

ATTACHMENT 2

IN THE MATTER OF GRIEVANCE BETWEEN:

AMERICAN FEDERATION OF)
GOVERNMENT EMPLOYEES)
(AFGE), LOCAL 3313)
Union,)
v.)
UNITED STATES DEPARTMENT)
OF TRANSPORTATION)
Agency)

FLSA OVERTIME GRIEVANCES

PARTIAL SETTLEMENT AGREEMENT

This Partial Settlement Agreement (the Agreement) is entered into by and between the United States Department of Transportation, Office of the Secretary (OST), Federal Motor Carrier Safety Administration (FMCSA), Pipeline and Hazardous Materials Safety Administration (PHMSA), National Highway Traffic Safety Administration (NHTSA), and Federal Transit Administration (FTA) (referred to jointly as the Agency) and the American Federation of Government Employees Local 3313 (the Union) (collectively, the Parties).

On or about July 30, 2014, the Union filed Grievances against the Agency, which included allegations of Fair Labor Standards Act (FLSA) violations, on behalf of all bargaining unit employees (BUEs) encumbering any bargaining unit position, going back three (3) years prior to the filing of the Grievances up until the resolution of the Grievances and including all employees ever in the Bargaining Unit at any point during the pendency of the Grievances. The five Grievances filed by the Union are collectively referred to herein as the "Grievances."

Since the filing of the Grievances, the Parties have engaged in settlement negotiations for the purpose of reaching a resolution of this matter and now freely and voluntarily enter into this Agreement in an effort to resolve fully and completely the issue of FLSA designations of employees in the Agency Bargaining Units covered by the Grievances. This Agreement addresses bargaining unit positions, grades and series for which the Union has challenged the Agency designation of FLSA Exempt during the covered timeframes of the Grievances. This Agreement in no way constitutes an admission by either Party that it has violated any statute, regulation or the Parties' collective bargaining agreements, and it is entered solely for the purpose of settling the specific issues stated herein.

By affixing their signature hereto, the Union and Agency each acknowledge their complete understanding and acceptance of all the recitals and of all of the provisions of this Agreement.

1. COVERAGE

This Agreement covers the following Agency employees in the AFGE Local 3313 Bargaining Units listed below:

- 1) OST
 - a. Non-Professional Bargaining Unit 1133.
 - b. Professional Bargaining Unit 1137: The Parties agree that OST's Professional Bargaining Unit 1137 was not encompassed within the Grievance filed by the Union against OST on or about July 30, 2014, but agree that in lieu of the Union's filing of a new grievance for the Professional Bargaining Unit employees, they will join the Grievances as of the date of full execution of this Agreement. The Parties agree that all timeframes applicable to the OST Professional Bargaining Unit will be based on this date of execution being used as the 'filing' date.
- 2) FMCSA --Bargaining Unit 3675: All professional and non-professional headquarters employees of FMCSA.
- 3) PHMSA -- Bargaining Unit 5901.
- 4) NHTSA- Bargaining Unit 2766.
- 5) FTA- Non-Professional Bargaining Unit 2688 and Professional Bargaining Unit 2694.

It is the intent of the Parties to address the FLSA exemption status of all BUEs in all graded positions ever designated by the Agency as FLSA Exempt during the Grievances timeframes. While the Parties believe this Agreement accomplishes that goal, should the Union become aware of any Agency graded positions existing during the Grievance timeframes which are not addressed on an Attachment, it will bring the omissions to the attention of the Agency and the Parties agree to promptly address resolution of the same in good faith.

The Parties agree that the applicable timeframes for damages covered by the Grievances have not been resolved and will be addressed separately from this Agreement. This Agreement intends to resolve the FLSA exemption status for any and all applicable timeframes for damages covered by the Grievances.

2. TREATMENT OF CURRENT AND PAST INCUMBENTS AS NON-EXEMPT- ATTACHMENT A

For the purpose of calculation of any and all damages alleged by the Grievances, the Parties agree to treat as FLSA Non-Exempt all BUEs who currently encumber and/or previously encumbered any of the positions in the series and grades identified as Non-Exempt in Attachment A for the period of time they encumbered these positions during the timeframes covered by the Grievances, except as listed in Attachment B. Formal personnel actions affecting FLSA designations of BUEs who no longer encumber any of the graded positions in Attachment A will not be made by the Agency in the Agency's system of records.

3. RE-DESIGNATION AS NON-EXEMPT – ATTACHMENT A

The Parties agree that the Agency will change the FLSA designations from Exempt to Non-Exempt for BUEs who currently hold Bargaining Unit positions in the series and grades identified as Non-Exempt in Appendix A to this Agreement, except as listed in Attachment B, to the extent they are not already designated as Non-Exempt. Personnel actions documenting the designation changes will be issued within ninety (90) calendar days of the effective date of this Agreement. The Agency agrees to provide the Union with a report that lists the updated FLSA designations of the AFGE BUEs encumbering the positions in the series and grades listed in Attachment A within thirty (30) calendar days of the conclusion of this re-designation period.

4. CONTINUATION AS EXEMPT –ATTACHMENT A & B

For the purpose of calculation of any and all damages alleged by the Grievances, the Parties agree to treat as FLSA Exempt all BUEs designated as FLSA Exempt while encumbering and/or previously encumbering any of the positions in the series and grades identified as FLSA Exempt in Attachments A and B for the period of time they encumbered these positions during the timeframes covered by the Grievances.

5. DAMAGES, ATTORNEY FEES

This Agreement does not address damages for any BUEs covered under the Grievances, though it does address the FLSA Exemption component, which is a factor relevant to the calculation of damages. The Parties agree that the issues of damages, costs and attorney fees have not yet been resolved and will be addressed by the Parties separate from this Agreement.

6. JURISDICTION OVER NONCOMPLIANCE

In the event that a dispute arises regarding the terms of this Agreement or over the implementation of this Agreement, the Parties agree to attempt to mutually resolve the dispute. The Party alleging a dispute shall notify the other Party in writing within thirty (30) calendar days from the date the issue giving rise to the dispute is known, or

should reasonably have been known, to the raising Party. If the Parties are unable to mutually resolve the dispute within sixty (60) calendar days from the date of the notification, the Parties agree to submit the dispute for Arbitration in accordance with the respective collective bargaining agreements between the Parties, except if an Arbitrator has already been selected to address the damages portion of the Grievances, the Parties agree to submit the dispute to that Arbitrator. The Parties may extend the time period with which to submit the dispute to arbitration upon written agreement.

7. NON-PRECEDENTIAL NATURE OF AGREEMENT

This Agreement is entered into for the purpose of settling the matters stated herein and may not be introduced as evidence by either Party in any type of litigation, proceeding or dispute other than the Grievances and/or to enforce the terms of this Agreement. Accordingly, this Agreement shall not be cited as precedent in any other grievances, arbitration or litigation between the Parties. It shall not bind the Parties in any proceedings, judicial or administrative in nature, except as necessary to effectuate the terms of this Agreement.

8. FUTURE FLSA ACTIONS

The Parties agree that in the future the Agency may designate or re-designate current or future BUEs/Bargaining Unit positions as Exempt or Non-Exempt in accordance with applicable statutes and regulations.

9. INDEPENDENT AGREEMENT

The Parties agree that this Partial Settlement Agreement is an independent Agreement. The failure of the Parties to amicably resolve the remainder of claims under the Grievances shall not invalidate this Agreement, and in the event of arbitration of any claim under the Grievances, this Agreement will be controlling as to the FLSA designations agreed to herein.

10. INCORPORATION

This Agreement sets forth the entire agreement between the Parties regarding the FLSA Exemption status component of the Grievances and fully supersedes any and all prior agreements or understanding between them.

11. AMENDMENTS OR MODIFICATIONS

This Agreement is a binding and enforceable settlement contract and no Party may modify it at a later date without execution of a separate written agreement between the Parties.

12. Authority

The Parties stipulate that the signatories to this Agreement have the full authority to enter into this Agreement and to make the agreements, obligations and considerations contained herein.

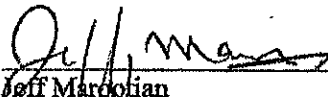
13. SIGNATURES

For the purposes of this Agreement, a facsimile or photocopy of signature(s) shall be considered to be an original signature. Signatures may be on successive pages and attached to the Agreement.


14. EFFECTIVE DATE

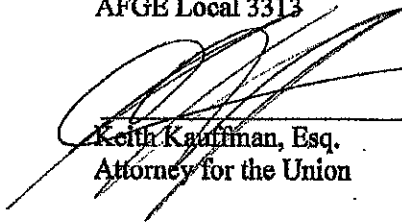
This Agreement shall be effective on the date all signatories have signed this Agreement.

For the AGENCY:

 1/16/17
Jeff Marcotian Date
Assistant Secretary for Administration

For the UNION:

 1/21/17
Eugene Johnson, President Date
AFGE Local 3313

 1/25/2017
Keith Kauffman, Esq. Date
Attorney for the Union

FMCSA—ATTACHMENT A

SERIES	GRADE	RESOLUTION
18	12	NonExempt
18	13	Exempt
28	14	Exempt
110	12 and above	Exempt
301	13 and below	NonExempt
301	14 and above	Exempt
303	6	NonExempt
318	9	NonExempt
341	13 and below	NonExempt
343	12 and below	NonExempt
343	13	NonExempt*
343	14 and above	Exempt
391	12	NonExempt
501	13 and below (Except Lead)	NonExempt
501	13 (Lead)	Exempt
501	14	Exempt
510	12 and above	Exempt
560	13	NonExempt
560	14	Exempt
610	11 and above	Exempt
801	12 and above	Exempt
830	13 and above	Exempt
905	15 and below	Exempt
1035	12	NonExempt
1035	13 and above	Exempt
1102	12 and below	NonExempt
1109	13	NonExempt
1109	14	Exempt
1529	11 and above	Exempt
1530	13 and above	Exempt
1701	13	NonExempt
1712	13	NonExempt
1801	13 and below	NonExempt
2101	12 and below	NonExempt
2101	13	NonExempt*
2101	14 and above	Exempt
2110	13 and below	NonExempt
2110	15	Exempt

*Indicates exceptions to NonExempt resolution for specific positions listed on Attachment B

2123	12	NonExempt
2210	12 and below	NonExempt
2210	13 and above	Exempt
2210	14 and above	Exempt

FMCSA–ATTACHMENT B Exceptions

SERIES	GRADE	TITLE & OFFICE & NAME	RESOLUTION
343	13	Management Analyst; Office of Policy Regulatory— Development Division: <ul style="list-style-type: none"> Nancy Scibek Ava Habif (<i>nee</i> Herman) Stephanie Dunlap 	Exempt
343	13	Management and Program Analyst; Office of Enforcement: <ul style="list-style-type: none"> Gian Marshall 	Exempt
2101	13	Transportation Specialist; Office of Safety Programs— Commercial Driver’s License Division: <ul style="list-style-type: none"> Michael Loose Carlos Dequina 	Exempt
2101	13	Transportation Specialist; Office of Enforcement and Compliance—Compliance Division: <ul style="list-style-type: none"> Monica Lanos Joseph Bennett 	Exempt
2101	13	Transportation Specialist; Office of Enforcement and Compliance—Enforcement Division: <ul style="list-style-type: none"> Kristopher Wyatt LaTonya Mimms Monique Riddick 	Exempt
2101	13	Transportation Specialist; Office of Enforcement— Hazardous Materials Division <ul style="list-style-type: none"> Roxanne Drayton-Oliver 	Exempt
2101	13	Transportation Specialist; Office of Enforcement— Commercial Passenger Safety Division <ul style="list-style-type: none"> Greg Nahmens Danielle Smith 	Exempt

FTA Attachment A

FTA Series	Grades	Resolution
0020	12 and below	Nonexempt
0020	13 and above	Exempt
0110	13 and above	Exempt
0301	13 and below	Nonexempt
0301	14 and above	Exempt
0303	07	Nonexempt
0341	13 and below	Nonexempt
0342	13 and below	Nonexempt
0343	13 and below	Nonexempt*
0343	14 and above	Exempt
0360	13 and below	Nonexempt
0391	13	Nonexempt
0501	13 and below	Nonexempt
0510	12 and above	Exempt
0560	12 and below	Nonexempt
0560	13 and above	Exempt
0801	09 and below	Nonexempt
0801	11 and above	Exempt
1035	12 and below	Nonexempt
1035	13 and above	Exempt
1082	14	Exempt
1102	12 and below	Nonexempt
1102	13 and above	Exempt
1160	13 and above	Exempt
1170	13 and above	Exempt
1801	13 and below	Nonexempt
1801	14 and above	Exempt
2101	13 and below	Nonexempt*
2101	14 and above	Exempt
2210	12 and below	Nonexempt
2210	13 and above	Exempt
0028	12 and below	Nonexempt
0028	13 and above	Exempt

*Indicates exceptions to resolution for specific positions listed on Attachment B

FTA Attachment B: Individual exceptions

Series	Grade	Name	Title and Office	Resolution
0343	13	NELSON, DANIELLE WIGHT	SENIOR PROGRAM ANALYST, RURAL AND TARGETED PROGRAM DIV	Exempt
0343	13	OPSTELTEN, HENDRIK N	PROGRAM ANALYST, RURAL AND TARGETED PROGRAM DIV	Exempt
0343	13	ALBERTS, BRIAN T	SR. PROGRAM ANALYST (POLICY), SAFETY POLICY & PROMOTION DIVISION	Exempt
0343	13	EVERETT, LYNN	PROGRAM ANALYST, OFFICE OF SYSTEM SAFETY	Exempt
0343	13	SPRATLING, DAKISHA D	PROGRAM ANALYST, SAFETY POLICY & PROMOTION DIVISION	Exempt
2101	13	HU, YIN T	TRANSPORTATION PROGRAM ANALYST, URBANIZED AREA DIVISION	Exempt
2101	13	RYMARZ, GREGORY D	TRANSPORTATION PROGRAM SPECIALIST, OFFICE OF MOBILITY INNOVATION	Exempt
2101	13	HALL, FAITH G C	TRANSPORTATION PROGRAM SPECIALIST, RESEARCH MGMT INNOVATION & OUTREACH	Exempt
2101	13	SOBHI, NAZEMEH	TRANSPORTATION PROGRAM SPECALIST, RESEARCH MGMT INNOVATION & OUTREACH	Exempt
2101	13	WILDER, CHARLENE M	TRANSPORTATION MANAGEMENT SPEC, ADVANCED PUBLIC TRANS SYSTEMS DIV	Exempt
2101	13	FOSTER, ANTHONY	TRANSPORTATION PROGRAM ANALYST, OFFICE OF PROGRAM OVERSIGHT	Exempt
2101	13	GURUSWAMY, DHARM	TRANSPORTATION PROG ANALYST(ADA), COMPLIANCE PROGRAMS DIVISION	Exempt
2101	13	JENSEN, HOPE J	TRANSPORTATION PROGRAM ANALYST, COMPLIANCE PROGRAMS DIVISION	Exempt
2101	13	MUIR, JAMES E	TRANSPORTATION PROGRAM SPEC, COMPLIANCE PROGRAMS DIVISION	Exempt
2101	13	SMEDLEY, NATHANIEL E	TRANSPORTATION PROGRAM ANALYST, PERFORMANCE & QUALITY ASSURANCE DIVIS	Exempt
2101	13	SNYDER, SHERRY	TRANSPORTATION PROGRAM ANALYST, COMPLIANCE PROGRAMS DIVISION	Exempt

NHTSA ATTACHMENT A

NHTSA SERIES	GRADE	RESOLUTION
301	13 and below	NONEXEMPT*
301	14 and above	EXEMPT
303	11 and below	NONEXEMPT
306	13	NONEXEMPT
318	8	NONEXEMPT
340	14	EXEMPT
342	12	NONEXEMPT
343	13 and below	NONEXEMPT
343	14 and above	EXEMPT
501	13	NONEXEMPT
560	12 and below	NONEXEMPT
560	13 and above	EXEMPT
1001	13	NONEXEMPT
1001	14	EXEMPT
1035	12 and below	NONEXEMPT
1035	13 and above	EXEMPT
1071	13	NONEXEMPT
1082	13 and above	EXEMPT
1084	13	NONEXEMPT
1101	13 and below	NONEXEMPT*
1101	14 and above	EXEMPT
1102	12 and below	NONEXEMPT
1102	13 and above	EXEMPT
1160	13	EXEMPT
1601	12	NONEXEMPT
1801	14 and below	NONEXEMPT*
2125	12 and below	NONEXEMPT
2125	13 and above	EXEMPT*
2210	11 and above	EXEMPT

*Indicates exceptions to resolution for specific positions listed on Attachment B

NHTSA ATTACHMENT B – Exceptions

NHTSA SERIES	GRADE	NAME	TITLE & OFFICE	RESOLUTION
301	13	Butterfield, Jessica A.	Safety Defects Specialist; Office of Defects Investigation	EXEMPT
301	13	Godfrey, William L.	Safety Defects Specialist; Office of Defects Investigation	EXEMPT
301	13	Hillman, Daniel J.	Safety Defects Specialist; Office of Defects Investigation	EXEMPT
301	13	Long, Laurence A.	Safety Defects Specialist; Office of Defects Investigation	EXEMPT
301	13	Price, Jeffrey M.	Safety Defects Specialist; Office of Defects Investigation	EXEMPT
1101	13	Graziosi, Kathryn E.	Marketing Specialist; Office of Consumer Information	EXEMPT
1101	13	Henry, Kathryn L.	Marketing Specialist; Office of Consumer Information	EXEMPT
1101	13	Joyce, Michael S.	Marketing Specialist; Office of Consumer Information	EXEMPT
1101	13	Mason, Glacera	Marketing Specialist; Office of Consumer Information	EXEMPT
1101	13	Nilsson, Kathryn E.	Marketing Specialist; Office of Consumer Information	EXEMPT
1801	14	Godfrey, William L.	Safety Defects Investigator; Office of Defects Investigation	EXEMPT
2125	13	Scott, Karen Frances	Highway Safety Specialist; Records Group	NONEXEMPT

OST-ATTACHMENT A

SERIES	GRADE	RESOLUTION
0019	12	NonExempt
0028	12	NonExempt
0028	13 and above	Exempt
0080	9	NonExempt
0110	11 and below	NonExempt
0110	12 and above	Exempt
0150	12 and above	Exempt
0160	13	NonExempt
0201	14 and above	Exempt
0260	12 and above	Exempt
0301	13 and below	NonExempt*
0301	13 (TB supervisor)	Exempt
0301	14 and above	Exempt
0303	10 and below	NonExempt
0306	13 and below	NonExempt
0306	14 and above	Exempt
0318	10 and below	NonExempt
0326	4 and below	NonExempt
0342	9	NonExempt
0343	13 and below	NonExempt
0343	14 and above	Exempt
0360	13 and below	NonExempt
0360	14 and above	Exempt
0399	12 and below	NonExempt
0501	13 and below	NonExempt*
0501	14 and above	Exempt
0510	13 and above	Exempt
0560	12 and below	NonExempt
0560	13 and above	Exempt
0855	15	Exempt
0904	9	NonExempt
0905	11 and above	Exempt
0963	9	NonExempt
0986	8	NonExempt
1001	12	NonExempt
1035	12 and below	NonExempt
1035	13 and above	Exempt
1060	12	NonExempt
1071	13	NonExempt

OST ATTACHMENT A - 1 of 2 pages

*Indicates exceptions to NonExempt resolution for specific positions listed on Attachment B

1082	11 and below	NonExempt
1082	13 and above	Exempt
1084	12 and below	NonExempt
1101	14 and above	Exempt
1102	13 and above	Exempt
1102	12 and below	NonExempt
1109	13	NonExempt
1370	13 and above	Exempt
1410	12 and below	NonExempt
1410	13 and above	Exempt
1412	11	NonExempt
1529	12 and above	Exempt
1530	13 and above	Exempt
2001	11	NonExempt
2003	12 and below	NonExempt
2005	7	NonExempt
2101	13 and below	NonExempt*
2101	14	Exempt
2101	15	Exempt
2110	13 and below	NonExempt*
2110	14	Exempt
2110	15	Exempt
2210	12 and below	NonExempt*
2210	13 and above	Exempt
2299	5	NonExempt
6907	7	NonExempt

OST-ATTACHMENT B Exceptions

SERIES	GRADE	TITLE & OFFICE	RESOLUTION
0301	13	Rebecca Higgins, Policy Analyst- Office of Safety, Energy & Env.	Exempt
0301	13	John Kennedy, Policy Analyst- Office of Infrastructure, Innovative Finance	Exempt
0301	13	Samuel Brooks, Program Specialist- DOCR	Exempt
2101	13	Paul Baumer, Transp. Policy Analyst – Office of Infrastructure, Finance & Trade	Exempt
2101	13	Jason Hill, International Transp. Specialist, Office of International Transp. & Trade	Exempt
2101	13	Ronalee Hoes, International Transp. Specialist, Office of International Transp. & Trade	Exempt
2101	13	Steronica Mattocks, International Transp. Specialist, Office of International Transp. & Trade	Exempt
2101	13	Peter Chipman, Transp. Specialist, Office of Research & Development	Exempt
2110	13	Kristin Davis, TIA –Under Secretary for Policy- Negotiations Staff	Exempt
2110	13	Richard Pittaway, TIA – Under Secretary for Policy, Competition & Policy Division	Exempt
0501	13	Leonele Raba, Financial Spec, Office of CFO	Exempt
0501	13	Paul Repak, Financial Spec., Policy- Resource Directorate	Exempt

0501	13	Tami Seals, Financial Spec., Policy-Resource Directorate	Exempt
2210	11	Amber Shaw, It Spec. Office of CIO	Exempt
2210	9 and above	Kofi N. Krumah, IT Specialist, Office of CIO	Exempt

PHMSA ATTACHMENT A

PHMSA SERIES	GRADE	RESOLUTION
110	14	EXEMPT
301	13 and below	NONEXEMPT
301	14 and above	EXEMPT
306	13	NONEXEMPT
306	14 and above	EXEMPT
340	14	EXEMPT
343	13 and below	NONEXEMPT
343	14 and above	EXEMPT
391	13	NONEXEMPT
399	12 and below	NONEXEMPT
510	12 and above	EXEMPT
560	13 and below	NONEXEMPT
560	14 and above	EXEMPT
801	9 and above	EXEMPT
905	11 and above	EXEMPT
1001	13 and below	NONEXEMPT
1035	13 and above	EXEMPT
1083	11	NONEXEMPT
1083	13 and above	EXEMPT
1102	12 and below	NONEXEMPT
1102	13 and above	EXEMPT
1109	13 and below	NONEXEMPT
1109	14 and above	EXEMPT
1301	12 and above	EXEMPT
1306	14	EXEMPT
1320	11 and above	EXEMPT
1515	14 and above	EXEMPT
1530	13	EXEMPT
1801	13 and below	NONEXEMPT
1801	14 and above	EXEMPT
1805	13	NONEXEMPT
2101	13 and below	NONEXEMPT*
2101	14 and above	EXEMPT
2199	11	NONEXEMPT
2210	11 and below	NONEXEMPT
2210	12 and above	EXEMPT
2299	12	NONEXEMPT

*Indicates exceptions to NonExempt resolution for specific positions listed on Attachment B

PHMSA ATTACHMENT B – Exceptions

PHMSA SERIES	GRADE	NAME	TITLE & OFFICE	RESOLUTION
2101	12	Antonielli, Jennifer	Transportation Specialist; PHH-13: International Standards	EXEMPT
2101	13	Andrews, Steven W	Transportation Regulations Specialist; PHH-12: Reg. Review and Reinvention	EXEMPT
2101	13	Antonielli, Jennifer	Transportation Specialist; PHH-13: International Standards	EXEMPT
2101	13	Der Kinderen, Dirk F	Transportation Regulations Specialist; PHH-11: Standards Development	EXEMPT
2101	13	Dow, Angela D	Transportation Specialist; PHP-30: Standards & Rulemaking	EXEMPT
2101	13	Edmonson, Eileen E	Transportation Regulations Specialist; PHH-12: Reg. Review and Reinvention	EXEMPT
2101	13	Fritsche-Register, Dana L	Transportation Specialist; PHP-30: Standards & Rulemaking	EXEMPT
2101	13	Leary, Kevin	International Standards Specialist; PHH-13: International Standards	EXEMPT
2101	13	Nickels, Matthew B	Transportation Regulations Specialist; PHH-12: Reg. Review and Reinvention	EXEMPT
2101	13	Stevens, Michael G	PHH-12: Reg. Review and Reinvention	EXEMPT
2101	13	Suchak, Neal W	Transportation Regulations Specialist; PHH-11: Standards Development	EXEMPT
2101	13	Webb, Steven Thomas	International Standards Specialist; PHH-13: International Standards	EXEMPT
2101	13	Whetsel, Cheryl P	Transportation Specialist; PHP-30: Standards & Rulemaking	EXEMPT
2101	13	Wiener, Aaron M	International Standards Specialist; PHH-13: International Standards	EXEMPT