in this case involves the extent to which the Federal Travel Regulations (FTR) should be applied to government contractors through FAR 31.205-46. The various documents in the case file outline the opposing views on this issue and a detailed recapitulation of the supporting arguments is not necessary. Suffice it to say that the Department of Energy (DOE) was (and may still be) of the opinion that Public Law 99-234 requires the wholesale incorporation of the FTR into the FAR and that contractors be treated the same as government personnel for purposes of determining their allowable travel costs. The cost principles committee majority and the DARC are of the opinion that wholesale incorporation of the FTR is not legally required and that the approved FAR changes represent better policy than the DOE recommended changes.

In my opinion the DARC's construction of the statute is legally supportable and is also the preferable construction as a matter of acquisition policy.

Kenneth J. Leonardi
Army Legal Member, DAR Council

Case Management Record

13 SEP 1989

DAR Case No. 87-118	CAAC No.	Original Updated	Date 9/11/89
-------------------------------	----------	---------------------	------------------------

Title
TRAVEL COSTS

Reference

Synopsis **O2 Report Due on.**

Priority	Submitted By O2	Originator Code	Case Manager A1
----------	------------------------	-----------------	------------------------

Keywords

Case References

FAR Cites

DFARS Cites

Cognizant Committees

Recommendation **Table clear 9/20** 13 SEP 1989
*O2 letter back to CSAC
 A2 do legal buy*

Notes
 The question was, if we accepted CAAC's (a)(6) on treatment of per diem for partial travel days, would we be creating a burden for contractors? I discussed with DCAM member to Cost Principles cmtc, FRAN BROWNELL. She felt the language on reasonableness ^{was} already clear and most contractors already have a system for partial day per diem. She did feel would be a burden for those contractors who do not have such a system.

OFFICAL MASTER CASE RECORD

DATE: 11/30

CAM POSTED

DARC

DAR CASE: 87-118

YES

DARSC

DISCUSSION:

NO

AF minority NOT Accepted. 01/05 TO
Figure out how to TELL CAAC to Act on
case. RD 12/7

OFFICIAL MASTER CASE RECORD

DATE: 11-9

CAM POSTED

DARC

DAR CASE: 87-118 - ^{Trans} _{Costs} YES

DARSC

DISCUSSION:

NO

Discussion 11/30

Case Management Record

11 9 OCT 1988

DAR Case No. 87-110 /87-118	CAAC No.	Original		Date
		Updated	✓	10/18/88
Title 87-110 Non-Commercial Cost Principles 87-118 Travel Costs				
Reference Proposed revision to Cost Principle on Travel Costs				
Synopsis				
Priority	Submitted By	Originator Code		Case Manager
	F2			
Keywords				
Case References				
FAR Cites				
DFARS Cites				
Cognizant Committees				
Recommendation	Discuss 11/9			
Notes				

ment programs; and

(iv) The total number of participating employees.

(2) Any advance agreement must include a provision requiring the contractor to refund to the Government training and education costs for employees who resign within 12 months of completion of such training or education for reasons within an employee's control.

(i) *Training or education costs for other than bona-fide employees.* Costs of tuition, fees, textbooks, and similar or related benefits provided for other than bona-fide employees are unallowable, except that the costs incurred for educating employee dependents (primary and secondary level studies) when the employee is working in a foreign country where public education is not available and where suitable private education is inordinately expensive may be included in overseas differential.

(j) *Employee dependent education plans.* Costs of college plans for employee dependents are unallowable.

31.205-45 Transportation costs.

Allowable transportation costs include freight, express, cartage, and postage charges relating to goods purchased, in process, or delivered. When these costs can be identified with the items involved, they may be directly costed as transportation costs or added to the cost of such items. When identification with the materials received cannot be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the contractor follows a consistent and equitable procedure. Outbound freight, if reimbursable under the terms of the contract, shall be treated as a direct cost.

31.205-46 Travel costs.

(a)(1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable subject to paragraphs (b) through (f) of this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.

(2) Except as provided in subparagraph (a)(3) and (4) of this subsection, costs incurred for lodging, meals, and incidental expenses (as defined in the regulations cited in (a)(2)(i) through (iii) of this subparagraph) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the—

(i) Federal Travel Regulations, prescribed by the General Services Administration, for travel in the conterminous 48 United States, available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office,

Washington, DC 20402, Stock No. 022-001-81003-7;

(ii) Joint Travel Regulations, Volume 2, DoD Civilian Personnel, Appendix A, prescribed by the Department of Defense, for travel in Alaska, Hawaii, The Commonwealth of Puerto Rico, and territories and possessions of the United States, available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 908-010-00000-1; or

(iii) Standardized Regulations (Government Civilians, Foreign Areas), Section 925, "Maximum Travel Per Diem Allowances for Foreign Areas," prescribed by the Department of State, for travel in areas not covered in (a)(2)(i) and (ii) of this subparagraph, available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 744-008-00000-0.

(4) (3) In special or unusual situations, actual costs in excess of the above-referenced maximum per diem rates are allowable provided that such amounts do not exceed the higher amounts authorized for Federal civilian employees as permitted in the regulations referenced in (a)(2)(i), (ii), or (iii) of this subsection. For such higher amounts to be allowable, all of the following conditions must be met:

(i) One of the conditions warranting approval of the actual expense method, as set forth in the regulations referenced in (a)(2)(i), (ii), or (iii) of this subsection, must exist.

(ii) A written justification for use of the higher amounts must be approved by an officer of the contractor's organization or designee to ensure that the authority is properly administered and controlled to prevent abuse.

(iii) If it becomes necessary to exercise the authority to use the higher actual expense method repetitively or on a continuing basis in a particular area, the contractor must obtain advance approval from the contracting officer.

(iv) Documentation to support actual costs incurred shall be in accordance with the contractor's established practices provided that a receipt is required for each expenditure in excess of \$25.00. The approved justification required by (a)(3)(ii) and, if applicable, (a)(3)(iii) of this subparagraph must be retained.

(5) (4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in (a)(2)(i), (ii), and (iii) in their entirety. Only the coverage in the referenced regulations dealing with special or unusual situations, the maximum per diem rates, and definitions of lodging, meals, and incidental expenses are incorporated herein.

87-110

87-118

[(3) Except as provided in subparagraph (a)(4) below, on days when lodging costs are not incurred, costs incurred for meals and incidental expenses (as defined in the regulations cited in (a)(2) above) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis [one third]* of the maximum per diem rates in effect at the time of travel as set forth in the regulations cited in (a)(2) above.]

* Percentage to be determined by DCAA audit of lodging costs as a percentage of per diem costs.



THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-8000

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7 01 1988

In reply refer to
DAR Cases: ~~87-110~~

87-118

MEMORANDUM FOR MR. HARRY S. ROSINSKI, ACTING CHAIRMAN
CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT: CAAC Cases 88-37, Travel Costs, and 88-63, Non-Commercial
Cost Principles

On December 1, 1988, the DAR Council reviewed these cases and
your most recent correspondence on them.

With regard to CAAC Case 88-37 (DARC 87-118), we do not believe
that sufficient evidence exists of a problem in determining the
reasonableness of travel costs to warrant making the change suggested
in your letter of July 5. We again recommend that the CAAC approve,
as a final rule, the coverage provided in my memo of April 18.

We have referred CAAC Case 88-63 (DARC 87-110) back to the
Commercial Cost Principles Committee with instructions to modify the
coverage associated with travel costs to comply with the statutory
change included in the OFPP Reauthorization Act, and to incorporate
the changes you suggested in your August 26 letter regarding
cafeteria costs and contributions and donations.

Duncan Holaday
Director, Defense Acquisition
Regulatory Council

OFFICIAL MASTER CASE RECORD

DATE: 8/24/89

CAM POSTED

DARC

DAR CASE: 87-118

YES

DARSC

DISCUSSION:

NO

DARC approved CAAC's H/O of 8/10/89 except for deleting last sentence in the CAAC's (a)(6).

A, to draft memo of transmittal back to CAAC. No need to bring to table.

O₂ to discuss new (a)(6) with DCMA... is paperwork involved.

will go out as a proposed rule

Case Management Record

Discuss

DAR Case No. <i>87-118</i>	CAAC No. <i>88-37</i>	Original Updated	Date <i>7-13-88</i>
Title <i>Travel Cost</i>			
Reference <i>CAAC Mtg of 7/5/88</i>			
Synopsis <i>CAAC recommends changes to DARC position.</i>			
Priority	Submitted By	Originator Code	Case Manager <i>A</i>
Keywords			
Case References			
FAR Cites			
DFARS Cites			
Cognizant Committees	<i>CCP</i>	<i>"</i>	
Recommendation <i>Refer to CCP Cmde for final travel amount.</i>			
Notes			



General Services Administration
Office of Acquisition Policy
Washington, DC 20405

JUL 5 1988

Mr. Duncan A. Holaday
Director, Defense Acquisition
Regulatory Council
ASD(P&L) DASD(P) DARS
c/o 3D139, The Pentagon
Washington, DC 20301-3062

SUBJECT: DAR Case 87-118, Travel Costs (CAAC Case 88-37)

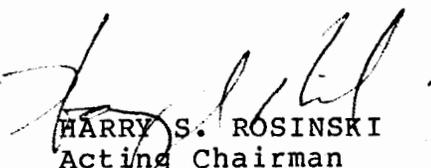
Dear Mr. Holaday:

At its meeting on June 22, 1988, the CAAC concurred with the DARC's proposed revisions to FAR 31.205-46, but voted to add some additional coverage dealing with cost reasonableness determinations on partial travel days and days when no lodging costs are incurred. The CAAC was persuaded that the addition of such coverage would assist in defining reasonableness on a potentially contentious cost issue.

Marked-up revisions of the DARC's recommended coverage and proposed Federal Register notice which contain the CAAC's recommended revisions are enclosed for your review. Because of the more extensive revisions in the CAAC's proposal, we are recommending that the case be issued as a proposed rule rather than a final rule.

Please let us know if the DARC concurs with our recommended addition and Federal Register notice revisions.

Sincerely,


HARRY S. ROSINSKI
Acting Chairman
Civilian Agency Acquisition Council

Enclosure



THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-8000

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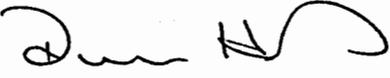
18 APR 1988

In reply refer to
DAR Case: 87-118

MEMORANDUM FOR MR. HARRY S. ROSINSKI, ACTING CHAIRMAN
CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT: DAR Case 87-118, Travel Costs

The DAR Council has approved revisions to FAR 31.205-46, Travel Costs, to provide a final rule under this case. The rationale supporting the final rule is contained in the attached report. If the CAAC agrees with our position, please forward the case to the FAR Secretariat for further processing and inclusion in the next Federal Acquisition Circular.


Duncan Holaday
Director, Defense Acquisition
Regulatory Council

Attachment

Enclosure

RECOMMENDED REVISION TO FAR 31.205-46

31.205-46 Travel costs.

(a) (1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable subject to ~~paragraphs (b) through (f)~~ of [the limitations contained in] this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.

(a)(2) and (a)(3) - No change.

(4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in (a)(2)(i), (ii), and (iii) in their entirety. ~~Only the coverage in the referenced regulations dealing with special or unusual situations, the maximum per diem rates, and [the] definitions of lodging, meals, and incidental expenses [, and the regulatory coverage dealing with special or unusual situations]~~ are incorporated herein.

(a)(5) ~~through (f)~~ - No change.

[(a)(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection do not constitute a reasonable daily charge when no lodging costs are incurred and on partial, travel days (eg. day of departure and return). In such circumstances appropriate downward adjustments are required when determining reasonable costs.] ✓
[] = language added.
words lined out = language deleted.

(b) thru (f) - no change ✓

PROPOSED FEDERAL REGISTER NOTICE

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31 (Federal Acquisition Circular 84-XX)

Federal Acquisition Regulation (FAR); Travel costs.

AGENCIES: Department of Defense (DoD); General Services Administration (GSA); and National Aeronautics and Space Administration (NASA).

ACTION: ^{Proposed} ~~Final~~ rule. (60 day comment period) ✓

SUMMARY: Federal Acquisition Circular 84-XX amends the Federal Acquisition Regulation (FAR) 31.205-46, Travel costs.

EFFECTIVE DATE: _____.

FOR FURTHER INFORMATION CONTACT: (b)(6) FAR
Secretariat (VRS), 18th & F Streets N.W., Room 4041, Washington,
DC 20405. Telephone (b)(2)

SUPPLEMENTARY INFORMATION:

A. Background.

It has come to the attention of the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council that subparagraph 31.205-46(a)(4) has been erroneously interpreted to mean that the maximum allowable contractor per diem travel costs must be calculated in the same manner as the "lodgings-plus" method contained in the Federal Travel Regulations which applies to Federal employees. There was and remains no intent to impose Government administrative procedures upon contractors. Accordingly, ^{it is proposed that} ~~the subparagraph has been~~ ^{be} grammatically rearranged to prevent erroneous interpretation. ✓

Another minor editorial correction recognizes that paragraph (a) contains allowability criteria.

A new subparagraph 31.205-6(a)(6) is proposed to define
~~Since these revisions only correct coverage already in the~~
~~reasonable per diem costs when no lodging costs are incurred~~
~~FAR, they are not "significant revisions" in accordance with~~
~~and on partial travel days. Appropriate downward adjustments in maximum~~
~~Subpart 1.5 of the FAR. Therefore, public comments need not be~~
~~per diem rates are required under these circumstances.~~
~~solicited.~~

B. Regulatory Flexibility Act.

proposed These ^{are not expected to} revisions to FAR 31.205-46 ~~do not~~ have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because they merely improve language that has been erroneously interpreted. *(and further define cost reasonableness in specific circumstances.)*
~~No change in coverage or meaning is intended. or~~
(or existing interpretations of reasonableness)
~~made.~~

C. Paperwork Reduction Act.

This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.



THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-8000

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18 APR 1988

In reply refer to
DAR Case: 87-118

MEMORANDUM FOR MR. HARRY S. ROSINSKI, ACTING CHAIRMAN
CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT: DAR Case 87-118, Travel Costs

The DAR Council has approved revisions to FAR 31.205-46, Travel Costs, to provide a final rule under this case. The rationale supporting the final rule is contained in the attached report. If the CAAC agrees with our position, please forward the case to the FAR Secretariat for further processing and inclusion in the next Federal Acquisition Circular.

A handwritten signature in dark ink, appearing to read "Duncan Holaday", with a stylized flourish at the end.

Duncan Holaday
Director, Defense Acquisition
Regulatory Council

Attachment

RECOMMENDED REVISION TO FAR 31.205-46

31.205-46 Travel costs.

(a) (1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable subject to ~~paragraphs (b) through (f)~~ of [the limitations contained in] this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.

(a)(2) and (a)(3) - No change.

(4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in (a)(2)(i), (ii), and (iii) in their entirety. Only ~~the coverage in the referenced regulations dealing with special or unusual situations,~~ the maximum per diem rates, ~~and~~ [the] definitions of lodging, meals, and incidental expenses [, and the regulatory coverage dealing with special or unusual situations] are incorporated herein.

(a)(5) through (f) - No change.

[] = language added.
~~words lined out~~ = language deleted.

PROPOSED FEDERAL REGISTER NOTICE

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31 (Federal Acquisition Circular 84-XX)

Federal Acquisition Regulation (FAR); Travel costs.

AGENCIES: Department of Defense (DoD); General Services Administration (GSA); and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular 84-XX amends the Federal Acquisition Regulation (FAR) 31.205-46, Travel costs.

EFFECTIVE DATE: _____.

FOR FURTHER INFORMATION CONTACT: (b)(6) FAR
Secretariat (VRS), 18th & F Streets, N.W., Room 4041, Washington,
DC 20405. Telephone (b)(2)

SUPPLEMENTARY INFORMATION:

A. Background.

It has come to the attention of the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council that subparagraph 31.205-46(a)(4) has been erroneously interpreted to mean that the maximum allowable contractor per diem travel costs must be calculated in the same manner as the "lodgings-plus" method contained in the Federal Travel Regulations which applies to Federal employees. There was and remains no intent to impose Government administrative procedures upon contractors. Accordingly, the subparagraph has been grammatically rearranged to prevent erroneous interpretation.

Another minor editorial correction recognizes that paragraph (a) contains allowability criteria.

Since these revisions only correct coverage already in the FAR, they are not "significant revisions" in accordance with Subpart 1.5 of the FAR. Therefore, public comments need not be solicited.

B. Regulatory Flexibility Act.

These revisions to FAR 31.205-46 do not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because they merely improve language that has been erroneously interpreted. No change in coverage or meaning is intended or made.

C. Paperwork Reduction Act.

This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

RECOMMENDED FAC PREAMBLE

Item No. _____ - Travel Costs.

It has come to the attention of the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council that subparagraph 31.205-46(a)(4) has been erroneously interpreted to mean that the maximum allowable contractor per diem travel costs must be calculated in the same manner as the "lodgings-plus" method contained in the Federal Travel Regulations which applies to Federal employees. There was and remains no intent to impose Government administrative procedures upon contractors. Accordingly, the subparagraph has been grammatically rearranged to prevent erroneous interpretation. Another minor editorial correction recognizes that paragraph (a) contains allowability criteria.

Since these revisions only correct coverage already in the FAR, they are not "significant revisions" in accordance with Subpart 1.5 of the FAR. Therefore, public comments need not be solicited.



DEPARTMENT OF THE NAVY

OFFICE OF THE ASSISTANT SECRETARY

(SHIPBUILDING AND LOGISTICS)

WASHINGTON, DC 20360-5000

DAR Staff
Case 87-118

4 March 1988

MEMORANDUM FOR THE DIRECTOR, DAR COUNCIL

SUBJECT: DAR Case 87-118, "Travel Costs"

I. PROBLEM:

To consider the recommendations contained in the Department of Energy (DOE) letter of 17 September 1987 to the Civilian Agency Acquisition Council (CAAC) to amend Federal Acquisition Regulation (FAR) 31.205-46, "Travel costs." DOE's proposed revisions are intended to fully implement all of the requirements of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985, Public Law 99-234.

II. RECOMMENDATION:

A. That FAR 31.205-46 be revised as indicated in TAB A.

B. That the memorandum at TAB B be used to transmit the final rule, together with the TAB C recommended Federal Register notice and the TAB D FAC Preamble, to the Civilian Agency Acquisition Council.

III. DISCUSSION:

A. Background.

The provision of Public Law 99-234 pertaining to contractor travel costs is contained in Title II, Section 201 of the Act, which states: "Under any contract with any executive agency, costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by subchapter I of chapter 57 of title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any provision of such subchapter" Subchapter I of chapter 57, in turn, states that a Federal employee traveling on official business is entitled to any one of the following:

(A) a per diem allowance at a rate not to exceed that established by the Administrator of General Services for

travel within the continental United States, and by the President or his designee for travel outside the continental United States;

(B) reimbursement for the actual and necessary expenses of official travel not to exceed an amount established by the Administrator for travel within the continental United States or an amount established by the President or his designee for travel outside the continental United States; or

(C) a combination of payments described in subparagraphs (A) and (B) of this subparagraph.

In addition, subchapter I prescribes mileage limitations for the use of privately owned vehicles instead of actual expenses of transportation when that mode of transportation is authorized or approved as more advantageous to the Government. The limitations are 20 cents a mile for motorcycles, 25 cents a mile for automobiles, and 45 cents a mile for airplanes.

B. DOE Position.

DOE's letter of 17 September 1987 to the CAAC noted that the Administrator of General Services in May 1986 and July 1987 revised the subchapter I limits in the Federal Travel Regulations (FTRs) governing subsistence to provide that payments to Federal travelers may not exceed the employee's actual cost of lodging (supported by a receipt) up to specified lodging maximums, plus a specified meals and incidental expense allowance, allocated within prescribed limitations. Since Public Law 99-234 requires contractors to comply with subchapter I, DOE contends that Congress intended to limit Federal payments for contractor travel costs to the amounts payable to Federal travelers in similar circumstances pursuant to the FTRs issued by the Administrator of General Services under the authority of 5 U.S.C. 5707. However, FAR 31.205-46 permits contractors to claim travel costs for lodging, meals, and incidental expenses based on per diem, actual expenses, or a combination thereof, provided the method used results in reasonable charges which do not exceed the maximum per diem rates specified in the FTRs, Joint Travel Regulations, or Standardized Regulations, as applicable; no reference to subchapter I and its assemblage of limitations is made.

DOE argues that the FAR cost principle, as written, can be interpreted to permit reimbursements in excess of the amounts payable to Federal employees traveling in similar circumstances. For example, a higher payment could result when the contractor chooses to pay employee travel costs by use of a per diem rate equal to the maximum per diem rate for a locality, even though the employee's actual cost of lodging is below the FTR's specified maximum lodging rate. A Federal employee, in similar

circumstances, would receive the maximum per diem rate less the difference between the specified lodging maximum and the actual cost of lodging.

Thus, DOE believes that application of the FAR provisions can result in varying degrees of compliance because the FTR provisions implementing subchapter I, including mileage limitations, were not explicitly incorporated into the FAR. DOE requests that FAR 31.205-46 be amended to reflect that the cost of contractor travel expenses shall be considered to be reasonable and allowable only if the resultant travel costs do not exceed the Federal travel cost limitations of subchapter I of chapter 57 in effect at the time of travel, as established by the Administrator of General Services, the President, or his designee.

C. Committee Comments.

1. Intent of Legislation:

In the Committee's view, DOE is interpreting Public Law 99-234 in an unduly narrow sense. We believe Congress never intended to require contractors to revise existing corporate travel policies in order to calculate travel costs in the same detailed manner as do Federal employees. Carried to the extreme, contractor personnel, if strictly bound by all of the numerous rules to which Federal employees are subjected, would be forced to stay at military installations if quarters were available. Further, they would be required to utilize Government-furnished automobiles, if available, in lieu of commercial rental cars. Obviously, this would place a tremendous administrative burden upon the Government and the contractor; we do not envision that Congress had this in mind when contemplating the legislation.

However, we recognize that some ambiguities in the House of Representatives Report 99-602 addressing Section 201 of Public Law 99-234 could lead to varying interpretations of the Law. For example, the Report noted that "... the United States Treasury will pay contractors no more than it will pay Federal employees." Although this could be narrowly interpreted as those specified lodging maximums and specified meals and incidental expense allowances which apply to Government personnel, such an interpretation would not be consistent with other statements in the Report:

Section 201 does not require government contractors to conform to recordkeeping requirements which the GSA may impose on Federal employees. The Committee expects that whatever Government contracting and auditing personnel require to support contractor expense claims would suffice.

The section's purpose is to provide a standard against which the reasonableness of contractor claims for such expenses can be measured.

The Committee finds that such a standard is needed. Federal government regulations allow contractors to charge travel costs to certain contracts so long as the charges are "reasonable." In the absence of criteria for determining what is reasonable, contracting officers have tended to accept charges without question. This ambiguity has resulted in excessive claims being paid to government contractors. (emphasis added)

Section 201 would remove the ambiguity. Amounts claimed up to the locality ceilings provided by the Administrator of General Services or the President pursuant to subchapter I of chapter 57 are deemed reasonable and allowable; any excess is not. (emphasis added - there is no reference to maximum lodging ceilings, only to locality ceilings which equate to maximum per diem rates).

Thus, we made a judgment call in developing the FAR coverage that we believed resulted in a rule which accomplished the goal intended by Congress. To impose additional requirements on contractors would undoubtedly increase recordkeeping expenses for contractors, a situation Congress clearly wanted to avoid.

In developing the final coverage in FAR 31.205-46 to implement the requirements of Public Law 99-234, the Cost Principles Committee carefully reviewed comments on the initially proposed language that were furnished by numerous industry associations and Government agencies. Excerpts from these comments, which strengthened our view that Congress did not intend a narrow interpretation of the law, follow:

Council of Defense and Space Industry Associations -- We are concerned that contract administration and audit personnel may interpret the cost principle to require literal compliance with all of the portions of the referenced travel regulation specifying the various methods of calculating travel costs. Contractors are not familiar with these very complex methods, and we do not believe it was the intent of Congress to impose all of the Federal Travel Regulation rules, methods and recordkeeping on industry.

So that this intent of the FAR is clearly understood by all parties, we recommend that the Supplementary Information clarify this intent and the following paragraph be added:

"(a)(4) Subparagraphs (a)(2) and (a)(3) of this subsection are not meant to incorporate the regulations

as cited in (a)(2)(i), (ii), or (iii) of this subsection in their entirety. Only the provisions in the referenced regulations covering definitions of travel cost, maximum daily per diem rates, and extraordinary and temporary situations are incorporated herein."

Control Data Corporation --

It is quite apparent that in applying the proposed travel limiters to indirect cost pools, there should be a "rule of reason." There is nothing in the legislative history (which is sparse) to suggest that Congress sought application of the new travel cost standard in a manner that would be unduly burdensome, costly and counterproductive

Lockheed Corporation --

We believe that contractors' employees' total daily travel costs for meals, lodging and incidentals should be subject to the per diem maximums for the locations, rather than the individual meals and incidentals/lodging limitations, so that contractors have flexibility to develop means of implementing the regulations within their existing travel policies and practices

TRW Electronics & Defense Sector --

Nowhere does the Act authorize the imposition of rates on contractors that reflect federal government discounts that are not available to contractors.

Thus, there is widespread support for our determinations that the "maximum" per diem rates were intended to be the yardsticks by which contractor travel costs are measured. In a 18 July 1986 report to the Defense Acquisition Regulatory (DAR) Council, the Committee recommended final revision to FAR 31.205-46 to implement the requirements of Public Law 99-234 that were subsequently adopted by the DAR and CAA Councils. In concluding that the "maximum" per diem rates should be specified, we noted:

... Several comments were received that indicated that the commenters were not sure whether the proposed cost principle language required application of the separate ceilings for lodging, and meals and incidental expenses. At the outset the Committee intended that the combined (e.g., the maximum) ceiling would apply because it believes that use of only a single ceiling complies with the intent of Congress and would be less complicated and administratively burdensome. Accordingly, the Committee has amended the proposed coverage to specify use of the maximum ceilings in (a)(2) and (a)(3)

We believe that Congress would have imposed separate ceilings on lodging and meals and incidental expenses if it desired to limit each element of travel costs. Similarly, we believe that Congress would have specifically stated that contractors would be subject to the subchapter I mileage limitations for the use of privately owned vehicles while traveling on official business if such limitations were intended. The only travel costs covered by Congress in the legislation were "costs of lodging, other subsistence, and incidental expenses;" limits on cost of transportation were not imposed. Further proof that Congress did not legislate limits on transportation costs is contained in Section 202 of the Act, which states: "The Administrator for Federal Procurement Policy, in consultation with the Secretary of Defense and the Administrator of General Services, shall undertake a study to determine whether limitations should be placed on payments by executive agencies to Government contractors for costs incurred by contractor employees for transportation and relocation." (Emphasis added). Thus, as stated in our report of 18 July 1986, "P.L. 99-234 requires the imposition of ceiling rates on lodging, meals and incidental expense, but does not require that similar ceilings be imposed on transportation costs."

2. Other Reasons for Not Adopting DOE Proposal:

Aside from the consensus that Congress never intended to require contractors to comply with all of the limitations imposed on Federal employees by subchapter I of chapter 57 of title 5, United States Code, there are several reasons not to adopt such a policy in the FAR. Some of the more significant considerations are depicted below.

a. Costs of Administration.

Requiring contractors to comply with all of the requirements contained in the ever changing Federal Travel Regulations would not be cost-effective. The costs of obtaining copies of the updated volumes of detailed regulations and the costs necessary for contractors to continually change their existing travel policies and practices would most likely offset any savings in experienced travel costs. Then too, if contractor employees were required to comply with individual ceiling costs for lodging, for example, they might elect to stay at cheaper hotels in the suburbs. The savings in lodging costs in all probability would be offset by car rental expenses, and a significant amount of otherwise productive time would be lost in commuting. As one commenter noted, "Penny-wise; pound-foolish is an axiom that directly applies here."

We note that the Public Law 99-234 coverage pertaining to Federal employees provides that those employees can be reimbursed for travel through a per diem allowance, by a reimbursement for actual and necessary expenses, or a combination thereof. This indicates that Congress accepted our philosophy concerning the need for flexibility that has been reflected in FAR 31.205-46 for many years. Paragraph (a)(1) of the cost principle states: "Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge."

b. Immateriality.

The Cost Accounting Standard at FAR 30.305, "Materiality," lists several criteria that shall be considered in determining whether amounts of costs are material or immaterial. A review of these criteria (e.g., the absolute dollar amount involved, the amount of contract cost compared with the amount under consideration, and the cost of administrative processing) indicates that in the vast majority of cases any additional costs which might be questioned as a result of making all of the Government's travel rules applicable to contractors would in all likelihood be immaterial. Therefore, imposition of a rule that would not result in material cost savings makes little sense.

c. Discounted Lodging Rates.

Several commenters complained that they are not able to obtain hotel discounts available to Government employees. TRW Inc. stated:

The Federal Travel Regulations establish separate daily rates for lodging costs and the cost of meals and incidental expenses. The lodging rates apply to government employees who receive substantial discounts from the commercial rates established by the various hotels and motels. The GSA stated in a March 6, 1986, Memorandum to the Interagency Committee on Travel Management that the lodging rates reflect discounts frequently available to government travelers. To impose these same rates on government contractor employees as the maximum allowable lodging cost is both unreasonable and inequitable.

The Machinery and Allied Products Institute observed:

There is a general belief among companies affected by the proposed regulations that the published per diem rates reflect the practice of most hotel and motel organizations to provide military and government personnel with reduced lodging rates not available to either the government contractor or the general public.

And the concerns of small businesses are reflected in Kaman Sciences Corporation's statement:

The records indicate that GSA feels that corporate rates given to large companies are as good as the rates given federal employees. That may or may not be true. The fact being ignored, however, is that corporate discounts are a function of volume and small companies will get little or no corporate discounts.

Consequently, requiring contractors to limit employee hotel expenses to the lodging ceilings applicable to Federal employees would only intensify industry's concerns, and could be unfair.

d. Processing Costs.

DOE's proposal, if adopted, would require contractors to spend an inordinate amount of administrative effort to screen employee travel reports to assure that the separate ceilings for lodging and other subsistence and incidental expenses are not exceeded. This, and additional efforts to assure that any other limitations applicable to Federal employees are not exceeded, could cause changes in contractor systems and procedures for monitoring travel costs and generate a significant increase in paperwork. As noted in the House of Representatives Report 99-602, GSA estimates that processing an actual-expenses voucher for Federal employees costs \$51.00, but processing a voucher under the lodgings-plus system would cost only \$28.00. It is reasonable to assume that contractors who may not impose lodging ceilings for their employees would incur processing costs significantly less than \$28.00; imposing lodging ceilings would likely drive their processing costs upward. It may be arduous to justify the additional processing costs due to the lack of any measurable savings to the Government.

e. General Accounting Office (GAO) Report.

Senate Report 99-406, dated 14 August 1986, contained a provision which required GAO to obtain extensive detailed statistical information to determine the effect of Public Law 99-234. The resulting report (GAO/NSIAD-88-59), which was issued in December 1987, noted that it is premature to conclude whether the Law is or is not treating Government contractors fairly. The report stated: "Sufficient time should elapse to allow the contractors' and GSA's efforts to obtain discount lodging rates to have an effect, and to have sufficient numbers of travel vouchers processed under the new travel regulations to assess." However, GAO's review of data provided by eight major contractors showed that in most cases the incurred per diem costs did not exceed the Government per diem limitations. Thus, until more

detailed studies are performed, it would be premature to consider changes to the existing FAR rule.

It is interesting to note that GAO found no fault with the way FAR implemented Public Law 99-234, although the following excerpts from its report indicate GAO was aware of differences in procedures governing reimbursement of Federal Employee and contractor employee travel:

These rates, set by GSA, govern per diem reimbursements to federal employees. Government employees are restricted to a maximum lodging amount and a fixed rate for meals and incidental expenses within each per diem rate. The new regulations governing contractor reimbursements, on the other hand, do not set lodging, meal, and incidental expense limits within such maximum per diem amount.

3. Ambiguous Coverage.

In discussion of this case, the DOE representative asserted that there is an ambiguity in paragraph 31.205-46(a) which allows the interpretation that the full panoply of regulations in the FTR, JTR, and Standardized Regulations, including the "lodging plus" system, applies to contractors. Subparagraph (a)(2) says in pertinent part:

"... costs incurred for lodging, meals, and incidental expenses (as defined in the regulations cited in (a)(2)(i) through (iii) of this subparagraph) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the - ..."

This clearly means that the largest per diem rate, the sum of the lodging limit and the meals and miscellaneous expenses limit, shall be the upper limit of allowable contractor travel costs.

Paragraph (a)(4), on the other hand, says in pertinent part:

"Only the coverage in the referenced regulations dealing with special or unusual situations, the maximum per diem rates, and definitions of lodging, meals and incidental expenses are incorporated herein."

This portion of the cost principle has been interpreted by a few contracting officers to mean that contractor's travel costs shall be limited to the maximum per diem rate and limited further by the lodging-plus method which is contained in the regulations dealing with maximum per diem rates.

Our analysis agreed that this interpretation, though stretched, is within the realm of reasonable interpretation. Since it is not the intended meaning, we recommend the offending sentence in (a)(4) be restructured into an improved grammatical form, without change in meaning.

The sentence should be revised to read:

"Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein."

4. Editorial Correction.

The Committee's discussion of the structure of the Travel cost principle revealed the need for another previously unnoticed editorial correction. Paragraph (a) refers to allowability being determined under paragraphs (b) through (f). However, (a) also contains allowability strictures. The first sentence of paragraph (a)(1) has been revised to cite the entire subsection.

5. Summary.

DOE reads the words of the statute and its legislative history to mean that the costs chargeable to a contract for each contractor employee's day of lodging, other subsistence, and incidental expenses shall not exceed the amount that would have been paid if that contractor employee were a Federal employee. However, the only way to assure that this is indeed the maximum allowable cost under a contract would be to require the maximum allowable cost to be calculated under the GSA-promulgated FTR procedures.

The Cost Principles Committee was convinced that Congress is satisfied if contractors' lodging, meals and incidental travel costs will be reasonable and acceptable if they are equal to or less than the FTR maximum daily amount. The GAO report on implementation of P.L. 99-234 and its effect on defense contractors did not take issue with the FAR implementation of the law. Nor is there any complaint, save DOE's, that the FAR implementation is causing excess costs to be charged to Government contracts. On the contrary, the FAR cost principle has provided an appropriate encouragement to contractors to reduce travel costs, such as by negotiating discounted room rates in areas of frequent travel.

We are persuaded, however, that the language of the cost principle, paragraph (a)(4), conceivably could be misinterpreted. Thus, we recommend the changes set forth in TAB A. In our opinion, they are not significant revisions requiring solicitation of public comments.

DOE Minority Opinion

The Department of Energy (DOE) strongly disagrees with the Cost Principles Committee's resolution of the substantive legal issues raised by DOE regarding the statutory interpretation of Pub. L. 99-234 and the FAR's implementation thereof. It is DOE's belief that the committee in its interpretation of public law has failed to provide proper resolution of the subject case. As DOE's views regarding Pub. L. 99-234 are supported by DOE Headquarters procurement counsel and regulatory counsel as well as by the legal staffs of our major operating components, we maintain that to properly resolve the issues raised by DOE requires a detailed written legal opinion as to whether the intent of Congress, in passing Pub. L. 99-234, is better effectuated by the course suggested by DOE or by that recommended by the committee. Therefore, we recommend that this matter be referred to the DAR Council and the CAAC so that the legal advisors thereto may adjudicate this divergence of opinion regarding implementation of Pub. L. 99-234. Our detailed comments on the committee resolution of this case are attached at TAB E and should be considered a part of this comment.

Majority Response to DOE Minority Opinion

Being unpersuaded that the Committee Majority's analysis of the FAR implementation of Pub. L. 99-234 is correct, DOE recommends preparation of "a detailed written legal opinion as to whether the intent of Congress ... is better effectuated by the course suggested by DOE or by that recommended by the Committee."

We, the Majority, did not seek such an analysis because it is unnecessary. In our opinion, Congress clearly wanted to have the same travel limit for Government employees and for contractor employees, and nothing more. Congress did not want to impose any detailed procedures on contractors, nor did they want national conformity with whatever methods and procedures GSA may adopt for Federal employees.

DOE complained that the Majority ignored the "rates and amounts" language of the statute. The Majority believes that "rates and amounts" refers to the maximum per diem allowance established by the Administrator of GSA, as a form of all-encompassing statutory language designed to include the sum of all component parts of the daily travel allowance. We see no deeper meaning in the use of "rates and amounts."

DOE states that there are two separate and conflicting provisions in 31.205-46, that subparagraph (a)(1) permits a per diem system, reimbursement of actual costs, or a combination thereof, while on the other hand subparagraph (a)(4) incorporates the detailed FTR coverage. We recognized the validity of DOE's argument, and have recommended a correction to (a)(4). DOE

believes the fix should be in (a)(1). We are not persuaded by DOE's argument, nor is DOE persuaded by the Committee Majority's argument. The decision by the CAA and DAR Councils will settle the matter.

Air Force Minority Opinion

The Air Force believes that a clarification to the current language should be incorporated. The existing cost principle does not specifically address reimbursement for those situations when hotel/motel costs are not incurred. A review of the information available indicates that the Cost Principles Committee intended that in this situation contractors be reimbursed something less than the maximum amounts for those days when no hotel costs are incurred. While the Air Force is not proposing that contractors be forced to adopt a lodging plus system per se, we see no reason not to codify the intent of the Committee. Inclusion of specific language should prevent any future misunderstandings. Therefore, the Air Force proposes that FAR 31.205-46(a)(4) be amended to add the following sentence: The maximum per diem rates above are intended to cover cases where contractor employees experience both motel/hotel and meal expenses. In cases where meals alone are involved, contractor policies should recognize lower but reasonable levels.

Majority Response to Air Force Opinion

The majority believes this suggestion would address a problem that does not exist. There is no report of abuses that the Air Force suggestion would prevent. There remains the opportunity to challenge the reasonableness of travel costs which are not, but should be, less than the maximum per diem rates. The contractors' policies for partial days of travel should be guided by reasonable policies set forth in advance and concurred in by the contracting officer. It is not necessary to specify in the FAR a few instances where reasonable travel costs should be less than the maximum per diem rate. It was the Committee's intention to rely on contractors' stated policies to limit travel costs to those considered to be reasonable. DCAA's reviews of the policies established by some of the major contractors found that they are in compliance with this intent of the cost principle. Unnecessary delineation of reasonableness criteria only serves to weaken the overall force of that concept.

Except for the DOE and Air Force members, all members of the Committee concur with the contents of this report.



J. W. ERMERINS
Chairman
Cost Principles Committee

DoD Members

Edwin Cornett, Army
Terrence D. Sheppard, Air Force
Donald W. Reiter, DLA
Roger Wm. Cowles, OASD(C)
Frances Brownell, DCAA
Don Sawyer, OASD(A&L)/CPF

Other Members

Robert W. Lynch, NASA
William T. Stevenson, DOE

Attachments:

TAB A - Recommended Rev. to FAR 31.205-46
TAB B - Ppsd Transmittal Memo to CAAC
TAB C - Ppsd Federal Register Notice
TAB D - Recommended FAC Preamble
TAB E - DOE Detailed Comments

DOE Comments on Draft Report, DAR Case 87-118, "Travel Costs"

The Department of Energy (DOE) strongly disagrees with the cost principles committee members' continued belief that Federal reimbursements for contractor travel expenses need be limited only to the "maximum per diem rates" listed in the third column of Appendix 1-A, Prescribed Maximum Per Diem Rates for CONUS, published as part of the Federal Travel Regulations (FTR's) and that the criteria specified in that Appendix regarding its use, the references to the "calculation" coverage of FTR Part 1-7, and the maximum "amounts" and "rates" listed for lodging and meals and incidental expenses (M&IE), respectively, in the first two column's of that Appendix, need not be addressed or incorporated in the cost principle.

The basis of disagreement involves two separate and conflicting provisions presently contained in Federal Acquisition Regulation (FAR) 31.205-46, Travel Costs. FAR 31.205-46(a)(1) states a contractors travel costs may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge. FAR 31.205-46(a)(4) incorporates the detailed FTR coverage on maximum per diem rates and thereby, limits Federal reimbursements for contractor travel costs to the "rates" and "amounts" set for Federal travelers in the FTR by the Administrator of the General Services Administration (GSA). It is not clear how a contractor could comply with both FAR provisions since the FTR coverage on maximum per diem rates is predicated on the use of GSA's lodgings-plus system.

The DOE requested that the FAR travel cost principle be amended to clarify that Federal reimbursements to contractors for contractor employee travel costs must be limited to the "rates" and "amounts" set for Federal travelers by the Administrator of GSA or the President (designee). Specifically, DOE recommended that the cited FAR 31.205-64(a)(1) provision be deleted because the flexibility provided contractors is in conflict with the statutory language of Section 201, Title II, Travel Expenses of Government Contractors (Pub. L. 99-234), and because excess payments prohibited by Pub. L. 99-234 could result under that FAR provision. The committee members recommend, instead, that the language incorporating the cited FTR coverage be deleted from FAR 31.205-46(a)(4). The statutory language supporting the committee's "policy" recommendations was not identified and DOE's basic concerns were not addressed.

It is to be noted that, in the original case on this subject, the committee members' recommended that the FTR coverage on maximum per diem rates not be incorporated in the FAR cost principle. That policy recommendation was reversed by the Defense Acquisition Regulation (DAR) Council and Civilian Agency Acquisition Council (CAAC) when the final rule was published. The committee's recommended language was revised to specify the FTR coverage on maximum per diem rates is incorporated (See FAR 31.205.46(a)(4) vis-a-vis page 4, Tab A, of the Cost Principles

Committee Report on DAR Case 85-230, dated July 18, 1986). The draft amendment now being recommended by the committee members would, in essence, require the DAR Council and the CAAC to reverse their original decisions to incorporate the FTR coverage on how to calculate maximum per diem rates.

DOE believes that the existing FAR 31.205.46(a)(4) coverage complies with the statutory requirements of Pub. L. 99-234 but that the flexibility provided by FAR 31.205-46(a)(1) does not. The latter provision creates the erroneous impression that contractors may choose alternate methods for determining the amount of employee travel costs that may be claimed for reimbursement as reasonable and allowable contract cost. That interpretation, which the committee members advocate, is not in compliance with Pub. L. 99-234 and 5 U.S.C. 5702 which reserve such flexibility for the Administrator of GSA or the President. Once the method for determining maximum "rates" and "amounts" payable to Federal travelers is set by GSA in the FTR, Pub. L. 99-234 provides that contractor's reimbursement claims may not exceed such FTR limitations. Accordingly, DOE still recommends deletion of the "flexibility" sentence in FAR 31.205-46(a)(1) and retention of the existing language in FAR 31.205-46(a)(4).

Our specific concerns and detailed responses which are an integral part of this rebuttal to the committee's draft report follow:

Section 201 of Pub. L. 99-234 provides that under any contract, the costs for travel, including lodging subsistence and incidental expenses shall be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by Subchapter I of Chapter 57 of Title 5 or by the Administrator of General Services or the President pursuant to such subchapter. Referenced subchapter 1 provides, in part, that:

- o Federal travelers are entitled to per diem, reimbursement of actual expense or a combination thereof, as established by GSA, or the President (5 U.S.C. 5702(a)(1)).
- o For travel consuming less than a full day, payments shall be allocated as prescribed by GSA or the President (5 U.S.C. 5702(a)(3)).

In compliance with Title 1 of Pub. L. 99-234, the Administrator of GSA amended the FTR to provide, effective as of 8-1-87, that the maximum payments to Federal travelers would be limited to:

- o Actual cost of lodging (supported by a paid receipt) up to specified maximum lodging amounts.
- o Plus fixed rates for M&IE.

FAR 31.205-46(a)(4), by incorporating the FTR coverage on maximum per diem rates, limited contractor reimbursements to the "rates" and "amounts" established by GSA. Without this FAR 31.205-46(a)(4) coverage, we believe the existing cost principle would not be in compliance with Pub. L. 99-234.

If this FAR coverage were deleted as recommended by the committee, FAR 31.205-46 would fail to establish any criteria requiring contractor compliance with the basic statutory limitations imposed on Federal travelers, i.e., contractors would not be required to:

- o Comply with the FTR lodging cost limitation.
- o Obtain a paid lodging receipt (to calculate actual lodging cost and to facilitate audit of the contractor's reasonableness representations).
- o Comply with the FTR's M&IE rates.
- o Allocate M&IE payments for partial travel days.
- o Comply with standard Federal criteria.

On days of departure, days of return and on days when no lodging costs are incurred, the differences between what a Federal employee would be paid and what a contractor employee may be paid could be significant. An example of the difference between the FTR maximum and the FAR cost principle maximum, as now being proposed by the committee, for an overnight trip to Los Angeles follows:

	<u>Maximums</u>		
	<u>Day of Departure</u>	<u>Day of Return</u>	<u>Total</u>
<u>Federal Traveler:</u>			
Lodging Amount Maximum	77*		
M&IE Rate Allowance	<u>16.50**</u>	<u>16.50**</u>	
FTR Maximum Rates and Amounts	93.50	16.50	110.00
<u>Contractor Employee:</u>			
FAR limitation is FTR Maximum Per Diem Rate	110.00***	110.00***	220.00

* FTR lodging amount ceiling is \$77. Assume lodging receipt is \$77, if less, maximum is the actual paid.
 ** FTR M&IE Rate is \$33. Assume 1/2 day allocations.
 *** Per FAR 31.205-46(a)(1), this amount is subject to "reasonableness."

Without FAR criteria, it is unclear just how the contracting officer or the Defense Contract Audit Agency (DCAA) auditor is to determine "reasonable" costs on days of departure and return or other days when no lodging expenses are incurred. Even under the existing FAR coverage DCAA Headquarters experienced problems. In a five page memorandum issued on December 3, 1986, DCAA advised its Regional Directors that it is unreasonable for a contractor to claim a "maximum per diem rate" where the travel schedule requires no lodging or only one meal and that the FTR per diem rates are the maximums considered reasonable, not the minimums.

To facilitate uniform implementation on a Federal-wide basis, this type of DCAA guidance should not be applied informally on a case-by-case basis. Appropriate criteria based on FTR limitations should be established in the FAR cost principle which in turn would be incorporated in Federal contracts. Otherwise, the burden of resolution is placed on the Government. That is not what Congress intended. (See statements in applicable House Report 99-602 issued by the Committee on Government Operations regarding the need for a uniform standard for both contractors and Federal travelers (HR pages 7 and 8) and expected savings in auditing and contract administration (HR page 17)).

Not addressed in the committee's draft report is one of the key issues raised by DOE regarding the fact that Public Law 99-234 clearly specifies that the "rates" and "amounts" set by GSA for Federal employees shall be the bench mark for determining the reasonableness and allowability of contractor travel expenses. That bench mark was also clearly identified as the standard to be applied to contractors. Congress knew that the Administrator of GSA planned to install a system for Federal employees that would be based on the cost of lodgings actually incurred by the traveler plus a flat-rate for M&IE. Lodgings expenses would be validated by receipt, but no accounting would be required for M&IE (HR Page 4). The bill as amended (which was enacted) includes a new provision that limits reimbursement for Government contractors that charge their employee travel expenses as part of contract costs. That limit would be those rates and amounts which are allowable as reimbursement for Federal employees (HR page 2).

FAR 31.205-46(a)(1) inappropriately extends to contractors the flexibility for determining reimbursement methodology (actuals, per diem or combination) reserved by statute to the Administrator of GSA. Hence, contractors electing not to use the FTR's lodging-plus system need not comply with the standard criteria established for Federal travelers. Instead, contractors can establish alternate systems and submit claims for contractor employee travel expenses that may exceed the "rates" and "amounts" set for Federal travelers. As illustrated above, this is particularly true on days of departure and return because there is no cost principle criteria requiring that contractors shall limit the amount claimed for employees not incurring lodging costs to the Federal employees allocable M&IE limits.

The providing of such flexibility appears to us as a clear violation of the statutory language. Further, Congress did not indicate such flexibility should be extended to contractors. On the contrary, "the Committee believed that a single standard of reasonableness in locally-based reimbursement ceilings should be fair both to contractor employees and to federal employees" (HR Page 8). In addition, the Congress believed that considerable savings in audit and contract administration would result from the bills "clear definition" of what is reasonable for contractor travel (HR page 17).

We believe that a complete reading of the statutory provisions and the House Report, in their entirety, clearly reflect that Congress intended that contractor travel expenses be limited to the "rates" and "amounts" set for Federal travelers by the Administrator of GSA, i.e., as of 8-1-87, the FTR lodgings-plus system. Accordingly, the authorization of any other system in the FAR, no matter how practical, is simply not in compliance with Section 201, Title II, of Pub. L. 99-234.

Detailed comments referenced by item number to the subject draft report follow:

Item I, Problem

DOE's proposed revisions are intended to clarify that Federal reimbursements for contractor travel costs are limited to the "rates" and "amounts" set for Federal travelers in the FTR by the Administrator of GSA as required by the Federal Civilian Employee and Contractor Travel Expenses Act of 1985, Public Law 99-234. To achieve such compliance, DOE also recommended that the last sentence of FAR 31.205-46(a)(1) be deleted because the flexibility provided contractors in establishing alternate systems was precluded by 5 U.S.C. 5702.

Item II, Recommendation

The recommended amendment would limit contract reimbursements for contractor travel expenses only to the FTR maximum per diem rates specified in the third column of FTR Appendix 1. That is not in compliance with Pub. L. 99-224 which provides that contractor travel costs shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set for Federal travelers by the Administrator of GSA; i.e., the FTR's lodging-plus system. Without additional criteria on how to adjust downward the "maximum per diem rates" (undefined term) the FAR cost principle criteria would be, as previously illustrated, more liberal than the FTR limitations. As such, the proposed amendment violates a basic tenet governing regulatory implementation of Public Law, i.e., a cost principle regulation can be more restrictive but not more liberal than a statutory limitation.

The basis for the committee member's persistence in recommending the establishment of a more liberal cost principle continues to elude us. We believe, FAR 31.205-46(a)(4) should be retained. Otherwise alternate criteria must be developed for determining the reasonableness of claimed travel costs when no lodging costs are incurred. The resulting criteria would have to result in Contractor reimbursements that are consistent with the FTR limitations, e.g., on partial travel days reimbursable expenses must be limited to the allocable portion of M&IE rate set for Federal travelers. Also, the last sentence of FAR 31.205-46(a)(1) must be deleted.

Item 3B, DOE Position

DOE believes that the FAR provision permitting contractors to select alternate reimbursement methods is not in accord with the statutory provisions. We believe the cost principle committee's "policy decision" is not sanctioned or intended by Congress. As stated herein, the House Report, cited above, specifies that a single standard was intended for both contractor and Federal travelers (HR page 8).

Also, the DOE position should incorporate the illustrative example re: an overnight trip to Los Angeles.

Item III, Paragraph C.1.

DOE likewise does not believe that Congress intended to require contractors to revise existing corporate practices on travel. Congress' interest was to limit the amounts that may be claimed as allowable for reimbursement under Federal contracts. Does Part 7.1 of the FTR's require a traveler to stay at military installations or to use Government automobiles?

The draft report citations of selected portions of the House Report designed to show that Congress did not intend to require contractor compliance with the FTR are incomplete and therefore misleading.

The House Report also cites that the committee believed that the use of a single standard of reasonableness should be fair both to contractor and Federal employees (HR Page 8) and that "Determination of such a standard becomes a heavy responsibility for GSA." We read the House Report to mean that the rates and amounts set for Federal travelers by GSA should be applied to contractors. When the House Report is read in its entirety, we believe that the reader will generally conclude what Congress intended for contractors to comply with the FTR rates and amounts set for Federal Travelers.

It is not surprising that contractor's support the use of general overall criteria rather than the establishment of explicit cost principle criteria for determining reasonableness (See previous comparison of FTR and FAR limits for an overnight trip to Los Angeles). This is like asking the fox if he would like us to lock the backdoor to the chicken house. The FAR cost principle should reflect criteria for determining reasonableness predicated on the statutory requirements of Pub. L. 99-234 and not the desires of contractors.

DOE does not share the cost principles committee's belief that Congress would have imposed separate ceilings on lodging and M&IE if it desired to limit each element of travel costs. In our view, the latter is precisely what Congress did! Please note that the statutory provisions in fact cite "rates" and "amounts" set by GSA within the limits of 5 U.S.C. 5702. The term "amounts" is related to actual costs (e.g., lodging) and

the term "rates" relates to per diem rates (e.g., M&IE) (see paragraph 2 on page 4, paragraph 3 on page 5, and the second paragraph on page 12 of the House Report; 5 U.S.C. 5702(a)(1)(A) and (B); and the FTR Appendix I). To us, it appears that Congress sanctioned GSA's proposal to establish the lodgings-plus system for Federal employees; provided GSA with the necessary flexibility to prescribe future changes for Federal employees within the parameters of 5 U.S.C. 5702; and clearly intended that Government reimbursements under Federal contracts for contractor employee travel expenses would be limited to the "rates" and "amounts" prescribed by GSA for Federal travelers.

Item III, Paragraph 2

The consensus is only held by the committee members.

Item III, Paragraph C2a, Costs of Administration

This paragraph infers that contractors are not now required to obtain and maintain updated FTR's. Since FAR 31.205-46(a)(2)(i) already requires contractors to obtain the FTR coverage on maximum per diem rates, Appendix I, etc., via subscriptions, it is not clear to us what additional costs are being addressed nor how a contractor is to comply with the "rates" and "amounts" in effect at the time travel is performed.

Under the hypothetical example provided, are the cost principles committee members recommending, (e.g., to the Defense Contract Audit Agency) that the overall cost of the unreasonable travel arrangements in the suburbs, as described in the draft, should be allowed as a reasonable contract cost?

The statement that "Congress accepted our philosophy concerning the need for flexibility that has been reflected in FAR 31.205-46 for many years" appears to us as a direct contradiction of the House Report statements on the need for a single standard (HR pages 7 and 8).

Item III, Paragraph 2b, Immateriality

DOE's primary question regards compliance with the law. Whether additional cost savings will be material is a secondary concern. With regard to materiality, however, the cost principle criteria only establishes a maximum daily limit. For full travel days there probably would be no material difference provided the travel cost is supported by a lodging receipt. However, on days of departure, days of return and on days when no lodging costs are incurred, the differences between what a Federal employee would be paid and what a contractor employee may be paid can be very significant as shown in our illustrative example for an overnight trip to Los Angeles.

Assuming most travel is performed within 5 days, the day of departure and day of return would represent 40 percent of the resulting amount; i.e., 40 percent of the maximum per diem rate amount totaled for five days. Since such amounts would be overstated, e.g., by 50 percent, total contractor travel costs could be overstated by 20%, or more if the trip requires less than 5 days.

Item III, Paragraph 2c, Discounted Lodging Rate

The issue of availability of Government discount rates was clearly addressed by Congress. The Congressional Committee was aware of contractors' concerns and concluded that since the Government hotel discounts are not always available to either a Government or Contractor employee the Committee expected that an average or medium Government discount rate would become the ceiling for both Government and Contractor employees (HR page 9).

The draft report presents a direct contradiction of the Congressional committees expectations; i.e., that GSA would establish lodging ceilings that result in "adequate reimbursement to Federal and contractor employees" (HR page 9).

Item III, Paragraph 2d, Processing Costs

The committee's argument is that DOE's proposal may increase a contractor's administrative costs. This is not the case. The House Report, on page 17, indicates it is cheaper to process vouchers under the lodgings-plus system which is the system that should currently be recognized as the standard for contractors based on our readings of the legislative history. If contractors use a different system, they are the ones driving up the cost of administration. Further, the Congressional Committee believes that savings in auditing and administration will result from the bill's clear definition of what reimbursement is "reasonable" (HR Page 17). Also, if contractors are not required to screen employee travel reports, how will anyone be able to determine that reasonable travel costs are being claimed under Federal contracts for reimbursement? The lack of contractor action will require more in-depth auditing and contract administration costs (But see HR 17).

Item III, Paragraph 2e, GAO Report

The GAO report is heavily qualified regarding the scope of their review. The GAO auditor only matched average per diem costs against the FTR maximum per diem levels. The report further qualifies the audit results because by using averages the auditors were not able to determine the actual unallowable costs. Hence, they were apparently unable to apply the test of reasonableness particularly for days where no lodging costs were incurred. We do not agree with the Committee's inference that because GAO found no problems we should wait and see. We recommend that the existing ambiguities be replaced now by criteria that complies with the statutory requirements.

Item III, Paragraph 3, Ambiguous Coverage

As indicated earlier, the DAR Council and the CAAC reversed the committee's recommended approach when the final rule was promulgated. It is unfortunate, that at that time the offending sentence permitting contractors a choice regarding travel reimbursement methods was not deleted.

Item III, Paragraph 4, Editorial Correction

This proposed change, if promulgated, would essentially elevate the particular sentence that DOE believes is in noncompliance with the cited statutory requirements from its ambiguous state to an allowable cost principle criteria status. For the numerous reasons cited in the rebuttal, DOE continues to recommend that this objectionable sentence be deleted from the cost principle. It is also completely inappropriate and misleading for the report to label this major policy decision as an "editorial correction." The draft report language does not address DOE's basic concerns.

Item III, Paragraph 5, Summary

DOE's position is that the reasonableness of contractor employee travel expenses claimed for reimbursement under the contract are limited by Pub. L. 99-234 to the rates and amounts that would be payable to a Federal traveler performing official travel in similar circumstances. We do not agree with the draft comments that the only way to assure this would be to require compliance with the FTR. While that is what the statutory language requires, an alternate set of criteria for determining reasonableness, e.g., when no lodging cost are incurred, that would result in contract reimbursements that are consistent with the FTR limitations could be justified so long as it had the same result. For example, the cost principle could require contractor compliance with the first two columns of FTR Appendix I.

To take the position that only the FTR specified maximum per diem rates apply but that the accompanying FTR criteria do not apply, in our view, results in an unworkable cost principle. As a minimum, alternate FAR criteria in-lieu of the FTR criteria must be established.

In conclusion, to revert back to a position that was originally proposed and rejected is not a solution to the issues raised by DOE. The FAR cost principle must be further clarified for consistency with the Pub. L. 99-234 and the intent of Congress concerning potential savings in contract administration and audit.



DEPARTMENT OF THE NAVY

OFFICE OF THE ASSISTANT SECRETARY

(SHIPBUILDING AND LOGISTICS)

WASHINGTON, DC 20360-5000

87-118

DAR Staff
Case 87-118

7 March 1988

MEMORANDUM FOR THE CHAIRMAN, CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT: Travel Costs

In accordance with the MEMORANDUM OF AGREEMENT Establishing Federal Acquisition Regulation Committees of 15 July 1987, transmitted herewith is a copy of the Cost Principles Committee report of 4 March 1988, subject as above, for advance review.

A handwritten signature in cursive script, appearing to read "J. W. Ermerins".

J. W. ERMERINS
Chairman
Cost Principles Committee

Copy to:
Mrs. Spector, DoD, ASD(P), w/o encl
Mr. Evans, NASA, Asst Admin for
Procurement, w/o encl
Director, DAR Council, w/o encl ←

OFFICIAL MASTER CASE RECORD

DATE: 3-31

CAM POSTED

DARC

DAR CASE: 87-118

YES

DARSC

DISCUSSION:

NO

Approve CME report as submitted - on
to CAAC as a ^{final} ~~proposed~~ rule

LTR TO CAAC

CME RPT TO CAAC

Case Management Record

DAR Case No. 87-118	CAAC No.	Original		Date 3/4/88
		Updated	✓	
Title Travel Costs				
Reference Cost Principles Committee report of 4 Mar 1988				
Synopsis The DOE-recommended revisions should be rejected and editorial corrections should be made.				
Priority	Submitted By	Originator Code	Case Manager N	
Keywords				
Case References				
FAR Cites				
DFARS Cites				
Cognizant Committees				
Recommendation Docket 23 March 1988				
Notes				



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(SHIPBUILDING AND LOGISTICS)
WASHINGTON, DC 20360-5000

DAR Staff
Case 87-118

4 March 1988

MEMORANDUM FOR THE DIRECTOR, DAR COUNCIL

SUBJECT: DAR Case 87-118, "Travel Costs"

I. PROBLEM:

To consider the recommendations contained in the Department of Energy (DOE) letter of 17 September 1987 to the Civilian Agency Acquisition Council (CAAC) to amend Federal Acquisition Regulation (FAR) 31.205-46, "Travel costs." DOE's proposed revisions are intended to fully implement all of the requirements of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985, Public Law 99-234.

II. RECOMMENDATION:

A. That FAR 31.205-46 be revised as indicated in TAB A.

B. That the memorandum at TAB B be used to transmit the final rule, together with the TAB C recommended Federal Register notice and the TAB D FAC Preamble, to the Civilian Agency Acquisition Council.

III. DISCUSSION:

A. Background.

The provision of Public Law 99-234 pertaining to contractor travel costs is contained in Title II, Section 201 of the Act, which states: "Under any contract with any executive agency, costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by subchapter I of chapter 57 of title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any provision of such subchapter" Subchapter I of chapter 57, in turn, states that a Federal employee traveling on official business is entitled to any one of the following:

(A) a per diem allowance at a rate not to exceed that established by the Administrator of General Services for

travel within the continental United States, and by the President or his designee for travel outside the continental United States;

(B) reimbursement for the actual and necessary expenses of official travel not to exceed an amount established by the Administrator for travel within the continental United States or an amount established by the President or his designee for travel outside the continental United States; or

(C) a combination of payments described in subparagraphs (A) and (B) of this subparagraph.

In addition, subchapter I prescribes mileage limitations for the use of privately owned vehicles instead of actual expenses of transportation when that mode of transportation is authorized or approved as more advantageous to the Government. The limitations are 20 cents a mile for motorcycles, 25 cents a mile for automobiles, and 45 cents a mile for airplanes.

B. DOE Position.

DOE's letter of 17 September 1987 to the CAAC noted that the Administrator of General Services in May 1986 and July 1987 revised the subchapter I limits in the Federal Travel Regulations (FTRs) governing subsistence to provide that payments to Federal travelers may not exceed the employee's actual cost of lodging (supported by a receipt) up to specified lodging maximums, plus a specified meals and incidental expense allowance, allocated within prescribed limitations. Since Public Law 99-234 requires contractors to comply with subchapter I, DOE contends that Congress intended to limit Federal payments for contractor travel costs to the amounts payable to Federal travelers in similar circumstances pursuant to the FTRs issued by the Administrator of General Services under the authority of 5 U.S.C. 5707. However, FAR 31.205-46 permits contractors to claim travel costs for lodging, meals, and incidental expenses based on per diem, actual expenses, or a combination thereof, provided the method used results in reasonable charges which do not exceed the maximum per diem rates specified in the FTRs, Joint Travel Regulations, or Standardized Regulations, as applicable; no reference to subchapter I and its assemblage of limitations is made.

DOE argues that the FAR cost principle, as written, can be interpreted to permit reimbursements in excess of the amounts payable to Federal employees traveling in similar circumstances. For example, a higher payment could result when the contractor chooses to pay employee travel costs by use of a per diem rate equal to the maximum per diem rate for a locality, even though the employee's actual cost of lodging is below the FTR's specified maximum lodging rate. A Federal employee, in similar

circumstances, would receive the maximum per diem rate less the difference between the specified lodging maximum and the actual cost of lodging.

Thus, DOE believes that application of the FAR provisions can result in varying degrees of compliance because the FTR provisions implementing subchapter I, including mileage limitations, were not explicitly incorporated into the FAR. DOE requests that FAR 31.205-46 be amended to reflect that the cost of contractor travel expenses shall be considered to be reasonable and allowable only if the resultant travel costs do not exceed the Federal travel cost limitations of subchapter I of chapter 57 in effect at the time of travel, as established by the Administrator of General Services, the President, or his designee.

C. Committee Comments.

1. Intent of Legislation:

In the Committee's view, DOE is interpreting Public Law 99-234 in an unduly narrow sense. We believe Congress never intended to require contractors to revise existing corporate travel policies in order to calculate travel costs in the same detailed manner as do Federal employees. Carried to the extreme, contractor personnel, if strictly bound by all of the numerous rules to which Federal employees are subjected, would be forced to stay at military installations if quarters were available. Further, they would be required to utilize Government-furnished automobiles, if available, in lieu of commercial rental cars. Obviously, this would place a tremendous administrative burden upon the Government and the contractor; we do not envision that Congress had this in mind when contemplating the legislation.

However, we recognize that some ambiguities in the House of Representatives Report 99-602 addressing Section 201 of Public Law 99-234 could lead to varying interpretations of the Law. For example, the Report noted that "... the United States Treasury will pay contractors no more than it will pay Federal employees." Although this could be narrowly interpreted as those specified lodging maximums and specified meals and incidental expense allowances which apply to Government personnel, such an interpretation would not be consistent with other statements in the Report:

Section 201 does not require government contractors to conform to recordkeeping requirements which the GSA may impose on Federal employees. The Committee expects that whatever Government contracting and auditing personnel require to support contractor expense claims would suffice.

The section's purpose is to provide a standard against which the reasonableness of contractor claims for such expenses can be measured.

The Committee finds that such a standard is needed. Federal government regulations allow contractors to charge travel costs to certain contracts so long as the charges are "reasonable." In the absence of criteria for determining what is reasonable, contracting officers have tended to accept charges without question. This ambiguity has resulted in excessive claims being paid to government contractors. (emphasis added)

Section 201 would remove the ambiguity. Amounts claimed up to the locality ceilings provided by the Administrator of General Services or the President pursuant to subchapter I of chapter 57 are deemed reasonable and allowable; any excess is not. (emphasis added - there is no reference to maximum lodging ceilings, only to locality ceilings which equate to maximum per diem rates).

Thus, we made a judgment call in developing the FAR coverage that we believed resulted in a rule which accomplished the goal intended by Congress. To impose additional requirements on contractors would undoubtedly increase recordkeeping expenses for contractors, a situation Congress clearly wanted to avoid.

In developing the final coverage in FAR 31.205-46 to implement the requirements of Public Law 99-234, the Cost Principles Committee carefully reviewed comments on the initially proposed language that were furnished by numerous industry associations and Government agencies. Excerpts from these comments, which strengthened our view that Congress did not intend a narrow interpretation of the law, follow:

Council of Defense and Space Industry Associations --
We are concerned that contract administration and audit personnel may interpret the cost principle to require literal compliance with all of the portions of the referenced travel regulation specifying the various methods of calculating travel costs. Contractors are not familiar with these very complex methods, and we do not believe it was the intent of Congress to impose all of the Federal Travel Regulation rules, methods and recordkeeping on industry.

So that this intent of the FAR is clearly understood by all parties, we recommend that the Supplementary Information clarify this intent and the following paragraph be added:

"(a)(4) Subparagraphs (a)(2) and (a)(3) of this subsection are not meant to incorporate the regulations

as cited in (a)(2)(i), (ii), or (iii) of this subsection in their entirety. Only the provisions in the referenced regulations covering definitions of travel cost, maximum daily per diem rates, and extraordinary and temporary situations are incorporated herein."

Control Data Corporation --

It is quite apparent that in applying the proposed travel limiters to indirect cost pools, there should be a "rule of reason." There is nothing in the legislative history (which is sparse) to suggest that Congress sought application of the new travel cost standard in a manner that would be unduly burdensome, costly and counterproductive

Lockheed Corporation --

We believe that contractors' employees' total daily travel costs for meals, lodging and incidentals should be subject to the per diem maximums for the locations, rather than the individual meals and incidentals/lodging limitations, so that contractors have flexibility to develop means of implementing the regulations within their existing travel policies and practices

TRW Electronics & Defense Sector --

Nowhere does the Act authorize the imposition of rates on contractors that reflect federal government discounts that are not available to contractors.

Thus, there is widespread support for our determinations that the "maximum" per diem rates were intended to be the yardsticks by which contractor travel costs are measured. In a 18 July 1986 report to the Defense Acquisition Regulatory (DAR) Council, the Committee recommended final revision to FAR 31.205-46 to implement the requirements of Public Law 99-234 that were subsequently adopted by the DAR and CAA Councils. In concluding that the "maximum" per diem rates should be specified, we noted:

... Several comments were received that indicated that the commenters were not sure whether the proposed cost principle language required application of the separate ceilings for lodging, and meals and incidental expenses. At the outset the Committee intended that the combined (e.g., the maximum) ceiling would apply because it believes that use of only a single ceiling complies with the intent of Congress and would be less complicated and administratively burdensome. Accordingly, the Committee has amended the proposed coverage to specify use of the maximum ceilings in (a)(2) and (a)(3)

We believe that Congress would have imposed separate ceilings on lodging and meals and incidental expenses if it desired to limit each element of travel costs. Similarly, we believe that Congress would have specifically stated that contractors would be subject to the subchapter I mileage limitations for the use of privately owned vehicles while traveling on official business if such limitations were intended. The only travel costs covered by Congress in the legislation were "costs of lodging, other subsistence, and incidental expenses;" limits on cost of transportation were not imposed. Further proof that Congress did not legislate limits on transportation costs is contained in Section 202 of the Act, which states: "The Administrator for Federal Procurement Policy, in consultation with the Secretary of Defense and the Administrator of General Services, shall undertake a study to determine whether limitations should be placed on payments by executive agencies to Government contractors for costs incurred by contractor employees for transportation and relocation." (Emphasis added). Thus, as stated in our report of 18 July 1986, "P.L. 99-234 requires the imposition of ceiling rates on lodging, meals and incidental expense, but does not require that similar ceilings be imposed on transportation costs."

2. Other Reasons for Not Adopting DOE Proposal:

Aside from the consensus that Congress never intended to require contractors to comply with all of the limitations imposed on Federal employees by subchapter I of chapter 57 of title 5, United States Code, there are several reasons not to adopt such a policy in the FAR. Some of the more significant considerations are depicted below.

a. Costs of Administration.

Requiring contractors to comply with all of the requirements contained in the ever changing Federal Travel Regulations would not be cost-effective. The costs of obtaining copies of the updated volumes of detailed regulations and the costs necessary for contractors to continually change their existing travel policies and practices would most likely offset any savings in experienced travel costs. Then too, if contractor employees were required to comply with individual ceiling costs for lodging, for example, they might elect to stay at cheaper hotels in the suburbs. The savings in lodging costs in all probability would be offset by car rental expenses, and a significant amount of otherwise productive time would be lost in commuting. As one commenter noted, "Penny-wise; pound-foolish is an axiom that directly applies here."

We note that the Public Law 99-234 coverage pertaining to Federal employees provides that those employees can be reimbursed for travel through a per diem allowance, by a reimbursement for actual and necessary expenses, or a combination thereof. This indicates that Congress accepted our philosophy concerning the need for flexibility that has been reflected in FAR 31.205-46 for many years. Paragraph (a)(1) of the cost principle states: "Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge."

b. Immateriality.

The Cost Accounting Standard at FAR 30.305, "Materiality," lists several criteria that shall be considered in determining whether amounts of costs are material or immaterial. A review of these criteria (e.g., the absolute dollar amount involved, the amount of contract cost compared with the amount under consideration, and the cost of administrative processing) indicates that in the vast majority of cases any additional costs which might be questioned as a result of making all of the Government's travel rules applicable to contractors would in all likelihood be immaterial. Therefore, imposition of a rule that would not result in material cost savings makes little sense.

c. Discounted Lodging Rates.

Several commenters complained that they are not able to obtain hotel discounts available to Government employees. TRW Inc. stated:

The Federal Travel Regulations establish separate daily rates for lodging costs and the cost of meals and incidental expenses. The lodging rates apply to government employees who receive substantial discounts from the commercial rates established by the various hotels and motels. The GSA stated in a March 6, 1986, Memorandum to the Interagency Committee on Travel Management that the lodging rates reflect discounts frequently available to government travelers. To impose these same rates on government contractor employees as the maximum allowable lodging cost is both unreasonable and inequitable.

The Machinery and Allied Products Institute observed:

There is a general belief among companies affected by the proposed regulations that the published per diem rates reflect the practice of most hotel and motel organizations to provide military and government personnel with reduced lodging rates not available to either the government contractor or the general public.

And the concerns of small businesses are reflected in Kaman Sciences Corporation's statement:

The records indicate that GSA feels that corporate rates given to large companies are as good as the rates given federal employees. That may or may not be true. The fact being ignored, however, is that corporate discounts are a function of volume and small companies will get little or no corporate discounts.

Consequently, requiring contractors to limit employee hotel expenses to the lodging ceilings applicable to Federal employees would only intensify industry's concerns, and could be unfair.

d. Processing Costs.

DOE's proposal, if adopted, would require contractors to spend an inordinate amount of administrative effort to screen employee travel reports to assure that the separate ceilings for lodging and other subsistence and incidental expenses are not exceeded. This, and additional efforts to assure that any other limitations applicable to Federal employees are not exceeded, could cause changes in contractor systems and procedures for monitoring travel costs and generate a significant increase in paperwork. As noted in the House of Representatives Report 99-602, GSA estimates that processing an actual-expenses voucher for Federal employees costs \$51.00, but processing a voucher under the lodgings-plus system would cost only \$28.00. It is reasonable to assume that contractors who may not impose lodging ceilings for their employees would incur processing costs significantly less than \$28.00; imposing lodging ceilings would likely drive their processing costs upward. It may be arduous to justify the additional processing costs due to the lack of any measurable savings to the Government.

e. General Accounting Office (GAO) Report.

Senate Report 99-406, dated 14 August 1986, contained a provision which required GAO to obtain extensive detailed statistical information to determine the effect of Public Law 99-234. The resulting report (GAO/NSIAD-88-59), which was issued in December 1987, noted that it is premature to conclude whether the Law is or is not treating Government contractors fairly. The report stated: "Sufficient time should elapse to allow the contractors' and GSA's efforts to obtain discount lodging rates to have an effect, and to have sufficient numbers of travel vouchers processed under the new travel regulations to assess." However, GAO's review of data provided by eight major contractors showed that in most cases the incurred per diem costs did not exceed the Government per diem limitations. Thus, until more

detailed studies are performed, it would be premature to consider changes to the existing FAR rule.

It is interesting to note that GAO found no fault with the way FAR implemented Public Law 99-234, although the following excerpts from its report indicate GAO was aware of differences in procedures governing reimbursement of Federal Employee and contractor employee travel:

These rates, set by GSA, govern per diem reimbursements to federal employees. Government employees are restricted to a maximum lodging amount and a fixed rate for meals and incidental expenses within each per diem rate. The new regulations governing contractor reimbursements, on the other hand, do not set lodging, meal, and incidental expense limits within such maximum per diem amount.

3. Ambiguous Coverage.

In discussion of this case, the DOE representative asserted that there is an ambiguity in paragraph 31.205-46(a) which allows the interpretation that the full panoply of regulations in the FTR, JTR, and Standardized Regulations, including the "lodging plus" system, applies to contractors. Subparagraph (a)(2) says in pertinent part:

"... costs incurred for lodging, meals, and incidental expenses (as defined in the regulations cited in (a)(2)(i) through (iii) of this subparagraph) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the - ..."

This clearly means that the largest per diem rate, the sum of the lodging limit and the meals and miscellaneous expenses limit, shall be the upper limit of allowable contractor travel costs.

Paragraph (a)(4), on the other hand, says in pertinent part:

"Only the coverage in the referenced regulations dealing with special or unusual situations, the maximum per diem rates, and definitions of lodging, meals and incidental expenses are incorporated herein."

This portion of the cost principle has been interpreted by a few contracting officers to mean that contractor's travel costs shall be limited to the maximum per diem rate and limited further by the lodging-plus method which is contained in the regulations dealing with maximum per diem rates.

Our analysis agreed that this interpretation, though stretched, is within the realm of reasonable interpretation. Since it is not the intended meaning, we recommend the offending sentence in (a)(4) be restructured into an improved grammatical form, without change in meaning.

The sentence should be revised to read:

"Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein."

4. Editorial Correction.

The Committee's discussion of the structure of the Travel cost principle revealed the need for another previously unnoticed editorial correction. Paragraph (a) refers to allowability being determined under paragraphs (b) through (f). However, (a) also contains allowability strictures. The first sentence of paragraph (a)(1) has been revised to cite the entire subsection.

5. Summary.

DOE reads the words of the statute and its legislative history to mean that the costs chargeable to a contract for each contractor employee's day of lodging, other subsistence, and incidental expenses shall not exceed the amount that would have been paid if that contractor employee were a Federal employee. However, the only way to assure that this is indeed the maximum allowable cost under a contract would be to require the maximum allowable cost to be calculated under the GSA-promulgated FTR procedures.

The Cost Principles Committee was convinced that Congress is satisfied if contractors' lodging, meals and incidental travel costs will be reasonable and acceptable if they are equal to or less than the FTR maximum daily amount. The GAO report on implementation of P.L. 99-234 and its effect on defense contractors did not take issue with the FAR implementation of the law. Nor is there any complaint, save DOE's, that the FAR implementation is causing excess costs to be charged to Government contracts. On the contrary, the FAR cost principle has provided an appropriate encouragement to contractors to reduce travel costs, such as by negotiating discounted room rates in areas of frequent travel.

We are persuaded, however, that the language of the cost principle, paragraph (a)(4), conceivably could be misinterpreted. Thus, we recommend the changes set forth in TAB A. In our opinion, they are not significant revisions requiring solicitation of public comments.

DOE Minority Opinion

The Department of Energy (DOE) strongly disagrees with the Cost Principles Committee's resolution of the substantive legal issues raised by DOE regarding the statutory interpretation of Pub. L. 99-234 and the FAR's implementation thereof. It is DOE's belief that the committee in its interpretation of public law has failed to provide proper resolution of the subject case. As DOE's views regarding Pub. L. 99-234 are supported by DOE Headquarters procurement counsel and regulatory counsel as well as by the legal staffs of our major operating components, we maintain that to properly resolve the issues raised by DOE requires a detailed written legal opinion as to whether the intent of Congress, in passing Pub. L. 99-234, is better effectuated by the course suggested by DOE or by that recommended by the committee. Therefore, we recommend that this matter be referred to the DAR Council and the CAAC so that the legal advisors thereto may adjudicate this divergence of opinion regarding implementation of Pub. L. 99-234. Our detailed comments on the committee resolution of this case are attached at TAB E and should be considered a part of this comment.

Majority Response to DOE Minority Opinion

Being unpersuaded that the Committee Majority's analysis of the FAR implementation of Pub. L. 99-234 is correct, DOE recommends preparation of "a detailed written legal opinion as to whether the intent of Congress ... is better effectuated by the course suggested by DOE or by that recommended by the Committee."

We, the Majority, did not seek such an analysis because it is unnecessary. In our opinion, Congress clearly wanted to have the same travel limit for Government employees and for contractor employees, and nothing more. Congress did not want to impose any detailed procedures on contractors, nor did they want national conformity with whatever methods and procedures GSA may adopt for Federal employees.

DOE complained that the Majority ignored the "rates and amounts" language of the statute. The Majority believes that "rates and amounts" refers to the maximum per diem allowance established by the Administrator of GSA, as a form of all-encompassing statutory language designed to include the sum of all component parts of the daily travel allowance. We see no deeper meaning in the use of "rates and amounts."

DOE states that there are two separate and conflicting provisions in 31.205-46, that subparagraph (a)(1) permits a per diem system, reimbursement of actual costs, or a combination thereof, while on the other hand subparagraph (a)(4) incorporates the detailed FTR coverage. We recognized the validity of DOE's argument, and have recommended a correction to (a)(4). DOE

believes the fix should be in (a)(1). We are not persuaded by DOE's argument, nor is DOE persuaded by the Committee Majority's argument. The decision by the CAA and DAR Councils will settle the matter.

Air Force Minority Opinion

The Air Force believes that a clarification to the current language should be incorporated. The existing cost principle does not specifically address reimbursement for those situations when hotel/motel costs are not incurred. A review of the information available indicates that the Cost Principles Committee intended that in this situation contractors be reimbursed something less than the maximum amounts for those days when no hotel costs are incurred. While the Air Force is not proposing that contractors be forced to adopt a lodging plus system per se, we see no reason not to codify the intent of the Committee. Inclusion of specific language should prevent any future misunderstandings. Therefore, the Air Force proposes that FAR 31.205-46(a)(4) be amended to add the following sentence: The maximum per diem rates above are intended to cover cases where contractor employees experience both motel/hotel and meal expenses. In cases where meals alone are involved, contractor policies should recognize lower but reasonable levels.

Majority Response to Air Force Opinion

The majority believes this suggestion would address a problem that does not exist. There is no report of abuses that the Air Force suggestion would prevent. There remains the opportunity to challenge the reasonableness of travel costs which are not, but should be, less than the maximum per diem rates. The contractors' policies for partial days of travel should be guided by reasonable policies set forth in advance and concurred in by the contracting officer. It is not necessary to specify in the FAR a few instances where reasonable travel costs should be less than the maximum per diem rate. It was the Committee's intention to rely on contractors' stated policies to limit travel costs to those considered to be reasonable. DCAA's reviews of the policies established by some of the major contractors found that they are in compliance with this intent of the cost principle. Unnecessary delineation of reasonableness criteria only serves to weaken the overall force of that concept.

Except for the DOE and Air Force members, all members of the Committee concur with the contents of this report.



J. W. ERMERINS
Chairman
Cost Principles Committee

DoD Members

Edwin Cornett, Army
Terrence D. Sheppard, Air Force
Donald W. Reiter, DLA
Roger Wm. Cowles, OASD(C)
Frances Brownell, DCAA
Don Sawyer, OASD(A&L)/CPF

Other Members

Robert W. Lynch, NASA
William T. Stevenson, DOE

Attachments:

TAB A - Recommended Rev. to FAR 31.205-46
TAB B - Ppsd Transmittal Memo to CAAC
TAB C - Ppsd Federal Register Notice
TAB D - Recommended FAC Preamble
TAB E - DOE Detailed Comments

RECOMMENDED REVISION TO FAR 31.205-46

31.205-46 Travel costs.

(a) (1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable subject to ~~paragraphs (b) through (f)~~ of [the limitations contained in] this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.

(a)(2) and (a)(3) - No change.

(4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in (a)(2)(i), (ii), and (iii) in their entirety. ~~Only the coverage in the referenced regulations dealing with special or unusual situations, the maximum per diem rates, and [the] definitions of lodging, meals, and incidental expenses [, and the regulatory coverage dealing with special or unusual situations]~~ are incorporated herein.

(a)(5) through (f) - No change.

[] = language added.
~~words lined out~~ = language deleted.

TAB B
DAR Case 87-118

PROPOSED TRANSMITTAL MEMO TO CAAC

MEMORANDUM FOR CHAIRMAN, CIVILIAN AGENCY ACQUISITION COUNCIL
SUBJECT: DAR Case 87-118, Travel Costs

The DAR Council has approved revisions to FAR 31.205-46, Travel costs, to provide a final rule under ^{this} ~~the subject~~ case. The rationale supporting the final rule is contained in the attached report. If the CAAC agrees with our position, please forward the case to the FAR Secretariat for further processing and inclusion in the next Federal Acquisition Circular.

DUNCAN A. HOLADAY
Director
Defense Acquisition
Regulatory Council

Attachment

PROPOSED FEDERAL REGISTER NOTICE

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31 (Federal Acquisition Circular 84-XX)

Federal Acquisition Regulation (FAR); Travel costs.

AGENCIES: Department of Defense (DoD); General Services Administration (GSA); and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular 84-XX amends the Federal Acquisition Regulation (FAR) 31.205-46, Travel costs.

EFFECTIVE DATE: _____.

FOR FURTHER INFORMATION CONTACT: (b)(6) FAR
Secretariat (VRS), 18th & F Streets, N.W., Room 4041, Washington,
DC 20405. Telephone (b)(2).

SUPPLEMENTARY INFORMATION:

A. Background.

It has come to the attention of the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council that subparagraph 31.205-46(a)(4) has been erroneously interpreted to mean that the maximum allowable contractor per diem travel costs must be calculated in the same manner as the "lodgings-plus" method contained in the Federal Travel Regulations which applies to Federal employees. There was and remains no intent to impose Government administrative procedures upon contractors. Accordingly, the subparagraph has been grammatically rearranged to prevent erroneous interpretation.

Another minor editorial correction recognizes that paragraph (a) contains allowability criteria.

Since these revisions only correct coverage already in the FAR, they are not "significant revisions" in accordance with Subpart 1.5 of the FAR. Therefore, public comments need not be solicited.

B. Regulatory Flexibility Act.

These revisions to FAR 31.205-46 do not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because they merely improve language that has been erroneously interpreted. No change in coverage or meaning is intended or made.

C. Paperwork Reduction Act.

This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

RECOMMENDED FAC PREAMBLE

Item No. _____ - Travel Costs.

It has come to the attention of the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council that subparagraph 31.205-46(a)(4) has been erroneously interpreted to mean that the maximum allowable contractor per diem travel costs must be calculated in the same manner as the "lodgings-plus" method contained in the Federal Travel Regulations which applies to Federal employees. There was and remains no intent to impose Government administrative procedures upon contractors. Accordingly, the subparagraph has been grammatically rearranged to prevent erroneous interpretation. Another minor editorial correction recognizes that paragraph (a) contains allowability criteria.

Since these revisions only correct coverage already in the FAR, they are not "significant revisions" in accordance with Subpart 1.5 of the FAR. Therefore, public comments need not be solicited.

DOE Comments on Draft Report, DAR Case 87-118, "Travel Costs"

The Department of Energy (DOE) strongly disagrees with the cost principles committee members' continued belief that Federal reimbursements for contractor travel expenses need be limited only to the "maximum per diem rates" listed in the third column of Appendix 1-A, Prescribed Maximum Per Diem Rates for CONUS, published as part of the Federal Travel Regulations (FTR's) and that the criteria specified in that Appendix regarding its use, the references to the "calculation" coverage of FTR Part 1-7, and the maximum "amounts" and "rates" listed for lodging and meals and incidental expenses (M&IE), respectively, in the first two column's of that Appendix, need not be addressed or incorporated in the cost principle.

The basis of disagreement involves two separate and conflicting provisions presently contained in Federal Acquisition Regulation (FAR) 31.205-46, Travel Costs. FAR 31.205-46(a)(1) states a contractors travel costs may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge. FAR 31.205-46(a)(4) incorporates the detailed FTR coverage on maximum per diem rates and thereby, limits Federal reimbursements for contractor travel costs to the "rates" and "amounts" set for Federal travelers in the FTR by the Administrator of the General Services Administration (GSA). It is not clear how a contractor could comply with both FAR provisions since the FTR coverage on maximum per diem rates is predicated on the use of GSA's lodgings-plus system.

The DOE requested that the FAR travel cost principle be amended to clarify that Federal reimbursements to contractors for contractor employee travel costs must be limited to the "rates" and "amounts" set for Federal travelers by the Administrator of GSA or the President (designee). Specifically, DOE recommended that the cited FAR 31.205-64(a)(1) provision be deleted because the flexibility provided contractors is in conflict with the statutory language of Section 201, Title II, Travel Expenses of Government Contractors (Pub. L. 99-234), and because excess payments prohibited by Pub. L. 99-234 could result under that FAR provision. The committee members recommend, instead, that the language incorporating the cited FTR coverage be deleted from FAR 31.205-46(a)(4). The statutory language supporting the committee's "policy" recommendations was not identified and DOE's basic concerns were not addressed.

It is to be noted that, in the original case on this subject, the committee members' recommended that the FTR coverage on maximum per diem rates not be incorporated in the FAR cost principle. That policy recommendation was reversed by the Defense Acquisition Regulation (DAR) Council and Civilian Agency Acquisition Council (CAAC) when the final rule was published. The committee's recommended language was revised to specify the FTR coverage on maximum per diem rates is incorporated (See FAR 31.205.46(a)(4) vis-a-vis page 4, Tab A, of the Cost Principles

Committee Report on DAR Case 85-230, dated July 18, 1986). The draft amendment now being recommended by the committee members would, in essence, require the DAR Council and the CAAC to reverse their original decisions to incorporate the FTR coverage on how to calculate maximum per diem rates.

DOE believes that the existing FAR 31.205.46(a)(4) coverage complies with the statutory requirements of Pub. L. 99-234 but that the flexibility provided by FAR 31.205-46(a)(1) does not. The latter provision creates the erroneous impression that contractors may choose alternate methods for determining the amount of employee travel costs that may be claimed for reimbursement as reasonable and allowable contract cost. That interpretation, which the committee members advocate, is not in compliance with Pub. L. 99-234 and 5 U.S.C. 5702 which reserve such flexibility for the Administrator of GSA or the President. Once the method for determining maximum "rates" and "amounts" payable to Federal travelers is set by GSA in the FTR, Pub. L. 99-234 provides that contractor's reimbursement claims may not exceed such FTR limitations. Accordingly, DOE still recommends deletion of the "flexibility" sentence in FAR 31.205-46(a)(1) and retention of the existing language in FAR 31.205-46(a)(4).

Our specific concerns and detailed responses which are an integral part of this rebuttal to the committee's draft report follow:

Section 201 of Pub. L. 99-234 provides that under any contract, the costs for travel, including lodging subsistence and incidental expenses shall be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by Subchapter I of Chapter 57 of Title 5 or by the Administrator of General Services or the President pursuant to such subchapter. Referenced subchapter 1 provides, in part, that:

- o Federal travelers are entitled to per diem, reimbursement of actual expense or a combination thereof, as established by GSA, or the President (5 U.S.C. 5702(a)(1)).
- o For travel consuming less than a full day, payments shall be allocated as prescribed by GSA or the President (5 U.S.C. 5702(a)(3)).

In compliance with Title 1 of Pub. L. 99-234, the Administrator of GSA amended the FTR to provide, effective as of 8-1-87, that the maximum payments to Federal travelers would be limited to:

- o Actual cost of lodging (supported by a paid receipt) up to specified maximum lodging amounts.
- o Plus fixed rates for M&IE.

FAR 31.205-46(a)(4), by incorporating the FTR coverage on maximum per diem rates, limited contractor reimbursements to the "rates" and "amounts" established by GSA. Without this FAR 31.205-46(a)(4) coverage, we believe the existing cost principle would not be in compliance with Pub. L. 99-234.

If this FAR coverage were deleted as recommended by the committee, FAR 31.205-46 would fail to establish any criteria requiring contractor compliance with the basic statutory limitations imposed on Federal travelers, i.e., contractors would not be required to:

- o Comply with the FTR lodging cost limitation.
- o Obtain a paid lodging receipt (to calculate actual lodging cost and to facilitate audit of the contractor's reasonableness representations).
- o Comply with the FTR's M&IE rates.
- o Allocate M&IE payments for partial travel days.
- o Comply with standard Federal criteria.

On days of departure, days of return and on days when no lodging costs are incurred, the differences between what a Federal employee would be paid and what a contractor employee may be paid could be significant. An example of the difference between the FTR maximum and the FAR cost principle maximum, as now being proposed by the committee, for an overnight trip to Los Angeles follows:

	<u>Maximums</u>		
	<u>Day of Departure</u>	<u>Day of Return</u>	<u>Total</u>
<u>Federal Traveler:</u>			
Lodging Amount Maximum	77*		
M&IE Rate Allowance	<u>16.50**</u>	<u>16.50**</u>	
FTR Maximum Rates and Amounts	93.50	16.50	110.00
<u>Contractor Employee:</u>			
FAR limitation is FTR Maximum Per Diem Rate	110.00***	110.00***	220.00

* FTR lodging amount ceiling is \$77. Assume lodging receipt is \$77, if less, maximum is the actual paid.

** FTR M&IE Rate is \$33. Assume 1/2 day allocations.

*** Per FAR 31.205-46(a)(1), this amount is subject to "reasonableness."

Without FAR criteria, it is unclear just how the contracting officer or the Defense Contract Audit Agency (DCAA) auditor is to determine "reasonable" costs on days of departure and return or other days when no lodging expenses are incurred. Even under the existing FAR coverage DCAA Headquarters experienced problems. In a five page memorandum issued on December 3, 1986, DCAA advised its Regional Directors that it is unreasonable for a contractor to claim a "maximum per diem rate" where the travel schedule requires no lodging or only one meal and that the FTR per diem rates are the maximums considered reasonable, not the minimums.

To facilitate uniform implementation on a Federal-wide basis, this type of DCAA guidance should not be applied informally on a case-by-case basis. Appropriate criteria based on FTR limitations should be established in the FAR cost principle which in turn would be incorporated in Federal contracts. Otherwise, the burden of resolution is placed on the Government. That is not what Congress intended. (See statements in applicable House Report 99-602 issued by the Committee on Government Operations regarding the need for a uniform standard for both contractors and Federal travelers (HR pages 7 and 8) and expected savings in auditing and contract administration (HR page 17)).

Not addressed in the committee's draft report is one of the key issues raised by DOE regarding the fact that Public Law 99-234 clearly specifies that the "rates" and "amounts" set by GSA for Federal employees shall be the bench mark for determining the reasonableness and allowability of contractor travel expenses. That bench mark was also clearly identified as the standard to be applied to contractors. Congress knew that the Administrator of GSA planned to install a system for Federal employees that would be based on the cost of lodgings actually incurred by the traveler plus a flat-rate for M&IE. Lodgings expenses would be validated by receipt, but no accounting would be required for M&IE (HR Page 4). The bill as amended (which was enacted) includes a new provision that limits reimbursement for Government contractors that charge their employee travel expenses as part of contract costs. That limit would be those rates and amounts which are allowable as reimbursement for Federal employees (HR page 2).

FAR 31.205-46(a)(1) inappropriately extends to contractors the flexibility for determining reimbursement methodology (actuals, per diem or combination) reserved by statute to the Administrator of GSA. Hence, contractors electing not to use the FTR's lodging-plus system need not comply with the standard criteria established for Federal travelers. Instead, contractors can establish alternate systems and submit claims for contractor employee travel expenses that may exceed the "rates" and "amounts" set for Federal travelers. As illustrated above, this is particularly true on days of departure and return because there is no cost principle criteria requiring that contractors shall limit the amount claimed for employees not incurring lodging costs to the Federal employees allocable M&IE limits.

The providing of such flexibility appears to us as a clear violation of the statutory language. Further, Congress did not indicate such flexibility should be extended to contractors. On the contrary, "the Committee believed that a single standard of reasonableness in locally-based reimbursement ceilings should be fair both to contractor employees and to federal employees" (HR Page 8). In addition, the Congress believed that considerable savings in audit and contract administration would result from the bills "clear definition" of what is reasonable for contractor travel (HR page 17).

We believe that a complete reading of the statutory provisions and the House Report, in their entirety, clearly reflect that Congress intended that contractor travel expenses be limited to the "rates" and "amounts" set for Federal travelers by the Administrator of GSA, i.e., as of 8-1-87, the FTR lodgings-plus system. Accordingly, the authorization of any other system in the FAR, no matter how practical, is simply not in compliance with Section 201, Title II, of Pub. L. 99-234.

Detailed comments referenced by item number to the subject draft report follow:

Item I, Problem

DOE's proposed revisions are intended to clarify that Federal reimbursements for contractor travel costs are limited to the "rates" and "amounts" set for Federal travelers in the FTR by the Administrator of GSA as required by the Federal Civilian Employee and Contractor Travel Expenses Act of 1985, Public Law 99-234. To achieve such compliance, DOE also recommended that the last sentence of FAR 31.205-46(a)(1) be deleted because the flexibility provided contractors in establishing alternate systems was precluded by 5 U.S.C. 5702.

Item II, Recommendation

The recommended amendment would limit contract reimbursements for contractor travel expenses only to the FTR maximum per diem rates specified in the third column of FTR Appendix 1. That is not in compliance with Pub. L. 99-224 which provides that contractor travel costs shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set for Federal travelers by the Administrator of GSA; i.e., the FTR's lodging-plus system. Without additional criteria on how to adjust downward the "maximum per diem rates" (undefined term) the FAR cost principle criteria would be, as previously illustrated, more liberal than the FTR limitations. As such, the proposed amendment violates a basic tenet governing regulatory implementation of Public Law, i.e., a cost principle regulation can be more restrictive but not more liberal than a statutory limitation.

The basis for the committee member's persistence in recommending the establishment of a more liberal cost principle continues to elude us. We believe, FAR 31.205-46(a)(4) should be retained. Otherwise alternate criteria must be developed for determining the reasonableness of claimed travel costs when no lodging costs are incurred. The resulting criteria would have to result in Contractor reimbursements that are consistent with the FTR limitations, e.g., on partial travel days reimbursable expenses must be limited to the allocable portion of M&IE rate set for Federal travelers. Also, the last sentence of FAR 31.205-46(a)(1) must be deleted.

Item 3B, DOE Position

DOE believes that the FAR provision permitting contractors to select alternate reimbursement methods is not in accord with the statutory provisions. We believe the cost principle committee's "policy decision" is not sanctioned or intended by Congress. As stated herein, the House Report, cited above, specifies that a single standard was intended for both contractor and Federal travelers (HR page 8).

Also, the DOE position should incorporate the illustrative example re: an overnight trip to Los Angeles.

Item III, Paragraph C.1.

DOE likewise does not believe that Congress intended to require contractors to revise existing corporate practices on travel. Congress' interest was to limit the amounts that may be claimed as allowable for reimbursement under Federal contracts. Does Part 7.1 of the FTR's require a traveler to stay at military installations or to use Government automobiles?

The draft report citations of selected portions of the House Report designed to show that Congress did not intend to require contractor compliance with the FTR are incomplete and therefore misleading.

The House Report also cites that the committee believed that the use of a single standard of reasonableness should be fair both to contractor and Federal employees (HR Page 8) and that "Determination of such a standard becomes a heavy responsibility for GSA." We read the House Report to mean that the rates and amounts set for Federal travelers by GSA should be applied to contractors. When the House Report is read in its entirety, we believe that the reader will generally conclude what Congress intended for contractors to comply with the FTR rates and amounts set for Federal Travelers.

It is not surprising that contractor's support the use of general overall criteria rather than the establishment of explicit cost principle criteria for determining reasonableness (See previous comparison of FTR and FAR limits for an overnight trip to Los Angeles). This is like asking the fox if he would like us to lock the backdoor to the chicken house. The FAR cost principle should reflect criteria for determining reasonableness predicated on the statutory requirements of Pub. L. 99-234 and not the desires of contractors.

DOE does not share the cost principles committee's belief that Congress would have imposed separate ceilings on lodging and M&IE if it desired to limit each element of travel costs. In our view, the latter is precisely what Congress did! Please note that the statutory provisions in fact cite "rates" and "amounts" set by GSA within the limits of 5 U.S.C. 5702. The term "amounts" is related to actual costs (e.g., lodging) and

the term "rates" relates to per diem rates (e.g., M&IE) (see paragraph 2 on page 4, paragraph 3 on page 5, and the second paragraph on page 12 of the House Report; 5 U.S.C. 5702(a)(1)(A) and (B); and the FTR Appendix I). To us, it appears that Congress sanctioned GSA's proposal to establish the lodgings-plus system for Federal employees; provided GSA with the necessary flexibility to prescribe future changes for Federal employees within the parameters of 5 U.S.C. 5702; and clearly intended that Government reimbursements under Federal contracts for contractor employee travel expenses would be limited to the "rates" and "amounts" prescribed by GSA for Federal travelers.

Item III, Paragraph 2

The consensus is only held by the committee members.

Item III, Paragraph C2a, Costs of Administration

This paragraph infers that contractors are not now required to obtain and maintain updated FTR's. Since FAR 31.205-46(a)(2)(i) already requires contractors to obtain the FTR coverage on maximum per diem rates, Appendix I, etc., via subscriptions, it is not clear to us what additional costs are being addressed nor how a contractor is to comply with the "rates" and "amounts" in effect at the time travel is performed.

Under the hypothetical example provided, are the cost principles committee members recommending, (e.g., to the Defense Contract Audit Agency) that the overall cost of the unreasonable travel arrangements in the suburbs, as described in the draft, should be allowed as a reasonable contract cost?

The statement that "Congress accepted our philosophy concerning the need for flexibility that has been reflected in FAR 31.205-46 for many years" appears to us as a direct contradiction of the House Report statements on the need for a single standard (HR pages 7 and 8).

Item III, Paragraph 2b, Immateriality

DOE's primary question regards compliance with the law. Whether additional cost savings will be material is a secondary concern. With regard to materiality, however, the cost principle criteria only establishes a maximum daily limit. For full travel days there probably would be no material difference provided the travel cost is supported by a lodging receipt. However, on days of departure, days of return and on days when no lodging costs are incurred, the differences between what a Federal employee would be paid and what a contractor employee may be paid can be very significant as shown in our illustrative example for an overnight trip to Los Angeles.

Assuming most travel is performed within 5 days, the day of departure and day of return would represent 40 percent of the resulting amount; i.e., 40 percent of the maximum per diem rate amount totaled for five days. Since such amounts would be overstated, e.g., by 50 percent, total contractor travel costs could be overstated by 20%, or more if the trip requires less than 5 days.

Item III, Paragraph 2c, Discounted Lodging Rate

The issue of availability of Government discount rates was clearly addressed by Congress. The Congressional Committee was aware of contractors' concerns and concluded that since the Government hotel discounts are not always available to either a Government or Contractor employee the Committee expected that an average or medium Government discount rate would become the ceiling for both Government and Contractor employees (HR page 9).

The draft report presents a direct contradiction of the Congressional committees expectations; i.e., that GSA would establish lodging ceilings that result in "adequate reimbursement to Federal and contractor employees" (HR page 9).

Item III, Paragraph 2d, Processing Costs

The committee's argument is that DOE's proposal may increase a contractor's administrative costs. This is not the case. The House Report, on page 17, indicates it is cheaper to process vouchers under the lodgings-plus system which is the system that should currently be recognized as the standard for contractors based on our readings of the legislative history. If contractors use a different system, they are the ones driving up the cost of administration. Further, the Congressional Committee believes that savings in auditing and administration will result from the bill's clear definition of what reimbursement is "reasonable" (HR Page 17). Also, if contractors are not required to screen employee travel reports, how will anyone be able to determine that reasonable travel costs are being claimed under Federal contracts for reimbursement? The lack of contractor action will require more in-depth auditing and contract administration costs (But see HR 17).

Item III, Paragraph 2e, GAO Report

The GAO report is heavily qualified regarding the scope of their review. The GAO auditor only matched average per diem costs against the FTR maximum per diem levels. The report further qualifies the audit results because by using averages the auditors were not able to determine the actual unallowable costs. Hence, they were apparently unable to apply the test of reasonableness particularly for days where no lodging costs were incurred. We do not agree with the Committee's inference that because GAO found no problems we should wait and see. We recommend that the existing ambiguities be replaced now by criteria that complies with the statutory requirements.

Item III, Paragraph 3, Ambiguous Coverage

As indicated earlier, the DAR Council and the CAAC reversed the committee's recommended approach when the final rule was promulgated. It is unfortunate, that at that time the offending sentence permitting contractors a choice regarding travel reimbursement methods was not deleted.

Item III, Paragraph 4, Editorial Correction

This proposed change, if promulgated, would essentially elevate the particular sentence that DOE believes is in noncompliance with the cited statutory requirements from its ambiguous state to an allowable cost principle criteria status. For the numerous reasons cited in the rebuttal, DOE continues to recommend that this objectionable sentence be deleted from the cost principle. It is also completely inappropriate and misleading for the report to label this major policy decision as an "editorial correction." The draft report language does not address DOE's basic concerns.

Item III, Paragraph 5, Summary

DOE's position is that the reasonableness of contractor employee travel expenses claimed for reimbursement under the contract are limited by Pub. L. 99-234 to the rates and amounts that would be payable to a Federal traveler performing official travel in similar circumstances. We do not agree with the draft comments that the only way to assure this would be to require compliance with the FTR. While that is what the statutory language requires, an alternate set of criteria for determining reasonableness, e.g., when no lodging cost are incurred, that would result in contract reimbursements that are consistent with the FTR limitations could be justified so long as it had the same result. For example, the cost principle could require contractor compliance with the first two columns of FTR Appendix I.

To take the position that only the FTR specified maximum per diem rates apply but that the accompanying FTR criteria do not apply, in our view, results in an unworkable cost principle. As a minimum, alternate FAR criteria in-lieu of the FTR criteria must be established.

In conclusion, to revert back to a position that was originally proposed and rejected is not a solution to the issues raised by DOE. The FAR cost principle must be further clarified for consistency with the Pub. L. 99-234 and the intent of Congress concerning potential savings in contract administration and audit.

GENERAL MASTER CASE RECORD

DATE: 11-12

CAN POSTED:

DARC
DARSC

DAR CASE: 87-118

YES

DISCUSSION:

NO

New case - NZ TO TASK Cost
Principles

APPROVAL DATE:

(CIRCLE WHERE APPLICABLE)

<u>RULE:</u>	<u>PROPOSED</u>	<u>INTERIM</u>	<u>FINAL</u>
FED. REG. NOTICE.	YES	NO	
REG. FLEX ANAL.	YES	NO	
REG. FLEX. CERT.	YES	NO	
PAPERWORK REDUCTION	YES	NO	
DAC INTRO ITEM.	YES	NO	
FAC INTRO ITEM.	YES	NO	
DEPT'L AUTH.	YES	NO	
RECLAMA.	YES	NO	

VOICE:

YES
A1
F1
S1
D1
N1
O1

NO
A1
F1
S1
D1
N1
O1

ABSTAINED
A1
F1
S1
D1
N1
O1

STATUS

COST PRINCIPLES COMMITTEE
DAR Case Report Due Dates
as of 1 February 1988

<u>DAR Case</u>	<u>Subject</u>	<u>Rept Date</u>
✓ 85-192	Severance Pay	15 Feb 88
-85-257	Value Engineering Cost Principle	29 Feb 88*
87-118	Travel Costs	29 Feb 88*
✓ 86-027	Litigation Costs	31 Mar 88*
-86-029	Leasing	15 Apr 88*

*New report date, based on present status and priorities.

**COST PRINCIPLES COMMITTEE
DAR Case Report Due Dates
as of 21 December 1987**

<u>DAR Case</u>	<u>Subject</u>	<u>Rept Date</u>
87-310	Aerospace Exports	06 Jan 88
84-18	Accounting for Mergers and Business Combinations--cmts	13 Jan 88*
87-301	Golden Parachute Payments, Unallowable	13 Jan 88*
87-303	Technical Data (Section 808, 1988 DoD Authorization Act)	15 Jan 88
86-027	Litigation Costs	31 Jan 88*
85-257	Value Engineering Cost Principle	15 Feb 88*
87-118	Travel Costs	15 Feb 88*
86-029	Leasing	29 Feb 88*

*New report date, based on present status and priorities.

ORIGINAL
UPDATED X

CASE NUMBER:	DFARS: 87-118	CAAC:	FAR:			
TITLE: Travel Costs						
REFERENCE: Navy Policy tasking memo dtd 16 Nov 87 to the CCP Committee						
ORIGINATION DATE:						
SYNOPSIS: Commercial Cost Principles Committee tasked to review case. Report due 30 Dec 87.						
PRIORITY:		ORIGINATOR CODE:				
KEYWORDS						
CASE REFERENCES						
FAR CITES						
DFARS CITES						
CASE MANAGER:		SUBCOUNCIL ASSIGNMENT:				
COGNIZANT COMMITTEES						
RECOMMENDED ACTION:						
BOX RECORD	1)	2)	3)	4)	5)	6)
7a)	7b)	7c)	8a)	8b)	8c)	9)
10)	11)	12)	13a)	13b)		
DISCUSSION DATE:			DOCKET DATE:			
REPORT DATE:						
FAC	NUMBER:	DATE:	ITEM:			
DAC	NUMBER:	DATE:	ITEM:			
DEPARTMENTAL	NUMBER:	DATE:				
BULLETIN	NUMBER:	DATE:				
CASE CLOSED:		CASE COMPLETED:				
REG FLEX APPLICABLE:		PAPERWORK REDUCTION:				
PROPOSED RULE:	INTERIM RULE:	FINAL RULE:				



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(SHIPBUILDING AND LOGISTICS)
WASHINGTON, DC 20360-5000

DAR Staff
Case 87-118

16 November 1987

MEMORANDUM FOR MR. JAMES W. ERMERINS, CHAIRMAN, COMMERCIAL COST
PRINCIPLES COMMITTEE

Subj: DAR Case 87-118, "Travel Costs"

Encl: (1) CAAC letter dated 7 October 1987 forwarding Depart-
ment of Energy letter dated 17 September 1987

Enclosure (1) recommends that the FAR be amended to implement all of the requirements of P.L. 99-234. Therefore, the DAR Council has decided to refer enclosure (1) to your Committee for review and recommendation.

A report due date of 30 December 1987 has been established. If I can be of any assistance, please let me know. Also, please advise me if there are any problems in meeting the report date.

A handwritten signature in cursive script, reading "Linda E. Greene", is positioned above the typed name.

LINDA E. GREENE
Navy Policy Representative
Defense Acquisition Regulatory
Council

Copy to:
CCP Committee Members
DAR Council Members, w/o encl

Case Management Record

Discuss

DAR Case No. <i>87-A18</i>	CAAC No.	Original		Date
		Updated		
Title <i>Travel Costs</i>				
Reference <i>DOE ltr of 3/10/88</i>				
Synopsis <i>DOE submits minority rept national fo Legal Rev.</i>				
Priority	Submitted By	Originator Code	Case Manager	
Keywords				
Case References				
FAR Cites				
DFARS Cites				
Cognizant Committees				
Recommendation				
Notes				



Department of Energy
Washington, DC 20585

MAR 10 1988

Mr. Duncan Holaday, Chairman
Defense Acquisition Regulatory Council
1211 Fern Street, Crystal City
Arlington, VA 22202

Dear Sir:

Enclosed are five (5) copies of supporting documentation related to the Defense Acquisition Regulatory (DAR) Council Case 87-118, Travel Costs. This material is being submitted to assist the legal members of the DAR Council in their evaluation of the statutory interpretation issues raised by the Department of Energy (DOE) in its minority opinion accompanying the Cost Principles Committee Report, dated March 4, 1988.

The material has been arranged and tabbed in such a manner as to facilitate location of the references and citations contained in DOE's opinion. If there are any questions regarding the material submitted herewith, or of the information in TAB F to the Committee's Report, please contact me, or (b)(6), of my staff, at (b)(2).

Sincerely,

James J. Cavanagh, Director
Business and Financial Policy Division
Office of Policy
Procurement and Assistance
Management Directorate

Attachments

cc: Mr. James Ermerins, Chairman,
DAR Cost Principles Committee



The Department of Energy (DOE) strongly disagrees with the Cost Principles Committees' resolution of the substantive legal issues raised by DOE regarding the statutory interpretation of Pub. L. 99-234 and the FAR's implementation thereof. It is DOE's belief that the committee in its interpretation of public law has failed to provide proper resolution of the subject case. As DOE's views regarding Pub.L. 99-234 are supported by DOE Headquarters' procurement counsel and regulatory counsel as well as by the legal staffs of our major operating components, we maintain that to properly resolve the issues raised by DOE requires a detailed written legal opinion as to whether the intent of Congress, in passing Pub. L. 99-234, is better effectuated by the course suggested by DOE or by that recommended by the committee. Therefore, we recommend that this matter be referred to the DAR Council and the CAAC so that the legal advisors thereto may adjudicate this divergence of opinion regarding implementation of Pub. L. 99-234. Our detailed comments on the committee resolution of this case are attached and should be considered a part of this comment.

Attachments to DOE Comments

P.L. 99-234
5 U.S.C. 5702, etc.
H.R. 99-602
FTR's

July 15, 1987 Fed. Reg.
May 30, 1987 Fed. Reg.

DCAA

3 Dec 86 HQs DCAA memo
24 Sep 86 Phil Region memo

DOD IG

June 16, 1986 Comment on Proposed Rule

PUBLIC LAW 99-234—JAN. 2, 1986

**FEDERAL CIVILIAN EMPLOYEE AND
CONTRACTOR TRAVEL EXPENSES ACT
OF 1985**

Public Law 99-234
99th Congress

An Act

To amend title 5, United States Code, to revise the authority relating to the payment of subsistence and travel allowances to Government employees for official travel; to prescribe standards for the allowability of the cost of subsistence and travel of contractor personnel under Government contracts; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. This Act may be cited as the "Federal Civilian Employee and Contractor Travel Expenses Act of 1985".

TITLE I—TRAVEL EXPENSES OF FEDERAL CIVILIAN EMPLOYEES

Sec. 101. Section 5701(4) of title 5, United States Code, is amended to read as follows:

"(4) 'per diem allowance' means a daily payment instead of actual expenses for subsistence and fees or tips to porters and stewards."

Sec. 102. (a) Section 5702 of title 5, United States Code, is amended by striking out subsections (a), (b), (c), and (d) and inserting in lieu thereof the following:

"(a)(1) Under regulations prescribed pursuant to section 5707 of this title, an employee, when traveling on official business away from the employee's designated post of duty, or away from the employee's home or regular place of business (if the employee is described in section 5703 of this title), is entitled to any one of the following:

"(A) a per diem allowance at a rate not to exceed that established by the Administrator of General Services for travel within the continental United States, and by the President or his designee for travel outside the continental United States;

"(B) reimbursement for the actual and necessary expenses of official travel not to exceed an amount established by the Administrator for travel within the continental United States or an amount established by the President or his designee for travel outside the continental United States; or

"(C) a combination of payments described in subparagraphs (A) and (B) of this paragraph.

"(2) Any per diem allowance or maximum amount of reimbursement shall be established, to the extent feasible, by locality.

"(3) For travel consuming less than a full day, the payment prescribed by regulation shall be allocated in such manner as the Administrator may prescribe.

"(b)(1) Under regulations prescribed pursuant to section 5707 of this title, an employee who is described in subsection (a) of this section and who abandons the travel assignment prior to its completion—

"(A) because of an incapacitating illness or injury which is not due to the employee's own misconduct is entitled to reimbursement for expenses of transportation to the employee's des-

ignated post of duty, or home or regular place of business, as the case may be, and to payments pursuant to subsection (a) of this section until that location is reached; or

"(B) because of a personal emergency situation (such as serious illness, injury, or death of a member of the employee's family, or an emergency situation such as fire, flood, or act of God), may be allowed, with the approval of an appropriate official of the agency concerned, reimbursement for expenses of transportation to the employee's designated post of duty, or home or regular place of business, as the case may be, and payments pursuant to subsection (a) of this section until that location is reached.

"(2)(A) Under regulations prescribed pursuant to section 5707 of this title, an employee who is described in subsection (a) of this section and who, with the approval of an appropriate official of the agency concerned, interrupts the travel assignment prior to its completion for a reason specified in subparagraph (A) or (B) of paragraph (1) of this subsection, may be allowed (subject to the limitation provided in subparagraph (B) of this paragraph)—

"(i) reimbursement for expenses of transportation to the location where necessary medical services are provided or the emergency situation exists,

"(ii) payments pursuant to subsection (a) of this section until that location is reached, and

"(iii) such reimbursement and payments for return to such assignment.

"(B) The reimbursement which an employee may be allowed pursuant to subparagraph (A) of this paragraph shall be the employee's actual costs of transportation to the location where necessary medical services are provided or the emergency exists, and return to assignment from such location, less the costs of transportation which the employee would have incurred had such travel begun and ended at the employee's designated post of duty, or home or regular place of business, as the case may be. The payments which an employee may be allowed pursuant to subparagraph (A) of this paragraph shall be based on the additional time (if any) which was required for the employee's transportation as a consequence of the transportation's having begun and ended at a location on the travel assignment (rather than at the employee's designated post of duty, or home or regular place of business, as the case may be).

"(3) Subject to the limitations contained in regulations prescribed pursuant to section 5707 of this title, an employee who is described in subsection (a) of this section and who interrupts the travel assignment prior to its completion because of an incapacitating illness or injury which is not due to the employee's own misconduct is entitled to payments pursuant to subsection (a) of this section at the location where the interruption occurred."

(b) Section 5702 of such title is further amended by redesignating subsection (e) as subsection (c).

Sec. 103. (a) Subchapter I of chapter 57 of title 5, United States Code, is amended by inserting after section 5706 the following new section:

"§ 5706a. Subsistence and travel expenses for threatened law enforcement personnel

"(a) Under regulations prescribed pursuant to section 5707 of this title, when the life of an employee who serves in a law enforcement,

Regulations.
5 USC 5707.

Transportation.

Regulations.
5 USC 5707.

Ann., p. 1756.

5 USC 5706a.

Regulations.
5 USC 5707.

investigative, or similar capacity, or members of such employee's immediate family, is threatened as a result of the employee's assigned duties, the head of the agency concerned may approve appropriate subsistence payments for the employee or members of the employee's family (or both) while occupying temporary living accommodations at or away from the employee's designated post of duty.

"(b) When a situation described in subsection (a) of this section requires the employee or members of the employee's family (or both) to be temporarily relocated away from the employee's designated post of duty, the head of the agency concerned may approve transportation expenses to and from such alternate location."

(b) The analysis for chapter 57 of title 5, United States Code, is amended by inserting after the item pertaining to section 5706 the following new item:

"5706a. Subsistence and travel expenses for threatened law enforcement personnel."

Sec. 104. Section 5707 of title 5, United States Code, is amended—

(1) by inserting "(1)" immediately after "(a)";

(2) by inserting the following at the end of subsection (a):

"(2) Regulations promulgated to implement section 5702 or 5706a of this title shall be transmitted to the appropriate committees of the Congress and shall not take effect until 30 days after such transmittal."; and

(3) by inserting at the end thereof the following new subsection:

"(c)(1) The Administrator of General Services shall periodically, but at least every 2 years, submit to the Director of the Office of Management and Budget an analysis of estimated total agency payments for such items as travel and transportation of people, average costs and duration of trips, and purposes of official travel; and of estimated total agency payments for employee relocation. This analysis shall be based on a sampling survey of agencies each of which spent more than \$5,000,000 during the previous fiscal year on travel and transportation payments, including payments for employee relocation. Agencies shall provide to the Administrator the necessary information in a format prescribed by the Administrator and approved by the Director.

"(2) The requirements of paragraph (1) of this subsection shall expire upon the Administrator's submission of the analysis that includes the fiscal year that ends September 30, 1991."

Sec. 105. Section 5724a of title 5, United States Code, is amended—

(1) by striking out "instead of" each place it appears in subsections (a)(1) and (a)(2) and inserting in lieu thereof "or";

(2) by striking out "maximum per diem rates prescribed by or under section 5702 of this title" each place it appears and inserting in lieu thereof "maximum payment permitted under regulations which implement section 5702 of this title"; and

(3) by striking out "average daily rates" in subsection (a)(3) and inserting in lieu thereof "daily rates and amounts".

Sec. 106. (a) Subchapter II of chapter 57 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 5734. Travel, transportation, and relocation expenses of employees transferred from the Postal Service

"Notwithstanding the provisions of any other law, officers and employees of the United States Postal Service promoted or trans-

ferred under section 1006 of title 39, United States Code, from the Postal Service to an agency (as defined in section 5721 of this title), for permanent duty may be authorized travel, transportation, and relocation expenses and allowances under the same conditions and to the same extent authorized by this subchapter for other transferred employees within the meaning of this chapter."

(b) The analysis for chapter 57 of title 5, United States Code, is amended by inserting after the item relating to section 5733 the following new item:

"5734. Travel, transportation, and relocation expenses of employees transferred from the Postal Service."

Sec. 107. (a) Section 7(e) of the Technology Assessment Act of 1972 (2 U.S.C. 476(e)) is amended by striking out "a per diem in lieu of subsistence at not to exceed the rate prescribed in sections 5702 and" and inserting in lieu thereof "payments when traveling on official business at not to exceed the payment prescribed in regulations implementing section 5702 and in".

(b) Section 636(g)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2396(g)) is amended by striking out "5702(c)" and inserting in lieu thereof "5702".

(c) Section 4941(d)(2)(G)(vii) of the Internal Revenue Code of 1954 (26 U.S.C. 4941(d)(2)(G)(vii)) is amended by striking out "5702(a)" and inserting in lieu thereof "5702".

(d) Section 456(a) of title 28, United States Code, is amended by striking out "a per diem allowance for travel at the rate which the Director establishes not to exceed the maximum per diem allowance fixed by section 5702(a) of title 5, or in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States, reimbursement for his actual and necessary expenses of subsistence not in excess of the maximum amount fixed by section 5702 of title 5" and inserting in lieu thereof the following: "payments for subsistence expenses at rates or in amounts which the Director establishes, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States and after considering the rates or amounts set by the Administrator of General Services and the President pursuant to section 5702 of title 5".

(e) Section 326(b) of title 31, United States Code, is amended by striking out "rates" and inserting in lieu thereof "rates and amounts".

(f) Section 6 of Public Law 90-67 (42 U.S.C. 2477) is amended by striking out "rates" and inserting in lieu thereof "rates and amounts".

TITLE II—TRAVEL EXPENSES OF GOVERNMENT CONTRACTORS

Sec. 201. The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended by adding at the end thereof the following new section:

"TRAVEL EXPENSES OF GOVERNMENT CONTRACTORS

"Sec. 24. Under any contract with any executive agency, costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by subchapter I of chapter 57 of

5 USC 5721.

Regulations.

Regulations.

Anti. p. 1756.

41 USC 420.

Regulations.

USC 5701
et seq.

title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any provision of such subchapter. This section shall be implemented in regulations prescribed as a part of the single system of Government-wide procurement regulations as defined in section 4 of this Act."

6 Stat. 1196.
2 USC 408.
study.
transportation.

Sac. 202. The Administrator for Federal Procurement Policy, in consultation with the Secretary of Defense and the Administrator of General Services, shall undertake a study to determine whether limitations should be placed on payments by executive agencies to Government contractors for costs incurred by contractor employees for transportation and relocation. The Administrator for Federal Procurement Policy shall submit within 180 days after the enactment of this Act a report thereon to the appropriate committees of the Congress.

report.

USC 5701 note.

TITLE III—EFFECTIVE DATE

regulations.

Sac. 301. (a) The Administrator of General Services shall promulgate regulations implementing the amendments made by sections 101, 102, 103, 104, and 106 of this Act not later than 150 days after the date of enactment of this Act. The amendments made by title I of this Act shall take effect on the effective date of such regulations, or 180 days after the date of enactment of this Act, whichever occurs first.

(b) The amendments made by section 201 of this Act shall take effect 30 days after the effective date of the amendments made by title I.

Approved January 2, 1986.

LEGISLATIVE HISTORY—S. 1840:

CONGRESSIONAL RECORD, Vol. 131 (1986):

Dec. 19, considered and passed Senate and House.

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THE CODE OF THE LAWS
OF THE
UNITED STATES OF AMERICA
TITLE 5 — GOVERNMENT ORGANIZATION AND
EMPLOYEES

[This title was enacted into law by Act Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 378.]

CHAPTER 57. TRAVEL, TRANSPORTATION, AND
SUBSISTENCE

SUBCHAPTER I. TRAVEL AND SUBSISTENCE EXPENSES;
MILEAGE ALLOWANCES

- Section
5701. Definitions
5702. Per diem; employees [employee] traveling on official business
5703. Per diem, travel, and transportation expenses; experts and consultants; individuals serving without pay
5704. Mileage and related allowances
5705. Advancements and deductions
5706. Allowable travel expenses
5706a. Subsistence and travel expenses for threatened law enforcement personnel
5707. Regulations and reports
5708. Effect on other statutes
5709. Air evacuation patients: furnished subsistence

SUBCHAPTER II. TRAVEL AND TRANSPORTATION EXPENSES;
NEW APPOINTEES, STUDENT TRAINEES, AND TRANSFERRED
EMPLOYEES

5721. Definitions
5722. Travel and transportation expenses of new appointees; posts of duty outside the continental United States
5723. Travel and transportation expenses of new appointees and student trainees; manpower shortage positions

TAB 2
PL 89-554

EMPLOYEES

TRAVEL AN

- 5724. Travel and transportation expenses of employees transferred; advancement of funds; reimbursement on commuted basis
- 5724a. Relocation expenses of employees transferred or reemployed
- 5724b. Taxes on reimbursements for travel, transportation, and relocation expenses of employees transferred
- 5724c. Relocation services
- 5725. Transportation expenses; employees assigned to danger areas
- 5726. Storage expenses; household goods and personal effects
- 5727. Transportation of motor vehicles
- 5728. Travel and transportation expenses; vacation leave
- 5729. Transportation expenses; prior return of family
- 5730. Funds available
- 5731. Expenses limited to lowest first-class rate
- 5732. General average contribution; payment or reimbursement
- 5733. Expeditious travel
- 5734. Travel, transportation, and relocation expenses of employees transferred from the Postal Service

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SUBCHAPTER III. TRANSPORTATION OF REMAINS, DEPENDENTS, AND EFFECTS

- 5741. General prohibition
- 5742. Transportation of remains, dependents, and effects; death occurring away from official station or abroad

SUBCHAPTER IV. MISCELLANEOUS PROVISIONS

- 5751. Travel expenses of witnesses
- 5752. Travel expenses of Senior Executive Service candidates

This chapter
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HISTORY; ANCILLARY LAWS AND DIRECTIVES

SUBCHAI

Explanatory notes:

The word "employee" appears in brackets in item 5702 to indicate the probable intent of Congress to conform such item to the amendment made by Act May 19, 1975, P. L. 94-22, § 3, 89 Stat. 84 to the catchline of 5 USCS § 5702.

Amendments:

1967. Act Sept. 11, 1967, P. L. 90-83, § 1(37)(E), 81 Stat. 205, amended the analysis of this chapter by adding item 5724a.

Act Dec. 16, 1967, P. L. 90-206, Title II, § 222(c)(2), 81 Stat. 641, amended the analysis of this chapter by adding item 5733.

1970. Act Oct. 21, 1970, P. L. 91-481, § 1(2), 84 Stat. 1081, amended the analysis of this chapter by adding item 5709.

Act Dec. 19, 1970, P. L. 91-563, § 4(b), 84 Stat. 1477, amended the analysis of this chapter by adding the Subchapter IV heading and item 5751.

1975. Act May 19, 1975, P. L. 94-22, § 7, 89 Stat. 86, amended the analysis of this chapter in item 5707, by adding "and reports".

1978. Act Oct. 13, 1978, P. L. 95-454, Title IV, § 409(c), 92 Stat. 1173 (effective 9 months after 10/13/78, as provided by § 415(a)(1) of such Act), amended the analysis of this section by adding item 5752.

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§ 5701. Defi
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TRAVEL AND SUBSISTENCE

5 USCS § 5701

1983. Act Nov. 14, 1983, P. L. 98-151, § 118(a)(7)(A)(ii), 97 Stat. 979 (effective upon enactment on 11/14/83, as provided by § 118(c)(1) of such Act, which appears as 5 USCS § 5724 note), added items 5724b and 5724c.

1986. Act Jan. 2, 1986, P. L. 99-234, Title I, §§ 103(b), 106(b), 99 Stat. 1758, 1759, added items 5706a and 5734.

Other provisions:

Promulgation of regulations and effective date of amendments made by Act Jan. 2, 1986. For provisions relating to promulgation of regulations and for the effective date of the amendments made to this chapter see Act Jan. 2, 1986, P. L. 99-334, Title III, § 301, 99 Stat. 1760, which appears as 5 USCS § 5701 note.

VERALEX™: Cases and annotations referred to herein can be further researched through the VERALEX electronic retrieval system's two services, Auto-Cite® and SHOWME™. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references. Use SHOWME to display the full text of cases and annotations.

CROSS REFERENCES:

This chapter is referred to in 5 USCS § 3396; 14 USCS § 193; 18 USCS § 3168; 22 USCS § 3671; 26 USCS § 7471; 42 USCS § 5816.

SUBCHAPTER I. TRAVEL AND SUBSISTENCE EXPENSES; MILEAGE ALLOWANCES

CROSS REFERENCES:

This subchapter is referred to in 5 USCS §§ 3375, 3381, 4109, 5354, 5723, 5751; 2 USCS § 476; 7 USCS § 2229; 10 USCS § 9441; 15 USCS § 634; 16 USCS §§ 916f, 961, 1032; 19 USCS § 2171; 21 USCS § 874; 22 USCS §§ 1754, 2024, 2511, 2672; 26 USCS §§ 7456, 7471; 28 USCS § 792; 41 USCS § 420, 42 USCS §§ 275, 1975b, 2477, 4276, 4277; 46 USCS Appx § 1717; 48 USCS § 1407h; 50 USCS Appx § 2281.

§ 5701. Definitions

For the purpose of this subchapter [5 USCS §§ 5701 et seq.]—

(1) "agency" means—

- (A) an Executive agency;
- (B) a military department;
- (C) an office, agency, or other establishment in the legislative branch;
- (D) an office, agency, or other establishment in the judicial branch;
- and
- (E) the government of the District of Columbia;

but does not include—

- (i) a Government controlled corporation;
 - (ii) a Member of Congress; or
 - (iii) an office or committee of either House of Congress or of the two Houses;
- (2) "employee" means an individual employed in or under an agency including an individual employed intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed basis and an individual serving without pay or at \$1 a year:
- (3) "subsistence" means lodging, meals, and other necessary expenses for the personal sustenance and comfort of the traveler;
- (4) "per diem allowance" means a daily payment instead of actual expenses for subsistence and fees or tips to porters and stewards;
- (5) "Government" means the Government of the United States and the government of the District of Columbia; and
- (6) "continental United States" means the several States and the District of Columbia, but does not include Alaska or Hawaii.
- (Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 498; May 19, 1975, P. L. 94-22, § 2(a), 89 Stat. 84; Jan. 2, 1986, P. L. 99-234, Title I, § 101, 99 Stat. 1756.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(1)-(5)	5 U.S.C. 835.	June 9, 1949, ch. 185, § 2, 63 Stat. 166.
(6)	[Uncodified].	Aug. 14, 1961, Pub. L. 87-139, § 8(c), 75 Stat. 340.

In paragraph (1), the word "agency" is substituted for "departments and establishments". The terms "Executive agency" and "military department" are substituted for "any executive department, independent commission, board, bureau, office, agency, or other establishment in the executive branch of the Government, including wholly owned Government corporations" in view of the definitions in sections 105 and 102. The exception of "a Government controlled corporation" is added in subparagraph (i) to preserve the application of this subchapter to "wholly owned Government corporations".

Paragraph (2) is added for convenience and to eliminate the necessity of referring to "civilian officers and employees of the agencies" elsewhere in the text of the subchapter.

In paragraph (4), the words "for subsistence and fees or tips to porters and stewards" are added on authority of the words "in lieu of their actual expenses of subsistence and all fees or tips to porters and stewards" and "in lieu of subsistence" in former sections 836 and 73b-2, which are carried into sections 5702 and 5703, respectively.

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Paragraph (5) is added for convenience and is based in part on former section 835(1)(A) and, insofar as concerns section 5703, on section 18 of the Act of Aug. 2, 1946, ch. 744, 60 Stat. 811.

Paragraph (6), insofar as concerns section 5703, is based in part on section 18 of the Act of Aug. 2, 1946, ch. 744, 60 Stat. 811.

The definition of "Member of Congress" in former section 835(4) is omitted as unnecessary in view of the definition of "Member of Congress" in section 2106.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Amendments:

1975. Act May 19, 1975, in para. (2), inserted "including an individual employed intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed basis and an individual serving without pay or at \$1 a year;"

1986. Act Jan. 2, 1986 substituted para. (4) for one which read: "'per diem allowance' means a daily flat rate payment instead of actual expenses for subsistence and fees or tips to porters and stewards;"

Short titles:

Act May 19, 1975, P. L. 94-22, § 1, 89 Stat. 84, provided: "This Act [5 USCS §§ 5701 et seq., generally; for full classification of such Act, consult USCS Tables volumes] may be cited as the 'Travel Expense Amendments Act of 1975'."

Act Jan. 2, 1986, P. L. 99-234, § 1, 99 Stat. 1756, provided: "This Act may be cited as the 'Federal Civilian Employee and Contractor Travel Expenses Act of 1985'". For full classification of such Act, consult USCS Tables volumes.

Other provisions:

Promulgation of regulations and effective date of amendments made by Act Jan. 2, 1986. Act Jan. 2, 1986, P. L. 99-234, Title III, § 301, 99 Stat. 1760, provided:

"(a) The Administrator of General Services shall promulgate regulations implementing the amendments made by sections 101, 102, 103, 104, and 106 of this Act [amending this section among other things; for full classification consult USCS tables volumes] not later than 150 days after the date of enactment of this Act [enacted Jan. 2, 1986]. The amendments made by title I of this Act [amending this section among other things; for full classification consult USCS tables volumes] shall take effect on the effective date of such regulations, or 180 days after the date of enactment of this Act [enacted Jan 2, 1986], whichever occurs first.

"(b) The amendments made by section 201 of this Act [adding 41 USCS § 420] shall take effect 30 days after the effective date of the amendments made by title I [amending this section among other things; for full classification consult USCS tables volumes]."

CROSS REFERENCES:

This section is referred to in 2 USCS § 68b; 7 USCS §§ 3128, 3194, 3323, 3335, 4108, 5005; 16 USCS 971h, 2443, 3608, 3641; 22 USCS § 1474; 46 USCS Appx § 1717.

CODE OF FEDERAL REGULATIONS

Vocational rehabilitation and education, 38 CFR Part 21.
Federal travel regulations, 41 CFR Part 101-7.

RESEARCH GUIDE

Federal Procedure L Ed:

Courts and Judicial System, Fed Proc, L Ed, § 20:26.

Am Jur:

15A Am Jur 2d, Civil Service § 48.

32B Am Jur 2d, Federal Practice and Procedure § 28.

Law Review Articles:

The Scope of Bribery Under the Travel Act. 70 The Journal of
Criminal Law & Criminology 337, Fall, 1979.

§ 5702. Per diem; employee traveling on official business

(a)(1) Under regulations prescribed pursuant to section 5707 of this title [5 USCS § 5707], an employee, when traveling on official business away from the employee's designated post of duty, or away from the employee's home or regular place of business (if the employee is described in section 5703 of this title [5 USCS § 5703]), is entitled to any one of the following:

(A) a per diem allowance at a rate not to exceed that established by the Administrator of General Services for travel within the continental United States, and by the President or his designee for travel outside the continental United States;

(B) reimbursement for the actual and necessary expenses of official travel not to exceed an amount established by the Administrator for travel within the continental United States or an amount established by the President or his designee for travel outside the continental United States; or

(C) a combination of payments described in subparagraphs (A) and (B) of this paragraph.

(2) Any per diem allowance or maximum amount of reimbursement shall be established, to the extent feasible, by locality.

(3) For travel consuming less than a full day, the payment prescribed by regulation shall be allocated in such manner as the Administrator may prescribe.

(b)(1) Under regulations prescribed pursuant to section 5707 of this title [5 USCS § 5707], an employee who is described in subsection (a) of this section and who abandons the travel assignment prior to its completion—

(A) because of an incapacitating illness or injury which is not due to the employee's own misconduct is entitled to reimbursement for expenses of transportation to the employee's designated post of duty,

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TRAVEL AND SUBSISTENCE

5 USCS § 5702

or home or regular place of business, as the case may be, and to payments pursuant to subsection (a) of this section until that location is reached; or

(B) because of a personal emergency situation (such as serious illness, injury, or death of a member of the employee's family, or an emergency situation such as fire, flood, or act of God), may be allowed, with the approval of an appropriate official of the agency concerned, reimbursement for expenses of transportation to the employee's designated post of duty, or home or regular place of business, as the case may be, and payments pursuant to subsection (a) of this section until that location is reached.

(2)(A) Under regulations prescribed pursuant to section 5707 of this title [5 USCS § 5707], an employee who is described in subsection (a) of this section and who, with the approval of an appropriate official of the agency concerned, interrupts the travel assignment prior to its completion for a reason specified in subparagraph (A) or (B) of paragraph (1) of this subsection, may be allowed (subject to the limitation provided in subparagraph (B) of this paragraph)—

(i) reimbursement for expenses of transportation to the location where necessary medical services are provided or the emergency situation exists,

(ii) payments pursuant to subsection (a) of this section until that location is reached, and

(iii) such reimbursement and payments for return to such assignment.

(B) The reimbursement which an employee may be allowed pursuant to subparagraph (A) of this paragraph shall be the employee's actual costs of transportation to the location where necessary medical services are provided or the emergency exists, and return to assignment from such location, less the costs of transportation which the employee would have incurred had such travel begun and ended at the employee's designated post of duty, or home or regular place of business, as the case may be. The payments which an employee may be allowed pursuant to subparagraph (A) of this paragraph shall be based on the additional time (if any) which was required for the employee's transportation as a consequence of the transportation's having begun and ended at a location on the travel assignment (rather than at the employee's designated post of duty, or home or regular place of business, as the case may be).

(3) Subject to the limitations contained in regulations prescribed pursuant to section 5707 of this title [5 USCS § 5707], an employee who is described in subsection (a) of this section and who interrupts the travel assignment prior to its completion because of an incapacitating illness or injury which is not due to the employee's own misconduct is entitled to payments pursuant to subsection (a) of this section at the location where the interruption occurred.

(c) This section does not apply to a justice or judge, except to the extent provided by section 456 of title 28 [28 USCS § 456].
 (Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 498; Nov. 10, 1969, P. L. 91-114, § 1, 83 Stat. 190; May 19, 1975, P. L. 94-22, § 3, 89 Stat. 84 Aug. 14, 1979, P. L. 96-54, § 2(a)(36), 93 Stat. 383; Sept. 10, 1980, P.L. 96-346, § 1, 94 Stat. 1148; Jan. 2, 1986, P. L. 99-234, Title I, § 102, 99 Stat. 1756.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 836.	June 9, 1949, ch. 185, § 3, 63 Stat. 166. Apr. 26, 1950, ch. 108, 64 Stat. 89. July 28, 1955, ch. 424, § 1, 69 Stat. 393. Aug. 14, 1961, Pub. L. 87-139, §§ 1, 8(a), 75 Stat. 339, 340.

In subsection (a), the term "employee" is substituted for "civilian officers and employees of the departments and establishments" in view of the definition of "employee" in sections 5701 and 2105. The words "in lieu of their actual expenses for subsistence and all fees or tips to porters and stewards" are omitted as unnecessary in view of the definition of "per diem allowance" in section 5701(4).

In subsection (b), the words "Under regulations prescribed under section 5707 of this title" are substituted for "in accordance with regulations promulgated and approved under sections 835-842 of this title".

In subsection (c), the words "Under regulations prescribed under section 5707 of this title" are substituted for "in accordance with regulations promulgated by the Director, Bureau of the Budget, pursuant to section 840 of this title."

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Amendments:

1969. Act Nov. 10, 1969, in subsec. (a), substituted "\$25" for "\$16"; and in subsec. (c), substituted "\$40" for "\$30" and substituted "\$18" for "\$10".

1975. Act May 19, 1975 substituted this catchline and section for ones which read:

§ 5702. Per diem; employees traveling on official business

"(a) An employee, while traveling on official business away from his designated post of duty, is entitled to a per diem allowance prescribed by the agency concerned. For travel inside the continental United States, the per diem allowance may not exceed the rate of \$25. For travel outside the continental United States, the per diem allowance may not exceed the rate established by the President or his designee,

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who may be the Director of the Bureau of the Budget or another officer of the Government of the United States, for the locality where the travel is performed.

"(b) Under regulations prescribed under section 5707 of this title, an employee who, while traveling on official business away from his designated post of duty, becomes incapacitated by illness or injury not due to his own misconduct is entitled to the per diem allowances, and transportation expenses to his designated post of duty.

"(c) Under regulations prescribed under section 5707 of this title, the head of the agency concerned may prescribe conditions under which an employee may be reimbursed for the actual and necessary expenses of the trip, not to exceed an amount named in the travel authorization, when the maximum per diem allowance would be much less than these expenses due to the unusual circumstances of the travel assignment. The amount named in the travel authorization may not exceed—

"(1) \$40 for each day in a travel status inside the continental United States; or

"(2) the maximum per diem allowance plus \$18 for each day in a travel status outside the continental United States.

"(d) This section does not apply to a justice or judge except to the extent provided by section 456 of title 28."

1979. Act Aug. 14, 1979 (effective 7/12/79, as provided by § 2(b) of such Act), in subsec. (c), substituted "(1)" and "(2)" for "(A)" and "(B)", respectively.

1980. Act Sept. 10, 1980, in subsec. (a) substituted "\$50" for "\$35"; in subsec. (c) substituted "\$75" for "\$50"; and in subsec. (d) substituted "\$33" for "\$21".

1986. Act Jan. 2, 1986 substituted subsecs. (a) and (b) for ones which read:

"(a) Under regulations prescribed under section 5707 of this title, an employee while traveling on official business away from his designated post of duty, or in the case of an individual described under section 5703 of this title, his home or regular place of business, is entitled to (1) a per diem allowance for travel inside the continental United States at a rate not to exceed \$50, and (2) a per diem allowance for travel outside the continental United States, that may not exceed the rate established by the President, or his designee, for each locality where travel is to be performed. For travel consuming less than a full day, such rate may be allocated proportionately.

"(b) Under regulations prescribed under section 5707 of this title, an employee who, while traveling on official business away from his designated post of duty or, in the case of an individual described under section 5703 of this title, his home or regular place of business, becomes incapacitated by illness or injury not due to his own misconduct, is entitled to the per diem allowance and appropriate transportation expenses to his designated post of duty, or home or regular place of business, as the case may be."

Such Act further deleted subsecs. (c) and (d) which read:

"(c) Under regulations prescribed under section 5707 of this title, the Administrator of General Services, or his designee, may prescribe

conditions under which an employee may be reimbursed for the actual and necessary expenses of official travel when the maximum per diem allowance would be less than these expenses, except that such reimbursement shall not exceed \$75 for each day in a travel status within the continental United States when the per diem otherwise allowable is determined to be inadequate (1) due to the unusual circumstances of the travel assignment, or (2) for travel to high rate geographical areas designated as such in regulations prescribed under section 5707 of this title.

"(d) Under regulations prescribed under section 5707 of this title, for travel outside the continental United States, the Administrator of General Services or his designee, may prescribe conditions under which an employee may be reimbursed for the actual and necessary expenses of official travel when the per diem allowance would be less than these expenses, except that such reimbursement shall not exceed \$33 for each day in a travel status outside the continental United States plus the locality per diem rate prescribed for such travel."

Such Act further, redesignated subsec. (e) as subsec. (c).

Other provisions:

Delegation of functions. Ex. Or. No. 11609 of July 22, 1971, § 1(2), 36 Fed. Reg. 13747, located at 3 USCS § 301 note, provided that the authority of the President to establish maximum rates of per diem allowances to the extent that such authority pertains to travel status of employees (as defined in 5 USCS § 5701) while enroute to, from, or between localities situated outside the 48 contiguous States of the United States and the District of Columbia under the last sentence of subsec. (a) of this section is delegated to the Administrator of General Services.

Reports to Congress of per diem and mileage allowance payments for fiscal years 1979 through 1981; rules and regulations. Act Sept. 10, 1980, P. L. 96-346, § 3, 94 Stat. 1148, provided: "To make available to Congress information in order that it may evaluate and reduce excessive per diem and mileage allowance payments:

"(a) The Administrator of General Services shall, based upon a sampling survey, collect by fiscal year the following information (compiled separately for payments made under sections 5702 and 5704 of title 5, United States Code [5 USCS §§ 5702 and 5704], and for each agency evaluated) with respect to agencies spending more than \$5,000,000 annually on transportation of people:

"(1) identification of the general causes and purposes of travel, both foreign and domestic, estimates of total payments, average cost and duration of trip, and an explanation of how these estimates were determined; and

"(2) identification by specific agency of travel practices which appear to be inefficient from a travel management or program management standpoint and recommendations to the Congress on the applicability of alternatives to travel as well as other techniques to improve the use of travel in carrying out program objectives by relating travel to mission.

"(b)(1) The Administrator shall report the information required by subsection (a) to the Congress for fiscal year 1979 by February 1,

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1981; for fiscal year 1980 by June 1, 1981; and for fiscal year 1981 by June 1, 1982.

"(2) The Administrator is empowered to issue such rules and regulations as are necessary to ensure that the information is submitted by the various agencies to him in a manner that permits comparisons among the agencies and to permit him to compile the information required to be included in the annual report."

Promulgation of regulations and effective date of amendments made by Act Jan. 2, 1986. For provisions relating to promulgation of regulations and for the effective date of the amendments made to this section see Act Jan. 2, 1986, P. L. 99-334, Title III, § 301, 99 Stat. 1760, which appears as 5 USCS § 5701 note.

Delegating certain functions of the President relating to federal civilian employee and contractor travel expenses. Ex. Or. No. 12561 of July 1, 1986, 51 Fed. Reg. 24299, provided: "By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 102(a) of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (Public Law 99-234) ("the Act") [amending 5 USCS § 5702] and Section 301 of Title 3 of the United States Code [3 USCS § 301], it is ordered as follows:

"Section 1. Section 1 of Executive Order No. 10621 of July 1, 1955 [note to this section], as amended, is further amended by redesignating the current subsection (i) as subsection (g); by revoking the current subsection (o); and by adding the following new subsection (h):

"(h) The authority vested in the President by Section 102(a) of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985, 5 U.S.C. 5702(a) [5 USCS § 5702(a)], to establish maximum rates of per diem allowances and reimbursements for the actual and necessary expenses of official travel for employees of the Government to the extent that such authority pertains to travel status in localities in Alaska, Hawaii, the Commonwealth of Puerto Rico, and possessions of the United States."

"Sec. 2. There is hereby delegated to the Secretary of State the authority vested in the President by Section 102(a) of the Act (5 U.S.C. 5702(a)) [5 USCS § 5702(a)] to establish maximum rates of per diem allowances and reimbursements for the actual and necessary expenses of official travel for employees of the Government to the extent that such authority pertains to travel status in localities (including the Trust Territories of the Pacific Islands) in any area situated outside the United States, the Commonwealth of Puerto Rico, and the possessions of the United States."

"Sec. 3. Executive Order No. 11294 of August 4, 1966, is revoked."

CODE OF FEDERAL REGULATIONS

Federal travel regulations, 41 CFR Part 101-7.

CROSS REFERENCES:

Student-employees, travel expenses upon detail to or affiliation with another Federal institution, 5 USCS § 5354.

5 USCS § 5702

EMPLOYEES

Members of uniformed services, subsistence expenses during travel on duty, 37 USCS § 404.

Civil defense trainees, payment of travel expenses and per diem allowances, 50 USCS Appx § 2281.

This section is referred to in 5 USCS §§ 5707, 5724a; 2 USCS § 476; 7 USCS § 3128, 3194, 3323, 3335, 4108, 5005; 15 USCS § 1341; 16 USCS §§ 971b, 2443, 3608, 3641; 18 USCS § 4285; 22 USCS §§ 1474, 2396, 2704; 26 USCS § 4941; 28 §§ 456, 1821; 31 USCS § 326; 36 USCS § 121; 38 USCS § 111; 42 USCS §§ 275, 2477.

RESEARCH GUIDE

Federal Procedure L Ed:

Criminal Procedure, Fed Proc, L Ed, § 22:1175.

Evidence, Fed Proc, L Ed, § 80:202.

Am Jur:

7 Am Jur 2d, Attorney General §§ 4, 8.

15A Am Jur 2d, Civil Service § 48.

RIA Employment Coordinator:

12, Emp Coord, Labor Relations 34,569.

Annotations:

Compensation of expert witness as costs recoverable in federal civil action by prevailing party against party other than United States. 71 ALR Fed 875.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Purpose
3. Away from duty station
4. Reasonableness of expense
5. Private vehicle use
6. Private residence use
7. Illness or death
8. —Family member
9. Ship personnel per diem
10. 2-day per diem rule
11. Travel less than 10 hours
12. Union business travel
13. Vacations

1. Generally

Per diem in lieu of subsistence allowance is not part of salary or other emolument of office. *Erickson v United States* (1952) 123 Ct Cl 163, 105 F Supp 1020.

One hundred mile rule for witness travel costs will not be waived where there are no special circumstances mandating use of individual as witness, individual was not indispensable to case, and where it was not shown that mechanical engineers of equivalent knowledge or experience could not be found within 100 miles of trial

location. *Oetiker v Jurid Werke, GmbH* (1982, DC Dist Col) 104 FRD 389, 1984-1 CCH Trade Cases ¶ 66000, 35 FR Serv 2d 984.

Per diem increase authorized by 5 USCS § 5702 is not automatic but requires administrative action before higher rate is effective; in addition, there is no authority for retroactively increasing specific rates authorized by travel orders issued prior to date of amendment to § 5702. (1978) 57 Op Comp Gen 281.

Should employee stationed in San Francisco, California, be given Intergovernmental Personnel Act (42 USCS §§ 4701 et seq.) assignment in Washington, D.C., San Francisco would remain his headquarters and if employee was sent to San Francisco on temporary duty, he would be entitled to travel allowance under 5 USCS § 3375(a)(1)(C) although he would not receive per diem. (1978) 57 Op Comp Gen 778.

Interest may not be paid on employee travel claims. (1982) 62 Comp Gen p 80.

2. Purpose

Subsistence allowance is intended to reimburse traveler for having to eat in hotels and restaurants, and for having to rent room in another

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3. Away from duty

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TRAVEL AND SUBSISTENCE

5 USCS § 5702, n 4

city while still maintaining his own table and his own permanent place of abode; its essence is that it covers extra expenses incident to traveling. *Bornhoft v United States* (1956) 137 Ct Cl 134.

3. Away from duty station

In absence of specific statutory authority, government may not pay subsistence expenses or per diem to civilian employees at their headquarters, official duty station, or place of abode, regardless of any unusual conditions involved. (1978) 57 Op Comp Gen 778.

Employee may not be paid temporary duty allowances at permanent duty station; fact that agency directed employee's transfer but did not issue travel orders prior to reporting date is not determinative of permanent duty station nor does it alter character of assignment at transferred location. (1983) 63 Op Comp Gen ¶ 58.

Authority for payment of per diem allowance under 5 USCS § 5702 is limited to payment when employee is away from designated post of duty, and regulations prohibit payment of per diem at employee's official duty station; determination of what constitutes official duty station involves question of fact and is not limited by administrative determination; merely reporting for duty at location where employee takes oath, is placed on payroll and submits to government supervision, does not make location employee's duty station; designated duty station where employees first reported and where employment papers were processed does not constitute duty station where no other duties were performed there and where travel orders clearly assigned employees to other place for duty. (1984) 63 Op Comp Gen p 225.

Employee may not receive per diem or subsistence in area of his place of abode or his official duty station, regardless of unusual circumstances; employee who obtains meal and rents hotel room near residence when snowstorm and icy roads prevent him from continuing to his home following return from temporary duty assignment is not entitled to per diem or actual subsistence. (1984) 64 Op Comp Gen p 70.

Employees who escort foreign delegations may not be paid subsistence expenses at their official duty stations. (1985) 64 Op Comp Gen p 447.

4. Reasonableness of expense

When employee on temporary duty rents lodging by week or month rather than by day but actually occupies them for lesser period because he voluntarily returns home on weekends, average cost of lodging may be derived by prorating rental cost over number of nights accommodations were actually occupied, rather than over entire rental period, provided that employee

acted prudently in renting by week or month, and that cost to government does not exceed cost of renting suitable motel or hotel room at daily rate. (1978) 57 Op Comp Gen 821.

There is no restriction in regulations on where employee should obtain lodging while in temporary duty assignment, hence no reason to deny reimbursement of employee's expense of staying in motel 74 miles from temporary duty station where there is no indication that choice of lodgings increased total cost to government. (1979) 58 Op Comp Gen p 706.

Agency may issue guideline alerting employees that maximum amount considered reasonable under ordinary circumstances for reimbursement for meals and miscellaneous expenses is 46 percent of statutory maximum, but it should also provide that amounts in excess of 46 percent may be paid if adequate justification based on unusual circumstances is submitted. (1981) 61 Op Comp Gen p 13.

Employee may be reimbursed for actual and necessary expenses for travel to high cost area in amount not to exceed maximum rate prescribed by administrator of general services; within that maximum, employee's reimbursement is subject to condition that employee is expected to exercise same care in incurring expenses that a prudent person would exercise if traveling on personal businesses and that reimbursable travel expenses are limited to those essential to transacting of official business. (1982) 62 Op Comp Gen p 88.

Subsistence expenses incurred by traveler at his permanent duty station, residence, enroute to or from nearby airport, or at airport, may not be reimbursed; in determining whether it would be unreasonable to expect employee to eat at home rather than enroute, factors such as elapsed time between meals and absence of in-flight meal service may be considered. (1983) 62 Op Comp Gen p 168.

Required use of government quarters, with consequent lowering of rate of per diem, is permissible when appropriate administrative determination has been made that use of government quarters is essential to accomplishment of mission of employee; it is unreasonable to deny payment of per diem allowance where employee incurs additional expenses over those he or she would have normally incurred had he or she remained at designated post of duty; failure to pay employees any per diem allowance is unreasonable exercise of agency's discretionary authority where additional expenses are incurred in fact by employees required to purchase groceries and other items at significantly higher prices at temporary duty station. (1984) 63 Op Comp Gen p 594.

5. Private vehicle use

Employee's request to use privately owned vehicle for temporary duty travel was denied although official told him it would be approved and arbitrator held that employee should be paid as though request had been approved since agency's failure to act on it within time frame in its regulations and official's statement amounted to approval; award could not be implemented since no determination was made that advantage to Government on basis of cost, efficiency, or work requirements as required by Federal Travel Regulations existed; although agency official indicated to an employee that his request to use private vehicle as advantageous to the Government for temporary duty travel would be approved, such statement did not bind Government since official had no authority to approve use and Government was not estopped from repudiating advice given by one of its officials if that advice was erroneous. 56 Op Comp Gen 131.

5 USCS § 5702 and related Federal Travel Regulations authorize reimbursement for expense of having privately owned vehicle returned to permanent duty station, where employee is incapacitated from doing so due to reasons other than his own misconduct; previous opinions to contrary overruled. (1979) 59 Op Comp Gen p 57.

6. Private residence use

Employee who stayed at family residence while performing temporary duty cannot be reimbursed for lodging expenses based on average mortgage, utility, or maintenance expenses because such expenses are costs of acquisition of private property and are not incurred by reason of official travel or in addition to travel expenses. 35 Comp. Gen. 554, and other prior decisions, should no longer be followed. 56 Op Comp Gen 223.

Military member who stayed with friends in lieu of staying in commercial lodging while on temporary duty assignment could not have cost of taking hosts to dinner included as actual lodging cost in computing his per diem allowance since payment for such expense was in nature of gift or gratuity and was not actual cost of lodging. 56 Op Comp Gen 321.

7. Illness or death

Federal employee on travel basis was not entitled to per diem allowance while on sick leave, annual leave, or leave without pay as result of stroke sustained while on travel basis. *Ericsson v United States* (1952) 123 Ct Cl 163, 105 F Supp 1020.

When employee on temporary duty dies his entitlement to per diem continues through entire

day of his death regardless of time of death but may not be further extended to later date to approximate planned culmination of temporary duty and return travel. (1980) 60 Op Comp Gen p 53.

8. Family member

Proposal concerning travel and per diem expenses is negotiable only if proposal is in conformance with requirements of Travel Expense Act (5 USCS §§ 5701 et seq.), and serves convenience of agency or is otherwise in primary interest of government, and proposal which presupposes negotiability of travel and per diem expenses without regard to "primary interest test" is non-negotiable, however agency has discretion to determine whether to make payments for otherwise proper travel expenses and per diem allowances, and must exercise that discretion through negotiations. NLRBU & NLRB (1986) 22 FLRA No. 50.

Where employee who returned to duty station to attend funeral of mother alleges that mission was substantially completed before return and second trip was for different purpose, claim for travel expenses may be paid if agency determines that mission was substantially completed or second trip was for different objective. 56 Op Comp Gen 345.

Employee was notified of sudden serious illness of his wife upon his arrival at temporary duty station; his supervisor determined that employee was incapacitated for performance of duty due to illness caused by distress over illness of wife and ordered employee to return to headquarters; in such circumstances, claim for return trip travel expenses may be paid. (1977) 57 Op Comp Gen 1.

9. Ship personnel per diem

Because Government agencies were granted discretion by 5 USCS § 5702 to determine what per diem allowances to give to different categories of travel or temporary duty status, agency's issuance of instruction that per diem rates be paid to civilian ship personnel "where travelers aboard Government ships are not required to maintain commercial quarters ashore" was proper and agency could exercise discretion to clarify nature of temporary duty station as being either ship on which personnel served or port in which ship was docked, with appropriate per diem rates applicable to each classification. *Boege v United States* (1975) 206 Ct Cl 560.

10. 2-day per diem rule

The "2-day per diem rule"—that up to but not including 2 days' per diem may be paid to enable employee to travel during regular duty

hours—is inapplicable on or consist over 2 consecutive work schedule days during travel duty; award of "per diem" is limited to 1 day if he had been completion of destination on Oct 347.

Two-day per diem not applicable under 20 CFR 101-11.6 rather due to administrative cost effective in lieu of requirement of 20 CFR 101-11.6

11. Travel less

Restriction on period of less than 1 day for actual travel expenses is to per diem all p 810.

Since Government is not required to pay for actual travel expenses incurred by an employee on a per diem basis, the Government is not required to pay for actual travel expenses incurred by an employee on a per diem basis.

12. Values basis

Travel Expense Act not applicable to actual travel expenses incurred by an employee on a per diem basis. Proposal concerning actual travel expenses is non-negotiable (subject of travel

TRAVEL AND SUBSISTENCE

5 USCS § 5702, n 12

hours—is intended to preclude delays in initiation or continuation of travel over weekends or over 2 consecutive days that employee is otherwise scheduled not to be on duty; where employee delays his travel from Friday in order to travel during regular duty hours on Monday in disregard of “2-day per diem rule,” his per diem is limited to that which would have been payable if he had begun his return travel following completion of work on Friday and continued to destination without delay. (1977) 56 Op Comp Gen 847.

Two-day per diem rule limiting per diem is not applicable where employee's travel is extended by 2 or more days, not due to personal desire to avoid working on nonwork days but rather due to government orders based upon administrative determination that it would be cost effective to extend employee's travel time in lieu of requiring weekend overtime work. (1984) 63 Op Comp Gen p 268.

11. Travel less than 10 hours

Restriction on payment of per diem for travel period of less than 10 hours contained in Federal Travel Regulations § 1-7.6d(1) is applicable to claim for actual expenses of traveling in high rate geographical area, since entitlement to actual expenses is generally dependent upon right to per diem allowance. (1979) 58 Op Comp Gen p 810.

Since General Services Administration employee relied on General Services Administration guideline interpreting Federal Travel Regulations as precluding application of 10-hour rule in case of actual subsistence reimbursement and since decision B-184489, April 16, 1976, was similarly interpreted by number of agencies, 10-hour rule shall not be applied to employee or in cases of actual subsistence reimbursement prior to issuance of 58 Op Comp Gen p 810, but rule shall apply after September 27, 1979, date of issuance of decision. (1980) 60 Op Comp Gen p 132.

12. Union business travel

Travel Expense Act (5 USCS § 5701 et seq.) does not specifically address payment for travel engaged in while conducting labor-management activity such that proposal concerning such payment is not precluded as involving matter specifically provided for by federal statute so as to be exempted from definition of conditions of employment under 5 USCS § 7103(a)(14). Department of the Treasury, US Customs Service, Washington, D.C. (1986) 21 FLRA No. 2.

Proposal concerning payment of travel and per diem expenses for employees on union business is non-negotiable where proposal presumes negotiability of travel and per diem expenses without

regard to whether statutory and regulatory requirements for such payments have been met. National Weather Service Employees Organization & Dept. of Commerce (1986) 22 FLRA No. 51.

Neither congressional declaration that collective bargaining in civil service is in public interest (5 USCS § 7101(a)) nor its requirement that federal agencies grant “official time” to employees representing their union in bargaining with agencies (5 USCS § 7131(a)) warrants conclusion that employee negotiators are on “official business” of government within meaning of 5 USCS § 5702; and thus, federal agencies cannot be required to pay travel expenses and per diem allowances of union negotiators. Bureau of Alcohol, Tobacco & Firearms v Federal Labor Relations Authority (1983) 464 US 89, 78 L Ed 2d 195, 104 S Ct 439, 114 BNA LRRM 3393.

National Guard is not required to pay per diem and travel expenses incurred by representatives of civilian employees in collective bargaining with National Guard. Division of Military & Naval Affairs v Federal Labor Relations Authority (1982, CA2) 683 F2d 45, 110 BNA LRRM 2990, cert den 464 US 1007, 78 L Ed 2d 708, 104 S Ct 523, 114 BNA LRRM 3512.

Federal Labor Relations Authority erroneously interpreted 5 USCS § 5702 as requiring payment of travel expenses and per diem to federal employees acting as union negotiators on grounds they are on “official time” pursuant to § 7131, since neither terms of statute nor its legislative history reflect Congressional intent to provide for payment of travel expenses and per diem to employees on union business who otherwise would be in duty status. United States Dept. of Agriculture v Federal Labor Relations Authority (1982, CA8) 691 F2d 1242, 111 BNA LRRM 2007, cert den 464 US 1007, 78 L Ed 2d 707, 104 S Ct 523, 114 BNA LRRM 3512.

Federal Labor Relations Authority erred in ruling, in reliance on its Interpretation and Guidance issued pursuant to 5 USCS § 7105(a)(1) that pursuant to § 5702(a), National Guard technician attending hearings in his capacity as negotiator for local union was entitled to be paid by National Guard for travel and per diem expenses, since FLRA's Interpretation is based only upon general declaration of policy by Congress and is not supported by language of statute, which does not imply Congressional intent to underwrite collective bargaining process entirely, which would result in inequality rather than equality of bargaining status. Florida Nat. Guard v Federal Labor Relations Authority (1983, CA11) 699 F2d 1082, 112 BNA LRRM 3178, cert den 464 US 1007, 78 L Ed 2d 708, 104 S Ct 524, 114 BNA LRRM 3512.

13. Vacations

Employee who was ordered to report to temporary duty station at end of his vacation, rather than returning directly to permanent station, is entitled to actual cost of transportation from permanent station to vacation site, from vacation site to temporary duty site, and from temporary duty site to permanent station, but limited to transportation expense he would have incurred by traveling round trip between permanent sta-

tion and temporary duty station. (1979) 58 Op Comp Gen p 797.

Vacationing employee whose leave is interrupted by orders to perform temporary duty at another location and who afterwards returns to permanent duty station at government expense is not entitled to reimbursement for cost of personal return airline ticket he could not use because of cancellation of leave. (1984) 64 Op Comp Gen p 28.

§ 5703. Per diem, travel, and transportation expenses; experts and consultants; individuals serving without pay

An employee serving intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed basis, or serving without pay or at \$1 a year, may be allowed travel or transportation expenses, under this subchapter [5 USCS §§ 5701 et seq.], while away from his home or regular place of business and at the place of employment or service.

(Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 499; Nov. 10, 1969, P. L. 91-114, § 2, 83 Stat. 190; May 19, 1975, P. L. 94-22, § 4, 89 Stat. 85.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 73b-2.	Aug. 2, 1946, ch. 744, § 5, 60 Stat. 808. July 28, 1955, ch. 424, § 2, 69 Stat. 394. Aug. 14, 1961, Pub. L. 87-139, §§ 2, 8(b), 75 Stat. 339, 340.

Subsection (a) is added on authority of section 18 of the Act of Aug. 2, 1946, ch. 744, 60 Stat. 811.

In subsection (b), the words "in lieu of subsistence" are omitted as unnecessary in view of the definition of "per diem allowance" in section 5701(4). The words "this subchapter" are substituted for "the Standardized Government Travel Regulations, Subsistence Expense Act of 1926, as amended (5 U.S.C. 821-833) and the Act of February 14, 1931, as amended by this Act" as the Subsistence Expense Act of 1926 and the Act of February 14, 1931, were repealed by section 9(a) of the Travel Expense Act of 1949, 63 Stat. 167, part of which appeared in former section 842 and is carried into section 5708, and as the authority for the Standardized Government Travel Regulations in former section 840 is carried into section 5707.

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In subsection (c), the words "this subchapter" are substituted for "said regulations and said Act of February 14, 1931, as so amended" as the Act of February 14, 1931, was repealed by section 9(a) of the Travel Expense Act of 1949, 63 Stat. 167, part of which appeared in former section 842 and is carried into section 5708, and as the authority for the Standardized Government Travel Regulations in former section 840 is carried into section 5707. The words "in lieu of subsistence" are omitted as unnecessary in view of the definition of "per diem allowance" in section 5701(4).

In subsection (d), the words "Under regulations prescribed under section 5707 of this title" are substituted for "in accordance with regulations promulgated by the Director, Bureau of the Budget, pursuant to section 840 of this title".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Amendments:

1969. Act Nov. 14, 1969, in subsec. (c)(1), substituted "\$25" for "\$16"; and, in subsec. (d), substituted "\$40" for "\$30" and "\$18" for "\$10".

1975. Act May 19, 1975 substituted this section for one which read:

"(a) For the purpose of this section, "appropriation" includes funds made available by statute under section 849 of title 31.

"(b) An individual employed intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed basis may be allowed travel expenses under this subchapter while away from his home or regular place of business, including a per diem allowance under this subchapter while at his place of employment.

"(c) An individual serving without pay or at \$1 a year may be allowed transportation expenses under this subchapter and a per diem allowance under this section while en route and at his place of service or employment away from his home or regular place of business. Unless a higher rate is named in an appropriation or other statute, the per diem allowance may not exceed—

"(1) the rate of \$25 for travel inside the continental United States; and

"(2) the rates established under section 5702(a) of this title for travel outside the continental United States.

"(d) Under regulations prescribed under section 5707 of this title, the head of the agency concerned may prescribe conditions under which an individual to whom this section applies may be reimbursed for the actual and necessary expenses of the trip, not to exceed an amount named in the travel authorization, when the maximum per diem allowance would be much less than these expenses due to the unusual circumstances of the travel assignment. The amount named in the travel authorization may not exceed—

"(1) \$40 for each day in a travel status inside the continental United States; or

"(2) the maximum per diem allowance plus \$18 for each day in a travel status outside the continental United States."

CODE OF FEDERAL REGULATIONS

Federal travel regulations, 41 CFR Part 101.-7.

CROSS REFERENCES:

National Science Foundation—Temporary employment of experts and consultants, 5 USCS § 3109.

Coast Guard, expenses of Advisory Committee to Academy, 14 USCS § 193.

Advisory panels of experts for research and demonstration projects in education of handicapped children, 20 USCS § 1443.

National Science Foundation—Transportation and subsistence for persons serving without compensation, 42 USCS § 1870.

National Science Foundation—Travel expenses of members of Board, divisional committees, or special commission, 42 USCS § 1873.

International Health Research Act of 1960, application of sections to, 22 USCS §§ 2102, 2103; 42 USCS § 242l.

Board of Regents of National Library of Medicine, members of as entitled to travel expenses under this section, 42 USCS § 277.

This section is referred to in 5 USCS §§ 573, 5306, 5702, 7119; 2 USCS §§ 175, 352, 475; 7 USCS §§ 87i, 1388, 1505, 2233, 3128, 3194, 3323, 3335, 4108, 5005; 10 USCS §§ 1464, 1589, 2006; 12 USCS §§ 635a, 1701j-2, 1701y, 1749bbb-1, 3013; 15 USCS §§ 633, 637, 1275, 1942, 4102; 16 USCS §§ 1a-2, 410cc-31, 450jj-6, 469j 839b, 972a, 1105, 1156, 1157, 1401, 1403, 1460, 1536, 1537a, 1604, 2443, 2803, 3004, 3181; 18 USCS § 4351; 19 USCS § 2171; 20 USCS §§ 929, 955, 957, 959, 963, 1098, 1134, 1134i, 1233c, 1505, 2012, 2013, 2106, 3602, 3701; 21 USCS §§ 360c, 360d, 360e, 360j, 376, 1115; 22 USCS §§ 287o, 287q, 290f, 290h-5, 1465c, 1471, 1474, 1622c, 2102, 2103, 2124b, 2351, 2456, 2581, 2672b, 2872, 2873, 2903, 2905, 3106, 3507, 3617, 4110, 4605; 25 USCS § 305; 28 USCS § 2077, 29 USCS §§ 308e, 656, 782, 792, 794b, 1142, 1302; 30 USCS §§ 663, 812, 1229, 1315; 31 USCS § 751; 33 USCS §§ 426, 857-16, 1320, 2073; 36 USCS §§ 121, 1403; 40 USCS §§ 333, 486, 822, 872; 41 USCS § 46; 42 USCS §§ 210, 242c, 242l, 242n, 254j, 286b, 286c, 287f, 290aa, 295d-2, 300j-5, 300k-3, 300v, 907, 1108, 1314, 42 USCS § 1320a-1, 1320c-12, 1395dd, 1395sa, 1870, 1873, 1975b, 2473, 2495, 3015, 3211, 3535, 3609, 3772, 3773, 3788, 3789c, 4025, 4532, 4553, 4768, 4914, 5042, 5105, 5112, 5404, 5617, 5651, 5661, 5774, 6007, 6614, 6632, 7234, 7417, 7546, 9511; 44 USCS §§ 2104, 2503, 3318; 46 USCS §§ 1295b, 1482, 9307, 13110; 46 USCS Appx § 1295b; 47 USCS § 611; 49 USCS § 325; 49 USCS Appx §§ 1673, 2003, 2508; 50 USCS § 98h-1; 50 USCS Appx § 2168.

RESEARCH GUIDE

Am Jur:
15A Am Jur 2d, Civil Service § 48.

INTERPRETIVE NOTES AND DECISIONS

Where experts and consultants, engaged in intermittent Federal employment, reached 130-day limitation prescribed by Civil Service regulations which transformed intermittent employment into temporary employment, conversion

did not invalidate previous payments of per diem for intermittent service. (1956) 36 Comp Gen 351.

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TRAVEL AND SUBSISTENCE

5 USCS § 5704

ee's travel under 5 USCS § 5703. (1980) 59 Op Comp Gen 675.

Internal Revenue Service may use appropriated funds to buy watches for guest speakers on program held in observance of National Afro-American (black) history month, under 5 USCS § 5703 which provides authority for per diem or subsistence expenses for individuals serving without pay. (1981) 60 Op Comp Gen p 304.

Members of advisory committee may not be reimbursed for actual subsistence benefits exceed-

ing maximum amount of \$75 per day as limited by 5 USCS § 5702 where enabling legislation provides that committee members are to be paid the same travel expenses as authorized under 5 USCS § 5703 for intermittent employees; intermittent employees serving as experts or consultants may not be reimbursed for actual subsistence benefits exceeding maximum rate, absent specific statutory authorization or payment at higher rate. (1984) 64 Op Comp Gen p 34.

§ 5704. Mileage and related allowances

(a) Under regulations prescribed under section 5707 of this title [5 USCS § 5707], an employee who is engaged on official business for the Government is entitled to not in excess of—

- (1) 20 cents a mile for the use of a privately owned motorcycle;
- (2) 25 cents a mile for the use of a privately owned automobile; or
- (3) 45 cents a mile for the use of a privately owned airplane;

instead of actual expenses of transportation when that mode of transportation is authorized or approved as more advantageous to the Government. A determination of such advantage is not required when payment on a mileage basis is limited to the cost of travel by common carrier including per diem. Notwithstanding the preceding provisions of this subsection, in any case in which an employee who is engaged on official business for the Government chooses to use a privately owned vehicle in lieu of a Government vehicle, payment on a mileage basis is limited to the cost of travel by a Government vehicle.

(b) In addition to the mileage allowance authorized under subsection (a) of this section, the employee may be reimbursed for—

- (1) parking fees;
- (2) ferry fees;
- (3) bridge, road, and tunnel costs; and
- (4) airplane landing and tie-down fees.

(Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 499; May 19, 1975, P. L. 94-22, § 5, 89 Stat. 85; Sept. 10, 1980, P. L. 96-346, § 2, 94 Stat. 1148.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 837.	June 9, 1949, ch. 185, § 4, 63 Stat. 166. July 28, 1955, ch. 424, § 4, 69 Stat. 394. Aug. 14, 1961, Pub. L. 87-139, §§ 3, 4, 75 Stat. 339, 340.

5 USCS § 5704

EMPLOYEES

TRAVEL

The word "employee" is substituted for "Civilian officers and employees of departments and establishments" in view of the definition of "employee" in sections 5701 and 2105.

In subsection (a), the words "Under regulations prescribed under section 5707 of this title" are substituted for "under regulations prescribed by the Director of the Bureau of the Budget".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Amendments:

1975. Act May 19, 1975 substituted this section for one which read:

"(a) Under regulations prescribed under section 5707 of this title, an employee or other individual performing service for the Government, who is engaged on official business inside or outside his designated post of duty or place of service, is entitled to not in excess of—

"(1) 8 cents a mile for the use of a privately owned motorcycle; or

"(2) 12 cents a mile for the use of a privately owned automobile or airplane;

instead of the actual expenses of transportation when that mode of transportation is authorized or approved as more advantageous to the Government. A determination of advantage is not required when payment on a mileage basis is limited to the cost of travel common carrier including per diem.

"(b) In addition to the mileage allowance under subsection (a) of this section, the employee or other individual performing service for the Government may be reimbursed for—

"(1) parking fees;

"(2) ferry fares; and

"(3) bridge, road, and tunnel tolls."

1980. Act Sept. 10, 1980, in subsec. (a)(1) substituted "20" for "11"; in subsec. (a)(2) substituted "25" for "20"; and in subsec. (a)(3) substituted "45" for "24".

CODE OF FEDERAL REGULATIONS

Federal travel regulations, 41 CFR Part 101-7.

CROSS REFERENCES:

Transportation rental contracts without regard to this section, 13 USCS § 26. Civil defense trainees, payment of travel expenses and per diem allowances, 50 USCS § 2281.

This section is referred to in 5 USCS §§ 5707, 5724; 2 USCS § 476; 7 USCS §§ 3128, 3194, 3323, 3335, 4108, 5005; 13 USCS §§ 24, 26; 16 USCS §§ 971h, 2443, 3608, 3641; 22 USCS § 1474; 28 USCS § 1821; 30 USCS §§ 812, 1229; 33 USCS § 1320; 37 USCS § 404; 38 USCS § 111; 42 USCS §§ 275, 2477.

RESEARCH GUIDE

Federal Procedure L Ed:
Witnesses, Fed Proc, L Ed, § 80:227.

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1. Generally
2. Toll highway
3. Private vehicle
4. Reimbursement

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2. Toll highways
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Am Jur:

15A Am Jur 2d, Civil Service § 48.

Annotations:

Compensation of federal witness as costs recoverable in federal civil action by prevailing party against party other than United States. 71 ALR Fed 875.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Toll highways
3. Private vehicle use
4. Reimbursement as subject of collective bargaining

1. Generally

Fact that predecessor to 5 USCS § 5704 required that employees be reimbursed for travel expenses in amount not to exceed 12 cents per mile did not support statutory construction which would require that maximum amount which could be allowed should be actual amount paid in every case where employee reached 12 cent limit. *Burich v United States* (1966) 177 Ct Cl 139, 366 F2d 984, cert den 389 US 885, 19 L Ed 2d 182, 88 S Ct 152, reh den 389 US 998, 19 L Ed 2d 504, 88 S Ct 486.

Employee assigned to transport another employee injured while on temporary duty assignment back to injured employee's residence in another city is entitled to be paid mileage for round trip to hospital and to injured employee's home and for subsequent side trip to injured employee's home to deliver papers concerning accident, since all such authorized and approved travel was official travel within meaning of 5 USCS § 5704. (1982) 61 Op Comp Gen p 373.

Purpose of reimbursement under 5 USCS § 5704 is to compensate employees for parking as part of mileage and related allowances for travel incurred on official business; parking costs sustained by disabled employee for regular transportation to work have nothing to do with travel on official business and are incident to employee's commute to and from regular place of business. (1984) 63 Op Comp Gen p 270.

2. Toll highways

Reimbursement may be made for toll charges provided there is administrative determination that toll road represents usually traveled route or that travel regulations establish official necessity for its use. (1953) 32 Op Comp Gen 438.

3. Private vehicle use

Employee's request to use privately owned vehicle as advantageous to Government for tem-

porary duty travel was denied although official told him it would be approved; arbitrator held that employee should be paid as though request had been approved since agency's failure to act on it within time frame in its regulations and official's statement amounted to approval; award could not be implemented since no determination was made that advantage to Government on basis of cost, efficiency or work requirements as required by Federal Travel Regulations existed; although agency official indicated to an employee that his request to use vehicle as advantageous to the Government for temporary duty travel would be approved, such statement did not bind Government since official had no authority to approve vehicle use and Government was not estopped from repudiating advice given by one of its officials if that advice was erroneous. 56 Op Comp Gen 131.

Employee's total reimbursement for travel is limited to total constructive cost of appropriate common carrier transportation where he utilizes privately owned vehicle as matter of personal preference when such use is not determined to be advantageous to government; employee is not entitled to include cost by common carrier transporting other government employees who accompany him on trip to determine maximum reimbursement where there is no order or administrative approval of additional payment. (1979) 58 Op Comp Gen 305.

Where employee on temporary duty was driven by friend in latter's automobile to airport for return flight to official duty station, employee's claim for mileage and parking fee may be paid to extent it does not exceed cost of taxicab fare and tip; decisions limiting reimbursement for travel with private party to actual expenses paid to private party apply only to regular travel on temporary duty and not to travel to and from common carrier terminal. (1981) 60 Op Comp Gen p 339.

5 USCS § 5704, which reimburses government employee who uses own vehicle for official government business on mileage basis, includes in that basis cost of insurance, if any, therefore,

5 USCS § 5704, n 3

EMPLOYEES

TRAVEL

reimbursement for damage to vehicle of employee officially authorized to use it is precluded; however, claim for damage can be made under 31 USCS §§ 240 et seq., even if employee is reimbursed on mileage basis. (1982) 60 Op Comp Gen p 633.

Employee's choice to travel by private vehicle instead of by train requires limitation of reimbursement to constructive cost of travel by common carrier; since travel by air was unavailable to employee due to medical condition, appropriate common carrier transportation was rail transportation; employee's annual leave may be charged for work hours involved in trip exceeding those hours which would have been required had employee used rail transportation. (1983) 62 Op Comp Gen p 393.

For computing constructed travel costs, only usual taxicab or airport limousine fares, plus tip, should be used for comparison purposes; for purposes of constructive cost of common carrier transportation, cost of government vehicle may not be used since it is defined as special convey-

ance and not as common carrier; employee may be reimbursed only for those local travel costs actually incurred without limitation by constructive costs. (1985) 64 Op Comp Gen p 443.

4. Reimbursement as subject of collective bargaining

Proposal requiring that employees be reimbursed for expenses incurred in commuting from home to work is outside of duty to bargain because it is inconsistent with 5 USCS § 5704 which states that employees can only be reimbursed for expenses incurred in official travel; cost of transportation between employee's place of residence and official duty station is personal expense. Department of Treasury, Internal Revenue Service (1982) 9 FLRA No. 88.

Proposal which would obligate agency to reimburse employees for financial loss caused by additional commuting costs resulting from reassignments is outside duty to bargain because it is inconsistent with 5 USCS § 5704. General Services Administration (1982) 9 FLRA No. 108.

§ 5705. Advancements and deductions

An agency may advance, through the proper disbursing official, to an employee entitled to per diem or mileage allowances under this subchapter [5 USCS §§ 5701 et seq.], a sum considered advisable with regard to the character and probable duration of the travel to be performed. A sum advanced and not used for allowable travel expenses is recoverable from the employee or his estate by—

- (1) setoff against accrued pay, retirement credit, or other amount due the employee;
 - (2) deduction from an amount due from the United States; and
 - (3) such other method as is provided by law.
- (Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 500; May 19, 1975, P. L. 94-22, § 2(b), 89 Stat. 84.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 838.	June 9, 1949, ch. 185, § 5, 63 Stat. 166.

The words "disbursing official" are substituted for "disbursing officer" because of the definition of "officer" in section 2104 which excludes a member of a uniformed service. Application to section 5703 is based on former section 73b-2, which is carried into section 5703.

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TRAVEL AND SUBSISTENCE

5 USCS § 5706

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Amendments:

1975. Act May 19, 1975 deleted "or individual", following "employee", wherever appearing.

CODE OF FEDERAL REGULATIONS

Federal travel regulations, 41 CFR Part 101-7.

CROSS REFERENCES:

This section is referred to in 5 USCS § 5724; 7 USCS §§ 3128, 3194, 3323, 3335, 4108, 5005; 16 USCS § 971h, 2443, 3608, 3641; 22 USCS § 1474.

RESEARCH GUIDE

Am Jur:

15A Am Jur 2d, Civil Service § 48.

INTERPRETIVE NOTES AND DECISIONS

Under 5 USCS §§ 5705 and 5724, employee is not required to assert claim against United States to eliminate or reduce his indebtedness for advance of funds since advance is obligation of employee that is discharged to extent of allowable expenses incurred; when advance and expenses involve same transaction employee, by incurring expenses for which advance was made, has defense of recoupment against collection of advance despite time bar under 31 USCS § 3701. (1984) 63 Op Comp Gen p 462.

Debt Collection Act of 1982 (5 USCS § 5514, 31 USCS § 3716) provides generalized authority

to take administrative offset to collect debts owed to United States, and passage does not impliedly repeal 5 USCS §§ 5522, 5705, or 5724 which authorize offset in particular situations; § 5 of Debt Collection Act (5 USCS § 5514) authorizes and specifies procedures that govern all salary offsets which are not expressly authorized or required by more specific statutes such as 5 USCS §§ 5522, 5705, and 5724; when taking administrative offset, agencies should follow procedures specified in 31 USCS § 3716. (1984) 64 Op Comp Gen p 142.

§ 5706. Allowable travel expenses

Except as otherwise permitted by this subchapter [5 USCS §§ 5701 et seq.] or by statutes relating to members of the uniformed services, only actual and necessary travel expenses may be allowed to an individual holding employment or appointment under the United States.

(Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 500.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 839.	June 9, 1949, ch. 185, § 6, 63 Stat. 167.

The words "members of the uniformed services" are substituted for "military personnel."

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODE OF FEDERAL REGULATIONS

Federal travel regulations, 41 CFR Part 101-7.

CROSS REFERENCES:

This section is referred to in 7 USCS §§ 3128, 3194, 3323, 3335, 4108, 5005; 16 USCS §§ 971b, 2443, 3608, 3641; 22 USCS § 1474.

RESEARCH GUIDE

Am Jur:

7 Am Jur 2d, Attorney General §§ 4, 8.
15A Am Jur 2d, Civil Service §§ 4, 48.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Fraudulent claims
3. Reimbursement by employee
4. Reimbursement by employer
5. Travel on union business

1. Generally

Agency may pay state or local employee's travel to any location after completion of assignment, provided cost does not exceed constructive cost of travel to location designated in original agreement. (1979) 59 Op Comp Gen p. 105.

2. Fraudulent claims

Reasonable suspicion of fraud which would support denial of claim or recoupment action in case of paid voucher depends on facts of each case; fraud must be proved by evidence sufficient to overcome existing presumption in favor of honesty and fair dealing; generally, where discrepancies are minor, small in total dollar amount, or where they are infrequently made, fraud will not be found absent most convincing evidence to contrary and where discrepancies are glaring, large sums are involved, or they are frequently made, finding of fraud is more readily made absent satisfactory explanation from claimant; where employee submits voucher for travel expenses and part of claim is believed to be based on fraud, only separate items which are based on fraud may be denied; moreover, as to substance expenses, only expenses for those days for which employee submits fraudulent information may be denied and claims for expenses on other days which are not based on fraud may be paid if

otherwise proper; where employee has been paid on voucher for travel expenses and fraud is then found to have been involved in portion of claim, recoupment of improperly paid items should be made to same extent and amount as if his claims were not yet paid and were to be denied because of fraud. (1978) 57 Op Comp Gen 664.

3. Reimbursement by employee

While federal employee traveling on official business must reimburse government for funds received from airline such as desired boarding compensation, payment received from airline for voluntarily vacating seat need not be reimbursed. (1980) 59 Op Comp Gen p 203.

Bonus tickets received by employee as result of trips paid by government while on official travel is property of government and must be turned in to appropriate official of government; if employee wishes to participate in bonus program and retain benefits from program he should make certain that all trips included in bonus program are paid from personal funds; employee who enters promotional programs sponsored by airlines which include free upgrade of service to first class, membership in clubs, and check-cashing privileges does not have to turn in such benefits to government since government is unable to use such benefits and there is no reason for employee not to use them; discount for future travel received by employee while on official travel which is either nontransferable or carries expiration date remains property of government and should not be given back to employee for personal use even if it appears that

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TRAVEL AND SUBSISTENCE

5 USCS § 5706a

Government may have no use for discount. (1984) 63 Op Comp Gen p 229.

Employee who received and used bonus ticket and free hotel room for personal travel as result of trips paid by both personal funds and government funds must pay full value of tickets and benefits received to government; those promotional gifts received because of travel paid by government funds belong to government; those employee used gifts prior to issuance of guidelines on use of such materials, he may reduce liability for repayment based on percentage of travel paid by personal funds; future use or promotional gifts results in liability for full value of bonus or gift. (1984) 63 Op Comp Gen p 233.

Agency may not recoup gain in currency conversion from employee where employee on official travel experiences gain in converting agency funds drawn in foreign currency into United States dollars. (1984) 63 Op Comp Gen p 354.

4. Reimbursement by employer

Proposal requiring agency, when employee had not been reimbursed for travel expenses within certain time frame, to pay interest on amount owed to employee at current prime interest rate is nonnegotiable as such interest is not "actual and necessary" expense essential to transacting official business. NFFE, Local 29 & U.S. Army Engineer Dist., Kansas City, Mo. (1983) 13 FLRA No. 4.

Government employees traveling in government vehicles who were entitled to reimbursement for actual expenses incurred could be reimbursed for highway, bridge, and tunnel tolls. (1995) 35 Op Comp Gen 92.

Employee on official travel may not be reimbursed for loss sustained in converting travelers

checks and cash drawn in foreign currency into United States dollars; risk of incurring exchange loss while on temporary duty in foreign country lies with employee; absent statutory or regulatory authorization, losses incurred on currency exchange may not be reimbursed; agency may not recoup gain in currency conversion from employee. (1984) 63 Op Comp Gen p 554.

Travel or transportation expenses caused by duty are reimbursable even though due to breakdown of privately owned vehicle where use of privately-owned vehicle for performance of official duties is advantageous to government. (1985) 64 Op Comp Gen p 234.

Employee on temporary duty who uses return portion of "super saver" airline ticket for week-end voluntary return travel to permanent duty station may not be reimbursed for difference between regular one-way coach fare and "super saver" fare. (1985) 64 Op Comp Gen p 236.

Handicapped employee may be reimbursed for additional subsistence benefits where he acts prudently in incurring those expenses by arriving at temporary duty station several days early and returning several days late in order to avoid driving in inclement weather. (1985) 64 Op Comp Gen p 310.

8. Travel on union business

Payment of travel and per diem expenses for travel attendant to Labor-management relations activities was not contrary to Travel Expense Act (5 USCS §§ 5701 et seq.) as parties' agreement constituted determination by agency that travel attendant to representing exclusive representative in negotiations is substantially within interest of U.S. to constitute official business. NTEU and Office of Hearings and Appeals, SSA (1986) 21 FLRA No. 49.

§ 5706a. Subsistence and travel expenses for threatened law enforcement personnel

(a) Under regulations prescribed pursuant to section 5707 of this title [5 USCS § 5707], when the life of an employee who serves in a law enforcement, investigative, or similar capacity, or members of such employee's immediate family, is threatened as a result of the employee's assigned duties, the head of the agency concerned may approve appropriate subsistence payments for the employee or members of the employee's family (or both) while occupying temporary living accommodations at or away from the employee's designated post of duty.

(b) When a situation described in subsection (a) of this section requires the employee or members of the employee's family (or both) to be temporarily relocated away from the employee's designated post of duty, the head of

the agency concerned may approve transportation expenses to and from such alternate location.

(Added Jan. 2, 1986, P. L. 99-234, Title I, § 103(a), 99 Stat. 1757.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

For provisions relating to promulgation of regulations and for the effective date of this section, see Act Jan. 2, 1986, P. L. 99-334, Title III, § 301, 99 Stat. 1760, which appears as 5 USCS § 5701 note.

§ 5707. Regulations and reports

(a)(1) The Administrator of General Services shall prescribe regulations necessary for the administration of this subchapter [5 USCS §§ 5701 et seq.], except that the Director of the Administrative Office of the United States Courts shall prescribe such regulations with respect to official travel by employees of the judicial branch of the Government.

(2) Regulations promulgated to implement section 5702 or 5706a of this title [5 USCS §§ 5702, 5706a] shall be transmitted to the appropriate committees of the Congress and shall not take effect until 30 days after such transmittal.

(b)(1) The Administrator of General Services, in consultation with the Comptroller General of the United States, the Secretary of Transportation, the Secretary of Defense, and representatives of organizations of employees of the Government, shall conduct periodic investigations of the cost of travel and the operation of privately owned vehicles to employees while engaged on official business, and shall report the results of such investigations to Congress at least once a year. In conducting the investigations, the Administrator shall review and analyze among other factors—

- (A) depreciation of original vehicle cost;
- (B) gasoline and oil (excluding taxes);
- (C) maintenance, accessories, parts, and tires;
- (D) insurance; and
- (E) State and Federal taxes.

(2) The Administrator shall issue regulations under this section which shall prescribe mileage allowances which shall not exceed the amounts set forth in section 5704(a) of this title [5 USCS § 5704(a)] and which reflect the current costs, as determined by the Administrator, of operating privately owned motorcycles, automobiles, and airplanes. At least once each year after the issuance of the regulations described in the preceding sentence, the Administrator shall determine, based upon the results of his investigation, specific figures, each rounded to the nearest one-half cent, of the average, actual cost a mile during the period for the use of a privately owned motorcycle, automobile, and airplane. The Administrator shall report such figures to Congress not later than five

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working days after he makes his determination. Each such report shall be printed in the Federal Register. The mileage allowances contained in regulations prescribed under this section shall be adjusted within thirty days following the submission of that report to the figures so determined and reported by the Administrator.

(c)(1) The Administrator of General Services shall periodically, but at least every 2 years, submit to the Director of the Office of Management and Budget an analysis of estimated total agency payments for such items as travel and transportation of people, average costs and duration of trips, and purposes of official travel; and of estimated total agency payments for employee relocation. This analysis shall be based on a sampling survey of agencies each of which spent more than \$5,000,000 during the previous fiscal year on travel and transportation payments, including payments for employee relocation. Agencies shall provide to the Administrator the necessary information in a format prescribed by the Administrator and approved by the Director.

(2) The requirements of paragraph (1) of this subsection shall expire upon the Administrator's submission of the analysis that includes the fiscal year that ends September 30, 1991.

(Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 500; May 19, 1975, P. L. 94-22, § 6(a), 89 Stat. 85; Jan. 2, 1986, P. L. 99-234, Title I, § 104, 99 Stat. 1758.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 840.	June 9, 1949, ch. 185, § 7, 63 Stat. 167.

The first sentence is based in part on former sections 73b-2, 836, and 837, which are carried into this subchapter. Application of the second sentence to section 5703, and the third sentence, are based on former section 73b-2, which is carried into section 5703.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Amendments:

1975. Act May 19, 1975 substituted this catchline and section for ones which read:

“§ 5707. Regulations

“The Director of the Bureau of the Budget shall prescribe regulations necessary for the administration of this subchapter. The fixing, payment, advancement, and recovery of travel allowances, and the reimbursement of travel expenses, under this subchapter shall be in accordance with the regulations. This section does not apply to the fixing or payment of a per diem allowance under section 5703(c) of this title.”.

1986. Act Jan. 2, 1986, in subsec. (a), designated the existing provisions as para. (1), and added para. (2); and added subsec. (c).

5 USCS § 5707

EMPLOYEES

TRAVEL

Other provisions:

Regulations; time for issuance. Act May 19, 1975, P. L. 94-22, § 6(b), 89 Stat. 86, provided that the regulations required under the first sentence of subsec. (b)(2) of this section as amended by § 6(a) of such Act May 19, 1975, should be issued no later than thirty days after May 19, 1975].

Delegation of functions. Ex. Or. No. 11609 of July 22, 1971, § 1(3), 36 Fed. Reg. 13747, located at 3 USCS § 301 note, provided that: the Administrator of General Services be designated and empowered to exercise without the approval, ratification or other action of the President certain functions of the President under this section.

Promulgation of regulations and effective date of amendments made by Act Jan. 2, 1986. For provisions relating to promulgation of regulations and for the effective date of the amendments made to this section, see Act Jan. 2, 1986, P. L. 99-334, Title III, § 301, 99 Stat. 1760, which appears as 5 USCS § 5701 note.

CODE OF FEDERAL REGULATIONS

Federal travel regulations, 41 CFR Part 101-7.

CROSS REFERENCES:

This section is referred to in 5 USCS §§ 5702, 5704, 5706a, 5709; 7 USCS §§ 3128, 3194, 3323, 3335, 4108, 5005; 16 USCS §§ 971h, 2443, 3608, 3641; 22 USCS § 1474; 28 USCS § 456; 40 USCS § 872.

RESEARCH GUIDE

Am Jur:

15A Am Jur 2d, Civil Service § 48.

INTERPRETIVE NOTES AND DECISIONS

Award for travel expenses incurred while using private vehicle could not be implemented since no agency determination was made that vehicle use was advantageous to Government on basis of cost, efficiency, or work requirements as required by Federal Travel Regulations; although agency official indicated to an employee that his request to use vehicle as advantageous to

the Government for temporary duty travel would be approved, such statement did not bind Government since official had no authority to approve vehicle use and Government was not estopped from repudiating advice given by one of its officials if that advice was erroneous. 36 Op Comp Gen 131.

§ 5708. Effect on other statutes

This subchapter [5 USCS §§ 5701 et seq.] does not modify or repeal—

- (1) any statute providing for the traveling expenses of the President;
- (2) any statute providing for mileage allowances for Members of Congress;
- (3) any statute fixing or permitting rates higher than the maximum rates established under this subchapter [5 USCS §§ 5701 et seq.]; or

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(4) any appropriation statute item for examination of estimates in the field.

(Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 500.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(1), (2).....	5 U.S.C. 841.	June 9, 1949, ch. 185, § 8. 63 Stat. 167.
(3), (4).....	5 U.S.C. 842.	June 9, 1949, ch. 185, § 9, 63 Stat. 167.

In paragraph (2), the words "Members of Congress" are substituted for "the President of the Senate or Members of Congress" in view of the definition of "Member of Congress" in section 2106.

The first sentence of section 9 of the Act of June 9, 1949, which repealed the Subsistence Act of 1926 and the Auto Mileage Act of February 14, 1931, is omitted as executed.

The first proviso of former section 842, which related to appropriation Acts for the years 1949 and 1950, is omitted as obsolete. The remainder of former section 842, other than the parenthetical expressions, is omitted as executed and existing rights are preserved by technical section 8.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODE OF FEDERAL REGULATIONS

Federal travel regulations, 41 CFR Part 101-7.

CROSS REFERENCES:

This section is referred to in 16 USCS §§ 971h, 2443, 3608, 3641; 22 USCS § 1474.

RESEARCH GUIDE

Am Jur:

15A Am Jur 2d, Civil Service § 48.

§ 5709. Air evacuation patients: furnished subsistence

Notwithstanding any other provision of law, and under regulations prescribed under section 5707 of this title [5 USCS § 5707], an employee and his dependents may be furnished subsistence without charge while being evacuated as a patient by military aircraft of the United States.

(Added Oct. 21, 1970, P. L. 91-481, § 1(1), 84 Stat. 1081.)

CODE OF FEDERAL REGULATIONS

Federal travel regulations, 41 CFR Part 101-7.

SUBCHAPTER II. TRAVEL AND TRANSPORTATION EXPENSES; NEW APPOINTEES, STUDENT TRAINEES, AND TRANSFERRED EMPLOYEES

CROSS REFERENCES:

This subchapter is referred to in 8 USCS § 1353; 22 USCS § 3650; 46 USCS Appx § 1717.

RESEARCH GUIDE

Am Jur: 15A Am Jur 2d, Civil Service § 48.

§ 5721. Definitions

For the purpose of this subchapter [5 USCS §§ 5721 et seq.]—

(1) "agency" means—

- (A) an Executive agency;
(B) a military department;
(C) a court of the United States;
(D) the Administrative Office of the United States Courts;
(E) the Library of Congress;
(F) the Botanic Garden;
(G) the Government Printing Office; and
(H) the government of the District of Columbia;

but does not include a Government controlled corporation;

- (2) "employee" means an individual employed in or under an agency;
(3) "continental United States" means the several States and the District of Columbia, but does not include Alaska or Hawaii;
(4) "Government" means the Government of the United States and the government of the District of Columbia; and
(5) "appropriation" includes funds made available by statute under section 9104 of title 31 [31 USCS § 9104].

(Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 500; Sept. 13, 1982, P. L. 97-258, § 3(a)(14), 96 Stat. 1063.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

The section is based on Act of Aug. 2, 1946, ch 744, §§ 18, 19 60 Stat. 811, 812. Sections 18 and 19 of the Act of Aug. 2, 1946, are omitted from this title and transferred to other titles of the United States Code since such sections apply also to sections 9, 11, and 16(a) of the Act of Aug. 2, 1946, which sections appear in titles 31 and 41 of the United States Code.

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FEDERAL CIVILIAN EMPLOYEE AND CONTRACTOR TRAVEL
EXPENSES ACT OF 1986

MAY 13 1986 Committed to the Committee of the Whole House on the State of the
Union and ordered to be printed

Mr. BROOKS, from the Committee on Government Operations,
submitted the following

REPORT

[To accompany H R 3291]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Operations, to whom was referred the bill (H.R. 3291) to revise certain provisions of chapter 57 of title 5, United States Code, relating to the subsistence allowances of Government civilian employees while performing official travel, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

EXPLANATION OF AMENDMENT

Inasmuch as the committee amendment struck out all after the enacting clause and replaced the original text with new language, this report constitutes an "Explanation of Amendment."

PURPOSE AND SUMMARY

The basic purpose of the bill is to establish a new statutory basis for determining the maximum payments allowable to Government employees on official travel to provide for their subsistence expenses, which include lodgings, food, and miscellaneous expenses. The objective of the bill is to provide a more flexible method for establishing the ceilings for travel reimbursements.

Until now, the maximum subsistence payments have been established by statute. The present maximums were set by Congress in 1980: \$50 on a per diem basis, and in high cost areas up to \$75 on an actual expenses basis as validated by receipts. Today, the \$50 limit is insufficient to cover expenses in nearly all localities, and the \$75 limit is inadequate in many, creating the inequity of employees themselves having to subsidize the Government's travel costs.

The bill would grant to the Administrator of General Services authority to set maximum limits according to locality. Not only would this permit raising or lowering daily rates in response to changing market conditions, but it would also remove the need for the Congress to legislate new maximums when the existing ones have become inadequate. The flexibility also would provide a way of dealing with extraordinary local situations where temporarily standard maximums could give way to a full actual expenses method.

The bill as amended includes a new provision that limits reimbursement for Government contractors who charge their employees' travel as part of contract costs. That limit would be those rates and amounts which are allowable as reimbursement for Federal employees.

COMMITTEE ACTION AND VOTE

At a duly called meeting on December 10, 1985, the Committee on Government Operations amended H.R. 3291 by language in the nature of a substitute. By voice vote, the bill as amended was approved and ordered reported.

HEARING

On September 19, 1985, the Government Activities and Transportation Subcommittee held a hearing on H.R. 3291. The witnesses were: the Honorable Steny Hoyer, a Representative in Congress from Maryland; the Honorable Frank R. Wolf, a Representative in Congress from Virginia; the Honorable Terence C. Golden, Administrator of General Services; Henry R. Wray, Associate General Counsel, U.S. General Accounting Office; Elayne Tempel, Labor Relations Specialist, National Federation of Federal Employees; Paul Newton, Director of Legislation, National Treasury Employees Union; Jerry Shaw, General Counsel, Senior Executives Association, and Kenneth T. Blaylock, National President, American Federation of Government Employees.

Prepared statements were received for the record from the Honorable Jack Brooks, Chairman of the Committee on Government Operations; and the Honorable Stan Parris, a Representative in Congress from Virginia. The Honorable Vic Fazio, a Representative in Congress from California, and the Honorable Michael Barnes, a Representative in Congress from Maryland, together filed a joint statement.

All testimony was in general support of the bill. Administrator Golden testified that if the bill were enacted GSA would implement it through a lodgings-plus system. (Such a system is described in the Discussion, below.) He also declared that agencies would be re-

quired to absorb the additional first year cost of increased daily rates, and thereafter hold travel to a minimum

BACKGROUND

During the 98th Congress, GSA submitted proposed legislation that would have raised the \$50 per diem to a maximum of \$75. The proposal would have held the actual expenses ceiling at \$75, meaning that this system of payment could have been used only where the locality-based per diem was lower than \$75. The legislation was introduced by Government Operations Committee Chairman Brooks (by request) as H.R. 4233.

The Chairwoman of the Government Activities and Transportation Subcommittee, concerned that the proposal did not solve the problem of Government employees having to pay some of their subsistence expenses when they traveled to any of the increasingly large number of high cost geographical areas, asked the Office of Management and Budget in 1984 to explain how such inequitable situations might be effectively remedied with minimal overall budgetary impact. The Administration's response was the proposed legislation that Administrator Golden transmitted to Congress by letter dated September 12, 1985, as a draft bill. This proposal, with minor technical changes, was the bill Committee Chairman Brooks then introduced (by request) as H.R. 3291. This measure was referred to the Government Activities and Transportation Subcommittee.

The Government Activities and Transportation Subcommittee on December 5, 1985, reported the measure to the full Committee on Government Operations with an amendment in the nature of a substitute. As stated above, the Committee on Government Operations, meeting on December 10, 1985, approved the bill as amended and ordered it to be reported.

The amendment perfects and clarifies the language of H.R. 3291 and makes necessary conforming changes in provisions of other laws which refer to the per diem allowance. It also makes two important additions to the bill. First, it requires that GSA's regulations implementing the new authority should lie before the appropriate Congressional Committee for 30 days before the regulations may take effect. (Administrator Golden had suggested such a provision in his testimony.) The second addition (Title II) supplements the provisions relating to reimbursement ceilings for Government employees by providing for assurance that Government contractors who include employee travel as part of contract costs are not able to claim more for such travel than the maximum that a Federal employee performing the same travel could claim.

On December 19, 1985, the Senate took up S. 1840, amended it so that it conformed precisely to H.R. 3291 as it had been amended and ordered reported by the Committee on Government Operations, and then passed it on that date. On the same date, the House took up the amended Senate bill and passed it by unanimous consent, thus clearing it for the President, who approved it January 2, 1986, to become Public Law 99-234.

Even though the measure was taken up and approved by both Houses and cleared for the President before the cognizant commit-

tees could issue reports, this subsequently issued report presents a source of background, summary, and explanation, and also offers insights into the committee's understanding and expectations with respect to objectives and individual provisions.

DISCUSSION

A. PROVISIONS RELATING TO THE NEW REIMBURSEMENT SYSTEM

1. *Delegation of Functions*

Because the legislation vests in the Administrator much of the authority to set reimbursement ceilings which the Congress has heretofore reserved to itself, the committee expects that the Administrator will maintain a high degree of personal involvement in matters relating to the exercise of this new authority and will rarely delegate major decisional authority.

The bill vests in the President authority to set reimbursement ceilings for travel outside the United States, and specifically permits the President to delegate this authority. Currently, Presidential authority to establish maximum per diem rates for travel outside the continental United States is delegated by E. O. 11294 to the Secretaries of Defense and State. This authority would remain unaltered. Consistent with this authority, the committee anticipates that the new authority to set maximum daily amounts for the reimbursement of actual and necessary expenses for travel outside the continental United States will continue to be delegated to the Departments of Defense and State.

2. *Use of the Lodgings-Plus System for Subsistence Allowances*

The Administrator testified that GSA plans to install a lodgings-plus system for computing subsistence allowances. As mentioned under "Purpose and Summary" above, under this system, the allowance would be based on the cost of lodgings actually incurred by the traveler, plus a flat-rate, varying by location, for meals and miscellaneous expenses. Lodgings expenses would be validated by receipt, but no accounting would be required for meals and miscellaneous expenses.

The Administrator, responding to a written subcommittee request for further explanation and examples as to how the system would work, provided the following:

The Administrator would set travel reimbursement ceiling based on locality on a city-by-city basis or for classes of cities. As a part of the ceiling for an individual city, a specific amount would be allocated to meals and miscellaneous expenses. No receipts would be required for this fixed amount, as it is automatically claimable. Furthermore, GSA plans to develop approximately three categories for meals and miscellaneous expenses. The maximum reimbursement for lodgings would be equal to the overall ceiling for a city, less the fixed amount for meals and miscellaneous expenses. The traveler would only be reimbursed for his lodgings costs up to the ceiling.

In addition, travel reimbursement calculations would be on a day-to-day basis. Unlike the current system, the traveler would

not be allowed to average his lodgings costs over the travel period.

As an example, assume an employee travelled to a city with an \$80 ceiling for one day and one night and was allowed \$28 per day for meals and miscellaneous expenses. Also assume that his hotel bill was \$50. Since the ceiling is \$80 and the meals and miscellaneous allowance is \$28, the traveler would be reimbursed up to \$52 for lodgings. The reimbursement calculation is as follows:

Lodgings	\$50
Meals and miscellaneous	28
Total reimbursement	\$78

3. Utilization of the Actual and Necessary Expenses Method

The amended section 5702 of title 5, U.S. Code authorizes the GSA Administrator (and the President or his designee with respect to travel outside the continental U.S.) to prescribe on a locality-by-locality basis a per diem allowance, a ceiling on reimbursement for actual and necessary expenses of official travel, or a combination of these two methods. The law is structured to give the Administrator great flexibility in designating a reimbursement system. The law should not be construed as giving an employee a choice as to how he will be reimbursed.

The Administrator provided this written response to a subcommittee question about the expected utilization of the actual expenses method:

The authority for reimbursement of the actual and necessary expenses for domestic travel under unusual circumstances is to be used on an exception basis in special or unique situations when payment of a preestablished per diem allowance would be inadequate or inappropriate. There are instances when the administratively set per diem rate, while generally adequate, would be insufficient for a particular travel assignment either because of special duties, such as accompanying dignitaries and protective service assignments, or because subsistence costs have escalated for short periods of time during special events such as the missile launching periods, the Olympics, world fairs or political conventions when it would be impractical to establish a higher per diem rate for such a short period of time. We expect the application of this provision to be infrequent, especially since the approval of such reimbursements will come from a higher level than for normal per diem reimbursements.

The Committee expects that the Administrator and the President will place further controls on the use of the actual expenses method by setting a flat ceiling on such reimbursements for the United States or for the area outside the United States, as the case may be, and that each ceiling will be based on the highest reasonable level that is likely to be encountered in the special circumstances justifying the method's use.

4. Abandonment or Interruption of Travel Because of Illness or Personal Emergency

The new section 5702(b) deals with abandonment or interruption of employee travel because of illness or injury, or a personal emergency. It expands the law beyond the current provision of subsistence and travel expenses for returning to the designated post of duty when the employee on travel is injured or becomes ill. The bill now authorizes transportation and subsistence expenses when the employee, with agency approval, abandons or interrupts the travel to return home because of a serious personal emergency (such as illness or death in the family, or a fire or a flood). Further, it authorizes transportation and subsistence expenses to an alternate location when the employee, with agency approval, abandons or interrupts the travel to go to that other location either because of injury or illness or because of personal emergency.

The sole objective of authorizing this allowance for travel to an alternate location is to place the employee in the same financial position as that which would have prevailed if the injury, illness, or emergency had occurred when the employee was not in travel status. If the employee has to incur additional transportation and subsistence expenses as a result of being on travel, the Government should pay the difference so as to make the employee whole.

Of course, if the employee in such circumstances is authorized to go to an alternate location that entails less travel expense than what would have been incurred had the employee been at the designated post of duty, then the agency should not provide payment relating to travel to the other location.

This is a benefit recognized for the first time in statute. Because of the range of circumstances that might characterize a personal emergency and the judgment involved as to what fits within this category, the committee expects that agency approval as a rule should come from a person higher than the employee's immediate supervisor. The committee further expects that regulations prescribed by the Administrator will include definitions of the terms "family member" and "personal emergency."

In response to a subcommittee question regarding the use of this new authority, GSA offered the following:

The purpose of the proposed new language of [Sections 5702 (b)(1)(B) and (b)(2)(A)] is to return the employee from the temporary assignment location at Government expense to the employee's designated post of duty or home where the employee would normally be present to take care of the emergency situation if the Government had not directed or assigned the employee to another location to perform official business.

Depending on the character of the temporary duty assignment and the stage of completion when the employees departed, the agency would have the discretion to authorize travel and transportation expenses to return the employee to the temporary duty assignment location upon resolution of the employee's personal emergency situation, or direct another employee to complete the temporary duty assignment.

B. SUPPLEMENTAL PROVISIONS**1. Reimbursement to Employees Transferred from the Postal Service**

Section 106 authorizes reimbursement for travel, transportation, and relocation expenses of employees transferred from the Postal Service to an agency for permanent duty. The Postal Reorganization Act largely excluded the Postal Service from coverage under title 5, United States Code.

Section 106 is the same as section 4 of the proposed bill which accompanied GSA's September 12, 1985, communication to Congress. There the Administrator explained the need and purpose of the provisions as follows:

Section 4 of the draft bill adds a new section 5734 to subchapter II of chapter 57, title 5, United States Code, pertaining to relocation allowances of transferred employees. This new section would correct an oversight in existing law that prompted the GAO to hold that Postal Service employees who transfer to other Federal agencies are not entitled to reimbursement under title 5, United States Code, for travel, transportation and relocation expenses. This situation is a result of enactment of the Postal Reorganization Act of 1970, Public Law 91-375, 84 Stat. 719, which specifically excluded Postal Service employees from coverage under title 5.

The GAO ruling is not widely known, even today, with the result that a number of former Postal Service employees who transferred to other executive branch departments and agencies were officially advised by the gaining agency that they were entitled to reimbursement for travel, transportation and relocation expenses. Later, they and their agencies learned that reimbursement could not be allowed. As a result, a number of private relief measures have been enacted to relieve the affected employees from liability to repay the Government. The proposed amendment would eliminate the need for further private relief measures.

Commenting on the bill in a September 24, 1985, letter to the Committee Chairman, the Postal Service stated that the provision "is necessary if the right to transfer to other positions in the Executive Branch of the Government, specifically provided by Congress in 39 U.S.C. 1006, is to have full practical effect."

2. Travel Expenses of Government Contractors

Section 201 of Title II limits reimbursement to Federal contractors for lodgings, meals, and other incidental travel subsistence expenses to the rates and amounts on the basis of which Federal employees can be reimbursed. The section's purpose is to provide a standard against which the reasonableness of contractor claims for such expenses can be measured.

The Committee finds that such a standard is needed. Federal procurement regulations allow contractors to charge travel costs to certain contracts so long as the charges are "reasonable." In the

absence of criteria for determining what is reasonable, contracting officers have tended to accept charges without question.¹ This ambiguity has resulted in excessive claims being paid to government contractors.

Section 201 would remove the ambiguity. Amounts claimed up to the locality ceilings provided by the Administrator of General Services or the President pursuant to subchapter I of chapter 57 are deemed reasonable and allowable; any excess is not. Thus, while contractors can use their own funds to reimburse their employees for any excess, the United States Treasury will pay contractors no more than it will pay Federal employees.

Section 201 is intended to apply whenever a contractor's travel expense component under an executive agency contract is being considered by Government contracting and auditing personnel who are applying the cost principles prescribed by the single system of government-wide procurement regulations.

Section 201 does not require government contractors to conform to record-keeping requirements which the GSA may impose on Federal employees. The Committee expects that whatever records Government contracting and auditing personnel require to support contractor expense claims would suffice.

The Committee believes that a single standard of reasonableness in locality-based reimbursement ceilings should be fair both to contractor employees and to federal employees. Determination of such a standard becomes a heavy responsibility for GSA under the bill. Hence the method whereby the GSA establishes the ceilings is critically important.

In the past, the GSA has contracted for surveys of hotels that would be frequented by people "at work." These surveys have primarily canvassed downtown and "business district" establishments as well as some airport locations. Taxes and tips have been included in the surveys.

Using the raw data generated by the surveys, the GSA has established the average daily travel subsistence cost for various cities. When the survey data have varied too greatly from experience, the GSA has adjusted figures derived from the raw data to arrive at its published cost estimate. In the last three years, however, the GSA's cost estimates for many localities have been academic because of existing statutory law, which since 1980 has limited reimbursement for subsistence expenses to \$50.00 per diem or to \$75.00 a day on an actual expenses basis.

The GSA cost estimates take on more significance under the provisions of H.R. 3291 because Title I would repeal the existing statutory caps on reimbursement and give the Administrator of General Services authority to set ceilings for locations within the continental United States. Section 201 would make these ceilings, as well as those set by the President or his designee, applicable to contractor allowances. It is imperative, therefore, that the cost estimates accu-

¹ "Federal and Contractor Employee Travel and Relocation Cost Reimbursements Differ," a report by the Comptroller General of the United States to the Chairman, Government Activities and Transportation Subcommittee, Committee on Government Operations, House of Representatives (GAO FPCD-82-35, July 20, 1982, B-195766), page 5.

rately reflect the marketplace of mid-range establishments in each locality.

During its consideration of this matter, the committee was aware of contractors' concerns that the GSA might establish ceilings by averaging the Government discount hotel rates for a particular locality, rather than the regular room rates or rates based on lesser discounts. The contractors maintained that since they do not always receive Government discounts, any ceilings established on the basis of Government discount rates would be unfair to them.

The GSA has informally indicated that it would "factor in" Government discounts when establishing new ceilings. According to the GSA, approximately 60% of the hotels which grant discounts to Federal employees offer equivalent discounts to Federal cost-reimbursement type contractors. The exact weight the GSA would give Government discounts, however, has not yet been determined.

The committee notes that a Government discount, even when offered by an establishment, is not always available to a particular Government employee. Such discounted rates typically have been offered on a limited, "space available" basis, much like discount seats on an airline. If the discounted rooms are booked, or if the hotel "blocks out" the discounts because of anticipated demand, a Government employee may be unable to get a room there at the discounted rate. In other words, the fact that a particular hotel offers a Government discount does not mean that the discount is available in any given case.

The committee recognizes the inherent difficulty in keeping Government travel costs as low as possible while ensuring that Government employees and contractors receive adequate reimbursement. The committee encourages the GSA to hold the line on travel costs. It also encourages GSA to expand its current efforts to negotiate access to Government discount rates at additional hotels for contractor employees affected by this legislation. However, because, as has been stated, the Government's hotel discounts are not always available to either a Government or a contractor employee, the Committee expects that an average or median Government discount rate for a particular locality would not become the ceiling in the absence of widespread, guaranteed (i.e., non-space-available) room availability for both Government and contractor employees. This would help realize adequate reimbursement to Federal and contractor employees while ensuring the lowest attainable cost to the Government.

GENERAL COMMENTS

1. Controlling Travel Costs

The committee accepts the assurances given by the Administrator in testimony that agencies would be required to absorb the additional first year cost of higher allowances and that agencies' travel expenditures will be monitored to see that travel is kept to a minimum. In his written response to a subcommittee request for further information about this matter, the Administrator declared:

The specific language was drafted in consultation with the Office of Management and Budget (OMB). The policy

of absorption of first year per diem costs is based on the policy of the Administrator not to submit any budget amendment or supplemental request for funding for travel for the fiscal year. Through the Federal Travel Regulations, GSA will continue to remind agencies that travel should be authorized only when necessary to accomplish the agencies' missions and remind travelers of the need to minimize travel costs. We also will continue through expansion of our discount programs to assure that adequate services are obtainable at the cheapest cost possible.

The committee expects that agencies, when justifying higher budget requests which include increased travel expenses, will not include as part of such justification references to the new authority that this measure provides and the higher allowances that may be available under it.

At one time during 1984, the difficulty created by the statutory subsistence ceilings led to the unusual action in which an agency itself, when certain job and mission requirements prevailed, would procure accommodations in higher-cost situations for its employees on travel. The General Accounting Office has held that use of such an unorthodox procurement procedure must be very narrowly applied. (See GAO letter to GSA dated May 1, 1984, B-213735; and GAO decision dated April 1, 1985, in the matter of Department of HUD, B-217011.) The Committee, while not necessarily agreeing with the propriety of any such procedure, which at best is vaguely authorized, expects that the new authority provided in this measure will make any such procedure unnecessary, and that agencies will not seek to use it.

2. Scope of New Travel Reimbursement System

Subchapter I of chapter 57, title 5, U.S. Code, is generally applicable to agencies within the executive, legislative, and judicial branches, as well as to the government of the District of Columbia. Expressly excluded, however, are the following: a Member of Congress, an office or committee of the House or Senate or of the two Houses, and a Government controlled corporation.

Some members of the committee expressed interest in how travel expenses allowable to Members of Congress and committees are computed. Reimbursements for official expenses are, of course, governed by regulations issued by the Committee on House Administration. When establishing the daily rates and amounts of reimbursement, that committee considers the rates and amounts the General Services Administration sets for employees of the executive branch. Following enactment of H.R. 3291, the Administrator of General Services will promulgate regulations to establish a new reimbursement system.

The committee believes that the provisions of H.R. 3291 will equitably meet the official travel needs of the executive branch and its employees. The committee suggests that the Administrator make available to the Committee on House Administration information on the operation of the new system, enabling that committee to determine whether the concepts embodied therein have applicability in establishing the policy for reimbursement of House

Members, employees, and committees for their allowable official expenses.

The Committee suggests also that the Administrator provide to the heads of Government controlled corporations, including such mixed ownership corporations as Amtrak and the Federal Deposit Insurance Corporation (plus the heads of any other agency to which the relevant portions of subchapter I might not be regarded as applicable, such as the U.S. Postal Service) the same information as that which would be provided to the Committee on House Administration

3. Cases of Travel Fraud

The committee recognizes that Federal employees as well as their agencies are for the most part extremely careful and reliable about submitting and processing vouchers with respect to travel and relocation costs. However, such claims and payments by their nature present opportunities for fraud. Therefore, the committee recommends that GSA request agencies to provide, in addition to the information required by 5 U.S.C. 5707 (as amended by this bill), statistical information relating to cases and amounts of proved voucher fraud. Within the multi-billion dollar annual outlay for Federal employee travel and relocation, even a relatively small percentage of payments based on fraudulent claims could amount to a substantial figure.

CONCLUSION

The need for a change in the law is both clear and overdue. The Committee believes that this careful revision of the existing law relating to subsistence allowances of Government employees in official travel status will provide for a useful and workable system which will not only yield equitable reimbursement but also permit more efficient and economical administration of these functions. Moreover, because of the measure's requirements for Congressional scrutiny of implementing regulations and for full reporting of agency travel payment statistics, continued Congressional oversight is assured.

SECTION-BY-SECTION ANALYSIS

Section 1 provides that the Act may be cited as the "Federal Civilian Employee and Contractor Travel Expenses Act of 1985".

TITLE I—TRAVEL EXPENSES OF FEDERAL CIVILIAN EMPLOYEES

Section 101

Section 101 amends Section 5701(4) of title 5, United States Code, by deleting the words "flat rate" from the definition of "per diem allowance". The new meaning, "a daily payment instead of actual expenses for subsistence and fees or tips to porters and stewards", is intended to cover the setting of different rates for different localities.

Section 102

Section 102 amends section 5702 of title 5, United States Code, by deleting subsections (a), (b), (c), and (d) and inserting in lieu thereof new subsections (a) and (b). Section 5702 is further amended by redesignating subsection (e) as subsection (c).

New subsection 5702(a)(1) provides that, subject to regulations prescribed by the Administrator of General Services under section 5707, an employee while traveling on official business away from the designated post of duty, is entitled to (A) a per diem allowance, or (B) reimbursement for the actual and necessary expenses of travel, or (C) a combination of payments described in (A) and (B). The "lodgings-plus" method described above in the Discussion is an appropriate exercise of the authority to prescribe a system of payments which has the effect of combining a per diem allowance and reimbursement for actual expenses. (The same benefits are to be available to individuals described in section 5703 of title 5—experts and consultants who are paid on a when-actually-employed basis or who serve without pay or at \$1 a year—when they are on official travel away from home or their regular place of business. Unless the context of the relevant section indicates otherwise, a further use in this analysis of the phrase "designated post of duty" includes the home or regular place of business for employees described in section 5703.)

The per diem allowance, reimbursement of actual and necessary expenses, or combination thereof, may not exceed rates and amounts established by the Administrator of General Services for travel within the continental United States, or by the President (or his designee) for travel outside the continental United States.

The authority under section 5707 to prescribe regulations enables the Administrator to prescribe, among other items, (1) the conditions under which an employee when traveling on official business may be given payments to cover subsistence expenses for travel both within and outside the continental United States, (2) the reimbursement systems, with detailed policies and procedures for determining actual amounts payable to employees for such travel within the maximum daily rates and amounts established by the Administrator or the President (or his designee), as appropriate, and (3) the maximum daily rates and amounts payable under these systems and conditions for travel within the continental United States.

New subsection 5702(a)(2) provides that the maximum per diem and actual expense allowances shall be established, to the extent feasible, by locality. GSA has broad latitude to define locality.

New subsection 5702(a)(3) provides that the payments for travel consuming less than a full day shall be allocated in a manner prescribed by the Administrator. This authority is made general so that, in line with the goal of simplifying the reimbursement system, the allocation can be made with a reasonable, rational relationship to estimated expenses and does not necessarily have to be based on actual time in travel status or in a particular location.

New subsections 5702(b) (1) and (2) authorize payment of transportation and subsistence expenses to employees who abandon or interrupt travel assignments because they become incapacitated because of illness or injury which is not due to misconduct, or to

interrupt travel assignments because they become incapacitated because of illness or injury which is not due to misconduct, or to

attend to a personal emergency such as serious illness or injury to, or death of, a family member, or an emergency situation involving the home or family, such as fire, flood, or act of God.

Section 5702(b)(2) and 5702(b)(3) preserve the existing authority for paying subsistence and transportation back to the regular post of duty for an employee on travel who becomes injured or ill, while adding new authority under which an agency may allow payments to an employee on travel confronted with a serious personal emergency requiring return to the employee's regular place of duty. The new authority also enables an agency to permit an employee to receive payments for travel to an alternate location (and subsistence expenses during such travel) if that is necessitated by the employee's illness or injury or by the location of the personal emergency—but only by so much as would exceed what such travel would have cost the employee if the illness, injury, or personal emergency had occurred when the employee was at the regular post of duty. (Further explanation is contained above in the Discussion portion of this report.)

New subsection 5702(b)(3) provides that subject to limitations prescribed by the Administrator under section 5707, an employee who interrupts the travel assignment because of an incapacitating illness or injury is entitled to subsistence payments at the location where the interruption occurred. The committee anticipates that such limitations would allow the payments to be continued for a reasonable length of time until the employee is able to resume the travel assignment or return to the designated post of duty.

Section 103

Section 103(a) amends subchapter I of Chapter 57 of title 5, United States Code, by adding new subsection 5706a. This section provides that, under regulations prescribed under section 5707, the head of an agency may approve subsistence payments for employees who serve in a law enforcement, investigative or similar capacity, and their immediate family members, when they are necessarily moved to temporary living accommodations because of job-related threats to the life of the employee or family members. If the temporary relocation is to a place away from the employee's designated post of duty, transportation expenses are also authorized with the agency head's approval.

The committee expects that this authority will be used by agencies with utmost discretion and only for temporary periods, such as 30-60 days or less. If an agency anticipates that individuals would have to be relocated for long periods, then reassigning the employee to another official station would seem a more prudent course of action.

Section 104

Section 104 amends section 5707 of title 5, United States Code, to provide that regulations implementing sections 5702 or 5706a shall be transmitted to the appropriate committees of Congress and shall not take effect until 30 days after transmittal. The committee intends that this requirement may be regarded as not applying to regulatory changes or additions that, in the judgment of the issu-

ing official, are minor, such as those of an editorial, perfective, or conforming nature.

Section 104 also provides that the Administrator of General Services shall periodically submit, at least every 2 years, to the Office of Management and Budget, an analysis of estimated total agency payments, including but not limited to those for travel and transportation of people; average costs and duration of trips; purposes of travel; and estimated agency payments for employee relocations. Such analysis shall, to the extent feasible, be based on a sampling survey of agencies which spent more than \$5,000,000 during the previous fiscal year on these payments. Agencies are required to provide the necessary information to the Administrator in a format prescribed by the Administrator and approved by the Director of the Office of Management and Budget. This reporting requirement shall expire with the submission of the analysis covering fiscal year 1991.

Section 105

Section 105 provides for several technical and conforming amendments to section 5724a of title 5, United States Code, to assure compatibility with new language contained in section 5702 of title 5.

Section 106

Section 106(a) amends subchapter II of Chapter 57 by adding a new section 5734, which provides that employees of the United States Postal Service who are promoted or transferred under 39 U.S.C. 1006, for permanent duty, from the Postal Service to an agency (as defined in section 5721 of title 5) may be authorized travel, transportation, and relocation expenses and allowance under the same conditions and to the same extent as authorized for other transferring employees within the meaning of subchapter II.

Section 107

Section 107 provides for several technical and conforming amendments to existing statutes which make reference to the travel and subsistence laws which are amended elsewhere in this bill. With one exception, these amendments simply conform the references to the new system of setting expense limitations which is created by the bill.

The exception is an amendment to section 456(a) of title 28, which authorizes the Director of the Administrative Office of the U.S. Courts to prescribe rates and amounts for subsistence expenses with the approval of the Judicial Conference, taking into consideration the rates or amounts set under section 5702 of title 5, United States Code.

TITLE II—TRAVEL EXPENSES OF GOVERNMENT CONTRACTORS

Section 201

Section 201 amends the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) by adding a new section 24, "Travel Expenses of Government Contractors." The new section provides that under any contract with any executive agency, travel costs incurred by

contractor personnel may not exceed the rates and amounts set by subchapter I of chapter 57 of title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to the provisions of subchapter I.

The provisions limiting the allowable costs of contractor personnel travel are required to be implemented as part of the single system of Government-wide procurement regulations mandated by section 4 of the Office of Federal Procurement Policy Act. The provisions are intended to apply whenever a contractor's travel expenses component under an executive agency contract is being considered by Government contracting and auditing personnel who are applying the cost principles prescribed by the single system of Government-wide procurement regulations.

Section 202

Section 202 requires the Administrator for Federal Procurement Policy within the Office of Management and Budget, in consultation with the Secretary of Defense and the Administrator of General Services, to undertake a study to determine whether limitations having a purpose similar to those required by section 201 should be placed on executive agency contractors with respect to payments allowable for the expenses of employee transportation and relocation. A report on the findings of this study shall be submitted by the Administrator for Federal Procurement Policy to the appropriate Committees of Congress within 180 days after the date of enactment of this bill.

TITLE III—EFFECTIVE DATE

Section 301

Section 301(a) requires the Administrator of General Services to promulgate regulations implementing the amendments made by sections 101, 102, 103, 104 and 106 of Title I of the Act within 150 days after the date of enactment. All amendments (including those in sections 105 and 107) made by Title I of the Act pertaining to Federal civilian employee travel shall take effect on the effective date of the Administrator's new implementing regulations or 180 days after the date of enactment, whichever occurs first. This allows the affected agencies at least 30 days to prepare for implementation of the new policies, procedures, and rates. Similarly, the Congress will have this period to review the promulgated regulations before they become effective.

Section 301(b) provides that amendments made by section 201 of the Act (pertaining to contractor employee travel) shall be effective 30 days after the effective date of the amendments made by Title I of the Act. This allows an additional 30 days after the effective date of the rates and amounts established in regulations issued by the Administrator of General Services for the contractor travel-cost provisions of section 201 to be incorporated into the Government-wide procurement regulations.

COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

The cost estimate prepared by the Congressional Budget Office (CBO) under Section 308(a) and 403 of the Congressional Budget Act of 1974 is contained in the following letter from the Director:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 19, 1985.

Hon. JACK BROOKS,
Chairman, Committee on Government Operations, U.S. House of Representatives, 2157 Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3291, the Federal Civilian Employee and Contractor Travel Expenses Act of 1985, as ordered reported by the House Committee on Government Operations, December 10, 1985.

The bill would authorize the Administrator of the General Services Administration (GSA) to establish new rates for payment of federal employees' travel expenses. Based on the Administrator's testimony before the Subcommittee on Government Activities Administration, we expect that GSA would replace the current \$50 and \$75 statutory limitations on per diem and actual expense reimbursements with a "lodgings-plus" system. Under that system, the per diem allowance would cover the actual cost of lodgings plus a flat rate (which would vary by location) for meals and miscellaneous expenses. Because the expected costs of lodgings and rate amounts would be greater than the \$75 cap that is currently in effect for 137 cities, total travel costs would increase by an estimated \$200 million annually. However, these increased costs would be partially offset by a reduction in the administrative expenses associated with reimbursing federal employees. Because the locality-based flat-rate system for meals and miscellaneous expenses would eliminate the need for processing vouchers for those expenses, annual administrative costs may decrease by \$20 million to \$30 million. The full effect of these increases in travel costs and decreases in administrative costs would probably not occur until fiscal year 1987 because the new travel regulations would not become effective until six months after enactment of the bill.

The bill would also require that government contractors be reimbursed for travel expenses at the same rate as federal employees. This is likely to reduce somewhat government contracting costs, but we cannot presently estimate the magnitude of such savings. In addition, the bill would require the Administrator to prepare a biennial analysis of federal travel costs for the Office of Management and Budget. Because GSA already collects most of the information required by the report, we do not expect the report to result in significant additional costs to the federal government.

Enactment of this bill would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

JAMES BLUM
(For Rudolph G. Penner, Director).

COMMITTEE COST ESTIMATE

The committee agrees neither with the cost estimate of the CBO nor with that of GSA. The assumptions on which these estimates are based appear too narrow.

GSA's testimony presented statistics showing that the cost impact of the proposed changes would be an increase in the overall travel budget of \$186 million, partially offset by a saving in administrative costs of \$54 million. This saving is derived from GSA's estimate that processing an actual-expenses voucher costs \$51, but processing a voucher under the lodgings-plus system (which the agency plans to implement upon enactment of this bill) would cost only \$28.

These overall costs and savings are, of course, only general estimates because of the difficulty of collecting and centralizing data. Therefore, the committee believes that comparing the CBO and the GSA estimates and drawing conclusions would be speculative. Furthermore, a significant factor not developed in the preparation of these estimates is the expected absorption of the prospective cost increase, which GSA testified will occur during the first year after enactment, and the future efforts to curtail government employee travel, which GSA has promised will be forthcoming.

In addition, the committee believes that greater emphasis should be placed on the cost reduction potential in contractor employee travel expenses which will result from implementation of this bill and consequent savings in auditing and contract administration costs that will derive from the bill's clear definition of what reimbursement is "reasonable" for those travel expenses. Although we do not know the extent of savings in these areas, we believe it will be significant.

OVERSIGHT FINDINGS

The Committee has maintained both legislative and investigative oversight over the functions affected by chapter 57 of title 5, United States Code, relating to travel, transportation, and subsistence of Government employees. Both before and since enactment of the last major amendment to this chapter resulting from the committee's actions (P.L. 96-346), the government Activities and Transportation Subcommittee has engaged in a continuous detailed oversight activities with respect to this subject matters.

INFLATIONARY IMPACT

In compliance with clause 2(1)(4) of Rule XI, it is the opinion of the Committee that the provisions of this bill will have no significant inflationary impact on prices and costs in the operation of the national economy.

OVERSIGHT FINDINGS

The Committee, through its Government Activities and Transportation Subcommittee, has maintained oversight over the issue of subsistence allowance for Federal civilian employees while performing official travel.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

No new budget authority or tax expenditures are contained in this legislation.

CHANGES IN LAW MADE BY THE BILL, AS REPORTED

For the information of the members, changes in existing law as in effect on the date the bill was ordered reported from committee that are made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart D—Pay and Allowances

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CHAPTER 57—TRAVEL, TRANSPORTATION, AND
SUBSISTENCESUBCHAPTER I—TRAVEL AND SUBSISTENCE EXPENSES, MILEAGE
ALLOWANCES

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Sec.

- 5701. Definitions.
- 5702. Per diem, employees traveling on official business.
- 5703. Per diem, travel, and transportation expenses; experts and consultants, individuals serving without pay.
- 5704. Mileage and related allowances.
- 5705. Advancements and deductions.
- 5706. Allowable travel expenses.
- 5706a. *Subsistence and travel expenses for threatened law enforcement personnel.*
- 5707. Regulations and reports.
- 5708. Effect on other statutes.
- 5709. Air evacuation patients: furnished subsistence.

SUBCHAPTER II—TRAVEL AND TRANSPORTATION EXPENSES; NEW
APPOINTEES, STUDENT TRAINEES, AND TRANSFERRED EMPLOYEES

- 5721. Definitions.
- 5722. Travel and transportation expenses of new appointees; posts of duty outside the continental United States.
- 5723. Travel and transportation expenses of new appointees and student trainees; manpower shortage positions.

- 5724 Travel and transportation expenses of employees transferred, advancement of funds; reimbursement on commuted basis
- 5724a Relocation expenses of employees transferred or reemployed
- 5724b Taxes on reimbursements for travel, transportation, and relocation expenses of employees transferred.
- 5724c Relocation services
- 5725 Transportation expenses; employees assigned to danger areas
- 5726 Storage expenses, household goods and personal effects
- 5727 Transportation of motor vehicles
- 5728 Travel and transportation expenses; vacation leave
- 5729 Transportation expenses; prior return of family
- 5730 Funds available
- 5731 Expenses limited to lowest first-class rate
- 5732 General average contribution; payment or reimbursement
- 5733 Expeditious travel
- 5734 *Travel, transportation, and relocation expenses of employees transferred from the Postal Service*

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**SUBCHAPTER I—TRAVEL AND SUBSISTENCE EXPENSES:
MILEAGE ALLOWANCES**

§ 5701. Definitions

For the purpose of this subchapter—

(1)

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[(4) "per diem allowance" means a daily flat rate payment instead of actual expenses for subsistence and fees or tips to porters and stewards;]

(4) "per diem allowance" means a daily payment instead of actual expenses for subsistence and fees or tips to porters and stewards;

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§ 5702. Per diem; employee traveling on official business

[(a) Under regulations prescribed under section 5707 of this title, an employee while traveling on official business away from his designated post of duty, or in the case of an individual described under section 5703 of this title, his home or regular place of business, is entitled to (1) a per diem allowance for travel inside the continental United States at a rate not to exceed \$50, and (2) a per diem allowance for travel outside the continental United States, that may not exceed the rate established by the President, or his designee, for each locality where travel is to be performed. For travel consuming less than a full day, such rate may be allocated proportionately.

[(b) Under regulations prescribed under section 5707 of this title, an employee who, while traveling on official business away from his designated post of duty or, in the case of an individual described under section 5703 of this title, his home or regular place of business, becomes incapacitated by illness or injury not due to his own misconduct, is entitled to the per diem allowance and appropriate transportation expenses to his designated post of duty, or home or regular place of business, as the case may be.

[(c) Under regulations prescribed under section 5707 of this title, the Administrator of General Services, or his designee, may prescribe conditions under which an employee may be reimbursed for the actual and necessary expenses of official travel when the maximum per diem allowance would be less than these expenses, except that such reimbursement shall not exceed \$75 for each day in a travel status within the continental United States when the per diem otherwise allowable is determined to be inadequate (1) due to the unusual circumstances of the travel assignment, or (2) for travel to high rate geographical areas designated as such in regulations prescribed under section 5707 of this title.]

[(d) Under regulations prescribed under section 5707 of this title, for travel outside the continental United States, the Administrator of General Services or his designee, may prescribe conditions under which an employee may be reimbursed for the actual and necessary expenses of official travel when the per diem allowance would be less than these expenses, except that such reimbursement shall not exceed \$33 for each day in a travel status outside the continental United States plus the locality per diem rate prescribed for such travel.]

(c)(1) Under regulations prescribed pursuant to section 5707 of this title, an employee, when traveling on official business away from the employee's designated post of duty, or away from the employee's home or regular place of business (if the employee is described in section 5703 of this title), is entitled to any one of the following:

(A) a per diem allowance at a rate not to exceed that established by the Administrator of General Services for travel within the continental United States, and by the President or his designee for travel outside the continental United States;

(B) reimbursement for the actual and necessary expenses of official travel not to exceed an amount established by the Administrator for travel within the continental United States or an amount established by the President or his designee for travel outside the continental United States; or

(C) a combination of payments described in subparagraphs (A) and (B) of this paragraph.

(2) Any per diem allowance or maximum amount of reimbursement shall be established, to the extent feasible by locality.

(3) For travel consuming less than a full day, the payment prescribed by regulation shall be allocated in such manner as the Administrator may prescribe.

(b)(1) Under regulations prescribed pursuant to section 5707 of this title, an employee who is described in subsection (a) of this section and who abandons the travel assignment prior to its completion—

(A) because of an incapacitating illness or injury which is not due to the employee's own misconduct is entitled to reimbursement for expenses of transportation to the employee's designated post of duty, or home or regular place of business, as the case may be, and to payments pursuant to subsection (a) of this section until that location is reached; or

(B) because of a personal emergency situation (such as serious illness, injury, or death of a member of the employee's family.

or an emergency situation such as fire, flood, or act of God, may be allowed, with the approval of an appropriate official of the agency concerned, reimbursement for expenses of transportation to the employee's designated post of duty, or home or regular place of business, as the case may be, and payments pursuant to subsection (a) of this section until that location is reached.

(2)(A) Under regulations prescribed pursuant to section 5707 of this title, an employee who is described in subsection (a) of this section and who, with the approval of an appropriate official of the agency concerned, interrupts the travel assignment prior to its completion for a reason specified in subparagraph (A) or (B) of paragraph (1) of this subsection, may be allowed (subject to the limitation provided in subparagraph (B) of this paragraph)—

(i) reimbursement for expenses of transportation to the location where necessary medical services are provided or the emergency situation exists,

(ii) payments pursuant to subsection (a) of this section until that location is reached, and

(iii) such reimbursement and payments for return to such assignment.

(B) The reimbursement which an employee may be allowed pursuant to subparagraph (A) of this paragraph shall be the employee's actual costs of transportation to the location where necessary medical services are provided or the emergency exists, and return to assignment from such location, less the costs of transportation which the employee would have incurred had such travel begun and ended at the employee's designated post of duty, or home or regular place of business, as the case may be. The payments which an employee may be allowed pursuant to subparagraph (A) of this paragraph shall be based on the additional time (if any) which was required for the employee's transportation as a consequence of transportation's having begun and ended at a location on the travel assignment (rather than at the employee's designated post of duty, or home or regular place of business, as the case may be).

(3) Subject to the limitations contained in regulations prescribed pursuant to section 5707 of this title, an employee who is described in subsection (a) of this section and who interrupts the travel assignment prior to its completion because of an incapacitating illness or injury which is not due to the employee's own misconduct is entitled to payments pursuant to subsection (a) of this section at the location where the interruption occurred.

[e] (c) This section does not apply to a justice or judge, except to the extent provided by section 456 of title 28.

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§ 5706a. Subsistence and travel expenses for threatened law enforcement personnel

(a) Under regulations prescribed pursuant to section 5707 of this title, when the life of an employee who serves in a law enforcement, investigative, or similar capacity, or members of such employee's immediate family, is threatened as a result of the employee's assigned duties, the head of the agency concerned may approve appropriate

subsistence payments for the employee or members of the employee's family (or both) while occupying temporary living accommodations at or away from the employee's designated post of duty.

(b) When a situation described in subsection (a) of this section requires the employee or members of the employee's family (or both) to be temporarily relocated away from the employee's designated post of duty, the head of the agency concerned may approve transportation expenses to and from such alternative location.

§ 5707. Regulations and reports

(a) (1) The Administrator of General Services shall prescribe regulations necessary for the administration of this subchapter, except that the Director of the Administrative Office of the United States Courts shall prescribe such regulations with respect to official travel by employees of the judicial branch of the Government.

(2) Regulations promulgated to implement section 5702 or 5706a of this title shall be transmitted to the appropriate committees of the Congress and shall not take effect until 30 days after such transmittal.

(c) (1) The Administrator of General Services shall periodically, but at least every 2 years, submit to the Director of the Office of Management and Budget an analysis of estimated total agency payments for such items as travel and transportation of people, average costs and duration of trips, and purposes of official travel, and of estimated total agency payments for employments for employee relocation. This analysis shall be based on a sampling survey of agencies each of which spent more than \$5,000,000 during the previous fiscal year on travel and transportation payments, including payments for employee relocation. Agencies shall provide to the Administrator the necessary information in a format prescribed by the Administrator and approved by the Director.

(2) The requirements of paragraph (1) of this subsection shall expire upon the Administrator's submission of the analysis that includes the fiscal year that ends September 30, 1991.

SUBCHAPTER II—TRAVEL AND TRANSPORTATION EXPENSES; NEW APPOINTEES, STUDENT TRAINEES, AND TRANSFERRED EMPLOYEES

§ 5724a. Relocation expenses of employees transferred or reemployed

(a) Under such regulations as the President may prescribe and to the extent considered necessary and appropriate, as provided therein, appropriations or other funds available to an agency for administrative expenses are available for the reimbursement of all or part of the following expenses of an employee for whom the Government pays expenses of travel and transportation under section 5724(a) of this title:

(1) Expenses of per diem allowance [instead of] or the subsistence expenses of the immediate family of the employee while enroute between his old and new official stations, not in excess of the maximum [per diem rates prescribed by or under] payments permitted under regulations which implement section 5702 of this title.

(2) Expenses of per diem allowance [instead of] or subsistence of the employee and his spouse, not in excess of the maximum [per diem rates prescribed by or under] payments permitted under regulations which implement section 5702 of this title. Expenses of transportation to seek permanent residence quarters at a new official station when both the old and new stations are located within the continental United States. However, expenses under this paragraph may be allowed only for one round trip in connection with each change of station of the employee.

(3) Subsistence expenses of the employee and his immediate family for a period of 60 days while occupying temporary quarters when the new official station is located within the United States, its territories or possession, the Commonwealth of Puerto Rico, or the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979). The period of residence i.. temporary quarters may be extended for an additional 60 days if the head of the agency concerned or his designee determines that there were compelling reasons for the continued occupancy of temporary quarters. The regulations shall prescribe [average] daily rates and amounts for subsistence expenses per individual, not in excess of the maximum [per diem rates prescribed by or under] payments permitted under regulations which implement section 5702 of this title, for the location in which the temporary quarters are located.

§ 5734. Travel, transportation, and relocation expenses of employees transferred from the Postal Service

Notwithstanding the provisions of any other law, officers and employees of the United States Postal Service promoted or transferred under section 1006 of title 39, United States Code, from the Postal Service to an agency (as defined in section 5721 of this title), for permanent duty may be authorized travel, transportation and relocation expenses and allowances under the same conditions and to the same extent authorized by this subchapter for other transferred employees within the meaning of this chapter.

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SECTION 7 OF THE TECHNOLOGY ASSESSMENT ACT OF 1972

ESTABLISHMENT OF THE TECHNOLOGY ASSESSMENT ADVISORY COUNCIL

SEC. 7 (a) . . .

(e)(1) The members of the Council other than those appointed under subsection (a)(1) shall receive no pay for their services as members of the Council, but shall be allowed necessary travel expenses (or, in the alternative, mileage for use of privately owned vehicles and [a per diem in lieu of subsistence at not to exceed the rate prescribed in sections 5702 and] payments when traveling on official business at not to exceed the payment prescribed in regulations implementing section 5702 and in 5704 of title 5, United States Code), and other necessary expenses incurred by them in the performance of duties vested in the Council, without regard to the provisions of subchapter 1 of chapter 57 and section 5731 of title 5, United States Code, and regulations promulgated thereunder.

SECTION 636 OF THE FOREIGN ASSISTANCE ACT OF 1961

SEC. 636.—PROVISIONS ON USES OF FUNDS.—(a) . . .

(g) Funds made available for the purposes of part II shall be available for—

(1) administrative, extraordinary (not to exceed \$300,000 in any fiscal year), and operating expenses incurred in furnishing defense articles, military education and training and defense services on a grant or sales basis by the agency primarily responsible for administering part II;

(2) reimbursement of actual expenses of military officers detailed or assigned as tour directors in connection with orientation visits of foreign military and related civilian personnel in accordance with the provisions of section [5702(c)] 5702 of title 5 of the United States Code, applicable to civilian officers and employees; and

SECTION 4941 OF THE INTERNAL REVENUE CODE OF 1954

SEC. 4941 TAXES ON SELF-DEALING

(a) INITIAL TAXES.— . . .

(d) SELF DEALING.—

(1) IN GENERAL.— . . .

(2) SPECIAL RULES.—For purposes of paragraph (1)—

(A) . . .

(G) in the case of a government official (as defined in section 4946(c)), paragraph (1) shall in addition not apply to—

(i) prizes and awards which are subject to the provisions of section 74(b), if the recipients of such prizes and awards are selected from the general public.

(vii) any payment or reimbursement of traveling expenses for travel solely from one point in the United States to another point in the United States, but only if such payment or reimbursement does not exceed the actual cost of the transportation involved plus an amount for all other traveling expenses not in excess of 125 percent of the maximum amount payable under section [5702(a)] 5702 of title 5, United States Code, for like travel by employees of the United States; and

SECTION 456 OF TITLE 28, UNITED STATES CODE

§ 456. Traveling expenses of justice and judges; official duty stations

(a) The Director of the Administrative Office of the United States Courts shall pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business at a place other than his official duty station for any continuous period of less than thirty calendar days (1) all necessary transportation expenses certified by the justice or judge; and (2) [a per diem allowance for travel at the rate which the Director establishes not to exceed the maximum per diem allowance fixed by section 5702(a) of title 5, or in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States, reimbursement for his actual and necessary expenses of subsistence not in excess of the maximum amount fixed by section 5702 of title 5.] *payments for subsistence expenses at rates or in amounts which the Director establishes, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States and after considering the rates or amounts set by the Administrator of General Services and the President pursuant to section 5702 of title 5.* The Director of the Administrative Office of the United States Courts shall also pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business under an assignment authorized under chapter 13 of this title which exceeds in duration a continuous period of thirty calendar days, all necessary transportation expenses and actual and necessary expenses and actual and necessary expenses of subsistence actually incurred, notwithstanding the provisions of section 5702 of title 5.

in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States.

SECTION 326 OF TITLE 31, UNITED STATES CODE

§326. Availability of appropriations for certain expenses

(a) Under regulations prescribed by the Secretary of the Treasury, an appropriation for the Department of the Treasury available to pay travel expenses also is available to pay expenses to attend meetings of organizations related to the function or activity for which the appropriation is made.

(b) The Secretary may approve reimbursement to agents on protective missions for subsistence expenses authorized by law without regard to rates and amounts established under section 5702 of title 5.

SECTION 6 OF THE NATIONAL AERONAUTICS AND SPACE
ADMINISTRATION AUTHORIZATION ACT, 1965

SEC. 6. There is hereby established an Aerospace Safety Advisory Panel consisting of a maximum of nine members who shall be appointed by the Administrator for terms of six years each. The Panel shall review safety studies and operations plans referred to it and shall make reports thereon, shall advise the Administrator with respect to the hazards of proposed or existing facilities and proposed operations and with respect to the adequacy of proposed or existing safety standards and shall perform such other studies as the Administrator may request. One member shall be designated by the Panel as its Chairman. Members of the Panel who are officers or employees of the Federal Government shall receive no compensation for their services as such, but shall be allowed necessary travel expenses (or in the alternative, mileage for use of privately owned vehicles and a per diem in lieu of subsistence not to exceed the rates and amounts prescribed in 5 U.S.C. 5702, 5704), and other necessary expenses incurred by them in the performance of duties vested in the Panel, without regard to the provisions of subchapter 1, chapter 57 of title 5 of the United States Code, the Standardized Government Travel Regulations, or 5 U.S.C. 5731. Members of the Panel appointed from outside the Federal Government shall each receive compensation at a rate not to exceed the per diem rate equivalent to the rate for GS-18 for each day such member is engaged in the actual performance of duties vested in the Panel in addition to reimbursement for travel, subsistence, and other necessary expenses in accordance with the provisions of the foregoing sentence. Not more than four such members shall be chosen from among the officers and employees of the National Aeronautics and Space Administration.

OFFICE OF FEDERAL PROCUREMENT POLICY ACT

To establish an Office of Federal Procurement Policy within the Office of Management and Budget, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Office of Federal Procurement Policy Act".

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TRAVEL EXPENSES OF GOVERNMENT CONTRACTORS

SEC. 24. Under any contract with any executive agency, costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by subchapter I of chapter 57 of title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any provision of such subchapter. This section shall be implemented in regulations prescribed as a part of the single system of Government-wide procurement regulations as defined in section 4 of this Act.

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Federal Register

Wednesday
July 15, 1987

Part II

General Services Administration

**Federal Travel Regulations; Per Diem
Rates and Reimbursement Procedures;
Notice of Changes**

FTRs Tab 4

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A-40, Supp. 24]

Federal Travel Regulations; Per Diem Rates and Reimbursement Procedures

AGENCY: Federal Supply Services, GSA.
ACTION: Notice of Changes to Federal
Travel Regulations.

SUMMARY: GSA has issued GSA Bulletin FPMR A-40, Supplement 24, transmitting changed pages amending the provisions of Federal Travel Regulations (FTR), FPMR 101-7, pertaining to reimbursement of subsistence expenses of Federal employees on official travel away from their duty stations and other related provisions.

EFFECTIVE DATE: The changed provisions of the FTR transmitted by GSA Bulletin FPMR A-40, Supplement 24, are effective for travel performed on or after August 1, 1987.

FOR FURTHER INFORMATION CONTACT: Staff members, Regulations and Policy Division FTS 557-1253, 557-1256, or 557-7525 (for non-FTS use AC 703).

SUPPLEMENTARY INFORMATION: GSA, in consultation with the Office of Management and Budget, has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in a major significant adverse effect on the national economy. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least cost to society.

Public Law 99-234 (99 Stat. 1756), January 2, 1986, among other things, provided the Administrator of General Services with authority to establish maximum subsistence rates for domestic travel and procedures for reimbursing subsistence expenses incurred by Federal civilian employees during official travel. The General Services Administration (GSA) issued changes to the FTR (transmitted by GSA Bulletin FPMR A-40, Supplement 20, effective July 1, 1986) establishing lodgings-plus per diem as the predominant reimbursement system for travel within CONUS. GSA retained \$50 as the standard CONUS rate applicable for all locations within CONUS that were not included in one of the defined localities or areas for which a specific rate is prescribed in appendix 1-A. Under the

lodgings-plus per diem system, employees are reimbursed for the actual cost of lodging plus a flat daily payment for meals and incidental expense (M&IE), the total not to exceed a maximum rate set by locality. On the first and last day of travel, a flat allowance of one-half of the M&IE rate (\$12.50 or \$16.50, as appropriate) was prescribed.

Recent subsistence cost surveys have revealed that the standard CONUS rate should be increased and that the current listing of per diem rates should be updated and expanded to include rates for additional localities. No change is required in the M&IE rates, although several locations have shifted from a \$25 to a \$33 rate. Appendix 1-A is revised accordingly.

To balance concerns about equity and administrative efficiency, GSA has determined that the best approach for dealing with meals is to divide the first and last calendar days of travel into quarters and prorate the total M&IE allowance accordingly. The per diem computation method for partial travel days is revised to reflect this change.

Explanation of changes. This supplement amends the FTR as follows:

- a. Part 1-7 is revised to make the following changes:
 - (1) Increase the standard CONUS maximum per diem rate from \$50 to \$60;
 - (2) Convert to a quarter-day method of calculating the M&IE allowance for partial days of travel;
 - (3) Clarify existing rules, and provide additional rules when appropriate, for computing per diem incident to trips that involve travel both within and outside CONUS; and
 - (4) Clarify the method of computing per diem when lodging is obtained on a weekly or monthly rental basis;
- b. Part 1-8 is revised to eliminate the requirement for receipts and/or itemization of meals and incidental expenses when agencies restrict reimbursement for M&IE to 100 percent of the applicable maximum M&IE rate for the locality involved.

c. Appendix 1-A is revised to increase the standard CONUS rate to \$60, to increase the specific per diem rates in a number of existing localities, and to add additional localities.

d. Part 2-5 is revised to make the following changes:

- (1) Reconstitute the previous rule, based on the quarter-day system, for determining the beginning of the eligibility period for temporary quarters subsistence expense reimbursement when en route travel incident to a change of official station and occupancy of temporary quarters occur in the same day; and

(2) Reflect the increase in the standard CONUS rate explained in a(1), above.

e. In addition to the above revisions, other clarifying and/or editorial changes have been made where indicated by change lines and highlighted in bold print.

Accordingly, the Federal Travel Regulations, are amended as indicated in the changes that follow.

Dated: July 6, 1987.

T.C. Golden,

Administrator of General Services.

For the reasons stated above, the Federal Travel Regulations, are amended as follows:

CHAPTER 1—TRAVEL ALLOWANCES

1. Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 496(c); Executive Order No. 11809, July 22, 1971; 5 U.S.C. 5702; 5 U.S.C. 5707.

PART 7—PER DIEM ALLOWANCES

2. Paragraph 1-7.3 is revised to read as follows:

1-7.3. *Rate adjustment requests for travel within CONUS.*

a. Federal agencies may submit a request to GSA for review of the subsistence costs in a particular city or area where the standard CONUS rate applies when travel to that location is repetitive or on a continuing basis and travelers' experiences indicate that the prescribed rate is inadequate. Other per diem localities listed in appendix 1-A will be surveyed on an annual basis by GSA to determine whether rates are adequate. Requests for subsistence rate adjustments shall be submitted by the agency headquarters office to the General Services Administration, Federal Supply Service, Attn: Regulations and Policy Division (FFY), Washington, DC 20406. Agencies should designate an individual responsible for reviewing, coordinating, and submitting to GSA the requests from bureaus, subagencies, etc.

b. Requests for rate adjustments shall include a city designation and a description of the surrounding location involved (county or other defined area) and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request also must contain an estimate of the annual number of trips to the location, the average duration of such trips, and the primary purpose of travel to the locations.

3. Paragraph 1-7.4 is revised to read as follows:

1-7.4. *General rules affecting entitlement to per diem.*

a. No allowance at official station. A per diem allowance shall not be allowed within the limits of the official station (see definition in 1-1.3c(1)) or at, or within the vicinity of, the place of abode (home) from which the employee commutes daily to the official station. Agencies may define a radius or commuting area that is broader than the limits of the official station within which per diem will not be allowed for travel within one calendar day.

b. Travel of 10 hours or less (10-hour rule). A per diem allowance shall not be allowed when the period of official travel is 10 hours or less except as provided in 1-7.6b(1). (See also 1-7.5b(1).)

c. Beginning and ending of entitlement. For computing per diem allowances, official travel begins at the time an employee leaves his/her home, office, or other authorized point of departure and ends when the traveler returns to his/her home, office, or other authorized point at the conclusion of the trip.

d. Deductions for meals and/or lodgings furnished. Where meals and/or lodging are furnished without charge or at a nominal cost by a Federal Government agency at a temporary duty station, an appropriate deduction shall be made from the authorized per diem rate. (See 1-7.5a(2)(b), 1-7.8e, and 1-7.7b.)

4. Paragraph 1-7.5 is amended by revising the introductory paragraph and subparagraphs a, b, c, and d to read as follows:

1-7.5. Lodgings-plus per diem computation rules for travel within CONUS. Except as otherwise provided in Part 1-7, the per diem allowances authorized or approved for all official travel within CONUS, including travel incident to a change of official station, shall be computed under the lodgings-plus per diem system as prescribed herein. Under this system, the per diem allowance for each travel day is established on the basis of the actual amount the traveler pays for lodgings plus an allowance for meals and incidental expenses (M&IE)—the total not to exceed the applicable maximum per diem rate. The rules provided in a through d, below, shall be applied in the specific situations covered.

a. Maximum CONUS per diem rates (appendix 1-A). Maximum per diem rates prescribed under 1-7.2a for travel within CONUS are listed on appendix 1-A for certain specific localities. For all CONUS locations not specifically listed or encompassed by the defined boundaries of a listed location, a standard maximum per diem rate of \$60 is prescribed. For all CONUS locations,

whether or not they are specifically listed in appendix 1-A, the standard CONUS rate applies in certain specified travel circumstances (see b(2), below) and for subsistence allowances incident to a change of official station (see Parts 2-2, 2-4, and 2-5). The following elements comprise the per diem allowance:

(1) Maximum lodging expense allowance. The maximum per diem rates include a maximum amount for lodging expenses. The employee will be reimbursed for actual lodging costs incurred up to the applicable maximum amount listed in appendix 1-A. Receipts for lodging are required as provided in c(1), below.

(2) Meals and incidental expenses (M&IE) allowance.

(a) The maximum per diem rates include a fixed allowance for meals and for incidental expenses related to subsistence. This allowance is reflected in appendix 1-A as the M&IE rate. When the M&IE rate, or fraction thereof, is authorized or approved as provided herein, it is payable to the traveler without itemization of expenses or receipts. For partial days of travel, the M&IE rate shall be prorated as provided in b(1)(c), b(2)(a)(iii), or b(2)(c)(ii).

(b) The M&IE rate shall be allocated as shown below when making necessary deductions from the per diem for meals furnished to the employee without charge by the Federal Government (see 1-7.4d and 1-7.7b). The total amount of deductions made on partial days shall not cause the employee to receive less than the amount allocated for incidental expenses.

	M&IE rates	
	\$25	\$30
Breakfast	5	7
Lunch	5	7
Dinner	13	17
Incidentals	2	2

b. Per diem allowance computations. The per diem allowance is to be calculated using the rules stated in (1) through (4), below.

(1) Travel of 24 hours or less.

(a) 10 hours or less. Per diem shall not be allowed for travel of 10 hours or less (see 1-7.4b). This prohibition is also applicable to travel incident to a change of official station within CONUS.

(b) Exception to 10-hour rule. Per diem shall not be allowed for employees who qualify for per diem solely on the basis of working a non-standard workday (e.g., four 10-hours days or other compressed or flexible schedule). In such instances, per diem shall not be allowed for travel periods less than or

equal to the employee's workday hours plus 2 hours.

(c) More than 10 hours. When the travel period (entire trip) for which per diem has been authorized is 24 hours or less, the travel period will be divided into 6-hour periods starting from the actual time travel begins and ending with the traveler's arrival at home, office, or other authorized point, upon conclusion of the trip. The per diem allowance for the trip will be calculated as follows:

(i) Lodging not required. If lodging is not required, one-fourth of the M&IE rate applicable to the location of the temporary duty assignment will be allowed for each 6-hour period, or fraction thereof. If more than one temporary duty point is involved, the per diem allowance will be calculated using the M&IE rate prescribed for the location where the majority of the time is spent performing official business.

(ii) Lodging required. If lodging is required, the rules for travel of more than 24 hours apply.

(2) Travel of more than 24 hours. The applicable maximum per diem rate (standard CONUS or locality rate from appendix 1-A) for each calendar day of travel shall be determined by the travel status and location of the employee at 12:00 midnight and whether lodging is required at such location. When lodging is required, the applicable maximum per diem rate shall be the maximum rate prescribed in appendix 1-A for the temporary duty location, or a stopover point where lodging is obtained while en route to, from, or between temporary duty locations (see (3) and (4), below, for rules on lodging location and travel incident to a change of official station, respectively). Only one maximum rate will be applicable to a calendar day or fraction thereof. The following rules shall be applied in calculating the allowable per diem for travel of more than 24 hours.

(a) Day travel begins.

(i) Lodging required. When lodging is required on the day travel begins (day of departure from the official station or other authorized point), the per diem allowable shall be the actual cost of lodging incurred by the employee, limited to the applicable maximum lodging allowance prescribed in appendix 1-A, plus the applicable M&IE rate prorated as provided in (iii), below.

(ii) Lodging not required. When lodging is not required on the day travel begins, the per diem allowable shall be the standard CONUS M&IE rate prorated as provided in (iii), below.

(iii) Method of prorating M&IE rate. The M&IE rate shall be prorated by

dividing the day of departure into 6-hour periods starting from the actual time travel begins and running through 12:00 midnight. For each 6-hour period, or fraction thereof, one-fourth of the applicable M&IE rate shall be allowed.

(b) Full calendar days of travel.

(i) Lodging required. For each full calendar day that the employee is in a travel status and lodging is required (whether en route or at a temporary duty location), the actual cost of lodging incurred by the traveler shall be added to the applicable M&IE rate. The resulting amount, limited to the maximum per diem rate prescribed for the location in appendix 1-A, shall be the allowable per diem for the full calendar day.

(ii) Lodging not required. For any full calendar day of travel when lodging is not required (such as when employee is en route overnight returning to the official station), the maximum per diem rate shall be the M&IE rate applicable to the preceding calendar day.

(c) Day Travel ends.

(i) Determining applicable rate. For the day travel ends (when employee returns to the official station or other authorized point, or arrives at the new official station incident to a change of official station), the per diem allowable shall be the M&IE rate applicable to the preceding calendar day prorated as provided in (ii), below.

(ii) Method of prorating M&IE rate. The M&IE rate shall be prorated by dividing the day travel ends into 6-hour periods beginning at 12:01 a.m. and running until the employee arrives at home, office, or other authorized point at the conclusion of trip. For each 6-hour period, or fraction thereof, one-fourth of the applicable M&IE rate shall be allowed.

(d) Lodging obtained after midnight. Although per diem generally is based on the employee's location at midnight, there will be instances in which he/she is en route and does not arrive at the lodging location (either temporary duty location or en route stopover point) until after midnight. In such cases, the lodging shall be claimed for the preceding calendar day and the applicable maximum per diem for the preceding day will be determined as if the employee had been at the lodging location at 12:00 midnight of that day.

(3) Lodging location rules.

(a) Lodging at temporary duty location. It is presumed that the employee will obtain lodging at the temporary duty location. However, if the employee obtains lodging away from or outside the temporary duty location because of personal preference or convenience, the allowable per diem

shall be limited to the maximum per diem rate prescribed for the temporary duty location.

(b) Lodging not available at temporary duty location. In certain circumstances, lodging accommodations may not be available at the temporary duty location and the employee must obtain lodging in an adjacent locality where the prescribed maximum per diem rate is higher than the maximum per diem rate for the location of the temporary duty point. In such instances, the agency may make an administrative determination on an individual case basis to authorize or approve the higher maximum per diem rate. If the higher maximum rate is not justified and authorized in advance, the employee must furnish a statement with the travel voucher satisfactorily explaining the circumstances that caused him/her to obtain lodging in an area other than at the temporary duty point designated in the travel authorization.

(4) Maximum rate applicable to change of official station travel. The standard CONUS rate shall be the applicable maximum per diem rate for en route travel performed incident to a change of official station.

c. Receipt requirements and allowable lodging expenses.

(1) Lodging receipt requirements. Receipts shall be required to support all lodging costs for which an allowance is claimed under the lodgings-plus per diem system except that a statement instead of a receipt may be accepted for the fee or service charge incurred for the use of Government quarters. Receipts are not required when a specific or reduced rate has been authorized in advance of the travel as provided in d. below, and in 1-7.7.

(2) . . .

(a) Conventional lodging. When an employee uses conventional lodging facilities (hotels, motels, boarding houses, etc.), the allowable lodging expense will be based on the single room rate for the lodging used (for double occupancy, see c(1)(a), above). (See 1-7.9a for computing daily lodging expense when lodging is rented on a weekly or monthly basis.)

(b) Government quarters. A fee or service charge paid for the use of Government quarters is an allowable lodging expense.

(c) Lodging with friends or relatives. When the employee obtains lodging from friends or relatives (including members of the immediate family) with or without charge, no part of the per diem allowance will be allowed for lodging unless the host actually incurs

additional costs in accommodating the traveler. In such instances, the additional costs substantiated by the employee and determined to be reasonable by the agency may be allowed as a lodging expense. Neither costs based on room rates for comparable conventional lodging in the area nor flat "token" amounts will be considered as reasonable.

(d) Lodging in nonconventional facilities. When no conventional lodging facilities are present (e.g., in remote areas) or when there is a shortage of rooms because of an influx of attendees at special events (e.g., world's fairs or international sports events), costs of lodging obtained in nonconventional facilities may be allowed. Such facilities may include college dormitories or similar facilities and rooms generally not offered commercially that are made available to the public by area residents in their homes. In such cases, the traveler must provide an explanation of the circumstances which is acceptable to the agency.

(e) Use of travel trailer or camping vehicle for lodgings. A per diem allowance for lodging may be allowed when the traveler uses a travel trailer or camping vehicle while on temporary duty assignments away from his/her official station. (See 1-7.9b for per diem computations in such situations.)

d. Deviation from lodgings-plus per diem system. An agency may determine that the lodgings-plus per diem system as prescribed in 1-7.5 is not appropriate for certain travel assignment situations, such as when quarters or meals, or both, are provided at no cost or at a nominal cost by the Government or when for some other reason the subsistence costs to be incurred by the employee can be determined in advance. For example, see situations described in 1-7.7 and 1-7.9. In such instances a specific per diem rate may be established within the maximum per diem otherwise applicable to the travel situation and any appropriate reductions made in accordance with 1-7.7, provided the exception from the lodgings-plus per diem system and the specific per diem rate are authorized in advance on the travel authorization by an appropriate official of the agency concerned. Such specific per diem rate authorized on the travel authorization shall be the per diem rate payable on the travel voucher without receipts and/or itemization by the employee.

5. Paragraphs 1-7.6 is amended by revising the introductory paragraph and subparagraphs b, c, and f to read as follows:

1-7.6. Per diem computation rules for travel to, from, between, or within locations outside CONUS. Except as otherwise provided in Part 1-7, per diem allowances authorized or approved for official travel to, from, between, or within locations outside CONUS (including travel incident to a change of official station) shall be computed under the quarter-day system as provided in a through f, below.

a. Maximum per diem allowable. Per diem allowances for official travel within localities outside CONUS will be at rates not to exceed the maximum per diem rate established under 1-7.2b or c for the locality in which the travel is performed. Per diem allowances for en route travel to, from, or between localities outside CONUS will be determined as provided in c, below. Whenever lodging is not required during a calendar day of official travel under 1-7.6, the applicable maximum rate shall be reduced to reflect such fact as provided in 1-7.7a.

b. Computation of basic per diem entitlements.

(1) Travel of 10 hours or less. Per diem shall not be allowed when the travel period is 10 hours or less during the same calendar day (or employee's workday hours plus two hours for employees who would otherwise qualify for per diem solely on the basis of working a non-standard workday, e.g., four 10-hour days or other compressed or flexible schedule), except when the travel period is 6 hours or more and either begins before 6 a.m. or ends after 6 p.m. (This rule does not apply for en route travel incident to a change of official station.)

(2) Methods of prorating travel days. Basic per diem entitlements will be calculated on a calendar day basis. When a change in travel status requires a change in the applicable rate during a calendar day or a per diem allowance must be calculated for partial days of travel, the travel day will be prorated as follows:

(a) Travel of 24 hours or less. For continuous travel of 24 hours or less, the travel period will be divided into 6-hour periods starting from the actual time travel begins and ending with its completion at home, office, or other authorized point. For each 6-hour period, or fraction thereof, one-fourth of the applicable per diem rate for a calendar day will be allowed.

(b) Travel of more than 24 hours. In computing per diem allowances for travel periods covering more than 24 hours, the calendar day (midnight to midnight) shall be the unit. The calendar day shall be divided into four 6-hour periods (quarter days) and one-fourth of

the applicable per diem rate shall be allowed for each quarter day. The per diem rate in effect at the beginning of a quarter day shall continue to the end of that quarter. When the per diem rate is changed during a calendar day, such rate will take effect at the beginning of the next quarter day immediately following the quarter day in which the rate change occurred. For a partial day at the beginning or ending of a travel period, one-fourth of the applicable per diem rate for the calendar day shall be allowed for each quarter day, or fraction thereof, that the employee is in a travel status during the partial day.

(c) 30-minute rule. When the time of departure from home, office, or other authorized point at the beginning of the trip or the time of return thereto at the end of the trip involves only a 30-minute fraction of a quarter day, per diem shall not be allowed for either such quarter day unless the traveler provides a statement with the travel voucher explaining the necessity for the specific time of departure or return that is acceptable to the agency. The 30-minute rule applicable to the payment of per diem as provided herein does not apply to the beginning of continuous travel of 24 hours or less as provided in (a), above; however, it is applicable to the end of such travel.

(3) International dateline. In computing per diem in cases where the traveler crosses the international dateline (180th meridian), the actual elapsed time shall be used to compute per diem rather than calendar days.

c. Computation of per diem rates for en route travel to, from, or between locations outside CONUS. The maximum per diem rate for en route travel to, from, or between locations outside CONUS is based on the traveler's travel time (including time spent at rest stop locations or stopovers at intermediate points) as prescribed below.

(1) Duty point. As used herein, the term "duty point" means the official station outside CONUS, any other place outside CONUS at which official travel begins or ends, or the point of exit or entry within CONUS.

(2) Rates and conditions. For en route travel beyond the limits of CONUS by airplane, train, or boat (regardless of whether commercially or Government-owned), whether en route between a duty point within CONUS and a locality beyond or between localities outside CONUS, including stopovers of less than 6 hours, the maximum per diem that may be authorized or approved (except for the provisions of b(1), above), is as follows:

(a) Same day return. When the traveler departs from a duty point within CONUS or a locality outside CONUS and returns during the same calendar day to a duty point within CONUS or the locality outside CONUS, respectively, the maximum per diem rate allowable for the trip shall be that of the duty point at which the trip began. Since lodging is not required in this instance, the per diem rate applicable to any duty point within CONUS shall be the standard CONUS M&IE rate prescribed in appendix 1-A. For the same reason, the maximum per diem rate for the origin locality outside CONUS shall be reduced to an appropriate amount to reflect no lodging costs.

(b) En route less than 6 hours. For travel other than that described in (a), above, when the en route travel time is less than 6 hours between a duty point within CONUS and a duty point in a locality outside CONUS or between two duty points outside CONUS, the maximum per diem rate allowable between duty points shall be that of the destination duty point. When the destination duty point is within CONUS, the maximum per diem rate shall be the standard CONUS rate prescribed in appendix 1-A, except when a higher rate for travel time at the duty point is authorized or approved under (4)(b), below.

(c) En route 6 hours or more. When the en route travel time is 6 hours or more between the duty points described in (b), above, the per diem rate applicable for travel between the duty points is \$6, except:

(i) For vessel travel of more than 9 successive calendar days, in addition to the fractional days of embarkation and debarkation, the per diem rate for the succeeding calendar days and for the fractional day of debarkation is \$2; and

(ii) When either the \$6 or \$2 rate prescribed herein is not commensurate with a traveler's subsistence expenses, a different per diem rate may be authorized or approved not in excess of the maximum per diem rate applicable to the destination duty point or, with respect to vessel travel, not in excess of \$9, except that the rate for travel by the Alaska Ferry System shall not exceed the standard M&IE rate for CONUS.

(3) Stopovers of 6 hours or more. When the en route travel period between origin and destination duty points involves a stopover at an intermediate point and the time spent at the stopover point is 6 hours or more, the per diem rate for the travel period at the stopover point shall be the rate applicable to the locality in which the stopover takes place. The applicable per

diem rate shall take effect at the beginning of the quarter day following the actual time of arrival at the intermediate stopover point. For purposes of determining per diem rates for en route travel, the length of time at an intermediate stopover point is controlling regardless of whether the stopover is necessary because of official duty, common carrier scheduling, or an authorized rest stop (see (6), below). Stopovers of less than 6 hours are considered part of the en route travel as provided in (2), above.

(4) *Travel beginning or ending within CONUS.* When the travel covered by this paragraph c, begins or ends at a place within CONUS other than a duty point, the maximum per diem applicable to the travel between such place and the duty point (place of exit or entry) within CONUS, including time in a travel status at the duty point or an intermediate location, shall be determined as provided in (a) through (c), below.

(a) Generally, the applicable maximum per diem rate shall be the standard CONUS maximum per diem rate prescribed in appendix 1-A, except that such maximum rate shall be limited to the M&IE portion of the standard CONUS rate in the following travel circumstances:

(i) For the day travel begins when the traveler is in an en route travel status at 12:00 midnight and no lodging is required that day because of the en route travel status; or

(ii) For the day(s) of return (or day travel ends) when lodging is not required because of en route status at 12:00 midnight or arrival at home or official station;

(b) When either the standard CONUS maximum per diem rate, or the M&IE portion thereof, is not commensurate with a traveler's subsistence expenses (such as when lodging is required at the duty point or an intermediate location), a different rate may be authorized or approved not in excess of the maximum per diem rate applicable for the locality involved; or

(c) When the travel described above involves temporary duty within CONUS and lodging is required within CONUS, per diem shall be computed under the lodgings-plus per diem system as provided in 1-7.8f. In such instances, the provisions of this paragraph (4) apply only to travel days prior to or immediately following the travel days for which the lodgings-plus per diem system is applicable.

(5) *Travel beginning or ending outside CONUS.* When en route travel outside CONUS is required between a home, official station, or some other location and the common carrier or other

terminal or between localities outside CONUS, and such travel is by a mode of transportation other than airplane, train, or boat, per diem for the quarter days involved will be based on the locality rate where the traveler is located at the beginning of each quarter. Per diem for the first quarter day of the travel will be at the origin rate.

(6) *Rest stops.*

(a) When travel is direct between duty points which are separated by several time zones and at least one duty point is outside CONUS, a rest period not in excess of 24 hours may be authorized or approved when air travel between the duty points is by less-than-first-class accommodations and the scheduled flight time (including stopovers of less than 6 hours) exceeds 14 hours by a direct or usually traveled route.

(b) The rest stop may be authorized at any intermediate point, including points within CONUS, provided the point is midway in the journey or as near to midway as requirements for use of U.S. flag air carriers and carrier scheduling permit.

(c) A rest stop shall not be authorized when an employee, for personal convenience, elects to travel by an indirect route resulting in excess travel time.

(d) The per diem rate for the rest stop shall be the rate applicable for the rest stop location (see (3), above).

(e) When carrier schedules or the requirements for use of U.S. flag air carriers preclude an intermediate rest stop, or a rest stop is not authorized, it is recommended that the employee be scheduled to arrive at the temporary duty point with sufficient time to allow a reasonable rest period before reporting for duty. (See 1-3.6 for guidelines on the use of U.S. flag carriers.)

d. *When lodging is not located at duty point outside CONUS.* When suitable lodging is not available at place of temporary duty in a locality outside CONUS and the employee is required to obtain lodging in a different locality, the maximum applicable per diem rate shall be that of the locality in which the lodging is obtained.

e. *Deductions for meals and/or lodgings furnished.* Where meals and/or lodging are furnished without charge or at a nominal cost by a Federal Government agency at a temporary duty station, an appropriate deduction shall be made from the authorized per diem rate. (See 1-7.7b.)

f. *Travel involving temporary duty within CONUS.* As a general rule, when travel covered under 1-7.5 involves temporary duty within CONUS and lodging is required within CONUS

incident to such temporary duty either at the temporary duty location, the entry or exit duty point within CONUS, or an intermediate stopover point within CONUS, the lodgings-plus per diem system prescribed in 1-7.5 is applicable to the travel time within CONUS. For the remainder of the trip, or when temporary duty is of such short duration that lodging is not required, per diem will be computed under the quarter-day system. The specific rules provided in (1) through (3), below, will be applied to determine specific time periods for application of the lodgings-plus system.

(1) *Round-trip travel beginning outside CONUS.* When round-trip travel is from a duty point outside CONUS for temporary duty within CONUS, the lodgings-plus per diem system takes effect at 12:01 a.m. on the first day lodging is required within CONUS and extends through 12:00 midnight of the last calendar day that lodging is required within CONUS.

(2) *Travel beginning within CONUS.* When travel begins within CONUS and temporary duty is performed within CONUS prior to departure from the CONUS exit duty point, the lodgings-plus per diem system will be in effect beginning on the day of departure from home, office, or other authorized point within CONUS through 12:00 midnight of the last calendar day that lodging is required within CONUS.

(3) *Travel ending within CONUS.* When travel ends within CONUS and temporary duty is performed within CONUS prior to conclusion of the travel, the lodgings-plus per diem system will be in effect beginning at 12:01 a.m. on the first day lodging is required within CONUS through the time of arrival at home, office, or other authorized point within CONUS upon completion of the travel.

6. Paragraph 1-7.7 is amended by revising the introductory paragraph and subparagraph b to read as follows:

1-7.7. *Reductions in maximum per diem rates when appropriate (worldwide).* An agency may, in individual cases or situations, authorize a reduced per diem rate under certain circumstances, such as when lodgings and/or meals are obtained by the employee at a reduced cost or furnished to the employee at no cost or a nominal cost by the Government; or when for some other reason the subsistence costs to be incurred by the employee can be determined in advance. In exercising its responsibilities outlined in 1-7.1e, the agency should consider any known factors that will cause the traveler's subsistence expenses in a specific situation to be less than the applicable

maximum rates prescribed under 1-7.2. If it can be determined in advance of the travel that such factors are present, the agency should authorize a reduced rate that is commensurate with the known expense levels. Such reduced rate authorized on the travel authorization shall be the per diem rate payable on the travel voucher without receipts and/or itemization by the employee. When reduced rate situations involve partial days, agencies may either prorate the rate by quarters or prescribe a special reduced rate for the partial travel days. Specific guidelines for reducing rates and situations where reduced rates may be appropriate are provided below.

b. When meals/lodgings are furnished by the Government. When all or part of the meals and/or lodging are furnished at no cost or at a nominal cost to the employee by the Federal Government, the applicable maximum per diem rate or the M&IE rate, as appropriate, shall be reduced to a daily amount commensurate with the remaining expenses expected to be incurred by the employee. If a reduced per diem rate was not authorized in advance of the travel, an appropriate deduction shall be made from the total per diem payable on the travel voucher. (See 1-7.4d, 1-7.5a(2)(b), and 1-7.6e.)

7. Paragraph 1-7.8 is revised to read as follows:

1-7.8. "Mixed travel" reimbursement. "Mixed travel" occurs when official travel within a single trip is subject to payment of the daily subsistence expenses under different reimbursement systems (i.e., CONUS lodgings-plus, outside CONUS quarter-day, or actual subsistence expense).

a. Transition between reimbursement systems. Reimbursement for subsistence expenses will be computed under only one reimbursement system for each calendar day except when the provisions of 1-8.2b apply. When travel to or from locations outside CONUS involves temporary duty (with lodging) within CONUS, the rules in 1-7.6f govern the transition between the CONUS lodgings-plus system and the outside CONUS quarter-day system. When actual expense reimbursement for certain travel days is intermittent with the per diem method for others, the rules in 1-8.6 govern.

b. Determining maximum daily rate(s). Reimbursement for each day will be subject to only one maximum rate, except for travel under 1-7.6 which may require different rates within a calendar day due to the quarter-day per diem calculation method. The rules for determining maximum rates within each

reimbursement system are provided in 1-7.5, 1-7.8, and 1-8.

8. Paragraph 1-7.9a(2) is revised to read as follows:

1-7.9. Per diem allowance computations for special situations (worldwide).

a. Per diem for weekly or monthly rentals.

(1) . . .

(2) **Computation of daily lodging costs.** When the employee obtains lodging on a weekly or monthly rental basis, the daily lodging cost shall be computed by dividing the total lodging cost for the expenses listed in (1), above, by the number of days the accommodations are actually occupied, provided that the employee acts prudently in renting by the week or month, and that the cost to the Government does not exceed the cost of renting conventional lodging at a daily rate. Otherwise the daily lodging cost shall be computed by dividing by the number of days in the rental period (e.g., 7 or 30 days, as appropriate).

9. Paragraph 1-8.3 is amended by revising the introductory paragraph and subparagraph a to read as follows:

PART 8—REIMBURSEMENT OF ACTUAL SUBSISTENCE EXPENSES

1-8.3. Maximum daily rates and reimbursement limitations. The maximum amount of reimbursement for actual subsistence expenses that may be authorized or approved for each calendar day or fraction thereof is as provided in a and b, below. Agencies shall determine appropriate and necessary daily maximum rates not to exceed these amounts when authorizing or approving travel under this Part 1-8. Maximum daily rates need not be prorated for fractions of a day; however, see 1-8.3a(2) and b(2) for reimbursement limitations.

a. Travel within CONUS.

(1) **Maximum daily rates.** For travel within CONUS, the maximum daily rate for subsistence expenses shall not exceed 150 percent of the applicable maximum per diem rate (rounded to the next higher dollar) prescribed in appendix 1-A for the travel assignment location.

(2) **Reimbursement limitation.**

(a) When the actual subsistence expenses incurred during any one day are less than the maximum daily rate authorized, the employee shall be reimbursed only for the lesser amount. Expenses incurred and claimed (including those for fractional days) shall be reviewed and allowed only to the extent determined to be necessary

and reasonable by the agency (see 1-8.5b). Reimbursement for meals and incidental expenses shall not, under any circumstances, exceed 150 percent of the M&IE rate applicable to the temporary duty location.

(b) The agency may limit reimbursement for meals and incidental expenses to 100 percent of the applicable M&IE rate and deviate from the requirement for receipts and/or itemization of such expenses as provided in 1-8.5a(3). In such instances the M&IE rate shall be prorated for partial days of travel as provided in 1-7.5b.

10. Paragraph 1-8.4b is amended by revising subparagraph b to read as follows:

1-8.4. Authorization or approval.

a. . . .

b. Prior authorization of actual expense travel. Normally, travel on an actual expense basis should be authorized in advance and the daily maximum rate authorized by the agency shall be started in the travel authorization.

11. Paragraph 1-8.5a is amended by adding subparagraph a(3) to read as follows:

1-8.5. Requirements for documentation, review, and administrative controls.

a. Documentation of actual expenses on the voucher.

(1) . . .

(2) . . .

(3) **Exception to receipts and/or itemization requirement.** When an agency limits reimbursement for meals and incidental expenses to 100 percent of the applicable M&IE rate (as provided in 1-8.3a(2)(b)), receipts and/or itemization of meals and incidental expenses as provided in (1) and (2), above, need not be required except at agency discretion.

12. Paragraph 1-8.6 is revised to read as follows:

1-8.6. Mixed travel (per diem and actual subsistence expense) reimbursement.

a. Generally, when actual expense reimbursement is authorized or approved for a particular temporary duty location, and is the only reimbursement system involved, the partial day of travel to and from that location also will be on an actual expense basis. However, if the en route travel to or from the actual expense location entails more than one day, the agency may authorize actual expense

reimbursement, or per diem in accordance with Part 1-7, whichever is administratively advantageous and commensurate with the expenses expected to be incurred by the traveler.

b. If actual expense reimbursement authorized for particular locations is intermingled with per diem at other locations in a single trip, either within or outside CONUS, the agency shall determine when the transition between reimbursement systems occurs, provided that only one method or system is authorized for any given calendar day.

CHAPTER 2—RELOCATION ALLOWANCES

PART 5—SUBSISTENCE WHILE OCCUPYING TEMPORARY QUARTERS

13. Paragraph 2-5.2g(1) is revised to read as follows:

2-5.2. *Conditions and limitations for eligibility.*

g. *Effect of partial days on eligibility period.* Occupancy of temporary quarters for less than a whole day constitutes one full calendar day of the eligibility period.

(1) *Claim for temporary quarters when occupancy begins the same day en route travel ends.* The guidelines in

(a) and (b), below, shall be used for determining the eligibility period for temporary quarters subsistence expense reimbursement and in computing maximum reimbursement when occupancy of temporary quarters for reimbursement purposes occurs the same day that en route travel per diem ends.

(a) *En route travel of more than 24 hours.* When en route travel is more than 24 hours, the eligibility period for reimbursement for temporary quarters subsistence expenses shall start at the beginning of the calendar day quarter immediately following the calendar day quarter in which en route travel per diem ends.

(b) *En route travel of 24 hours or less.* When en route travel is 24 hours or less, the eligibility period for reimbursement for temporary quarters subsistence expenses shall start at the beginning of the same calendar day quarter in which en route travel per diem ends.

14. Paragraphs 2-5.4c(1), (2)* NOTE, and (3) are amended to read as follows:
2-5.4. *Allowable rate.*

c. . . .
(1)

(a) For temporary quarters located in the conterminous United States, the applicable maximum per diem rate is the standard CONUS rate (\$80) prescribed under 1-7.5a.

(2)

*Note.—If the temporary quarters occupied are in the conterminous United States, the maximum daily rates prescribed under (a), (b), (c), and (d), above, are \$80, \$40, \$40, and \$30, respectively.

(3)

(a) For an employee, or unaccompanied spouse, the daily rate shall not exceed \$45;

(b) For an accompanying spouse, the daily rate shall not exceed \$30;

(c) For each other family member 12 years of age or older, the daily rate shall not exceed \$30; and

(d) For each family member under 12 years of age, the daily rate shall not exceed \$22.50.

Appendix 1-A, Prescribed Maximum Per Diem Rates for CONUS

15. Appendix 1-A of the FTR is revised to read as follows:

BILLING CODE 9830-AM-22

APPENDIX 1-A, PRESCRIBED MAXIMUM PER DIEM RATES FOR CONUS

The maximum rates listed below are prescribed under paragraph 1-7.2 of these regulations (Federal Travel Regulations (FTR)) for reimbursement of subsistence expenses incurred during official travel within CONUS (the conterminous United States). The amount shown in column (a) is the maximum that will be reimbursed for lodging expenses including applicable taxes. The M&IE rate shown in column (b) is a fixed amount allowed for meals and incidental expenses related to subsistence. The per diem payment calculated in accordance with Part 1-7 of the FTR for lodging expenses plus the M&IE rate may not exceed the maximum per diem rate shown in column (c).

Per Diem Locality	Maximum Lodging Amount (a)	+	M&IE Rate (b)	=	Maximum Per Diem Rate (c) 4/
CONUS, Standard rate	\$35		\$25		\$60
(Applies to all locations within CONUS not specifically listed below or encompassed by the boundary definition of a listed point. However, the standard CONUS rate applies to all locations within CONUS, including those defined below, under certain specified travel circumstances and for certain relocation subsistence allowances. See Parts 1-7, 2-2, 2-4 and 2-5 of the FTR.)					
Key City 1/	County and/or other defined location 2/ 3/				
ALABAMA					
Anniston	Calhoun	40	25		65
Birmingham	Jefferson	50	25		75
Dothan	Houston	38	25		63
Gadsden	Etowah	38	25		63
Gulf Shores	Baldwin	42	25		67
Huntsville	Madison	48	25		73
Mobile	Mobile	38	25		63
Montgomery	Montgomery	42	25		67
Sheffield	Colbert	61	25		86
ARIZONA					
Bullhead City	Mohave	40	25		65
Chinle	Apache	44	25		69
Kayenta	Navajo	54	25		79
Page/Flagstaff	Coconino	45	25		70
Phoenix/Scottsdale	Maricopa	50	25		75
Prescott	Yavapai	48	25		73
Sierra Vista	Cochise	42	25		67
Tucson	Pima County;	48	25		73
	Davis-Monthan AFB				
Yuma	Yuma	43	25		68
ARKANSAS					
Fayetteville	Washington	39	25		64
Fort Smith	Sebastian	43	25		68
Helena	Phillips	45	25		70
Hot Springs	Garland	45	25		70
Little Rock	Pulaski	48	25		73
CALIFORNIA					
Chico	Butte	46	25		71
Death Valley	Inyo	85	33		118
El Centro	Imperial	45	25		70
Eureka	Humboldt	39	25		64
Fresno	Fresno	50	25		75
Los Angeles	Los Angeles, Kern, Orange & Ventura Counties; Edwards AFB; Naval Weapons Center & Ordnance Test Station, China Lake	77	33		110

Per Diem Locality		Maximum Lodging Amount (a)	Maximum M&IE Rate (b)	Maximum Per Diem Rate (c)
Key City 1/	County and/or other defined location 2/ 3/	+	=	4/
Monterey	Monterey	66	25	91
Palm Springs	Riverside	72	33	105
Redding	Shasta	50	25	75
Sacramento	Sacramento	54	33	87
San Diego	San Diego	67	33	100
San Francisco	San Francisco, Alameda, Contra Costa & Marin	62	33	95
San Jose	Santa Clara	57	33	90
San Luis Obispo	San Luis Obispo	53	25	78
San Mateo	San Mateo	66	33	99
Santa Barbara	Santa Barbara	71	33	104
Santa Cruz	Santa Cruz	66	33	99
South Lake Tahoe	Dorado	52	33	85
Stockton	San Joaquin	45	25	70
Tahoe City	Placer	46	25	71
Vallejo	Solano	45	25	70
Victorville/Barstow	San Bernardino	47	25	72
Visalia	Tulare	58	25	83
West Sacramento	Yolo	47	25	72
Yosemite Nat'l Park	Mariposa	68	33	101
COLORADO				
Aspen	Pitkin	72	33	105
Boulder	Boulder	58	33	91
Colorado Springs	El Paso	43	25	68
Denver	Denver, Adams, Arapahoe & Jefferson	63	33	96
Durango	La Plata	46	25	71
Glenwood Springs	Garfield	45	25	70
Grand Junction	Mesa	37	25	62
Gunnison	Gunnison	43	25	68
Keystone/Silverthorne	Summit	50	33	83
Pagosa Springs	Archulete	43	25	68
Pueblo	Pueblo	37	25	62
Steamboat Springs	Routt	48	25	73
Trinidad	Las Animas	39	25	64
Vail	Eagle	77	33	110
CONNECTICUT				
Bridgeport/Danbury	Fairfield	69	25	94
Hartford	Hartford & Middlesex	50	33	83
New Haven	New Haven	67	25	92
New London/Groton	New London	50	25	75
Putnam/Danielson	Windham	56	25	81
Salisbury	Windham	49	33	82
DELAWARE				
Dover		42	25	67
Lewes		44	25	69
Wilmington		61	25	86
	Church, gton, the es in a)	84	33	117
		60	25	85
		88	25	113
		50	25	75
		41	25	66

Per Diem Locality	County and/or other defined location 2/ 3/	Maximum Lodging Amount (a)	M&IE Rate (b)	Maximum Per Diem Rate (c)	4/
Fort Lauderdale	Broward	55	25	80	
Fort Myers	Lee	56	25	81	
Fort Pierce	Saint Lucie	45	25	70	
Fort Walton Beach	Okaloosa	50	25	75	
Gainesville	Alachua	46	25	71	
Jacksonville	Duval County; Naval Station Mayport; (also see St. Marys, GA)	46	25	71	
Kissimmee	Osceola	46	25	71	
Lakeland	Polk	39	25	64	
Miami	Dade & Monroe	53	33	86	
Naples	Collier	60	25	85	
Orlando	Orange	54	25	79	
Panama City	Bay	50	25	75	
Pensacola	Escambia	44	25	69	
Punta Gorda	Charlotte	55	25	80	
Sarasota	Sarasota	37	25	62	
Saint Augustine	Saint Johns	48	25	73	
Stuart	Martin	60	25	85	
Tallahassee	Leon	43	25	68	
Tampa/St. Petersburg	Hillsborough & Pinellas	52	25	77	
Vero Beach	Indian River	38	25	63	
West Palm Beach	Palm Beach	60	25	85	
GEORGIA					
Albany	Dougherty	46	25	71	
Athens	Clarke	39	25	64	
Atlanta	Clayton, De Kalb, Fulton & Cobb	69	33	102	
Augusta	Richmond	44	25	69	
Brunswick	Glynn	43	25	68	
Columbus	Muscogee	40	25	65	
Macon	Bibb (including Robins AFB)	39	25	64	
Savannah	Chatham	41	25	66	
St. Marys	The Naval Submarine Base, Kings Bay (See also Jacksonville, FL)	46	25	71	
IDAHO					
Boise	Ada	44	25	69	
Coeur d'Alene	Kootenai	41	25	66	
Ketchum/Sun Valley	Blaine	49	25	74	
Lewiston	Hex Perce	36	25	61	
Pocatello	Bannock	44	25	69	
Stanley	Custer	40	25	65	
ILLINOIS					
Alton	Madison	47	25	72	
Champaign/Urbana	Champaign	41	25	66	
Chicago	Du Page, Cook & Lake	80	33	113	
Danville	Vermilion	41	25	66	
Dixon	Lee	43	25	68	
East St. Louis	Saint Clair	37	25	62	
Macomb	McDonough	41	25	66	
Mattoon	Coles	46	25	71	
Peoria	Peoria	53	25	78	
Rockford	Winnebago	46	25	71	
Rock Island/Moline	Rock Island	48	25	73	
Springfield	Sangamon	47	25	72	
INDIANA					
Anderson	Madison	47	25	72	
Bloomington	Monroe	45	25	70	
Burlington Beach/ Valparaiso	Porter	39	25	64	

Per Diem Locality		Maximum Lodging Amount	M&IE Rate	Maximum Per Diem Rate
Key City 1/	County and/or other defined location 2/ 3/	(a)	(b)	(c) 4/
Charlestown/ Jeffersonville	Clark County; Indiana Army Ammunition Plant	46	25	71
Columbus	Bartholomew	39	25	64
Dale	Spencer	38	25	63
Elkhart	Elkhart	50	25	75
Fort Wayne	Allen	52	25	77
Gary	Lake	40	25	65
Indianapolis	Marion County; Fort Benjamin Harrison	55	25	80
Lafayette	Tippecanoe	47	25	72
Logansport	Cass	38	25	63
Michigan City	La Porte	38	25	63
Muncie	Delaware	48	25	73
Nashville	Brown	50	25	75
South Bend	St. Joseph	48	25	73
IOWA				
Bettendorf/Davenport	Scott	44	25	69
Cedar Rapids	Linn	40	25	65
Des Moines	Polk	48	25	73
Dubuque	Dubuque	38	25	63
Iowa City	Johnson	41	25	66
Sioux City	Woodbury	39	25	64
Waterloo	Black Hawk	39	25	64
KANSAS				
Garden City	Finney	37	25	62
Hays	Ellis	37	25	62
Kansas City	Johnson & Wyandotte (See also Kansas City, MO)	60	25	85
Manhattan	Riley	43	25	68
Topeka	Shawnee	41	25	66
Wichita	Sedgwick	53	25	78
KENTUCKY				
Bowling Green	Warren	38	25	63
Covington	Kenton	46	25	71
Frankfort	Franklin	42	25	67
Hopkinsville	Christian	45	25	70
Lexington	Fayette	52	25	77
Louisville	Jefferson	46	25	71
Owensboro	Daviess	36	25	61
Somerset	Oykasju	37	25	62
LOUISIANA				
Alexandria	Rapides Parish	43	25	68
Baton Rouge	East Baton Rouge Parish	50	25	75
Bossier City	Bossier Parish	57	25	82
Gonzales	Ascension Parish	51	25	76
Lafayette	Lafayette Parish	41	25	66
Lake Charles	Calcasieu Parish	42	25	67
Monroe	Ouachita Parish	41	25	66
New Orleans	Parishes of Jefferson, Orleans, Plaquemines & St. Bernard	52	33	85
Shreveport	Caddo Parish	50	25	75
Slidell	St. Tammany Parish	40	25	65
MAINE				
Auburn	Androscoggin	56	25	81
Augusta	Kennebec	43	25	68
Bangor	Penobscot	48	25	73
Bar Harbor	Hancock	60	25	85
Bath	Sagadahoc	62	25	87

Per Diem Locality		Maximum Lodging Amount	M&IE Rate	Maximum Per Diem Rate
Key City 1/	County and/or other defined location 2/ 3/	(a) +	(b) =	(c) 4/
Kittery	Portsmouth Naval Shipyard (See also Portsmouth, NH)	56	25	81
Portland	Cumberland	62	25	87
Presque Isle	Aroostook	38	25	63
Rockport	Knox	62	25	87
Sanford	York	38	25	63
South Paris	Oxford	36	25	61
Wiscasset	Lincoln	42	25	67
MARYLAND				
(For the counties of Montgomery and Prince Georges, see District of Columbia)				
Annapolis	Anne Arundel	70	25	95
Baltimore	Baltimore & Harford	50	33	83
Columbia	Howard	87	33	120
Cumberland	Allegany	43	25	68
Easton	Talbot	46	25	71
Frederick	Frederick	52	25	77
Hagerstown	Washington	46	25	71
Lexington Park/St. Inigoes/Leonardtwn	St. Marys	47	25	72
Lusby	Calvert	55	25	80
Ocean City	Worcester	82	33	115
Salisbury	Wicomico	47	25	72
Waldorf	Charles	54	25	79
MASSACHUSETTS				
Andover	Essex	81	33	114
Boston	Middlesex, Norfolk & Suffolk	75	33	108
Greenfield	Franklin	51	25	76
Hyannis	Barnstable	56	25	81
Martha's Vineyard/ Nantucket	Dukes & Nantucket	93	33	126
New Bedford	Bristol	46	25	71
Northampton	Hampshire	50	25	75
Pittsfield	Berkshire	48	25	73
Plymouth	Plymouth	86	25	111
Springfield	Hampden	55	25	80
Worcester	Worcester	55	25	80
MICHIGAN				
Adrian	Lenawee	37	25	62
Ann Arbor	Washtenaw	61	25	86
Battle Creek	Calhoun	40	25	65
Bay City	Bay	42	25	67
Boyer City	Charlevoix	62	25	87
Cadillac	Wexford	46	25	71
Detroit	Wayne	63	33	96
Flint	Genesee	38	25	63
Gaylord	Otsego	53	25	78
Grand Rapids	Kent	48	25	73
Houghton Lake	Roscommon	52	25	77
Ironwood	Gogebic	37	25	62
Jackson	Jackson	47	25	72
Kalamazoo	Kalamazoo	55	25	80
Lansing/East Lansing	Ingham	46	25	71
Mackinac Island	Mackinac	54	25	79
Midland	Midland	49	25	74
Mount Pleasant	Isabella	43	25	68
Muskegon	Muskegon	37	25	62

<u>Per Diem Locality</u>		<u>Maximum Lodging Amount</u>	<u>M&IE Rate</u>	<u>Maximum Per Diem Rate</u>
<u>Key City 1/</u>	<u>County and/or other defined location 2/ 3/</u>	<u>(a) +</u>	<u>(b) =</u>	<u>(c) 4/</u>
Pontiac	Oakland	48	25	73
Port Huron	St. Clair	42	25	67
Saginaw	Saginaw	44	25	69
St. Joseph/Benton Harbor/Niles	Berrien	43	25	68
Three Rivers	Saint Joseph	37	25	62
Traverse City	Grand Traverse	53	25	78
Warren	Macomb	43	25	68
MINNESOTA				
Bemidji	Beltrami	40	25	65
Brainerd	Crow Wing	42	25	67
Duluth	St. Louis	42	25	67
Minneapolis/St. Paul	Anoka, Hennepin & Ramsey Counties; Fort Snelling Military Reservation & Navy Astronautics Group (Detachment BRAVO), Rosemount	52	25	77
Rochester	Olmsted	51	25	76
St. Cloud	Benton, Sherburne & Stearns	36	25	61
MISSISSIPPI				
Jackson	Hinds	50	25	75
Natchez	Adams	45	25	70
Oxford	Lafayette	36	25	61
Vicksburg	Warren	39	25	64
MISSOURI				
Cape Girardeau	Cape Girardeau	42	25	67
Columbia	Boone	47	25	72
Jefferson City	Cole	44	25	69
Kansas City	Clay, Jackson & Platte (See also Kansas City, KS)	60	25	85
Lake Ozark	Miller	36	25	61
Osage Beach	Camden	64	25	89
Springfield	Greene	50	25	75
St. Louis	St. Charles & St. Louis	57	25	82
MONTANA				
Great Falls	Cascade	39	25	64
Helena	Lewis & Clark	37	25	62
NEBRASKA				
Grand Island	Hall	37	25	62
Lincoln	Lancaster	41	25	66
Norfolk	Madison	36	25	61
Omaha	Douglas	50	25	75
NEVADA				
Elko	Elko	46	25	71
Las Vegas	Clark County; Nellis AFB	69	33	102
Reno	Washoe	44	25	69
NEW HAMPSHIRE				
Concord	Merrimack	49	25	74
Conway	Carroll	81	25	106
Durham	Strafford	64	25	89
Laconia	Belknap	64	25	89

Per Diem Locality		Maximum Lodging Amount	+	M&IE Rate	=	Maximum Per Diem Rate	
Key City 1/	County and/or other defined location 2/ 3/	(a)		(b)		(c)	4/
Manchester	Hillsborough	57		25		82	
Portsmouth/Newington	Rockingham County; Pease AFB (See also Kittery, ME)	56		25		81	
Woodsville	Grafton	40		25		65	
NEW JERSEY							
Atlantic City	Atlantic	103		33		136	
Belle Mead	Somerset	60		25		85	
Camden	Camden	50		25		75	
Dover	Morris County; Picatinny Arsenal	62		25		87	
Eatontown	Monmouth County; Fort Monmouth	50		33		83	
Edison	Middlesex	50		25		75	
Millville	Cumberland	43		25		68	
Newark	Bergen, Essex, Hudson, Passaic & Union	75		33		108	
Ocean City/Cape May	Cape May	90		33		123	
Princeton/Trenton	Mercer	77		33		110	
Salem	Salem	57		25		82	
Tom's River	Ocean	74		25		99	
NEW MEXICO							
Albuquerque	Bernalillo	59		25		84	
Artesia	Eddy	39		25		64	
Cloudcroft	Otero	62		33		95	
Farmington	San Juan	47		25		72	
Gallup	McKinley	47		25		72	
Grants	Cibola	41		25		66	
Hobbs	Lea	38		25		63	
Las Cruces/White Sands	Dona Ana	43		25		68	
Las Vegas	San Miguel	44		25		69	
Los Alamos	Los Alamos	44		25		69	
Raton	Colfax	52		25		77	
Roswell	Chaves	38		25		63	
Santa Fe	Santa Fe	62		33		95	
Silver City	Grant	37		25		62	
Taos	Taos	49		25		74	
Tucumcari	Quay	44		25		69	
NEW YORK							
Albany	Albany	59		25		84	
Batavia	Genesee	55		25		80	
Binghamton	Broome	53		25		78	
Buffalo	Erie	50		25		75	
Catskill	Greene	38		25		63	
Corning	Steuben	56		25		81	
Elmira	Chemung	49		25		74	
Glens Falls	Warren	43		25		68	
Ithaca	Tompkins	57		25		82	
Jamestown	Chautauqua	39		25		64	
Kingston	Ulster	56		25		81	
Lake Placid	Essex	72		25		97	
Monticello	Sullivan	54		33		87	
New York City	The boroughs of Bronx, Brooklyn, Manhattan, Queens & Staten Island; Nassau & Suffolk Counties	103		33		136	
Niagara Falls	Niagara	55		25		80	

Per Diem Locality		Maximum Lodging Amount (a)	+	M&IE Rate (b)	=	Maximum Per Diem Rate (c)	4/
Key City 1/	County and/or other defined location 2/ 3/						
Owego	Tioga	39		25		64	
Poughkeepsie	Dutchess	66		25		91	
Rochester	Monroe	63		25		88	
Saratoga Springs	Saratoga	45		33		78	
Schenectady	Schenectady	54		25		79	
Syracuse	Onondaga	57		25		82	
Troy	Rensselaer	55		25		80	
Utica	Oneida	54		25		79	
Watertown	Jefferson	47		25		72	
Watkins Glen	Schuyler	72		25		97	
West Point	Orange	43		25		68	
White Plains	Westchester	84		33		117	
NORTH CAROLINA							
Asheville	Buncombe	45		25		70	
Boone	Watauga	38		25		63	
Chapel Hill	Orange	51		25		76	
Charlotte	Mecklenburg	56		25		81	
Duck	Dare	57		25		82	
Durham	Durham	36		25		61	
Elizabeth City	Pasquotank	51		25		76	
Fayetteville	Cumberland	39		25		64	
Greenville	Pitt	57		25		82	
High Point/Greensboro	Guilford	52		25		77	
Kinston	Lenoir	44		25		69	
Morehead City	Carteret	53		25		78	
Raleigh	Wake	56		25		81	
Wilmington	New Hanover	45		25		70	
Winston-Salem	Forsyth	48		25		73	
NORTH DAKOTA							
Bismarck	Burleigh	44		25		69	
Fargo	Cass	50		25		75	
Grand Forks	Grand Forks	45		25		70	
Minot	Ward	46		25		71	
OHIO							
Akron	Summit	52		25		77	
Bellevue	Huron	55		25		80	
Bridgeport/Martins Ferry/Belaire	Belmont	38		25		63	
Chillicothe	Ross	42		25		67	
Cincinnati/Evendale	Hamilton & Warren	50		25		75	
Cleveland	Cuyahoga	57		33		90	
Columbus	Franklin	54		25		79	
Dayton	Montgomery County; Wright-Patterson AFB	59		25		84	
Defiance	Defiance	40		25		65	
East Liverpool	Columbiana	46		25		71	
Elyria	Lorain	49		25		74	
Geneva	Ashtabula	50		25		75	
Hamilton/Fairfield	Butler	45		25		70	
Ironton	Lawrence	37		25		62	
Lancaster	Fairfield	40		25		65	
Lima	Allen	42		25		67	
Port Clinton	Ottawa	54		25		79	
Portsmouth	Scioto	42		25		67	
Sandusky	Erie	55		25		80	
Springfield	Clark	43		25		68	
Tinney/Fremont	Sandusky	42		25		67	
Toledo	Lucas	50		25		75	
Napakoneta	Auglaize	44		25		69	

Per Diem Locality		Maximum Lodging Amount (a)	M&IE Rate (b)	Maximum Per Diem Rate (c)
Key City 1/ County and/or other defined location 2/ 3/		+	=	4/
OKLAHOMA				
Ada	Postotoc	39	25	64
Bartlesville	Washington	46	25	71
Muskogee	Muskogee	36	25	61
Norman	Cleveland	44	25	69
Oklahoma City	Oklahoma	47	25	72
Stillwater	Payne	43	25	68
Tulsa	Osage, Tulsa & Washington	39	25	64
OREGON				
Beaverton	Washington	46	25	71
Bend	Deschutes	37	25	62
Clackamas	Clackamas	46	25	71
Coos Bay	Coos	45	25	70
Lincoln City	Lincoln	45	25	70
Portland	Multnomah	50	25	75
Salem	Marion	37	25	62
Seaside	Clatsop	66	25	91
PENNSYLVANIA				
Allentown	Lehigh	48	25	73
Altoona	Blaire	42	25	67
Bloomsburg	Columbia	40	25	65
Chester	Delaware	46	25	71
Du Bois	Clearfield	51	25	76
Easton	Northampton	62	25	87
Erie	Erie	41	25	66
Gettysburg	Adams	49	25	74
Harrisburg	Dauphin	60	25	85
Johnstown	Cambria	53	25	78
King of Prussia/ Ft. Washington	Montgomery County, except Bala Cynwyd (See also Philadelphia, PA)	63	25	88
Lancaster	Lancaster	63	25	88
Mansfield	Tioga	49	25	74
Mechanicsburg	Cumberland	36	25	61
Mercer	Mercer	54	25	79
Philadelphia	Philadelphia County; city of Bala Cynwyd in Montgomery County	74	33	107
Pittsburgh/Monroeville	Allegheny	55	25	84
Reading	Berks	47	25	72
Scranton	Lackawanna	51	25	76
Shippingport	Beaver	44	25	69
Somerset	Somerset	58	25	83
State College	Centre	44	25	69
Uniontown	Fayette	73	25	98
Valley Forge	Chester	80	33	113
Warminster	Bucks County; Naval Air Development Center	53	25	78
Wilkes-Barre	Luzerne	53	25	78
York	York	50	25	75
RHODE ISLAND				
East Greenwich	Kent County; Naval Construction Battalion Center, Davisville	54	25	79
Newport	Newport	80	33	113
Providence	Providence	71	25	96
Quonset Point	Washington	44	25	69

Per Diem Locality		Maximum Lodging Amount (a)	Maximum M&IE Rate (b)	Maximum Per Diem Rate (c)
Key City 1/	County and/or other defined location 2/ 3/			4/
SOUTH CAROLINA				
Charleston	Charleston & Berkeley	49	25	74
Columbia	Richland	48	25	73
Greenville	Greenville	42	25	67
Hilton Head	Beaufort	84	33	117
Myrtle Beach	Horry County; Myrtle Beach AFB	70	25	95
Rock Hill	York	49	25	70
Spartanburg	Spartanburg	42	25	67
SOUTH DAKOTA				
Rapid City	Pennington	49	25	74
Sioux Falls	Minnehaha	43	25	68
TENNESSEE				
Chattanooga	Hamilton	40	25	65
Clarksville	Montgomery	37	25	62
Columbia	Maury	48	25	73
Elizabethton	Carter	38	25	63
Gatlinburg	Sevier	61	25	86
Greenville	Greene	37	25	62
Johnson City	Washington	52	25	77
Kingsport/Bristol	Sullivan	44	25	69
Knoxville/Oak Ridge	Knox County; city of Oak Ridge	49	25	74
Memphis	Shelby	50	25	75
Nashville	Davidson	52	25	77
Shelbyville	Bedford	52	25	77
TEXAS				
Amarillo	Potter	46	25	71
Austin	Travis	55	25	80
Bastrop	Bastrop	37	25	62
Bay City	Matagorda	41	25	66
Beaumont	Jefferson	37	25	62
Brownsville	Cameron	40	25	65
Brownwood	Brown	41	25	66
College Station/Bryan	Brazos	43	25	68
Corpus Christi	Nueces	53	25	78
Dallas/Fort Worth	Dallas & Tarrant	74	33	107
Denton	Denton	46	25	71
El Paso	El Paso	49	25	74
Ft. Davis	Jeff Davis	36	25	61
Galveston	Galveston	51	25	76
Granbury	Hood	55	25	80
Houston	Harris County; L. B. Johnson Space Center & Ellington AFB	60	33	93
Kingsville	Kleburg	37	25	62
Lajitas	Brewster	56	25	81
Laredo	Webb	47	25	72
Longview	Gregg	41	25	66
Lubbock	Lubbock	46	25	71
Lufkin	Angelina	37	25	62
McAllen	Hidalgo	48	25	73
Midland/Odessa	Ector & Midland	48	25	73
Nacogdoches	Nacogdoches	41	25	66
Plainview	Hale	44	25	69
Plano	Collin	71	25	96
San Angelo	Tom Green	36	25	61
San Antonio	Bexar	50	25	75

Per Diem Locality		Maximum Lodging Amount (a)	PER Rate (b)	Maximum Per Diem Rate (c)
Key City 1/	County and/or other defined location 2/ 3/			
Temple	Bell	40	25	65
Victoria	Victoria	36	25	61
Waco	McLennan	43	25	68
Wichita Falls	Wichita	41	25	66
UTAH				
Bullfrog	Garfield	69	25	94
Ogden	Weber	43	25	68
Salt Lake City	Salt Lake County; Dugway Proving Ground & Toole Army Depot	60	25	85
Vernal	Uintah	39	25	64
VERMONT				
Burlington	Chittenden	43	25	68
Montpelier	Washington	36	25	61
Rutland	Rutland	50	25	75
White River Junction	Windsor	56	25	81
VIRGINIA				
(For the cities of Alexandria, Fairfax, and Falls Church, and the counties of Arlington, Fairfax, and Loudoun, see District of Columbia)				
Blacksburg	Montgomery	55	25	80
Bristol*		45	25	70
Charlottesville*		51	25	76
Covington*		37	25	62
Lynchburg*		37	25	62
Manassas/Manassas Park*	Prince William County	50	25	75
Norfolk*	York County; Naval Weapons Station, Yorktown	55	25	80
(also Virginia Beach, Portsmouth, Hampton, Newport News & Chesapeake*)				
Petersburg*	Fort Lee	42	25	67
Richmond*	Chesterfield & Henrice Counties; also Defense Supply Center	54	25	79
Roanoke*	Roanoke County	47	25	72
Staunton*		37	25	62
Wallops Island	Accomack	51	25	76
Warrenton	Fauquier	38	25	63
Waynesboro*		36	25	61
Williamsburg*		60	33	93
* Denotes independent cities.				
WASHINGTON				
Kelso/Longview	Cowlitz	46	25	71
Mount Vernon	Skagit	38	25	63
Richland	Benton	36	25	61
Seattle	King	52	33	91
Spokane	Spokane	47	25	72
Takoma	Pierce	39	25	64
Tumwater/Olympia	Thurston	46	25	71
Vancouver	Clark	47	25	72
WEST VIRGINIA				
Beckley	Raleigh	41	25	66
Charleston	Kanawha	48	25	73
Harpers Ferry	Jefferson	46	25	71

<u>Key City 1/</u>	<u>County and/or other defined location 2/ 3/</u>	<u>Maximum Lodging Amount (a)</u>	<u>M&IE Rate (b)</u>	<u>Maximum Per Diem Rate (c)</u>
Huntington	Cabell	41	25	66
Morgantown	Monongalia	44	25	69
Parkersburg	Wood	37	25	62
Wheeling	Ohio	41	25	66
WISCONSIN				
Brookfield	Waukesha	50	25	75
Cable	Bayfield	38	25	63
Green Bay	Brown	44	25	69
Kewaunee	Kewaunee	58	25	83
La Crosse	La Crosse	48	25	73
Lake Geneva	Walworth	75	25	100
Madison	Dane	54	25	79
Milwaukee	Milwaukee	55	25	80
Minocqua/Rhineland	Oneida	45	25	70
Mishicot	Manitowoc	55	25	80
Oshkosh	Winnebago	53	25	78
Sheboygan	Sheboygan	39	25	64
Sturgeon Bay	Door	44	25	69
Wausau	Marathon	46	25	71
Wautoma	Waushara	46	25	71
Wisconsin Dells	Columbia	43	25	68
WYOMING				
Casper	Natrona	37	25	62
Cheyenne	Laramie	43	25	68
Cody	Park	42	25	67
Evanston	Uinta	37	25	62
Gillette	Campbell	42	25	67
Jackson	Teton	57	25	82
Thermopolis	Hot Springs	41	25	66

- 1/ Unless otherwise specified, the per diem locality is defined as "all locations within, or entirely surrounded by, the corporate limits of the key city, including independent entities located within those boundaries."
- 2/ Per diem localities with county definitions shall include "all locations within, or entirely surrounded by, the corporate limits of the key city as well as the boundaries of the listed counties, including independent entities located within the boundaries of the key city and the listed counties."
- 3/ Military installations or Government-related facilities (whether or not specifically named) that are located partially within the city or county boundary shall include "all locations that are geographically part of the military installation or Government-related facility, even though part(s) of such activities may be located outside the defined per diem locality."
- 4/ Federal agencies may submit a request to GSA for review of the subsistence cost in a particular city or area when travel to that location is repetitive or on a continuing basis and travelers' experience indicates that the prescribed standard CONUS per diem rate is inadequate. Other per diem locality rates listed in this appendix will be surveyed on an annual basis by GSA to determine whether rates are adequate. Agencies' requests shall be submitted to the General Services Administration, Federal Supply Service, Attn: Regulations and Policy Division (FPY), Washington, DC 20406. Requests for rate adjustments shall include a description of the location involved (city, county or other defined area) and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request must also contain an estimate of the annual number of trips to the location and the average duration of such trips.

Federal Register

**Friday
May 30, 1986**

Part II

**General Services
Administration**

Federal Travel Regulations

GENERAL SERVICES ADMINISTRATION

(GSA Bulletin FPMR A-40, Supp. 20)

Federal Travel Regulations

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of changes to Federal Travel Regulations.

SUMMARY: GSA has issued GSA Bulletin FPMR A-40, Supplement 20, transmitting changed pages amending the Federal Travel Regulations (FTR), FPMR 101-7, to implement the new statutory provisions contained in Title I—Travel Expenses of Federal Civilian Employees, Pub. L. 99-234 (99 Stat. 1756), January 2, 1986.

The provisions of Title I, Pub. L. 99-234, remove the statutory ceilings on per diem allowances and actual subsistence expense reimbursements for Federal civilian employees on official travel within the conterminous United States and authorize the Administrator of General Services to establish appropriate maximum rates administratively. Title I of Pub. L. 99-234 also allows GSA's Administrator to establish the type of reimbursement system to be used by Federal agencies. GSA Bulletin FPMR A-40, Supplement 20, establishes maximum per diem rates and a lodgings-plus per diem system as the predominant method of reimbursement for travel within CONUS. While authority for reimbursement of the actual and necessary subsistence expenses of travel has been retained, use of this authority is limited and it is expected that such use will be held to a minimum.

Supplement 20 implements other provisions of Title I of Pub. L. 99-234 noted in the Supplementary Information paragraph.

EFFECTIVE DATES: (1) Except as provided in (2), below, the changed provisions of the FTR transmitted by Supplement 20 are effective for travel (including travel incident to change of official station) performed on or after July 1, 1986.

(2) The provisions of Chapter 2, Relocation Allowances, are extended to include officers and employees of the U.S. Postal Service who are transferred in the interest of the Government to an executive agency (see 2-1.2a(1-a)) and whose effective date of transfer (date employee reports for duty at the new official station) is on or after May 30, 1986.

FOR FURTHER INFORMATION CONTACT: Staff members, Regulation and Policy Division FTS 557-1253 or 557-1256 (for non-FTS use AC 703).

SUPPLEMENTARY INFORMATION: GSA, in consultation with the Office of Management and Budget, has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in a major increase in costs to consumers or others, nor otherwise have a significant adverse effect on the national economy. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least cost to society.

Background Information

In addition to the new authority for reimbursement of subsistence expenses discussed in the Summary, above, title I of Pub. L. 99-234:

(1) Requires GSA, at least every 2 years from now until 1991, to collect data on travel, transportation, and relocation payments from agencies spending over \$5 million a year on these payments and to submit an analysis thereof to the Office of Management and Budget;

(2) Expands eligibility for certain travel expense reimbursements to employees who experience personal emergencies while on official travel;

(3) Authorizes temporary payments of subsistence and transportation expenses for threatened law enforcement/investigative employees; and

(4) Expands eligibility for relocation allowances to U.S. Postal Service employees transferring to other Federal agencies.

Title II—Travel Expenses of Government Contractors, also contained in Pub. L. 99-234, amends section 201 of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) by limiting Government-contractors' travel expenses to the rates and amounts established under Title I of Pub. L. 99-234 for Federal civilian employee travel. These provisions affecting Government contractors will be implemented in a change to the Federal Acquisition Regulation.

Notice to Agencies

The provisions of Supplement 20 establish a new lodgings-plus per diem system (without quarter day computations) for subsistence expense reimbursement for travel *within* CONUS. However, the current flat rate per diem system (with quarter day computations) for travel to, from, and

between, or while at, locations *outside* CONUS is being retained at this time. As a result, allowable per diem reimbursement under the new regulations is computed differently based on whether travel is within or outside CONUS. A thorough review of the current reimbursement system for travel outside CONUS will be conducted following the issuance of this change to the FTR for CONUS travel.

A review also will be made of the existing structure of reimbursement levels for subsistence expenses incurred by employees incident to changes of official station. The requirement in the new law that GSA collect data from certain agencies on their travel, transportation and relocation payments will be implemented separately through issuance of a temporary regulation or other publication.

Explanation of Changes

This supplement amends the FTR as follows:

a. Paragraph 1-2.4 is revised to refer the user to new Part 1-12 for provisions covering reimbursement of certain transportation expenses when, due to illness or injury or other personal emergency situation, an employee performs emergency travel (see paragraph f, below).

b. Part 1-7 is revised to make the following changes: (1) Prescribe a standard maximum per diem rate applicable under specified conditions for all locations within the conterminous United States (CONUS) and maximum per diem rates for specific localities (see 1-7.2a, 1-7.5a, and Appendix 1-A);

(2) Provide procedures by which agencies may request GSA to review a particular area to determine if it qualifies for a higher per diem rate (see 1-7.3);

(3) Implement a new lodgings-plus per diem system for travel within CONUS under which reimbursement for subsistence expenses is computed for each travel day based on the amount the traveler pays for lodging plus a fixed allowance for meals and incidental expenses, the total not to exceed a maximum daily rate set by locality (the average cost of lodging computation has been rescinded) (see 1-7.5);

(4) Add guidelines for determining the types of expenses that are allowable for lodgings (see 1-7.5c(2));

(5) Restate and revise, as necessary for clarification, the rules which generally apply on a worldwide basis (see 1-7.1, 1-7.2, 1-7.4, 1-7.7 thru 1-7.11);

(6) Restate and revise, as necessary for clarification, the rules for determining per diem allowances for en

route travel to, from, or between locations outside CONUS, including guidelines for authorization or approval of a rest stop (see 1-7.6);

(7) Provide guidelines for per diem reductions in certain situations, including provisions which reference regulations issued by the Office of Personnel Management (OPM) governing payment of subsistence expenses for extended training assignments (see 1-7.7);

(8) Provide specific guidelines for per diem computations when lodging accommodations are obtained on a weekly or monthly basis or when mobile homes or recreational vehicles are used during temporary duty assignments (see 1-7.9); and

(9) Restate, clarify and revise to some extent the rules for payment of per diem and actual subsistence expenses when the temporary duty assignment involves leave and nonworkdays (see 1-7.11).

c. Part 1-8 is revised to make the following changes:

(1) Delete the actual expense reimbursement authority for designated high rate geographical areas and the \$75 statutory ceiling for reimbursement of actual subsistence expenses;

(2) Establish new maximum daily rates that may be authorized or approved for reimbursement of actual and necessary subsistence expenses for travel within CONUS (see 1-8.3a);

(3) Reserve paragraph 1-8.3b pending approval of an executive order delegating the President's authority to establish actual expense rates for localities outside CONUS;

(4) Restate and revise current provisions and add new provisions under which actual subsistence expense reimbursement may be authorized or approved;

(5) Revise and transfer to Part 1-7 the former reference to regulations issued by OPM concerning payment of subsistence expense for extended training assignments (see 1-7.7e);

(6) Revise the former mixed travel rule to reflect the new lodgings-plus per diem reimbursement system (see 1-8.6); and

(7) Make other minor editorial changes for clarity and to conform and standardize the terminology with Part 1-7.

d. Part 1-10 is amended to make the following changes:

(1) Paragraphs 1-10.1 and 1-10.2 are revised to (a) incorporate the authority contained in 41 CFR 101-41.203-2 for agencies to authorize cash purchases of transportation services exceeding \$100 in emergency situations; (b) reflect certain provisions of FPMR Temporary Regulation A-25 as it pertains to use of Government contractor-issued charge

cards for cash payment of passenger transportation services; and (c) reformat for clarification; and

(2) Paragraph 1-10.3 is revised to limit the advance of funds that an employee may be provided.

e. The following paragraphs in Part 1-11 (annotated with change lines) are amended to conform with other changes made in the regulations resulting from implementation of Public Law 99-234: 1-11.3c, 1-11.8a, and 1-11.8b.

f. Part 1-12 is added to Chapter 1, Travel Allowances, to implement new statutory authority (5 U.S.C. 5702(b)) for reimbursement of certain transportation expenses and allowable per diem when, due to illness or injury, or other personal emergency situation, an employee returns to his/her official station or performs travel from the temporary duty location to the official station or an alternate location to attend to the emergency situation.

g. Part 1-13 is added to Chapter 1, Travel Allowances, and reserved.

h. Part 1-14 is added to Chapter 1, Travel Allowances, to implement new statutory authority (5 U.S.C. 5706a) for payment of subsistence and transportation expenses under certain circumstances when the life of an employee who is employed in a law enforcement or investigative position, or similar capacity, or members of the employee's immediate family, is threatened as a result of the employee's assigned duties.

i. Paragraph 2-1.1 is amended and paragraph 2-1.2a(1-a) is added to implement new statutory authority (5 U.S.C. 5734), expanding the coverage of Chapter 2, Relocation Allowances, to include employees of the U.S. Postal Service who are transferred in the interest of the Government to an Executive Agency (as defined in 5 U.S.C. 5721) to the same extent as employees transferring between such Executive agencies.

j. Paragraphs 2-2.1, 2-2.2, and 2-2.3d are revised to reflect use of the new lodgings-plus per diem system rules under Chapter 1 for computing per diem for en route travel incident to changes of official station wholly within CONUS and to clarify that the applicable maximum per diem rate for such travel is still \$50 (standard CONUS rate).

k. Part 2-5 is amended as indicated below:

(1) Paragraph 2-5.2g is revised to incorporate a new rule for determining the beginning of the eligibility period for reimbursement of temporary quarters subsistence expenses when the en route travel incident to a change of official station within CONUS and occupancy of temporary quarters occur in the same

calendar day. Although reformatted, the rule has not changed for this determination when en route travel incident to changes of official station is computed under the quarter day system.

(2) Paragraph 2-5.4c(1) is revised to clarify that the maximum per diem rate of \$50 (now referred to as the standard CONUS rate) is still applicable for computation of the maximum daily subsistence allowance when temporary quarters are located within CONUS.

l. Other minor and/or editorial changes have been made where indicated by change lines.

Accordingly, the Federal Travel Regulations, are amended as follows:

CHAPTER 1. TRAVEL ALLOWANCES

1. Authority. (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Executive Order No. 11609, July 22, 1971; 5 U.S.C. 5707)

Part 2. Transportation Allowable

2. Paragraph 1-2.4 is revised to read as follows:

1-2.4. *Emergency travel due to illness or injury or a personal emergency situation.* Provisions governing reimbursement for allowable transportation in connection with emergency travel due to illness or injury or a personal emergency situation are in Part 1-12.

Part 7. Per Diem Instead of Actual Subsistence

3. Part 7 is revised to read as follows:

Part 7. Per Diem Allowances

1-7.1. *General.* The provisions of this Part 1-7 apply worldwide (both within and outside CONUS) except as specifically provided herein.

a. *Authority.* Per diem allowances shall be paid as prescribed in Part 1-7 for official travel away from the official station (including travel incidental to a change of official station), except when actual subsistence expense reimbursement is authorized or approved as provided in Part 1-8.

b. *Definitions.* For purposes of this Part 1-7, the following definitions apply:

(1) *Calendar day.* Calendar day means the 24-hour period from one midnight to the next midnight. For purposes of these regulations, the calendar day technically begins one second after midnight (reflected herein as 12:01 a.m.) and ends at 12:00 midnight.

(2) *CONUS.* CONUS refers to both the "Continental United States", defined in 5 U.S.C. 5701(6), and the "conterminous United States", defined in 1-1.3c(2) as the 48 contiguous States and the District of Columbia.

(3) **Locality rates.** Locality rates are maximum per diem rates prescribed for specific localities within CONUS. Locality rates are listed by State and city in appendix 1-A.

(4) **Standard CONUS rate.** Generally, the standard CONUS rate is prescribed for any location within CONUS that is not included in one of the defined localities or areas for which a specific rate is prescribed in appendix 1-A. The standard CONUS rate is also prescribed in certain specified circumstances as provided herein for all locations within CONUS, including the separately defined localities.

(5) **Per diem allowance.** The per diem allowance is a daily payment instead of actual expenses for lodging, meals and related incidental expenses (see 1-7.1c). The per diem allowance is distinguished from transportation expenses and other miscellaneous travel expenses as described below.

(a) **Transportation expenses.** Transportation expenses include commercial bus, air, rail, or vessel/steamship fares and are reimbursable in addition to the per diem allowance. Transportation expenses also include local transit system and taxi fares, cost of commercial rental cars and other special conveyances, and mileage and other allowances for use of privately owned conveyances, including fees for parking, ferries, etc. (See Parts 1-2, 1-3, and 1-4 for governing provisions.)

(b) **Other miscellaneous travel expenses.** Other miscellaneous travel expenses are those described in Part 1-6 that are directly attributable and necessary to the travel and temporary duty as authorized and performed. When authorized or approved by the agency concerned, these expenses are reimbursable in addition to the per diem allowance and transportation expenses.

(c) **Types of expenses covered by per diem.** The per diem allowance covers all charges, including taxes and service charges where applicable, for the following types of subsistence expenses.

(1) **Lodging:**

(a) The term "lodging" includes expenses for overnight sleeping facilities; baths; personal use of the room during daytime; and service charges for fans, air conditioners, heaters, and fires furnished in rooms when such charges are not included in the room rate.

(b) The term "lodging" does not include accommodations on airplanes, trains, buses, or vessels. The cost of accommodations furnished aboard common carriers is included in the transportation cost and is not considered a subsistence expense. However, in determining the overall cost

to the Government when authorizing the mode of transportation to be used (see 1-2.2), the availability of these accommodations shall be considered.

(2) **Meals.** Expenses for breakfast, lunch, and dinner (specifically excluded are alcoholic beverage and entertainment expenses, and any expenses incurred for other persons).

(3) **Incidental expenses related to subsistence.**

(a) Fees and tips to waiters and waitresses, porters, baggage carriers, bellhops, hotel maids, dining room stewards or stewardesses and others on vessels, and hotel servants in foreign countries.

(b) Laundry and cleaning and pressing of clothing.

(c) Transportation between places of lodging or business and places where meals are taken except as provided in 1-2.3b.

(d) Telegrams and telephone calls necessary to reserve lodging accommodations. (See Part 1-6 for allowable telegram and telephone expenses incurred for other purposes.)

(e) **Employee responsibility.** An employee traveling on official business is expected to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business and expending personal funds (see 1-1.3a). Excess costs, circuitous routes, delays, or luxury accommodations and services unnecessary or unjustified in the performance of official business are not acceptable under this standard. Employees will be responsible for excess costs and any additional expenses incurred for personal preference or convenience.

(f) **Agency responsibilities for authorizing/approving rates.** It is the responsibility of the head of each agency, or his/her designee, to authorize or approve only those per diem allowances that are justified by the circumstances affecting the travel and are allowable under the specific rules in Part 1-7. However, the per diem rates provided for under these rules represent the maximum allowable. To prevent authorization or approval of per diem allowances in excess of amounts required to meet the necessary subsistence expenses of official travel, consideration shall be given to factors such as those listed below that reduce the necessary expenses of employees. (See specific guidelines in 1-7.7 for reducing rates.)

(1) Known arrangements or established cost experience at temporary duty locations showing that lodging and/or meals can be obtained

without cost or at reduced cost to the employee;

(2) Situations in which special rates for accommodations have been made available for a particular meeting, conference, training or other temporary duty assignment;

(3) Traveler's familiarity with establishments providing lodging and meals at a lower cost in certain localities, particularly where repetitive travel or extended stays are involved;

(4) Modes of transportation where accommodations are provided as part of the transportation cost; and

(5) Situations in which the Government furnishes lodging, such as Government quarters or other lodging procured for the employee by means of an agency purchase order (see 1-7.7a).

1-7.2. **Maximum per diem rates.** Per diem allowances for official travel authorized or approved under this Part 1-7 shall be at daily rates not in excess of the maximum per diem rates established as follows:

a. **Conterminous United States (CONUS).** The per diem allowances payable for official travel within CONUS shall not exceed the maximum per diem rates established by the Administrator of General Services and listed in appendix 1-A of this regulation. (See instructions in 1-7.3 for requesting rate adjustments and 1-7.5 for application of per diem rules within CONUS.)

b. **Nonforeign areas outside CONUS.** The per diem allowances payable for official travel in nonforeign areas shall not exceed the maximum per diem rates established by the Secretary of Defense and listed in Civilian Personnel Per Diem Bulletins published periodically in the Federal Register. The term "nonforeign areas" includes the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, and the possessions of the United States.

c. **Foreign areas.** Per diem allowances payable for official travel in foreign areas shall not exceed the maximum per diem rates established by the Secretary of State and published in the Per Diem Supplement to the Standardized Regulations (Government Civilians, Foreign Areas). The term "foreign areas" includes any area (including the Trust Territory of the Pacific Islands) situated both outside CONUS and the nonforeign areas as described in a and b, above.

1-7.3. **Rate adjustment requests for travel within CONUS.**

a. Federal agencies may submit a request to GSA for review of the subsistence costs in a particular city or area when travel to that location is repetitive or on a continuing basis and

travelers' experiences indicate that the prescribed standard CONUS per diem rate is inadequate. Other per diem rates listed in appendix 1-A will be surveyed on an annual basis by GSA to determine whether rates are adequate. Agencies' requests shall be submitted to the General Services Administration, Federal Supply Service, Attn: Regulations and Policy Division (FFY), Washington, DC 20408.

b. Requests for rate adjustments shall include a description of the location involved (city, county, or other defined area) and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request also should contain an estimate of the annual number of trips to the location and the average duration of such trips.

1-7.A. General rules affecting entitlement to per diem.

a. *No allowance at official station.* A per diem allowance shall not be allowed within the limits of the official station (see definition in 1-1.3c(1)) at, or within the vicinity of, the place of abode (home) from which the employee commutes daily to the official station except as provided in Part 1-14. Agencies may define a radius or commuting area that is broader than the limits of the official station within which per diem will not be allowed for travel within one calendar day.

b. *Travel of 10 hours or less (10-hour rule).* A per diem allowance shall not be allowed when the period of official travel is 10 hours or less during the same calendar day except as provided in 1-7.5b(1). (Also see 1-7.5b(1).)

c. *Beginning and ending of entitlement.* For computing per diem allowances, official travel begins at the time an employee leaves his/her home, office, or other authorized point of departure and ends when the traveler returns to his/her home, office, or other authorized point at the conclusion of the trip.

d. *Deductions for meals and/or lodgings furnished.* Where meals and/or lodging are furnished without charge or at a nominal cost by a Federal Government agency at a temporary duty station, an appropriate deduction shall be made from the authorized per diem rate. (See 1-7.5a(2), 1-7.5c and 1-7.7b.)

1-7.5. Lodgings-plus per diem computation rules for travel within CONUS. Except as otherwise provided in Part 1-7, the per diem allowances authorized or approved for all official travel within CONUS, including travel incident to a change of official station, shall be computed under the lodgings-plus per diem system as prescribed herein. Under this system, the per diem

allowance for each travel day is established on the basis of the actual amount the traveler pays for lodgings plus a prescribed allowance for meals and incidental expenses (M&IE)—the total not to exceed the applicable maximum per diem rate. The rules provided in a through d, below, shall be applied in the specific situations covered.

a. *Maximum CONUS per diem rates (appendix 1-A).* Maximum per diem rates prescribed under 1-7.2a for travel within CONUS are listed in appendix 1-A for certain specific localities. For all CONUS locations not specifically listed, a standard maximum per diem rate of \$50 is prescribed. For all CONUS locations, whether or not they are specifically listed in appendix 1-A, the standard CONUS rate applies in certain specified travel circumstances (see b(2), below) and for subsistence allowances incident to a change of official station (see Parts 2-2, 2-4 and 2-5). The following elements comprise the per diem allowance:

(1) *Maximum lodging expense allowance.* The maximum per diem rates include a maximum amount for lodging expenses. The employee will be reimbursed for actual lodging costs incurred up to the applicable maximum amounts listed in appendix 1-A. Receipts for lodging are required as provided in c(1), below.

(2) *Meals and incidental expenses (M&IE) allowance.* The maximum per diem rates include a fixed allowance for meals and incidental expenses related to subsistence. This allowance is reflected in appendix 1-A as the M&IE rate. When the M&IE rate, or fraction thereof, is authorized or approved as provided herein, it is payable to the traveler without itemization of expenses or receipts. The M&IE rate shall be allocated as shown below when making necessary deductions from the per diem for meals furnished to the employee without charge by the Federal Government.

M&IE rates	\$\$\$	\$\$\$
Breakfast	6	7
Lunch	6	7
Dinner	16	17
Incidentals	2	2

b. *Per diem allowance computations.* The per diem allowance is to be calculated using the rules stated in (1) through (4), below.

(1) *Travel of less than 24 hours.*

(a) *10 hours or less.* Per diem shall not be allowed for travel of 10 hours or less within the same calendar day (see 1-7.4b). This prohibition is also applicable

to travel incident to a change of official station within CONUS.

(b) *Exception to 10-hour rule.* Per diem shall not be allowed for employees who qualify for per diem solely on the basis of working a non-standard workday (e.g., four 10-hour days or other compressed schedule). In such instances, per diem shall not be allowed for travel periods less than or equal to the employee's scheduled workday hours plus 2 hours.

(c) *More than 10 hours.* When the travel period is more than 10 hours but less than 24 hours, the following rules apply:

(i) *Lodging not required.* If lodging is not required, the per diem allowable shall be one-half of the M&IE rate applicable to the location of the temporary duty assignment. If more than one temporary duty point is involved, the allowance will be one-half of the M&IE rate prescribed for the location where the majority of the time is spent performing official business.

(ii) *Lodging required.* If lodging is required, the rules for travel of 24 hours or more apply.

(2) *Travel of 24 hours or more.* The applicable maximum per diem rate (standard CONUS or locality rate from appendix 1-A) for each calendar day of travel shall be determined by the travel status and location of the employee at 12:00 midnight and whether lodging is required at such location. When lodging is required, the applicable maximum per diem rate shall be the maximum rate prescribed in appendix 1-A for the temporary duty location or en route stopover point where the lodging is obtained (see (3) and (4), below, for rules on lodging location and travel incident to a change of official station). Only one maximum rate will be applicable to a calendar day (12:01 a.m.-12:00 midnight). The following rules shall be applied in calculating the allowable per diem:

(a) *Day of departure.*

(i) *With lodging.* When lodging is required on the day travel begins (day of departure from the official station or other authorized point), the per diem allowable shall be the actual cost of lodging incurred by the employee, limited to the maximum applicable lodging allowance, plus one-half of the applicable M&IE rate.

(ii) *Without lodging.* When lodging is not required on the day travel begins, the per diem allowable shall be one-half the standard CONUS M&IE rate.

(b) *Full calendar days of travel.*

(i) *Lodging required.* For each full calendar day (12:01 a.m.-12:00 midnight) that the employee is in a travel status



and lodging is required (whether en route or at a temporary duty location), the actual cost of lodging incurred by the traveler shall be added to the applicable M&IE rate. The resulting amount, limited to the maximum per diem rate prescribed for the location in appendix 1-A, shall be the allowable per diem for the full calendar day.

(ii) *Lodging not required.* For any full calendar day of travel when lodging is not required (such as when employee is en route overnight returning to the official station), the maximum per diem rate shall be the M&IE rate applicable to the preceding travel day.

(c) *Day of return.* For the day travel ends (when employee returns to the official station or other authorized point), the per diem allowance shall be one-half the M&IE rate applicable to the preceding calendar day. The M&IE rate for the preceding day will be the M&IE rate for the last temporary duty point, except when lodging is required at an intervening en route stopover point. When this occurs, the M&IE rate for the en route stopover point will be applicable.

(d) *Lodging obtained after midnight.* Although per diem generally is based on the employee's location at midnight, there will be instances in which he/she is en route and does not arrive at the lodging location until after midnight. In such cases, the lodging shall be claimed for the preceding calendar day and the applicable maximum per diem will be determined as if the employee had been at the lodging location at 12:00 midnight of the preceding day.

(3) *Lodging location rules.*

(a) *Lodging at temporary duty location.* It is presumed that the employee will obtain lodging at the temporary duty location. However, if the employee obtains lodging away from or outside the temporary duty location because of personal preference or convenience, the allowable per diem shall be limited to the maximum per diem rate prescribed for the temporary duty location.

(b) *Lodging not available at temporary duty location.* In certain circumstances, lodging accommodations may not be available at the temporary duty location and the employee must obtain lodging in an adjacent locality where the prescribed maximum per diem rate is higher than the maximum per diem rate for the location of the temporary duty point. In such instances, if the lodging costs are excessive, the agency may make an administrative determination on an individual case basis to either authorize or approve the higher maximum per diem rate or reimburse the employee on an actual

expense basis (see 1-8.2a). If the higher maximum rate is not justified and authorized in advance, the employee must furnish a statement with the travel voucher satisfactorily explaining the circumstances that caused him/her to obtain lodging in an area other than at the temporary duty point designated in the travel authorization.

(4) *Maximum rate applicable to change of official station travel.* The standard CONUS rate shall be the applicable maximum per diem rate for en route travel performed incident to a change of official station.

c. *Receipt requirements and allowable lodging expenses.*

(1) *Lodging receipt requirements.* Receipts shall be required to support all lodging costs for which an allowance is claimed under the lodgings-plus per diem system except that a statement instead of a receipt may be accepted for the fee or service charge incurred for the use of Government quarters.

(a) *Double occupancy.* If the lodging receipt shows a charge for double occupancy, such fact shall be shown on the travel voucher with the name and employing agency or office of the person sharing the room if such person is a Government employee on official travel. One-half of the double occupancy charge shall be allowable for each employee. If the person sharing the room is not another Government employee on official travel, identification of the person sharing the room is not required and the employee may be allowed the single room rate.

(b) *Receipts lost or impractical to obtain.* If receipts have been lost or destroyed or are impractical to obtain, a statement acceptable to the agency explaining the circumstances shall be furnished with the travel voucher, including the name and address of the lodging facility, the dates the lodging was obtained, and the cost incurred. Agencies may require employees to obtain copies of lost or destroyed receipts from the lodging establishment. (See also 1-11.3d.)

(2) *Allowable lodging expenses.* As provided in 1-7.5a(1), the traveler will be reimbursed only for his/her actual cost of lodging up to the maximum amount. No minimum amount is authorized for lodging under the lodgings-plus per diem system since reimbursement is based on the actual cost of lodging incurred by the employee. Expenses incurred in the situations described below will be allowed as lodging expenses.

(a) *Conventional lodging.* When an employee uses conventional lodging facilities (e.g., hotels, motels, and boarding houses), the allowable lodging

expense will be based on the single room rate for the lodging used (for double occupancy, see c(1)(a), above). (See 1-7.5a for computing daily lodging expense when lodging is rented on a weekly or monthly basis.)

(b) *Government quarters.* A fee or service charge paid for the use of Government quarters is an allowable lodging expense.

(c) *Lodging with friends or relatives.* When the employee obtains lodging from friends or relatives (including members of the immediate family) with or without charge, no part of the per diem allowance will be allowed for lodging unless the host actually incurs additional costs in accommodating the traveler. In such instances, the additional costs substantiated by the employee and determined to be reasonable by the agency will be allowed as a lodging expense. Neither costs based on room rates for comparable commercial lodging in the area nor flat "token" amounts will be considered as reasonable.

(d) *Lodging in nonconventional facilities.* When no conventional lodging facilities are present (e.g., in remote areas) or when there is a shortage of rooms because of an influx of attendees at special events (e.g., world's fairs or Olympics), costs of lodging obtained in nonconventional facilities may be allowed. Such facilities may include college dormitories or similar facilities as well as rooms made available to the public by area residents in their homes. In such cases, the traveler must provide an explanation of the circumstances which is acceptable to the agency.

(e) *Use of travel trailer or camping vehicle for lodgings.* A per diem allowance for lodging may be allowed when the traveler uses a travel trailer or camping vehicle while on temporary duty assignments away from his/her official station. (See 1-7.9b for per diem computations in such situations.)

d. *Deviation from lodgings-plus per diem system.* An agency may determine that the lodgings-plus method as prescribed in 1-7.5 is not appropriate for certain travel assignment situations, such as when quarters or meals, or both, are provided at no cost or at a nominal cost by the Government or when for some other reason the subsistence costs to be incurred by the employee can be determined in advance. In such instances a specific per diem rate may be established within the maximum per diem otherwise applicable to the travel situation and appropriate reductions made in accordance with 1-7.7, provided the exception from the lodgings-plus per diem system and the specific per diem

rate are authorized in advance on the travel authorization by an appropriate official of the agency concerned.

1-7.8. Per diem computation rules for travel to, from, between, or within locations outside CONUS. Except as otherwise provided in Part 1-7, per diem allowances authorized or approved for official travel to, from, between, or within locations outside CONUS (including travel incident to a change of official station) shall be computed as provided in a through f, below.

a. Maximum per diem allowable. Per diem allowances for official travel within localities outside CONUS will be at rates not to exceed the maximum per diem rate established under 1-7.2b and c for the locality in which the travel is performed. Per diem allowances for en route travel to, from, or between localities outside CONUS will be determined as provided in c, below. Whenever lodging is not required during a calendar day of official travel under 1-7.8, the applicable maximum rate shall be reduced to reflect such fact as provided in 1-7.7a.

b. Computation of basic per diem entitlements.

(1) Travel of 10 hours or less.

(a) 10-hour rule. Per diem shall not be allowed when the travel period is 10 hours or less during the same calendar day, except when the travel period exceeds 6 hours and either begins before 6 a.m. or ends after 8 p.m. (This rule does not apply for en route travel incident to a change of official station.)

(b) Exception to 10-hour rule. Per diem shall not be allowed for employees who qualify for per diem solely on the basis of working a non-standard workday (e.g., four 10-hour days or other compressed schedule). In such instances per diem shall not be allowed for travel periods less than or equal to the employee's scheduled workday hours plus two hours.

(2) Methods of prorating travel days.

Basic per diem entitlements will be calculated on a calendar day basis. When a change in travel status requires a change in the applicable rate during a calendar day or a per diem allowance must be calculated for partial days of travel, the travel day will be prorated as follows:

(a) Travel of 24 hours or less. For continuous travel of 24 hours or less, the travel period will be divided into 6-hour periods starting from the actual time travel begins and ending with its completion at home, office, or other authorized point. For each 6-hour period, or fraction thereof, one-fourth of the applicable per diem rate for a calendar day will be allowed.

(b) Travel of more than 24 hours. In computing per diem allowances for travel periods covering more than 24 hours, the calendar day (midnight to midnight) shall be the unit. The calendar day shall be divided into four 6-hour periods (quarter days). The per diem rate in effect at the beginning of a quarter day shall continue to the end of that quarter. When the per diem rate is changed during a calendar day, such rate will take effect at the beginning of the next quarter day immediately following the quarter day in which the rate change occurred. For a partial day at the beginning or ending of a travel period, one-fourth of the applicable per diem rate for the calendar day shall be allowed for each quarter day, or fraction thereof, that the employee is in a travel status during the partial day.

(c) 30-minute rule. When the time of departure from home, office, or other authorized point at the beginning of the trip or the time of return thereto at the end of the trip involves only a 30-minute fraction of a quarter day, per diem shall not be allowed for either such quarter day unless the traveler provides a statement with the travel voucher explaining the necessity for the specific time of departure or return that is acceptable to the agency. The 30-minute rule applicable to the payment of per diem as provided herein does not apply to the beginning of continuous travel of 24 hours or less as provided in (a), above; however, it is applicable to the end of such travel.

(3) International dateline. In computing per diem in cases where the traveler crosses the international dateline (180th meridian), the actual elapsed time shall be used to compute per diem rather than calendar days.

c. Computation of per diem rates for en route travel to, from, or between locations outside CONUS. The maximum per diem rate for en route travel to, from, or between locations outside CONUS is based on the traveler's actual travel time (including time spent at rest stop locations or stopovers at intermediate points) between duty points as prescribed below.

(1) Duty point. As used herein, the term "duty point" means the official station outside CONUS, any other place outside CONUS at which official travel begins or ends, or the point of exit or entry within CONUS.

(2) Rates and conditions. For en route travel beyond the limits of CONUS by airplane, train, or boat (regardless of whether commercially or Government-owned), whether en route between a duty point within CONUS and a locality beyond or between localities outside

CONUS, including stopovers of less than 6 hours, the maximum per diem that may be authorized or approved is as follows:

(a) Same day return. When the traveler departs from a duty point within CONUS or a locality outside CONUS and returns during the same calendar day to a duty point within CONUS or the locality outside CONUS, respectively, the maximum per diem rate allowable for the trip shall be that of the duty point at which the trip began. Since lodging is not required in this instance, the per diem rate applicable to any duty point within CONUS shall be the standard CONUS M&IE rate prescribed in appendix 1-A. For the same reason, the maximum per diem rate for the origin locality outside CONUS shall be reduced to an appropriate amount to reflect no lodging costs.

(b) En route less than 6 hours. For travel other than that described in (a), above, when the en route travel time is less than 6 hours between a duty point within CONUS and a duty point in a locality outside CONUS or between two duty points outside CONUS, the maximum per diem rate allowable between duty points shall be that of the destination duty point. When the destination duty point is within CONUS, the maximum per diem rate shall be the standard CONUS rate prescribed in appendix 1-A.

(c) En route 6 hours or more. When the en route travel time is 6 hours or more between the duty points described in (b), above, the per diem rate applicable for travel between the duty points is \$6, except:

(i) For vessel travel of more than 9 successive calendar days, in addition to the fractional days of embarkation and debarkation, the per diem rate for the succeeding calendar days and for the fractional day of debarkation is \$2; and

(ii) When either the \$6 or \$2 rate prescribed herein is not commensurate with a traveler's subsistence expenses, a different per diem rate may be authorized or approved not in excess of the maximum per diem rate applicable to the destination duty point or, with respect to vessel travel, not in excess of \$6, except that the rate for travel by the Alaska Ferry System shall not exceed the standard M&IE rate for CONUS.

(3) Stopovers of 6 hours or more. When the en route travel period between duty points involves a stopover at an intermediate point outside CONUS and the time spent at the stopover point is 6 hours or more, the per diem rate for the travel period at the stopover point shall be the rate applicable to the locality in which the stopover takes place. The applicable per diem rate shall

take effect at the beginning of the quarter day following the actual time of arrival at the intermediate stopover point. For purposes of determining per diem rates for en route travel, the length of time at an intermediate stopover point is controlling regardless of whether the stopover is necessary because of official duty, common carrier scheduling, or an authorized rest stop (see (8), below). Stopovers of less than 8 hours are considered part of the en route travel as provided in (2), above.

(4) *Travel beginning or ending within CONUS.* When the en route travel period begins or ends at a place (other than duty point) within CONUS, the maximum per diem applicable to the travel between such place and the duty point (place of entry or exit) within CONUS shall be the standard CONUS per diem rate prescribed in appendix 1-A, except that such maximum rate shall be limited to the M&IE rate portion of the standard CONUS rate in the following travel circumstances (calculation shall be under the quarter day system as prescribed in this 1-7.6):

(a) For the day travel begins when the traveler is in an en route travel status at 12:00 midnight and no lodging is required that day because of the en route travel status; or

(b) For the day(s) of return travel when lodging is not required because of en route status at 12:00 midnight or arrival at home or official station.

(5) *Travel beginning or ending outside CONUS.* When en route travel is required between a home, official station or some other location and the common carrier or other terminal, per diem for the quarter days involved will be based on the origin rate.

(6) *Rest stops.*

(a) When travel is direct between duty points which are separated by several time zones and at least one duty point is outside CONUS, a rest period not in excess of 24 hours may be authorized or approved when air travel between the duty points is by less-than-first-class accommodations and the scheduled flight time (including stopovers of less than 8 hours) exceeds 14 hours by a direct or usually traveled route.

(b) The rest stop may be at any intermediate point, including points within CONUS, provided the point is midway in the journey or as near to midway as requirements for use of U.S. flag air carriers and carrier scheduling permit.

(c) A rest stop shall not be authorized when an employee, for personal convenience, elects to travel by an indirect route resulting in travel time in excess of 14 hours.

(d) The per diem rate for the rest stop shall be the rate applicable for the rest stop location (see (3), above).

(e) When carrier schedules or the requirements for use of U.S. flag air carriers preclude an intermediate rest stop, or a rest stop is not authorized, it is recommended that the employee be scheduled to arrive at the temporary duty point with sufficient time to allow a reasonable rest period before reporting for duty. (See 1-3.6 for guidelines on the use of U.S. flag carriers.)

d. *When lodging is not located at duty point outside CONUS.* When suitable lodging is not available at place of temporary duty in a locality outside CONUS and the employee is required to obtain lodging in a different locality, the maximum applicable per diem rate shall be that of the locality in which the lodging is obtained.

e. *Deductions for meals and/or lodgings furnished.* Where meals and/or lodging are furnished without charge or at a nominal cost by a Federal Government agency at a temporary duty station, an appropriate deduction shall be made from the authorized per diem rate. (See 1-7.7b.)

f. *Travel involving temporary duty within CONUS.*

(1) When travel is from a duty point outside CONUS to a temporary duty location within CONUS, the lodgings-plus per diem system prescribed in 1-7.5, shall be followed to compute per diem for travel days at the CONUS temporary duty locations beginning from 12:01 a.m. on the day of arrival at the first temporary duty location through 12:00 midnight of the last full calendar day at a last temporary duty location within CONUS. (If actual subsistence expense reimbursement has been authorized or approved for the CONUS temporary duty location(s), the provisions of 1-8 are applicable for the same time period.)

(2) The quarter day system for en route travel as prescribed in b and c, above, is applicable only for the en route travel to CONUS beginning with the time of departure from the duty point outside CONUS through 12:00 midnight of the calendar day prior to the day of arrival at the CONUS temporary duty location and for the return travel day(s) beginning at 12:01 a.m. on the day of departure from the last CONUS temporary duty location through the time of arrival at the duty point outside CONUS.

1-7.7. *Reductions in maximum per diem rates when appropriate (worldwide).* An agency may, in individual cases or situations, authorize a reduced per diem rate under certain circumstances, such as when lodgings

and/or meals are obtained by the employee at a reduced cost or furnished to the employee at no cost or a nominal cost by the Government; or when for some other reason the subsistence costs to be incurred by the employee can be determined in advance. In exercising its responsibilities outlined in 1-7.1e, the agency should consider any known factors that will cause the traveler's subsistence expenses in a specific situation to be less than the applicable maximum rates prescribed in 1-7.2. If it can be determined in advance of the travel that such factors are present, the agency should authorize a reduced rate that is commensurate with the known expense levels. Such reduced rate authorized on the travel authorization shall be the per diem rate payable on the travel voucher without receipts and/or itemization by the employee. Specific guidelines for reducing rates and situations where reduced rates may be appropriate are provided below.

a. *When no lodgings expenses incurred.* For travel within or outside CONUS which is less than 24 hours or in any other travel situation where lodging expenses will not be incurred, including instances where lodging is furnished by the Government without charge, the maximum per diem rate shall be reduced accordingly. For CONUS travel, the lodgings-plus per diem system automatically reduces the maximum per diem rate to the M&IE rate (or fraction thereof). When lodging is furnished at no cost to the employee through use of an agency purchase order, the agency shall not authorize or approve a per diem allowance for other subsistence expenses that will, when combined with the cost of lodging furnished, exceed the applicable maximum per diem rate prescribed under 1-7.2.

b. *When meals/lodgings are furnished by the Government.* When all or part of the meals and/or lodging are furnished at no cost or at a nominal cost to the employee by the Federal Government, the applicable maximum per diem rate or the M&IE rate, as appropriate, shall be reduced to a daily amount commensurate with the remaining expenses expected to be incurred by the employee. If a reduced per diem rate was not authorized in advance of the travel, an appropriate deduction shall be made from the total per diem payable on the travel voucher. (See 1-7.4d, 1-7.5a(2) and 1-7.8e.)

c. *Extended stays.* When travel assignments involve extended periods of more than 30 days at temporary duty locations and travelers are able to secure lodging and/or meals at lower costs, the per diem rate should be

reduced accordingly. If the extended temporary duty is for purposes of training, see e, below. (See also 1-7.9 for allowable expenses in special situations.)

d. Meetings and conventions. In the interest of uniform treatment of employees, whenever a meeting or conference is arranged which will involve the travel of attendees from other agencies or components of the same agency, and reduced cost lodging accommodations have been prearranged at the meeting or conference site, the agency or agencies sponsoring the meeting or conference shall recommend to the other participating agencies or components a per diem allowance that would be reasonable.

e. Subsistence payments for extended training assignments.

(1) The Government Employees Training Act (5 U.S.C. 4101-4118) authorizes agencies to pay all or a part of the subsistence expenses of an employee assigned to training at a temporary duty station. Implementing regulations prescribed by the Office of Personnel Management (OPM) in § 410.603 of Title 5, Code of Federal Regulations (5 CFR 410.603), provide specific guidelines for payment of subsistence expenses for employees on extended training assignments of more than 30 calendar days at temporary duty locations.

(2) Generally the OPM guidelines require a reduced subsistence payment of not more than 55 percent of the applicable maximum per diem rate prescribed in these regulations (see 1-7.2). Subsistence payments above these levels (not to exceed the maximum per diem rates) must be justified. Agencies shall refer to the OPM guidelines in 5 CFR 410.603 for specific criteria to determine the appropriate subsistence payments. Guidelines are also published by OPM in the Federal Personnel Manual, Chapter 410, Section 6-3.

1-7.8. "Mixed travel" reimbursements. "Mixed travel" occurs when travel days within a single trip are subject to reimbursement of the daily subsistence expenses under different computation methods or different maximum rates.

a. General rule. Reimbursement for subsistence expenses will be computed under only one method of reimbursement for each calendar day except when the provisions of 1-8.2b apply. Reimbursement for each day will be subject to only one maximum rate, except for travel under 1-7.8 which may require different rates within a calendar day due to the quarter day per diem calculation method.

b. Same reimbursement method with different daily maximum rates. The

applicable rules for transition between different maximum rates are provided in 1-7.5, 1-7.8, and 1-8 for each reimbursement method.

c. Transition between reimbursement methods.

(1) **Travel wholly within CONUS.** Subsistence expenses for the majority of travel within CONUS will be reimbursed on a per diem basis for each calendar day. However, when actual expense reimbursement for certain travel days is intermittent with the per diem method for others, the traveler's status and location at 12:00 midnight on any given day control the method of reimbursement for that day (except as provided in 1-8.2b). (See 1-7.5 and 1-8.6 for specific rules.)

(2) **Travel to, from, between, or while at locations outside CONUS.**

(a) All travel to, from, between, and while at locations outside CONUS will be reimbursed under the quarter-day system as provided in 1-7.6 including travel time within CONUS incident to such travel except as provided in (b), below.

(b) When travel is from outside CONUS for temporary duty within CONUS, the transition from the quarter-day system to the CONUS lodgings-plus per diem system or actual expense method is governed by the rules in 1-7.6f.

1-7.9. Per diem allowance computations for special situations (worldwide).

a. Per diem for weekly or monthly rentals.

(1) **Types of expenses included in lodging costs.** When an employee rents a room, apartment, house, or other lodging incident to a temporary duty assignment, the following expenses may be considered part of the lodging cost: the rental cost; if unfurnished, the rental cost of appropriate and necessary furniture and appliances, such as a stove, refrigerator, chairs, tables, bed, sofa, television, and vacuum cleaner; cost of connection, use, and disconnection of utilities; cost of reasonable maid fee and cleaning charges; monthly telephone use fee (does not include installation and long-distance calls); and, if ordinarily included in the price of a hotel or motel room in the area concerned, the cost of special user fees, such as cable TV charges and plug-in charges for automobile head bolt heaters.

(2) **Computation of daily lodging costs.** When the employee obtains lodging on a weekly or monthly rental basis, the daily lodging cost shall be computed by dividing the total lodging cost for the expenses listed in (1), above, by the number of days in the rental

period (e.g., 7 or 30 days, as appropriate).

(3) **Per diem allowable.**

(a) Under the lodgings-plus system for CONUS travel, the allowable per diem consists of the daily lodging cost calculated under (2), above, plus the applicable M&IE rate not to exceed the maximum per diem rate prescribed for the location involved.

(b) When a reduced per diem rate is being established (see 1-7.7) in advance of the travel, the daily lodging cost calculated in (2), above, shall be added to the amount determined by the agency to be necessary for meals and incidental expenses.

b. Per diem allowances for use of a recreational vehicle for lodging. The term "recreational vehicle" includes mobile homes, campers, camping trailers, or self-propelled mobile recreational vehicles.

(1) **Privately owned.**

(a) **Lodging costs.** When an employee uses a privately owned camping or recreational vehicle while on official travel, allowable expenses which may be considered as a lodging cost include parking fees; fees for connection, use, and disconnection of utilities (electricity, gas, water, and sewage); bath or shower fees; and dumping fees. Depreciation shall not be considered as a lodging cost.

(b) **Meals and incidental expenses.** The agency shall determine an appropriate amount for meals and incidental expenses based on whether the type of recreational vehicle used by the employee has meal preparation facilities. When use of the recreational vehicle is for a temporary duty assignment within CONUS, such amount shall not exceed the applicable M&IE rate.

(c) **Per diem computation.** The daily lodging costs plus an appropriate rate for meals and incidental expenses determined under (b), above, shall be the per diem rate, limited to the applicable maximum rate prescribed under 1-7.2 for the locality involved. An agency may authorize a reduced per diem rate within the applicable maximum per diem rates if the actual costs expected to be incurred can be determined in advance of the travel.

(2) **Rented recreational vehicle.** When the use of a rented recreational vehicle is authorized or approved as advantageous to the Government, the rental fee and the allowable expenses shown in (1)(a), above, may be considered as lodging costs. Advantageous use might occur when the employee is on an extended temporary duty assignment in a remote area or

where conventional lodging facilities are limited or not available. If use of a rented recreational vehicle is not authorized or approved as advantageous, only those expenses listed in (1)(a), above, may be considered as lodging costs.

c. Per diem computations when temporary duty is curtailed, canceled, or interrupted for official purposes (see 59 Comp. Gen. 609 (1980), 59 Comp. Gen. 612 (1980), 60 Comp. Gen. 630 (1981), and cases cited therein). When an employee has made advance arrangements for lodging (such as those described in a or b, above), with reasonable expectation of the travel assignment being completed as ordered or directed, and subsequently the temporary duty assignment is curtailed, canceled, or interrupted for official purposes, or for other reasons beyond the employee's control that are acceptable to the agency, lodging costs may be calculated and paid as follows:

(1) *Travel assignment curtailed or interrupted.* When the temporary duty assignment is curtailed or interrupted for the benefit of the Government or for other reasons beyond the employee's control and the employee is unable to obtain a refund of prepaid rent, expenses incurred for unused lodging may be reimbursed under the following conditions:

(a) *Determination of reasonableness.* The agency must determine that the employee acted reasonably and prudently in incurring allowable lodging expenses pursuant to temporary duty travel orders. Included in this determination should be a consideration of whether the employee sought to obtain a refund of the prepaid lodging cost or otherwise took steps to minimize the costs once the temporary duty was officially curtailed or interrupted.

(b) *Adjusted calculation and reimbursement of lodging costs.* If the agency determines that the employee acted reasonably, the unused portion of the prepaid lodging cost may be reimbursed as follows:

(i) The daily lodging costs for the period covered by the voucher shall be calculated by dividing the total cost for the rental period by the number of days of actual occupancy. The total of the lodging costs thus calculated plus the appropriate daily amount authorized for meals and incidental expenses may be reimbursed not to exceed the per diem rate authorized in the employee's travel orders for the days that the lodging was occupied.

(ii) If the authorized per diem rate is insufficient for the days of occupancy, the daily lodging cost calculated in (i) plus the amount authorized for meals

and incidental expenses may be reimbursed on an actual expense basis not to exceed appropriate maximum daily rates determined as provided in 1-8.3.

(iii) The excess amount (if any) of the unrefunded lodging cost not reimbursed under (ii), above, may be paid as a miscellaneous travel expense incident to the travel assignment, if otherwise proper.

(iv) In instances where the travel assignment was interrupted for official purposes (e.g., when the employee is directed to perform temporary duty at another location), allowable subsistence expenses (if any) incurred during the interruption may be reimbursed separately from those reimbursements outlined in (i) and (ii), above, if otherwise proper, and in conformance with the provisions of this Part 1-7.

(2) *Travel assignment canceled.* When the employee incurs lodging expenses in reasonable expectation of a travel assignment being completed as ordered or directed, and due to a change in travel orders the travel assignment is canceled prior to its commencement, the prepaid lodging expenses may be reimbursed as a miscellaneous travel expense provided the amounts are reasonable and the conditions in (1)(a) are met.

(3) *Forfeited rental deposits.* If, in situations described in (1) and (2), above, the employee was required by the terms of a lease or rental agreement to pay a rental deposit and all or part of the deposit is forfeited to cover unpaid lodging costs, the amount of the forfeited deposit may be reimbursed as a miscellaneous travel expense provided the conditions in (1)(a), above, are met. Reimbursement for deposits forfeited for damages to lodging accommodations shall not be allowed.

d. Per diem while aboard Government vessel. For temporary duty aboard Government vessels where meals and lodgings are furnished at no cost or at a reduced cost, agencies shall prescribe an appropriate per diem rate within the provisions of this Part 1-7. The term "Government vessel" includes vessels owned and operated, leased and operated, or chartered by the Government.

1-7.10. Time determinations.

a. Duty to record pertinent times. The date and hour of departure from and arrival at the official station or any other place at which official travel begins or ends must be shown on the travel voucher. The same information also must be shown for points at which temporary duty is performed when such arrival or departure affects the per diem allowance or other travel expenses.

Other points visited should also be shown but the time of arrival and departure need not be entered.

b. Use of standard time. The hours of departure and arrival recorded on the voucher shall be those of the standard time in effect at the place involved. (See 15 U.S.C. 262.)

1-7.11. *Interruptions of per diem entitlement.* For purposes of this paragraph, the term "place of abode" means the place from which the employee commutes daily to the official station.

a. Leave and nonworkdays.

(1) *General.* Leave of absence (other than as provided in 1-7.11d) for one-half or less of the prescribed daily working hours shall be disregarded for per diem purposes. Where the leave is more than one-half of the prescribed daily working hours, no per diem shall be allowed for that day.

(2) *Nonworkdays.* Legal Federal Government holidays and weekends or other scheduled nonworkdays are considered nonworkdays. Employees are considered to be in a per diem status on nonworkdays except when they return to their official station or place of abode (see b, below), or except under conditions stated in (a) or (b), below.

(a) *Leave before and after nonworkdays.* Per diem shall not be paid for nonworkdays when:

(i) Employees are in a leave status at the end of the workday before the nonworkdays and at the beginning of the workday following the nonworkdays, and

(ii) The period of leave on either of those days is more than one-half of the prescribed working hours for that day.

(b) *Leaves between nonworkdays.* Per diem shall not be paid for more than two nonworkdays in cases where leave of absence is taken for all of the prescribed working hours between the nonworkdays.

b. Return to official station for nonworkdays.

(1) *Required return—official business.* An employee who is required by appropriate agency officials to return to his or her official station for the nonworkdays to perform official business or because it is otherwise advantageous to the Government shall be allowed the round-trip transportation expenses and per diem for the en route travel.

(2) *Authorized return—substantial cost savings.* An agency may authorize per diem and transportation expenses to an employee to return home for nonworkdays where a significant cost savings will be achieved. Travel time shall be scheduled within the

employee's duty hours to the extent practicable. The cost of lost productivity attributable to the duty hours involved in traveling to and from the employee's residence for nonworkdays shall be considered in determining the cost savings (Comp. Gen. B-202544, August 31, 1981).

(3) *Authorized return incident to extended temporary duty.* Employees who are required to routinely perform extended periods of temporary duty may, at agency discretion and within the limits of appropriations available for payment of travel expenses, be authorized round-trip transportation expenses and per diem en route for periodic return travel to their official stations or places of abode for nonworkdays. Agencies are cautioned that this authority is to be used with the utmost discretion and consideration of the length and purpose of the temporary duty assignments and the distance of the return travel. (See 55 Comp. Gen. 1291 (1978).) The periodic return travel may be authorized as provided in (a) and (b), below.

(a) The head of the agency has determined, based on an appropriate cost analysis, that the costs of periodic weekend return travel (including the costs of potential overtime, if applicable) are outweighed by savings in terms of increased employee efficiency and productivity, as well as reduced costs of recruitment and retention of employees. This cost analysis shall be conducted no less frequently than every other year.

(b) Return travel for nonworkdays authorized under these provisions constitutes an exception to the directive on scheduling of travel contained in 5 U.S.C. 6101(b)(2) and therefore should be performed outside the employee's regularly scheduled duty hours or during periods of authorized leave. However, in the case of employees not exempt from the Fair Labor Standards Act overtime provisions, consideration should be given to scheduling the authorized travel to minimize payment of overtime, including scheduling of travel during regularly scheduled duty hours when necessary. (See Office of Personnel Management regulations for further guidelines covering overtime during travel.)

(4) *Voluntary return.* When an employee voluntarily returns to his/her official station or place of abode for nonworkdays, the maximum reimbursement for the round-trip transportation and per diem en route shall be limited to the per diem allowance and travel expenses which would have been allowed had the employee remained at the temporary

duty station. The employee shall perform any such voluntary return travel during non-duty hours or periods of authorized leave.

c. *Indirect route or interrupted travel.* If there is an interruption of travel or deviation from the direct route resulting in excess travel time because of an employee's personal preference or convenience or through the taking of leave, the per diem allowed shall not exceed that which would have been allowed on uninterrupted travel by a direct or usually traveled route except as provided in Part 1-12 for certain emergency travel situations. (See 1-2.5, 1-7.10a, and 1-11.5a(3).)

d. *Illness or injury or a personal emergency situation.* Provisions governing per diem allowable for emergency travel performed due to an employee's incapacitating illness or injury or because of a personal emergency situation, as well as the continuation of per diem due to incapacitating illness or injury of the employee, are found in Part 1-12.

4. Part 8 is revised to read as follows:

Part 8. Reimbursement of Actual Subsistence Expenses

1-8.1. *General.* The provisions contained herein apply to travel within and outside the conterminous United States (CONUS).

a. *Authority.* Agencies may authorize or approve reimbursement for the actual and necessary subsistence expenses of official travel when such expenses are unusually high due to special or unusual circumstances or for occasional meals and/or lodging as provided herein. This authority shall be used for individual travel assignments or specific travel situations only after appropriate consideration of the actual facts existing at the time the travel is directed and performed.

b. *Delegation of authority.* Heads of agencies may delegate, with provisions for limited redelegation, the authority to authorize or approve travel on an actual subsistence expense basis. Such delegation or redelegation shall be held to as high an administrative level as practicable to ensure that authorization or approval of travel on an actual subsistence expense basis or reimbursement therefor is based on adequate consideration and review of the travel circumstances warranting such reimbursement.

c. *Agency responsibility.* Heads of agencies, as defined in 1-1.3c(8), shall, in accordance with provisions of this part, prescribe administrative policies and procedures under which reimbursement for actual and necessary expenses of official travel may be

authorized or approved to ensure that the authority contained herein is administered in accordance with the intent of these regulations.

d. *Relationship to per diem.* Generally, authorization or approval of actual subsistence expenses is contingent on the entitlement to per diem. Except as otherwise provided herein, the definitions and rules stated in Part 1-7 applicable to the employee's entitlement to a per diem allowance shall apply to travel on an actual expense basis.

e. *Allowable expenses.* Actual subsistence expense reimbursement may be allowed for the same types of expenses that are covered by the per diem allowance in 1-7.1c provided such expenses are determined to be actual and necessary expenses incident to the particular travel assignment.

f. *Prudent traveler.* An employee traveling on the actual subsistence expense basis is expected to exercise the same care in incurring expenses as set forth in 1-7 for travel on a per diem basis.

1-8.2. *Conditions warranting authorization or approval of actual expenses.*

a. *Travel assignments involving special or unusual circumstances.* Travel on an actual subsistence expense basis may be authorized or approved for travel assignments within and outside CONUS when the applicable maximum per diem rate (see 1-7.2) is inadequate due to special or unusual circumstances. The maximum per diem rate, although generally adequate, may be insufficient for a particular travel assignment because the actual and necessary subsistence expenses are unusually high due to special duties or because subsistence costs have escalated temporarily during special events. Actual subsistence expense reimbursement shall not be authorized or approved when the actual and necessary subsistence expenses exceed or are expected to exceed the applicable maximum per diem allowance by only a small amount. Since lodging costs constitute a major portion of the subsistence expenses, travel on an actual expense basis may be authorized or approved for travel when, due to special or unusual circumstances, the lodging costs absorb all or nearly all of the applicable maximum per diem allowance (see 1-7.2). Examples of travel assignments or situations that may warrant authorization or approval of actual and necessary expenses include but are not limited to the following:

the applicable rate and/or reimbursement method for each calendar day (beginning at 12:01 a.m.) will be determined by the employee's status and location at 12:00 midnight of that calendar day. Only one rate and reimbursement method will be authorized for each day except when reimbursement is authorized for occasional meals or lodging as provided in 1-8.2b. The reimbursement method and maximum rate for the day of departure from the official station will be the same as that authorized for the first location where lodging is required. On the day of return to the official station, the same method and maximum rate of reimbursement applicable to the previous calendar day shall apply.

1-8.7. *Interruption of subsistence entitlements.* The provisions of 1-7.11 applicable to interruptions of per diem entitlements (leave and nonworkdays, return to official station for nonworkdays, indirect route or interrupted travel, and illness or injury or a personal emergency situation) shall also apply to travel on an actual subsistence basis.

Part 18. Sources of Funds

5. Paragraph 1-10.1 is revised to read as follows:

1-10.1. *Employee to provide funds.* Employees traveling on official business shall provide themselves with funds for all current expenses. However, Government contractor-issued charge cards, transportation request forms, and travel advances as authorized by 1-10.2 and 1-10.3, respectively, should be used to reduce the need for travelers to use their own money. Employees issued a Government charge card in accordance with FPMR Temporary Regulation A-25 are encouraged to use the charge card to pay for official travel expenses to the maximum extent possible.

6. Paragraph 1-10.2b is revised to read as follows:

1-10.2. *Procurement of common carrier transportation.*

b. *Cash payments for procurement of common carrier transportation services.* The use of cash to procure passenger transportation services may not be authorized except under the conditions specified in (1) through (3), below. For the purpose of this paragraph b, the use of checks (personal or travelers), personal credit cards, or individual Government contractor-issued charge cards is considered the equivalent of cash. Cash payments may be made with a travel advance (see 1-10.3) or through the use of personal funds.

(1) *Procedures for the use of cash.* The procedures for the use of cash to procure

passenger transportation services are prescribed by the Administrator of General Services in 41 CFR 101-41.203-2, as follows:

(a) *When cost of transportation is \$10 or less.* Travelers shall use cash to procure all passenger transportation services costing \$10 or less, excluding Federal transportation tax, and to pay excess baggage charges costing \$15 or less for each leg of a trip, unless special circumstances justify the use of a GTR.

(b) *When cost of transportation is over \$10 but does not exceed \$100.* Agencies may, by appropriate regulations, require a traveler to use cash to procure passenger transportation services from, to, or between points in the United States and its possessions or the trust territories when the cost is over \$10 but does not exceed \$100, excluding Federal transportation tax, for each trip as authorized on the travel authorization (see note below).

Note.—The National Railroad Passenger Corporation (AMTRAK) will not accept a GTR for travel under \$100. AMTRAK will accept personal checks or major credit cards provided proper identification is shown when purchasing a ticket.

(c) *When cost of transportation exceeds \$100.* Except as noted in (2), below, a GTR must be used to procure passenger transportation services costing in excess of \$100, excluding Federal transportation tax, unless otherwise exempted in writing by GSA as provided in 41 CFR 101-41.203-2.

(2) *Exception to cash payment limitation.* As an exception to the rule stated in (1)(c), above, cash payment of official transportation expenses, without regard to the \$100 limitation, is authorized under the following conditions:

(a) *Reduced group or excursion fares available from travel agencies.* Cash payments in excess of \$100 may be authorized by the agency for individual employees or a group of employees to secure reduced group or excursion fares available only through travel agents under certain conditions as provided in 1-3.4b(2). A copy of the administrative determination required under paragraph 1-3.4b(2) shall accompany the travel voucher.

(b) *Use of individual Government contractor-issued charge card for procurement of transportation exceeding \$100.* Cash payment of passenger transportation services in excess of \$100 is authorized when a participating agency or its employees use a charge card issued by a contractor under contract with the General Services Administration, for official

travel. Use of charge or credit cards held by the employee for personal use and issued by any other credit card company is not authorized under this exception. (See FPMR Temporary Regulation A-25 governing the Government's charge card program.)

(c) *Emergency circumstances.* Under emergency circumstances when the use of GTR's is not possible, heads of agencies, or their designated representatives, may authorize or approve travelers' use of cash exceeding the \$100 limitation when procuring passenger transportation services as provided in 41 CFR 101-41.203-2(b). Under this cited provision, the delegation of authority to authorize or approve the use of cash in excess of \$100 for the procurement of emergency transportation services shall be held to as high an administrative level as practicable to ensure adequate consideration and review of the circumstances.

(3) Reimbursement.

(a) *Claim.* The travel voucher claim for reimbursement for cash payments for transportation services shall show the ticket number, carrier name, accommodations used, origin and destination of travel performed, and the agent's valuation of the transportation ticket. A traveler who has procured passenger transportation services with cash (whether using personal funds, a travel advance, or a Government charge card) shall assign to the Government his/her right to recover any excess payment involving a carrier's use of improper rates. (See statement/voucher requirements in 1-11.5c(3). Also see 1-1.6b for provisions on promotional materials received from carriers and 1-1.6c and 1-3.5 for provisions on denied boarding compensation.)

(b) *Documentation required.* Receipts, passenger coupons, or other appropriate evidence shall be required to support reimbursement claims for cash payments for passenger transportation services in all cases except for use of local transit systems (see 1-11.3c(18) and 1-11.5c(3)).

7. Paragraph 1-10.3a is revised to read as follows:

1-10.3. Advance of funds.

a. *Authority.* The head of each agency or his/her designated representative may advance through proper disbursing officers to any person entitled to per diem, mileage allowance, or subsistence expenses, or for the procurement of transportation by group or charter under 1-3.4b(2), any sums as may be deemed advisable considering the character and probable duration of the travel to be performed or the cost of the

transportation to be paid for by the employee. However, the amount of the advance shall not exceed 80 percent of the minimum estimated expenses that the employee is expected to incur prior to reimbursement. As a general rule, especially when the traveler is a Government contractor-issued charge card holder, advances shall be held to a minimum and allowed only when circumstances indicate that an advance is warranted and only in conjunction with a travel authorization. These provisions apply to advances issued for trip-by-trip authorizations as well as to permanent advances issued in conjunction with open travel authorizations. The need for a permanent advance and the amount of the advance shall be reviewed and justified when the corresponding open travel authorization is reviewed and justified. (See 1-1.5a and d.)

Part 11. Claims for Reimbursement

8. Paragraph 1-11.3c(18) is amended to read as follows:

1-11.3. *Travel vouchers and attachments.*

(18) *Cash payments for passenger transportation services.* (See 1-10.2b(3)(b).)

9. Paragraphs 1-11.6a (1), (4) and (5) and 1-11.6b (15), (16), (17), (18), (26) and (27) are amended to read as follows:

1-11.6. *Administrative approvals.*

(1) *Return to official station due to illness or injury* (1-2.4, 1-7.11d, 1-8.7, and Part 1-12).

(4) *Continuation of per diem during leave of absence due to illness or injury* (1-7.11d and 1-12.5a).

(5) *Continuation of actual subsistence during leave of absence due to illness or injury* (1-8.7 and 1-12.5a).

(15) *Reductions in maximum per diem rates when appropriate* (1-7.7).

(16) *Additional per diem when travel en route is 8 hours or more* (1-7.6c(2)(c)).

(17) *Reimbursement of actual subsistence expense* (1-8.4).

(18) *Maximum daily reimbursement* (1-8.3).

(26) *Return to official station due to a personal emergency situation* (1-2.4, 1-7.11d, 1-8.7, and Part 1-12).

(27) *Travel to an alternate location due to illness or injury or a personal emergency situation* (1-2.4, 1-7.11d, 1-8.7, and Part 1-12).

10. Chapter 1 of the FTR is amended by adding Part 12 to read as follows:

Part 12. Emergency Travel of Employee Due to Illness or Injury or a Personal Emergency Situation, Within or Outside CONUS

1-12.1. *General.* Transportation and subsistence expenses may be allowed to the extent provided herein when an employee discontinues or interrupts a temporary duty travel assignment prior to its completion because of incapacitating illness or injury or a personal emergency situation.

1-12.2. *Agency responsibility/delegation of authority.* Agencies may authorize or approve reimbursement for transportation and per diem expenses under Part 1-12 based on the exigencies of the employee's personal situation and the agency mission. Each agency shall prescribe written administrative policies and procedures to govern its authorizations and approvals under these provisions. Agency heads may delegate their authority under this Part 1-12. Such delegation shall be held to as high an administrative level as practical to ensure adequate consideration and review of the circumstances surrounding the need for emergency travel.

1-12.3. *Employee responsibility and documentation.* As soon as an employee is incapacitated by illness or injury or informed of an emergency situation which necessitates discontinuance or interruption of the temporary duty travel assignment, he/she should attempt to contact the designated travel-approving official for instructions. In the event that such contact cannot be made on a timely basis, agencies may approve payments after the travel has been performed.

1-12.4. *Definitions.* As used in this part, the following definitions apply:

a. *Official station.* The term "official station" also refers to the home or regular place of business as it pertains to experts and consultants described in 5 U.S.C. 5703 (see 1-1.3c(6)).

b. *Alternate location.* An alternate location is a destination, other than the employee's official station or the point of interruption, where necessary medical services or a personal emergency situation exists. In the case of illness or injury of the employee, the nearest hospital or medical facility capable of treating the illness or injury is not considered to be an alternate location.

c. *Incapacitating illness or injury of employee.* For purposes of Part 1-12, an incapacitating illness or injury is one that occurs suddenly for reasons other than the employee's own misconduct and renders the employee incapable of continuing, either temporarily or permanently, the travel assignment. A sudden illness or injury may include a recurrence of a previous medical condition thought to have been cured or under control. The illness or injury may occur while the employee is at, or en route to or from, a temporary duty location.

d. *Family.* Family means those individuals defined in 2-1.4d who are members of the employee's household at the time the emergency situation arises. For compassionate reasons, when warranted by the circumstances of a particular emergency situation, an agency may on an individual case basis expand this definition to encompass other members of the extended family of an employee and employee's spouse, such as the individuals named in 2-1.4d who are not dependents of the employee or members of the employee's immediate household. In using this authority and deciding each case, agencies shall evaluate the extent of the emergency and the employee's relationship to, and degree of responsibility for, the individual(s) involved in the emergency situation.

e. *Personal emergency situation.* Personal emergency situation means the death or serious illness or injury of a member of the employee's family or a catastrophic occurrence or impending disaster such as a fire, flood, or act of God which directly affects the employee's home at the official station or the family and occurs while the employee is at, or en route to or from, a temporary duty location.

f. *Serious illness or injury of family member.* Serious illness or injury of a family member means a grave, critical, or potentially life-threatening illness or injury; a sudden injury such as an automobile or other accident where the exact extent of injury may be undetermined but is thought to be critical or potentially life threatening based on the best assessment available; or other situations involving less serious illness or injury of a family member in which the absence of the employee would result in great personal hardship for the immediate family.

g. *Fire, flood, or Act of God.* Fires or floods may be due to natural causes or human actions (e.g., arson) or other identifiable causes. Act of God means an extraordinary happening by a natural cause (as fire, flood, tornado, hurricane,

earthquake, or other natural catastrophe) for which no one is liable because of experience, foresight, or care could not prevent it.

1-12.5. Incapacitating illness or injury of employee. When an employee interrupts or discontinues a travel assignment because of an incapacitating illness or injury (as defined in 1-12.4c), transportation expenses and per diem may be allowed to the extent provided below.

a. Continuation of per diem at point of interruption. An employee who interrupts the temporary duty assignment because of an incapacitating illness or injury and takes leave of any kind shall be allowed a per diem allowance under the provisions of 1-7.5 or 1-7.8, as appropriate, not to exceed the maximum rates prescribed under 1-7.2 for the location where the interruption occurs. Such per diem may be continued for a reasonable period, normally not to exceed 14 calendar days (including fractional days) for any one period of absence. However, a longer period may be approved by the employee's agency if justified by the circumstances of a particular case. The point of interruption may include the nearest hospital or medical facility capable of treating the employee's illness or injury. Per diem shall not be allowed while an employee is confined to a hospital or medical facility that is within proximity of the official station or that is the same one the employee would have been admitted to if the illness or injury had occurred while at the official station.

(1) Receipt of payments from other Federal sources. If, while in travel status under circumstances described in 1-12.5a, the employee receives hospitalization (or is reimbursed for hospital expenses) under any Federal statute (including hospitalization in a Veterans Administration or military hospital) other than 5 U.S.C. 8901-8913 (Federal Employees Health Benefits Program), the per diem allowance for the period involved shall not be paid or, if paid, shall be collected from the employee.

(2) Documentation and evidence of illness. The type of leave and its duration must be stated on the travel voucher. No additional evidence of the illness or injury need be submitted with the travel voucher. The evidence filed with the agency concerned, as required by that agency under the annual and sick leave regulations of the Office of Personnel Management, shall suffice.

b. Return to official station or home. When an employee discontinues a temporary duty assignment before its completion because of an incapacitating

illness or injury, expenses of appropriate transportation and per diem while en route shall be allowed for return travel to the official station. Such return travel may be from the point of interruption or other point where the per diem allowance was continued as provided in a, above. If, when the employee's health has been restored, the agency decides that it is in the Government's interest to return the employee to the temporary duty location, such return is considered to be a new travel assignment at Government expense.

c. Travel to an alternate location and return to the temporary duty assignment.

(1) Conditions and allowable expenses. When an employee, with the approval of an appropriate agency official, interrupts a temporary duty assignment because of an incapacitating illness or injury and takes leave of absence for travel to an alternate location to obtain medical services and returns to the temporary duty assignment, reimbursement for certain excess travel costs may be allowed as provided in (2), below. The nearest hospital or medical facility capable of treating the employee's illness or injury will not be considered an alternate location (see 1-12.4b).

(2) Calculation of excess costs. The reimbursement that may be authorized or approved under (1), above, shall be the excess (if any) of actual costs of travel from the point of interruption to the alternate location and return to the temporary duty assignment, over the constructive costs of round-trip travel between the official station and the alternate location. The actual cost of travel will be the transportation expenses incurred and en route per diem for the travel as actually performed from the point of interruption to the alternate location and from the alternate location to the temporary duty assignment. (No per diem is allowed for the time spent at the alternate location.) The constructive cost of travel is the sum of transportation expenses the employee would reasonably have incurred for round-trip travel between the official station and the alternate location (had the travel begun at the official station) plus per diem calculated under Part 1-7 for the appropriate en route travel time. The excess cost that may be reimbursed is the difference between the two calculations.

1-12.6. Personal emergency situation.

a. Return to official station or home. When an employee discontinues a temporary duty assignment before its completion because of a personal emergency situation as defined in 1-12.4e, expenses of appropriate

transportation and per diem while en route may be allowed, with the approval of an appropriate agency official, for return travel from the point of interruption to the official station. If, when the personal emergency situation has been resolved, the agency decides that it is in the Government's interest to return the employee to the temporary duty location, such return is considered to be a new travel assignment at Government expense.

b. Travel to an alternate location and return to the temporary duty assignment. When an employee, with the approval of an appropriate agency official, interrupts a temporary duty assignment because of a personal emergency situation as defined in 1-12.4e, and takes leave of absence for travel to an alternate location where the personal emergency exists, and returns to the temporary duty assignment, reimbursement may be allowed for certain excess travel costs (transportation and en route per diem) to the same extent as provided in 1-12.5c for incapacitating illness or injury of the employee.

1-12.7. Procurement of transportation.

a. Use of discount fares. The discount fares offered by contract air carriers in certain city pairs, as well as other reduced fares available to Federal travelers on official business, should be used to the extent possible for travel authorized or approved under this Part 1-12.

b. Return to official station. When the employee is authorized emergency return travel, from the point of interruption or discontinuance of the travel assignment to the official station, appropriate transportation services may be purchased by the agency or the employee. The unused return portion of round-trip transportation tickets procured by the agency for the travel assignment shall be used if appropriate for the mode of transportation required for the emergency travel. If not used, the agency and the employee shall ensure that all unused tickets are properly accounted for (see 1-3.5).

c. Travel to alternate location. An agency may require employees to use personal funds for emergency travel to an alternate location and return to the temporary duty assignment. A Government contractor-issued charge card also may be used for this purpose. However, if the employee does not have sufficient personal funds available and is not a Government charge card holder, the agency may procure (or provide an advance of funds for the employee to procure) appropriate transportation. The employee, upon completion of the

emergency travel, shall reimburse the Government for any cost of such transportation or travel advance that is above the amount of allowable reimbursement that may be authorized or approved under this Part 1-12.

11. Chapter 1 of the FTR is amended by adding and reserving Part 13 and by adding Part 14 to read as follows:

Part 13. [Reserved]

Part 14. Payment of Subsistence and Transportation Expenses for Threatened Law Enforcement/Investigative Employees

1-14.1. *Authority.* The head of an employing agency, as described in 1-14.2 (hereafter referred to as "agency"), may authorize or approve payment of subsistence and certain transportation expenses for threatened individuals (see 1-14.4) whose lives are placed in jeopardy as a result of the employee's assigned duties and who, as a protective measure, are moved to temporary living accommodations at or away from the official station within or outside CONUS.

1-14.2. *Agency responsibility/delegation of authority.* Heads of agencies are responsible for issuing regulations or guidelines to implement the provisions of this part and for ensuring that the agency's policy is adhered to. The agency head may delegate the authority to authorize or approve payment of allowable subsistence and transportation expenses for the use of temporary living accommodations by eligible individuals as provided herein. The delegation of authority shall be held to as high an administrative level as practical to ensure proper review of the circumstances surrounding the need to take protective action by moving eligible individuals from their homes.

1-14.3. *Policy.* The authority under 1-14.1 is to be given priority consideration when the life-threatening situation is expected to be of temporary duration (normally no more than 60 days) and the only feasible alternative is to transfer the employee to a new duty station. The head of an agency or his/her designee must make the final decision as to how long such payments should continue based on the specific nature and potential duration of the life-threatening situation and the alternative costs of a change of official station for protective purposes.

1-14.4. *Eligible individuals.* Employees (as defined in 1-1.3c(6)) who specifically serve in a law enforcement, investigative, or similar capacity, or other Federal employees detailed into these capacities for specific law

enforcement/investigational purposes, are eligible for the allowances covered by this part. The employing agency shall be deemed to be the one to whom the employee was assigned at the time of the threat. Members of such employees' immediate families (as defined in 2-1.4d) also are eligible.

1-14.5. *Procedures for evaluating risk to threatened individuals.* When a situation occurs that appears to be life-threatening, the agency's first responsibility is to take any appropriate action necessary to protect the eligible individual(s), including removal from the home. The agency may ask the Criminal Division of the Department of Justice (DOJ) for assistance in determining the degree and seriousness of the threat. The agency, however, ultimately is responsible for deciding in each individual case, based on its own assessment of the situation (and the advice of the DOJ, if requested and furnished), whether protective action should be initiated, or continued if already undertaken, and the amount of subsistence and transportation expenses that will be approved. At 30-day intervals the agency will reevaluate the situation and decide whether any further extension of the time period is appropriate.

1-14.6. *Eligibility conditions and limitations.*

a. *Limits on duration of temporary living accommodations.* Subsistence payments may begin as soon as the agency determines that the provisions of this part should be invoked in a particular situation. Normally subsistence payments may be allowed for a period of no more than 60 days; the agency may, however, approve extensions of the time period as provided in 1-14.5. If the threatened individuals are directed to move immediately into temporary accommodations while the agency assesses the degree and seriousness of the threat, subsistence payments for this period may be allowed, even when the agency ultimately determines that the threat is not serious or no longer exists and decides to return the individuals to their home. When necessary occupancy of temporary living accommodations is expected to exceed 120 days, the agency should consider whether permanently relocating the employee would be advantageous given the specific nature of the threat, the continued disruption of the family, and the alternative costs of a change of official station.

b. *Location of temporary living accommodations.* The temporary living accommodations may be located in the vicinity of the employee's official station or at an alternate location away from

the official station as circumstances warrant. When justified, the employee and immediate family members may occupy temporary living accommodations at different locations. The agency will designate the appropriate locations.

1-14.7. *Allowable subsistence payments.*

a. *Expenses covered.* Payments under this authority are intended to cover only reasonable and necessary subsistence expenses actually incurred incident to the occupancy of temporary living accommodations. Subsistence payments under this part generally will be limited to the cost of lodgings. However, certain expenses for meals, laundry, and cleaning of clothing may be allowed as provided in c. below.

b. *Determining allowable lodging costs.*

(1) *Allowable costs for daily rentals.* The same costs allowed in 1-7.5c(2) for lodging facilities obtained in connection with temporary duty travel may be allowed for temporary living accommodations under this part.

(2) *Allowable types of costs for other-than-daily rentals.* When an eligible individual rents lodgings on an other-than-daily basis for temporary occupancy under this part, the allowable costs shall be converted to a daily basis using the general guidelines under 1-7.9 which apply to lodgings obtained in connection with temporary duty travel.

c. *Determining other allowable expenses.* Costs of food, laundry, and cleaning of clothing are expenses incurred in day-to-day living. Such expenses should be considered the responsibility of the employee and normally will not be reimbursed. However, if temporary living accommodations do not contain cooking and/or laundry facilities, or other extenuating circumstances are present, certain of these expenses may be allowed to the extent determined appropriate by the agency.

d. *Maximum allowable amount.*

(1) *Method of computation.* An agency may approve the actual amount of allowable expenses incurred in each 30-day period (or fraction thereof) up to a maximum amount based on the daily limitations calculated under (2). below, multiplied by 30 (or the actual number of days used if fewer than 30). The daily actual subsistence expenses required to be itemized under a. below, will be totaled for each 30-day period (or fraction thereof) and compared with the maximum allowable for the particular period as prescribed under (2). below.

(2) *Daily limitations.* The maximum amount of subsistence payments for

each 30-day period (or fraction thereof) will be based on daily limitations calculated as provided in (a) through (e), below. If subsistence payments are authorized only for lodging costs, the daily limitations shall be reduced appropriately.

(a) For the employee, or for the unaccompanied spouse (one who necessarily occupies temporary accommodations without the employee or in a location separate from the employee), the daily limitation shall be an amount prescribed by the agency that shall not exceed the applicable maximum per diem rate prescribed under 1-7.2 for the location of the temporary living accommodations.

(b) For the spouse accompanied by the employee, the daily limitation shall not exceed three-fourths of the employee's daily limitation established in (a), above.

(c) For each other member of the employee's immediate family who is 12 years of age or older, the daily limitation shall not exceed three-fourths of the daily limitation established in (a), above, for the employee or the unaccompanied spouse, as appropriate.

(d) For each member of the employee's immediate family who is under 12 years of age, the daily limitation shall not exceed one-half of the daily limitation established in (a), above, for the employee or the unaccompanied spouse, as appropriate.

(e) For each member of the immediate family who necessarily occupies temporary living accommodations without, or at a location separate from, either the employee or the spouse, the agency may, when the limitations stated in (c) and (d), above, are inadequate, establish an appropriate higher daily limitation, that is within the limitation prescribed in (a), above.

e. Itemization and receipts. The actual expenses shall be itemized in a manner prescribed by the agency which will permit at a minimum a review of the amounts spent daily for (1) lodging, (2) meals, and (3) other allowable items of subsistence expenses (see a, above). Receipts shall be required at least for lodging and for any other allowable expenses as required by the agency.

1-14.8. Transportation to and from a location away from the employee's designated post of duty. The agency may approve the payment of transportation expenses when a situation described in 1-14.1 requires the employee and/or members of the immediate family to be temporarily relocated to a place away from the employee's designated post of duty. Transportation to and from such location shall be in accordance with the governing provisions of Parts 2 through 4

of this Chapter 1 unless the agency specifically approves a deviation from the rules for security reasons (see 1-10.2 regarding use of cash to procure transportation services in emergency circumstances). The documentation provisions of 1-14.9 govern in such instances.

1-14.9. Authorizations and payment of claims. Due to the unique nature of the situations covered under this part, agency heads shall establish specific administrative procedures for issuing authorizations and for payment of claims. In instances when documentation might compromise the security of the individuals involved, the head of the agency may waive all but absolutely essential documentation requirements.

1-14.10. Advance of funds. Funds may be advanced for subsistence and transportation expenses covered under this part in accordance with 1-10.3. The advance of funds will be at intervals prescribed by the agency but for no more than a 30-day period at a time. The amount of the advance shall not exceed an amount based on the daily limitations established by the agency under 1-14.7d(2).

12. Appendix 1-B, entitled "Travel Purpose Categories," is amended by redesignating category number 9 as number 10 and inserting new category 9 to read as follows:

9. Emergency travel—Travel to return an employee from a temporary assignment location at Government expense to his/her designated post of duty or home, or other alternate location, where he/she would normally be present to take care of the emergency situation if the Government had not directed or assigned the employee to another location to perform official business.

CHAPTER 2. RELOCATION ALLOWANCES

Part 1. Applicability and General Rules

13. Paragraph 2-1.1 is revised to read as follows:

2-1.1. *Authority.* These regulations are issued pursuant to 5 U.S.C. 5721-5734 and 20 U.S.C. 905(a).

14. Paragraph 2-1.2a is amended by revising subparagraph a(1) and adding paragraph a(1-a) to read as follows:

2-1.2. Applicability.

(1) Civilian officers and employees upon transfer from one official station or agency to another for permanent duty.

(1-a) Civilian officers and employees of the United States Postal Service

transferred under 39 U.S.C. 1006 from the Postal Service to an agency as defined in 5 U.S.C. 5721 for permanent duty.

15. Paragraph 2-1.6a(3)(a) is revised to read as follows:

2-1.6. Use of funds.

(a) Per diem, mileage, and common carrier costs incident to his/her change of official station as set forth in 2-2.4;

Part 2. Allowances for Subsistence and Transportation

16. Paragraph 2-2.1 is revised to read as follows:

2-2.1. *For the employee.* Except as specifically provided in these regulations, per diem instead of subsistence expenses, transportation costs, and other travel expenses of the employee shall be allowed in accordance with the provisions of 5 U.S.C. 5701-5709 and Chapter 1; the maximum per diem rate allowable for travel within CONUS shall be the standard CONUS rate prescribed under 1-7.2 (see also 1-7.5a). Within CONUS, the prohibition on paying per diem for travel of less than 10 hours will apply to change of official station travel; outside CONUS, the 10-hour exclusion does not apply (see 1-7.4b). This part applies to travel of transferred employees, new appointees (including those covered in 2-1.5f), and employees assigned to posts of duty outside the conterminous United States in connection with either overseas tour renewal agreement travel or return travel to places of residence for the purpose of separation.

17. Paragraph 2-2.2b is revised to read as follows:

2-2.2. *For members of an employee's immediate family.*

b. *Per diem allowance when en route between employee's old and new official stations.* When an employee is transferred, an allowance shall be paid for per diem instead of subsistence expenses incurred by the employee's immediate family while traveling between the old and new official stations regardless of where the old and new stations are located. If the actual travel involves departure and/or destination points other than the old or new official station, the per diem allowance shall not exceed the amount to which members of the immediate family would have been entitled if they had traveled by usually traveled route between the old and new official stations. In computing the per diem

allowance under provisions of Chapter 1, within CONUS, the prohibition on paying per diem for travel of less than 10 hours will apply to permanent change of station travel; outside CONUS, the 10-hour exclusion does not apply (see 1-7.4b). The maximum allowable per diem rates are as follows:

18. Paragraph 2-2.3d(1) is revised to read as follows:

d. Maximum per diem allowances when privately owned automobile is used.

(1) *Rates as prescribed by agency.*

The per diem allowance for the employee while en route between the old and new duty stations shall be at appropriate rates, as prescribed by the agency concerned, within the applicable maximums and in accordance with provisions of 2-2.1 and Chapter 1. The per diem allowances prescribed in 2-2.2b apply for members of an employee's immediate family, except as excluded in 2-2.2c.

Part 5. Subsistence While Occupying Temporary Quarters

19. Paragraph 2-5.2g is revised to read as follows:

2-5.2. Conditions and limitations for eligibility.

g. Effect of partial days on eligibility period. Occupancy of temporary quarters for less than a whole day constitutes one full calendar day of the eligibility period.

(1) *Claim for temporary quarters when occupancy begins the same day en route travel ends.* The guidelines in (a) and (b), below, shall be used for determining the eligibility period for temporary quarters subsistence expense reimbursement and in computing maximum reimbursement when occupancy of temporary quarters for reimbursement purposes occurs the

same day that en route travel per diem ends.

(a) *Old and new official station within the conterminous United States.* When en route travel (between official stations within the conterminous United States) ends and occupancy of temporary quarters for reimbursement purposes occurs in the same calendar day, the eligibility period for reimbursement for temporary quarters subsistence expenses shall start when en route travel terminates upon arrival at the temporary quarters location.

(b) *Old and/or new official station outside the conterminous United States.*

(i) *En route travel of more than 24 hours.* When en route travel is more than 24 hours, the eligibility period for reimbursement for temporary quarters subsistence expenses shall start at the beginning of the calendar day quarter immediately following the calendar day quarter in which en route travel per diem ends.

(ii) *En route travel of 24 hours or less.* When en route travel is 24 hours or less, the eligibility period for reimbursement for temporary quarters subsistence expense shall start at the beginning of the same calendar day quarter in which en route travel per diem ends.

(2) *Claims for temporary quarters occupancy in all other cases.* In all cases other than those covered in (1), above (e.g., when occupancy of temporary quarters occurs at the old official station or when reimbursement for occupancy of temporary quarters is not claimed on the same day that en route travel per diem begins or ends), the temporary quarters period shall start as provided in (a) or (b), below.

(a) *Old and new official stations within the conterminous United States.* When both the old and new official stations are within the conterminous United States, the temporary quarters period shall start at 12:01 a.m. of the calendar day (see 1-7.1b(1)) in which temporary quarters subsistence expense reimbursements is claimed, provided

that temporary quarters are occupied during that calendar day.

(b) *Old and/or new official station outside the conterminous United States.* When the old and/or new official station is outside the conterminous United States, the temporary quarters shall start with the first quarter of the calendar day in which temporary quarters subsistence expense reimbursement is claimed, provided that temporary quarters are occupied during that calendar day.

(3) *Termination of eligibility period.*

The temporary quarters period shall terminate at midnight of the last day of eligibility.

20. Paragraph 2-5.4c(1) is revised to read as follows:

2-5.4. Allowable amount.

(1) *Applicable maximum per diem rates.* The maximum per diem rates to be used for computations under (2) through (4), below, shall be as follows:

(a) For temporary quarters located in the conterminous United States, the applicable maximum per diem rate is the standard CONUS rate (\$50) prescribed under 1-7.5a.

(b) For temporary quarters in applicable locations outside the conterminous United States, the maximum per diem rate is the rate prescribed by the Secretary of Defense or by the Secretary of State under 1-7.2b or c for the locality of the temporary quarters.

Appendix 1-A, Prescribed Maximum Per Diem Rates for CONUS

21. Appendix 1-A of the FTR is amended by removing Appendix 1-A entitled "Designated High Rate Geographical Areas (HRGA's)" and adding new Appendix 1-A entitled "Prescribed Maximum Per Diem Rates for CONUS" to read as follows:

BILLING CODE 6820-AM-21

<u>Per Diem Locality</u>		Maximum Lodging Amount	M&IE Rate	Maximum Per Diem Rate
<u>Key City 1/</u>	<u>County and/or other defined location 2/ 3/</u>	(a)	(b)	(c) 4/
San Francisco	San Francisco, Alameda, Contra Costa & Marin	62	33	95
San Jose	Santa Clara	57	33	90
San Luis Obispo	San Luis Obispo	52	25	77
San Mateo	San Mateo	54	33	87
Santa Barbara	Santa Barbara	71	25	96
Santa Cruz	Santa Cruz	50	25	75
Stockton	San Joaquin	44	25	69
Tahoe City	Placer	46	25	71
Vallejo	Solano	40	25	65
West Sacramento	Yolo	43	25	68
COLORADO				
Aspen	Pitkin	65	33	98
Boulder	Boulder	55	33	88
Colorado Springs	El Paso	43	25	68
Denver	Denver, Adams, Arapahoe & Jefferson	57	33	90
Durango	La Plata	46	25	71
Ft. Collins	Larimer	34	25	59
Glenwood Springs	Garfield	45	25	70
Grand Junction	Mesa	37	25	62
Steamboat Springs	Routt	46	25	71
Pagosa Springs	Archuleta	36	25	61
Pueblo	Pueblo	37	25	62
Silverthorne/Keystone	Summit	50	25	75
Vail	Eagle	69	33	102
CONNECTICUT				
Bridgeport/Danbury	Fairfield	62	25	87
Hartford	Hartford & Middlesex	50	33	83
New Haven	New Haven	61	25	86
New London/Groton	New London	50	25	75
Putnam/Danielson	Windham	52	25	77
DELAWARE				
Dover	Kent	38	25	63
Lewes	Sussex	40	25	65
Wilmington	New Castle	55	25	80
DISTRICT OF COLUMBIA				
Washington, DC (also the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington, Loudoun, and Fairfax in Virginia; and the counties of Montgomery and Prince Georges in Maryland) (see also Maryland and Virginia)		79	33	112
FLORIDA				
Bradenton Beach/ Bradenton	Manatee	79	25	104
Cocoa Beach	Brevard	50	25	75
Daytona Beach/Ormond Beach/New Smyrna	Volusia	41	25	66
Fort Lauderdale	Broward	55	25	80
Fort Myers	Lee	42	25	67
Fort Pierce	Saint Lucie	45	25	70
Fort Walton Beach	Okaloosa	50	25	75
Gainesville	Alachua	40	25	65
Jacksonville	Duval County; Naval Station Mayport; (also see St. Marys, GA)	46	25	71

<u>Per Diem Locality</u>		Maximum Lodging Amount (a)	MEIE Rate (b)	Maximum Per Diem Rate (c)
<u>Key City 1/</u>	<u>County and/or other defined location 2/ 3/</u>	+	=	4/
Miami	Dade & Monroe	50	33	83
Naples	Collier	34	25	59
Orlando	Orange	54	25	79
Panama City	Bay	50	25	75
Pensacola	Escambia	44	25	69
Sarasota	Sarasota	37	25	62
Saint Augustine	Saint Johns	48	25	73
Stuart	Martin	45	25	70
Tallahassee	Leon	42	25	67
Tampa/St. Petersburg	Hillsborough & Pinellas	52	25	77
West Palm Beach	Palm Beach	54	25	79
GEORGIA				
Albany	Dougherty	41	25	66
Athens	Clarke	35	25	60
Atlanta	Clayton, De Kalb, Fulton & Cobb	62	33	95
Augusta	Richmond	41	25	66
Brunswick	Glynn	39	25	64
Columbus	Muscogee	36	25	61
Macon	Bibb (including Robbins AFB)	36	25	61
Savannah	Chatham	41	25	66
St. Marys	The Naval Submarine Base, Kings Bay (See also Jacksonville, FL)	46	25	71
IDAHO				
Boise	Ada	44	25	69
Coeur d'Alene	Kootenai	37	25	62
Ketchum	Blaine	49	25	74
McCall	Valley	32	25	57
Pocatello	Bannock	41	25	66
ILLINOIS				
Alton	Madison	45	25	70
Champaign/Urbana	Champaign	38	25	63
Chicago	Du Page, Cook & Lake	72	33	105
Danville	Vermillion	40	25	65
Dixon	Lee	33	25	58
East St. Louis	St. Clair	35	25	60
Macomb	McDonough	40	25	65
Moline/Rock Island	Rock Island	45	25	70
Peoria	Peoria	48	25	73
Rockford	Winnebago	37	25	62
Springfield	Sangamon	44	25	69
INDIANA				
Bloomington	Monroe	45	25	70
Charlestown/ Jeffersonville	Clark County; Indiana Army Ammunition Plant	46	25	71
Columbus	Bartholomew	35	25	60
Ekhart	Ekhart	45	25	70
Fort Wayne	Allen	50	25	75
Gary	Lake	37	25	62
Indianapolis	Marion County; Fort Benjamin Harrison	50	25	75
Lafayette	Tippecanoe	39	25	64
Logansport	Cass	35	25	60
Marion	Grant	31	25	56
Michigan City	La Porte	34	25	59
Nuncie	Delaware	44	25	69
New Albany	Floyd	32	25	57
South Bend	St. Joseph	44	25	69

<u>Per Diem Locality</u>	<u>County and/or other defined location 2/ 3/</u>	<u>Maximum Lodging Amount (a)</u>	<u>NITE Rate (b)</u>	<u>Maximum Per Diem Rate (c)</u>	<u>4/</u>
IOWA					
Bettendorf/Davenport	Scott	43	25	68	
Cedar Rapids	Linn	38	25	63	
Des Moines	Polk	48	25	73	
Dubuque	Dubuque	34	25	59	
Iowa City	Johnson	37	25	62	
Sioux City	Woodbury	36	25	61	
Waterloo	Black Hawk	39	25	64	
KANSAS					
Hayes	Ellis	33	25	58	
Kansas City	Johnson & Wyandotte (See also Kansas City, MO)	60	25	85	
Lawrence	Douglas	30	25	55	
Topeka	Shawnee	40	25	65	
Wichita	Sedgwick	50	25	75	
KENTUCKY					
Covington	Kenton	46	25	71	
Frankfort	Franklin	40	25	65	
Lexington	Fayette	52	25	77	
Louisville	Jefferson	46	25	71	
Prestonburg	Floyd	34	25	59	
LOUISIANA					
Alexandria	Rapides Parish	43	25	68	
Baton Rouge	East Baton Rouge Parish	50	25	75	
Bossier City	Bossier Parish	57	25	82	
Lafayette	Lafayette Parish	41	25	66	
Lake Charles	Calcasieu Parish	42	25	67	
Monroe	Ouachita Parish	41	25	66	
New Orleans	Parishes of Jefferson, Orleans, Plaquemines & St. Bernard	52	33	85	
Shreveport	Caddo Parish	50	25	75	
Slidell	St. Tammany Parish	39	25	64	
MAINE					
Augusta	Kennebec	40	25	65	
Bangor	Penobscot	48	25	73	
Bath	Sagadahoc	32	25	57	
Kittery	Portsmouth Naval Shipyard (See also Portsmouth, NH)	40	25	65	
Portland	Cumberland	55	25	80	
Presque Isle	Aroostook	38	25	63	
MARYLAND					
(For the counties of Montgomery and Prince Georges, see District of Columbia)					
Annapolis	Anne Arundel	63	25	88	
Baltimore	Baltimore & Harford	50	25	75	
Columbia	Howard	81	25	106	
Cumberland	Allegany	41	25	66	
Easton	Talbot	39	25	64	
Frederick	Frederick	50	25	75	
Lexington Park/St. Inigoes/Leonardtown	St. Marys	44	25	69	
Ocean City	Worcester	74	25	99	
Salisbury	Wicomico	44	25	69	
Waldorf	Charles	41	25	66	

<u>Per Diem Locality</u>	<u>County and/or other defined location 2/ 3/</u>	<u>Maximum Lodging Amount</u> (a)	<u>M&IE Rate</u> (b)	<u>Maximum Per Diem Rate</u> (c)	<u>4/</u>
<u>Key City 1/</u>					
MASSACHUSETTS					
Andover	Essex	72	33	105	
Boston	Middlesex, Norfolk & Suffolk	75	33	108	
Hyannis	Barnstable	50	25	75	
Martha's Vineyard/ Nantucket	Dukes & Nantucket	85	33	118	
New Bedford	Bristol	46	25	71	
Northampton	Hampshire	46	25	71	
Pittsfield	Berkshire	48	25	73	
Springfield	Hampden	50	25	75	
Worcester	Worcester	50	25	75	
MICHIGAN					
Adrian	Lenawee	36	25	61	
Ann Arbor	Washtenaw	50	25	75	
Battle Creek	Calhoun	37	25	62	
Bay City	Bay	37	25	62	
Detroit	Wayne	57	25	82	
Flint	Genesee	37	25	62	
Grand Rapids	Kent	48	25	73	
Holland	Ottawa	31	25	56	
Jackson	Jackson	38	25	63	
Kalamazoo	Kalamazoo	48	25	73	
Lansing/East Lansing	Ingham	45	25	70	
Marquette	Marquette	32	25	57	
Midland	Midland	45	25	70	
Monroe	Monroe	30	25	55	
Muskegon	Muskegon	32	25	57	
Pontiac	Oakland	48	25	73	
Port Huron	St. Clair	42	25	67	
Saginaw	Saginaw	40	25	65	
St. Joseph/Benton Harbor/Niles	Berrien	39	25	64	
Traverse City	Grand Traverse	40	25	65	
Warren	Macomb	43	25	68	
MINNESOTA					
Demidji	Beltrami	36	25	61	
Duluth	St. Louis	42	25	67	
Minneapolis/St. Paul	Anoka, Hennepin & Ramsey Counties; Fort Snelling Military Reservation & Navy Astronautics Group (Detachment BRAVO), Rosemount-	50	25	75	
St. Cloud	Stearns	33	25	58	
MISSISSIPPI					
Gulfport	Harrison	39	25	64	
Jackson	Hinds	50	25	75	
Natchez	Adams	44	25	69	
Oxford	Lafayette	36	25	61	
Pascagoula	Jackson	31	25	56	
Vicksburg	Warren	37	25	62	
MISSOURI					
Cape Girardeau	Cape Girardeau	40	25	65	
Columbia	Boone	46	25	71	
Jefferson City	Cole	39	25	64	
Joplin	Jasper	30	25	55	
Kansas City	Clay, Jackson & Platte (See also Kansas City, KS)	60	25	85	

Per Diem Locality		Maximum Lodging Amount (a)	MEIE Rate (b)	Maximum Per Diem Rate (c)	4/
Key City 1/	County and/or other defined location 2/ 3/				
Springfield	Greene	43	25	68	
St. Louis	St. Charles & St. Louis	53	25	78	
MONTANA					
Billings	Yellowstone	34	25	59	
Great Falls	Cascade	37	25	62	
Helena	Lewis & Clark	33	25	58	
NEBRASKA					
Grand Island	Hall	35	25	60	
Lincoln	Lancaster	39	25	64	
Norfolk	Madison	36	25	61	
Omaha	Douglas	50	25	75	
Scottsbluff	Scottsbluff	33	25	58	
NEVADA					
Beatty/Tonopah	Nye	30	25	55	
Carson City	Carson City	32	25	57	
Las Vegas	Clark County; Nellis AFB	69	33	102	
Reno	Washoe	44	25	69	
NEW HAMPSHIRE					
Concord	Merrimack	44	25	69	
Laconia	Belknap	50	25	75	
Manchester	Hillsborough	55	25	80	
Portsmouth/Newington	Rockingham County; Pease AFB (See also Kittery, ME)	40	25	65	
NEW JERSEY					
Atlantic City	Atlantic	93	33	126	
Belle Mead	Somerset	59	25	84	
Camden	Camden	50	25	75	
Cape May	Cape May	50	25	75	
Dover	Morris County; Picatinny Arsenal	55	25	80	
Easton town	Monmouth County; Fort Monmouth	50	25	75	
Edison	Middlesex	50	25	75	
Newark	Bergen, Essex, Hudson, Passaic & Union	75	25	100	
Princeton/Trenton	Mercer	61	25	86	
Tom's River	Ocean	45	25	70	
NEW MEXICO					
Albuquerque	Bernalillo	59	25	84	
Las Cruces/White Sands	Dona Ana	39	25	64	
Los Alamos	Los Alamos	42	25	67	
Santa Fe	Santa Fe	55	25	80	
Taos	Taos	49	25	74	
NEW YORK					
Albany	Albany	54	25	79	
Binghamton	Broome	52	25	77	
Buffalo	Erie	50	25	75	
Catskill	Greene	32	25	57	
Corning	Steuben	48	25	73	
Glens Falls	Warren	40	25	65	
Ithaca	Tompkins	51	25	76	
Lake Placid	Essex	50	25	75	

<u>Per Diem Locality</u>		Maximum Lodging Amount	M&IE Rate	Maximum Per Diem Rate
<u>Key City 1/</u>	<u>County and/or other defined location 2/ 3/</u>	(a)	(b)	(c) 4/
New York City	The boroughs of the Bronx, Brooklyn, Manhattan, Queens & Staten Island; Nassau & Suffolk Counties	93	33	126
Niagara Falls	Niagara	53	25	78
Owego	Tioga	39	25	64
Poughkeepsie	Dutchess	50	25	75
Rochester	Monroe	63	25	88
Schenectady	Schenectady	49	25	74
Syracuse	Onondaga	57	25	82
Troy	Rensselaer	48	25	73
West Point	Orange	38	25	63
White Plains	Westchester	76	33	109
<u>NORTH CAROLINA</u>				
Asheville	Buncombe	43	25	68
Boone	Watauga	36	25	61
Charlotte	Mecklenburg	52	25	77
Duck	Dare	50	25	75
Durham	Durham	33	25	58
Fayetteville	Cumberland	38	25	63
Greensboro	Guilford	49	25	74
Morehead City	Carteret	53	25	78
Raleigh	Wake	54	25	79
Wilmington	New Hanover	45	25	70
Winston-Salem	Forsyth	44	25	69
<u>NORTH DAKOTA</u>				
Bismarck	Burleigh	44	25	69
Fargo	Cass	46	25	71
Minot	Ward	42	25	67
<u>OHIO</u>				
Akron	Summit	46	25	71
Bridgeport/Martins Ferry/Belaire	Belmont	37	25	62
Chillicothe	Ross	40	25	65
Cincinnati/Evendale	Hamilton & Warren	50	25	75
Cleveland	Cuyahoga	51	33	84
Columbus	Franklin	51	25	76
Dayton	Montgomery County; Wright-Patterson AFB	53	25	78
Defiance	Defiance	40	25	65
Freemont	Sandusky	33	25	58
Geneva	Ashtabula	43	25	68
Hamilton/Fairfield	Butler	41	25	66
Ironton	Lawrence	35	25	60
Lima	Allen	35	25	60
Portsmouth	Scioto	38	25	63
Sandusky	Erie	44	25	69
Springfield	Clark	43	25	68
Toledo	Lucas	50	25	75
<u>OKLAHOMA</u>				
Clinton	Custer	32	25	57
Eufaula	McIntosh	34	25	59
Lawton	Comanche	35	25	60
Muskogee	Muskogee	35	25	60
Norman	Cleveland	44	25	69
Oklahoma City	Oklahoma	47	25	72
Stillwater	Payne	43	25	68
Tulsa	Osage, Tulsa & Washington	39	25	64

Per Diem Locality		Maximum Lodging Amount (a)	M&IE Rate (b)	Maximum Per Diem Rate (c) 4/
Key City 1/	County and/or other defined location 2/ 3/			
OREGON				
Beaverton	Washington	40	25	65
Bend	Deschutes	36	25	61
Portland	Multnomah	50	25	75
Salem	Marion	37	25	62
PENNSYLVANIA				
Allentown	Lehigh			
Chester	Delaware	45	25	70
Erie	Erie	46	25	71
Harrisburg	Dauphin	41	25	66
King of Prussia/ Pt. Washington	Montgomery County, except Bala Cynwyd (see also Philadelphia, PA)	58	25	83
Lancaster	Lancaster	59	25	84
Mechanicsburg	Cumberland	41	25	66
Philadelphia	Philadelphia County; city of Bala Cynwyd in Montgomery County	36	25	61
Pittsburgh/Monroeville	Allegheny	72	33	105
Reading	Berks	59	25	84
State College	Centre	47	25	72
Valley Forge	Chester	38	25	63
Warminster	Bucks County; Naval Air Development Center	73	25	98
York	York	48	25	73
		50	25	75
RHODE ISLAND				
East Greenwich	Kent County; Naval Construction Battalion Center, Davisville	49	25	74
Newport	Newport	72	33	105
Providence	Providence	64	25	89
SOUTH CAROLINA				
Cayce	Lexington	32		
Charleston	Charleston & Berkeley	44	25	57
Columbia	Richland	44	25	69
Greenville	Greenville	48	25	73
Hilton Head	Beaufort	40	25	65
Myrtle Beach	Horry County;	76	33	109
Spartanburg	Myrtle Beach AFB	63	25	88
	Spartanburg	41	25	66
SOUTH DAKOTA				
Pierre	Hughes	31		
Rapid City	Pennington	46	25	56
Sioux Falls	Minnehaha	42	25	71
		42	25	67
TENNESSEE				
Chattanooga	Hamilton	38		
Clarksville	Montgomery	37	25	63
Elizabethton	Carter	37	25	62
Greenville	Greene	37	25	62
Johnson City	Washington	37	25	62
Kingsport/Bristol	Sullivan	45	25	70
Knoxville	Knox County;	42	25	67
Memphis	city of Oak Ridge	41	25	66
Morristown	Shelby	50	25	75
Nashville	Hamblen	30	25	55
	Davidson	52	25	77

<u>Key City 1/</u>	<u>County and/or other defined location 2/ 3/</u>	<u>Maximum Lodging Amount (a)</u>	<u>M&IE Rate (b)</u>	<u>Maximum Per Diem Rate (c)</u>	<u>4/</u>
TEXAS					
Amarillo	Potter	46	25	71	
Austin	Travis	55	25	80	
Bastrop	Bastrop	37	25	62	
Beaumont	Jefferson	36	25	61	
Brownsville	Cameron	39	25	64	
College Station/Bryan	Brazos	43	25	68	
Corpus Christi	Nueces	53	25	78	
Dallas/Fort Worth	Dallas & Tarrant	74	33	107	
El Paso	El Paso	49	25	74	
Galveston	Galveston	51	25	76	
Houston	Harris County; L. B. Johnson Space Center & Ellington AFB	60	33	93	
Kingsville	Kleburg	35	25	60	
Lajitas	Brewster	48	25	73	
Laredo	Webb	47	25	72	
Longview	Gregg	41	25	66	
Lubbock	Lubbock	37	25	62	
Lufkin	Angelina	36	25	61	
McAllen	Hidalgo	43	25	68	
Midland/Odessa	Ector & Midland	43	25	68	
Macogdoches	Macogdoches	41	25	66	
San Antonio	Bexar	50	25	75	
Temple	Bell	37	25	62	
Wichita Falls	Wichita	41	25	66	
UTAH					
Cedar City	Iron	32	25	57	
Ogden	Weber	36	25	61	
Provo	Utah	33	25	58	
Salt Lake City	Salt Lake County; Dugway Proving Ground & Toole Army Depot	53	25	78	
Vernal	Uintah	39	25	64	
VERMONT					
Burlington	Chittenden	43	25	68	
Montpelier	Washington	32	25	57	
Rutland	Rutland	50	25	75	
VIRGINIA					
(For the cities of Alexandria, Fairfax, and Falls Church, and the counties of Arlington, Fairfax, and Loudoun, see District of Columbia)					
Blacksburg	Montgomery	50	25	75	
Bristol*		42	25	67	
Charlottesville*		51	25	76	
Covington*		33	25	58	
Fredericksburg*		34	25	59	
Lexington*		35	25	60	
Lynchburg*		33	25	58	
Manassas/Manassas Park*	Prince William County	45	25	70	
Norfolk* (also Virginia Beach, Portsmouth, Hampton, Newport News & Chesapeake*)	York County; Naval Weapons Stations, Yorktown	55	25	80	
Petersburg*	Fort Lee	38	25	63	
Richmond*	Chesterfield & Henrico Counties; also Defense Supply Center	52	25	77	

Per Diem Locality		Maximum Lodging Amount (a)	+	M&IE Rate (b)	=	Maximum Per Diem Rate (c)	4/
Key City 1/	County and/or other defined location 2/ 3/						
Roanoke*	Roanoke County	42		25		67	
Staunton*		37		25		62	
Wallops Island	Accomack	46		25		71	
Warrenton	Fauquier	37		25		62	
Waynesboro*		33		25		58	
Williamsburg*		58		25		83	
* Denotes independent cities.							
WASHINGTON							
Longview	Cowlitz	36		25		61	
Olympia	Thurston	43		25		68	
Richland	Benton	34		25		59	
Seattle	King	53		33		86	
Spokane	Spokane	47		25		72	
Takoma	Pierce	39		25		64	
Yakima	Yakima	34		25		59	
WEST VIRGINIA							
Charleston	Kanawha	45		25		70	
Harpers Ferry	Jefferson	45		25		70	
Huntington	Cabell	41		25		66	
Morgantown	Monongalia	40		25		65	
Wheeling	Ohio	40		25		65	
WISCONSIN							
Brookfield	Waukesha	50		25		75	
Green Bay	Brown	40		25		65	
La Crosse	La Crosse	48		25		73	
Madison	Dane	51		25		76	
Milwaukee	Milwaukee	51		25		76	
Rhineland	Oneida	37		25		62	
Tomah	Monroe	32		25		57	
Wausau	Marathon	42		25		67	
WYOMING							
Casper	Natrona	37		25		62	
Cheyenne	Laramie	43		25		68	
Evanston	Uinta	32		25		57	
Gillette	Campbell	42		25		67	
Jackson	Teton	51		25		76	
Rock Springs	Sweetwater	35		25		60	

1/ Unless otherwise specified, the per diem locality is defined as "all locations within, or entirely surrounded by, the corporate limits of the key city, including independent entities located within those boundaries."

2/ Per diem localities with county definitions shall include "all locations within, or entirely surrounded by, the corporate limits of the key city as well as the boundaries of the listed counties, including independent entities located within the boundaries of the key city and the listed counties."

3/ Military installations or Government-related facilities (whether or not specifically named) that are located partially within the city or county boundary shall include "all locations that are geographically part of the military installation or Government-related facility, even though part(s) of such activities may be located outside the defined per diem locality."

4/ Federal agencies may submit a request to GSA for review of the subsistence cost in a particular city or area when travel to that location is repetitive or on a continuing basis and travelers' experience indicates that the prescribed standard CONUS per diem rate is inadequate. Other per diem locality rates listed in this appendix will be surveyed on an annual basis by GSA to determine whether rates are adequate. Agencies' requests shall be submitted to the General Services Administration, Federal Supply Service, Attn: Regulations and Policy Division (FPY), Washington, DC 20406. Requests for rate adjustments shall include a description of the location involved (city, county or other defined area) and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request also should contain an estimate of the annual number of trips to the location and the average duration of such trips.

Dated: May 8, 1986.

T.C. Golden,

Administrator of General Services.

[FR Doc. 86-11965 Filed 5-29-86; 8:45 am]

BILLING CODE 6950-AM-M



DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

3 December 1986

86-PAD-192

MEMORANDUM FOR REGIONAL DIRECTORS, DCAA
DIRECTOR, FIELD DETACHMENT, DCAA

SUBJECT: Audit Guidance on Application of New Cost Principles
Effectuated by P.L. 99-145 and P.L. 99-234

Subsequent to the promulgation of 14 new and/or revised cost principles effected by the DoD Authorization Act of 1986, P.L. 99-145 (FAC 84-15) and the revised travel cost principle effected by P.L. 99-234 (FAC 84-19), several questions have been raised regarding the implementation and application of the new rules. This memorandum provides our comments and responses to a number of these questions.

1. Applicability Date of the Revised Rules.

Question: New rules are applicable to only those contracts awarded after the effective date of the revisions. In order to avoid the maintenance of two sets of contract cost records, one for contracts under the old rules and another for contracts under the new rules, can a contractor and the Government enter into an advance agreement which would permit the contractor to defer the implementation date of the new rules to a later date than that required by FAC?

Response: The cost principles revisions promulgated in FAC 84-15 are applicable to all contracts awarded after 7 April 1986 and the travel cost principle revisions promulgated in FAC 84-19 are applicable to all contracts resulting from solicitations issued on or after 31 July 1985. Therefore, any agreement that would exclude any of those contracts from coverage would be inconsistent with the regulations. In our opinion, such an agreement would require a deviation in accordance with FAR Subpart 1.4 and applicable DoD Supplement. Paragraph (c) of FAR 31.109, Advance Agreements, specifically prohibits the contracting officer to enter into an agreement which is inconsistent with applicable FAR cost principles.

However, with regard to the applicability date of the new travel cost principle pertaining to per diem costs promulgated in FAC 84-19, the DAR Council recently granted the Administrative Contracting Officer the authority to deviate from the effective date set forth in this FAC. The deviation authority granted the ACO is:

the authority to forgo application of the FAC 84-19 travel cost principle revision to covered contracts for calendar year 1986, provided that, in all such cases, the ACO obtain the contractor's agreement to apply this revision to all uncovered, as well as covered, contracts beginning no later than 1 January 1987 and to implement appropriate amendments.

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To the extent that the ACD enters into an advance agreement within the terms and conditions authorized by the deviation, such an agreement is valid and enforceable. Note that the deviation authority is extended only to per diem cost principle revision with respect to its applicability date. Accordingly, any agreement outside the scope of this authority and the FAR cost principles is invalid and unenforceable.

2. FAR 31.205-50, Executive Lobbying Costs.

Question: This cost principle provides that: "Cost incurred in attempting to improperly influence ... an employee or officer of the executive branch of the Federal Government ... are unallowable." What actions are defined as constituting improper influence?

Response: FAR 3.401 defines improper influence as "any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter." Contractor actions will have to be judged on their own merits and in the context of the facts and circumstances of the issue involved. Unallowable costs include costs of gifts, gratuities, entertainment, or any other thing of monetary value offered to a Government employee and any costs incurred by the contractor in an attempt to seek favorable decisions on Government programs or contracts. However, costs of liaison activities, such as gathering and providing technical and factual information, making suggestions or inquiries, and responding to a solicitation for comments on regulatory matters, are allowable.

3. FAR 31.205-46, Travel Costs.

a. Question: Will contractors be permitted to use a two-part lodging plus per diem rate that does not exceed, on a daily basis, the maximum per diem rates in effect at the time of travel as set forth in the Federal Travel Regulations?

Response: Paragraph (a) of FAR 31.205-46 provides that costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or combination thereof. Accordingly, contractors may claim a combination of actual costs for lodging and a fixed amount for meals and incidental expenses as long as the total costs do not exceed, on a daily basis, the maximum per diem rates in effect at the time of travel as set forth in the referenced Government travel regulations.

b. Question: If a two-part system that provides for a fixed amount for meals and incidental expenses is used, what is the consequence

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of an employee purchasing alcoholic beverages with the fixed amount for meals and incidental expenses?

Response: If a contractor reimburses its employees a fixed amount for meals and incidental expenses and the total daily costs for lodging, meals and incidental expenses do not exceed the maximum per diem rate, there is a presumption that the costs are reasonable and allowable. In this situation, detailed receipts or other documentation is not required to support claims by employees for meals and incidental expenses.

c. **Question:** Can a contractor bill the Government a fixed per diem rate and reimburse employees based on actuals?

Response: A contractor cannot bill the Government an amount greater than it has actually incurred for costs that are allowable and allocable in accordance with contract terms and applicable rules and regulations. Note that the cost principle language is clear that the per diem rates set forth in the Government travel regulations are the maximums considered reasonable and allowable; nowhere in the coverage does the rule imply these per diem rates are minimums. Accordingly, if a contractor reimburses its employees actual travel costs incurred, the amount reimbursable by the Government will be the lesser of the allowable actual costs or per diem rates.

d. **Question:** A contractor plans to use the maximum per diem rates for each day of travel including day of departure and day of return. The Federal Travel Regulations (FTR), however, limit these and the one day trips to only the maximum meals/incidental expense rates. How should the maximum meals/incidental expense rates and definitions be applied to contractors? This includes the other rules affecting entitlement to per diem.

Response: Subparagraph (a)(4) of FTR 31.205-46 states, "Only the coverage in the referenced regulations dealing with the definitions of lodging, meals and incidental expenses, the maximum per diem rates, and extraordinary and temporary situations are incorporated herein." This subparagraph was added to make clear that the requirements and provisions of the Government travel regulations are to be applied only in these specific areas. At the time the cost principle coverage was being developed, the policymakers decided that it would not be prudent to impose all the detailed provisions and requirements of the Government travel regulations on contractors. Nor did the policymakers consider it necessary to include any restrictive language regarding how costs of a trip for a partial day should be accounted for. Accordingly, it is not appropriate to disallow per diem costs based on various FTR limitations and restrictions that have not been incorporated in the revised cost principle. However, all contractor costs including travel costs are

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subject to the provisions of FAR 31.201-3, Determining Reasonableness, and therefore any unreasonable per diem costs should be questioned. For example, it is unreasonable for a contractor to claim a "maximum per diem" rate where the travel schedule requires no lodging or only one meal. Note that the FAR per diem rates are the maximums considered reasonable, not the minimums.

g. Question: A contractor has established a term called "in lieu of expenses" for travel costs paid to an employee who stays with family or friends while on business. It considers these expenses allowable under the definition of lodging, meals, and incidental expenses included in the FAR. Should "in lieu of expenses" (room rates for comparable commercial lodging in the area or a flat "token" amount) be questioned? If not, what criteria should be used in determining acceptable costs?

Response: The provisions of FAR 31.205-46 do not preclude a contractor from reimbursing its employees in lieu of actual expenses. Assume, for example, that the contractor's general policy is to require its employees to submit a hotel invoice for reimbursement. However, the cost principle provisions do not prohibit the contractor from adopting a specific policy which will waive this requirement if the employee claims do not exceed some fixed amount (i.e., a payment in lieu of actual expenses) such as a maximum amount of \$25 without requiring a receipt. Contractor travel costs, in this case, are based on a combination of actual expenses and a fixed rate. Contractor costs based on payments "in lieu of actual expenses" must be evaluated in accordance with FAR 31.201-3, Determining Reasonableness and the contractor's established policy and practices that are consistently followed.

f. Question: A contractor proposes to use the maximum per diem rates at the place of lodging on the evening of travel and the place of lodging from the previous day on the return day. What criteria is to be used to determine which county and/or other defined location should be used to apply the maximum per diem rates in effect at the time of travel?

Response: It is not appropriate to determine the applicable maximum per diem rates based on the place of lodging. This practice could result in additional costs to the Government when travelers are permitted to choose the locality of lodging based on their personal preference or convenience, irrespective of the temporary duty location. The applicable maximum per diem rates should be determined based on the temporary duty location.

DOE WIPP SITE

P.06

3 December 1986

86-PAD-192

PAD

SUBJECT: Audit Guidance on Application of New Cost Principles Effected by P.L. 99-145 and P.L. 99-234

g. **Question:** Is the cost of first class air travel allowable as long as it does not exceed the cost of the lowest customary standard, coach, or equivalent airfare during normal business hours (i.e., first class airfare on a red-eye flight)?

Response: Revised coverage at FAR 31.205-46(d) provides that: "Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable..." Conversely, airfare costs (including first class airfare on a red-eye flight) are allowable if they are not in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours.

h. **Question:** If an employee works a flexible work schedule and travels after his or her working day has ended but otherwise during normal business hours, is first class airfare allowable?

Response: The revised rule places no restriction on contractors as to what time of the day they must travel. The rule provides that airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable.

Any questions regarding this memorandum should be directed to Ms. (b)(6) Program Manager, Accounting Policy Division at (b)(2)

(b)(6)

(b)(2)

FOR THE DIRECTOR:

William J. Sharkey
 William J. Sharkey
 Assistant Director
 Policy and Plans

DISTRIBUTION:

C

Memorandum Expiration Date: 31 December 1987



DEFENSE CONTRACT AUDIT AGENCY
 PHILADELPHIA REGION
 RECEIVED FEDERAL BUILDING, ROOM 4400
 DC 800 ARCH STREET
 FAIRFAX DC PHILADELPHIA, PENNSYLVANIA 19106-1604

*O-file
 1-Dan
 1-LA Sec
 (7)*

IN REPLY REFER TO

86 SEP 29 P3:39

84 SEP 1986

RST-6/86- 116 701.4
 (Disk #8.49)

MEMORANDUM FOR REGIONAL AUDIT MANAGERS AND FIELD AUDIT OFFICE MANAGERS,
 PHILADELPHIA REGION, DCAA

SUBJECT: Computation of Per Diem Rates Under FAR 31.205-46, Travel Costs

A question has arisen as to whether contractors must structure their per diem computations according to established rules such as the Joint Travel Regulation quarter day system. The sections of the Joint Travel Regulations, Federal Travel Regulations and Standardized Regulations that govern computation of per diem expenses such as the calendar day (midnight to midnight) and quarter day fractional allocation system are not required to be adopted by contractors. The intent of the revised cost principle is to limit reimbursement on a daily basis. Contractors may thus adopt their own method of allocating per diem expenses.

Although contractors are not restricted to computations of per diem expenses as provided in government travel regulations, systems of reimbursement should be evaluated to determine that reimbursements are not claimed in unreasonable amounts. Since the revised cost principle is applied on a daily basis and allocation systems established in government travel regulations are not applicable, we have been advised that contractors have proposed reimbursing the total daily rate to periods of travel substantially less than 24 hours. For instance, a contractor in the Philadelphia area may propose establishing a system that would reimburse an employee a total daily rate of \$100 for a day trip to Washington, DC. In this instance the contractor would claim that the reimbursement is within the daily ceiling rate of \$112 and therefore allowable.

Any method of reimbursing travel expenses that allocates costs either to periods of time or to meals on a disproportionate basis, such as the preceding example, should be questioned under FAR 31.201.3, Reasonableness. In determining if the contractor's method of reimbursement is reasonable, established methods such as the quarter day system included in government travel regulations could be applied as a test. The contractor's method of reimbursing travel expenses should be evaluated to determine that reimbursements are not unreasonable. Any method of reimbursement considered unreasonable should be reported to the Region.

Should you have any questions pertaining to this memorandum call (b)(6) Technical Programs Division, at (b)(2)

John P. Stanton
 JOHN P. STANTON
 Regional Director

Distribution: H

Memorandum expiration date: 31 October 1986



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

86-29-2

JUN 16 1986

Audit Policy
and Oversight

MEMORANDUM FOR FEDERAL ACQUISITION REGULATORY SECRETARIAT

SUBJECT: Federal Acquisition Regulation Case 86-29

We have reviewed your proposed changes to Section 31.205-46 to revise the Federal Travel Regulations in accordance with Public Law 99-234, "Federal Civilian Employee and Contractor Travel Expense Act of 1985."

The proposed procedures for allowing reimbursements above the standard amounts would leave the definition of "extraordinary situations" to the approving officer of the contractor's organization. Without a clear definition of terms, there may be as many interpretations as there are approving officers. This is likely to lead to the same kind of misrepresentations of travel costs that are currently found in company travel accounts and which has led to the need for stricter regulations of travel costs.

Public Law 99-234 amends subchapter I of chapter 57 of title 5, United States Code and, in section 5702, authorizes only the Administrator of the General Services and the President (or his designee) to determine what should constitute reasonable reimbursement for official travel. The new law is structured to give the Administrator flexibility in designating a reasonable reimbursement system in recognition that unusual circumstances may arise. In a response to the Congress, the Administrator has defined "unusual circumstances" as those "instances when the administratively set per diem rate...would be insufficient...either because of special duties, such as accompanying dignitaries and protective service assignments, or because subsistence costs have escalated for short periods of time during special events such as...the Olympics, world fairs or political conventions...We expect the application of this provision to be infrequent...."

We recommend that a provision be added in section 31.205-46(a)(3), to clarify what constitutes "extraordinary and temporary situations," as defined by the Administrator of the General Services. Without this clarification, the law may be construed as leaving the definition to the discretion of the approving officer.

JUN 19 1986

RECEIVED

If you have any questions, please contact Mr. Charles L. Cipolla, my Deputy Assistant Inspector General for Audit Policy and Oversight, on (b)(2)


James H. Curry
Assistant Inspector General
for Audit Policy and Oversight



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, DC 20310-0103

info



13 SEP 1990

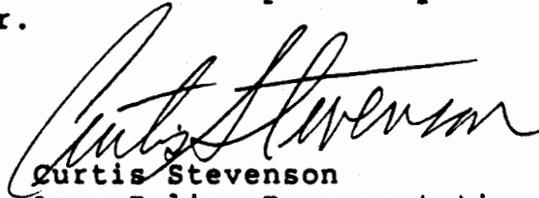
SARD-PP

MEMORANDUM FOR CHAIRMAN, COST PRINCIPLES COMMITTEE

SUBJECT: Travel Costs, DAR Case 87-118

Enclosed are the public comments received in response to the proposed rule published in the Federal Register on 13 June 1990.

Your Committee is to review the comments and prepare a recommendation for a final rule. I am to provide your report to the DAR Council on 17 October.


Curtis Stevenson
Army Policy Representative
DAR Council

Case Management Record

DISC

DAR Case No. 87-118	CAAC No. 88-037	Original Updated	<input checked="" type="checkbox"/>	Date 12 SEP 90
Title TRAVEL COSTS				
Reference GSA ltr dtd 23 Aug 90				
Synopsis Forwards public comments				
Priority	Submitted By 06	Originator Code	Case Manager	
Keywords				
Case References				
FAR Cites	310205-46			
DFARS Cites				
Cognizant Committees				
DAR STAFF - Eric Mens				
Recommendation Cost Principles Task [] Cmte. w/report due 30 days				
Notes RD = 19/7				



General Services Administration
Office of Acquisition Policy
Washington, DC 20405

August 23, 1990

Lt. Col. Nancy L. Ladd
Director, Defense Acquisition
Regulatory Council
ASD (P&L) DASD (P) DARS
c/o 3D139, The Pentagon
Washington, DC 20301-3062

Dear Colonel Ladd:

Comments received concerning the subject FAR case are forwarded for your appropriate action:

FAR Case: 90-26, DAR Case: 87-118, CAAC Case: 88-37
Title: Travel Costs

Federal Register Notice: 55 FR 24068, June 13, 1990

Letter to Industry: June 22, 1990

The Department of Defense is the lead agency on this case, therefore, the enclosed comments are to be reconciled by the DAR Council and recommendation for concurrence forwarded to the CAAC Chairman for approval prior to publication of a final rule.

Sincerely,

(b)(6)

FAR Secretariat

Enclosures

cc: Chairman, Civilian Agency Acquisition Council
ATTN: (b)(6) Procurement Analyst

FAR Case 90-26 Comments

Due: 8/13/90

Subject: Travel Costs

To: DAR Council

Date: 8/23/90

<u>Response Number</u>	<u>Date Received</u>	<u>Date of Letter</u>	<u>Commenter</u>	<u>Comments</u>
90-26-1	7/3/90	6/28/90	Anthony P. DeStefano	
90-26-2	7/9/90	7/5/90	National Endowment for the Humanities	90-28-4
90-26-3	7/9/90	7/6/90	United States Information Agency	90-27-7 90-28-5
90-26-4	7/10/90	7/9/90	Armed Forces Communications & Electronics Association (AFCEA)	90-28-6
90-26-5	7/12/90	7/6/90	Thiokol Corp.	
90-26-6	7/13/90	7/12/90	U.S. National Labor Relations Board	90-28-7
90-26-7	7/16/90	7/10/90	Litton	
90-26-8	7/16/90	7/12/90	FDIC	90-28-8
90-26-9	7/20/90	7/18/90	CIA	90-28-9
90-26-10	7/23/90	7/19/90	Corning Inc.	
90-26-11	7/23/90	7/17/90	U.S. Dept of Justice	90-28-10
90-26-12	8/6/90	7/31/90	Agency For International Development	90-28-12
90-26-13	8/13/90	8/9/90	Aerospace Industries Assoc., Nat'l Security Industrial Assoc.	

FAR Case 90-26 Comments

Due: 8/13/90

Subject: Travel Costs

To: DAR Council

Date: 8/23/90

<u>Response Number</u>	<u>Date Received</u>	<u>Date of Letter</u>	<u>Commenter</u>	<u>Comments</u>
90-26-14	8/3/90	8/1/90	American Defense Preparedness Assoc.	
90-26-15	8/6/90	8/3/90	IG, DoD	
90-26-16	8/7/90	8/1/90	Motorola Inc.	
90-26-17	8/8/90	8/6/90	Department of Veterans Affairs	90-28-13
90-26-18	8/9/90	8/9/90	Office of GSA Acquisition Policy	

90-26-1

6500 Lacelike Row
Columbia, Maryland 21045
June 28, 1990

General Services Administration
FAR Secretariat (VRS)
18th & F Streets, N.W.
Room 4041
Washington, D.C. 20405

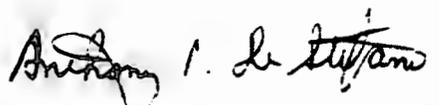
Dear (b)(6),

I am very pleased to have this opportunity to comment on the proposed rule in FAR Case 90-26, published in the Federal Register on June 13, 1990 clarifying the maximum allowable per diem rates for contractor travel costs.

I agree that some clarification is needed addressing the question of how to handle partial days. However, a literal reading of the proposed rule opens the door for unfair disallowances of costs for personnel departing very early in the day and arriving late in the evening. Someone departing at 7 or 8 in the morning, or returning between 6 and 12 at night, incurs the full per diem. They would not, however, incur lodging costs when they return in the evening, but would incur the full daily meal cost. On the day of departure, they could incur both.

Since the proposed rule could easily be misinterpreted, and since many in the U.S. Government read examples as binding requirements, I suggest a final rule that clarifies the handling of early departures and late returns. Since the proposed rule could have an adverse effect on all contractors, there would also be an adverse economic impact on small entities under the Regulatory Flexibility Act.

Sincerely,



Anthony P. DeStefano, C.P.A.

cc: Congresswoman Connie Morella

90-26-

NATIONAL ENDOWMENT FOR THE HUMANITIES

WASHINGTON, D.C. 20506

July 5, 1990

(b)(6)

FAR Secretariat (VRS)
General Services Administration
18th & F Streets, NW, Rm. 4041
Washington, DC 20405

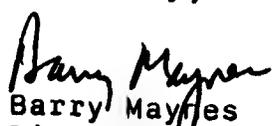
Dear (b)(6):

I am writing in regard to the following Federal Register article:

FAR Case 90-26, ^y Travel Costs
FAR Case 90-28, ^y Submission of Offers in English
Language/U.S. Currency

Please note that the National Endowment for the Humanities (NEH) has no comments or objections to the above case as drafted.

Sincerely,


Barry Maynes

Director for Administrative Services

**United States
Information
Agency**

Washington, D.C. 20547



US

90-26-
July 6, 1990

Dear (b)(6) :

Re: FAR Case Nos. 90-26, 90-27 and
90-28 - b

We have reviewed and concur in the three proposed rules to revise the Federal Acquisition Regulation (FAR) as follows:

- a. Travel Costs. (FAR Case 90-26)
- b. Effect of Debarment/Suspension on Bids/Offers. (FAR Case 90-27)
- c. Submission of Offers in English Language/U.S. Currency.
(FAR Case 90-28)

Thank you for submitting this material for our review.

Sincerely,

James W. Durham
Acting, Agency Procurement Executive
Office of Contracts

(b)(6)

FAR Secretariat (VRS)
General Services Administration
18th & F Sts., N.W. Room 4041
Washington, D.C. 20405



**Armed Forces Communications
and Electronics Association**

AFCEA International Headquarters
4400 Fair Lakes Court • Fairfax, Virginia 22033-3899, USA
Telephone (U.S.) 703-631-6100 • (International) 001-703-631-6100
Facsimile (U.S.) 703-631-4693 • (International) 001-703-631-4693
Telex 90 1114 AFCEA FFX



90-26-4

July 9, 1990

FAR Secretariat (VRS)
Attn: (b)(6)
General Services Administration
18th & F Streets, N.W.
Room 4041
Washington, D.C. 20405

Dear (b)(6):

Reference your letter of June 22, 1990 requesting comments on FAR Cases 90-26⁴ and 90-28. The Armed Forces Communications and Electronics Association (AFCEA) agrees with the proposed changes.

Sincerely,

J. F. Denniston
Colonel, USAF (Ret.)
Director of Finance
AFCEA International

/lls

90-26-5

Thiokol CORPORATION
EXECUTIVE OFFICES

Grady L. Jacobs
Vice President, Contracts and Administration

July 6, 1990
GLJ-CON-91-004

FAR Secretariat (VRS)
General Services Administration
18th and F Street, N.W., Room 4041
Washington, D. C. 20245

Reference: FAR Case 90-26 - Travel Costs

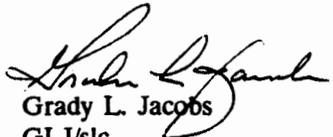
Dear Sir:

Thank you for the opportunity to comment on the proposed rule change to FAR 31.205-46.

Thiokol Corporation has a concern with the proposed addition of paragraph (6). This appears to establish a reasonableness standard rather than an allowability standard and would invite interpretive disputes as to what constitutes reasonable per diem charges on days when no lodging expenses are incurred and on partial travel days (e.g., day of departure and return.) The guidance is excessive, unreasonable and unnecessary when the policies presently used by contractors are considered. Per diem expenses are reimbursed to employees for actual time spent in travel status. Additional documentation and calculations to support maximum expenditures for partial travel days and days of departure/return is not beneficial to the government or the contractor.

Time zone differences, length of work day without regard to time started or time finished, and unique travel arrangements are currently considered by contractors in determining per diem reimbursement. The proposed guidance in paragraph (6) seems to be in direct conflict with the FAR Council's intent to not impose Government administrative procedures upon contractors. This paragraph, in its application, would do just that. Accordingly, we recommend that paragraph (6) be omitted from the proposed rule on travel costs.

Sincerely,


Grady L. Jacobs
GLJ/slc

cc: Paul Cienki
Rodger Pond
Royce Searle



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

90-26-t

July 12, 1990

(b)(6)

FAR Secretariat (VRS)
General Services Administration
18th and F Street, NW - Room 4041
Washington, DC 20405

Dear (b)(6):

We have reviewed the proposed revisions to the Federal Acquisition Regulation with respect to FAR Case 90-26, Travel Costs, and FAR Case 90-28; Submission of Offers in English Language/U.S. Currency, and we have no substantive comments to offer.

Thank you for the opportunity to comment.

Sincerely,

Gloria Joseph
Acting Director of Administration

Litton

Ingalls Shipbuilding

90-26-7

P O Box 149
Pascagoula, Mississ
39568 0149
601 935-1122

July 10, 1990

General Services Administration
FAR Secretariat (VRS)
18th & F Streets NW, Room 4041
Washington, D. C. 20405

Reference: FAR Case 90-26

Gentlemen:

In the proposed revision to FAR 31.205-46, Travel Costs, the wording in paragraph (a)(6) is unclear. The paragraph, as written, gives guidance on what is not reasonable per diem when no lodging costs are incurred and for partial travel days; however, no criteria is given to guide contractors in deciding what the maximum allowable per diem should be in those circumstances.

Very truly yours,

INGALLS SHIPBUILDING, INC.



R. E. Delarosa
Audit Liaison Officer

RED/nn

FDIC

Federal Deposit Insurance Corporation
Washington, DC 20429

90-26-8

Division of Accounting and Corporate Services

July 12, 1990

(b)(6)

FAR Secretariat
General Services Administration
18th & F Sts., N.W. RM. 4041
Washington, D.C. 20405

Reference: FAR CASE 90-26-8
FAR CASE 90-28-8

Dear (b)(6):

Thank you for allowing the Federal Deposit Insurance Corporation the opportunity to review the issues proposed under the above referenced FAR and FAC Cases. We do not, however, have any comments on the proposed rule changes.

Sincerely



Andrew Freimuth,
Chief Contracts &
Library Information
Services Section

Central Intelligence Agency

90-26-9

Washington, D.C. 20505

JUL 18 1990

FAR Secretariat
General Services Administration
Office of Acquisition Policy
18th and F Streets, N.W.
Room 4041
Washington, D.C. 20405

Attention: (b)(6)

FAR Secretariat

Dear (b)(6):

Regarding your letter of 3 July 1990, this Agency has reviewed the following rules, revising the Federal Acquisition Regulations (FAR), and has no comment on any of them:

FAR Case 90-26, ⁹Travel Costs.

FAR Case 90-28, ⁹Submission of Offers in English Language/U.S. Currency.

We appreciate your forwarding the above cases to us.

Sincerely,



Frank M. Lane
Chief

Procurement Management Staff
Office of Logistics

JUL 20 1990

90-26-10

CORNIN

July 19, 1990

General Services Administration
FAR Secretariat (VRS)
18th & F Streets N.W., Room 4041
Washington, DC 20405

Re: FAR Case 90-26

Dear Sirs:

Corning does not view the proposed new definition of reasonable per diem costs for partial travel days as adequate. This new definition would be provided in new subparagraph (a)(6) of FAR 31.205-46 under a proposed rule published June 13, 1990 at 55 FR 24068.

Background

Government contracts comprise only two to three percent of Corning's \$2.4 billion annual sales volume. Under an informal agreement with the Defense Contract Audit Agency (DCAA), Corning adheres to the requirements of FAR 31.205-46, Travel Costs, using a sampling method. Approximately 40 Corning employees, all of whom deal directly with government contracts, follow the FAR's travel cost restrictions when they travel. Travel costs which are unallowable are charged to a specific account, and the ratio of this unallowable cost account to related total travel costs is used to estimate unallowable costs throughout Corning's General and Administrative (G&A) organization.

Under this sampling approach, Corning's exposure to the Travel Costs regulation is limited. Yet the Company's system of administering the regulation for the small sample of personnel who follow it has proven to be extremely time-consuming and wasteful. The system includes special forms, computer programs, and training sessions, all supported by frequent internal consulting on the correct interpretation of the regulations. This costly exercise supports a downward adjustment to our G&A rates of only about .2% to exclude travel cost unallowables.

90-26-1

Corning's system has always adjusted the per diem downward to exclude lodging on travel days when no lodging cost is incurred. However, no comparable adjustment is now made for meal costs based on partial travel days. The employee is allowed the full day's meal per diem regardless of his departure time on his first day of travel or his arrival time home from a trip.

Note that the meal per diem "allowance" only extends to the calculation of travel costs under the regulation. Unlike government employees, Corning personnel are only reimbursed for actual costs. This reimbursement is subject to supervisory review and approval.

Recommendation on the Proposal

Corning objects to the Travel Costs regulation in general as inherently unfair. As a small government contractor, none of our personnel can obtain government rates at lodging establishments. Yet the government per diems assume that these discounted rates exist.

Putting aside this issue of fairness, however, one is still left with the practical consideration of administering the regulations. Corning does not disagree with the exclusion of lodging per diem from the maximum per diem on days when no lodging costs are incurred. The logic of that adjustment was obvious when the regulation was first established. However, if the new definition requires adjustment of meal per diem as well, this implies the need for elaborate rules on how such an adjustment should be made. Would the adjustment depend on whether the employee did or did not incur cost? Would the departure/arrival time be a factor in the decision? Should the \$26 or \$34 rate be used for the adjustment? Would a simplified rule (e.g. reduce the final travel day's allowance by half) result in an adequate adjustment? Should the \$2 incidental expenses allowance be adjusted, along with the meal cost portion?

These questions are only relevant to partial travel days, not the whole days of travel during a trip. Corning's position is that the cost to address these subtle issues of meal cost adjustment is not justified.

The only advantage to the current Travel Costs regulation is its relative simplicity on this point. We can agree that an adjustment for lodging cost is warranted, but adjustment for meal costs is not. Accordingly, new subparagraph (a)(6) should explicitly limit its impact to the lodging cost adjustment only.

90-26-

A General Recommendation

This letter has already expressed Corning's fundamental disagreement with the Travel Costs regulation on the grounds of fairness. Putting this objection aside once again, we would still take this opportunity to make a more general recommendation on behalf of companies such as Corning.

Our objection to new subparagraph (a)(6) considers the practical difficulties created by the proposal. Expanding on this theme, we have a more general suggestion on how to make the regulation more palatable to smaller contractors such as ourselves.

Corning's use of a sampling approach to achieve compliance with this regulation has already been mentioned. This is based not on any provision in the regulation itself but rather on a DCAA document entitled "Audit Guidance on Implementing the Cost Principle on Per Diem Costs (DAR Case 85-230)" (Memorandum for Regional Directors, DCAA; designated 86-PAD-134, dated 18 August 1986). This document reads in part:

CAS 405.50(c) states, "Specific identification of unallowable costs is not required in circumstances where, based upon considerations of materiality, the Government and the contractor reach agreement on an alternate method that satisfies the purpose of the Standard." This provision covers special situations where contractors may be permitted to use an alternate method to the specific identification of unallowable costs. In determining whether or not this provision is applicable to an individual contractor situation, auditors must consider such factors as materiality of unallowable portions of per diem costs and additional administrative costs required to specifically identify such unallowable costs. Assume, for example, that the contractor's Government work represents only a minimal portion of its total business, and administrative costs of specifically identifying all unallowable travel costs in an overhead pool would substantially exceed cost savings to the Government that would result from specific identification of excess travel costs. Use of statistical sampling or other alternate method may then be considered appropriate for the segregation of unallowable costs.

90-26-

Corning believes that this approach should be explicitly included in the Travel Costs regulation. Moreover, Corning proposes that the Administrative Contracting Officer (ACO) be given discretion in the regulation to negotiate formal agreements with government contractors fixing their estimation formula for excluding these travel cost unallowables either permanently or for long periods of time. Thus, the regulations should encourage Corning and its ACO, once an adequate sample of travel costs has been gathered (perhaps over the span of two or three years), to agree on a simplified formula with which to exclude travel cost unallowables. This formula would stand until any substantial change occurred in the regulations or in the company's situation.

A central issue related to this suggestion is whether any agreed-upon formula would satisfy the stringent requirements of the Certificate of Indirect Costs. This certificate must be provided by the contractor in support of billing rates and proposed actual indirect cost rates. A formal agreement between the company and the ACO must be deemed adequate for the certificate, or it would serve no meaningful purpose.

Summary

In summary, Corning reiterates its objections to proposed new subparagraph (a)(6) as too vague. If this proposed change can be confined to the exclusion of lodging per diem from maximum per diem rates for travel days when no lodging costs are incurred, then the change will provide useful clarification to the regulation. If, on the other hand, the change would require adjustment to the meal per diems as well, it will overstep the bounds of practical considerations which must be applied to this (or any) regulation.

In addition, Corning proposes that the smaller government contractor and its ACO be encouraged to pursue simplified estimation approaches to adhering to the Travel Costs regulation.

Corning would be glad to respond to any questions concerning its position.

Sincerely,

Maynard K. Davis

Maynard K. Davis
Government Contract
Administration Manager



U.S. Department of Justice

90-26-11

Washington, D.C. 20530

JUL 17 1990

(b)(6)

FAR Secretariat (VRS)
General Services Administration
18th and F Streets, N.W., Room 4041
Washington, D.C. 20405

Dear (b)(6) :

This is in response to your request of June 22, 1990, for - 11
comments on Federal Acquisition Regulations (FAR) Case 90-26,
Travel Costs. We have reviewed this proposed rule and have no
objections. Our comments on FAR Case 90-28, Submission of Offers
in English Language/U.S. Currency were provided under separate
cover dated June 21, 1990.

Thank you for the opportunity to review this rule.

Sincerely,

W. L. Vann
Procurement Executive
Justice Management Division

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

90-26-12

JUL 31 1990

(b)(6)

FAR Secretariat (VRS)
General Services Administration
18th and F Streets, N.W., Room 4041
Washington, D.C. 20405

Dear (b)(6):

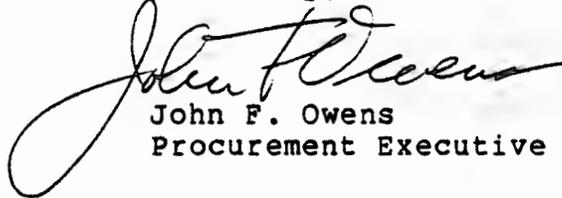
Thank you for your letter of June 22, 1990, in which you requested our comments on the following proposed revisions in the Federal Acquisition Regulation:

FAR Case 90-26,¹² Travel Costs, and

FAR Case 90-28,¹² Submission of Offers in English Language/U.S. Currency.

The Agency for International Development has no comment on the above actions.

Sincerely,



John F. Owens
Procurement Executive

90-26-13

Aerospace Industries Association
National Security Industrial Association

August 9, 1990
FAR Case 90-26

(b)(6)

General Services Administration
FAR Secretariat (VRS)
18th & F Streets, N.W.
Room 4041
Washington, D.C. 20405

Dear (b)(6) :

The Aerospace Industries Association (AIA) and the National Security Industrial Association (NSIA) appreciate the opportunity to provide you with our views and concerns regarding the proposed rule on FAR 31.205-46, Travel Costs, as published in the Federal Register on June 13, 1990 (FAR Case 90-26).

We have no comments on the clarifications of FAR 31.205-46 (a)(1) and (a)(4). However, we believe subparagraph (a)(6) changes the meaning of the cost principle, and thus is more than a clarification. Furthermore, we are unaware of any abuse or situations which prompt such a proposed change. The following concerns are directed to the proposed change in subparagraph (a)(6).

When the original proposed changes to the Travel Costs cost principle were made, incorporating the per diem rates into the cost principle in 1986, both industry and the DAR Council worked together to ensure that the congressionally imposed requirement was implemented in the least burdensome manner. At issue was whether the per diem rates required individual application of separate ceilings for lodging, and meals and incidentals. The DAR Council, in its report of July 18, 1986 stated:

The Committee agrees that the "maximum" per diem rates should be specified. Several comments were received that indicated that the commentators were not sure whether the proposed cost principle language required application of the separate ceilings for lodging, and meals and incidental expenses. At the outset the Committee intended that the combined (e.g., the maximum) ceiling would apply because it believes that use of only a single ceiling complies with the intent of Congress and would be less complicated and administratively burdensome. Accordingly, the Committee has amended the proposed coverage to specify use of the maximum ceilings in (a)(2) and (a)(3). The amended language for (a)(2) and (a)(3) inserts "maximum" and in (a)(3) deletes "daily", a redundant modifier.

At the time the cost principle coverage was being developed, the DAR Council decided that it would not be prudent to impose all the detailed provisions and requirements of the Government travel regulations on contractors. Nor did the DAR Council consider it necessary to include any restrictive language regarding how costs of a trip for a partial day should be accounted for.

We are now concerned that the Committee's intention as quoted above has dramatically changed. The Supplementary Information section of the June 13, 1990 proposed change states:

A new subparagraph (a)(6) is proposed to define reasonable per diem costs for partial travel days and when no lodging costs are incurred. Appropriate downward adjustments in maximum per diem rates are generally required under these circumstances. (Underline added).

While the proposed language in FAR 31.205-46 (a)(6) does not specify "downward adjustments in maximum per diem rates", it does imply that separate ceilings for meals and incidentals must be used on partial travel days and other travel days when no lodging costs are incurred. We certainly feel that Government auditors will interpret the words as now proposed to demand that contractors establish a reasonability measurement system that parallels the Government requirements of identifying half- and quarter-day rates and reasonableness by meal. We are already being penalized by not being able to obtain Government hotel rates. With this proposed change, you are targeting meals and incidentals as well. For most contractors, establishing such a system would be exceedingly burdensome and expensive, especially in light of the expected "benefits" to be derived by the Government.

The concept of materiality must be addressed by the DAR Council before implementing the proposed change. The perceived additional unallowable costs to be gained by the Government are significantly outweighed by the substantial costs of implementation, maintenance, segregation, reporting and audit of costs. Contractors do not recover the "maximum" per diem rates on those days when lodging costs are not incurred. Implementing the proposed change may help to determine whether \$37 is reasonable (as opposed to the JTR ceiling of \$34) for three meals, but it is certainly not "beneficial" to either the contractor or the Government to pursue the matter. Total unallowable travel expenses can be relatively small when compared to total costs of products or services. The increase in a contractor's systems cost to comply with the proposed change would far exceed any possible gain in unallowable costs.

While the DAR Council was inserting the word "maximum" to clarify its intent in 1986, it also added FAR 31.205-46 (a)(5) in order to encourage advance agreements as a method to ensure compliance with the new rules on maximum per diem expense limitations. As quoted from the above referenced July 18, 1986 report:

The Committee recognizes that there is a variety of methods or systems a contractor can employ to assure compliance with the new rules concerning maximum costs for lodging, meals and incidental expenses. Although some methods were described in the comments received, the Committee does not endorse any particular method or system. It believes that use of advance agreements may be helpful in dealing with this matter, and that a specific mention in the cost principles will help to overcome reluctance to enter into an advance agreement on this subject. Accordingly, we have included provisions for advance agreements in 31.205-46 (a)(5) and 31.109. (Underline added).

We believe it was the intent of the DAR Council to cover situations such as described in the new proposed (a)(6) subparagraph on an individual contractor basis, and not burden the contractor with additional compliance costs.

Consequently, we recommend that the proposed FAR 31.205-46 (a)(6) be deleted in its entirety. Reliance on reasonableness determinations can then be negotiated by each contractor through the use of advance agreements.

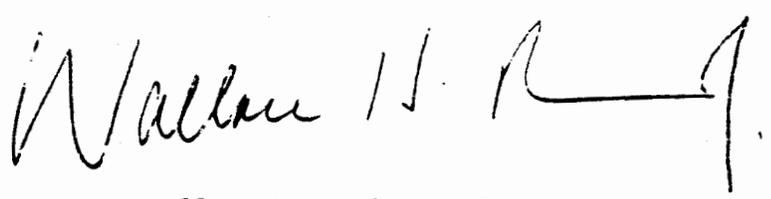
However, if it is felt that it is necessary to insert a subparagraph to define reasonableness on travel days when no lodging is incurred, we recommend the following words to ensure that there is no misconception on the use of Government rules in determining reasonableness:

(a)(6) the maximum per diem rates referenced in subparagraph (a)(2) of this subsection or any other per diem rates do not apply to those partial travel days or travel days where lodging costs are not incurred. The basis for a determination of reasonableness should be in accordance with 31.201-3, Determining Reasonableness.

AIA and NSIA appreciate the opportunity to provide you with these comments. Representatives of our associations would be pleased to discuss this issue in more detail or answer any questions which you might have. Paul J. Cienki, Director, Financial Administration, AIA, is the point of contact for this project.



Don Fuqua
President
Aerospace Industries
Association



Wallace H. Robinson, Jr.
President
National Security
Industrial Association



Founded 1919

90-26-14
AMERICAN DEFENSE PREPAREDNESS ASSOCIATION

DEDICATED TO PEACE WITH SECURITY THROUGH DEFENSE PREPAREDNESS

TWO COLONIAL PLACE, 2101 WILSON BOULEVARD, SUITE 400, ARLINGTON, VIRGINIA 22201-3061

703-522-1820 FAX: 703-522-1885

August 1, 1990

(b)(6)

FAR Secretariat (VRS)
General Services Administration
Room 4041
18th and F Streets NW
Washington, DC 20405

re: FAR Case 90-26

Dear (b)(6):

This responds to your request for comments on editorial changes in the cost principle for "travel costs."

We see nothing objectionable in the editorial changes made in 31.205-46(a)(1) and (a)(4) and in the new subparagraph in (a)(6). However, we think that a change in the format of FAR cases is in order, using brackets to indicate deletions of existing coverage and underlining to indicate additions and changes. Such changes would make it much easier to read. At present, it becomes necessary to read the existing coverage to determine what the changes will accomplish.

Attached are examples of how the old and the new would be indicated in the proposed rules published in the Federal Register.

We appreciate the opportunity to review and comment on the proposed changes.

William E. Eicher
William E. Eicher
Major General, US Army (Ret.)
Vice President and Advisor
Advisory Service

WEE:da

90-26-14

EXAMPLES OF IMPROVEMENTS SUGGESTED IN FORMAT OF FAR CASES

[DELETE]
UNDERLINE NEW
OR CHANGED
MATERIAL

"(a)(1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable, subject to [paragraphs (b) through (f) of] the limitations contained in this subsection...."

[DELETE]
UNDERLINE NEW
OR CHANGED
MATERIAL

"(a)(4) Subparagraphs (a)(2) and (3)...Only [the coverage in the referenced regulations dealing with special or unusual situations,] the maximum per diem rates, the definitions of lodging, meals, and incidental expenses and the regulatory coverage dealing with special or unusual situations are incorporated herein."



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884

90-26-15

Audit Policy
and Oversight

AUG 02 1990

(b)(6)

Federal Acquisition
Regulation Secretariat (VRS)
General Services Administration
Washington, D.C. 20405

Dear (b)(6):

We have reviewed Federal Acquisition Regulation (FAR) Case No. 90-26 which revises FAR 31.205-46, "Travel Costs," to prevent the erroneous interpretation that the maximum allowable contractor per diem travel costs must be calculated in the same manner as the "lodging-plus" method contained in the Federal Travel Regulations. In general, we concur with the proposed revisions; however, we believe that two additional changes will further clarify the intent of the proposed revisions.

We recommend that FAR 31.205.46 (a)(2) be changed to read as follows (change underlined):

"Except as provided in subparagraph (a)(3) of this subsection, costs incurred for lodging, meals and incidental expenses (as defined in the regulations cited in (a)(2)(i) through (iii) of this subparagraph) shall be considered to be reasonable and allowable only to the extent that these expenses in total do not exceed on a daily basis the maximum per diem rates...."

The above change will further emphasize that the reasonableness of contractor travel costs will be considered in total against the maximum per diem rates set by applicable Government regulations.

We also recommend additional wording to the proposed subparagraph (a)(6). The subparagraph was added to define reasonable cost for partial travel days and when no lodging costs are incurred. The proposed wording only states what is not considered reasonable, i.e., the maximum per diem rates. We believe that the subparagraph should contain some guidance on how to determine what is reasonable. The FAR case under "Background" states, "Appropriate downward adjustments in maximum per diem rates are generally required under these circumstances." We believe the following wording should be added to the proposed subparagraph (a)(6):

90-26-14

"Appropriate downward adjustments in maximum per diem rates are generally required under these circumstances. These adjustments should be calculated consistent with the contractor's established policies and procedures and result in a logical, reasonable reimbursement."

We appreciate the opportunity to comment on the changes. Please address any questions to me or (b)(6) on (b)(2).

Sincerely,



Michael R. Hill
Assistant Inspector General
for Audit Policy and Oversight



MOTOROLA INC

90-26-16

August 1, 1990

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, NW, Room 4041
Washington, D.C. 20405

Dear Sir:

Reference FAR Case 90-26, Travel Costs. We appreciate the opportunity to comment on this proposed FAR Part 31 change and offer the following suggestion for your consideration.

Paragraph 31.205-46(a)(6) presents problems as worded, and we believe that revision is in order. The proposed wording is unclear and potentially inequitable. The paragraph states as follows:

"(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection do not constitute a reasonable daily charge when no lodging costs are incurred and on partial travel days (e.g., day of departure and return)."

As written, there are two possible interpretations:

- 1) that maximum per diem rates (i.e., meals and incidentals) are not reasonable, and therefore unallowable, when lodging costs have not been incurred.
- 2) that maximum per diem rates (i.e., meals and incidentals) are not reasonable, and therefore unallowable, on partial travel days when lodging costs have not been incurred.

Using the first interpretation, meals and incidentals per diem could be judged to be unallowable where lodging was provided to the traveler. The word "and", following "lodging costs are incurred", makes the paragraph ambiguous. It is inequitable to determine in advance the reasonableness of the per diem amount. We suggest a modification of "do not constitute" to "may not constitute." In our opinion, the maximum per diem is reasonable, for example, when an employee travels and returns on the same day and is in travel status for more than twelve hours.

98-26-16

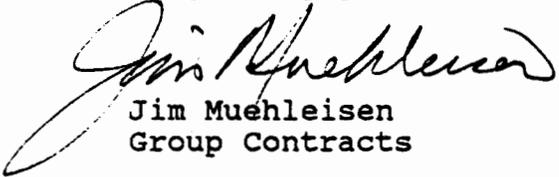
Proposed Change to FAR 31.205-46
Travel Costs
August 1, 1990
Page 2.

A suggested rewording of FAR 31.205-46(a)(6) is as follows:

"The maximum per diem rates may not constitute a reasonable daily charge when an employee is in travel status for a part day. Generally, a reduction to the maximum per diem rates is appropriate under these circumstances."

We feel that this revised wording would be equitable to both the Government and contractors. It meets the intent of the change as indicated in the background comments contained in the Federal Register.

Very truly yours,



Jim Muehleisen
Group Contracts

\dh



Department of
Veterans Affairs

AUG 6 1990

In Reply Refer to: 93P

(b)(6)

FAR Secretariat (VRS)
General Services Administration
Office of Acquisition Policy
18th and F Streets, NW., Room 4041
Washington, DC 20405

Dear (b)(6):

I appreciate the opportunity to comment on FAR Case 90-26,¹⁷
Travel Costs and FAR Case 90-28,¹³ Submission of Offers in English
Language/U.S. Currency. The Department of Veterans Affairs has no
objection to the proposed rules.

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'H. Robert Saldivar'.

H. Robert Saldivar
Deputy Assistant Secretary for
Acquisition and Materiel Management

116 - 8 1990



General Services Administration
Office of Acquisition Policy
Washington, DC 20405



90-26-18

AUG - 9 1990

MEMORANDUM FOR AL VICCHIOLLA
DIRECTOR
OFFICE OF FEDERAL ACQUISITION POLICY (VR)

FROM: IDA M. USTAD
DIRECTOR *IDA M. USTAD*
OFFICE OF GSA ACQUISITION POLICY (VP)

SUBJECT: Federal Acquisition Regulation (FAR)
Travel Costs (FAR Case 90-26)

The Office of GSA Acquisition Policy (VP) has reviewed the proposed rule to revise Section 31.205-46 of the Federal Acquisition Regulation (FAR) to clarify the maximum allowable contractor per diem travel costs. We concur with the proposed change.

If additional information is required, please call me on

(b)(2)

(b)(2)

AUG

DIRECTOR, DEFENSE ACQUISITION REGULATORY SYSTEM

Date 8-29-40

Suspense Date _____

	Coord	Date-In	Date-Out
	1/2/50		
	✓	H/O	
Intern (1-16)			

I agree w/ comments; we are using
a hell bet to get at a solution!