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## **PREAMBLE**

This Agreement, herein referred to as the 2010 Collective Bargaining Agreement is between the Office of Operations of the United States Department of Agriculture and the American Federation of State, County, and Municipal Employees (AFSCME) Local 2846. The Agreement is effective as of September 30, 2012, unless otherwise provided.

## **ARTICLE 1: PARTIES TO THE AGREEMENT, RECOGNITION, AND DEFINITION OF A BARGAINING UNIT**

### Section A. Parties to the Agreement

The parties to this Agreement are the U.S. Department of Agriculture, Office of Operations, (OO)Washington, D.C. metropolitan area, hereinafter known as the “Agency,” “Employer,” “OO,” or “Management” and the American Federation of State, County and Municipal Employees (AFSCME) Local 2846, hereinafter known as the “Union.”

### Section B. Unit of Recognition

The unit of recognition covered by this Agreement is that unit certified by the Federal Labor Relations Authority in Case No. WA-RP-05-0054. The Employer recognizes the American Federation of State, County and Municipal Employees, Local 2846, as the exclusive representative of all employees (hereinafter sometimes referred to as “employees” or “bargaining unit employees”) in the bargaining unit as defined below.

### Section C. Bargaining Unit Coverage

This agreement covers all professional and non-professional employees employed by the USDA, Office of Operations in the Washington, D.C. metropolitan area including professional and nonprofessional employees, but excluding all guards, management officials, supervisors, employees described in title 5, United States Code (U.S.C.), Section 7112 (b)(2), (3), (4), (6) & (7).

### Section D. Certification

A copy of the FLRA certification is found in Appendix 1.

## **ARTICLE 2: EMPLOYEE RIGHTS**

- A. Each employee shall have the right to form, join or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided, this includes the right:
  - 1. To act for AFSCME in the capacity of a representative and the right, in that capacity of a representative, to present the views of AFSCME to heads of agencies and other officials of the Executive Branch of the Government, the Congress, or other appropriate authorities; and,
  - 2. To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees or AFSCME.
- B. An employee has the right to be represented by the Union at any meeting with OO Management or anyone acting as an agent of OO Management when the employee has a grievable or negotiable complaint concerning conditions of employment.
- C. Employees will be provided annual notification of their right to request Union representation at any Management-initiated investigative meeting that may reasonably result in disciplinary action. The Union shall receive a copy of this notification. A copy of the annual Weingarten Notice is found at Appendix 2.
- D. Each employee has the right to request representation by the Union at any Management-initiated investigative meeting that may result in disciplinary action, or that the employee reasonably believes may result in disciplinary action. In those cases, employees shall be given the opportunity to obtain such representation, upon request.
- E. OO shall make available copies of the rules, regulations, and policies under which employees are obligated to work in the office having primary responsibility for the program to which the regulations apply, on bulletin boards and/or online.
- F. The Employer and the Union strongly disapprove of abusive actions towards anyone in the workplace. Such actions may be written or oral abuse that insults or belittles the individual, stronger in tone or deed than the situation warrants. Physical abuse will never be tolerated.

### **ARTICLE 3: UNION RIGHTS AND RESPONSIBILITIES**

- A. The Union is the exclusive representative of the employees in the OO bargaining unit and is entitled to represent, and negotiate collective bargaining agreements covering, these employees. The Union is responsible for representing the interests of all employees in the bargaining unit without discrimination and without regard to labor organization membership.
- B. For the purpose of administration of this Agreement, the Employer agrees to recognize representatives of AFSCME Council 26, AFSCME International and/or AFSCME designated or private counsel designated by AFSCME to represent employees in the bargaining unit. For any single issue, the Union will designate a single point of contact.
- C. The Union has the right to represent an employee or group of employees at any formal discussion between one or more representatives of the Agency and one or more employees in the bargaining unit or their representatives concerning any personnel policy or practices or other general condition of employment; or any examination of an employee in the unit by a representative of the Agency in connection with an investigation if: 1) the employee reasonably believes that the examination may result in disciplinary action against the employee, and 2) the employee requests Union representation. The Union has exclusive right to represent employees under the negotiated grievance procedure in this Agreement. An employee or group of employees may present a grievance or complaint without representation by the Union, provided that the Union is a party to all formal discussions and grievance proceedings.
- D. Reasonable Notice: The Union will be given reasonable notice of, and provided reasonable time to be present at, formal discussions concerning any grievance, personnel policy or practice, or other conditions of employment.
- E. Restraint: Union officials and representatives performing duties in accordance with this Agreement and the Federal Labor Management Relations Act (FLMRA) will not be subject to unlawful restraint, coercion, reprisal, or discrimination as the result of performing union duties.

## **ARTICLE 4: MANAGEMENT RIGHTS AND RESPONSIBILITIES**

In accordance with 5 U.S.C. 7106, the Employer retains the right:

- A. To determine the mission, budget, organization, number of employees, and internal security practices of the Agency;
- B. To hire, assign, direct, layoff, and retain employees, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against employees;
- C. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which the Employer's operations shall be conducted;
- D. With respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion or from any other appropriate source;
- E. To take whatever actions may be necessary to carry out the Agency's mission during emergencies; and
- F. To designate a single point of contact for any single issue.

## **ARTICLE 5: DUES WITHHOLDING**

Members of the bargaining unit are authorized to effect voluntary allotment for the payment of dues to the Union subject to the provisions outlined in the Memorandum of Understanding between AFSCME Council 26 and the U.S. Department of Agriculture dated May 3, 1993. This Memorandum of Understanding is incorporated verbatim into this article, as follows:

### ***MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF AGRICULTURE AND THE AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 26***

*The parties to this memorandum, the American Federation of State County and Municipal Employees, Council 26, hereinafter referred to as AFSCME, and the U.S. Department of Agriculture, hereinafter referred to as USDA, enter into this agreement for the purpose of establishing a mutually beneficial dues withholding agreement.*

- 1. This Memorandum of Understanding is subject to and governed by 5 U.S.C. 7115, by regulations issued by the Office of Personnel Management (5 C.F.R. 550.301, 550.311, 550.312, 550.321 and 550.322), and will be modified as necessary by any future amendments to said rules, regulations and law. Reference is also made to DPM 550, Subchapter 3 for procedural guidance.*
- 2. The USDA will permit any employee of the USDA who is a member of AFSCME and included within a bargaining unit for which AFSCME has exclusive recognition to make a voluntary allotment for the payment of dues to AFSCME. Such deductions shall begin after certification of AFSCME by the Federal Labor Relations Authority, and upon request by the appropriate union official and shall be at no cost to AFSCME. This Memorandum of Understanding shall be made a part of every future local or Council 26 agreement and shall be the only authorized method for obtaining dues withholding.*
- 3. The employee shall obtain a SF-1187, "Request for Payroll Deductions for Labor Organization Dues," from AFSCME and shall file the completed SF-1187 with the designated AFSCME representative. The employee shall be instructed by AFSCME to complete the top portion and Part B of the form. No number shall appear in block 2 of the form except the last four digits of the employee's Social Security number.*
- 4. The President or other authorized official of the Local Union or the Council will certify on each SF-1187 that the employee is a member in good standing of AFSCME; insert the amount to be withheld, and the appropriate Local number; and submit the completed SF-1187 to the Servicing Personnel Office (SPO) of the USDA Agency involved. The SPO shall certify the employee's eligibility for dues withholding, insert the AFSCME code (47) and, process the*

form through the Payroll/Personnel Processing System. An employee's initial dues deduction will become effective the first full pay period after the receipt by the SPO of the employee's certified SF-1187, provided it is received three working days before the beginning of the pay period. For SF-1187's received after this cut-off, an attempt shall be made to begin dues withholding effective the first full pay period after receipt. However, if this is not possible, dues withholding will become effective the following pay period. The SPO will promptly forward a copy of the SF-1187 to the AFSCME designated official. When the SPO determines that a SF-1187 cannot be processed, the SPO shall promptly return the form to the Union, annotated with the reason for its return. In most cases, the annotation will be one word, such as "confidential" or "supervisor." Dues deduction will not be made for an employee who does not receive compensation sufficient to cover the total amount of the allotment.

5. Deductions will be made each pay period and remittances will be made on the Department's pay day to the payee designated by the Union. A grace period of seven days will be permitted in unusual circumstances. The NFC shall also promptly forward to AFSCME, a listing of dues withheld. The listing shall be segregated by Local and shall show the name of each member employee from whose pay dues were withheld, the last four digits of the employee's Social Security number, the amount withheld the code of the employing agency, and the number of the Local to which each employee belongs. The listing will be in alphabetical order of the employee's last name. Each Local listing shall be summarized to show the number of members for whom dues were withheld, total amount withheld, and amount due to the Local. Each list will also include the name of each employee member for that Local who previously made an allotment for whom no deduction was made that pay period, whether due to leave without pay or other cause. Such employees shall be designated with an appropriate explanatory term.
6. The amount of dues certified on the SF-1187 by the authorized Union official (see Section 4) shall be the amount of regular dues, exclusive of initiation fees, assessment, back dues, fines, and similar charges and fees. One standard amount for all employees or different amounts of dues for different employees may be specified. If there should be a change in the dues structure or amount, the authorized Union official shall notify the appropriate SPO. If the change is the same for all members of the Local, a blanket authorization may be used which includes only the Local number and the new amount of dues to be withheld. If the change involves a varying dues structure, then a revised rate schedule will be provided to the SPO. The SPO shall add the AFSCME code (47) and promptly forward the certification to the NFC. The change shall be effected at the beginning of the first full pay period after the certification is received by NFC which shall be no later than 30 days after the Union provides written notification to the SPO of the change in dues. Only one such change may be made in any 6-month period for a given Local.
7. An employee may voluntarily revoke an allotment for the payment of dues by completing a SF-1188, "Cancellation of Payroll Deductions for Labor Organization Dues" or by memorandum in duplicate, and submitting it to the appropriate SPO. If the employee uses a written request, it must contain all the information required by the SF-1188. The SPO shall process the revocation effective as of the first full pay period after September 1 of each year provided that the revocation was received by the SPO on or before August 29 of each year, and provided

*the employee has had AFSCME dues withheld for more than 1 year and certifies to that fact. The SPO shall verify the information and forward to the designated Union official a copy of each revocation received as appropriate notification of the revocation.*

*8. The USDA will terminate an allotment:*

*a. As of the beginning of the first full pay period following receipt of notice that exclusive recognition has been withdrawn;*

*b. At the end of the pay period during which an employee member is separated or assigned to position not included in an AFSCME bargaining unit;*

*c. At the end of the pay period during which the SPO received a notice from the AFSCME or a Local of AFSCME that an employee member has ceased to be a member in good standing;*

*d. Annually during the first full pay period after September 1, after receipt of the employee member's written revocation of allotment (SF-1188 or memorandum in duplicate), provided that the revocation is received by the SPO on or before August 29 of each year, and provided the employee verifies that he/she has had AFSCME dues withheld for more than one year.*

*9. The SPO and the employee members have a mutual responsibility to assure timely revocation of an employee's allotment for AFSCME dues when the employee is promoted or assigned to a position not included in a bargaining unit represented by AFSCME. If the dues allotments continue and the employee fails to notify his/her SPO, the retroactive recovery of dues withheld from AFSCME shall not be made, nor shall a refund be made to the employee.*

*10. The parties to this agreement recognize that problems may occur in the administration of this agreement and the dues withholding program. The parties agree to exchange names, addresses, and telephone numbers of responsible officials and/or technicians of AFSCME and USDA to facilitate resolution of problems. These individuals shall cooperate fully in an effort to resolve any issue relating to dues withholding under the terms of this Memorandum of Understanding. This does not constitute a waiver of any legal, regulatory, or contractual right. Grievances or other appeals concerning this Memorandum of Understanding will be filed with or against the parties at the level of recognition.*

*11. This Memorandum of Understanding shall remain in effect for as long as AFSCME holds exclusive recognition in USDA, except that either party may propose amendments annually, before the anniversary date of the signing of this agreement.*

*Agreed to, signed a Washington, D.C. on May 3, 1993.*

*Larry B. Slagle /s/ Carl Goldman /s/*

*Director of Personnel Executive Director*

*Department of Agriculture American Federation of State County*

*And Municipal Employees, Council 26*

## **ARTICLE 6: WORK SCHEDULES/TOURS OF DUTY**

**Section A. General:** The Parties recognize that this Article increases work schedule flexibility. Because employees and managers work to carry out the overall mission of the Agency by providing professional, technical, and clerical services to internal and external customers, both managers and employees have a responsibility to inform each other in a timely fashion of any significant events that may affect the work schedule.

**Section B. Definitions:** For the purposes of this Agreement and consistent with Federal Regulations, the following definitions are used:

1. Alternative Work Schedule – refers to both flexible and compressed work schedules.
2. Basic Work Requirement – the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award.
3. Biweekly Pay Period – the 2-week period for which an employee is scheduled to perform work.
4. Core Hours – the time periods during the workday, workweek, or pay period that are within the tour of duty during which an employee covered by an alternative work schedule must be present for work. Core hours are between 9:00 a.m. and 3:00 p.m.
5. Credit Hours – those hours within a flexible work schedule that an employee voluntarily elects to work in excess of his or her basic work requirements so as to vary the length of a workweek or workday. Credit hours may be worked and earned between 6:00 a.m. and 7:30 p.m., Monday through Friday, up to two (2) hours per day. Teleworkers may work and earn credit hours outside of the 6:00 a.m. to 7:30 p.m. restriction, up to two (2) hours per day, provided that the work does not require interaction with others without prior arrangement and mutual agreement.
6. Compressed Work Schedule (CWS) – work under a fixed work schedule that has:
  - a. In the case of a full-time employee, an 80-hour biweekly basic work requirement that is scheduled for fewer than ten (10) days.
  - b. In the case of a part-time employee, a biweekly basic work requirement of less than eighty (80) hours that is scheduled for less than ten (10) workdays and that may require the employee to work more than eight (8) hours in a day.
7. Flexible Work Schedule – means a work schedule that:

- a. In the case of a full-time employee, has an 80-hour biweekly basic work requirement that allows an employee to determine his or her own schedule consistent with the procedures in this Article; and,
  - b. In the case of a part-time employee, has a bi-weekly work requirement of less than eighty (80) hours that allows an employee to determine his or her own schedule consistent with the procedures in this Article.
- 8. Maxiflex Schedule – a type of flexible work schedule that contains core hours on fewer than ten (10) workdays in the biweekly pay period and in which a full-time employee has a basic work requirement of eighty (80) hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given work day or the number of hours each week consistent with the procedures in this Article. See Section F.
  - 9. Gliding Schedule – a flexible work schedule under which an employee has a basic work requirement of eight (8) hours per day, forty (40) hours per week, and the employee may select a starting and stopping time each day, and may change starting and stopping times daily within the established flexible hours. See Section E.
  - 10. Temporary Schedule Change – a temporary work schedule change, as used in this Article, means two (2) pay periods or less, except as noted in Section F.6 of this Article.
  - 11. Permanent Schedule Change – a permanent work schedule change, as used in this Article, means a period of time that exceeds two (2) pay periods.
  - 12. Flexilunch – employees on a Gliding Schedule or Maxiflex schedule may, with advance supervisory approval, expand their lunch break within the lunch band on any given day, provided arrival and/or departure times are adjusted by an equivalent amount on that day.

13. Lunch Band – the period of time between 11:00 a.m. and 2:00 p.m. when an employee may take his or her lunch break. An employee may not be required to work more than six (6) hours without a lunch break.

14. Overtime Hours – for employees on a standard or flexible work schedule, work in excess of eight (8) hours in a day or forty (40) hours in a week, or outside of a Maxiflex schedule-of (80) eighty hours in a pay period, if ordered and approved in advance, but does not include credit hours. For employees on a compressed work schedule, overtime are any hours in excess of those specified for full-time employees. For part-time employees on compressed schedules, overtime hours are those hours in excess of their compressed work schedule for a day (must be over 8) or, for a week (must be over 40).

15. Standard work schedule – a standard work schedule is Monday through Friday, eight (8) hours a day, with a 30 to 60 minute meal period scheduled to occur between 11:00 a.m. and 2:00 p.m., and a preset starting time occurring between 7:00 a.m. and 9:00 a.m.

16. Tour of Duty – under an alternative work schedule means the limits established within which an employee must complete his or her basic work requirement.

**Section C. Work Schedule Options**

1. Each employee must have in place a work schedule approved by the immediate supervisor. Supervisors must consider employee work schedule requests that are made in accordance with Section G. below. In cases where an alternate work schedule is not approved, the employee will work a standard work schedule as defined in the Article. In establishing the standard work schedule, the supervisor must consider and approve the requested starting times and meal period unless otherwise necessitated by Agency needs. Employees on a standard work schedule are not eligible to glide, earn credit hours, or flex their lunch period.
2. The following tables summarize alternative work scheduling options available to OO in the Washington, D.C. metropolitan area as approved by OPM. Within these parameters, work schedules are to be established by supervisors to meet the needs of the agency, with full consideration given to accommodate employee requests:

<b>a. Available Compressed Work Schedule Options</b>		
	<b>5-4/9 Option</b>	<b>4-10 Option</b>
<b>Tour</b>	Eight (8), nine- (9)-hour days and one (1), eight- (8)-hour day per pay period	Four (4), ten- (10)-hour days per week as scheduled
<b>Start time</b> (Arrival and departure time cannot vary)	9-hour day: 6:00 to 9:00 a.m. 8-hour day: 7:00 to 9:00 a.m.	6:00 to 9:00 a.m.
<b>Nonwork day</b>	One (1) day per pay period as established	One (1) day per week as established

<b>Glide</b>	Ineligible	Ineligible
<b>Credit hours</b>	Ineligible	Ineligible
<b>Flexilunch</b>	Ineligible	Ineligible
<b>Holiday Pay</b>	Eight (8) hours on short day Nine (9) hours on long day	Ten (10) hours

<b>b. Available Flexible Work Schedule Options</b>		
	<b>Maxiflex</b>	<b>Gliding Schedule</b>
<b>Tour</b>	As scheduled up to ten- (10-) hour days	Eight- (8-) hour work day
<b>Nonwork day</b>	One (1) or more as established	Ineligible
<b>Start time</b>	6:00 to 9:00 a.m.	7:00 to 9:00 a.m.
<b>Glide</b>	Eligible	Eligible
<b>Credit hours</b>	Eligible up to 2 hours per day (See Section B.5)	Eligible up to 2 hours per day (See Section B.5)
<b>Flexilunch</b>	Eligible	Eligible
<b>Holiday Pay</b>	Eight (8) hours	Eight (8) hours

3. Employees will record their time worked using current recording practices. Should the Agency wish to change such practices it will meet, consult, and bargain with the Union pursuant to Article 36 of this Agreement.

#### **Section D. Compressed Work Schedule**

1. An employee may request to work a compressed work schedule. The employee will submit a proposed schedule with his or her request.
2. The basic work requirement for an employee on a compressed work schedule is eighty (80) hours per pay period in fewer than ten (10) days. Employees on a compressed work schedule may request to work one of the following schedule options:
  - a. 5-4/9 Compressed Plan - an employee works eight (8) 9-hour days and one (1) 8-hour day for a total of eighty (80) hours a pay period.
  - b. Four-Day Workweek (4-10 Plan) - an employee must work four (4) ten- (10-) hours a days, forty (40) hours a week, and eighty (80) hours a pay period.
3. Core hours for employees on a compressed work schedule are between 9:00 a.m. and 3:00 p.m. each day worked. Employees on a compressed work schedule must be on duty

during core hours, except for scheduled and approved use of leave or during the employee's 30-minute unpaid lunch period.

4. Compressed work schedule tours of duty may begin at 6:00 a.m. and must end by 7:30 p.m. The one (1) 8-hour day cannot begin before 7:00 a.m.

### **Section E. Gliding Schedule Work Schedule**

1. An employee may request to work a Gliding Schedule work schedule. Employees will submit a proposed schedule with their request.
2. Employees on a Gliding Schedule work schedule must work an 8-hour day Monday through Friday. They may propose to vary the arrival time of their work day between 7:00 a.m. and 9:00 a.m. on a daily basis.
3. Core hours for employees on a Gliding Schedule work schedule are between 9:00 a.m. and 3:00 p.m. each day. Employees on a Gliding Schedule work schedule must be on duty during those hours except for scheduled and approved use of leave or credit hours or during the employee's 30-minute unpaid lunch period.
4. Employees on a Gliding Schedule work schedule may earn and use credit hours between 6:00 a.m. and 7:30 p.m. on Monday through Friday. See Section I below for more information on credit hours.

### **Section F. Maxiflex Work Schedule**

1. An employee may request to work a Maxiflex work schedule.
2. The basic work requirement for an employee on Maxiflex is eighty (80) hours per pay period. Employees on Maxiflex may work up to ten (10) hours a day Monday through Friday in meeting their basic work requirement. They may vary the arrival time of their work day between 6:00 a.m. and 9:00a.m., and the departure time between 3:00 p.m. and 7:30 p.m. on a daily basis. While employees may vary their arrival and departure times from their established work schedule within these flexible time bands, they are required to inform their supervisor in advance if they plan to vary arrival or departure time more than 30 minutes. This advance notification requirement does not apply to unforeseen situations beyond the employee's control, wherein the employee must notify the supervisor as soon as possible. Based on compelling work-related needs, the supervisor may direct the employee to report or remain on duty during their established work schedule on any given day.
3. Core hours for employees on a Maxiflex work schedule are between 9:00 a.m. and 3:00 p.m. each day worked. Employees on a Maxiflex work schedule must be on duty during those hours except for scheduled and approved use of leave or credit hours or during the employee's 30-minute unpaid lunch period.

4. Employees on a Maxiflex work schedule may earn and use credit hours between 6:00 a.m. and 7:30 p.m. on Monday through Friday. See Section I below for more information on credit hours.
5. Employees on a Maxiflex work schedule will fill out a projected work schedule and submit it to their supervisor not later than the close of business on the Monday prior to the pay period it will go into effect. Once approved, the employee's submitted work schedule will remain in effect and no further work schedule submission is necessary unless the employee requests a subsequent work schedule change. Consistent with Section H, below, supervisors will approve the employee's requested schedule and any amendments to it unless doing so would adversely affect unit productivity, level of service to the public or other stakeholders, or cost of operations as determined by the supervisor.
6. Employees on a Maxiflex work schedule may request a temporary schedule change for any pay period in which a Federal holiday, or in lieu of holiday as defined in Section K falls on a day that, in the absence of the Federal holiday, would have been otherwise scheduled as a 9- or 10-hour workday, so that only eight (8) hours are scheduled on the holiday or in lieu of holiday.

### **Section G. Work Schedule Changes**

1. Employees must submit a written work schedule request to their supervisors using a supervisory approved procedure. Employees may request a temporary or permanent change in their current work schedule at any time by making a written request to their supervisor no later than the Monday prior to the pay period it will go into effect. After an initial work schedule is established, an employee-initiated request to change between a Standard, Gliding, Maxiflex, 5-4/9, and 4-10 work schedule may be made only once during a 12-month period. This will not preclude supervisory approval of additional employee-requested changes, when such changes would not impede the Agency's day-to-day business operations or negatively impact upon the Agency's mission-critical.
2. Except in cases of emergency or of compelling need, a Supervisor may, after giving at least one pay period advance notice to an affected employees, make a temporary or permanent change to an employee's work schedule (including scheduled days off).
3. Should the Agency need to make work schedule changes for two or more employees in the same unit predicated on a management-initiated change, it will meet, consult, and bargain with the Union in accordance with the provisions of Article 36 of this Agreement.
4. Any approved work schedule option or work schedule option change will become effective at the beginning of the pay period after approval or as agreed between the supervisor and the employee. Retroactive changes to work schedule options will not be approved.
5. A supervisor or manager will approve or disapprove a work schedule option request within five (5) work days of actual receipt. It is the employee's responsibility to ensure

the supervisor's actual receipt of the request. If the work schedule option requested is disapproved, the reasons for such disapproval must be provided in writing to the employee.

### **Section H. Work Schedule Request Conflicts**

1. If two or more employees' work schedule requests conflict so that to approve both/all the requests would result in inadequate office coverage during the work day, or undue delays or interruptions to Agency business operations, or the failure, delay, or interruption in completing a critical mission of the Agency, the supervisor should meet with the affected employees and return the form to each employee with the request that the employees reach agreement among themselves, if possible.
2. If the employees are unable to reach agreement by 12:00 noon on the Thursday before the pay period in which the employees desire the requested schedules to be effective, the supervisor, by close of business on Thursday, will approve or disapprove the work schedules by giving priority to the employee with seniority based on the service computation date for leave.

### **Section I. Credit Hours**

1. Credit hours may be worked and used only by employees covered by a Gliding Schedule or Maxiflex work schedule between the hours of 6:00 a.m. and 7:30 p.m., Monday through Friday. Credit hours may not be earned for working during the lunch period. Use of credit hours (or other earned leave) may be requested to extend a lunch period.
2. Employees on a Maxiflex or Gliding Schedule work schedule will be permitted to earn credit hours subject to the following limitations:
  - a. The earning of credit hours is conditional upon the availability of appropriate work and work priorities as determined by the employee's supervisor. Prior supervisory approval is not required for earning credit hours provided the employee performs appropriate work and complies with priorities established by the supervisor. Working credit hours is at the employee's discretion.
  - b. Employees may earn up to two (2) credit hours on any workday and accrue up to twenty-four (24) credit hours in any biweekly pay period. Credit hours may not be earned on a non-work day. Credit hours can be earned and used in fifteen (15) minute increments.
3. Credit hours must be worked within an employee's tour of duty. The tour of duty for employees on Gliding Schedule or Maxiflex is Monday through Friday of each week. Employees on standard or compressed schedules are not eligible for credit hours.
4. For a full-time employee, the number of credit hours that may be carried over from a biweekly pay period to a succeeding biweekly pay period will not exceed twenty-four (24) credit hours. For a part-time employee, the number of credit hours that may be

carried over from a biweekly pay period to a succeeding biweekly pay period will not exceed one-fourth of the part-time employee's biweekly work requirement.

5. An employee's right to use earned credit hours is subject to supervisory approval. The same procedures used to request using annual leave will be used to request the use of credit hours. Credit hours must be earned before they are used.
6. When an employee is no longer subject to a flexible work schedule, the employee must be paid for accumulated credit hours at his or her current rate of pay. An employee may not be compensated for excess or unused credit hours that cannot be carried forward into the next pay period.
7. An employee may not be paid overtime pay, Sunday premium pay, or holiday premium pay for credit hours.

#### **Section J. Overtime under Alternative Work Schedules**

1. This section is to be read in conjunction with Article 7. For employees on a Maxiflex work schedule, overtime hours are all hours of work in excess of eight (8) hours in a day, or forty (40) hours in a week, or outside of a Maxiflex schedule if ordered and approved in advance, but does not include credit hours. Employees on flexible alternative work schedules may not earn overtime pay as a result of suffered or permitted hours under the Fair Labor Standards Act as hours of work.
2. Management may order an employee who is covered by a flexible alternative work schedule to work hours that are in excess of the number of hours that the employee planned to work on a specific day. If the hours ordered to be worked are not in excess of eight (8) hours in a day or forty (40) hours in a week at the time they are performed, the employee may elect to:
  - a. Take time off from work on a subsequent workday for a period of time equal to the number of extra hours of work ordered;
  - b. Complete his or her basic work requirement as scheduled and count the extra hours of work ordered as credit hours; or,
  - c. Complete his or her basic work requirement as scheduled and, to the extent allowed by law and regulation, be compensated for the extra hours of work ordered.

#### **Section K. Holiday Pay**

1. This section is to be read in conjunction with Article 7. When a Federal holiday falls on an employee's scheduled workday, the employee is entitled to holiday leave according to the following:
  - a. For employees on a Compressed Work Schedule, the total number of hours scheduled for that day. For example, if a holiday falls on Monday and the

employee is scheduled to work nine (9) hours, the employee will be paid nine (9) hours for the holiday.

- b. For employees on a Maxiflex or Gliding Schedule work schedule, the employee is entitled to eight (8) hours holiday leave.
2. When a holiday falls on a full-time employees' non-workday, the employee may, with supervisory approval and consistent with the need to maintain adequate office coverage and provide services to our customers, take their in lieu of holiday on the work day immediately prior to or after the holiday consistent with Federal laws and regulations.
  3. When a federal holiday occurs on a day that a part-time employee is:
    - a. Not scheduled to work, the employee is not entitled to holiday leave;
    - b. Scheduled to work, the part-time employee is entitled to be paid for the number of hours scheduled for that day, up to eight (8) hours.

#### **Section L. Night Pay**

1. An employee is entitled to night pay for regularly scheduled night work performed between the hours of 6:00 p.m. and 6:00 a.m. Employees on a flexible work schedule who voluntarily schedule to work after 6:00 p.m. and prior to 6:00 a.m. are not normally entitled to night pay.
2. The supervisor must authorize night pay for any regularly scheduled overtime worked between 6:00 p.m. and 6:00 a.m.

#### **Section M. Sick and Annual Leave under Flexible Work Schedules**

1. Paid time off during an employee's basic work requirement must be charged to the appropriate leave category, credit hours, compensatory time off, or to excused absence if warranted.
2. An employee may apply no more sick or annual leave to a given day than he or she is scheduled to work on that day.

#### **Section N. Excused Absences under Flexible Work Schedules**

1. The supervisor may grant excused absence with pay to employees covered by a flexible work schedule under the same circumstances as excused absence would be granted to employees covered by other work schedules.
2. For employees on flexible work schedules, the amount of excused absence to be granted should be based on the employee's established basic work requirement in effect for the period covered by the excused absence.

**Section O. Reasonable Accommodation:**

By mutual consent of the supervisor, employee, and the Disability Employment Program Manager, core hours and/or tour of duty restrictions may be waived for a disabled employee requiring a permanent schedule change to enable the Agency to provide ongoing reasonable accommodation for a disability. A full-time employee must still meet the 40-hour weekly or 80-hour biweekly basic work requirement, as applicable.

## **ARTICLE 7: PREMIUM PAY AND COMPENSATORY TIME**

### **Section A. General**

1. Overtime/compensatory time will be earned in accordance with the applicable law and/or regulation that applies to the employee.
2. For employees with an established tour of duty for each day during the pay period, work in excess of 8 hours per day or 40 hours in a week is considered overtime, if ordered and approved in advance. For employees on a flexible work schedule, work in excess of eight (8) hours in a day or eighty (80) hours biweekly is considered overtime, if ordered and approved in advance.
3. Overtime and compensatory time will be earned, and compensatory time used, in increments of fifteen (15) minutes, subject to the same approval procedures that apply to annual leave in Article 8, Leave.
4. Overtime shall be paid at the overtime rate, except when compensatory time is requested and approved in lieu of overtime payment.
5. Call back overtime shall be compensated at a minimum of two (2) hours payable in overtime or compensatory time for both Title 5 U.S.C. and Fair Labor Standards Act (FLSA) employees.
6. Subject to law, including Comptroller General/OPM decisions, the Agency shall reimburse employees for parking and/or transportation expenses that are in addition to costs normally incurred to commute to and from work and are incurred as a direct result of overtime work. An employee shall be reimbursed for transportation expenses incurred to commute to and from work for call back overtime when the employee is dependent on public transportation for such travel. This is applicable when the overtime would require travel during hours of infrequently scheduled public transportation or darkness, or other relevant conditions, including safety factors.
7. The Agency will make every reasonable effort to ensure the safety and security of employees during overtime assignments.
8. The Agency determines the need for, approves and assigns all overtime work, and determines the required qualifications of employees to perform it.
9. The assignment or denial of overtime work will not be made as a reward or penalty to an employee, but solely in accordance with the terms of this Agreement.

## **Section B. Procedure for Assignment of Overtime**

1. The supervisor will give an employee as much advance notice as possible in making overtime assignments, but the parties acknowledge that emergencies, operational exigencies, and unanticipated workload requirements may result in the supervisor's inability to give advance notice. However, employees will be allowed reasonable time under the circumstances to make arrangements necessary to minimize personal hardship.
2. Assignment of Overtime
  - a. Whenever possible, overtime will be assigned by seeking qualified volunteers within the work unit which would normally be functionally responsible for the task at hand.
  - b. If more than enough qualified volunteers apply, the volunteer with the greatest seniority as determined by current continuous service in the Agency is entitled to work the overtime.
  - c. In the event of a tie, then the volunteer with the greatest seniority in Federal service using service computation date for leave is entitled to work the overtime.
  - d. In the absence of sufficient qualified volunteers within the work unit, inverse seniority (among qualified employees within the work unit) as determined by Federal service computation date for leave shall apply.
3. Fully qualified employees in training or on details may be considered for overtime in their regular work unit if they are reasonably available as to time, workload, and location.
4. The availability of other equally qualified employees in the work unit will be considered if an employee has a claimed hardship in a particular instance. If the overtime must be worked and the bargaining unit employee being ordered to work the overtime claims hardship, the supervisor shall assign the overtime work to the next least senior qualified bargaining unit employee in the work unit. If all employees in the work unit claim hardship, the supervisor shall assign the overtime work to the least senior qualified employee regardless of claimed hardship.

## **Section C. Compensatory Time**

1. Compensatory time is in lieu of irregular or occasional overtime work. All rules and procedures established in this Article that govern the assignment and accrual of overtime are applicable to compensatory time, except as noted herein.
2. FLSA "nonexempt" employees may be allowed to earn compensatory time rather than overtime provided that the employee requests in writing (hard copy or e-mail), at the time overtime is assigned, that compensatory time be granted in lieu of overtime payment. Compensatory time for FLSA nonexempt employees is granted at the discretion of the Agency; however, the Agency may not require that the employee earn compensatory time in lieu of overtime payment.

3. Title 5 "FLSA exempt" employees may be allowed to earn compensatory time rather than overtime provided that the employee requests in writing (hard copy or e-mail), at the time overtime is assigned, that compensatory time be granted in lieu of overtime payment. Compensatory time for FLSA exempt employees is granted at the discretion of the Agency. Compensatory time in lieu of overtime payment may be made mandatory at the discretion of the Agency for FLSA exempt (Title 5) employees whose basic rate of pay (including locality pay and special pay rates) exceeds the established rate of a GS-10/10.
4. Whether an employee may earn or work compensatory time shall not depend upon the employee's leave balance or the amount of compensatory time already accrued, but consistent with the provisions of this Article and the needs of the Agency.
5. Compensatory time not used by the end of the following year in which it was earned or by the time of separation will be payable at the overtime rate in effect at the time the compensatory time was earned.
6. Compensatory time will be used before annual leave unless the forfeiture of annual leave will occur.

#### **Section D. Holiday Premium Pay**

1. When the supervisor requires the services of employees on a designated Federal holiday, the supervisor will fill the needs of the work unit using the procedures established in Section B. of this Article.
2. To minimize the effect of assigning employees to work on designated Federal holidays, the supervisor will make every reasonable effort to provide a minimum of seven (7) calendar days notice to affected employees.
3. Employees who are duty stationed in the Washington, DC metropolitan area who are working outside of the Washington, DC metropolitan area on Inauguration Day are not excused from work on that day

#### **Section E: Overtime While on Official Travel Status**

1. Overtime will be awarded for time expended on official travel status for employees not exempt from coverage under the FLSA during normal duty hours on non-duty days and during non-duty hours on duty days in accordance 5 C.F.R. 550.112(g).
2. It is the intention of this Agreement to afford employees on official travel status the flexibility and support necessary to accomplish the Agency's mission and objectives while being appropriately compensated in accordance with this Agreement and Federal law. Recognizing that official travel sometimes involves overtime, the following procedures shall apply to assure required accountability.
3. Employees will establish trip itineraries including general hours of work in advance of initiating official travel taking into consideration meeting agendas when attending conferences, seminars and other functions with scheduled events. Known overtime needs

arising from trip planning shall be approved/denied by the employees' immediate supervisor prior to the onset of official travel. The supervisor will notify the employee of their decision prior to departure. When planning international travel, itinerary arrangements including the possibility of overtime work will be coordinated with the appropriate Head of Post and the supervisor. Meetings scheduled before or after the normal Post tour of duty will be considered overtime and appropriate approvals granted.

4. Recognizing that there may be circumstances when overtime requirements are not known in advance of official travel and timely contact with the immediate supervisor to seek approval is not possible, the employee will obtain advance written approval for overtime from an appropriate management official. Before official travel begins, if it appears likely that an employee might need to work overtime but the local situation would likely prohibit requesting advance approval, the supervisor may grant advance approval for overtime up to two (2) hours per workday and four (4) hours per non-workday. The overtime work must be carefully documented and annotated by the employee.
5. Requests for overtime should be limited to work situations. Non-work events include, but are not limited to, attendance at optional events such as dinners and receptions. Only those hours that are deemed to be essential to the successful completion of the work assignment will receive overtime approval.
6. Upon return to their official duty station, employees shall annotate appropriate T&A's (including those submitted while on travel status) per standard T&A submission procedures along with their travel itinerary including any approved overtime adjustments. The T&A's shall be processed in a timely manner.

## ARTICLE 8: LEAVE

### Section A. General Rules

1. Employees will earn annual and sick leave in accordance with applicable laws and regulations.
2. Denial of leave requests will not be used in lieu of disciplinary or adverse actions.
3. Leave will be charged in fifteen (15) minute increments.
4. Requests for, and approval or disapproval of, leave will be documented using the WebTA timekeeping system, or any future timekeeping system that may be prescribed for use by USDA. It is the employee's responsibility to ensure requests are submitted to, and received by, the approving official and, when practicable, approved prior to taking leave. Approving officials will timely consider requests for leave and ensure a response is promptly received by the employee.
5. If the needs of the Agency do not permit the approval of leave requested in advance, the supervisor will write the reason for the disapproval in the space provided in the timekeeping system, and will assure that the employee is promptly made aware of the disapproval without depending on automatic notifications by the system. On these rare occasions, the employee and the supervisor will work together in an attempt to schedule leave at an agreed upon time.
6. It is the intention of the Parties to respect the privacy of employees in dealing with purely personal matters. However, where appropriate, a supervisor may request sufficient information concerning the circumstances and the duration of the absence, if known, to permit the supervisor to evaluate the appropriateness of approving or disapproving leave. When it appears that an absence will extend beyond the original date of anticipated return to duty, the employee shall promptly notify the supervisor and request approval for the new anticipated date of return.
7. When leave scheduling conflicts arise and the employees are unable to reach agreement among themselves, the supervisor will make the final determination by giving consideration to circumstances such as, but not limited to, the nature of the leave requested, the date of request, and seniority based on service computation date for leave.
8. When unscheduled leave is necessary, the employee shall be guided by the following:

<b>Step</b>	<b>Action</b>
(1)	Employee determines necessity for unscheduled leave (e.g., unanticipated illness, personal emergency, etc.).
(2)	(a) Employee notifies first-level supervisor to request leave. (b) If the first-level supervisor is unavailable, the second level supervisor shall be contacted. (c) If the second level supervisor is unavailable, the employee may provide notification via electronic mail or voice mail, or leave a message for the supervisor with a co-worker. Notifications must include a

	telephone number at which the employee may be reached, if necessary, by the supervisor.
(3)	Employee submits the request in the timekeeping system along with any other documentation required under this Article to the supervisor as soon as is reasonably possible under the applicable circumstances.

9. Substitution of leave without pay (LWOP), compensatory time, credit hours, or sick leave for annual leave must be made within the first pay period in which the employee returns to duty, or, if medical documentation is required, by the close of the following pay period after the illness occurs. Employees may change previously authorized annual leave to compensatory time or credit hours. Employees may change previously authorized annual leave to LWOP or sick leave, if appropriate, subject to approval by the supervisor. An approved absence which would otherwise be chargeable to sick leave may be charged to annual leave, compensatory time, credit hours, or LWOP when requested by the employee. However, substitution of annual leave, credit hours, or LWOP for earned sick leave previously granted and charged may be permitted under rules for amending leave records, but annual leave cannot be substituted for sick leave already granted in order to avoid forfeiture of annual leave at the end of the leave year.

10. Employees may request sick leave, annual leave, or LWOP to attend and participate in a substance abuse treatment program. The supervisor shall grant sick leave, annual leave, or LWOP to the requesting employee in accordance with procedures in this Article. The utmost confidentiality should be exercised in these instances.

11. Employees in a use-or-lose annual leave situation (i.e., there is a possibility that some annual leave hours will be lost at the end of the leave year if adequate plans are not made to schedule and take that leave) must request use of that leave no later than the end of pay period 23. If, after receiving approval for use-or-lose leave, an exigency of public business occurs that prevents use of such leave prior to the end of the leave year, the employee may request to have his/her forfeited annual leave restored during the next leave year without permanently increasing the employee's annual leave ceiling. Any restored annual leave must be used during the new leave year or the leave year that follows.

12. Employees may be excused without loss of leave or pay for a reasonable period of time before and upon return from local area Government training including conferences, conventions or other special events. However, where practicable, an employee should request a temporary work schedule change to better coincide with the training times. A supervisor may also make a temporary change to an employee's work schedule, after giving timely notice to the employee. The term "reasonable period of time" shall be determined by the employee and their immediate supervisor, but shall not exceed 2 hours of the workday before and upon return from training.

## **Section B. Advanced Annual Leave**

1. A permanent employee who expects to remain in service through the leave year may request advancement of annual leave in an amount not to exceed that which the employee will accrue for the remainder of the leave year.
2. An employee who wishes to request advancement of annual leave shall submit the request in the timekeeping system and provide a written explanation of the reason for the request in the space provided for Employee Remarks. If the explanation requires more space than provided in the timekeeping system or additional documentation is needed, that will be submitted in writing either on paper or electronically as specified by the supervisor.

## **Section C. Sick Leave**

1. Sick leave may be granted for absences required by personal illness, injury, medical, dental or psychological appointments and/or treatment/therapy, adoption of a child, or certain circumstances involving contagious diseases in accordance with applicable laws and/or regulations.

2. Sick leave may be granted for Family Care purposes as set forth in Section F, Family and Medical Leave, and Section G, Sick Leave for Family Care (SLFC) (below).

3. When an employee knows in advance that sick leave will be required for a reason set forth in Paragraphs 1 or 2 (above), the employee will request sick leave at the time the necessity for the leave is determined. In evaluating requests for sick leave, in those circumstances in which the employee has substantial control over the need, the supervisor and employee will work together to schedule leave at an agreed upon time.

### 4. Advanced Sick Leave

a. The supervisor may approve requests for advanced sick leave after considering the following factors:

- (1) Leave is properly applied for in accordance with this Article.
- (2). Repayment can reasonably be expected through leave accruals taking into account the employee's leave record, the employee's length of service, and the nature of the incapacitation.
- (3). Accommodations can be made within the work unit to cover the work unit's critical functions. This factor may only be considered in situations in which the employee has substantial control over the circumstances and can reschedule the requested leave, such as elective surgery.
- (4). The employee has a serious illness or injury.
- (5). Medical documentation, if requested by the supervisor.
- (6). Any other relevant factors.

b. As a maximum, a permanent employee may be advanced up to 240 hours of sick leave for personal medical situations. Advanced sick leave may not exceed 240 hours at any one time.

c. There is no limit on the number of times an employee may request advanced sick leave. The supervisor will consider each request for advanced sick leave on its individual merits and in accordance with the criteria described above.

## 5. Health Unit Visits

a. Employees may leave the work site to attend an on-site health unit. Except in cases of emergency, the employee shall obtain approval of the supervisor prior to leaving the work site.

b. The employee may remain in the Health Unit as long as permitted by the Health Unit. If the employee is unable to return to work after two (2) hours, the employee will request appropriate leave for the remainder of his/her tour of duty. This provision applies only to employees who are ill while in duty status.

c. Employees who are injured on the job will not be charged sick leave but shall be granted administrative leave to visit the Health Unit at the time or on the day of the on-the-job injury, in accordance with applicable worker's compensation procedures.

## 6. Abuse of Sick Leave

a. When a supervisor has reasonable grounds to suspect an employee of sick leave abuse, the supervisor shall notify the employee of the suspected sick leave abuse and counsel the employee.

b. The supervisor may notify the employee in writing that, for a stated period not to exceed six (6) months for the first offense, the employee will be on sick leave restriction, and all requests for sick leave will not be approved during the stated period unless supported by medical certification.

c. Employees on leave restriction will be required to furnish medical certification. This certification must be provided within three (3) business days upon return to duty.

## **Section D. Medical Certification**

1. "Medical certification" means a written statement signed by a licensed practicing physician or other licensed medical practitioner certifying incapacitation, and the period of incapacitation while receiving professional treatment. For sick leave requested because of exposure to a contagious disease, the medical certification should indicate the name of the disease and indicate that the disease is contagious, and the period of confinement and/or quarantine, if quarantine is required by ordinance or statute. However, if a medical practitioner certifies incapacity other than contagious disease, the employee need not disclose the details of an illness in his/her medical certificate. Medical certification must be submitted to the supervisor by the close of the following pay period after the employee's return to duty.

2. The employee may be required to provide medical certification:
  - a. For an unscheduled absence in excess of three (3) consecutive workdays.
  - b. For any use of sick leave if the employee is officially on sick leave restriction.
  - c. For a chronic condition which does not necessarily require medical treatment although absence from work may be necessary. If the employee has previously furnished a medical certificate of the chronic condition, the employee may not be required to furnish a medical certificate on a continuing basis. The supervisor may require reasonable updates to the medical certificate.
  - d. To consider an employee's request for leave for medical reasons, including treatment and convalescence related to childbirth, and care for a spouse, son, daughter, parent, or legal ward with a serious health condition.
  - e. To consider an employee's request for special consideration such as reassignment or other reasonable accommodation, and there is a question as to the medical need for such accommodation.
  - f. To consider an employee's request for advanced sick leave under Paragraph 2 d (above).
  - g. To support an employee's request for "family leave" under Section F, Family and Medical Leave, or Section G, Sick Leave for Family Care (below), or to support an application to become a leave recipient in the Leave Transfer and/or the Leave Bank Programs.
3. The supervisor may also request medical certification from a licensed physician stating that the employee can return to work and noting any applicable limitations.
4. Employees cannot be denied or removed from consideration for promotion, training, or other opportunities as a result of approved use of sick leave.

### **Section E. Administrative Leave**

1. Administrative leave is an excused absence from duty administratively authorized without loss of pay and without charge to other types of leave. The Agency will grant administrative leave in accordance with applicable guidelines and this Agreement.
2. For inclement weather or other emergency situations, the Agency will follow the OPM issued Washington, D.C. Area Emergency Dismissal or Closure Procedures developed in consultation with the Metropolitan Washington Council of Governments. The procedures are updated annually and can be viewed or printed from the OPM website: <http://www.opm.gov/>.
3. Blood Donation

- a. Upon advance request by the employee to the supervisor, an employee donating blood without compensation will be granted administrative leave of up to four (4) hours for travel and rest and recuperation at the donation site unless to do so would interfere with work operations. The actual time needed for the donation process is in addition to the 4 hours. The employee is not permitted to go home after the donation unless they feel sick and request leave (sick, annual, credit, compensatory, or LWOP).
  - b. An employee who is not accepted for donating blood is only entitled to time necessary to travel to and from the donation site and the time needed to make the determination.
  - c. Appropriate documentation from the donation site may be required by the supervisor.
4. Employees will be granted administrative leave for bone marrow and/or organ donations in accordance with applicable law and regulation.
5. Voting: Employees may be excused from reporting to work for up to three (3) hours after the polls open or for leaving work up to three (3) hours before the polls close in their voting jurisdiction, whichever requires the lesser amount of time excused from duty. Exceptions to the 3-hour limits shall be considered for those commuting long distances, for heavy voter turnout, or other factors such as work schedules or day care limitations that would impair the ability to vote.
6. Employees may be excused for up to four (4) hours per calendar year for health care screenings.
7. Supervisors will permit employees who are breastfeeding to express/pump milk for their child and permit a reasonable and flexible time period to conduct this activity. Reasonable time will be permitted to go to and return from an adequate on-site location. No adverse action or recourse will be based on an employee's desire to breastfeed.

## Section F. Family and Medical Leave (FMLA)

### 1. Leave Entitlement

- a. Permanent full- and part-time employees serving on a temporary appointment with a time limitation of greater than one (1) year are eligible for family and medical leave provided they have completed at least twelve (12) months of Federal service (not required to be twelve (12) consecutive months).
- b. Upon request, an eligible employee is entitled to a total of twelve (12) work weeks or 480 hours of unpaid leave during a 12-month period for the purposes of:
  - (1). The birth of a son or daughter of the employee and the care of such son or daughter;
  - (2). The placement of a son or daughter with the employee for adoption or foster care;

(3). Care of a spouse, son, daughter, parent, or legal ward who has a serious health condition; or,

(4). A serious health condition of the employee that makes the employee unable to perform the essential functions of the employee's job.

c. For the purposes of Paragraphs b (1) and (2) above:

(1). The family and medical leave may begin on, before, or after the actual date of birth or placement of the child, and must be for a continuous period of time, unless the employee and supervisor agree otherwise; and,

(2). Entitlement for use of family and medical leave shall expire no later than twelve (12) months after the date of birth or placement of the child.

d. For the purposes of Paragraphs b (3) and (4) above:

(1). Family and medical leave may be taken continuously, intermittently, or as part of a reduced work schedule; and,

(2). Entitlement for use of family and medical leave shall expire twelve (12) months from the date the employee first takes leave for a family or medical need.

e. Leave under Paragraph b (above) will be made available for a full-time or part-time employee in direct proportion to the number of hours in the employee's regularly scheduled administrative workweek.

2. Consistent with law and regulation, an employee may substitute the following paid leave for any or all of the unpaid leave taken for FMLA purposes:

a. Accrued or advanced annual leave;

b. Accrued or advanced sick leave;

c. Donated leave made available through the Voluntary Leave Transfer or Leave Bank programs; and/or,

d. Accumulated compensatory time or credit hours.

3. Supervisors may not require an employee to use accrued paid leave for LWOP. An employee cannot retroactively substitute paid leave for LWOP already taken during a period when family and medical leave was used.

4. Requests and Approvals: When the need for leave is foreseeable, an employee shall request family and medical leave in the WebTA timekeeping system, or any future timekeeping system that may be prescribed for use by USDA under the provisions of this Section at least thirty (30) days in advance to allow the supervisor time to prepare for any staffing adjustments necessary to compensate for the employee's anticipated absence. However, the Parties recognize that

circumstances beyond the employee's control may arise and adjustments in the requested leave may be necessary.

#### 5. Medical Certification

- a. The supervisor may require administratively acceptable medical certification as defined in Section D 1 (above) of this Article when an employee invokes his/her right to family and medical leave for purposes under Paragraphs 2 b (3) and (4) (above).
- b. The supervisor may require a copy of the legal documents when an employee invokes his/her right to family and medical leave for adoption or foster care.
- c. The supervisor may require, at the Agency's expense and by a health care provider designated or approved by the Agency, a second medical opinion to verify the validity of the certification provided by the employee. If the second opinion differs from the original certification, the supervisor may require, at the Agency's expense, certification from a third health care provider selected jointly by the Agency and employee.

#### 6. Protection of Employment and Benefits Upon Return to Duty

- a. An eligible employee who takes leave for family and medical purposes shall be entitled to return to the same or equivalent position, with equivalent benefits, pay, status, and other terms and conditions of employment, unless termination of employment is otherwise required by reduction-in-force, for cause, or for similar reasons unrelated to the use of leave under the FMLA.
- b. The Agency understands that there may be a transitional period upon returning to the workforce and supervisors will work with employees to arrive at an appropriate work schedule during this transitional period.
- c. An employee who invokes his/her right to LWOP under the FMLA may elect to continue health benefits coverage provided the employee pays his/her share of the cost. Employees may pay their share of the cost on a current basis or may pay upon return to work.

### **Section G. Use of Sick Leave for Family Care (SLFC)**

1. Sick leave may be granted for family care purposes:
  - a. In cases in which an employee is required to provide care for a family member who is incapacitated by a medical or mental condition or attend to a family member receiving medical, dental or optical examination or treatment.
  - b. To make arrangements necessitated by the death of a family member or to attend the funeral of a family member.
  - c. To provide care for a family member with a serious health condition.
2. Approval of sick leave for family care must comply with the requirements and conditions specified in the summary table below:

<b>SLFC Regulations</b>	<b>Definition of Medical Condition</b>	<b>Hours / Coverage</b>	
A	<b>A Full-Time leave-earning employee, with <u>less than</u> 80 hours of sick leave</b>	To provide care for a family member experiencing: - a physical or mental medical condition including injury, illness, and disability; - pregnancy; - incapacitation due to childbirth; - medical, psychiatric, dental, or optical examination, treatment, or therapy; - a communicable disease; To make arrangements due to the death of a family member or attend the funeral, or both.	Up to 40 hours earned or advanced sick leave per leave year
B	<b>A Full-Time leave-earning employee, with <u>more than</u> 80 hours of sick leave</b>	For the same purposes, as above.	Up to 104 hours of earned sick leave each leave year, but the employee's sick leave balance <u>cannot fall</u> below 80 hours.
C	<b>A Full-Time leave-earning employee may use earned sick leave</b>	To care for a family member with a serious health condition (illness, injury, surgery, impairment, or physical or mental condition) that involves for example, but is not limited to, heart attacks, heart conditions, cancers, back conditions requiring therapy and/or surgery, kidney dialysis, physical therapy, strokes, severe nervous disorders, injuries caused by serious accidents on or off the job, clinical depression, recovery from major surgery, final stages of a terminal illness, Alzheimer's disease and includes incapacitation due to pregnancy, childbirth, miscarriages, complications or illness related to pregnancy.	Up to 480 Hours earned sick leave, but the employee's sick leave balance <u>cannot fall</u> below 80 hours

3. Hours and limitations for authorized use of sick leave for family care for part-time employees are subject to OPM established limitations.

**Section H. Leave Without Pay:**

The Agency will grant LWOP in the following cases:

1. Disabled veterans who are entitled to LWOP for medical treatment under Executive Order 5396, when the veteran presents an official statement, from a registered practicing physician or other health care professional certifying that medical treatment is required. The disabled veteran must give advance notice of the period during which absence for treatment will occur.
2. Reservists and National Guardsmen who are entitled to a leave of absence for required military training under Title 38 U.S.C. Section 2024(d). LWOP will be approved if the employee has exhausted or is not entitled to military leave.
3. Employees receiving injury compensation under Title 5 U.S.C. Chapter 81 unless permanently disabled.
4. Employees meeting requirements for LWOP under the provisions of the FMLA.
5. Family Related LWOP
  - a. Approving officials may, upon request by the employee and in accordance with the Presidential memorandum dated April 11, 1997, grant up to 24 hours of LWOP per calendar year for the activities listed below. (These 24 hours are separate from, and should not be confused with, FML entitlements.) Where paid leave is appropriate and not contrary to regulation, employees should be permitted its use prior to unpaid leave. Employees may also use earned credit hours and/or compensatory time.
  - b. School and early childhood educational activities: allows employees (including those who do not have children) to support a child's educational development and advancement by attending parent-teacher conferences, meeting with the child-care providers, interviewing for a new school or child-care facility, or participating in volunteer activities such as tutoring, coaching, etc. School is defined as an elementary or secondary school, Head Start Program, or a child-care facility.
  - c. Routine family medical purposes: allows parents to accompany children to routine medical or dental appointments, such as annual check-ups or vaccinations.
  - d. Elderly relatives health or care needs: allows employees to accompany elderly relatives to routine medical or dental appointments or other professional services related to their care, such as making arrangements for housing, meals, phones, banking services, and other similar activities.

6. Special Considerations
  - a. Union Activity

(1). Upon request of the appropriate Union officer or staff, the Agency will consider granting LWOP for them to engage in Union activity or to work in Union sponsored programs at the national or district level. The Agency agrees to render a timely determination, and if disapproved, provide its reasons.

(2). An employee returning from LWOP from engaging in Union activity will be placed in the same position that he/she previously held, if available. If that position is not available, the employee may be placed in another position, but he/she will not suffer any loss of grade or pay, or change in series.

b. Employees whose application for disability retirement is pending.

c. Employees receiving workers compensation benefits, unless it is known that they are permanently disabled. In these cases, supervisors should contact the SPO.

## 7. Other Requests for LWOP

a. LWOP for purposes other than those identified in Section G 1 may be requested and approved in accordance with appropriate regulations. An employee may not demand LWOP as a matter of right, except in those cases defined in Sections H 1 and Section F of this Article, but all requests shall be considered objectively and with both the employee's and Agency's interest in mind.

b. The immediate supervisor may approve an employee's request, with justification, for LWOP for up to four (4) weeks.

c. Extended LWOP: The Director of Operations or his or her delegate may approve an employee's request, with justification, for extended LWOP (defined as LWOP in excess of four (4) work weeks) up to one (1) year.

## 8. Retroactive Substitutions of Paid Leave for LWOP

a. LWOP may be retroactively changed to paid leave if:

(1) Due to an administrative error or misunderstanding the employee was not aware that he/she had a leave balance or that leave could have been used; or,

(2) The employee is accepted into the Voluntary Leave Transfer Program and/or the Voluntary Leave Bank and donated leave is available.

9. Paid leave cannot be substituted for LWOP granted under FMLA.

## **Section I. Military Leave**

1. Effective December 21, 2000, any full-time permanent employee (working 80 hours per pay period) who is a member of the National Guard or other reserve unit of the Armed Forces shall be entitled to accrue 120 hours (or fifteen (15) days times eight (8) hours) of military leave in a fiscal year for active duty or inactive or active duty training. Military leave will be prorated for part-time employees based on the number of hours in their regularly scheduled biweekly pay period.

2. Charges for military leave will be in one (1) hour increments and military leave will not be charged for military service on non-duty days (typically weekends and holidays). An employee may be charged military leave only for hours during which the employee would otherwise have worked and received pay. Employees requesting military leave for inactive duty training (generally two (2), four (4), or six (6) hours in length) will be charged only the amount of military leave necessary to cover the period of training and necessary travel. Hours in the civilian workday not chargeable to military leave must be worked or charged to another leave category, as appropriate.

3. Employees who are entitled to regular military leave but who do not use the entire 120 hours may carry over the unused portion from one fiscal year to the next fiscal year for a maximum cumulative total not to exceed 240 hours.

4. Approval of the military leave shall be granted based on a copy of the military orders directing the employee to duty or training.

### **Section J. Court Leave**

1. Court leave shall be approved according to 5 U.S.C. 6322.

2. Court leave is an authorized absence, without charge to leave or loss of pay, for jury service or witness service under certain conditions. All leave-earning employees are eligible for court leave.

3. Court leave is authorized for an employee summonsed or subpoenaed to serve as a witness on behalf of any party in a judicial proceeding to which the United States, the District of Columbia, a State, a U.S. territory or possession, or a local government is a party to the proceedings. The employee may be summonsed or subpoenaed in an official capacity as a Federal employee or unofficial capacity as a U.S. citizen. The employee must request use of his/her own accrued leave or LWOP when the summons or subpoena does not name the United States, the District of Columbia, a State, a U.S. territory or possession, or a local government as a party to the proceedings.

4. The employee must provide a copy of the subpoena or summons to the supervisor immediately upon receipt. Court leave must be requested on an SF-71 with a copy of the subpoena or court summons submitted with the request. If jury service or witness service lasts for more than 2 workdays, present to the supervisor evidence of court attendance, e.g., a jury duty certificate or written statement signed by an officer of the court.

5. An employee attending jury service or witness service is expected to return to duty once dismissed by the courts unless the return would be at the end of his/her scheduled workday. Employees who do not return to work shall request use of annual leave, credit hours, compensatory time, or LWOP for the balance of the workday.

6. In every instance, the employee may fulfill the citizenship responsibilities of jury duty. The Agency may petition the court to excuse the employee if jury duty will substantially interfere with the Agency's work.

## **Section K. Religious Observances**

1. In accordance with law and government-wide rules and regulations, employees wishing to attend or participate in the observance of a religious holiday will be permitted to be absent from work using annual leave, credit hours, compensatory time, or LWOP so long as the employee requests such leave at least three (3) work days in advance and their absence will not cause an undue workload problem.

2. For the purpose stated in this Section, an employee may work compensatory time either before or after the grant of compensatory time off. A grant of advanced compensatory time off for these purposes shall be repaid by an equal amount of compensatory work within the earlier of six (6) pay periods of its use or the end of the leave year.

3. An employee's request for compensatory time off for religious observances must contain the date(s) and time(s) when the employee intends to be absent and a projected work schedule that accounts for the time necessary to pay back the granting of advanced compensatory time.

4. Failure to work the required amount of time to repay advanced compensatory time off will result in a charge to annual leave, if the employee so elects, or LWOP.

## **Section L. Leave Transfer Program:**

The Agency agrees to continue its Voluntary Leave Transfer Program in accordance with law and regulation.

## **ARTICLE 9: POSITION DESCRIPTIONS**

### **Section A. Position Descriptions**

1. Position descriptions shall be current and accurately reflect the principal duties, responsibilities, and supervisory relationships of the position as assigned by the Agency.
2. Availability of Position Descriptions:
  - a. Upon request, the Servicing Personnel Office (SPO) shall furnish each employee with a copy of the employee's current position description and the career ladder position description for the next higher grade, if any, for the position.
  - b. Newly promoted employees shall be furnished a current, accurate copy of the position description by the SPO within thirty (30) calendar days of entry on duty in the new position.
  - c. When there is a significant change in an employee's responsibilities or grade controlling duties for a period to exceed thirty (30) calendar days, the employee shall be provided an accurate and updated position description within fifteen (15) work days from the date the position description is signed and dated by the SPO unless it is mutually agreed that additional time is needed.
  - d. Employees newly hired to the Agency shall be furnished a current, accurate copy of the position description by the SPO normally during in-processing.
3. Whenever a bargaining unit position description is amended, the SPO shall provide the Union a copy of the amended position description within thirty (30) calendar days of the SPO's signature date.
4. In accordance with law and regulation, employees may grieve reductions in grade, pay, or loss of promotion potential that result from a classification decision following procedures in Article 41: Grievance Procedures, of this Agreement.
5. Duties which are withdrawn from an employee's position description shall no longer be a principal duty or responsibility of the employee, nor assumed in a category for arbitrarily assigned duties such as "other duties as assigned" unless they relate to tasks of an incidental, infrequent, or emergency nature which are impractical to include in the position description. The supervisor may assign or change duties and responsibilities necessary to accomplish work appropriate to the employee's position.
6. Supervisors will request appropriate guidance from the SPO when there is a need to create or revise a position description. Upon receipt of a new or revised position description from a supervisor, the SPO will normally initiate a review within thirty (30) calendar days and work with the supervisor on a continuous basis to complete the action.

## **Section B. Classification Standards**

1. Positions will be classified in accordance with the appropriate classification and job grading standard.
2. The SPO is available to provide information to employees regarding their concerns about the titles and series of their position. Employees who believe their positions should be reclassified may ask the SPO for an explanation as to why it would or would not be appropriate to do so under the relevant classification standards. If the employee chooses, they may file a classification appeal. The Agency agrees that work will not be reassigned for the purpose of avoiding reclassification during a classification appeal.
3. OPM classification standards are available at the OPM website: [www.opm.gov](http://www.opm.gov).

## **Section C. Notification to the Union**

The Agency agrees to inform the Union as soon as possible when changes will be made in the grade controlling duties and responsibilities of positions held by employees due to reorganization or when changes in position classification standards result in classification changes.

## **Section D. Grade Determining/Controlling Duties**

The Agency will assure that duties assigned to the employee that are grade determining/controlling will be included in the position description.

## **Section E. Desk Audits/Classification Reviews**

1. An employee or supervisor may request a desk audit from the SPO. If the employee requests the desk audit, it will normally be submitted through their supervisor. When initiated by an employee, submission of the request through the supervisor is understood to be for informational purposes only. The supervisor may not take action to delay transmission or deny the request. This does not preclude supervisory participation in any phase of the audit.
2. From the date an employee files a request for a desk audit with the SPO, the SPO normally shall accomplish the audit or review process within ninety (90) calendar days of the request, and shall thereafter take prompt action to upgrade or downgrade the position, or redistribute the grade controlling duties of the position, as appropriate.
3. The classifier will compare the work described by the employee and the supervisor to the appropriate classification standard to ensure that the employee's position is accurately classified and the employee is properly compensated for the work he or she is assigned.
4. Upon completion of the process, the employee and the supervisor are notified of the desk audit results and any corrective action that may be necessary.

## **Section F. Classification Appeals**

1. Employees or supervisors may file an appeal concerning a classification decision.
2. An employee may appeal the series or grade of the position to which the employee to which the employee is currently and officially assigned.
3. An appeal by an employee shall be in writing stating the reasons why the employee believes his/her position is erroneously classified.
4. The employee may choose to file at any level but an appeal made initially at a higher level will waive the employee's right to appeal to the lower level. The options for filing a classification appeal are as follows:
  - a. If the appeal is filed with the Director, Human Resources Operations Division (HROD), then the appeal may receive the maximum number of reviews and the decision serves as the final Agency determination.
  - b. If the appeal is filed with the Director, Office of Human Resources Management (OHRM), USDA, then the appeal may be filed with OPM and the decision serves as the final USDA determination.
  - c. If the appeal is filed with OPM then the decision is final and there is no further right of appeal.
  - d. If the appeal is filed at the OHRM or OPM level, a copy of the appeal will be provided to the Director, HROD.
5. An appeal decision that reverses a classification action that resulted in a downgrading or loss of compensation may entitle an employee to retroactive benefits if the classification appeal is filed with HROD, OHRM, or OPM within fifteen (15) calendar days after the effective date of the personnel action.
6. Subsequent appeals of lower level appellate decisions (Paragraphs 4 a and b, above) must be filed within fifteen (15) calendar days after the lower level decision.
7. Time limits may be extended if the employee can show that there was no notification of time limits or there were extenuating circumstances.
8. A guide to the appeal process providing information on how to file an appeal can be found on the OPM web site by searching on "classification appeal."

## **ARTICLE 10: PERSONNEL RECORDS**

### **Section A. Official Personnel Records**

1. The official personnel records of OO employees are contained in Official Personnel Folders (OPFs) maintained by the Servicing Personnel Office (SPO). The SPO also maintains a copy of employee performance appraisals for the most recent three years in separate folders established for that purpose. Records of disciplinary and adverse action proposals including the documentation, upon which such proposals are based, are maintained by the SPO. If the proposed adverse action is sustained, a copy of the final decision memo is retained in the Employee and Labor Relations files, while the SF-50 documenting the action is filed in the OPF. Letters of reprimand are also filed in the OPF for no longer than two (2) years; however, the employer may remove the reprimand from the OPF at any time consistent with Article 29, Disciplinary and Adverse Actions. Employees may have access to all of these records under the conditions set forth in Article 2, Employee Rights.

### **Section B. Supervisory Files**

1. Supervisors of bargaining unit employees may maintain worksite files on such matters as emergency locator information, time and attendance records, training, award, and promotion histories, and other matters pertinent to the performance of their personnel management responsibilities. In most instances, such files will contain only information that is accessible to the employee through the records maintained by the SPO. To the extent that the supervisor maintains records containing information that does not duplicate material contained in the official files maintained by the SPO, such records, other than reports of an ongoing criminal investigation, shall be disclosed upon request to the employee who is the subject of the information or to his/her Union representative. Personal notes that a supervisor may keep as a memory jogger are not considered records and are not releasable to employees, unless relied upon by the supervisor in taking a formal disciplinary or adverse action or unless relevant to legal proceedings such as EEO complaints or grievances.

2. No record, information, or document in the supervisor's or personnel offices's worksite file will be made available to any unauthorized persons to inspect, review, copy or photocopy. Such information will be made available to authorized persons only for official use, as specified by OPM, other applicable laws, and this agreement.

3. The Employer will disclose to the employee all information, including worksite personnel files, used as a basis for disciplinary or adverse action at the time of the proposed action.

### **Section C. Form and Disposition of Records**

1. All provisions of this Article apply to electronic as well as paper files.

2. All personnel files maintained by the Employer, including the OPF maintained by the SPO, shall be disposed of in accordance with the General Records Schedule, other applicable laws, and this agreement.

## **Section D. Index of Systems of Records**

1. The Employer shall provide to the Union and to employees, upon request an index of the system of records it maintains.

## **Section E. Employee Records**

1. The OPF prescribed by the Office of Personnel Management (OPM) is the official repository of records providing the basic source of factual data about the employee's employment history. The OPF may be used by the Servicing Personnel Office (SPO) as permitted by applicable law, rule, or regulation for any legitimate official purpose, including but not limited to, screening qualifications, determining status, computing length of service, and providing information for statistical purposes.

2. The OPF may be reviewed by, or be used to furnish information to OPM and the Employer's officers and employees who have a need for the OPF or information contained therein, in the performance of their duties. Except for disclosure made in accordance with the previous sentence and to persons and entities engaged in law enforcement activities, the Employer will maintain a record of all other individuals who have reviewed the OPF.

3. Any employee, or Union representative who is authorized in writing by the employee, shall be granted access during scheduled business hours, to review and receive a copy under appropriate supervision, of any documents contained in the OPF in accordance with applicable law, rule and regulation. Normally, the Employer will make the copies, but if this would result in significant time delay, the employee may make the copies under appropriate supervision.

4. Any information, including documentary information, that is unfavorable, derogatory or which reflects adversely upon an employee's character or government service shall be maintained in the OPF only in accordance with applicable law, regulation and this Collective Bargaining Agreement. Employees may review and/or seek to amend any such information in accordance with 5 C.F.R. Part 297, Subpart C, entitled Amendment of Records or this Collective Bargaining Agreement.

## **ARTICLE 11: CAREER DEVELOPMENT AND TRAINING**

### **Section A. General**

1. The provisions of this Article are intended to create and foster a work environment conducive to the career development and training of bargaining unit employees. The Parties agree to support and encourage employees in developing their knowledge, skills, and abilities, and in contributing to the more effective utilization of available human and material resources in service to the Agency.
2. The Parties will encourage employees to take advantage of educational opportunities and training that enhance work efficiency and provide needed skills for advancement based on Agency priorities and availability of training funds.
3. The Agency agrees to maintain information and furnish guidance about suitable and available education, training, and career development resources, including specialized career development programs.
4. Employees should receive fair and equitable treatment in all aspects of the Agency's career development and training program, consistent with affirmative action and other broad staff development goals and be subject to the following:
  - a. The Government Employee Training Act (5 U.S.C. 4101-4118) and regulations issued pursuant thereto;
  - b. The Equal Employment Opportunity Act (5 U.S.C. 2000-e), as amended;
  - c. The Affirmative Employment Plan as reflected in the Agency's current MD-715 Report;
  - d. Available resources allocated for training purposes; and
  - e. Other applicable statutory or regulatory provisions.
5. The Agency agrees to assist employees in planning and completing a plan of career development and training.
6. The Agency agrees to notify employees directly of selection or non-selection for Agency- controlled training or educational opportunities for which they applied or were nominated within fifteen (15) work days of the closing date, or two (2) work days prior to the beginning of the training, whichever is sooner. It is understood by the Parties that for some classes or other opportunities which require paneling or recommendation by the Executive Advisory Group, this will not always be possible. In cases of non-selection, the employees may request in writing and receive a written explanation for the denial.

7. Where an institution of higher learning requires verification of on-the-job experience, the Agency shall verify that the employee does work for the Agency, the position description, series, job title, years worked for the Agency, and training history for the immediately prior five (5) year period. The Agency shall verify this information within ten (10) work days of the employee's written request. The Agency's response shall be in the form (e.g., a letter, memorandum, telephone call, and electronic mail) requested by the employee. The Agency agrees to fax the response if requested to do so by the employee.
8. The Agency shall make payment for all authorized expenses in connection with approved training. Authorized training expenses include tuition, registration fees, books, transportation and parking for day-time courses only. However, items such as dictionaries and miscellaneous reference materials will not be covered unless approved in advance by the Servicing Personnel Office (SPO). School supplies such as pencils, notebooks and backpacks, student fees related to college or university courses, and late fees will not be reimbursed.

### **Section B. Definitions**

1. Job Related Training: Activities undertaken to increase the knowledge, competency, ability and skills of employees, which are related to their current duties and responsibilities.
2. Career Development Training: Activities undertaken to increase the knowledge, competency, ability, and skill of employees in the performance of those duties, which support the Agency mission and performance goals. These include potential duties in a different job or occupation at the same or higher level than the one currently held.
3. Skills Inventory: A listing or description of knowledge, skills, abilities, (KSAs) and/or competencies developed and/or adopted by the Agency for mission critical occupations and other occupations. These listings will be stratified by grade levels and contain key KSAs and/or competencies deemed necessary for successful performance.

### **Section C. Training**

1. The goals of the agency's training program are to facilitate improvement in job performance by employees within their current positions and established career ladders, and to support the long-term development of its employees. This will be achieved by the Agency allocating its available developmental opportunities and resources in a manner that both enhances the ability of OO to meet its mission more effectively in the short and long term, and the ability for employees to improve their job-related skills.

2. The following approaches to employee training will be utilized, as appropriate:
  - a. in-house, external, or on-the-job training to improve employee capabilities to perform their current duties;
  - b. training, detail and rotational assignments in complementary positions;
  - c. enrollment of employees in part-time educational programs at local educational institutions, distance learning, and/or in online courses; and
  - d. competitive long-term training in Federal and non-Federal educational institutions, i.e., training which, because of its duration and/or scope, provides development beyond the needs of an employee's position.
3. Normally at the time of the interim review, as well as immediately subsequent to the performance evaluation, or at any other time necessary, supervisors shall discuss with employees training needs and opportunities that would help the employee to improve performance in his/her current position. Unscheduled discussions concerning an employee's training needs and performance improvement opportunities may be initiated by the employee or supervisor.
4. Employees shall receive training and/or orientation appropriate for any job in which they are placed or to which they are reassigned under Article 19, Reassignments.
5. When training is requested primarily to prepare employees for advancement, or if the requested training would fulfill specific qualification requirements for a position with known promotion potential, selection for such training will be made under competitive promotion procedures, including those contained in Article 18, Merit Promotion.
6. Employees in career-ladder positions who have not yet reached the highest grade level in the career ladder usually shall not be required to compete for training which the Agency deems is necessary for their accession to the next grade level in the career ladder.
7. Job-related training shall be provided on an equitable basis among work unit employees who require such training.
8. The Agency agrees to play an active role in nominating members of the bargaining unit for various specialized career development programs.
9. When membership in a professional organization is not a trainer-determined or vendor-determined prerequisite for attendance at a training session, the Agency shall not consider membership as the sole factor in determining which employees will receive the training.

## **Section D. Training Requests and Documentation**

1. Training requests, documentation of completed training, and Individual Development Plans (IDP) will be processed and maintained through an Agency administered employee development system (e.g., USDA AgLearn). The system will allow employees access to their training records.
2. The agency will process approved training requests and related documents received within prescribed time limits to ensure employees are registered and notified in adequate time to prepare for their participation (e.g., make travel arrangements, obtain pre-class materials, etc.).
3. Normally, approved training will occur on official time, subject to restrictions contained in Government-wide regulations and any voluntary agreements made between the Agency and employee, such as when the employee agrees to attend training events during non-duty hours on his/her own time in exchange for the Agency paying tuition/registration fees.
4. Employees will be notified of any agency-wide training requirements (e.g., Civil Rights, Ethics, etc.) and be provided a reasonable amount of official time to complete those requirements in a timely manner.
5. The Agency will assist employees with resolving technical problems experienced while using the system.

## **Section E. New Processes and Training**

As a specific exception to provisions contained in Article 36 (Reorganizations and Other Workplace Changes), Section C, whenever the Agency makes workplace changes involving the introduction of new equipment and/or new processes that will have an impact on conditions of employment on employees, it agrees:

1. To meet, consult, and bargain, if requested, with the Union when employees will be expected to acquire new skills as necessary as a result of the introduction of new equipment and/or new processes which affect or impact the working conditions of the involved employees.
2. To notify the Union as soon as practicable of proposed installation of any new equipment, machinery, or processes which would result in changes in work assignments or require additional training of members of the bargaining unit, and to bargain, as necessary over procedures and arrangements to mitigate any adverse affects on employees associated with implementing those said changes.
3. Upon request by either Party, to meet and discuss, in good faith, the possibility of instituting programs to train or retrain employees in new skills so as to assure an

adequate supply of available employees trained in these new skills. Written requests for such a meeting shall identify the purpose thereof.

4. To include the Union in the planning process for training courses or on-the-job training related to automated processes in order to effectively enable affected employees to perform their job duties as well as provide for requisite staff development. The Agency will inform the Union of planned changes and schedule the training through the agency information technology organization's coordinating process or other appropriate means.

### **Section F. Career Development Counseling**

1. Employees shall be given reasonable opportunity and reasonable time necessary to discuss their career development with their supervisors and/or the SPO staff.
2. An employee may request a meeting with the appropriate Agency representative for the purpose of career counseling.
3. An employee's request for a lateral reassignment to a different job or a change to a lower-grade job shall not be considered a factor in any adverse action under Article 29, Disciplinary and Adverse Actions, concerning that employee. Section G. Individual Development Plan (IDP)

### **Section G. Individual Development Plan (IDP)**

1. The IDP is a tool by which employees and supervisors identify desired training and will to the extent possible, be followed and used as a basis to justify requested training, recognizing the approval of requested training is contingent on Agency priorities and the availability of training funds.
2. Supervisors and their employees shall discuss the employee's training needs using an Agency-prescribed skills inventory to identify short-term (i.e., needs for current position) and long-term (i.e., needs for career advancement) training needs. The results of this skills inventory assessment will provide the framework for the IDP. Training needs for both the duties the employee currently performs or will be performing, as well as opportunities for career development will be considered, with priority given to the former. The employee shall have the opportunity to explain why particular job-related and career development training was requested and the most appropriate timing for the proposed training.
3. If at any stage of the IDP review process requested training and/or opportunity for career development is not approved, the employee shall be advised.
4. The IDP may be revisited at any time should the supervisor's assessment of the employee's training needs change, additional training be required, and/or the

employee seeks training, including nomination/participation in specialized career development programs. When the employee seeks training, such requests will be considered as expeditiously as possible.

**Section H. Tuition Assistance:** An eligible employee (career or career-conditional employee who has completed one (1) year of current, continuous federal service) who initiates a request for tuition assistance and obtains prior approval from the Agency will have tuition costs (tuition is defined as the cost of the course per credit hour) paid at educational institutions during their non- work hours, provided that:

1. The course will enable the employee to increase his or her ability in presently assigned duties or duties the employee will be performing (i.e., the course is job- or Agency mission-related). If the latter, the course will be reviewed on a case by case basis by the Agency;
2. For courses of eighty (80) or more classroom hours, the employee must agree in writing to stay with the Agency three (3) times the actual length of the course. Failure to complete this required service will result in the employee being required to repay costs incurred by the Agency. This requirement may be waived at the Agency's discretion;
3. An employee who fails to complete a course or receives a grade of less than C, shall reimburse the Agency unless a waiver is granted by the Agency;
4. The employee completes an Agency- provided course evaluation, if requested;
5. If a college course, the employee is required to provide a copy of the official final grade report;
6. Funds are available to pay for such training without deferring or canceling commitments of higher priority.

**Section I. Variance in Work Hours:** Requests for a variance in regular working hours and/or appropriate leave for educational purposes will be granted unless it would interfere with the performance of the critical day-to-day mission of the work unit or does not conform to existing laws, regulations or this Agreement.

**Section J. Agency-wide Employee Development Initiatives**

1. The Agency agrees that in the event it undertakes any employee development program policy initiatives likely to result in program changes affecting represented employees (e.g., development of career paths for Mission Critical Occupations, skills inventory, etc.), the Union will be notified in accordance with Article 36 (Reorganization and Other Workplace Changes)

and the Agency will engage the Union in pre-decisional involvement (PDI) activities as provided for in that Article.

2. In addition, should the Agency decide to develop any significant career development initiative (e.g., establishment of an automated skills inventory), it will form a joint task force to engage in PDI and develop recommendations. Unless otherwise agreed to by the Parties, any task force will include equal numbers of Management and Union-nominated representatives, including at least two Union-nominated representatives, approved by the Agency.

## **ARTICLE 12: STUDENT CAREER EXPERIENCE PROGRAM**

A. The Employer and the Union realize that OO does not currently have employees in the Student Career Experience Program (**SCEP**).

B. The Union reserves the right to bargain regarding impact and implementation of SCEP employment should OO began hiring employees in a SCEP status.

## **ARTICLE 13: EMPLOYEE ORIENTATION**

### **Section A. Copies of Negotiated Agreement**

1. In all cases, the Employer shall provide to each employee newly assigned to a bargaining unit position a copy of the negotiated Agreement during the initial personnel processing or when the new employee reports for duty.

### **Section B. Official Time for Orientation for New Employees**

1. The Union's representative for this section only is defined as the Union President, Council 26 Representative or the Union's designee. The Union's designee must be designated in writing by the Union President or the Council 26 Representative to represent the Union for the orientation of new employees. This notice of designation must be given to the Director of Operations.
2. When the Employer holds an orientation session for a new employee, a Union representative shall be entitled to make a (15) fifteen minute presentation during which time the Union representative shall be entitled to distribute to each new bargaining unit employee an introductory letter and a package of materials prepared by the Union.
3. The Union representative shall be granted official time in accordance with Article 47, Official Time and Union Representatives.
4. The Employer agrees to provide notice to the Union President of all orientation sessions along with a list of the new employees at least (1) week advance notice to the President of the Union to ensure a Union representative's attendance at the orientation session.

## **ARTICLE 14: TRAVEL AND PER DIEM**

### **Section A. Travel**

1. All travel must be approved in advance.
2. Employees are required to make airline reservations using GovTrip.com (or any successor electronic sites). Employees should contact the DM Travel Office if they experience any problems.
3. The Agency will take all legal actions and remedies available to guarantee employee health and safety during official travel, especially concerning the use of common carrier conveyances. The Agency agrees to give employee health and safety appropriate consideration when scheduling and/or contracting for official travel with common carrier services, consistent with the Federal Travel Regulations (FTR) and the Agriculture Travel Regulations (ATR).
4. Whenever possible, official travel will be scheduled during the employees' normal work day. In those cases where this cannot be accomplished, the affected employee(s) will be compensated for travel time in keeping with applicable pay laws, government-wide regulations, and this Agreement. See Article 7: Premium Pay and Compensatory Time, and any other applicable guidance, for additional information regarding overtime/compensatory time issues while in travel status.
5. Upon appropriate application, an employee may be advanced sufficient funds to cover anticipated out-of-pocket expenses in accordance with established FTR and ATR procedures. Travel advance balances will be maintained in accordance with existing requirements.
6. A government credit card will be provided to employees through USDA/DM policy and procedure, if an employee is expected to travel more than once a year. The credit card may be used only for expenses incurred in connection with official travel. Failure to comply with the terms and conditions of the card, or to make timely payments on the amount due, can subject a cardholder to disciplinary action.
7. Travel vouchers shall be prepared and processed in accordance with the FTR and ATR and normally submitted within five (5) work days after returning from the trip.
8. Travelers who submit a proper travel voucher to their approving official and are not paid within 30 calendar days after the approving official receives the proper voucher, will be paid a late fee using the prevailing Prompt Payment Act interest rate.
9. The Agency will attempt to minimize extended travel (more than two weeks).
10. Once submitted by the employee, travel vouchers will be processed in a timely manner. The Agency may not withhold such reimbursement of properly documented expenses either for disciplinary reasons or to induce employees to produce reports or other work.
11. The Parties agree that the supervisor and the traveler are ultimately responsible for the accuracy of all travel documents.

12. Decisions to waive requirements concerning airports and use of contract carriers will be made by the approving official in accordance with applicable travel regulations and policies.

13. Training in the use of GovTrip is included as a feature of the system. Additional assistance will be provided on an as needed basis.

### **Section B. Per Diem**

1. Employees will be reimbursed in accordance with applicable travel laws and regulations (including Comptroller General Decisions) for reasonable expenses incurred by them in the discharge of their official duties.

2. Pursuant to the FTR, employees are expected to exercise care in incurring expenses. Employees should recognize that excess cost incurred from indirect travel routes or planned en route delays, and unusual services or expenses will only be reimbursed if authorized in advance on approved travel authorizations in accordance with established regulations and procedures. If unanticipated expenses are incurred en route, employees may be responsible for paying excess costs absent an acceptable demonstration of mitigating circumstances.

3. An employee assigned to training or temporary duty outside their regular duty station, who elect to return home during non-workdays, will be reimbursed for travel not to exceed the amount reimbursable for the per diem had the employee remained away from home as otherwise required by training or the duty assignment. If this occurs, the employee shall not receive per diem for the non-workdays.

### **Section C. Travel Regulations**

1. Employees will be given access to applicable travel regulations.

### **Section D. Vehicles**

1. The Agency agrees to refrain from encouraging use of privately-owned vehicles (POV) for official travel.

2. In the event the use of a POV is authorized, mileage for such use shall be compensated at the prevailing rate published in the Federal Register.

3. When an employee is authorized to use a POV for official business and that vehicle sustains damage, the employee may file a claim in accordance with 31 C.F.R. 4.4 g.

### **Section E. Illness**

1. In accordance with FTR and Comptroller General Decisions, an employee that becomes ill while in official travel status is generally entitled to per diem for a period not to exceed fourteen (14) calendar days. The period of illness is chargeable to the employee's leave. The supervisor will be notified as soon as possible when an employee becomes ill while in official travel status.

## **Section F. Use of Frequent Traveler Benefits**

1. Employees may participate in frequent traveler programs.
2. Employees are allowed to retain for personal use promotional items received incident to official travel, including frequent flyer miles. Use of such items must be in accordance with applicable rules and regulations.
3. Employees are responsible for establishing their own frequent travel promotional benefits account. Any associated costs must be paid by the employee and are not reimbursable.
4. For additional details on frequent traveler benefits refer to the FTR, PART 301-53.

## **Section G. Premium Class Travel**

1. It is the policy of the Government that employees shall travel by coach class or equivalent accommodations. However, employees may upgrade their transportation class of service at their own expense. In addition, employees may use any frequent traveler benefits earned to upgrade their transportation class to premium service.
2. The regulations governing upgrades to premium airline accommodations can be found in the FTR in Sections 301-10.123 and 301-10.124. An employee must meet one of the exceptions contained in these regulations in order for the Agency to consider any upgrades.
3. Procedures for requesting an exception for a medical condition:
  - a. Employees with medical conditions needing travel accommodations, including premium class upgrades, should request the accommodations in accordance with DM 4300-002, Reasonable Accommodation Procedures. The form to be used to document the request in writing is Appendix A of DM 4300-002. Initial requests may be made orally to the supervisor, who will provide assistance as needed to process and respond to the request.
  - b. Medical documentation must be dated within the prior six months of travel or must be a permanent disability.
  - c. In those cases where the trip is authorized, management is responsible for ensuring that adequate funding is available for accommodations as required by the Rehabilitation Act unless it poses an undue hardship on the agency.

## **ARTICLE 15: TELEWORK**

### **Section A. General**

1. Telework, also known as Flexiplace and Telecommuting, is a family-friendly work life benefit that allows eligible OO employees to work at Telework Centers or at home in lieu of the irregular work-site. In doing so, the program improves productivity, morale, and quality of work life issues.
2. Both Parties support the participation of employees in the Telework program.
3. The Parties agree that employees participating in Telework are bound by statutory and regulatory requirements, by this Agreement, and their Telework Work Agreement.
4. Operating procedures for Telework shall be governed by the terms of this Agreement, law, government-wide regulations, OO policy, and Comptroller General Decisions relating to reimbursement of expenses for Telework arrangements.
5. The Parties agree that the success of Telework relies on the mutual trust of the Parties. The employees and managers accept the responsibilities that are inherent in the privilege of working under Telework.

### **Section B. Program Guidelines and Criteria**

1. Telework must promote more efficient use of OO resources in accomplishing the mission of the Agency (e.g., result in improved productivity).
2. Telework must enhance the quality and timeliness of services currently provided to OO customers.
3. Telework provides for reasonable accommodation to permanently or temporarily disabled employees.
4. Telework will be considered for emergency situations such as natural disasters, matters that involve national security, the agency's Continuity of Operations Plan or other unique situations.
5. Telework is a Management option as well as an employee benefit. Employee entitlements/benefits are in accordance with applicable law or regulation.
6. Employee participation is voluntary and subject to Management approval.
7. All teleworkers must complete a telework agreement for all types of telework. All teleworkers agree to participate in necessary telework training.
8. Cancellation of a Telework Work Agreement can be initiated at any time by either the

employee or the supervisor. A notice of withdrawal from the employee or a notice of program termination from the supervisor will be in writing and normally will be provided to the other party at least ten (10) working days prior to its effective date. A notice from the supervisor will state the reason(s) for the decision to terminate the employee's participation in Telework.

9. Telework must not adversely affect the performance of the employee on Telework or others in the work group.

10. Employees are required to record their telework in their official time and attendance system in accordance with departmental and agency policy. Supervisors must be able to certify an employee's time and attendance.

11. The employee must have a safe and adequate place to work offsite that is free from interruptions and that provides the necessary level of security and protection for Agency property.

12. Telework is not a substitute for dependent care and employees must not use duty time for any purpose other than official duties.

13. The Agency may place Government-owned computers and telecommunications equipment in employee homes or at other alternative work sites, but the Agency retains ownership of and control of hardware, software, and data. Such equipment is for official use only and its repair and maintenance are the responsibility of the Agency. Technical support will be provided to employees using their own equipment to the extent feasible.

### **Section C. Determining Position and Employee Eligibility**

1. The Parties recognize that there may be certain characteristics related to job performance in certain positions that do not lend themselves to employee participation in the Telework program. In other cases, certain characteristics may preclude regular and recurring employee participation in the Telework program, but the employee may be eligible to participate on an intermittent basis.

2. Union Officials on 100% official time are ineligible for telework. No union representational duties may be performed at the alternate work site.

3. Supervisors will consider requests for participation in the Telework program on a case-by-case basis. In evaluating individual requests, supervisors will utilize the following criteria:

a. Portability of the Work

(1). Work suitable for telework depends on job content, rather than job title, type of appointment, or work schedule.

(2). Telework is feasible for work that requires thinking and writing such as data analysis, writing decisions or reports; telephone-intensive tasks such as setting up a conference, obtaining information, following up on participants in a study; and computer-oriented tasks such as programming, data entry, and word processing.

(3). Work is not suitable for telework if the work can only be done at the primary work site; the employee needs to have extensive face-to-face contact with the supervisor, other employees, clients, or the general public; if the employee needs frequent access to material which cannot be moved from the regular office; if the Agency cannot provide any special facilities or equipment that are necessary; or if it would be too costly for the agency to duplicate the same level of security at the alternative workplace. Classified work or work that involves extensive use of classified files is not portable.

#### b. Suitability of the Employee

(1). Employees approved for participation in the Telework program should be organized, disciplined, and conscientious self-starters who require minimal supervision.

(2). Employees must have acquired a working knowledge of OO policies, programs and procedures unless the employee qualifies on the basis of a documented disability which requires accommodation.

(3). Employees must have at least a fully successful performance level.

(4). Employees who are eligible to receive accommodation based on a documented disability will be considered for telework on a case-by-case basis.

### **Section D. Types of Telework Arrangements**

1. Telework arrangements may be considered for an employee with a documented medical condition provided the employee is able to perform the functions of his/her position and all other criteria and conditions outlined in this Article have been met.
2. Employees who are scheduled to work at their official duty station less than 3 days per week may be required to share their work space with another employee.

### **Section E. Employee Continuation in the Program**

Management reserves the right to deny participation in Telework at any time for just cause, normally with a 10-day notice to the employee. This includes but is not limited to the following reasons:

1. Employee work performance is not satisfactory

2. Adverse organizational productivity
3. Valid customer complaints
4. Conduct related issues
5. Failure to adhere to the provisions of the Telework Work Agreement
6. Changes in duties that make the work not suitable for Telework

#### **Section F. Personnel Policies/Procedures**

1. Official Duty Station: The Employer will follow OPM guidelines in determining the official duty station for employees approved for telework.
2. Hours of Duty: The existing rules on hours of duty apply to teleworkers. The supervisor determines employee work schedules consistent with the requirements of the office and provisions of Article 6, Work Schedules/Tours of Duty, of this Agreement. The supervisor will give consideration to approval of alternative work schedules for teleworkers.
3. Pay and Leave: Existing rules on pay and leave administration apply to teleworkers.
4. Overtime: The existing rules on overtime under Title 5, United States Code, and the Fair Labor Standards Act (FLSA) apply to teleworkers. Employees who work overtime may do so only with advance approval from their supervisor, consistent with Article 7, Premium Pay and Compensatory Time, of this Agreement.
5. Certification and Control of Time and Attendance: In accordance with Title 6 of the General Accounting Office's Policy and Procedures Manual for the Guidance of Federal Agencies, supervisors who manage employees working at remote sites must have reasonable assurance that the employees are working when scheduled. Therefore, supervisors may make occasional telephone calls or visits during the employee's scheduled work time.
6. Position Descriptions and Performance Standards: Performance measures for teleworkers and employees who perform similar tasks in the regular office should be similar. However, if a telework agreement requires major changes in position descriptions, performance standards for teleworkers should remain results-oriented and should describe the quantity and quality of expected work products and the method of evaluation.
7. Workers' Compensation: Telework employees are covered by the Federal Employees Compensation Act and may qualify for payment for on-the-job injury or occupational illness.
8. Emergency Dismissal Guidance: A teleworker may be affected by an emergency requiring the regular office to close. When both the regular office and the alternative work site are affected by a widespread emergency, the employee may be required to continue to

work at the alternate work site or be granted excused absence as appropriate. When an emergency affects only the alternative work site for a major portion of the workday, the employee may be required to report to the regular office, request leave, or be granted excused absence, depending on the circumstances. In addition, teleworkers may be designated as participants in the agency's Continuity of Operations Planning (COOP) and emergency evacuation plan.

## **ARTICLE 16: TECHNOLOGY, METHODS AND MEANS OF PERFORMING WORK**

### **Section A. General**

1. Proposed changes in technology, methods, and means of performing work initiated by either the Agency or the Union will require appropriate advance notice, pre-decisional involvement of bargaining unit employees, and bargaining in accordance with applicable law, Executive Order, and Article 44, Mid-Contract Negotiations, of this Agreement.

### **Section B. Personal Use of Government Technology**

It is the policy of this Agency to protect USDA and OO resources from accidental or deliberate unauthorized access, use, modification, or disclosure by employing adequate security measures through cost-effective technical and management controls. Additional details regarding the Agency's policy on accessing and using the Internet and email systems are contained in USDA DR 3300-1.

1. Government office equipment for which limited personal use is authorized includes, but is not limited to:

- a. Personal computers and related peripheral equipment and software
- b. Library resources
- c. Telephones
- d. Facsimile machines
- e. Photocopiers
- f. Office supplies
- g. Internet connectivity and access to Internet services
- h. E-mail.

2. Limited personal use may be authorized if it is determined that:

- a. The employee's performance of official duties is not adversely affected;
- b. The use is of reasonable duration and frequency and, whenever possible, made during the employee's personal time;
- c. The use serves a legitimate public interest;
- d. The use does not reflect adversely on USDA or the Agency (such as uses involving pornography, playing games, conducting private business, chain letters, etc.); and,

e. The use does not overburden the equipment and there is no significant additional cost to the Agency or USDA.

3. Misuse or inappropriate personal use includes, but is not limited to:

a. Any personal use that could cause congestion, delay, or disruption of service to any Government system or equipment;

b. Creating, copying, transmitting, or retransmitting chain letters or other unauthorized mass mailings regardless of the subject matter;

c. Activities that are illegal, inappropriate, or offensive to fellow employees or the public;

d. Use for commercial purposes or in support of other outside employment or business activity;

e. Any type of personal solicitation;

f. Modifying Government office equipment for nongovernmental purposes including loading personal software or making configuration changes unless approved by the Agency.

### **Section C. Changes in Technology**

1. When replacing or acquiring additional computer equipment, the Agency will provide for anticipated Flexiplace needs.

a. Equipment for Flexiplace employees should be adequate to permit the employee to perform the required duties while working at the alternative work site.

b. Employees will not be accountable for reductions in their efficiency that is attributable to Agency changes in technology, including software, operating systems, and methods of operations.

2. Subject to the availability of funds, the Agency will provide at least one (1) color inkjet printer per Division if requested by the Director.

## **ARTICLE 17: CAREER LADDER PROMOTIONS**

### **Section A. Basic Eligibility Requirements:**

An employee in a career ladder generally should be promoted no earlier than the first full pay period after all of the following requirements are met:

1. The employee becomes minimally eligible to be promoted after one (1) year in grade or whatever lesser period satisfies basic eligibility requirements;
2. The employee demonstrates the potential for satisfactory performance at the next higher level. In this regard, the supervisor must make this determination prior to the date the employee is minimally eligible to be promoted;
3. The employee's current performance appraisal record must have an overall summary rating of not less than Fully Successful; and
4. All other requirements of law and regulation are met.

### **Section B. Supervisor Certification**

1. Supervisors shall review the work of each employee in a career ladder position who will be eligible for a career ladder promotion prior to the employee's eligibility date. Employees who do not meet the requirements for promotion in accordance with Section A of this Article will be provided written notice to this effect by the supervisor no less than thirty (30) calendar days prior to the eligibility date. The written notice will explain in what performance element area and how the employee's performance is lacking and advise as to what the employee must do to meet the requirements for promotion. If delays are for reasons other than performance, these will be explained in the advance notice.
2. Once an employee's performance improves to the requisite level as described in Section A of this Article, the supervisor will recommend the employee for promotion.
3. If advance notice requirements are not met, the promotion will be made retroactive to the date the employee met the basic eligibility requirements as stated in Section A 1, 3, and 4 above.

## **ARTICLE 18: MERIT PROMOTION**

### **Section A. General Provisions**

1. The principle of merit promotion is to ensure that employees are given full and fair consideration for advancement and to ensure selection from among the best-qualified candidates. The Agency recognizes the value of promoting from within the Agency.
2. Positions in the Bargaining Unit will be filled on the basis of merit and in accordance with applicable law, rule, regulations and this Agreement.
3. Supervisors must notify temporarily absent subordinate employees about announced vacancies. Employees who wish to be considered for vacancies but who are unable to apply online should be given fax numbers for the Servicing Personnel Office (SPO), or other necessary numbers, so that they can make appropriate arrangements to submit their applications. Others should review vacancy announcements and apply online at [www.usajobs.gov](http://www.usajobs.gov), or any subsequent web site.

### **Section B. Vacancy Announcements**

1. Announcements for bargaining unit positions shall be open for at least ten (10) work days.
2. Announcements will be posted electronically by the opening date.
3. All vacancy announcements will contain the following information:
  - a. Announcement number and issue date;
  - b. Area of consideration;
  - c. Title, series, grade, and number of positions;
  - d. Geographic location of position;
  - e. Closing date for acceptance of applications;
  - f. Summary of the duties of the position;
  - g. Qualification requirements, including any selective placement factors;
  - h. Knowledge, skills, and abilities to be used in the evaluation process, if any;
  - i. Known promotion potential, if any;
  - j. Instructions for applying;

k. Whether reimbursement for relocation expenses is authorized in the event selection is made of a candidate from outside the commuting area;

l. A statement that the principles of equal employment opportunity will be adhered to in all phases of the promotion process; and

m. Name and phone number of contact person for any information concerning the vacancy announcement, including a copy of the position description;

n. The following statements:

(1). Use of U.S. Government postage-paid envelopes to submit applications are unauthorized.

(2). Use of U.S. Government envelopes used for transmitting personnel and other official administrative personal documents (blue envelopes marked Personal - Attention/For Official Use Only) is unauthorized.

(3). Use of U.S. Government inter-office messenger mail envelopes, GSA Optional Form 65-B, is authorized.

(4). Submission by FAX from overseas is authorized.

4. Supervisors are encouraged to notify the Union prior to announcing vacancies outside the Agency (i.e., USDA-wide, Government-wide, or all sources).

### **Section C. Qualification Standards**

1. Qualification requirements and selective placement factors for vacant positions will be job related.

2. Candidates will be rated basically eligible for a position if they meet the minimum qualification requirements for a General Schedule position described in the OPM Operating Manual for Qualifications Standards for General Schedule Positions based on the application, Knowledge, Skills and Abilities (KSA's), and performance appraisal (or Wage Grade Qualifications Standards, as appropriate) as supplemented by valid job-related selective placement factors, if any.

3. Selective placement factors may be used in determining basic qualifications if they are essential (not merely desirable) to successful performance in the position being filled. The inclusion of such factors must be supported by the position description.

### **Section D. Evaluation and Ranking Criteria**

The best qualified candidates will be identified through an impartial evaluation of eligible candidates based upon uniformly applied job-related evaluation criteria. The following factors will provide a framework for determining the appropriate criteria for each position.

1. Experience. Experience is to be evaluated in terms of the position to be filled. Length of experience may be used only to the extent to which it can be shown to be a valid job-related factor for the position being filled. Experience (including leadership, supervisory and managerial) gained through employment in other public and private positions will be given credit as described in OPM Qualification Standards for General Schedule positions.

2. Training and Education. Pertinent training, self-development, and outside activities determined to indicate effective performance in the position to be filled will be considered to the extent that they are clearly job-related, or clearly provide evidence of learning ability where this is a requirement for successful performance on the job.

3. Performance Appraisal. All Federal applicants must submit a copy of their latest performance appraisal form which would usually have been completed within the last year.

4. Awards and Recognition. An employee's achievements that earned him/her special recognition will be considered in terms of the requirements of the job to be filled.

### **Section E. Evaluation and Ranking Procedures**

1. Initial Review of Applications. Before beginning the evaluation and ranking procedures, the SPO will first review all applications to ensure that each applicant/application:

- a. Is within the area of consideration;
- b. Meets minimum qualifications, including selective placement factors, if applicable;
- c. Meets time-in-grade requirements, if applicable; and
- d. Has submitted all required documents.

#### 2. Rating and Ranking

- a. If there are eleven (11) or more qualified competitive applicants,

(1). Evaluation for positions will be made by a Merit Promotion panel consisting of subject matter experts. A personnel specialist from the SPO will serve as a facilitator.

(2). Based upon the span of numerical scores, the evaluator(s) must determine which of the qualified candidates are best qualified and should therefore be referred to the selecting official. The best qualified applicants are those with the highest scores. This will generally be determined by a significant or meaningful break in numerical rankings which separate the best qualified group from the remaining applicants.

(3). The best qualified applicants will be referred for each position and/or grade level. The number of best qualified applicants referred may vary based on a meaningful break in scores, the number of vacancies, or other relevant factors.

b. In cases of ten (10) or fewer qualified competitive applicants, a single evaluator may rank all applications.

c. The names of the best qualified applicants will be listed alphabetically for referral to the selecting official. Individual scores will not be listed.

## **Section F. Selection**

1. The selecting official will comply with the law and this Agreement. The selecting official must consider candidates for the position according to the following order of precedence:
  - a. Career Transition Assistance Program (CTAP) applicants who are well qualified;
  - b. Former Department employees who are on the Department's priority reemployment or repromotion list; and
  - c. Best qualified applicants from all other sources.
2. The selecting official is not required to fill a vacancy by selection of one of the best qualified candidates listed on the promotion certificate. He or she may:
  - a. Request extension of the area of consideration;
  - b. Request additional recruitment efforts; and/or
  - c. Fill the job by some other type of placement action.
3. All competitive bargaining unit applicants referred to the selecting official will be interviewed. Telephone interviews are acceptable for those applicants not in the commuting area or not able to participate in a face-to-face interview due to unusual circumstances.
4. The selecting official's decision to select a particular candidate is subject to law, regulation, or Government-wide mandate.
5. Bargaining Unit employees covered by this Agreement will be notified of their selection by the SPO and will be released from their existing positions promptly, normally at the end of the first full pay period after selection or another date mutually agreed upon by the SPO, the gaining and losing supervisors, and the employee. Applicants not selected for the position may contact the hiring official to discuss reasons for their non-selection.

## **ARTICLE 19: REASSIGNMENTS**

### **Section A. Definition**

1. A reassignment means a change of an employee, from one position to another within OO without promotion or demotion, while serving continuously within OO.

### **Section B. General**

1. The parties understand reassignments of OO employees may be initiated by employees or the Employer for reasons such as:

- a. To accomplish the mission and/or maintain the integrity of the Agency;
- b. To improve economy or efficiency;
- c. To assure the better utilization of employee skills or abilities;
- d. To make the best use of current staff and other resources;
- e. To provide employees with opportunities to broaden their qualifications, skills, abilities, and experience in areas of work performed by the Employer;
- f. To resolve work-related problems;
- g. To resolve employee hardship and reasonable accommodation concerns;
- h. To fulfill an employee request; and/or
- i. To allow training of an employee.

2. Although the Employer will make a good faith effort to honor an employee's request for reassignment, it is understood that the Employer may not be able to fulfill all employee requested reassignments.

3. The Union will receive five (5) work days advance notice of any reassignment actions involving bargaining unit employees.

4. Reassignments made will be consistent with Career Transition Assistance Program (CTAP) regulations.

### **Section C. Procedures - Employee Requests**

1. Employees may request a reassignment, in writing, to their immediate supervisor. Employees may request a Union representative to assist in the reassignment(s).

2. The Employer will respond, in writing, within sixty (60) calendar days of receiving an employee's request. The immediate supervisor will coordinate his/her response with the program

area manager. If the request is disapproved, the Employer's written response must provide the reasons for the disapproval.

3. When a reassignment involves a change in duty station to or from outside the Washington, DC area, the Employer agrees to give the employee a reasonable amount of time to accomplish the change in duty station in an orderly manner.

#### **Section D. Employer-Initiated Actions**

1. The employer may initiate a reassignment based on need.

2. The Employer will notify the affected employee(s), in writing, of the specifics in advance of the reassignment(s) consistent with Section B of this Article.

## **ARTICLE 20: DETAILS**

### **Section A. General**

1. Definition: For the purposes of this article, the term detail means the temporary assignment by the Agency of an employee to new duties, unclassified duties, or to another position.
2. The Parties will encourage employees to take advantage of detail opportunities that enhance work efficiency and provide needed skills for advancement based on Agency priorities and availability of training funds.

### **Section B. Details to a Position at the Same or Lower Grade Level**

1. Length of Detail. The detail of an employee to a position at the same or lower grade level will generally not exceed one hundred twenty (120) calendar days. This provision may not be circumvented by resorting to a series of details of less than one hundred twenty (120) calendar days.
2. Documentation
  - a. Details for more than thirty (30) calendar days within the Agency shall be documented by a position description if available or a memorandum containing a brief description of duties (e-mail acceptable) to the employee and signed by the detail supervisor.
  - b. Normally, specifics of details expected to last more than thirty (30) calendar days will be submitted to the Union prior to implementation.
3. Impact on Merit Promotion Procedures. Merit promotion procedures do not apply when a detail is to a position at the same or lower grade level.
4. For employees detailed for one hundred twenty (120) days or less, supervisors are encouraged to provide a write-up of not more than one page on the employee's performance under the detail, if requested by the employee.
5. Employees detailed to positions with different elements and standards expected to exceed one hundred twenty (120) days will be issued a performance plan no later than thirty (30) days of entering the new position or starting the detail.

### **Section C. Details to a Higher-Graded Position**

1. Length of Non-Competitive Detail. An employee may not be non-competitively detailed to a higher graded position for more than one hundred twenty (120) calendar days or in accordance with prevailing CTAP regulations. A detail to a higher graded position expected to last for more than thirty (30) days requires a temporary promotion if basic eligibility criteria for promotion are met. This provision may not be circumvented by rotating an employee in and out of a detail position.
2. Documentation. Details under this section will be documented by:

- a. an SF-50 for a temporary promotion; and
- b. an SF-52 for a detail of more than thirty (30) calendar days.

3. Normally, specifics of a detail expected to last more than thirty (30) calendar days will be submitted to the Union prior to implementation.

4. Details will not be used to circumvent competitive procedures or be used to give an unfair competitive advantage to the employee detailed to a higher-graded position. For non-competitive details, the supervisor shall endeavor to rotate the detail opportunity(ies) among equally qualified work unit employees, when possible.

5. For employees detailed for one hundred twenty (120) days or less, supervisors are encouraged to provide a write-up of not more than one page on the employee's performance under the detail, if requested by the employee.

6. Employees detailed to positions with different elements and standards expected to exceed one hundred twenty (120) days will be issued a performance plan no later than thirty (30) days of entering the new position or starting the detail.

#### **Section D. Return to Original Assignment**

1. Upon return to his/her original position, the employee will be given reasonable time to become acquainted with any changes which have occurred during his/her absence.

#### **Section E. Training and Developmental Assignments**

1. Work assignments/details made as part of recognized training or professional development programs will not be covered by the requirements of this Article to the extent that they conflict with program guidelines or requirements or interfere with the achievement of the training or professional development program objectives.

#### **Section F. Other Details**

1. Nothing in this Article shall preclude the Union from suggesting the use of details to address grievance resolutions and/or personnel conflicts. In those cases where the employee chooses not to use a Union representative to address personnel conflicts, the Union shall be informed prior to implementation.

## **ARTICLE 21: PART-TIME EMPLOYMENT**

- A. The Employer and the Union realize that OO does not currently employ Part-time employees.
- B. The Union reserves the right to bargain regarding impact and implementation of Part-time employment should OO began hiring employees in a Part-time status.

## **ARTICLE 22: PROBATIONARY EMPLOYEES**

### **Section A. Definitions**

1. A probationary bargaining unit employee is a bargaining unit employee who has been given a career or career-conditional appointment and who is serving his/her first year of federal service and who meets the further requirements described in 5 C.F.R., Part 315. The Parties recognize that there are circumstances that may require an employee to serve more than one probationary period.

### **Section B. Procedures**

1. The Agency agrees to discuss and advise a probationary bargaining unit employee of his/her performance progress at any time but no later than the required mid-term progress review.
2. The Agency may discharge probationary employees at any time during their probationary period for misconduct, poor work performance, poor attendance, unfitness for duty, or if they fail to demonstrate that they are fully qualified for continued employment.
3. When the Agency decides to terminate bargaining unit employees serving a probationary period, the Agency shall terminate them by notifying them in writing why they are being separated and the effective date of the action.
4. The Agency may allow a probationary bargaining unit employee the opportunity to resign his/her position in lieu of termination.

### **Section C Grievability**

1. Nothing in this Article shall afford the probationary bargaining unit employee the opportunity to grieve a termination, unless there is a change in law during the term of this Agreement.

## **ARTICLE 23: REDUCTION-IN-FORCE (RIF) AND TRANSFER OF FUNCTION**

### **Section A.**

1. Except as otherwise provided for in this Article, a Reduction-in-Force (RIF), transfer of function, or furlough of more than thirty (30) calendar days, shall be administered pursuant to 5 CFR 351 and all other applicable laws, rules, regulations, and this Agreement.

### **Section B.**

1. All provisions of this Article shall be based on non-discriminatory criteria.

### **Section C. Reduction in Force (RIF)**

1. Prior to the decision to institute a RIF that may result from a reorganization or other change, the Agency shall fulfill its obligations pursuant to Article 36 (Negotiating Reorganizations and Other Workplace Changes) of this Agreement. This provision in no way negates the Agency's right to implement a RIF, nor does it constitute a waiver of the Union's right to bargain to the full extent of the law over matters not otherwise covered by this Agreement.
2. Before instituting a RIF the Agency shall, where it determines such actions to be feasible, consider taking steps to avoid and/or mitigate the scope of the RIF by addressing budget cutbacks and/or other changes. These steps include attrition, hiring freezes, employee reassignments, furloughs, reductions in non-mission critical travel or training, or reductions in contracts let to consultants and contractors, as well as any and all other non-mission critical expenses. To this effect, the Agency shall impose a hiring freeze for those positions in the same occupation series, grade levels, and competitive levels as those positions being subject to a RIF beginning no later than when the Agency obtains RIF authority until when the RIF ends.
3. The Union shall be given the earliest possible preliminary notification in writing once the Agency has decided to implement a RIF. To the maximum extent possible, this notification shall be at least seventy-five (75) calendar days before the anticipated effective date for the RIF. The notification shall contain the anticipated effective date of the RIF, the names, title, series, grade of employees likely to be affected; efforts the Agency has taken to avoid a RIF; expected outcomes of the RIF; and a copy of the Agency's request to the Department to seek RIF authority.
4. Unless a shorter notice period has been approved by the Director of OPM, the Agency shall provide affected employees specific RIF notices at least sixty (60) full days prior to the effective date of the RIF, which shall include the following information, as applicable:

- a. the specific functions to be transferred and identification of employees assigned to this function;
- b. the specific actions being proposed or taken;
- c. the reason for the RIF;
- d. the effective date that the action will occur;
- e. the affected employee's competitive area and level;
- f. the affected employee's appointment status;
- g. the affected employee's service computation date;
- h. the place where the employee may inspect the records and regulations pertinent to his or her placement or non-placement, including his or her retention register;
- i. why any employee at the same competitive level in the area affected by the RIF with less retention preference is being retained,
- j. why any employee occupying a position at a lower grade in the same promotion plan as the affected employee is being retained;
- k. salary and grade retention rights, as applicable;
- l. the time frame in which an employee must accept or decline a placement offer;
- m. if applicable, the employee's rights, entitlements, and responsibilities with respect to available programs such as the Career Transition Assistance Plan (CTAP), Reemployment Priority List (RPL), Career Development Centers, and other programs which may be available;
- n. where and how to apply for unemployment insurance;
- o. reemployment rights, as applicable;
- p. information regarding continued health and life insurance benefits after RIF separation; and
- q. time limits for the filing of appeals and complaints and where such appeals and complaints should be addressed.

The Agency shall also make copies of OPM regulation 5 CFR 351 and OPM's Employee Guide to RIF available to employees in each affected program area within OO. Employees may access OPM's Employee Guide to RIF at <http://www.opm.gov/rif/general/rifguide.asp>.

5. The Agency shall inform the Union, in writing, no less than seven (7) calendar days prior to the presentation of the specific RIF notice(s) to affected employee(s). The Union's notice shall include:
  - a. the reasons for the upcoming RIF;
  - b. the numbers and types of positions being impacted by the RIF;
  - c. the names of all bargaining unit members being affected;
  - d. the approximate date of the RIF;
  - e. the date, time and location of the presentation of the notices to the employees, as well as an invitation to the Union to participate in any meetings with affected employees concerning the RIF; and
  - f. as available, copies of the notices being distributed to employees. The Union shall receive copies no later than the date of their distribution to employees.

Should the Union need further information regarding the RIF it may request such information pursuant to 5 USC 7114.

6. No RIF shall provide an advantage to an employee which he or she did not otherwise have prior to that RIF's implementation. Nor shall the Agency institute a RIF in lieu of a disciplinary measure or as a performance-based adverse action against any employee or group of employees. Nor shall a RIF be instituted for the purpose of circumventing merit promotion procedures.
7. The Agency shall minimize the displacement of employees potentially adversely affected by a prospective RIF through the reassignment of such employees to vacant positions for which they might qualify, provided that there is a need, as determined by the Agency, to fill such vacancies, and further provided that such reassignment(s) are consistent with applicable law, rule, and regulation. Such reassignment shall be to a vacant position at the same grade or pay. Employees reassigned under this section shall be provided with such additional training as is deemed necessary by the Agency to successfully perform the requirements of the new job.
8. The Union shall be provided with a list of appropriate OPM position qualification standards should the Agency make exceptions to those standards in order to place affected employees in available vacant positions.

9. Determining the procedures by which an agency is required to implement a RIF as well as which employees may be subject to a RIF action is contained in OPM regulations (5 CFR 351) and the OPM publication, *The Employee's Guide to Reduction in Force (RIF)*, found at <http://www.opm.gov/rif/general/rifguide.pdf>. As a way to familiarize and provide employees immediate access to the key RIF-related terms and features, the following glossary is provided with the understanding that the cited OPM regulations are the authoritative source for RIF information:
- a. **Competitive Area.** The geographical and organizational boundary within which employees compete for job retention during a RIF. A competitive area may consist of all or part of an agency.
  - b. **Competitive Level.** Within each competitive area, the Agency shall group interchangeable positions into competitive levels. Each competitive level shall include positions with the same grade, series, qualifications, duties, and working conditions. Positions with different types of work schedules (e.g., full-time, part-time, intermittent, seasonal, or on-call) are placed in different competitive levels.
  - c. **Retention registers.** Separate retention registers are established for each competitive level. Within each competitive level, employees are ranked in terms of their retention standings. An employee's retention standing is based on these four retention factors: *tenure*, *Veteran's preference*, *length of service*, and *performance*, as described below:
    1. **Tenure.** There are three tenure groups: 1) career employees not serving on probation; 2) career employees who are serving a probationary period and career-conditional employees; and 3) employees serving on term and similar non-status appointments.
    2. **Veteran's preference.** There are three groups for Veteran's preference: 1) veterans with a compensable service-connected disability of 30% or more; 2) veterans not included in group 1 above; and 3) nonveterans. According to regulation, there are additional factors for determining Veteran's preference.
    3. **Length of service.** Length of service is based on service computation date.
    4. **Performance.** Performance ratings for the previous four years receive extra service credit in determining retention standing. Extra service credit for performance is assigned by averaging the value of the last three annual ratings (rounded up to the next whole number, in the case of a fraction). The standard values are:
      - i. 20 years for an "Outstanding" rating;
      - ii. 16 years for an "Exceeds Fully Successful" rating; and

- iii. 12 years for a "Fully Successful" rating.

The extra years of performance credit are added to the service computation date to form the adjusted service computation date, which is used in determining RIF retention standing.

10. Employees receiving a RIF notice have the right to review all retention lists pertaining to all positions for which they are qualified. This includes the retention register for their competitive level and those for other positions for which they are qualified, down to and including those in the same equivalent grade as the position offered by the Agency. If separation occurs, this includes all positions at or below the level of their current positions. Affected bargaining unit employees shall have the right to have a Union representative present when reviewing such lists or records. Such review shall be subject to the Agency's lawful authority to withhold identifying information under the Privacy Act. If information is withheld because of privacy issues, the Agency shall supply a description or list of the withheld information. For examples of sample retention lists, see the OPM publication, *The Employee's Guide to Reduction in Force (RIF)*, cited above and found online at <http://www.opm.gov/rif/general/rifguide.pdf>.
11. Release from the Competitive Level: The Agency shall release employees from the retention register in the inverse order of their retention standing.
12. Should the Agency, pursuant to 5 CFR 351, decide to depart from this the normal order of release from their competitive level in order to retain an employee with special skills, it shall notify any employees reached for release because of such decision. The notification shall give the reasons for the procedural exception.
13. Employees released from a Competitive Level may have rights to other positions by exercising assignment rights that are commonly referred to as *bumping* and *retreating*, as defined in the OPM publication, *The Employee's Guide to Reduction in Force (RIF)* and OPM RIF regulations:
  - a. Bumping: displacing an employee in the same competitive area but on a different competitive level who is in a lower tenure group, or in a lower subgroup within your tenure group.
  - b. Retreating: displacing an employee in the same competitive area but on a different competitive level and in the same tenure group and subgroup who has less service.
14. Grade and Pay Retention: Employees assigned to positions at a lower representative rate than the position from which they have been released are entitled to two (2) years of grade retention and subsequent pay retention in accordance with 5 CFR 536.

15. To determine employees' potential qualifications to bump or retreat into another position, before the Agency issues RIF notices it may ask employees to submit a qualifications update by a designated freeze date.
16. An employee shall be given ten (10) workdays to accept any placement offer made in accordance with his or her rights as provided for under the regulations or by this Article. Absent circumstances that would cause the Agency to extend the time frame, the employee's failure to respond within the above time frame shall be considered a rejection of the offer. Acceptance of a position offer made in accordance with 5 CFR 351 and this Article shall conclude the Agency's obligation to the affected employee as far as his or her RIF placement is concerned. Refusal of any placement made in accordance with the terms of this Article or under 5 CFR 351 shall result in separation of the affected employee.
17. Consistent with Federal Acquisition law and regulations, when employees are displaced as a result of a decision to contract out the work they perform, the Agency shall include in its solicitation a clause requiring the prospective contractor to offer the right of first refusal for employment openings under the contract to qualified downgraded and/or separated employees. Affected employees shall not be required to exercise their right of first refusal until such time as the Agency has fully met its obligations, as provided for in this Article and in applicable OPM RIF regulations, regarding the employee's placement. Employees declining to exercise such right shall in no way diminish rights he or she might otherwise have under the provisions of this Article and this Agreement.
18. The Agency shall explain to adversely affected employees their early retirement rights and options and provide retirement counseling to employees requesting it. Bargaining unit employees have the right to outplacement services described in 5 CFR 351 and current regulations.
19. Pursuant to the terms of Departmental Regulation 4030-330-001, employees subject to separation by a RIF shall be eligible for placement in the Career Transition Assistance Plan (CTAP) and/or placement on the USDA Reemployment Priority List (RPL). Once separated, such employees may also be eligible for placement assistance through the Interagency Placement Assistance Plan (ICTAP).
20. In accordance with USDA regulations, the Agency shall inform eligible employees of their right to register on the USDA Reemployment Priority List (RPL) for reemployment consideration. Subject to the placement provisions contained in OPM and USDA RPL regulations, career employees shall be eligible for rehire for two (2) years after placement on the RPL. Career conditional employees shall be eligible for one year.
21. The Agency shall provide resume-writing software and access to the Internet in each program area or over the local area network. To the extent that such activities do not excessively interfere with ongoing Agency work, affected employees shall be allowed reasonable use of its equipment to seek outplacement opportunities. Such equipment

shall include but not be limited to: computers, phones, fax machines, printers, and copiers. To the maximum extent possible, employees shall also be allowed a reasonable amount of administrative leave for such purposes.

22. The Agency shall also grant affected employees a reasonable amount of administrative leave to attend, visit, or participate in the following local activities, such as: job fairs; job interviews; seminars, counseling services and appointments with outplacement consultants; agency-provided career transition services; meetings with unemployment officials; and other job search activities (including access to any available electronic-job-posting bulletin boards). The Agency shall make facilities and office spaces available for such activities.
23. In order to allow separated employees the opportunity to apply for unemployment compensation, the Agency shall make every reasonable effort to ensure that separated employees receive a copy of the Separation-RIF SF-50, or equivalent form, prior to the employee's effective separation date. It shall also ensure that D.C., Maryland, and Virginia unemployment compensation forms are available.
24. Eligible employees who have been involuntarily separated from the Agency as a result of a RIF shall be granted severance pay in accordance with 5 CFR 550.

#### **Section D. Transfer of Functions**

1. A transfer of function is the transfer of the performance of a continuing function from one competitive area to one or more other competitive areas, except when the function being transferred is virtually identical to functions already being performed in the gaining competitive area(s); or the competitive area in which the function has been performed is being moved to another local commuting area.
2. The Agency agrees to discuss impending actions with employees prior to the initiation of any transfer of functions in accordance with its obligations set forth in Article 36 (Reorganizations and Other Workplace Changes). This provision in no way waives or conditions the Union's right to negotiate to the full extent of the law over matters concerning proposed transfers of function insofar as such matters are not addressed by provisions of this Agreement.
3. An employee occupying a position that has been identified for transfer has no right to transfer with a function, unless the alternative is separation or downgrading in the competitive area losing the function.
4. The Agency shall notify the affected employees and the Union of the upcoming transfer of function. To the extent possible, such notice shall be at least sixty (60) full days before the anticipated transfer is implemented. For transfer of functions not resulting in RIFs, notices shall include information agreed to by the Parties resulting from agreements reached from labor-management activities effected under Article 36 (Reorganizations and

Other Workplace Changes) of this Agreement. In situations where RIFs are conducted in conjunction with a transfer of function, notices shall contain the information specified in Section C of this article.

5. Prior to implementing a transfer of function wherein the affected employees will be moved into a different local commuting area, the Agency shall solicit interest from those employees who wish to be considered for the relocation with the TOF. This list of volunteers shall be used to determine whether the TOF can be accomplished using volunteers. When the number of volunteers exceeds the number of positions needed in the new competitive area, preference shall be given to employees with highest retention standing based on their service computation date.
6. If a RIF is conducted in association with a TOF, it shall be done in accordance with USDA and Federal regulations, and provisions of this Article and Agreement.

### **Section E. RIF Appeals**

1. Any employee who has been separated or demoted under RIF, and believes that the provisions of this article, or of applicable law, rules, or regulations have not been correctly applied, may file an appeal with the Merit Systems Protection Board (MSPB). However, an employee who has accepted an offer of another position at the same grade and same representative rate may not appeal to MSPB in accordance with applicable Federal regulations.
2. Along with the RIF notice, provided for in Section C of this Article, adversely affected employees shall be provided with copies of the MSPB appeal form. At that time they shall be advised, in writing, that they:
  - a. have thirty (30) calendar days after the effective date of the action to file an appeal;
  - b. may have access to the applicable MSPB regulations regarding the processing of appeals;
  - c. may file the appeal in person or by mail and where such appeal should be filed; and
  - d. are responsible for ensuring that the appeal is timely filed at the appropriate MSPB field office.
3. Bargaining unit employees may not use the negotiated grievance procedure to appeal a RIF action.
4. An employee may not file an appeal before the effective date of the RIF action.

## **ARTICLE 24: PERFORMANCE APPRAISAL**

### **Section A. General**

1. Both Parties agree that the Agency will strive for excellence in Agency performance in order to fulfill its commitment to providing the highest quality public service.
2. The purpose of the performance management system is to involve employees in a communication process in order to improve individual and organizational performance, program effectiveness, and accountability by focusing on results, quality of service, and customer satisfaction, and by aligning standards and elements with organizational goals and strategic plans.
3. The performance management system encompasses the following:
  - a. Continuous communication between employees and their supervisors when planning, evaluating, appraising and recognizing performance;
  - b. Transparency and fairness;
  - c. Employee development; and
  - d. Recognition of team contributions.
4. Performance appraisal is a continuous process. It is an integral part of a sound employee/supervisor relationship involving communication between employee and supervisor concerning requirements or job expectations, performance necessary to achieve them, and progress in terms of meeting stated objectives. Communication shall include on-going feedback between customers, employees, and supervisors about the level and quality of performance. Performance appraisal is a joint process designed to increase constructive communication between the supervisor and the employee, and to improve the employee's performance.
5. Performance work plans including elements and standards shall be based on the requirements of the position described in the current position description (See Article 9, Position descriptions, Section 1, paragraph 1.).

### **Section B. Definitions**

1. Appraisal - the act or process of reviewing and evaluating the performance of an employee against the performance work plan.
2. Appraisal period - The period of time during which an employee's performance will be reviewed and a rating of record will be prepared. The appraisal period for all employees is October 1 through September 30 of the following year.
3. Critical performance element - a component of an employee's position that is of such importance that unacceptable performance on the element would result in a determination that the employee's overall performance is at the unacceptable level.

4. Opportunity to Improve (OTI) - a written notice informing an employee of performance deficiencies and of the action(s) to be taken by the employee to improve performance during a specified period of time.
5. Performance Standard - the written expression of the performance, threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, expressions of quality, quantity, cost-efficiency, timeliness and manner of performance.
6. Performance work plan - the written document that identifies the critical performance elements and standards against which the employee will be rated.
7. Progress review - a joint discussion between the rating official and the employee regarding the employee's progress toward achieving the performance standards. This review is not a rating. The content of the progress review is not grievable.
8. Rating Official - an employee's first line supervisor or other person designated with responsibility for establishing performance work plans, conducting progress reviews, and issuing final ratings of record.
9. Rating of record - the final summary rating normally issued at the end of the appraisal period which becomes a part of the employee's performance file maintained in the SPO.

### **Section C. Performance Work Plans/Standards**

1. Pursuant to 5 U.S.C. 4302, performance work plans/standards must, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the position in question.
2. In developing performance work plans, supervisors will encourage the input of employees who occupy such positions before implementing such performance work plans. Employees shall be provided a minimum of five (5) workdays to submit comments.
3. Performance work plans shall be established and communicated to the employee in writing no later than thirty (30) calendar days after the beginning of the appraisal period, or within thirty (30) days of appointment, reassignment, promotion, or detail for more than the minimum appraisal period. The employee and rating official shall sign and date the performance work plan indicating that it has been discussed and the employee has had the opportunity to obtain a clear understanding of the expected performance.
4. A performance work plan must contain performance elements and standards as determined by management and prescribed by the agency's performance management system.
5. Performance standards:
  - a. Are expressed measures (quantity, quality, timeliness, etc.) that the supervisor expects to be achieved for each performance element.

- b. Shall be defined for all performance elements at the fully successful or equivalent level.
  - c. Will be written in a common format.
  - d. Must be performance-related, not conduct-related, nor personality-related.
  - e. Shall be stated at the level of performance expected for the grade held by the employee, and shall be based on factors within the control of the employee.
6. An employee may request that standards or elements be reconsidered in light of comments or if the duties of the position have significantly changed.
7. The substance of elements and performance standards cannot be grieved.

#### **Section D. Progress Reviews**

1. Rating officials are responsible for initiating communication with the employee about actual performance and ensuring progress reviews are held. It is the employee's responsibility to seek that feedback or initiate the review if one is not scheduled by the supervisor.
2. Progress reviews provide the opportunity to identify and resolve problems in the employee's performance.
3. A progress review must be scheduled by the supervisor or employee and conducted whenever the employee reaches the approximate midpoint between the date the employee's performance work plan was issued and the end of the appraisal period unless the length of this period is less than ninety (90) days. Additional progress reviews are encouraged.
4. Progress reviews will summarize the employee's performance in each element of the performance work plan. Corrective actions may be identified, as appropriate.
5. The employee and the rating official will initial and date the appropriate blocks to indicate the discussions were held. A copy of any written comments will be provided to the employee.

#### **Section E. Ratings of Record**

1. Supervisors will prepare a narrative overall assessment of the employee's capabilities, as indicated by his/her performance during the appraisal period, of not more than one page. Likewise, employees are strongly encouraged to submit a statement of accomplishments of not more than one page. Both the supervisory assessment and the employee statement of accomplishments, if completed, will be included with the appraisal package.
2. All employees must be issued a rating of record annually. Employees who have not served under established elements and standards for at least ninety (90) calendar days during the appraisal period must have the timeframe extended to meet this requirement. Once the minimum appraisal period has been completed, a rating of record must be issued.

a. Employees who serve under established elements and standards for less than thirty (30) calendar days during the appraisal period (due to a movement, i.e., reassignment, promotion, within the Agency) will receive a rating of record based on their previous position.

b. Employees who serve under established elements and standards for less than thirty (30) calendar days during the appraisal period (i.e., new hire to the agency) will not receive a rating of record until the end of the following appraisal period.

3. Performance discussions and feedback comments should be prepared at the time of each position and/or supervisory change provided the employee has served under a performance work plan for at least ninety (90) calendar days. This feedback must be provided to the gaining or permanent supervisor to be considered at the time the final rating of record is issued.

a. Details and Temporary Promotions - At the conclusion of a detail or temporary promotion, the rating official to whom the employee was detailed will document the employee's accomplishments and forward the information to the employee's permanent supervisor.

b. Supervisory Change - Each individual who supervised the employee for ninety (90) calendar days or more during the appraisal period should discuss the performance with the employee, prepare feedback comments, and forward them to the current supervisor.

c. Position and Supervisory Change - When an employee who has occupied a position for at least ninety (90) calendar days leaves that position, the supervisor should prepare feedback comments on the employee's performance and forward them to the new supervisor.

d. Position Change Without a Supervisory Change - When an employee changes positions, but retains the same supervisor, the supervisor should prepare written comments on the employee's performance. This information must be considered in the employee's rating of record.

4. Annual ratings will be documented in a common format.

5. Official time spent performing Union representational functions will not be considered when evaluating an employee's performance.

6. The supervisor will schedule a meeting with the employee for the purpose of discussing the annual rating.

7. When a performance rating is presented to an employee, the discussion will include the basis for the rating. The employee will be asked to sign the original rating form. The employee's signature indicates receipt of the rating; it does not represent agreement with the rating. If the employee refuses to sign the rating of record, the rating official should note this in the appropriate block and indicate the date the rating was issued.

8. Ratings of record may be grieved.

## ARTICLE 25: WITHIN-GRADE INCREASES

- A. Employees may be granted WGI's when the current level of performance and most recent rating of record are at least "Fully Successful" or its equivalent. If the employee has met the above then the WGI will be effective the first pay period following completion of the required waiting period.
- B. When a supervisor concludes that an employee's work is not **at least** at the "Fully Successful" or its equivalent level, the supervisor will notify the employee in writing, as soon as possible but at least fifteen (15) calendar days in advance of the scheduled effective date, that the WGI will be denied. The notification will state the element(s) and standard(s) where the employee has failed to perform at the "Fully Successful" or its equivalent level, including examples of performance that did not meet expectations, and information as to what areas of competencies need to be improved to bring the performance to the "Fully Successful" or its equivalent level. The notice will also advise the employee of his/her reconsideration rights. A denial of a WGI after a mid-year progress review, which did not identify areas needing improvement, should stipulate how performance declined in the second-half of the performance cycle.
- C. An employee may request reconsideration of a negative level of competence determination by filing, not more than fifteen (15) calendar days after the scheduled effective date of the WGI, a written response setting forth the reasons the Agency should reconsider the determination. Requests for reconsideration shall be filed with the employee's second level supervisor.
- D. Neither the substantive nor procedural aspects of WGI denials may be grieved until a reconsideration decision is due or issued, whichever is earlier. A reconsideration decision is due twenty (20) calendar days from the date of the second level supervisor's receipt of the employee's written request.
- E. Upon a review that finds an employee to have been eligible for a WGI, the WGI will be made retroactive with pay to the original effective date.

## **ARTICLE 26: UNACCEPTABLE PERFORMANCE**

### **Section A. Scope and Definitions**

1. For purposes of this Article, acceptable performance is performance that meets the performance requirement(s) or standard(s) at a level of performance above “unacceptable” in the critical element(s) at issue.
2. An action based on unacceptable performance is defined as the reassignment, reduction in grade or removal of an employee whose performance is unacceptable in one or more critical elements of the employee's position.
3. This section applies only to employees who have completed their probationary or trial period. It does not apply to employees serving on a temporary appointment.
4. A reassignment related to unacceptable performance will follow the procedures in Article 19 (Reassignments), Section D.

### **Section B. Procedural Requirements**

1. Because performance evaluation is a continuous process, the following procedures, consistent with 5 C.F.R. 432 shall be followed at any time during the year when a supervisor concludes that a bargaining unit employee's performance on any critical element is unacceptable and would be rated at the "Unacceptable" level.
2. There must be a discussion between the supervisor and the bargaining unit employee for the purpose of:
  - a. Advising the employee of specific shortcomings between observed performance in the performance element(s) under scrutiny and the performance standard(s) associated with that particular element(s);
  - b. Providing the employee with a full opportunity to explain the observed deficiencies; and,
  - c. Advising the employee of opportunities to attend counseling and training.
3. After the discussion, the supervisor should determine what action is best suited to the particular circumstances. Unacceptable performance may lead to reassignment, reduction in grade or removal.
4. Performance Improvement Plan: For each critical element in which the employee's performance is unacceptable, the rating official must afford the employee a reasonable opportunity to demonstrate acceptable performance commensurate with the duties and responsibilities of the employee's position and place the employee on a performance improvement plan.

a. When an employee is placed on a performance improvement plan, the opportunity period must be at least 60 days. The performance improvement plan must clearly identify and describe the performance deficiencies in the performance elements and standards for which the employee's performance is at the unacceptable level. If the rating official concludes that additional time is required to assess the employee's performance progress, the initial opportunity period may be extended. If the opportunity period is extended, the rating official must notify the employee in writing, of the extension.

b. If the employee does not demonstrate an acceptable level of performance for a critical element during or following the opportunity period, the rating official may initiate a reassignment, reduction in grade, or removal action.

c. If an employee has performed acceptably for one year from the beginning of an opportunity period and the employee's performance again becomes unacceptable, the rating official must afford the employee an additional opportunity to demonstrate acceptable performance before determining whether to propose a reassignment, reduction in grade or removal action. A proposed action may be based upon instances of unacceptable performance which occur within a 1-year period ending on the date of the notice of proposed action.

5. Notice of Proposed Adverse Action: An employee whose reduction in grade or removal is proposed is entitled to (30) calendar day's advance written notice, which informs the employee:

a. Of the nature of the proposed action:

b. Of the critical element(s) of the employee's position involved in each instance of unacceptable performance;

c. Of the specific instance(s) which demonstrate(s) unacceptable performance by the employee on which the proposed action is based;

d. The time to reply and to whom;

e. The right to be represented by the Union; and,

f. The right to make an oral and/or written reply and to receive a written decision with appeal rights stated.

6. Employee Response

a. The employee will be given the opportunity to respond orally and/or in writing prior to a decision. Any request for an oral reply must be submitted within seven (7) calendar days. Written replies must be submitted and oral replies made within fifteen (15) calendar days of receipt of the notice of proposed action.

b. If the employee elects to make an oral reply, the Agency may make a written report of the oral reply and will provide a copy to the employee.

## 7. Decision Letter

a. The deciding official will be an official occupying a higher position (if one exists) than the official proposing the action.

b. The deciding official shall prepare a decision letter, which shall include all of the following:

(1) A determination of the final action;

(2) Findings with response to each instance of unacceptable performance listed in the letter proposing the action;

(3) Findings with response to each dispute, if any, raised by the employee's reply;

(4) The effective date of the action. The effective date must be no earlier than thirty (30) calendar days after the date on which the employee received the proposed notice of adverse action;

(5) Written concurrence of the action by an official occupying a higher position (if one exists) than the official proposing the action;

(6) Notice to the employee that he or she has the option to appeal the action to the Merit Systems Protection Board (MSPB) or through the negotiated grievance procedure, but not both; and,

(7) Notice to the employee that he or she will be deemed to have exercised his/her option to raise the matter under one procedure or the other at the time the employee timely files a written grievance or files a notice of appeal under the applicable MSPB procedure.

c. If the employee is the subject of an action based on unacceptable performance related to a disability, and the employee is eligible and files for disability retirement, and the Agency recommends approval, the Agency may delay the action to allow a determination to be made concerning the disability retirement.

8. Time Extensions: Except for the advance notice period in section B 5, any of the time limits set forth in this Article may be extended or waived by mutual agreement of the parties.

## **ARTICLE 27 – AWARDS & RECOGNITION**

### **Section A - Introduction:**

The use of monetary and non-monetary awards has been proven to have a significant effect on employee morale, motivation and performance. Award programs provide recognition based on employee performance, improvement, contributions and achievements that contribute to an Agency's mission. An effective awards program is intended to motivate and reward employees to continually strive for excellence. The Parties agree that a motivational incentive awards system is a necessary and useful mechanism through which employees' accomplishments shall be recognized and to provide an incentive for higher achievement. Employees and managers are strongly encouraged to take an active part in the system by objectively recognizing and rewarding high caliber performance or contributions that exceed expectations. Management will set aside the requisite amounts of funds allocated for the award program by Congress and OPM regulations.

### **Section B - Guidelines:**

Incentive awards are granted in the form of monetary and non-monetary recognition based upon the criteria and in accordance with direction contained in this agreement and USDA and Government-wide regulations pertaining to employee awards and recognition. All Parties agree to comply with USDA Directive 4040-451-1, the "*USDA Employee Awards and Recognition Program*" (issued January 20, 2011), and other applicable policies and regulations issued by the USDA and OPM regarding awards and recognition. A copy of this guide may be obtained online at: [www.ocio.usda.gov/directives/doc/DR4040-451-1.pdf](http://www.ocio.usda.gov/directives/doc/DR4040-451-1.pdf)

Nothing in this Article shall in any way be construed as a waiver of the Union's rights to negotiate to the full extent of the law over changes in the Agency Awards System.

### **Section C - Eligibility:**

All Bargaining Unit employees may be eligible for most types of awards and recognition if nominated by their supervisor and approved by their manager. Nomination by their supervisor and approval by their manager does not automatically guarantee awards to employees. All provisions of USDA Directive 4040-451-1 must be successfully complied with, including but not limited to: timely submission of required documents by management and employees, necessary funds to implement awards or recognition; employee has requisite time in unit; supervisor and/or manager has requisite time in unit; employee's performance meet the requisite standards required for the particular award or recognition; and the superior performance being awarded and recognized occurred within the requisite time periods.

## **Section D – Types of Recognition:**

**Informal Recognition:** Agency managers are encouraged to issue time off awards as well as certificates of accomplishment or appreciation to honor employees for their efforts throughout the year in accordance with Departmental regulations.

Recognition may be given to eligible employees for performance or achievements which benefit the Agency or staff, but does not merit a cash, time-off, or honor award. Informal recognition includes non-monetary gifts of nominal value, which may be purchased with public funds for appropriate use in the public sector. Although gift certificates/cards may be issued to employees; however, Informal Recognition gifts items may not exceed the limits set by USDA regulations (items priced more than \$250.00).

**Formal Recognition:** Recognition may be formally given to eligible employees for events and actions including, but not limited to: retirement, meritorious suggestions, excellent safety and attendance records and length of service.

## **Section E – Types of Awards:**

**Non-monetary awards** may be given to eligible employees for actions or performance that do not meet the standard for a cash award or in cases where the contributions do meet the standard; however, the supervisor chooses not to grant a monetary award. These awards may be given for length of service (Career Service Award); a specific outstanding accomplishment, such as: superior contribution on a project or assignment; a meritorious achievement or invention which contributed to the Agency's mission, efficiency, or customer satisfaction. Non-monetary awards may consist of letters of appreciation, certificates, time off, and/or items which do not exceed the limits of USDA regulations (items priced more than \$250.00).

**Monetary awards** may be given to eligible employees for performing well during the course of a rating cycle (performance awards) or for a particular accomplishment, such as those described above as non-monetary awards (which the supervisors in this case determine a monetary award is in order), and those described below:

1. **Performance Awards:** These awards may be given to eligible employees at the end of the performance cycle and may be received only once during the performance cycle. These awards are cash awards based solely on an employee's performance rating of record assigned at the end of the appraisal period. Annual performance must be at least fully successful to receive a performance award and the award amount may not exceed ten (10) percent of an annual salary. The Agency will endeavor to process the performance awards for employees prior to December 10<sup>th</sup> of each year. These awards will be administered in accordance with Federal and Departmental regulations and guidelines, and this agreement.
2. **Within-Grade-Increases:** Within-grade increases (WGIs) or step increases are periodic increases in a General Schedule (GS) employee's rate of basic pay from one step of the grade of his or her position to the next higher step of that grade. These awards may be given to eligible employees who qualify for Within-Grade-Increases or step increases. For WGI purposes, an employee's rate of basic pay is the rate of pay fixed by law or

administrative action for the position held by the employee before any deductions and exclusive of additional pay of any kind.

WGs apply only to GS employees occupying permanent positions. "Permanent position" is defined in 5 CFR 531.403 as a position filled by an employee whose appointment is not designated as temporary and does not have a definite time limitation of 1 year or less. "Permanent position" includes a position to which an employee is promoted on a temporary or term basis for at least 1 year. The term does not include a position filled by an employee whose appointment is limited to 1 year or less and subsequently extended so that the total time of the appointment exceeds 1 year.

**Quality Step Increases:** A Quality Step Increase is an additional step increase that may be granted in recognition of high quality performance above that ordinarily found in the type of position concerned. Management must show that the proposed recipients have performed at a truly exceptional level to justify a permanent increase to their rate of basic pay. To be eligible for a Quality Step Increase, employees must:

- a) be below step 10 of their grade level;
- b) have received the highest rating available under their performance appraisal system;
- c) have demonstrated sustained performance of high quality; and
- d) have not receive a Quality Step Increase within the preceding 52 consecutive calendar weeks-

3. **Extra Effort Awards:** These awards consist of a lump sum cash award that recognizes specific accomplishments that are in the public interest and have exceeded normal job requirements. Award amounts range from \$50.00 to more than \$10,000.00 depending on the achievement being recognized according to the Measurable or Non-measurable Benefits Scale. These awards may be presented individually or to groups. These awards may be given at any time and there is no limit to the number of extra effort awards a Bargaining Unit employee may receive.
4. **Spot Awards:** These awards are a form of an extra effort award that recognizes individuals or groups of employees for their day-to-day extra efforts and contributions. These awards may be given at any time and there is no limit to the number of spot awards a Bargaining Unit employee may receive.
5. Nothing shall preclude the Agency from establishing a supplemental awards fund at the Administrator's level to recognize individuals, units and teams who demonstrate extraordinary performance accomplishments during an awards cycle. –In such occurrences, the Union will be notified of any Agency program established to award such funds prior to its implementation. The Union reserves its rights to negotiate over impact and implementation of any resultant changes

## **Section F. Representation and Review**

1. The Agency will provide the Union an annual Award Report for the previous fiscal year no later than the end of pay period 26 of each calendar year. The Report will list the number of agency employees who received awards identified by grade, series, bargaining unit status, and the type of award (i.e. QSI, individual cash awards, group cash awards, and time off awards). In addition, by the same date, the Agency will provide a report summarizing the Agency's annual performance ratings for the previous appraisal period showing summary ratings by bargaining unit status.
2. If the Agency establishes an awards committee(s) for such purposes as assessing the program's effectiveness and/or addressing specific program issues for the purpose of developing recommendations for program improvement, it agrees to include at least one AFSCME Union representative on the committee(s).

## **Section G. Fairness**

The awards system shall be administered in a manner that is fair, equitable, and non-discriminatory, and which does not favor one group over another, such as by organization, by personnel system (e.g. Civil Service), by grade, by job series, or by prohibited or discriminatory categorization, as defined in Article 28 (Prohibited Personnel Practices) and Article 38 (Equal Employment Opportunity) of this Agreement.

## **ARTICLE 28: PROHIBITED PERSONNEL PRACTICES**

### **Section A. Purpose**

1. For the purpose of this Article, and in accordance with the Civil Service Reform Act of 1978 (5 U.S.C. Section 2302), prohibited personnel practice means any action described in Section B 1 below.

2. For the purpose of this Article with respect to an employee in, or applicant for, a covered position in the agency, personnel action means:

- a. An appointment;
- b. A promotion;
- c. An action under the Civil Service Reform Act of 1978 (5 U.S.C. Chapter 75) or other disciplinary or corrective action;
- d. A detail, transfer, or reassignment;
- e. A reinstatement;
- f. A restoration;
- g. Reemployment;
- h. A performance evaluation under Chapter 43 of the Civil Service Reform Act of 1978 (5 U.S.C. Chapter 43);
- i. A decision concerning pay, benefits, or awards; or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subsection; and
- j. Any other significant change in duties or responsibilities which is inconsistent with the employee's salary or grade level.

### **Section B. Practices**

1. Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority:

- a. Discriminate for or against any employee for employment:

- 1). On the basis of race, color, religion, sex, or national origin, as prohibited under Title 7, Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);
- (2). On the basis of age as prohibited under Section 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);
- (3). On the basis of sex, as prohibited under Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206[d]);
- (4). On the basis of handicapping condition, as prohibited under Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or
- (5). On the basis of marital status or political affiliations, as prohibited under any law, rule, or regulation.

b. Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of:

(1). An evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

(2). An evaluation of the character, loyalty, or suitability of such individual.

c. Coerce the political activity of any person (including the providing of any political contribution or service) or take any action against any employee as a reprisal for the refusal of any person to engage in such political activity;

d. Deceive or willfully obstruct any person with respect to such person's right to compete for employment;

e. Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

f. Grant any preference or advantage not authorized by law, rule, or regulation to any employee (including defining the scope or manner of competition or the requirement for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

g. Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in 5 U.S.C. 2302, Section 3110[a][3]) of such employee if such position is in the Agency in which such employee is serving as a public official (as defined in 5 U.S.C. 2302, Section 3110[a][2]) or over which such employee exercises jurisdiction or control as such an official;

h. Take or fail to take a personnel action with respect to any employee or applicant for employment as reprisal for:

(1). Disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences:

(a) A violation of any law, rule, or regulation, or

(b) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law, if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(2) Any disclosure to the Special Counsel for the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences:

(a) A violation of any law, rule or regulations, or

(b) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

i. Take or fail to take any personnel action against any employee or applicant for employment as reprisal for the exercise of any appeal right granted by any law, rule, or regulation;

j. Discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency, from taking into account in determining suitability or fitness, any conviction of the employee or applicant for any crime under the laws of any state, the District of Columbia, or the United States; or

k. Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in 5 U.S.C. 2301.

2. While it is recognized that threats are not specifically covered as a prohibited personnel practice under 5 U.S.C. 2302, the agency will not tolerate such practices.

### **Section C. Withholding of Information**

1. Nothing in Section B above shall be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress.

#### **Section D. Equal Employment Opportunity**

Nothing in Section B shall be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee in the civil service under:

1. Title 7, Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
2. Section 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631-633a), prohibiting discrimination on the basis of age;
3. Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206[d]), prohibiting discrimination on the basis of sex;
4. Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or
5. The provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

#### **Section E. Prohibited Personnel Practice**

1. An employee affected by a prohibited personnel practice may raise the matter under a statutory procedure or the negotiated grievance procedure (Article 41, Grievance Procedures), but not both, unless permitted by law.

## **ARTICLE 29: DISCIPLINARY AND ADVERSE ACTIONS**

### **Section A. Definitions**

For the purposes of this Agreement, the following definitions are used:

1. A **suspension** is defined as the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.
2. A **disciplinary action** is defined as a letter of official reprimand or a suspension of fourteen (14) calendar days or less.
3. A **reprimand** is defined as a written document describing the inappropriate conduct or other deficiency (e.g., failure to obtain prior approval for outside employment) giving rise to the reprimand, and provides official notice that a failure to correct the inappropriate conduct or deficiency, or future misconduct, may result in more severe action.
4. An **adverse action** is defined as a suspension of more than fourteen (14) calendar days, involuntary reduction in grade or pay, or removal.

### **Section B. General Provisions**

1. Employees will not be disciplined for exercising their rights or on the basis of the protections afforded them under 5 U.S.C. 2302 (Prohibited Personnel Practices) and 42 U.S.C. Chapter 21, Subchapter VI (Civil Rights - Equal Employment Opportunities), which are referenced and addressed in Article 28 (Prohibited Personnel Practices) and Article 38 (Equal Employment Opportunity) of this Agreement.
2. No bargaining unit employee will be disciplined and/or subject to adverse actions except for such cause as will promote the efficiency of the Service. The Employer agrees that any disciplinary and/or adverse action will be taken in accordance with applicable law, rule, government-wide regulations and this Agreement. In those instances where timely action is not taken and employees have engaged in inappropriate behavior that does not warrant discipline or adverse action, supervisors shall discuss and/or counsel and/or warn that those unacceptable behavioral actions could, if continued, constitute grounds for future disciplinary and/or adverse actions. Before deciding on a particular penalty, the employer will consider the applicable Douglas Factors (Douglas v. VA, 5 MSPR 280, 305-06 (1981)), and agency regulations, including the USDA penalty guide.
3. Unless otherwise stated within this Article, disciplinary/adverse actions will be administered as timely as possible.
4. In any disciplinary action or adverse action, the employee will be furnished with a copy of the material relied upon by the Employer to take the action at the time of the notice of the proposal of such action.
5. Employees may grieve those items in Section A in accordance with the terms of Article 41, Grievance Procedures, of this Agreement.

6. Copies: See Article 30 - Notices to Employees, for information on copies to be provided.
7. The Agency will comply with employee rights associated with investigative meetings as found in Article 2 (Employee Rights), Sections D and E, of this Agreement.

### **Section C. Reprimand**

1. Reprimands shall be maintained in the employee's Official Personnel Folder (OPF) for a period of up to two (2) years. This time period will be stated in the letter of reprimand. The period of retention may subsequently be reduced when the employee's supervisor determines that circumstances warrant a shorter period. Such determination may be made in response to an employee's request to remove the reprimand from the employee's OPF. Such reprimands which have been overturned as a result of grievance or other authority shall be immediately removed from the OPF.

### **Section D. Suspensions of 14 Days or Less: Cause**

1. The Employer may suspend an employee for fourteen (14) calendar days or less for such cause as will promote the efficiency of the Service, including discourteous conduct to the public confirmed by the immediate supervisor's report or any other discourteous conduct.
2. To clarify the alleged misconduct(s) and, if necessary, help correct employee behavior, the supervisor will discuss the pattern of conduct in a timely fashion with the employee, consistent with Section B2 of this Article and Article 2, Employee Rights, Section E.
3. The Employer may not suspend an employee on the basis of any reason prohibited by 5 U.S.C. 2302 (Prohibited Personnel Practices).
4. Procedures: When the Employer proposes to suspend an employee for fourteen (14) calendar days or less, the following procedures will apply:
  - a. A notice of proposed suspension of fourteen (14) calendar days or less will be provided to the employee at least fourteen (14) calendar days prior to the effective date of the action. The proposed notice will inform the employee of:
    - i. The proposed action;
    - ii. The specific reason(s) for the proposed action;
    - iii. The opportunity to review the evidence that is relied upon to support the charges;
    - iv. The time to reply and to whom to furnish affidavits and other documentary evidence in support of the reply;
    - v. The right to be represented by the Union (per Article 2 - Employee Rights, Section F);

- vi. The right to make an oral and/or written reply within seven (7) calendar days from the receipt of the proposed action; and
  - vii. The right to a reasonable amount of official time as specified in Section F (Employee Replies) of this Article.
- b. The Agency will issue a final decision after receipt of the written and/or oral reply, or the termination of the fourteen (14) calendar day notice period. In arriving at its decision, the Agency will consider: only those reasons specified in the notice of proposed action and any reply made by the employee and/or the employee's Union representative. The decision letter will state which reason(s) and specification(s) are sustained and will address factual disputes, if any, raised in the employee's reply by stating the reasons why each factual dispute was rejected.

**Section E. Suspensions of More Than 14 Days, Reductions in Grade, and Removals**

1. Notice of Proposed Adverse Action: Unless otherwise provided by law (e.g. the crime provision of 5 U. S. C. 7513 (b)), an employee who receives a proposal for an adverse action is entitled to at least thirty (30) calendar days advance written notice which informs the employee of:
  - a. The proposed action;
  - b. The specific reason(s) for the proposed action;
  - c. The opportunity to review the evidence that is relied upon to support the charges;
  - d. The right to be represented by the Union (per Article 2 - Employee Rights);
  - e. The right to make an oral and/or written reply within fourteen (14) calendar days from the receipt of the proposed action;
  - f. To whom to reply and submit any documentary evidence in support of such reply; and
  - g. The right to a reasonable amount of official time as specified in Section F (Employee Replies) of this Article.
  
2. Action by the Deciding Official
  - a. After carefully considering the proposed letter, evidence of record, and the employee's response, if any, including any mitigating factors, the deciding official shall decide whether:
    - i. To institute the proposed action; or
    - ii. To propose alternative discipline (if not a decision to remove); or
    - iii. To institute a lesser action; or
    - iv. To withdraw the proposed action.

- b. Normally, the Agency will issue a final decision within thirty (30) calendar days after receipt of the written and/or oral reply, or after the time limit for reply has expired, whichever comes last. The final decision letter will state which reasons and specifications are sustained and will address factual disputes raised in the employee's reply. The decision letter will also advise the employee of his or her right to grieve or appeal the Agency's decision. Such notice shall be delivered to the employee on or before the date of the decision.
  - c. In arriving at his or her decision, the deciding official will consider: only those reasons specified in the notice of proposed action and any reply made by the employee and/or the employee's Union representative.
  - d. If the decision is not to remove the employee, the Employer may defer the effective date of the action(s) for up to fourteen (14) calendar days at the request of the employee.
  - e. Normally, the deciding official must be a higher-ranking official in the Agency than the official proposing the action if one exists in OO.
3. If discipline is imposed, the decision letter will inform the employee of his/her option to appeal the action to the Merit Systems Protection Board (MSPB) or grieve through the Negotiated Grievance Procedure, but not both, and will inform the employee that he/she will be deemed to have exercised his/her option to raise the matter under one procedure or the other at the time the employee timely files a written grievance or files a notice of appeal under the applicable MSPB procedure.

### **Section F. Employee Replies**

1. In all matters where disciplinary action is being proposed, an employee may exercise his or her right to reply either orally and/or in writing and to furnish affidavits and other documentary evidence in support of his or her reply. Such replies will be made on official time if the employee is otherwise in an active duty status.
2. If the proposed suspension is covered by Section D of this Article, the Agency will provide the employee who is in an active duty status a reasonable amount of official time to: (1) review all material relevant to his or her case; and (2) consult with his or her Union representative with regard to his or her case.
3. If the proposed action being taken is covered by Section E of this Article, the Agency must give the employee who is in an active duty status a reasonable amount of official time to: (1) review all material relevant to his or her case; (2) prepare his or her oral and/or written reply; (3) consult with his or her Union representative with regard to his or her case; and (4) if applicable, secure any pertinent affidavits. Should the employee wish the Agency to consider any medical condition which may have contributed to his or her situation, the Agency must allow the employee a reasonable amount of time to retrieve such information.

### **Section G. Disability Retirement**

1. In those cases where the employee has applied for disability retirement prior to the decision to remove him or her, the Agency, upon request by the employee or his or her Union representative, may consider either placing that employee in LWOP status or delaying his or

her removal, pending a decision on the employee's disability retirement application.

#### **Section H. Alternative Discipline**

1. Whenever the Agency offers the opportunity for an employee to enter into an alternative disciplinary agreement (including last chance agreements), the subject employee has the right to consult with and have a Union representative present at any meeting or discussion with an Agency representative concerning a proposed agreement.
2. Alternative discipline processes and agreements will comply with Departmental regulations, and be voluntary on the part of the employee. An employee who is being provided the option to enter into an alternative discipline agreement shall be given a reasonable amount of official time to: (1) review all material relevant to his or her case, including documents cited in Sections D and E of this Article, as applicable; and (2) consult with his or her Union representative with regard to the case and proposed agreement.

#### **Section I. Time Limit Extensions:**

1. Subject to applicable law and regulations, any of the time limits set forth in this Article may be extended by mutual agreement of the parties.

## **ARTICLE 30: NOTICES TO EMPLOYEES**

1. When the Employer presents written notice to a bargaining unit employee concerning a personnel action in which the employee has appeal rights in accordance with applicable law, rule, regulation, and this agreement, the Employer will provide the employee with an original and one copy of the notice.

2. This copy at his or her option may be furnished to AFSCME Local 2846 to determine if a grievance should be filed. All disciplinary action, including Letters of Reprimand, Suspensions, Notices of Furlough, Notices of Reduction in Grade, or Notices of Proposed Removals will notify employees of their rights to appeal the action through the Union.

## **ARTICLE 31: WAIVER OF OVERPAYMENT**

### **Section A. Processing Requests**

1. When an employee receives an overpayment of pay and allowances, he/she may request a waiver of overpayment in accordance with applicable law, rules, and regulations.
2. The Employer will process all requests for waiver of overpayment within the timeframe stipulated by applicable law, rules, and regulations.
3. To the extent possible, if an employee has applied for a waiver of overpayment. No overpayment will be collected until the employee's application for waiver of overpayment has been decided.
4. If a waiver of overpayment is denied, the employee will be sent notification of the reason(s) for the denial in writing.

### **Section B. Repayment**

1. When an employee is not granted a waiver of overpayment, the employee may be permitted to make repayment in accordance with applicable law, rule, and regulation.
2. If an employee terminates employment with the Employer prior to the liquidation of any overpayment described in this Article, the Employer retains the right to satisfy any outstanding balance from any funds due to the employee.

## **ARTICLE 32: RETIREMENT COUNSELING AND RESIGNATION**

### **Section A. Retirement Counseling**

1. Employees within five (5) years of retirement eligibility may have a reasonable amount of time, without charge to leave, to visit agency retirement counselors.
2. Employees within five (5) years of retirement eligibility may be allowed up to 5 days to attend Agency-sponsored retirement training sessions or events on duty time.
3. The Agency agrees to make available an annual training program on retirement issues which any interested employee within five (5) years of retirement eligibility may attend. In the absence of such a program employees within five (5) years of retirement eligibility may be afforded the opportunity attend other similar OPM-sponsored retirement training sessions or events outside of their regular work location.
4. Employees within five (5) years of retirement eligibility may be granted annual leave to attend non-Agency sponsored retirement seminars.
5. The Agency will do nothing to prevent employees from receiving their estimated annuity from OPM and Social Security each year. Employees within five (5) years of retirement may have their annual estimate updated by an Agency retirement counselor upon request.
6. The Employer agrees to make a good faith effort to ensure information is provided for all bargaining unit employees whenever significant changes to retirement legislation or regulations occur.

### **Section B. Resignation:**

An employee may withdraw a resignation at any time prior to its effective date provided:

1. The withdrawal is communicated in writing (e-mail acceptable) to the Employer; and
2. The Employer has not made a commitment to any specific person to fill the position.
3. After the effective date of a resignation the employee may no longer change or withdraw the resignation.

## **ARTICLE 33: OUTSIDE EMPLOYMENT**

### **Section A. Introduction**

1. Employees may engage in outside employment during non-duty hours that do not involve conduct prohibited by statute or Federal Regulation.

### **Section B. Prior Approval**

1. In accordance with 5 C.F.R. 2635.803, USDA has determined that all USDA employees who file either a Public Financial Disclosure Report (SF-278) or a Confidential Financial Disclosure Report (OGE 450) or an alternative form of reporting approved by the Office of Government Ethics, must seek approval before engaging in any outside employment. Financial disclosure report filers occupy high level positions or otherwise hold positions that have a direct and substantial effect on the interests of non-Federal entities. Accordingly, prior approval of these employees' outside employment is warranted.

2. All employees required to file OGE 450 shall obtain prior approval for outside employment. All requests for such outside employment must be in writing (e-mail acceptable) and submitted not less than ten (10) work days in advance of the proposed start work date. The Agency ethics officer in the Servicing Personnel Office (SPO) is designated as the official to receive such requests and will approve the request or notify the employee that approval is delayed with reasons prior to the proposed start date.

3. Employees not required to file OGE 450 are not required to request prior approval for outside employment. Even though prior approval is not required, outside employment of all employees must comply with all applicable laws and regulations.

### **Section C. Employer Consideration and Approval**

1. The Agency agrees not to disapprove requests for outside employment or activity without giving employees the opportunity to explain the requested employment or activity, and, if necessary, to answer questions the Agency has concerning the propriety of the requested employment or activity. The Agency ethics officer may require this to be done orally, in writing, or both depending on the case.

2. The Agency agrees that all requests for outside employment or activities shall be considered using the criteria established in 5 C.F.R. 2635, by the Office of Government Ethics, and the USDA Standards of Conduct and negotiated written notices and Personnel Manuals (PM) provided by the Agency and in effect at the time the request is submitted.

3. The Agency agrees to provide to affected employees a written explanation for denials of requests for outside employment or activity.

4. Information developed or received in evaluating these requests will be held in confidence by all Agency employees.

## **ARTICLE 34: EMPLOYEE ASSISTANCE PROGRAM**

### **Section A. Objective**

1. The Employer and the Union support the practice of offering the services of the Departmental Employee Assistance Program (EAP) to employees. Some of the services offered by EAP include help for alcoholism, drug abuse, duress, financial or legal concerns, marriage or family concerns, or other personal problems. The Employer agrees to continue to support the Departmental Employee Assistance Program (EAP).

### **Section B. Union Cooperation**

1. Employees are free to seek rehabilitation and other assistance made available under the provisions of the EAP.

### **Section C. Confidentiality**

1. Employee participation in the EAP will be strictly confidential, unless the employee signs a waiver releasing this confidentiality, or a waiver is contained in a settlement agreement. The Employer may request an employee to sign release forms; however, this does not obligate the employee to do so.

### **Section D. Notification to Employees**

1. The Employer will continue to provide notice to employees explaining the EAP and the services it provides. An EAP poster containing the contact information for EAP will be conspicuously posted on unit bulletin boards.

### **Section E. Program Participation**

1. The parties recognize that the EAP is designed to deal with problems at an early stage when the situation may more likely be correctable. If an employee participates in the EAP, the responsible supervisory official will give consideration to this fact in determining any appropriate disciplinary and/or adverse action, if applicable.

2. The Employer will not take disciplinary action against an employee for seeking assistance through the EAP. Participation in the EAP will not prevent the Employer from proposing and taking conduct and performance-based actions.

3. Employees requesting the services of EAP will not be denied an opportunity to contact EAP. The Employer agrees to assist employees by providing information and encouragement to use counseling services as needed. Should counseling appointments require absence from the workplace, employees must make the appropriate advance arrangements with their supervisors.

4. When the Employer determines that a conduct or performance problem exists which may be drug or alcohol related and refers the employee to EAP, the Employer may take appropriate

disciplinary or adverse action, consistent with the charges and applicable laws and regulations. In certain instances, access to EAP may be considered a reasonable accommodation.

### **Section F. Leave During Duty Hours**

1. With supervisory approval, employees may be allowed up to one hour (or more as necessitated by travel time) of excused absence for the initial counseling session(s) during the assessment/referral phase of rehabilitation. Thereafter, absences during duty hours for rehabilitation or treatment must be charged to the appropriate leave category in accordance with law and leave regulations. Supervisors have the right to verify the employee's attendance with an EAP counselor.

### **Section G. New Hire Orientation**

1. Newly hired employees will receive appropriate EAP information and materials during orientation.

## **ARTICLE 35: HEALTH AND SAFETY**

### **Section A. General**

1. Consistent with applicable law, Executive Order 12196, Occupational, Safety, Health Administration requirements, as well as other applicable health and safety codes, the Agency will support the maintenance of safe and healthful working conditions for all employees. If an appropriate authority determines there is a significant health or safety problem and the Department does not take timely action on the problem, the Agency, to the extent of its authority, will provide an appropriate remedy to address the needs of employees. Both Parties will cooperate to that end and will encourage employees to work in a safe manner.

2. Pursuant to applicable law and regulation, no employee shall be subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthy working condition, or other participation in Agency occupational safety and health program activities, or because of the exercise by such employee on their behalf or another's of any right afforded by Section 19 of the Occupational Safety and Health Act (29 U.S.C. Chapter 15, Section 668), Executive Order 12196, or 29 C.F.R. 1960. These rights include, among others, the right of an employee to decline to perform their assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting.

### **Section B. Agency Action**

1. The Agency will work with all persons, entities, or organizations which own and/or control work space to which bargaining unit employees are assigned to ensure that healthy and safe working conditions are maintained and to ensure compliance with applicable laws, rules, and regulations, and this Agreement. The Agency will provide feedback to employees and the Union regarding the results of any action taken.

2. The Agency agrees:

- a. To provide information concerning Federal Employee Health Benefits (FEHB) and Life Insurance Programs, pre-retirement planning, retirement benefits information, the USDA's TARGET center, and the Employee Assistance Program (EAP);
- b. To make information available to employees on health benefits open season activities and maintain copies of offered health plans for review upon request;
- c. To work with the building manager, the Department, General Services Administration (GSA) and private lessors, as applicable, to have safe electrical equipment, and adequate light and ventilation in all work areas;
- d. To provide information available through the Department about ergonomic hazards and how to prevent ergonomic related injuries;

- e. To grant periodic relief to employees using video display terminals (VDTs) for extended periods during the course of a day, by interspersing other work tasks requiring less visual concentration;
- f. To provide, to the extent possible, safety devices, such as anti-glare screens and wrist props, which will promote greater safety and comfort for VDT operators;
- g. To follow the Americans With Disabilities Act and GSA regulations in providing facilities appropriate and adequate to accommodate the needs of disabled employees;
- h. To inform the Union of any decision to introduce new office equipment into the work place so that the Union may, thereafter, request bargaining concerning any appropriate arrangements required because of the new equipment;
- i. To obtain and provide to the Union copies of applicable regulations;
- j. To make available for review by the Union all safety reports generated by or available to the Agency that are required by law, regulation, and/or this Agreement; and
- k. To assure the provision of safe, potable, drinking water to all unit employees within ready access of working areas. Ready access is defined as a distance no more than the location of the nearest gender appropriate restroom.

### **Section C. Union Action**

1. The Union will encourage all bargaining unit employees to work safely with due consideration for the safety, health and comfort of all fellow employees. To avoid preventable unhealthy or unsafe working conditions, the Union will encourage respect and care by bargaining unit employees for the Agency's facilities and equipment and their own work environment.

### **Section D: Employee Reports of Unsafe or Unhealthy Working Conditions**

1. Each bargaining unit employee is encouraged to report any unsafe or unhealthy working conditions to his or her immediate supervisor as soon as any such conditions come to his or her attention.

2. The Agency will:

- a. Investigate the reported condition as soon as is practicable, and may refer the situation to
  - (1). The appropriate OO or USDA office;
  - (2). GSA;
  - (3). The OSHA of the Department of Labor;
  - (4). The Health Unit, or

(5). Other appropriate official(s) for further investigation.

b. To the extent possible, the Union will be given an opportunity to accompany any inspector who responds on such a complaint during the inspector's physical inspection of the workplace unless it would be hazardous to accompany the inspector. The Union representative will be granted official time for this purpose.

3. The Agency will ensure a timely response to an employee report of hazardous conditions. No employee will be unreasonably required to continue working in a situation determined to pose the threat of imminent danger or significant health hazard as determined by the appropriate authorities.

4. If an employee is assigned duties which he/she reasonably believes could possibly endanger his/her health or well-being, the employee will immediately notify his/her immediate or second-line supervisor of the situation.

a. If the supervisor cannot solve the problem and agrees with the employee, the supervisor will, under normal circumstances, delay the assignment and refer the matter through the proper channels for appropriate action, unless the delay would unduly interfere with the Agency's operation.

b. When the supervisor does not agree with the employee's concerns, the employee has the right to consult the Union and the right to file a report in accordance with the applicable agency or departmental regulations.

### **Section E. Occupational Injury or Illness**

1. Employees who become injured or occupationally ill in the performance of duties shall report the injury or illness to their supervisor immediately. The supervisor will refer the employee to the Human Resources Division, the Health Unit, or other medical service as appropriate and as permitted by applicable law, rule or regulation. The supervisor shall also advise the employee to contact the Servicing Personnel Office (SPO) to obtain information on benefits under the Federal Employees' Compensation Act (5 U.S.C. 8101-8193). The Agency and employee shall cooperate in promptly processing all paperwork in connection with compensation claims.

### **Section F. Occupant Emergency Plan**

1. Each building in which bargaining unit employees are stationed within the United States will have an Occupant Emergency Plan. The Agency will issue an annual reminder of the Occupant Emergency Program Plan.

### **Section G. First-Aid**

1. The Agency will provide first-aid kits at Agency building locations for use when Health Unit facilities are not available.

2. The Agency may provide for training to interested employees for cardiopulmonary resuscitation (CPR) during duty or non-duty hours. If during duty hours, official time will be given to those approved in advance for participation.

### **Section H. Health Unit**

1. The Agency currently operates health units at the South Building, George Washington Carver Center, and Patriot's Plaza III. Both Parties will work cooperatively to ensure that the Department continues to maintain health units at these sites.

2. In the event an employee becomes incapacitated on the job, the Agency will notify Health Unit personnel who may call for emergency transportation if deemed appropriate.

### **Section I. Pre-Tax Health Insurance Deduction Benefit:**

1. The Agency will provide a pre-tax health insurance premium conversion plan for those employees participating in the FEHB program in accordance with applicable laws and Federal Regulations.

## **ARTICLE 36: REORGANIZATIONS AND OTHER WORKPLACE CHANGES**

### **Section A. Reorganization**

#### **1. Introduction**

- a. These procedures are intended to increase communication between management and employees, reduce potential employee/management friction and improve employee morale while recognizing management's and unions' rights. Additionally, the reorganization procedures should permit reorganization issues to be resolved at the lowest possible level, and in a more expeditious way than traditional bargaining.
- b. In these procedures, the term reorganization is considered synonymous with the terms realignment, organizational adjustment, or major workplace changes that are subject to bargaining.

#### **2. Pre-Proposal Stage**

- a. As early as practicable, managers, employees, and union representatives are expected to discuss all pertinent available information including key factors which might warrant reorganization. Managers are encouraged to use team building techniques to formulate reorganization proposals.
- b. Managers are encouraged to hold additional meetings with union representatives and affected employees as needed to formulate a written proposal.

#### **3. Pre-decisional Stage**

- a. A pre-decisional written proposal is presented to the Union and affected employees to evaluate. Reorganization proposals are normally prepared in accordance with DR 1010-001.
- b. Management announces and schedules at least five (5) days in advance a pre-decisional employee-management meeting at the level affected by the proposal. At the same time, the Union will be notified and included.
- c. Management answers questions and receives employee input directly or summarized by the Union.

#### **4. Evaluation Stage**

- a. Management presents complete formal reorganization proposal to the Union and affected employees. This will include a background statement, which bargaining unit employees are affected, old and proposed organizational charts (including grade and job series changes), before and after physical location of employees, target dates for implementation, managements point of contact, and any other necessary documents.
- b. Upon receipt, the Union has a ten (10) workday period to gather bargaining unit employee input, request additional reasonable information, and/or respond to management.
- c. Management shall meet all reasonable Union requests for relevant additional information, and, if needed, the evaluation period may be extended by mutual consent for up to an additional ten (10) workdays.

5. Determination Stage: After evaluating the reorganization plan, the Union will respond to management with one of the following responses:

- a. Concurrence with the plan as presented.
- b. Concurrence with the plan as modified in writing by mutual agreement of the Parties.
- c. Interest Based Bargaining Session: By mutual consent, the Parties may request a facilitated session in an attempt to reach consensus rather than proceed to formal negotiations.
- d. Formal Negotiations: The Parties revert to formal negotiations. Date is established by mutual consent.
- e. Stop Plan: The Parties agree by mutual consent to stop the reorganization procedures.

6. Implementation Stage: Management proceeds with implementation of the reorganization plan in accordance with existing personnel rules and labor relations law. The Parties will discuss any additional changes proposed after implementation begins. By mutual consent, the Parties may request a facilitated session to address significant additional changes to the reorganization plan.

### **Section B. Workplace Changes Other Than Reorganization**

1. Changes, other than reorganization, involving bargaining unit member relocation and modification of work sites in the Washington, D.C. metropolitan area will be handled in accordance with procedures contained in this section. The steps and/or time frames outlined below may be modified or waived by mutual consent of the Parties.
2. At the earliest possible stage, management notifies the Union of the need to schedule meetings/discussions with bargaining unit employee(s) on negotiable workplace change matters.
3. A pre-decisional information package is provided to the Union and affected employees including:
  - a. In the case of office moves, a current and proposed floor plan showing location of affected employees, equipment and the target date for implementation.
  - b. Other material relevant to the workplace change which may help clarify to the Union and the employees the impact of the change, if available.
4. A pre-decisional meeting is scheduled and held by the manager, generally with at least two (2) workdays notice.
  - a. The affected bargaining unit employees are provided with the latest written and verbal information about the change and are encouraged to provide verbal feedback to management on the plan during the meeting or afterwards through the Union.
  - b. A deadline for timely submission of bargaining unit employees written comments and suggestions on the pre-decisional plan is agreed upon by the Parties.

5. After the meeting, written/verbal comments and suggestions by bargaining unit employees will be channeled through the Union to management.
6. Management decides how the comments and suggestions are to be incorporated into the final plan.
7. Management's final plan is submitted to the Union. The plan should include: detailed current and proposed floor plan with desk locations, before and after room and work station square footage, and equipment placement, and; a statement on how employee comments are being addressed.
8. The Union has ten (10) work days after management submits the final plan to work with bargaining unit employees and Management to resolve differences between parties, if any. Within this time frame, the Union will decide whether to concur with the final plan or request formal negotiations. In either case, the Union will alert Management.
9. Provided the Union concurs with the final plan, Management will notify affected bargaining unit employees and the Union five (5) work days prior to implementation.
10. If changes to the agreed upon final plan are required, Management will notify the Union to assure that the Union may negotiate on behalf of bargaining unit employees, if desired.

### **Section C. Other Changes**

All other changes involving working conditions shall be governed by the following:

1. A proposed change, affecting the conditions of employment of any employee, will be submitted in writing by one Party to the other. The notice will include the following:
  - a. A description of the change or proposed change;
  - b. An explanation of how the change will/would be implemented; and
  - c. The date of implementation or proposed implementation.
2. The other Party will respond to the notice of proposed change within ten (10) work days of receipt of the notice. The response may include a request for information, briefing, and/or negotiation.
3. The initiating Party will respond to the request for information or briefing, or both, within ten (10) work days of receipt of the request.
4. Requests for negotiation will be made within ten (10) work days of receipt of information requested or completion of the briefing, and will be accompanied by proposals or counterproposals, as appropriate.
5. The parties may mutually agree to extend the time limits described above.

6. With regard to the proposed change, the Parties shall bargain over all matters that are negotiable consistent with law and this Agreement.

#### **Section D. Impasse Procedures**

If agreement cannot be reached on the matters under negotiation, the following procedures apply:

##### 1. Declarations of Impasse

a. Neither party may declare an impasse until all issues are agreed to or declared non-negotiable by the Agency or declared at an impasse by either Party. The Parties agree that each will use their best good-faith efforts to avoid impasse in negotiations.

b. Either Party declaring any provision non-negotiable will provide to the other Party a statement of non-negotiability and reasons therefore, without prejudice to later supplementation of the reasons.

2. In the event either Party believes there to be an impasse in negotiations, the Federal Mediation and Conciliation Service shall be immediately requested to provide services and assistance to resolve the dispute pursuant to 5 U.S.C. 7119.

3. If mediation services of the Federal Mediation and Conciliation Service do not result in resolution of the issue, either Party may invoke the services of the Federal Service Impasses Panel pursuant to 5 U.S.C. 7119. Prior to taking such action, however, the Party seeking to invoke the services of the Federal Service Impasses Panel will provide notice to the opposing party of its intention to take such action.

## **ARTICLE 37: COMMERCIAL ACTIVITIES**

### **Section A. General**

1. The Office of Operations and the Union agree to cooperate and communicate to the maximum extent practicable concerning Commercial Activities issues.
2. The Office of Operations agrees to notify the Union regarding any planned review of a function for contracting out that could affect bargaining unit positions, as required or allowed by law, rule or regulation including the Federal Activities Inventory Reform Act (FAIR) (PL 105-270), the Federal Acquisition Regulation (48 C.F.R. Section 7.3 et seq.), OMB Circular A-76 and this Agreement.
3. A Union representative may be invited to participate on any committee, group or task force organized to conduct a cost study, as long as Union participation is consistent with procurement and conflict of interest requirements.
4. The Union shall have the opportunity to review and make comments on the Office of Operations's annual OMB Circular A-76 Inventory. Management is not required to delay submission of the report to OMB or Congress for this to take place. Union review and comments can be obtained post-submission when necessary to ensure timely submission.

### **Section B. Joint Participation**

1. At the earliest possible stage of development after the Office of Operations determines to contract out, the Union will have the opportunity to provide input into the development of supporting documents and proposals, including the development of performance standards, performance work statements, management plans/efficiency studies, the milestone chart governing the conduct of the Commercial Activities study, the development of in-house and contract cost estimates, and any other detailed supporting data used in the development of the above documents.
2. The Office of Operations shall notify the Union in writing when a contracting study is underway.
3. The Office of Operations agrees to provide the Union a copy of any Statement of Work to be performed by a contractor that will affect working conditions or may adversely impact work performed or that could be performed by existing bargaining unit employees. The Union will be given ten (10) business days to provide comments before proposals are solicited from potential contractors.
4. The Office of Operations will provide the Union with advance notice of any planned walk through held for potential contractors in order to facilitate the Union's opportunity to observe each such walk through.

### **Section C. Information**

1. The Office of Operations will provide to the Union in a timely manner copies of pertinent information relative to contracting out, to the extent permissible by law, rule and regulation.
2. The Office of Operations will notify the Union and affected bargaining unit employees of an impending cost comparison and employees will be kept informed of major milestones in the process for the purpose of providing timely information concerning Commercial Activities studies. Such notification to the union shall include the names of all directly affected employees.

### **Section D. Bargaining**

1. When the Office of Operations determines that bargaining unit work will be contracted out, the Union shall be provided the opportunity to bargain concerning matters set forth in, and consistent with, 5 U.S.C. Chapter 71. The Union shall have ten (10) business days from the time of notification of the result of the solicitation to request such negotiation.

### **Section E. Appeals**

1. Actual A-76 decisions are not grievable under this Agreement, but can be pursued under the appeal process contained in OMB Circular A-76. The Office of Operations recognizes the right of first refusal required by OMB Circular A-76 and its Supplement. Declining to exercise the right of first refusal due to displacement by contracting out shall not be deemed to be a waiver of any appeal grievance rights by a bargaining unit employee under applicable law, regulation and this Agreement.
2. The Office of Operations agrees that, to minimize adverse effects on bargaining unit positions and employees affected by a contracting out decision, the procedures as outlined in Article 23 (Reductions in Force and Furlough) will be followed.
3. The Office of Operations recognizes that, in a standard competition, a majority of directly affected employees may appoint an agent to contest certain actions as set out in Attachment A, Section F of Circular A-76. The appointed agent may be the Union.

### **Section F. Performance Monitoring**

1. Should the Commercial Activities study result in a decision to convert to a contract, the Union is encouraged to bring known contract discrepancies to the attention of the appropriate Administrator or designee.

## **ARTICLE 38: EQUAL EMPLOYMENT OPPORTUNITY**

### **Section A. General**

1. The Employer affirms its commitment to the policy of providing equal employment opportunities to all employees and of prohibiting discrimination on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, membership in an employee organization, retaliation, parental status, military service, or other non-merit factor, and reprisal for previous Equal Employment Opportunity (EEO) activity. The Employer will remain vigilant in seeking to identify and eliminate any internal policy, practice or procedure which has the purpose or effect of impermissibly denying equal employment opportunities or equal access to OO programs or services. The Employer will also cooperate and work to resolve any discrimination inquiries or complaints. The parties agree that equal employment opportunity shall be administered in accordance with Title 7 of the Civil Rights Act of 1964 (42 U.S.C. chapter 21, Subchapter VI), 29 C.F.R. Part 1614, Title 5 U.S.C., Executive Order, and other applicable rules and regulations.

2. As early as practicable each year, the Employer shall provide the Union with a copy of the OO EEO Program Status Report (MD 715 Report) which will provide a comprehensive overview of the Agency's EEO Programs and workforce profiles as required in EEOC Management Directive 715. The Union reserves its right to file information requests pursuant to 5 USC 7114 regarding summary statistical data, according to job series, grade level, sex, age, and disability.

3. The Employer agrees to discuss any questions raised by the Union in connection with the data provided in the MD 715 Report and shall provide the opportunity for the Union to make recommendations on EEO priorities for the coming year. The employer will provide information requested by the Union consistent with law and regulation, including confidentiality obligations. Copies of the report will be provided to bargaining unit employees upon request, first by providing electronic access, and, if necessary, by hard copy.

4. The Union agrees to cooperate with the Employer in assuring equal employment opportunity and equal access to OO programs and services. The Union may, when it deems appropriate and can be mutually scheduled, meet with, advise, and present proposed solutions to the appropriate officials within the Agency related to any problems or potential problems it perceives in the area of equal employment opportunity and equal access to OO programs and services.

### **Section B. Employee Rights**

1. In accordance with applicable law, Federal regulations, and this Agreement, any employee who believes that he or she has been discriminated against on the grounds set forth in Section A of this article, may file either a grievance under the provisions of this Agreement (Article 41, Grievance Procedures), or a complaint under an appropriate formal or informal complaint or appeals procedure, but may not file under more than one procedure.

2. Any employee who wishes to file or has filed a grievance or complaint shall be free from coercion, interference, and reprisal, and shall be entitled to expeditious processing of the grievance or EEO complaint process within time limits prescribed by regulations or this Agreement.

3. In the case of alleged discrimination on any basis prohibited by law, rule, regulation, or policy described and cited in Sections A 1 and A 5 of this Article and in Article 28 (Prohibited Personnel Practices) of this Agreement, an employee has the right to seek redress through either the negotiated grievance procedure (Article 41, Grievance Procedures) or procedures established by the Office of Special Counsel and the Merit Systems Protection Board in accordance with applicable Federal regulations.

4. In accordance with employee rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA), veterans who believe their rights have been violated, may initiate a complaint with the U.S. Department of Labor, Veterans Employment and Training Service or the Office of Special Counsel.

### **Section C. Representation**

1. Whether the employee chooses to file under EEO complaint process or under the negotiated grievance procedure (Article 41, Grievance Procedures), employees have a right to be represented or to be unrepresented.

a. For complaints filed under EEO procedures, the complainant shall have the right to be accompanied, represented, and advised by a representative of the complainant's choice.

b. For complaints filed under the negotiated grievance procedure (Article 41, Grievance Procedures), the representative is a Union representative or a Union-designated representative. If the employee elects to process the grievance without Union representation, the Union shall have the right to be present at any meeting between the Employer and the employee concerning the grievance, to ensure fair treatment and procedural adherence to the terms of Article 41, Grievance procedures.

### **Section D. Settlement**

1. Prior to implementing terms of any settlement agreement that may affect conditions of employment of bargaining unit employees, the agency will provide the union with prior notice and fulfill its collective bargaining obligations.

### **Section E. EEO Information**

1. EEO complaint procedures will be posted electronically and will be available to all bargaining unit employees. The Union will also be given a copy of the complaint procedures.

2. The Employer shall electronically post and maintain the names, phone numbers, and work locations of EEO staff and counselors.

3. In all vacancy announcements for positions within the Agency which are posted on the USAJobs.gov web site, the Employer will provide a link to the United States Government EEO Policy Statement. This statement is as follows: The United States Government does not discriminate in employment on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, membership in an employee organization, retaliation, parental status, military service, or other non-merit factor.

### **Section F. Obligations**

1. Where the development and implementation of the Employer's Equal Employment Opportunity plans and programs involve changes to conditions of employment, the Employer will fulfill its bargaining obligations with the Union under 5 U.S.C, Chapter 71, Labor-Management Relations and this Agreement.

## **ARTICLE 39 CAREER ENHANCEMENT PROGRAM**

### **Section A. General**

1. The Equal Employment Opportunity Act of 1972 requires federal agencies to establish training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential.
2. The Agency will, consistent with this agreement, government-wide regulations and statutes, and to the extent allowed by ceiling and budgetary constraints, utilize the Career Enhancement Program (CEP) for the purpose of developing and implementing specific career opportunities for employees who are in wage grade or one-grade increment job series and employees in two-grade increment job series with a full performance level no greater than GS-10.
3. The USDA Office of Operations may utilize the Career Enhancement Program to provide opportunities for career advancement to employees who are underutilized or under skilled.
4. The target positions for the CEP within the Office of Operations may include those that have a positive educational requirement.

### **Section B. Definitions**

1. Career enhancement - a systematic management effort that focuses Federal personnel policy and practice on the development and implementation of specific career opportunities for lower level employees who are in positions or occupational series that do not enable them to realize their full work potential.
2. Career enhancement trainee position - a position in a technical or administrative career area to which a career enhancement program participant will be assigned when selected for the program. In this position, the trainee will receive on-the-job and/or formal training necessary to achieve the skills, knowledge, and technical ability to successfully perform in the target position. The employee's training plan shall specify the length of training, as determined by the personnel specialist, and type of training needed to qualify the trainee for the target position. The training program includes both on-the-job and formal training that are needed to fully qualify the applicant for the target position.
3. Target position - the specific position (series and grade) in which the program participant will be placed upon successful completion of the CEP individual training plan.
4. Individual development plan (IDP) - an approved document that has been jointly prepared by the supervisor, program participant, and other appropriate officials that outlines all necessary on-the-job and formal training required to be completed before the program participant can progress to the next trainee or target position.
5. Under skilled employee - employee who does not presently qualify (does not meet the OPM Qualification Standards Handbook requirements) for the entry grade level but who shows potential, with appropriate experience and/or training, to succeed in the position.

6. Underutilized employee - employee who meets the Qualification Standards Handbook requirements for the entry grade level but whose current position does not fully use his/her experience and/or knowledge.

### **Section C. Goals**

The goals of the CEP are to:

1. Provide a vehicle through which employees with demonstrated potential may be competitively selected and thereafter trained for new career fields.
2. Provide the opportunity for further career advancement in the chosen field, depending on work performance and capabilities.
3. Provide a planned selection, training, and development process for underutilized and under skilled employees who have demonstrated the talent and potential to move to a more technically advanced job to qualify them in the career area.
4. Obtain a more effective utilization of the capabilities of underutilized and under skilled employees.
5. Motivate underutilized and under skilled employees and create a climate conducive to an increase in productivity.
6. Prepare the trainee to function effectively in the target position and to utilize the skills of the employee while he or she is functioning in the trainee position.
7. Provide a broader base for the selection of personnel for technical and administrative positions and thus diversify the employee population in those careers.

### **Section D. Program Procedures**

1. As part of the annual budget cycle, supervisors and managers, will identify positions likely to be available within their area of responsibility for filling by CEP participants no later than December 31. The results of these surveys will be provided to the Union by the Office of the Administrator.
2. Announcing and Filling Career Enhancement Positions:
  - a. Career enhancement positions may be announced at any time during the year. The announcement will be consistent with Government-wide requirements, Departmental and Office of Operations policy, along with this Agreement.

(1). As applicable, the trainee position will be announced in accordance with Career Transition Assistance Program (CTAP) regulations. If any position from the trainee position through the target position is filled through CTAP, the career enhancement

position will not be filled. CTAP applicants will be evaluated using separate criteria from CEP applicants. CTAP applicants must meet the series and grade qualification requirements of the vacant position.

(2). The announcement will include:

i. All information required in Article 18, Merit Promotion, Section B 3, and

ii. The entry and full performance level positions;

iii. The evaluation process and criteria that will be used to rate and rank the candidates for the position;

iv. A written essay to be administered by the Servicing Personnel Office (SPO) will be required.

(3) Normally only one announcement will be used to solicit candidates for a career enhancement position. That announcement will be advertised for Office of Operations employees and USDA CTAP eligibles by the SPO unless broader coverage is legally required. The announcement's area of consideration will be incrementally increased (agency, mission area, USDA) if there are fewer than 10 eligible candidates in the area.

(4) Evaluation methods for selecting candidates will conform to the following:

A rating panel composed of:

i. Two (2) subject matter experts who are the same or higher grade level than the vacant position full performance level and

ii. One (1) EEO/CR specialist or representative.

b. A personnel specialist shall serve as the facilitator on all panels.

c. The panel will rate and evaluate:

(1) The required Knowledge, Skills and Abilities (KSA's);

(2) The current appraisal;

(3) Awards received;

(4) An essay administered by the SPO;

(5) An interview by the panel;

(6) The applicant' potential to perform;

(7) Any previous self-development efforts on the part of the applicant; and,

(8) Any outside activities, including volunteer work.

d. The Office of Operations agrees to give priority consideration to qualified applicants in accordance with government-wide regulations and the agency Merit Promotion procedures including

e. A Reemployment Priority Placement or CTAP eligible employee must be selected over other candidates for vacancies within the local commuting area. A Reemployment Priority Place or ICTAP eligible employee must be selected over other candidates outside of USDA for vacancies within the local commuting area except as noted in 5 C.F.R. 330.705(c).

f. If there are CTAP or reemployment or re-promotion priority candidates, a clearly delineated referral and selection register will be provided to the selecting official showing potential selectee's along with instructions on the order of consideration that must be afforded all candidates on the list.

g. Placement of Selectee's in Career Enhancement Positions

(1). An individual selected for a career enhancement position must have an approved IDP in place within thirty (30) calendar days of assuming the position. The IDP will be agreed upon and signed by the employee and the supervisor.

(2). Selectees who are under skilled may enter the CEP only through lateral reassignment or by accepting a change to a lower grade into the trainee position. Selectee's who are underutilized may enter the trainee position through promotion, change to lower grade, or lateral reassignment as appropriate.

### 3. Participation in the Career Enhancement Program

a. Assisting the selected candidate: The supervisor, with appropriate assistance from the SPO, will ensure that an employee selected for a career enhancement position will be provided such assistance as would normally be necessary to assure success in the position. That assistance will include, but is not necessarily limited to, the following:

(1). Assessing the current knowledge, skills, and abilities of the candidate as they relate to the career enhancement position and the target position;

(2). Developing a comprehensive IDP for the selectee that outlines the training required and establishes the benchmarks against which progress in meeting program requirements can be met; and

(3). Progress reviews and reports will be made at least every three months. These reviews must involve the supervisor and the program participant and may include appropriate representatives from the SPO. The program participant will receive a copy of the written report submitted to the SPO.

b. Pay Retention

(1). An employee accepting a change to lower grade to enter the CEP will be eligible for pay retention in accordance with applicable regulations.

(2). An employee who leaves the CEP before successfully completing the program forfeits eligibility for pay retention. In this case the employee's pay will be set by using the highest previous rate rule.

c. Termination of CEP Participation

(1). An employee participating in the CEP may voluntarily withdraw from the program at any time.

(2.) Management may terminate an employee's participation in the CEP for the following reasons:

i. Lack of progress of the employee based on periodic reviews;

ii. Lack of funding or ceiling spaces for the program; or

iii. Reduction in force.

(3). If an employee's participation in the CEP is terminated for a reason other than reduction in force, the employee is entitled to be placed in a position commensurate with his/her knowledge, skills, and abilities at a grade equal to the one in which the employee entered the program. If the employee accepted a change to a lower grade to enter the program, and a position at a grade no higher than, and with no greater promotion potential than, the one held by the employee immediately prior to entry into the program and for which the employee is qualified is vacant management may non-competitively place the employee in that position.

d. Program Completion

(1). Upon satisfactory completion of the training program and successful performance on the job, the employee will be placed in the target position.

(2).The employee will be placed in the target position at the beginning of the pay period after all legal requirements for placement in the position have been satisfied.

**Section E. Developing the Pool of Program Applicants**

1. Upon request of an employee in response to an announcement of a CEP position, the SPO Career Enhancement Program Manager will provide the employee with an assessment of his/her eligibility to participate in the CEP.

2. The counseling services provided through the SPO may be utilized by employees interested in assessing their eligibility and potential for participation in the CEP. Employees desiring to make use of the available CEP eligibility counseling services will be given a reasonable amount of time, including travel time, without charge to leave to do so.

3. Employees desiring to make use of available counseling services should make an appointment with the CEP Manager and should cooperate with him or her by providing information requested in advance of the meeting, if possible. The CEP Manager may ask the employee to:

- a. Provide personal background information;
- b. Discuss their immediate- and long-range interests and goals; and
- c. Provide a work history.

4. The CEP Manager will assist the employees by making an objective assessment of their potential capabilities and realistic employment goals in the Agency. They will work in conjunction with other SPO specialists as required. The CEP Manager cannot guarantee eligibility, qualification, or selection for a specific position. Interested employees must apply for consideration through the announcement and its application process.

#### **Section F. Information Provided**

- 1. Applicants for participation in the CEP will, upon their request, be provided with the information that is available to employees in the merit selection process. (See Article 18, Merit Promotion, of this Agreement).
- 2. The Union will be provided on a timely basis with the following information:
  - a. Annually, the positions that are likely to be available as career enhancement positions in accordance with Section D 1, above;
  - b. Copies of CEP reports made to the Agency and/or to the Office of Personnel Management, Congress, or other appropriate Government entity;
  - c. Copies of CEP entry and target position descriptions.
- 3. The Agency will not provide the Union with copies of individual employee progress reports.

## **ARTICLE 40: REPORTS AND NOTIFICATIONS**

### **Section A. Reports**

The following reports will automatically be provided, electronically whenever possible, to the Union:

1. The Bargaining Unit listing, by name, position title, series and grade on a semiannual basis as of April 30 and October 31. A key to codes used in the report will be provided with each report.

### **Section B. Notifications**

The Agency will provide the following notifications annually, unless otherwise stated, to the bargaining unit electronically whenever possible.

1. The annual "Weingarten" notice each September.

## **ARTICLE 41: GRIEVANCE PROCEDURE**

### **SECTION 1: PURPOSE**

- A. The purpose of this agreement is to provide a mutually acceptable method for prompt and equitable settlement of grievances. The Parties agree to attempt to settle grievances at the lowest possible level.

### **SECTION 2: DEFINITION**

- A. A grievance is any complaint:

1. By any Bargaining Unit Employee concerning any matter relating to the employment of the employee
2. By the Union concerning any matter relating to the employment of the employee
3. By any Bargaining Unit Employee, the Union, or the Agency concerning:
  - a. The effect or interpretation, or a claim of breach, of a negotiated agreement between the parties
  - b. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment

### **SECTION 3: SCOPE AND EXCLUSIONS**

- A. The procedures set forth in this Article shall be the procedures available to bargaining unit employees and to the Parties to this Agreement for the resolution of grievances covered under the terms of this agreement.
- B. Exclusions: The following matters are not grievable under these procedures and are specifically excluded from the coverage of this Agreement.
1. Any claimed violation of subchapter III of Title 5 USC, Chapter 73, relating to prohibited political activities (**Hatch Act**);
  2. Retirement, life insurance, or health insurance;
  3. A suspension or removal under Title 5 USC, Section 7532 relating to National Security;
  4. Any examination, certification, or appointment;
  5. The classification of any position which does not result in the reduction in grade or pay of any employee;
  6. The Agency's decision to conduct a reduction-in-force or non-disciplinary furloughs or

more than thirty (30) calendar days;

7. Grievances asking for a change to established personnel policies and practices or contract provisions which are properly subject to negotiations between the Office of Operations and the Union. Nothing in this Agreement will affect the employee's ability to grieve the change of an alleged past practice;
  8. Non-selection for promotion from a group of properly ranked and certified candidates;
  9. An action terminating a temporary promotion within a maximum period of two (2) years and returning the employee to the position that is not a lower grade or level than the position from which he or she was temporarily promoted, except in cases where such termination violates the provisions of this Agreement, or applicable law, rule or regulation;
  10. A preliminary warning or notice of specific action which, if effected, would be covered under this procedure or under a statutory appeals procedure. Nothing in this Agreement will affect the employee's right to reply or otherwise respond to a notice of adverse action, disciplinary action or unacceptable performance pursuant to 5 USC Sections 43 and 75;
  11. Termination of a probationary employee during the probationary period and termination of a temporary employee during the probationary employment;
  12. The content of a published agency regulation and policy. Nothing in this Agreement will affect the employee's ability to file a grievance concerning the application of a published agency regulation or policy;
  13. An action for which the desired relief may be obtained through a request made to the Federal Labor Relations Authority (**FLRA**) for a bargaining unit determination. The Parties agree to meet informally and attempt to resolve disputes over a bargaining unit determination before proceeding to the FLRA;
  14. Claims based on alleged discrimination on account of race, color, sex, age, religion, national origin, or non-disqualifying disability that are the subject of a formal written complaint with the Equal Employment Opportunity Commission. An employee who charges the Agency with such discrimination may file either a grievance or a discrimination complaint, but not both. An employee shall be deemed to have exercised such option at such time as he or she timely filed a formal written complaint or timely files a grievance in writing, whichever comes first;
  15. Claims that have been filed, pursuant to 5 USC 7121(g), with the Merit Systems Protection Board or Office of Special Council
- C. Agency Appeals: The only grievances that may be processed under this negotiated grievance procedure are appeals by the Agency of the following actions by the Union:
1. A claim of a violation of a valid negotiated agreement.

#### **SECTION 4: APPLICATION AND REPRESENTATIVE**

- A. A grievance may be filed by a Bargaining Unit Employee or a group of employees, by the Union, or by the Agency.
- B. Bargaining Unit Employees presenting grievances may elect to be represented by the Union or to represent themselves in processing the grievance through the steps provided by this Article.
- C. In the event an employee presents a grievance without representation by the union, the union will be given the opportunity to be present at any formal meetings held in processing and adjusting the grievance. The Agency will provide the Union with copies of the written grievance and written decisions as well as supporting documentation that was exchanged between the Parties.
- D. Only the Union, or a Representative designated by the Union, may represent bargaining unit employees in grievances.
- E. Any resolution of a grievance must be consistent with the terms of this Agreement and all applicable law, rule and regulation.
- F. An employee is entitled to be accompanied, represented and advised at any stage of the grievance procedure by a Union representative.

#### **SECTION 5: PROCEDURE**

- A. A grievance is any complaint:

##### **Step 1 Grievance**

1. A grievance shall first be presented in writing by the grievant(s) to his or her first level supervisor of record (who is not a team leader), or the supervisor's designee, within twenty (20) work days of the occurrence that led to the grievance or twenty (20) work days after the grievant knew or should have known of the occurrence that led to the grievance. In the case of an ongoing or recurring occurrence, a grievance may be filed within twenty (20) work days of the most recent occurrence. If the supervisor does not have the authority to grant the relief requested, he or she shall refer the grievance to the appropriate person, who shall then be responsible for all of the responsibilities under this paragraph identified as "supervisor or his or her designee's" responsibilities.
2. The written Step 1 grievance shall be provided on the Office of Operations Grievance Form (Appendix C). The form shall be presented to the employee's supervisor of record or the supervisor's designee. If required information is omitted from the written Step 1 grievance, the grievance form will be returned by the supervisor or supervisor's designee for correction to or addition of the required information. Filing deadlines will not be extended to accommodate such a correction or addition.

3. The supervisor, or his or her designee, shall schedule a grievance meeting within ten (10) work days of receipt of the written grievance in order to resolve, discuss, and/or clarify facts and issues which might impact their decision. The employee may be accompanied by his or her Union representative at the meeting. The supervisor will make whatever investigation he or she deems necessary and give his or her written response within ten (10) working days after meeting with the employee regarding the grievance.
4. The response will include the justification for the supervisor's decision as well as a referral to the appropriate Division Director/Chief with whom to file a Step 2 Grievance.
5. Any grievance filed by a grievant whose first-level supervisor of record is the Division Director/Chief will skip Step 1, proceeding directly to Step 2. The Step 1 timeframes will apply in such a case, however.
6. If the Director of the Office of Operations is the Step 1 deciding official, the decision at Step 1 will be the final decision of the Office of Operations and the Union will determine whether to proceed to arbitration on the grievance in accordance with Section 10 of this Article and Article 42 of this Agreement.

### **Step 2 Grievance**

1. If the matter is not satisfactorily resolved at Step 1, the grievant may, within fifteen (15) work days of the receipt of the Step 1 decision, submit the matter in writing to both the Division Director/Chief of the Division to which the employee is assigned and the Labor Relations Specialist. If the Division Director/Chief does not have the authority to grant the relief requested, he or she shall refer the grievance to the appropriate person, who shall then be responsible for all the responsibilities.
2. The written Step 2 grievance shall be provided on the Office of Operations Grievance Form (Appendix C). The form shall be presented to both the Division Director/Chief of the Division to which the employee is assigned and the Labor Relations Specialist. If required information is omitted from the written Step 2 grievance, the grievance form will be returned by the Division Director/Chief or his or her designee for correction to or addition of the required information. Filing deadlines will not be extended to accommodate such a correction or addition.
3. The Division Director/Chief, or his or her designee, will meet with the employee and/or the Union representative within fifteen (15) work days in order to resolve, discuss, and/or clarify facts and issues which might impact their decision and will render a written decision within ten (10) working days after the meeting.
4. The response will include the justification for the Division Director/Chief's decision as well as a referral to the appropriate Director of the Office of Operations with whom to file a Step 3 Grievance.
5. If the Director of the Office of Operations is the Step 2 deciding official, the decision at

Step 2 will be the final decision of the Office of Operations and the Union will determine whether to proceed to arbitration on the grievance in accordance with Section 10 of this Article and Article 42 of this Agreement.

### **Step 3 Grievance**

1. If the grievance is not satisfactorily resolved at Step 2, the grievant may, within fifteen (15) work days of the receipt of the Step 2 decision, submit a written request for reconsideration of the Step 2 decision to the Director of the Office of Operations, or his or his designee, with a copy to the Labor Relations Specialist.
2. The written Step 3 grievance shall be provided on the Office of Operations Grievance Form (Appendix C). The form shall be presented to both the Director of the Office of Operations and the Labor Relations Specialist. If required information is omitted from the written Step 3 grievance, the grievance form will be returned by the Director of the Office of Operations or his or her designee for correction to or addition of the required information. Filing deadlines will not be extended to accommodate such a correction or addition.
3. The Director, or his or her designee, will meet with the grievant within fifteen (15) work days in order to resolve, discuss, and/or clarify facts and issues which might impact their decision and will render a written decision within fifteen (15) working days after the meeting.
4. If the grievance is not satisfactorily settled at Step 3, the Union may invoke arbitration in accordance with Section 10 of this Agreement.

### **B. Grievance of Disciplinary Actions, Adverse Actions, and Unacceptable Performance:**

1. A grievance filed in response to a written decision letter notifying the employee of an action under 5 U.S.C. Chapter 75 (Disciplinary and Adverse Actions) or 5 U.S.C. Chapter 43 (Reduction in Grade or Removal for Unacceptable Performance) must be filed in writing with the Director of the office of Operations at Step 3, within fifteen (15) work days of receipt of the decision letter.

### **C. Group Grievances:** Bargaining Unit Employees may join in submitting a grievance as a group provided that the issues and the remedy sought are identical for each. A group grievance will be processed as a single grievance in the name of either a Representative or one employee designated by the others to act for them.

1. If the grievants are supervised by different supervisors but within the line of authority of one Division Director/Chief, the grievance may be submitted directly at Step 2. If the grievant's line of authority includes more than one Division Director/Chief, the grievance may submitted directly at Step 3. In both instances the time frames for timely filing of the grievance shall be the same as provided for Step 1 grievances.

2. All employees joining the grievance must be identified and all employees in the group must sign the written grievance at the initial Step of the grievance procedure. These signatures will remain valid at each subsequent step of the grievance process unless the employee withdraws from the group grievance. An employee may withdraw from a group grievance, in writing, at any time before a decision is rendered; however, he or she may not then initiate the same or substantially similar grievance in his or her own name. A decision rendered on a group grievance applies to all employees in the group unless otherwise specified in the decision.
3. The time frames for meetings held between the responding official and the grievant(s) and/or representative shall be the same as those provided for above at Steps 2 and 3.

**D. Agency Grievances:** The following procedure shall apply in processing Agency grievances covered by this Article. Agency grievances shall be presented in writing by the Director, Office of Operations, or his or her designee, to the Union President within thirty (30) work days of the event giving rise to the grievance. The written grievance shall include all of the following:

1. A clear statement of the facts surrounding the grievance;
2. The articles of a negotiated agreement that the grievant believes have been violated, including specific subsections;
3. The specific corrective action desired;
4. A list of witnesses with direct knowledge of the events surrounding the grievance, if applicable;
5. The date; and
6. The Director, or his or her designee's, signature
7. The Union President shall issue a written decision within thirty (30) work days of receipt of the grievance. The Union's decision will be its final decision on the grievance. Should the issue remain unresolved, the Agency may invoke arbitration under Article 42.

**E. Written Decisions:** Any decision rendered by either the Agency or the Union shall be a reasoned, written decision. The possible responses to a grievance include:

1. Decision finding no violation;
2. Decision finding a violation, with a statement of the remedy to be provided
3. Mutual agreement, reduced to writing and signed by both Parties and their

representatives (if any), containing the statement that the agreement constitutes the full and complete resolution of the grievance;

4. Rejection of the grievance, which may be based upon any of the following reasons:
  - a. Failure to meet grievance filing timelines at any Step;
  - b. Grievance (or part of the grievance) not raised at an earlier step;
  - c. Substance of the grievance is not covered by this negotiated grievance procedure;
  - d. Grievance is procedurally deficient (either does not contain the required information or was not presented to the appropriate person); or
  - e. Relief requested is not personal to the grievant, if applicable

F. No person may serve as reviewer of a grievance decision which he or she made at a lower level.

#### **SECTION 6: MEDIATION**

- A. At any time during the grievance procedure, either Party may make a written request for mediation. The request or mediation must be clear and unequivocal. Mediation is available only once during a grievance, at either Step 1, Step 2 or Step 3.
- B. Once mediation has been requested, the party in receipt of the request has five (5) work days within which to accept or reject the request for mediation. If mediation is refused, or attempted with no resolution, the Parties may not again request mediation during the course of that grievance.
- C. If both Parties agree to mediate, all time limits in this Article will be extended by the amount of time the Parties are entered into mediation. Within ten (10) work days of the agreement to mediate, the Parties shall jointly contact the Conflict Prevention and Resolution Center (CPRC), which will convene the mediation and designate the mediator. This deadline may be extended by the mutual agreement of the Parties.
- D. Mediation will be terminated at the request of either party or upon written resolution of the grievance. The mediated agreement, if one is reached, must be reduced to writing, signed by both Parties and their representatives (if any). Should the mediation fail to resolve the grievance, or be terminated by either Party, the parties will resume the grievance procedure at the point where the procedure was halted when the request for mediation was accepted.

#### **SECTION 7: TIME LIMITS AND EXTENSIONS**

- A. Time limits in this Article may be extended by mutual agreement. The limits, including any extensions, will be strictly observed. Extensions must be requested at least one work day prior to the deadline and agreed to in writing.

- B. Failure by the grievant(s) to adhere to a time limit for filing a grievance at any step shall result in rejection of the grievance, unless mitigating circumstances prevail.
- C. Mitigating circumstances are approved extended absences such as military leave, detail or temporary duty travel, sick leave, and Family and Medical Leave Act leave.
- D. Failure of the responding Party to respond to a grievance at any step within the given time limit, or one modified by agreement of the Parties shall permit the grievant to escalate the grievance to the next step. If a Party fails to respond timely at the step that precedes arbitration, the grieving Party may invoke arbitration. The grievance must be filed at the next step within fifteen (15) work days of the date that the response was due or in the case of arbitration, within twenty (20) work days.
- E. However, all response time limits in this Article are doubled if and when there are ten or more grievance to be responded to by the same party, pending simultaneously, at any step of the process. All response time limits are waived if and when there are more than twenty (20) grievances to be responded to by the same party, pending simultaneously, at any step of the process. The Party invoking this paragraph must inform the grievants, in writing or via email, that it is invoking the extended time frames under this paragraph. This paragraph does not apply to grievances filed under Section 5C of this Article

#### **SECTION 8: REQUESTS FOR INFORMATION NECESSARY TO EVALUATE AND PROCESS GRIEVANCES**

- A. The Union may request information pursuant to 5 U.S.C. Section 7114(b)(4) when the Union believes that such information is necessary to evaluate and/or process a grievance. The Union's request for such information will be in writing.
- B. In cases where the Union has requested information to evaluate or process a grievance, the Parties agree to an extension for a reasonable length of time the time limits for filing at the steps above and for invoking arbitration as applied to the grievance. Extensions pursuant to this section will be requested in writing and mutually agreed upon.

#### **SECTION 9: ARBITRATION**

- A. If the decision in a grievance processed under the negotiated grievance procedure is not satisfactory, the Agency or the Union, either as the grievant or as a representative of the grievant may refer the issue to arbitration. A grievance may be referred to arbitration only by the Agency or the Union. Either Party may invoke arbitration under Article 42 in writing within twenty (20) work days from receipt of the final decision of the responding party.

#### **SECTION 10: COMPUTATION OF TIME**

- A. In computing periods of time for the purposes of this Article, the day of the occurrence from which the designated period of time begins to run shall not be included.

## **ARTICLE 42: ARBITRATION**

### **SECTION 1: RIGHT TO ARBITRATION**

- A.** If the decision in a grievance processed under the negotiated grievance procedure is not satisfactory, the Agency or the Union, either as the grievant or as a representative of the grievant, may refer the issue to arbitration. A grievance may be referred to arbitration only by the Agency or the Union.
- B.** A request to refer an issue to arbitration must be in writing and submitted to the other Party within twenty (20) work days following receipt of the final decision by the aggrieved Party. Union requests made under this provision shall be submitted to the Director, Office of Operation and Labor Relations Specialist. Agency requests made under this provision shall be submitted to the Union President.

### **SECTION 2: SELECTION OF THE ARBITRATOR**

- A.** Unless otherwise agreed, the invoking Party will, within twenty (20) calendar days, submit a request to the Federal Mediation and Conciliation Service (FMSC) for a list of seven (7) impartial persons qualified to act as arbitrators, and shall provide the other Party with a copy of the request.
- B.** Within ten (10) calendar days after receipt of such list from the FMCS, the Parties will meet to select an arbitrator. The Parties shall first attempt to agree upon an arbitrator. However, if the Parties are unable to agree upon one of the listed persons, the Agency and the Union will each alternately strike one name from the list until only one arbitrator's name remains. The last remaining name shall be the duly selected arbitrator. The Party requesting arbitration shall strike the first name.
- C.** If either Party fails to participate in the selection of the arbitrator, the other Party will select the arbitrator from the list.

### **SECTION 3: FEES AND EXPENSES**

- A.** The arbitrator's fees and expenses shall be borne by the losing Party, except in cases where the arbitrator sustains the grievance in part. In such instances the arbitrator shall have the authority and discretion to apportion his or her fees and costs in a manner which is proportionate to his or her decision.
- B.** Except as provided for below in Section 6 of this Article, the cost of transcripts shall be borne by the Party requesting a transcript; if both Parties request transcripts, both Parties will share the costs. If the Union subsequently makes an information request for a transcript paid for by the Agency for a matter related to the grievance at issue (e.g. an exception or appeal of that decision), the Union will pay their share of the cost of the transcript.

#### **SECTION 4: ARBITRATION PROCESS**

- A. The Party invoking arbitration may opt to postpone the arbitration hearing date if the Party has filed an Unfair Labor Practice Charge, alleging that information relevant to the case has been withheld, until the FLRA has rendered its decision.
- B. Whenever possible, the arbitration hearing will be held at the Agency's premises in Washington, DC during the regular work hours of the basic work week.
- C. The arbitrator shall have the authority to decide arbitrability, and other jurisdictional and threshold issues. Questions of jurisdiction (non-grievability or non-arbitrability) and other threshold issues will be bifurcated and decided before any hearing on the merits or on the appropriate remedy on the same hearing date as the hearing on the merits of the case, unless otherwise agreed to by the Parties. In cases where either Party raises a question of jurisdiction, both Parties will submit written briefs to the arbitrator. In jurisdiction cases, the losing Party will be assessed only the portion of the costs for the bifurcated hearing on the record.
- D. The Parties may agree that a "stipulation of facts" to the arbitrator may be appropriate where there are no factual disputes. All facts, data, documentation, etc., are jointly submitted to the arbitrator with a request for a decision based upon the facts presented.
- E. If the Parties do not agree to utilize either the "stipulations of facts" or the mini-arbitration as provided in Section 6 of this Article, an arbitration hearing will be convened and conducted by the arbitrator. When an arbitration hearing is used, the arbitrator will develop a full and appropriate formal record and establish the facts relevant to the issue.
- F. The Parties agree that a joint submission of the issues is most desirable and will work diligently to arrive at one. To that effect, they will meet within ten (10) work days of selection of the arbitrator for purposes of reaching agreement upon a joint statement of issues. If the Parties cannot agree upon a joint submission of the issue within twenty (20) work days of the selection of the arbitrator either Party, upon giving notice to the other, may decide to submit a separate statement of the issue, and the arbitrator shall determine the issue or issues to be decided.

#### **SECTION 5: TIME LIMITS**

- A. The arbitrator will be requested to render his or her decision and the proposed remedy to the Agency and Union within thirty (30) calendar days after the conclusion of the hearing, unless the Parties agree otherwise.

#### **SECTION 6: MINI-ARBITRATION**

- A. The Parties may mutually agree to an expedited arbitration process (i.e. mini-arbitration) whereby Parties present evidence and argument to the arbitrator, and the arbitrator issues a brief, written summary decision.

- B.** No transcripts shall be made and no briefs filed in mini-arbitration, though the arbitrator shall conduct the hearing in the same manner as in regular arbitration proceedings.
- C.** The decision in mini-arbitration shall be dispositive of that case only and shall not be considered precedential.

#### **SECTION 7: ARBITRATOR'S AUTHORITY**

- A.** The arbitrator's decision and proposed remedy will be final and binding on both Parties and shall be implemented without delay, unless appealed or excepted under the provisions of Section 8 of this Article.
- B.** The arbitrator's authority shall be limited to the adjudication of issue(s) raised in the grievance before him or her. The arbitrator shall have the authority to interpret and define the terms of any negotiated agreement between the Parties, or any applicable law, rule or regulation, as necessary to render a decision. He or she shall have no authority to add to, subtract from or modify and terms of an agreement between the Parties or published Agency policy.

#### **SECTION 8: EXCEPTIONS TO ARBITRATION AWARD**

- A.** Either Party may:
  - 1. Seek judicial review of the arbitrator's decision which might otherwise have been appealed to the Merit Systems Protection Board (MSPB); or
  - 2. File exceptions to all other decisions with the FLRA. If no exception or appeal to the arbitrator's award is filed within thirty (30) calendar days of the award having been served, the award shall be final and binding.

**ARTICLE 43: ALTERNATIVE DISPUTE RESOLUTION UNDER EEO**

**See Article 38. Equal Employment Opportunity**

## **ARTICLE 44: MID-CONTRACT NEGOTIATIONS**

### **Section A. Definition:**

1. Mid-contract negotiation means reopening articles within this Agreement for the purpose of renegotiation.

### **Section B. Agreements Under This Article**

1. Any agreements reached under the provisions of this Article shall be deemed to be supplemental to this Agreement and will expire when this Agreement expires.

2. Should a provision of any agreement negotiated pursuant to this Article be rendered invalid by appropriate authority, either party may reopen the specifically affected sections as well as issues clearly bargained away as part of this Agreement.

3. Notwithstanding this Article, nothing shall affect the authority of the Agency to take whatever actions may be necessary to carry out its mission during emergencies.

### **Section C. Mandated Changes**

1. Disposition of future statutes or judicial decisions

a. Such actions may require the Parties to change this Agreement. If either Party desires to negotiate the impact and implementation of the change, it shall provide written notification to request bargaining to the other Party. Such notice shall be followed by submission of a specific formal proposal for negotiations or a request to use interest based bargaining techniques within five (5) work days of the request to bargain.

b. The receiving Party shall respond within ten (10) work days of receipt of the notice. Failure to timely respond will allow the other party to file an unfair labor practice charge for failure to negotiate in good faith.

c. Neither party will be permitted to propose changes unrelated to the change specifically required by statute or judicial decision.

2. The Agency shall meet its obligations to bargain in good faith, and to delay implementation of the planned change until it has met its negotiation obligations in accordance with law, regulation and terms of this Agreement.

### **Section D. Scope of Mid-term Bargaining**

1. Mid-term bargaining may be initiated by either Party during the period beginning eighteen (18) months after the effective date and six (6) months prior to the anniversary date of this Agreement by informing the other party, in writing, of intent to amend, supplement, or renegotiate a specified Article(s) in the Agreement.

2. Each party may request to amend, supplement, or renegotiate up to five (5) Articles contained in this Agreement. By mutual consent, more than five (5) Articles may be reopened by a Party.

3. Requests for mid-term bargaining will normally be accompanied by written proposals. If a Party elects to use an interest based approach to bargaining, a request for mid-term bargaining using this approach and stating the issues of concern will meet this notice requirement.

4. Requests for bargaining over procedures, substance or appropriate arrangements related to changes in working conditions covered in 5 U.S.C. 7106 will follow the process found in Article 36, Reorganizations and Other Workplace Changes.

### **Section E. Ground Rules**

1. Negotiations shall take place during regular duty hours and begin as soon as practicable but not later than sixty (60) calendar days after receipt of a proposal by either Party unless otherwise mutually agreed by the Parties.

2. The Agency will provide mutually acceptable facilities for negotiations.

3. The Union will be authorized the same number of Union representatives on official time as the Agency has representatives at the negotiating table.

4. It is the intent of the Parties to consolidate issues for bargaining to the greatest extent possible.

5. Unless mutually agreed, no new proposals shall be submitted by either Party after the first day of negotiations.

6. All agreements are tentative until full agreement is reached.

7. Agreements reached will be written and signed by both Parties and are subject to Union ratification and Agency Head review before they become effective.

### **Section F. Impasse Procedures**

1. If agreement cannot be reached on the matters under negotiation, the following procedures shall apply:

2. Declarations of Impasse

a. Neither party may declare an impasse until all Articles and Sections are agreed to or declared non-negotiable by the Agency or declared at an impasse by either Party. The Parties agree that each will use their best good-faith efforts to avoid impasse in negotiations.

b. If the Agency declares a provision to be outside the duty to bargain (i.e. non-negotiable), it will furnish the exclusive representative a written allegation concerning the duty to bargain in accordance with FLRA regulations.

### 3. Impasse

a. In the event either Party believes there to be an impasse in negotiations, the Federal Mediation and Conciliation Service (FMCS) shall be immediately requested to provide services and assistance to resolve the dispute pursuant to 5 U.S.C. 7119.

b. If mediation services of the FMCS do not result in resolution of the issue, either Party may invoke the services of the Federal Service Impasses Panel (FSIP) pursuant to 5 U.S.C. 7119. Prior to taking such action, however, the Party seeking to invoke the services of the FSIP will provide notice to the opposing party of its intention to take such action.

## **ARTICLE 45: PRECEDENCE, EFFECT OF LAW, REGULATION & SEVERABILITY**

### **Section A. Previous Agreements and Past Practices**

1. This Agreement supersedes all previous agreements signed by management and the union regarding the articles herein. This Agreement also supersedes past practices in conflict with this Agreement.

### **Section B. Mandated Changes**

1. The provisions in Article 44, Mid-Contract Negotiations, Section B.1. and 2. shall be applicable to this Section.

### **Section C. Severability**

1. Should any part, term, condition or provision of this collective bargaining agreement be declared or determined by any court, head of the agency, or arbitrator to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and said illegal or invalid part, term or provision shall be deemed not to be a part of this agreement.

### **Section D. Effect of Agreement**

1. For the duration of this Agreement, it will have the full force and effect of regulations within the bargaining unit.

## **ARTICLE 46: DURATION AND TERMINATION**

### **Section A. Effective Date**

1. This Agreement will be submitted for Agency Head review when the Union certifies that it has been ratified by its bargaining unit.
2. Upon review and approval of the Agency or after the date on which the thirty (30) day time limit for Agency Head review expires, the Parties will meet to sign the Agreement. The Agreement will become effective upon such signature by the Parties.

### **Section B. Duration**

1. This Agreement shall remain in effect for four (4) years from its effective date. Thereafter, it shall automatically renew in increments of one (1) year beginning on the day after the anniversary date, unless either Party serves the other with written notice of a desire to renegotiate or modify this Agreement in whole or in part in which case this Agreement shall stay in effect until negotiations are completed and the revised Agreement takes effect. Such notice shall be provided to the other Party not more than one hundred twenty (120) calendar days, but not less than sixty (60) calendar days prior to the expiration date of this Agreement.
2. Upon receipt by either Party of notice, both parties shall meet within ninety (90) calendar days of receipt of a proposal to begin negotiations. When either Party notifies the other that it wishes to modify this Agreement, within the time limits specified in Section B.1 above, this Agreement will be extended until the effective date of the modified agreement.
3. Except as specified in this Article, the provisions of any article in this Agreement may only be reopened pursuant to Article 44, Mid-Contract Negotiation, or where affected by changes of law, regulations, mutual agreement, or Executive Order.

## **ARTICLE 47: OFFICIAL TIME AND UNION REPRESENTATION**

### **SECTION 1: REPRESENTATIVES**

- A. Only employees officially designated by AFSCME Local 2846 in accordance with this contract will be entitled to use official time (hereinafter Representative) except as provided in Section 7 of this Article. Three (3) executive officers and four (4) shop stewards designated by the Union will serve as Representatives.
- B. AFSCME Local 2846 will provide the Agency with the list of Representatives within 30 calendar days of the effective date of (the date of the signature of the last signatory to) this Agreement. Such list shall be maintained on a current basis. Any changes to the list will be submitted to the Agency in writing within five (5) days before the newly appointed or elected representative is expected to begin performing representational duties.
- C. The Union may assign Representatives to any case or jurisdiction area with the bargaining unit. Representatives requiring the use of travel time for the fulfillment of their representational duties shall be allowed a reasonable amount of travel time.

### **SECTION 2: OFFICIAL TIME PROCEDURE**

The Union is committed to, as far as is practicable, minimize disruptions caused by the use of official time, especially with respect to the Agency's ongoing work in small work units. For its part, the Agency recognizes that unusual circumstances may arise which will require flexibility in conducting the Agency's work

- A. Prior to using official time, the Representative will request approval in writing from his supervisor or supervisor's designee, using the Office of Operations Request for Official Time Form (Appendix A). The Representative will not be released from his or her work assignments until the supervisor or the supervisor's designee issues written approval on the Office of Operations Request for Official Time form. Everything in this Article applies whether the Representative will be using official time at his or her work station or away from his or her work station. For brief incoming and outgoing telephone calls or brief unscheduled visits to the Representative's worksite, no prior approval is required.
- B. The request must include the actual or estimated amount of time needed.
- C. The supervisor or supervisor's designee will grant the official time request unless deadline requirements preclude such a grant. If the supervisor denies the request, the supervisor will notify the Representative with as much advance notice as possible so that the Union may select an alternate representative. Upon such notification, the supervisor will supply the Representative with a completed Office of Operations Request for Official Time form, providing the reason for denial. Within one work day, the supervisor or the supervisor's designee will notify the Representative of a time when he or she can be released from official duties. In the event of disapproval or delay, the Agency will make a reasonable attempt to reschedule the representational activity.
- D. Once the Representative has obtained approval from the supervisor or the supervisor's designee and the supervisor or the supervisor's designee has signed the Office of Operations

Request for Official Time Form, Representative will indicate the exact time that he or she is leaving the workstation on Section 3 of the Office of Operations Request for Official Time form. The Representative is responsible for having the supervisor or supervisor's designee initial the time that he or she left the workstation if the Representative's departure is not simultaneous with approval.

- E.** Normally, in the event the Representative requires additional time due to unforeseen circumstances, after initial approval has been given, the Representative shall request an extension of time by telephone. The Representative shall request the extension from the supervisor or supervisor's designee. The supervisor or supervisor's designee will grant the official time extension unless deadline requirements preclude such a grant.
- F.** Once the official time use is concluded and the Representative has returned to his or her workstation, the Representative will complete Section 3 of the Office of Operations Request for Official Time form, indicating the exact time that he or she returned to the workstation. The Representative is responsible for having the supervisor or supervisor's designee initial the return time. The supervisor or designee will give the Representative back a copy of the form once he or she has initialed it.
- G.** The Representative shall attach each completed and approved the Office of Operations Request for Official Time form to the Representative's Time and Attendance Log or time sheet for the pay period(s) in which the official time was used.
- H.** The Representative shall be responsible for coding his or her Time and Attendance Log or time sheet in accordance with Section 8 of this Article
- I.** In the event that a Representative's request for official time is denied or delayed and the request involved a representational matter subject to a deadline, any window under the control of the Agency with respect to such deadline will be extended for a time equal to the delay time.

### **SECTION 3: PURPOSES OF OFFICIAL TIME**

For the purposes of this Article, official time for representational purposes or representational activities is covered by 5 U.S.C. Section 7131 and shall include the following:

- A.** Any formal discussion between one or more representatives of the Agency and one or more employees in the unit or their representatives concerning any grievance, personnel policy or practices or other general conditions of employment.
- A.** Any examination of an employee in the unit by a representative of the Agency in connection with an interview or investigation if:
  - 1.** The employee reasonably believes the examination may result in disciplinary action against the employee; and
  - 2.** The employee requests representation.

- C. Any meeting between one or more Union representatives and one or more representatives of the Agency that is initiated by either the Agency or the Union in order to informally resolve problems of concern to either party.
- D. Participation in bargaining, including mediation and/or the resolution of any bargaining impasse and/or negotiability question.
- E. The participation in proceedings initiated by the Union or by the Agency in connection with statutory or regulatory appeal procedures involving the Union or any member of the bargaining unit.
- F. Preparation for, investigation related to, and representation in , the above activities as well as negotiation.
- G. Preparation and participation in grievance or arbitration procedures negotiated between the parties.
- H. To act for the Union in a representational capacity before Congress on matters related to conditions of employment for bargaining unit employees. This will be limited to no more than three (3) Representatives.
- I. The preparation of financial and membership reports required by the U.S. Government, including reports to the U.S. Department of Labor and Internal Revenue Service, as well as the maintenance of records required by those reports

#### **SECTION 4: OFFICIAL TIME ALLOCATION**

- A. Unless otherwise agreed to by the Parties, AFSCME Local 2846 will be provided with a bank of hours for official time of up to 1360 hours per calendar year. During the first year of this Agreement, the bank of hours will be prorated to reflect the amount of time left in that calendar year (e.g. should this Agreement go into effect in April the amount of available time in bank shall be 1020 hours) .
- B. With the exception of the first year of the Agreement, should the bank of hours drop to 100 hours in any calendar year the Parties agree to renegotiate over an extension of the bank at the request of either Party. During the first year of the Agreement such amount shall be prorated in accordance with Section 4A of this Article. Renegotiation will commence within one (1) week of such request and will be limited solely to the bank or hours referred to in Section 4A of this Article. Management is under no affirmative obligation to agree to such an extension.
- C. Actual times for term and mid-term bargaining, meetings with management concerning conditions of employment, training as per Section 5 of this Article, and time spent for the presentation of grievances, complaints, appeals and charges shall not be charged against the bank of 1360 hours. Preparation for any of the above shall be charged against the bank.

- D. Requests for official time for purposes other than those enumerated in Section 3 of this Article will be considered by the Agency and responded to in a timely manner. Such requests shall be made by the Representative to the Labor Relations Specialist.
- E. Official time shall not be used for overtime, telework, compensatory time, or representing employees in other bargaining units.

### **SECTION 5: TRAINING**

Official time, in an amount not to exceed forty (40) hours in the first twelve months of the Agreement and sixteen (16) hours for each incumbent representative per calendar year thereafter (on January 1), shall be authorized for each Representative recognized under Section 1 to participate, if otherwise in a duty status, in labor management relations training. Up to forty (40) hours of official time shall be authorized in the first twelve months of service for newly designated representatives to participate, if otherwise in a duty status, in labor management relations training. Official time for training is in addition to (and does not count toward) the bank of time available in Section 4.

- A. The Representative will request approval for training in writing from his or her supervisor. The completed Office of Operations Request for Official Time for Training form (Appendix B) must describe the training requested and indicate the expected benefits of the training to both the Union and the Agency. The Representative shall indicate on the Office of Operations Request for Official Time for Training form the exact dates of the training program and submit the form to the Representative's supervisor no less than thirty (30) days before the beginning to the requested training.
- B. The supervisor will grant the official time for training unless deadline requirements preclude such a grant.
- C. The Representative shall attach each completed and approved the Office of Operations Request for Official Time for Training form to the Representative's Time and Attendance Log for the pay period(s) in which the official time is used.
- D. The Representative shall be responsible for coding his or her Time and Attendance Log or time sheet in accordance with Section 8 of this Article.
- E. The Agency will not pay training program fees and travel expenses related to training.
- F. Representatives are not entitled or permitted to accrue compensatory time for travel to or from labor management relations training under this Article.

### **SECTION 6: UNION BUSINESS**

- A. A Representative shall not use official time or duty time to conduct internal Union business. Internal Union business includes but is not limited to the following:
  1. Solicitation of membership;
  2. Elections of labor organization officials; and
  3. Collection of dues

## **SECTION 7: EMPLOYEE’S RIGHT TO OFFICIAL TIME**

- A. A grievance may be filed by a Bargaining Unit Employee or a group of employees, by the Union, or by the Agency.
- B. Bargaining Unit Employees presenting grievances may elect to be represented by the Union or to represent themselves in processing the grievance through the steps provided by this Article.
- C. In the event an employee presents a grievance without representation by the union, the union will be given the opportunity to be present at any formal meetings held in processing and adjusting the grievance. The Agency will provide the Union with copies of the written grievance and written decisions as well as supporting documentation that was exchanged between the Parties.

## **SECTION 8: RECORD KEEPING**

- D. Pursuant to USDA guidance, official time used is to be recorded on the Union representative’s biweekly time sheet using the following codes:

35	Term Contract Negotiations
36	Mid-term Negotiations
37	Ongoing Labor-Management Relations
38	Grievances, Charges and Appeals

These codes are subject to change upon satisfaction of bargaining obligations.

## **SECTION 9: DISPUTES**

- A. Any dispute over the use of official time will be resolved through the grievance procedure set forth in Article 41, Grievance Procedure of this Agreement.

## **ARTICLE 48: FACILITIES AND SERVICES**

### **Section A. Union Facilities and Services**

1. The Agency shall provide an enclosed, secure office with the following furniture and equipment: desk, desk chair, conference table, conference table chairs, computer, printer, fax machine, color copier, side table to hold fax machine and file cabinets.

a. The office shall be in the building housing the most bargaining unit employees.

(1). The union office is currently located in Room 0618 of the South Building.

(2). It is the intent of the Agency to allow the Union to retain the office currently occupied in room 0618 South Building throughout the life of this Agreement. Should the Union be required to vacate Room 0618 due to reasons outside the Agency's control, or for major repairs or renovations of lengthy duration, the Agency will provide the Union with reasonable advance notice and negotiate in good faith to acquire comparable office space to the extent possible.

### **Section B. Keys**

1. One (1) for each officer and steward for the exclusive use of the Union.

### **Section C. Telephones**

1. The Agency will provide one additional telephone jack in close proximity to the conference table located in room 0618.
2. The telephone line will be available on all telephones in the suite
3. The office shall be listed in the Agency telephone directory by Union name, room number, and telephone number.

## **ARTICLE 49: DAY CARE**

### **Section A. General**

1. Both Parties agree that healthful and adequate child/day care facilities are conducive to a family-friendly work environment and are in the best interest of the Agency.
2. The Agency agrees to continue to support the Department's efforts to provide employees with affordable and accessible child/day care facilities. If the Department terminates day care, both Parties agree to negotiate over day care (excluding the day care subsidy) to the extent permitted by law and government-wide regulation.

### **Section B. Notification of Changes:**

1. The Agency agrees to notify the Union of changes in contracts for on-site day care facilities that may have an effect on the bargaining unit.

## **ARTICLE 50: FOOD SERVICES**

1. The Employer and the Union agree that accessibility to affordable and adequate food service facilities is a concern of OO employees and is a component in the existence of a friendly work place.
2. The Employer agrees to continue to support OO employees' ready access and utilization of food service centers located at the South Building or any work site OO employees may occupy
3. The Union reserves the right to bargain to fullest extent permitted by law and executive order over food service facilities if bargaining unit members' access to food service facilities changes.

## **ARTICLE 51: TRANSIT SUBSIDY**

1. The transit subsidy is a monetary benefit where the Agency provides a specified amount to subsidize an employee's monthly commuting costs. Agency will continue to implement a Transit Benefits Subsidy Program in accordance with USDA Directive 4080-811-04, to the extent that it is fully subsidized by the Department of Transportation for USDA employees.
2. The Transit Benefits Subsidy Program policies and procedures are available on the following website: <http://www.dm.usda.gov/shmd/transit.html> . Questions and answers regarding the Transit Benefits Subsidy Program may be found at the following website: <http://www.dm.usda.gov/shmd/transitfaq.htm>.
3. The Agency will provide transit benefits up to the maximum allowed by current regulations and policies for an employee's particular circumstance. However, the Parties recognize that continuation of transit benefits is dependent on the availability of funds. Should Congress or the Department of Transportation propose to reduce the transit subsidy benefits to the employees, the Agency will provide the Union with a written statement describing the proposed changes.
4. Neither public transportation subsidies, pre-tax transit, parking benefits, nor any other media to which they are converted may be transferred from the recipient to any other individual. Moreover, benefits may only be used for eligible commuting to and from work; not for personal trips or trips between office locations. Inappropriate conversion or use will result in the employee's removal from the program and may result in disciplinary action and/or criminal prosecution, as appropriate.
5. One or more Agency employee(s) will be designated to serve as the coordinator for transit benefits.
6. Employees receiving transit or parking benefits are responsible for informing their Transit Coordinator any time their commuting patterns change, resulting in a change in either eligibility for the transit/parking benefit itself or eligibility for the overall amount of the benefit.
7. Employees are not eligible to receive transit or parking benefits retroactively.
8. Participating employees that separate from USDA immediately lose all transit and parking benefits upon their separation.
9. The application form and a copy of the program rules will be provided to eligible employees interested in participating in the program.
10. The Agency reserves the right to terminate the program upon the announcement of reduction in force and/or furlough actions that may be necessitated by budget or ceiling constraints or other constraints beyond its control.

## **ARTICLE 52: FITNESS/HEALTH FACILITIES**

- A. The Employer and the Union agree that accessibility to affordable and adequate fitness/health facilities is a concern for OO employees and is a component in the existence of a friendly workplace.
- B. The Employer agrees to continue to support OO employees' ready utilization of fitness/health centers located at the South Building or any work site where the majority of OO employees are located.
- C. The Union reserves the right to bargain regarding impact and implementation, over fitness and health facilities if bargaining unit members' access to fitness and health facilities changes.

## **ARTICLE 53: SMOKING POLICY**

A. The Employer and the Union agree to the following parameters and procedures regarding smoking policies as clarified in the Departmental Regulation (DR) Number 4400-6 dated December 16, 1996, for the duration of this Agreement. DR # 4400-6 is located at [www.usda.gov/ocio/directives/DR](http://www.usda.gov/ocio/directives/DR).

B. The employer will offer employees a smoking cessation program using the services of Federal Occupational Health (FOH). Any employee wishing to participate in the program should complete the necessary form and submit it to the Health Unit in the South Building. The FOH representative will contact the employee and conduct a short interview (approximately 30 minutes) and assist the employee in deciding which nicotine replacement product is best (gum, patches, or lozenges).

C. The typical smoking cessation program for employees involves 8-12 weeks of nicotine replacement therapy. Participation in this smoking cessation program is limited on a onetime basis per employee.

D. The employer agrees to pay for the counseling program and the first 4-week supply of materials to assist employees during their 8-12 week smoking cessation plan.

E. The employee will pay for the cost of materials to complete the last 5-12 weeks of the nicotine replacement therapy (8 weeks). It is expected that savings from not purchasing tobacco products will help offset the cost of the replacement therapy materials. It is strongly suggested that the nicotine replacement therapy should be used with a support program. The FOH representatives may provide individual counseling; regular follow up; and support resources.

F. The employee is authorized to participate in the initial interview, counseling sessions, and follow up during the 8-12 weeks of nicotine replacement therapy without loss in pay or leave. Supervisor approval is required for the interview and counseling session schedules.



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY  
WASHINGTON REGION

US Department of Agriculture, Office of Operations  
(Agency)

and

CASE NO. WA-RP-05-0054

American Federation of State, County, and Municipal  
Employees, Council 26  
(Labor Organization/Petitioner)

**CERTIFICATION OF REPRESENTATIVE**

An election was conducted in the above matter under the supervision of the undersigned Regional Director of the Federal Labor Relations Authority, in accordance with the provisions of Chapter 71 of Title 5 of the U.S.C., and with the Regulations of the Federal Labor Relations Authority. A majority of the valid ballots has been cast for a representative for the purpose of exclusive recognition.

Pursuant to authority vested in the undersigned,

IT IS CERTIFIED that the American Federation of State, County, and Municipal Employees Council 26 has been designated and selected by a majority of the professional and nonprofessional employees of the above-named Agency, in the unit described below, as their representative for purposes of exclusive recognition, and that pursuant to Chapter 71 of Title 5 of the U.S.C., the named labor organization is the exclusive representative of all employees in the unit.

**UNIT:**           **Included:**   All professional and nonprofessional employees employed by the U.S. Department of Agriculture, Office of Operations, in the Washington, D.C. metropolitan area.

**Excluded:**   Supervisors, guards, management officials, and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6), and (7).

FEDERAL LABOR RELATIONS AUTHORITY

Robert P. Hunter  
Regional Director  
Washington Region

Dated: November 7, 2005  
Attachment: Service Sheet

**APPENDIX 1 – FLRA CERTIFICATION**



**UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF HUMAN RESOURCES MANAGEMENT  
WASHINGTON, D.C. 20250**

**Annual Weingarten Notice**

**MEMORANDUM TO ALL USDA OFFICES  
(For Posting or Distribution to Bargaining Unit Employees)  
June 4, 2012**

The Federal Service Labor-Management Relations Statute (FSLMRS), 5 U.S.C. Chapter 71, Section 7114(a)(2)(B) provides Federal employees represented by a labor organization the right to request a union representative in conjunction with investigations conducted by agency representatives under certain conditions. This memorandum fulfills the USDA's obligation under the FSLMRS to annually remind employees of their rights and the conditions when those rights may be exercised.

As a bargaining unit employee represented by a labor organization, you have the right to request representation from your certified labor organization at any investigative examination/interview where you reasonably believe the examination might result in disciplinary action being taken against you. You may make this request at any time prior to or during the interview. If you request union representation, your agency may opt to: (1) suspend questioning and grant your request then resume the interview; (2) discontinue the interview; or (3) offer you the choice to proceed with the interview without a Union representative or to forego the interview.

Sources of additional information concerning your rights to representation include union officials within the labor organization having exclusive recognition for employees in your work unit, the collective bargaining agreement for your bargaining unit, and the Federal Labor Relations Authority (FLRA) at [www.flra.gov](http://www.flra.gov).

*Ronald S. James*

Ronald S. James  
Employee and Labor Relations Officer

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**APPENDIX 2 – WEINGARTEN RIGHTS NOTICE**

## Office of Operations Request for Official Time Form

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### Part 1 To be completed by the Representative and submitted to the supervisor or supervisor's designee

\_\_\_\_\_  
Representative's Name

\_\_\_\_\_  
**Date and Time**

Purpose (provide amount of time requested and a brief description

Term Contract Negotiations TC 35	TIME Estimated:_____ Actual:_____
Prep for Term Contract Negotiations TC 35	TIME Estimated:_____ Actual:_____
Mid Term Negotiations TC 36	TIME Estimated:_____
Actual:_____	
Prep for Mid Term Negotiations TC-36	TIME Estimated:_____ Actual:_____
Grievances, Charges and Appeals TC-38	TIME Estimated:_____ Actual:_____
Prep for Grievances, Charges and Appeals TC-38	TIME Estimated:_____ Actual:_____
Ongoing Labor/Management Relations	TIME Estimated:_____ Actual:_____
Subject:_____	

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### Part 2 to be completed by the supervisor or supervisor's designee

\_\_\_\_\_ Approved                      \_\_\_\_\_ Disapproved

Reason(s) for  
Disapproval:\_\_\_\_\_

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\_\_\_\_\_  
Signature of Supervisor or Supervisor's Designee

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### Part 3 to be completed by the Representative & supervisor/supervisor's designee

_____ Time Out	_____ Supervisor's Initials
_____ Time In	_____ Supervisor's Initials

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## APPENDIX A – THE OFFICE OF OPERATIONS REQUEST FOR OFFICIAL TIME

# **Office of Operations Request for Official Time for Training Form**

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**Part 1 to be completed by the Representative and submitted to the supervisor or supervisor's designee**

\_\_\_\_\_  
**Representative's Name**

\_\_\_\_\_  
**Date**

Please provide a general description of the training offered and the expected benefits of attending the training:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dates of training program: \_\_\_\_\_

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**Part 2 to be completed by the supervisor or supervisor's designee**

\_\_\_\_\_ Approved                      \_\_\_\_\_ Disapproved

Reason(s) for  
Disapproval: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Supervisor or Supervisor's Designee

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**APPENDIX B - THE OFFICE OF OPERATIONS REQUEST FOR OFFICIAL TIME FOR TRAVEL**

NAME	TELEPHONE NUMBER
ORGANIZATION (OFFICE, DIVISION, BRANCH, ETC)	UNION REPRESENTATION (IF ANY) AND TELEPHONE NUMBER
<p>THIS IS A PRESENTATION AT (CHECK ONE)</p> <p>STEP 1 ____ STEP 2 ____ STEP 3 ____</p> <p>IF THIS IS A STEP 2 OR STEP 3 GRIEVANCE, PLEASE ATTACH THE PREVIOUS GRIEVANCES &amp; RESPONSE(S), IF APPLICABLE</p>	
PLEASE PROVIDE A STATEMENT OF (Attach additional pages if necessary)	FACTS SURROUNDING THE GRIEVANCE
PLEASE PROVIDE A LIST OF WITNESSES WITH DIRECT KNOWLEDGE OF THE EVENTS SURROUNDING THE GRIEVANCE	
PLEASE REFERENCE THE SPECIFIC LAWS AND/OR ARTICLES OF THE NEGOTIATED AGREEMENT THAT YOU BELIEVE HAVE BEEN VIOLATED, TO THE EXTENT THAT YOU ARE AWARE OF THEM (OPTIONAL)	
THE SPECIFIC RELIEF REQUESTED IS:	
SIGNATURE OF GRIEVANT:	DATE:

**OFFICE OF OPERATIONS GRIEVANCE FORM – APPENDIX C**

**COLLECTIVE BARGAINING AGREEMENT  
BETWEEN  
AFSCME COUNCIL 26 – LOCAL 2846  
AND  
USDA OFFICE OF OPERATIONS**

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This Agreement between the American Federation of State, County, and Municipal Employees Council 26 – Local 2846 and the United States Department of Agriculture’s Office of Operations is entered into on the date shown below. This Agreement will remain in full force and effect for four (4) years from its effective date. Thereafter, it shall automatically renew in increments of one (1) year beginning on the day after the anniversary date, unless either Party serves the other with written notice of a desire to renegotiate or modify this Agreement in whole or in part in which case this Agreement shall stay in effect until negotiations are completed and the revised Agreement takes effect.

Except as specified in Article 46, Duration and Termination, of this Agreement, the provisions of any article in this Agreement may only be reopened pursuant to Article 44, Mid-Contract Negotiation, or where affected by changes of law, regulations, mutual agreement, or Executive Order.

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**On behalf of the Office of Operations**

Curtis Wilburn  
USDA  
Director, Office of Operations

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

**On behalf of AFSCME Council 26**

Beth Van de Bussche  
AFSCME  
Council 26 Representative

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**