

# **COLLECTIVE BARGAINING AGREEMENT**

between the

**Mid-Atlantic Regional Office  
Food and Nutrition Service  
United States Department of Agriculture**



and

**Local #2735  
American Federation of Government Employees  
AFL-CIO**



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## **PREAMBLE**

This Agreement is made in compliance with Title 5 U.S. Code, Chapter 71, hereafter referred to as "5 USC 71" or the "Statute". The Parties to this Agreement are the Mid-Atlantic Regional Office, Food and Nutrition Service, USDA, hereafter referred to as the "Employer", and Local #2735, American Federation of Government Employees (AFGE), AFL-CIO, hereafter referred to as the "Union". The terms and conditions of this Agreement apply only to positions and employees within the Bargaining Unit as defined in Article 1, Section 2.

The successful administration of this Agreement requires the maintenance of an effective system of two-way communications between the Parties for the purpose of bringing matters of concern to the attention of each other. Cooperation between the Parties in reducing cost, eliminating waste, increasing productive efficiency and improving quality and customer service represents a practical approach that is mutually beneficial.

## ARTICLE 1

### **Recognition of the Union and Bargaining Unit Designation**

#### Section 1 - Exclusive Recognition

The Employer hereby recognizes that the Union is the exclusive representative of all employees in the Bargaining Unit as defined in Section 2 of this Article. As the exclusive representative, the Union is entitled to negotiate agreements covering all employees in the Bargaining Unit. The Union recognizes its responsibility to represent, without discrimination, the interests of all Bargaining Unit employees with respect to grievances; personnel practices, policies and procedures; and other matters affecting their general working conditions in accordance with 5 USC 71.

#### Section 2 - Bargaining Unit Designation

The AFGE Local #2735 Bargaining Unit consists of the positions and all employees that work at the Mid-Atlantic Regional Office (MARO) of Food and Nutrition Service (FNS), including employees who administratively report to MARO.

Excludes Supervisors, management official, professional employees, temporary employees, student employees, employee who report to the Regional Operations Division with the exception of employees physically located at the Mid-Atlantic Regional Office in Robbinsville, NJ and employees described in 5 U.S.C. 7112(b) (2), (3), (4), (6) and (7).

#### Section 3 - Bargaining Unit Changes

Either Party may propose changes in the exclusion or inclusion of positions in the Bargaining Unit. If agreement cannot be reached, the matter may be referred to the Federal Labor Relations Authority (FLRA) as provided by appropriate Statute and regulations.

## ARTICLE 2

### **Governing Laws and Regulations**

In the administration of all matters covered by this Agreement, the Parties and bargaining unit employees will be governed by applicable Federal laws; and government-wide rules and regulations, Agency or Employer regulations and policies in existence on the effective date of this Agreement. Where any Agency or Employer regulations or policies conflict with this Agreement, the Agreement will prevail.

The Parties agree that Employer regulations and policies in existence on the effective date of this Agreement do not preclude the Parties from negotiating any of these matters for which a legal obligation to bargain exists, as determined by 5 USC 71, and provided they are not covered in this Agreement.

## ARTICLE 3

### Employee Rights

#### Section 1 - Work-Related Matters

Employees have the right to bring work-related matters to the attention of their supervisors. This right may be exercised by bargaining unit employees, individually or collectively.

#### Section 2 – Right to Join or Assist a Labor Organization

Each bargaining unit 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 bargaining unit employee will be protected in the exercise of such right. Except as otherwise provided under the Statute, such right includes the right to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and the right to engage in collective bargaining with respect to conditions of employment through representatives chosen by bargaining unit employees under the Statute.

#### Section 3 – Right to Representation

The Union will be given the opportunity to be represented at:

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

Prior to an examination relating to an investigation, the employee will be informed of the purpose of the examination and the right to representation. When an employee exercises this right and a representative of the Union is not immediately available, the investigation will be delayed for a reasonable period of time to permit the presence of a Union representative. The Employer will ensure that bargaining unit employees are informed annually of their rights under 5 U.S.C., Chapter 71, Section 7114 (a) (2) (B) of the Statute.

#### Section 4 - Fair Treatment

In the administration of this Agreement, all employees will be treated in a fair and equitable manner, without regard to their educational level, position, seniority, grade level, or other potentially defining factors.

#### Section 5 – Union Membership

Nothing in this agreement shall require an employee to become or to remain a member of a labor organization or to pay money to the organization, except pursuant to a voluntary written authorization by a member for the payment of dues through payroll deduction.

#### Section 6 – Employee Morale

The Parties will endeavor to provide a workplace that supports good morale.

#### Section 7 – Employee Official Personnel File (OPF)

The Electronic OPF (eOPF) is an electronic version of the paper OPF and is accessible to employees via the FNCS intranet. Employees have “read-only” access to their own information in the eOPF. However, only Human Resources staff has access to add or remove records in the system. If the employee chooses to furnish OPF material to the Union, the Union will be responsible for ensuring that confidentiality is maintained.

Upon request, materials placed in the OPF will be discussed with the employee. Employees may submit a request to the Human Resources Division, or its service provider to update information in their personnel files, including information regarding work experience, training, etc. The Employer will be available to assist employees in this matter.

#### Section 8 – Supervisor’s Record of Employee

A supervisor’s record, file, or notes regarding an employee shall remain confidential. This material shall not be shared with other supervisors, higher level managers, or a promotion panel or selecting official, unless they have an official need to know. The information contained in these files shall not be used in any disciplinary, adverse, or performance based action unless the information is provided to the employee.

## ARTICLE 4

### Union Rights/Representatives

#### Section 1 - Union's Rights Under Statute

The Employer shall not interfere with, nor restrain union officers, stewards, or other chosen representatives in the exercise of their delegated responsibilities in accordance with 5 USC 71, government-wide laws, rules or regulations or this Agreement concerning all matters relating to personnel policies, practices, and other conditions of employment. The Parties agree that representatives of the Union will conduct their delegated responsibilities reasonably and properly in accordance with the Statute and this Agreement.

#### Section 2 - Recognition of Representatives

The Employer will recognize the officers, stewards and other representatives designated by the Union as the officials of the Union. The Union will provide the Employer a complete list of union representatives annually and as soon as any change occurs.

#### Section 3 – Union Representation

The Union will be given the opportunity to be represented at:

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

#### Section 4 - New Employees

The Employer will provide a copy of this Agreement to new bargaining unit employees and notify them of the names and phone numbers of the union officers. Union representatives may introduce themselves and make brief presentations concerning official representational duties to new employees on official time. If a face-to face meeting is not practical, this presentation will be done by telephone.

#### Section 5 - Union Visitors

The Employer will recognize visitors who are employees of the Union, attorneys, and other representatives that are duly authorized by the Union. These individuals will be permitted

on the premises for representational matters and for official Union functions. The Union will notify the Employer of any visitor(s) in advance and provide the date, name of the visitor(s), the individual being visited, and the purpose of the visit. The union representative and/or employee involved will obtain the prior approval of his/her supervisor for official time. If the purpose of the visit is not official, it shall be scheduled either during non-working hours or the union representative and/or employee visited will use approved leave. The use of work site space will require prior approval by the Employer, except for the union office.

## ARTICLE 5

### Employer Rights

#### Section 1 - Employer's Rights Under Statute

In accordance with the Statute, nothing in this Agreement shall affect the authority of the Employer:

1. To determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and
2. In accordance with applicable laws,
  - a. To hire, assign, direct, lay off, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
  - b. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;
  - c. With respect to filling positions, to make selections for appointments from;
    - (1) Among properly ranked and certified candidates for promotion;  
or
    - (2) Any other appropriate source; and
  - d. To take whatever actions may be necessary to carry out the agency mission during emergencies.

## ARTICLE 6

### **Information Sharing and Use of Facilities**

#### Section 1 – Employee Information

The Employer will provide to the Union copies of organizational charts as updated and information on all Mid-Atlantic Regional Office employees upon request, but not more frequently than quarterly. The information shall contain the name, series, title, grade, program, bargaining unit status and official duty station of each employee. The Employer will also include any bargaining unit vacancies.

#### Section 2 - Health Benefits

The Employer agrees to inform each eligible new employee of the health benefit plans available to him/her, and to make available to employees information received for that purpose during the annual Open Season. Every attempt will be made to provide this material to employees within a reasonable period of time following the beginning of Open Season or receipt of this information. However, in case of late receipt of material, the Employer will assure that individuals have up to two (2) weeks after receipt of the information to submit changes for processing. The Parties will encourage employees to utilize related Internet web sites to locate information, reduce paperwork and expedite the enrollment process.

#### Section 3 – Use of Facilities for Union Meetings

The Employer will provide space in the regional office for the conduct of Union meetings if that space is not needed for agency business, not to exceed four times per month. The Employer will consider additional requests for use of space. Union officials and employees who attend these meetings will do so on non-duty hours (e.g., lunch time or approved leave). The office hours will not be extended to accommodate this Section. The Union and the Employer will work together to prevent abuse of this provision. The Union is responsible for maintaining security and the general housekeeping when using this facility.

#### Section 4 - Use of Facilities for Official Representational Duties

The Employer will allow the Union reasonable access during office hours to existing communication equipment and services. This includes but is not limited to the telephone system, internal mailing and photocopying machines, computer systems, video and data fax equipment when available and not needed by the Employer for the work of the Agency. The Union recognizes that its internal needs are subordinate to the official business of the Agency. The Employer retains the right to set priorities for official business. The Union agrees that these facilities will be used in the most economical way possible.

#### Section 5 - Use of Facilities for Internal Union Business

The Union may use the Employer's facilities for internal union business only with prior approval of the Employer. When approved, internal union business must be conducted on non-duty hours. The Parties agree to the following exceptions:

1. The Union may send newsletters and meeting minutes to each bargaining unit member through use of the office e-mail system but no more frequently than monthly and no more than seven (7) pages per issuance.
2. The Union may make two (2) brief announcements to bargaining unit employees over the public address system prior to meetings. Announcements for other purposes must have prior approval by the Employer. The Union will be responsible for the content of all announcements.

#### Section 6 - Draft Regulations

In instances where the Employer is asked to comment on draft Agency regulations that affect the bargaining unit employees and has the discretion to share the draft with the Union, a copy will be provided to the Union for comment at least seven (7) days prior to the deadline for submission of Regional comments, or as soon as possible if this time frame cannot be met. It is agreed that comments made by the Union do not waive the Union's right to bargain on the changes being implemented.

#### Section 7 - Access to Rules and Regulations

Rules and regulations are available from various sources (for example Human Resources Division (HRD), internet, union and management representatives). The Parties will encourage employees to utilize these sources to locate information regarding personnel policies, practices, procedures, and working conditions that are currently in effect. The Employer will provide to the Union specifically requested Agency regulations or policies, or inform the Union where these can be accessed.

#### Section 8 - Directory Listings

The Employer will list and identify the names and phone numbers of the Local's President and District Vice-Presidents in MARO's internal telephone directory.

#### Section 9 - Bulletin Board Space

Bulletin board space shall be provided by the Employer for the exclusive use of the Union at all sites. The Union agrees that information posted or distributed must not: (1) violate any law, regulation, this Agreement, or the security of the Employer; (2) contain libelous material regarding the Employer or Federal Government; (3) attempt to hold any group up to ridicule; or (4) impugn the integrity of any employee of the Food and Nutrition Service.

#### Section 10 - Union Office

The Employer agrees to provide a private room for the exclusive use by the Union as office space to conduct union business. The Employer agrees to provide a locking door with a

key provided to the Local President, one (1) telephone, one (1) desk with drawers and an adjustable chair on wheels, three (3) chairs and two (2) file cabinets.

The Union agrees to keep all its union documents and materials in this union office and remove all union documents and materials from the general office area. The Union acknowledges that it is solely responsible for the upkeep of this room and agrees to maintain this space in a safe and orderly manner.

## **ARTICLE 7**

### **Official Time**

#### **Section 1 - Union Representatives' Official Time**

The Parties agree that union representatives are expected to accomplish the duties of their official positions and to carry out their Union responsibilities as described in this Agreement. Under the terms of this Agreement and subject to the Statute and workload requirements, a reasonable and necessary amount of official time will be granted by the Employer to union representatives, upon request, for the following:

1. Meetings agreed upon between the Parties on issues affecting the Bargaining Unit;
2. Preparation for and participation in negotiations;
3. On-site consultations with AFGE district representatives regarding official representational matters;
4. Preparation for and attendance at third party proceedings, hearings or formal discussions where the Union is an official participant in the proceedings as provided for by this Agreement and appropriate laws and regulations, and statutory appeals procedures;
5. Consultations, preparation, and presentation of complaints, grievances or appeals where the Union is an official participant in the proceedings; or
6. When the Union exercises its right to attend a formal hearing or proceeding as an observer, its representative will be granted official time needed for this purpose, not to exceed three (3) instances per year. Only one union representative may attend any one gathering as an observer.

#### **Section 2 – Representational Activities**

A union representative desiring to leave the immediate work area during duty hours to perform representational duties in accordance with this Agreement shall first notify the immediate supervisor. At that time, the supervisor shall be informed of the destination, type of representational duty to be performed, and estimated amount of time required. If other areas are visited, the representative will so inform the supervisor prior to leaving the original destination. The supervisor shall normally grant the requested time unless workload demand requires the presence of the union representative at the work site. If the time cannot be granted when requested, a later time will be established. Representatives and employees will inform their supervisors directly after the completion of representational duties and appointments.

### Section 3 - Bargaining Unit Employees' Official Time

Bargaining unit employees will be granted excused absence (Code 66 – Administrative/Excused Absence) upon request that is mutually agreed to be reasonable, necessary and in the public interest for the following:

1. Consultation with union representatives concerning complaints and grievances;
2. Attendance as witness at Agency third party proceedings;
3. Participation in Agency task forces and work teams authorized by the Employer.

Prior to using excused absence, employees will obtain supervisory approval. If the supervisor is unable to grant the official time when requested, the supervisor will advise the employee of this and schedule a mutually agreeable alternative time. The excused absence will normally be rescheduled within one (1) workday. The employee will inform the supervisor directly after completion of the appointment.

### Section 4 - Union Training

Training of union officers and representatives on Labor-Management Relations is considered to be of mutual interest to the Union and the Employer. Therefore, requests for official time for training (Code 37 – Union Ongoing LMR) will be granted if mutually agreed upon by both Parties as being in the best interest of the Agency. This Agreement authorizes official time only. Both Parties agree that no financial claim will be submitted or approved (including but not limited to tuition, travel or per diem) in relation to union training. The union representative is responsible for obtaining written supervisory approval.

### Section 5 – Exclusions

Official time shall not include time spent on internal union business; for example, attending union meetings, soliciting members, collecting dues, posting internal information, conducting elections, and preparing internal union newsletters or other internal documents.

### Section 6 - Abuse of Official Time

The Parties will cooperate to avoid abuse of official time. The Union agrees to caution its officers and representatives to avoid abuse or excessive use of official time.

### Section 7 - Travel and Per Diem

Normally, when official time is granted, other than for union training or when the Union attends a hearing or proceeding as an observer, the Employer will pay expenses it deems reasonable and necessary.

## Section 8 - Recording Official Time

Union representatives and employees are responsible for informing their supervisor and timekeeper of official time used for official union business and to insure the time has been properly recorded on the designated form and the biweekly Time and Attendance Report. The appropriate codes for reporting performance of union duties are:

1. 35 - Union Contract Negotiations
2. 36 – Union Mid-term Negotiations
3. 37 – Union Ongoing LMR
4. 38 – Union Grievances/Appeals

## ARTICLE 8

### Mid-Term Bargaining

#### Section 1 – Negotiations

In accordance with the Statute, matters appropriate for negotiation between the Parties are changes by the Employer in personnel policies and practices or conditions of employment affecting bargaining unit employees. The Employer will not implement these changes without affording the Union an opportunity to negotiate, as appropriate, in accordance with the Statute and this Agreement. Personnel policies and practices or conditions of employment that are covered under this Agreement or are in conflict with this Agreement are not matters for negotiations during the life of this Agreement. In accordance with the Statute, nothing in this Agreement shall preclude the Parties from negotiating:

1. At the election of the Employer, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;
2. Procedures which the Employer will observe in exercising any authority under 5 USC 7106; or
3. Appropriate arrangements for employees adversely affected by the exercise of any authority under 5 USC 7106 by the Employer.

#### Section 2 - Notification of Changes

The Employer's obligation to negotiate will be met by providing notice of the proposed change to the Union. The Union will be provided seven (7) days to request negotiations on the matter, unless a different timeframe is mutually agreed to by the Parties.

#### Section 3 - Changes in Law or Regulations

When changes in laws, rules or government-wide regulations require the Employer to make changes which impact on the bargaining unit, the Employer will afford the Union the opportunity to negotiate on the changes, in accordance with this Article.

#### Section 4 – Mid-Term Bargaining

The Parties may initiate mid-term bargaining on matters affecting conditions of employment that are not specifically covered by or in conflict with this Agreement.

#### Section 5 - Union/Employer Relationships

On a continuing basis, the Parties agree to emphasize cooperation and interest-based relationships to jointly identify problems, challenges, and priorities facing MARO. Pre-decisional involvement and open sharing of information is encouraged. The Parties support

the goals of enhanced productivity, flexible work processes, improved working conditions, continuous quality improvement, and improved service to customers.

## **ARTICLE 9**

### **Annual Leave**

#### **Section 1 - General**

Use of accrued annual leave is a right of the employee, subject to supervisory approval and the needs of the Agency (e.g. workload, office coverage).

All requests for annual leave will be made in compliance with applicable law, regulations, FNS Instruction 305-1 and this Article. The employee shall insure that requests for annual leave normally are submitted in advance in a timely and proper manner. The Employer shall attempt to schedule work and to approve leave requests as submitted. Employees will attempt to use leave throughout the year to prevent excessive use of “use or lose” leave at the year’s end.

Annual leave normally should be granted to allow every employee an annual vacation period of extended leave for rest and recreation, and to provide time off for personal and emergency purposes. A request for annual leave not in excess of two weeks is reasonable for employees, and generally will be approved unless needs of the Agency otherwise prevent the granting of accrued leave. Requests for leave for periods of time longer than one week will be given full and fair consideration in the light of all circumstances attendant to the individual situation. However, these requests normally must be submitted and approved at least one month in advance of the effective date.

Annual leave will be granted on an equitable basis and the Employer will make a reasonable attempt to satisfy the leave requests of employees. When a conflict occurs involving two or more employees requesting extended leave and the employer’s needs are not an issue, an attempt will be made to resolve it between the employees involved or to determine if other acceptable coverage is available. If this fails to resolve the conflict, the earliest date of leave request shall prevail. If both leave requests have the same date, the employee with the earlier service computation date shall be granted the leave.

Annual leave may be requested, approved and charged in ½ hour increments. An employee will not be required to perform any duties during any part of a period charged against his/her leave account.

#### **Section 2 - Scheduling Annual Leave**

Employees should request annual leave as far in advance as possible so that the Employer can plan staffing needs for efficient operation. When leave has been requested and approved, the Employer will not cancel this approval unless an emergency, such as a workload demand or coverage problem, requires it. Every effort will be made to accommodate employees who desire annual leave or compensatory time during holiday seasons and on religious holidays (see Article 14, Other Leave Provisions).

### Section 3 - Procedures for Requesting Leave

All requests for annual leave must be made on form SF-71, Request for Leave or Approved Absence, and approval received, prior to commencement of the annual leave. All requests for annual leave shall be made solely to the employee's supervisor or other designated approving official. Notification of absence or intended absence does not constitute approval. A supervisor who denies a request for annual leave shall indicate the reasons on the form SF-71 submitted by the employee.

### Section 4 - Emergency Leave

In the event of an emergency where advance approval is not possible, requests for approval of annual leave shall be called in to the supervisor or designee as soon as possible, but normally not later than two hours after the start of the employee's scheduled tour of duty. If the supervisor or designee is unavailable, the employee may discuss it with a non-supervisory employee. The employee will complete form SF-71 as soon as practicable. In order to permit the efficient scheduling of work and provide adequate coverage, requests should be for genuine emergencies and held to a minimum.

### Section 5 - Advance Annual Leave

The maximum amount of allowable advance annual leave is the number of hours that will be accrued by the employee as of the end of the leave year. The Employer shall take the past leave record of the employee under serious consideration in approving or disapproving advance annual leave, as well as other circumstances that apply to the individual situation. Advance annual leave is a privilege afforded by the Employer; the employee has no right or entitlement to this leave. Employees who leave the agency with a negative leave balance for reasons other than for death or disability retirement will be required to reimburse the Employer.

### Section 6 – “Use or Lose” Annual Leave

Information concerning projected “use or lose” annual leave for the current leave year is available on Form AD-334, Statement of Earnings and Leave, which is provided to employees electronically each pay period. Information concerning use of this leave, forfeiture and restoration is available from the Human Resources staff and FNS Leave Instruction.

## ARTICLE 10

### Sick Leave

#### Section 1 - Use of Sick Leave

The accrual and use of sick leave will be in accordance with applicable law, regulations, the FNS Leave Instruction and this Article. Sick leave is a benefit to be used by employees with the Employer's approval. Employees may request sick leave for the following reasons:

1. When incapacitated for duty by physical or mental illness, injury, pregnancy, or childbirth;
2. When undergoing medical, dental, or optical examination or treatment, including time spent traveling to and from appointments;
3. Upon exposure to a contagious disease that would endanger the health of co-workers;
4. When care is needed for an immediate family member who has a contagious disease as certified by a public health official; or
5. For purposes relating to the adoption of a child.

Sick leave may be requested, approved and charged in ½ hour increments.

#### Section 2 - Definition of "Family Member"

A "family member" is defined as the following:

1. Spouse, and his/her parents;
2. Sons and daughters, and their spouses;
3. Parents, and their spouses;
4. Brothers and sisters, and their spouses;
5. Grandparents and grandchildren, and their spouses;
6. Domestic partners and their parents, including domestic partners of any individual in subsections (2) through (5) of this section; and
7. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship

### Section 3 – Family Member Care

In accordance with the provisions of OPM regulations, sick leave may also be used by employees to care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment. Additionally, OPM regulations authorize the use of sick leave for purposes relating to the death of a family member, including making arrangements or attending the funeral of such family member. Sick leave used for these purposes must meet all requirements of OPM regulations, including documentation and limitations on the amount of sick leave that can be used. The OPM regulations authorize covered full-time employees to use a total of up to one hundred and four (104) hours of sick leave each leave year for the purposes described in this section. For part-time employees, the amount of sick leave permitted under this section is the number of hours of sick leave he or she normally accrues during a leave year.

### Section 4 – Family Member with Serious Health Condition

A full time employee may use a total of up to 480 hours of sick leave per leave year to care for a family member with a serious health condition as defined in OPM regulations. For part-time employees, the amount of sick leave permitted for this purpose is an amount equal to 12 times the average number of hours in his or her scheduled tour of duty each week. Any sick leave used for purposes described in Section 3, counts toward the 480 hours.

### Section 5 - Procedures for Requesting Sick Leave

Employees will request sick leave using a form SF-71. To the extent possible, employees will obtain advanced approval for leave needed for medical, dental, or optical examinations or treatment, to care for a family member, or for funeral or adoption purposes. When advanced approval is not possible, an employee will notify the immediate supervisor or a designated official of an absence due to illness or urgent family care as soon as possible, but normally not later than two (2) hours after the start of the employee's scheduled tour of duty. If the supervisor or designee is unavailable, the employee may notify a non-supervisory employee. A supervisor who denies a request for sick leave shall indicate the reasons on the form SF-71 submitted by the employee. If the employee is requesting sick leave under the FFLA or sick leave for family care, the employee must so note on the SF-71.

### Section 6 - Medical Certification

When requesting more than three (3) consecutive workdays of sick leave, the employee is required to submit medical certification or other acceptable evidence. "Medical Certification" means a written statement signed by a physician or other acceptable practitioner certifying to the illness, examination, or treatment, the period of disability during which the patient receives professional treatment, and the time when the employee is expected to return to full or limited duty. If the employee did not consult a physician, the employee may personally certify on the SF-71 the nature of the illness and the reasons the employee did not consult a physician, subject to the Employer's approval.

An employee will not be required to furnish a medical certificate for sick leave for periods of three (3) consecutive workdays or less unless a supervisor has reason to suspect abuse of sick leave. In such case, the supervisor may counsel the employee and/or provide written notification to the employee describing the reasons for suspecting abuse and stating that medical certification will be required to support the use of all future sick leave. The supervisor may rescind this requirement when he/she believes the employee's leave record has improved, and must review the requirement at least annually. The employee may request reconsideration of this requirement at any time.

#### Section 7 - Advanced Sick Leave

A request for advanced sick leave shall be made by the employee in writing. It must be approved prior to the effective date except in an extreme emergency as determined by the Employer. Advanced sick leave shall be requested by an employee only if all of the following circumstances are met:

1. At no time may an employee's negative leave balance exceed 240 hours;
2. The employee is eligible to earn sick leave;
3. The employee's request will not exceed 240 hours:
  - a. When he/she is incapacitated for duty by physical or mental illness, injury, pregnancy or childbirth;
  - b. When he/she or a family member have a serious health condition;
  - c. When he/she would jeopardize the health of others because of exposure to a communicable disease;
  - d. For purposes relating to his/her adoption of a child; or
  - e. For the care of a covered service member with a serious injury or illness, provided the employee is exercising his/her entitlement under 5.U.S.C. 6382(a)(3).
4. The request will not exceed 104 hours when an employee:
  - a. Receives medical, dental or optical examination or treatment;
  - b. Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment;
  - c. Provides care for a family member who would jeopardize the health of others because of exposure to a communicable disease; or
  - d. Makes arrangements necessitated by the death of a family member or attends the funeral of a family member.

5. The request is supported by medical evidence certifying the seriousness of the condition and including the estimated date of return to duty; and
6. There is reasonable assurance the employee will return to duty.

Advanced sick leave is a privilege afforded by the Employer; the employee has no right or entitlement to this leave. Employees are encouraged to consider the Volunteer Leave Transfer Program when facing a medical situation that would cause financial hardships. Employees who leave the agency with a negative leave balance for reasons other than death or disability retirement will be required to reimburse the Employer.

## ARTICLE 11

### Family and Medical Leave Act

#### Section 1 - Entitlement to Leave

The Family and Medical Leave Act (FMLA) of 1993, PL 103-3, provides employees who have completed at least twelve (12) months of service with entitlement to leave without pay (LWOP), not to exceed twelve (12) administrative workweeks during any twelve (12) month period, for certain family or medical needs. This includes the birth of a child of the employee and care of such child; the placement of a child with the employee for adoption or foster care; the care of a spouse, child, or parent of the employee who has a serious health condition; a serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position; or any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

#### Section 2 - Request and Medical Certification Requirements

A request for FMLA leave must be submitted in writing to the immediate supervisor, at least thirty (30) calendar days before leave is to begin, or as soon as practicable if that is not possible. Employees must also note on the form SF-71 that they are requesting FMLA Leave. A request for FMLA leave to care for a serious health condition of the employee or a family member must be supported by acceptable medical certification issued by a health care provider. The employee must provide this medical certification to the immediate supervisor with the leave request or within fifteen (15) calendar days of the leave request unless it is not practicable to do so under the circumstances. If the employee is unable to provide medical certification within that time period, the Employer may grant an extension of up to fifteen (15) calendar days, in accordance with the FMLA.

If FMLA leave has commenced and the employee fails to provide medical certification, the FMLA leave may not be approved. If so, the Employer will first allow the employee to request that the leave be approved and charged to an appropriate category, before charging it as absent without leave (AWOL).

#### Section 3 - Job Benefits and Protection

Upon return from FMLA leave, an employee will be returned to the same position or to another position with equivalent benefits, grade, location, pay, and other terms of employment, unless a personnel action affecting that status would have occurred had the employee been in a duty status.

An employee who takes FMLA leave is entitled to maintain health benefits coverage. The employee may pay the employee share of the premiums on a current basis or pay upon return to work as appropriate, in accordance with regulations.

#### Section 4 - Substituting Paid Leave for LWOP

In accordance with the FMLA, an employee may request approval to substitute paid leave (e.g., annual, sick, or earned compensatory leave) in lieu of LWOP. Paid leave may be substituted when available and if approved, in accordance with applicable regulations and this Agreement. However, an employee may not retroactively substitute paid leave for LWOP under the FMLA.

#### Section 5 - Holidays

Holidays that occur during the period in which the employee is on FMLA may not be counted toward the 12-week entitlement. In addition, employees in LWOP status on the day before and after a holiday will not receive pay for the holiday.

#### Section 6 - Special Leave Entitlement for Birth or Adoption Purposes

Subject to the needs of the Agency, leave entitlement (including LWOP) is extended up to a total of six (6) months for the birth or adoption of a child. If requested and certified medically necessary, pregnant employees will be granted sick leave prior to and after childbirth, and for other pregnancy-related medical conditions. Specific categories of leave must be requested and approved in accordance with leave regulations.

Upon return from leave for birth or adoption purposes, an employee will be returned to the same position or to another position with equivalent benefits, grade, location, pay, and other terms of employment, unless a personnel action affecting that status would have occurred had the employee been in a duty status.

## ARTICLE 12

### Leave Without Pay

#### Section 1 - General

Leave without Pay (LWOP) is a temporary non-paid leave status that may be requested by employees in lieu of usage of annual or sick leave. The Employer retains the right to approve or disapprove all requests for LWOP. Employees cannot demand LWOP as a matter of right except when disabled veterans need medical treatment, a period of military service is required, employees are receiving workers' compensation payments, or employees make a request under the Family and Medical Leave Act (see Article 11).

#### Section 2 - Requests

All requests for LWOP must be made in advance in writing, and, at a minimum, include a brief explanation of the reasons for which it is to be used, the amount of LWOP, and the expected return to duty date. A request must be submitted to the immediate supervisor for his/her recommendation to the approving official. Except in an emergency situation, an employee may not commence using LWOP without prior written approval. Failure to comply with this requirement may result in the employee being placed in an absence without leave status (AWOL), which may become the basis of a disciplinary action.

The approving official shall base the decision to approve or disapprove LWOP on the following:

1. The employee must be committed to return to duty after a period of LWOP (except certain disability situations);
2. LWOP must meet the needs of the Employer as well as the employee; and
3. The reasons for the requested LWOP meet all requirements, and are valid and acceptable to the Employer. In case of a request for LWOP for medical reasons, the sick leave provisions will apply.

## **ARTICLE 13**

### **Administrative Leave**

#### **Section 1 - Definition**

Administrative leave is the excused absence of employees from duty without loss of pay and without charge to leave.

#### **Section 2 – Tardiness Due to Hazardous and/or Difficult Conditions**

On an individual case basis, the Employer may excuse tardiness for up to two (2) hours for hazardous conditions that affect the employee's ability to safely get to his/her workplace. The Employer may also consider granting up to one (1) day of administrative leave to an employee when hazardous and/or difficult conditions exist and the employee has made every reasonable effort to get to work. Such factors as the distance between an employee's home and the work site, availability of public transportation, reasonable efforts made by the employee, and the success of other similarly situated employees to get to the work site, will weigh heavily in the Employer's decision. An Employee requesting this administrative leave should submit a memorandum with all related information through his/her supervisor.

#### **Section 3 - Uncomfortable or Hazardous Working Conditions**

When uncomfortable or hazardous working conditions exist, administrative leave may be provided to affected employees in accordance with Article 15, Health, Safety and Office Environment.

#### **Section 4 - Blood Donation Leave**

Employees are encouraged to serve as blood donors. If requested, employees may be granted up to four (4) hours of necessary administrative leave, subject to the work needs of the Employer, for blood donations conducted on or off the work site.

#### **Section 5 - Voting Leave**

The Parties encourage all employees to exercise their right to vote. Employees should consider altering their work schedules to accommodate the need for time to vote. If polls are not open at least three (3) hours before or after an employee's tour of duty, up to three (3) hours administrative leave may be approved, as deemed reasonable and necessary by the Employer, to afford sufficient time to vote.

#### **Section 6 - Leave for Bone Marrow or Organ Donation**

An employee shall be provided with up to seven (7) days of paid leave in a calendar year to serve as a bone marrow and up to thirty (30) days a year as an organ donor.

## ARTICLE 14

### Other Leave Provisions

#### Section 1 - Leave for Union Business

Subject to workload needs, the Employer will grant reasonable requests for annual leave or leave without pay (LWOP) for internal union business activities.

#### Section 2 - Leave or Compensatory Time for Religious Observances

An employee may elect to use leave, or to work compensatory time (not overtime) for the purpose of taking an equal amount of compensatory time off without charge to leave for the purpose of religious observances, to the extent that such modifications in work schedules do not interfere with the efficient accomplishment of MARO's mission. This compensatory time may be earned before or after using it. However, if used first, it must be earned back in the same pay period for Time and Attendance purposes. If earned first, it must be used no later than the following pay period.

#### Section 3 - Court Leave

Pursuant to applicable laws and regulations, administrative leave will be granted to an employee, if not on LWOP, who is summoned before a court to act as a witness on behalf of a Federal, state, or local government (but not a private party), or to perform jury duty in any court of law. When an employee is called as such a witness or juror, the employee will notify his/her supervisor as soon as possible and provide a copy of the subpoena or summons. Upon completion of service, the employee will submit documentation of the dates the employee served as a witness or juror. The administrative leave will be recorded on the Time and Attendance report and the related documentation from the court will be attached. The Employer will provide written request to be excused for an employee whose services are required at the job site. If such request is not acceptable to the court, the Employer will grant court leave.

If an employee is excused from court service with sufficient time to enable that employee to return to duty for at least three (3) hours of the scheduled workday, the employee shall return to duty unless granted appropriate leave by the Employer. In addition, if an employee is summoned by a court as a witness for a private party, annual leave or LWOP must be used by the employee.

Employees on paid court leave will reimburse the Employer for the amount paid by the court for serving, except that employees may retain reimbursement for out-of-pocket expenses (e.g., mileage, tolls, parking).

#### Section 4 - Military Leave

Full time employees whose appointments are not limited to one year are entitled to specified amounts of military leave for active duty, and for active and inactive military training in accordance with 5 USC 6323 and other related regulations.

## Section 5 – Tardiness

Based on supervisory judgment, employees may be excused for occasional tardiness for up to one (1) hour. However, employees are expected to make every reasonable effort to arrive at work on time. Employees may request leave, or be placed on leave of absence without leave for such tardiness in half-hour increments.

## ARTICLE 15

### Health, Safety and Office Environment

#### Section 1 – General

The Employer will make reasonable efforts to provide a safe and healthful working environment for all employees. The Employer will comply with applicable health and safety regulations. The Parties will monitor and address workplace health and safety issues as needed. Employees and union representatives should inform the Employer of any condition at the workplace that imposes a health or safety hazard. The Employer will take reasonable and necessary steps to address the hazardous condition and will notify the Union as to what action has been or will be taken to address the reported condition.

#### Section 2 - Computer Furniture and Equipment

The Employer shall provide employees with furniture and equipment that meet reasonable and acceptable ergonomic design criteria at the official duty location. Wrist rests will be provided upon request. The Employer will also make reasonable accommodations for employees who have a documented medical condition (e.g., repetitive strain injury, carpal tunnel syndrome) aggravated by the use of computer equipment in accordance with recommendations made by medical or rehabilitation professionals.

#### Section 3 - Harmful Chemicals

The Employer will inform the Union when potentially harmful chemicals will be used in its buildings, such as paint, pesticides, or cleaning agents (beyond what is used for routine cleaning), as soon as the Employer is aware that such chemicals will be used. Where there is a reasonable possibility of illness due to application of any such chemicals, reasonable accommodation will be provided to employees in consultation with the Union. If an individual employee contends that a potentially harmful chemical has created a health problem, and there is not safe area in the office where the employee can be accommodated, the Employer will consider other reasonable accommodations in the short term. If the problem persists, and the adverse health condition is documented by a health professional, the Agency's formal reasonable accommodation process will be followed.

#### Section 4 - First Aid Kits; CPR

The Employer will provide a first aid kit in the Regional Office in a location accessible to all employees and will designate a person to maintain this equipment. The Employer will consider providing periodic cardiopulmonary resuscitation (CPR) training for employees on a voluntary basis, and providing a defibrillator in the Regional Office, in consultation with the Union.

#### Section 5 – Delayed Opening, Early Dismissal, Office Closures or Unscheduled Telework

The Employer's concern for the health and safety of its employees governs decisions regarding delayed openings, early dismissal, and office closures. Eligible employees who

are telework ready will be encouraged to exercise the option for unscheduled telework. The Employer's decision to close an office, delay the opening of an office, or dismiss employees early is made as a result of such conditions as inclement weather, hazardous road conditions, no access to the office due to road closure(s), electrical power failure at the work place, civil unrest, security threats and unsafe or unhealthy conditions at the workplace. Departmental and Agency policy will be followed when it's necessary to either close the office or have a delayed opening or early dismissal. However, when circumstances are localized to the region or no Departmental or Agency guidance is issued, the following procedures will apply:

1. Notification: The Employer shall determine the method to be used to communicate to employees an office closing or delayed opening (e.g., automatic broadcast system such as MIR3, a recorded telephone message, and/or phone tree) and will provide all related information about this procedure in the MARO Communications Plan.
2. Delayed Opening or Early Dismissal:
  - a. When an office opens late or closes early, employees who are on duty or scheduled to report for duty at the affected office will not be charged leave for any time that administrative leave has been approved.
  - b. An employee who leaves work before an early dismissal is announced or before the early dismissal time, should be charged leave in the appropriate category from the time the employee departed until the time set for dismissal.
  - c. If an employee is scheduled to report for duty but does not do so because of the emergency condition, the employee will be charged leave only for the time not covered by administrative leave.
  - d. If an employee is on prescheduled leave, the employee is charged leave for the entire period approved.
3. Office Closures:
  - a. When an office is closed for a full day, administrative leave will be granted for any hours that employees were scheduled to work that day, unless the employee requested and received approval to telework or there is a Continuity of Operations Plan (COOP) situation where alternate work arrangements have been made in accordance with COOP, such as a facility issue. The COOP shall supersede any telework policy in accordance with H.R. 1722.
  - b. Employees on prescheduled leave will be charged only for their approved hours of leave when the office is closed for the entire day.
  - c. If the office is closed on an employee's AWS day off, the employee is not entitled to an additional in lieu of day off.

- d. Employees in non-pay status do not receive excused absence when the office is closed, and therefore remain in non-pay status during the closure.
- e. Employees who are scheduled to work at an alternate work site or at a travel location that is not affected by such factors as inclement weather or hazardous conditions are required to work their normal scheduled tour of duty.

4. Exceptions:

- a. If an employee is on official travel and the employee is impacted by the office closure, the employee must contact the supervisor, and the supervisor will advise employee of expectations based on specific circumstance, such as telework from an approved alternate work site or grant administrative leave.
- b. In certain circumstances, and in accordance with the regional Continuity of Operations Plan (COOP), the Employer may direct staff to alternate work sites to ensure that essential functions of the Agency are performed. This may include employees working from alternate work sites that are within reasonable distance from the employees' official duty station.

Section 6 - Office Environment

The Parties will address issues regarding the office environment, such as temperature and air and water quality on an on-going basis. Air temperatures have been pre-set by Administrative Services, and the controls are locked to ensure a comfortable temperate. When the temperature in an office drops below 65° or rises above 76° and this condition cannot be rectified within two (2) hours, the COOP will be followed. Depending on the circumstance, the Employer may either direct employees who are eligible and telework ready to complete their tour of duty at an approved alternate work site or grant administrative leave.

Potable water and reasonably clean and safe lavatory facilities are basic human amenities. When an interruption in services occurs that cannot be restored within one (1) hour, the Employer will authorize employees to utilize alternative facilities on the premises or elsewhere as arranged by the Employer and agreed to by the Union. Transportation will be provided by the Employer upon request and if available. If this is not possible, the COOP will be followed. Employees who are eligible and telework ready may either be asked to complete their tour of duty at an approved alternate work site or may be granted administrative leave. Employees ineligible for telework or not telework ready will be granted administrative leave.

Employees will be expected to report for duty on the following scheduled work day.

### Section 7 - Lease Agreement

If the Regional Office moves to new leased office space, the Employer will provide the Union with a copy of the Lease Agreement prior to the move if possible.

### Section 8 - Accidents and Workers' Compensation Claims

The Employer will notify the Union of all work-related accidents and injuries incurred at employee's official duty location, approved alternate work site and/or while on travel status. For workers injured in a work-related accidents, the Employer will inform the employee of the proper procedures for filing claims under the Federal Employees' Compensation Act.

### Section 9 - USDA Smoking Policy

Smoking or having a lighted tobacco product is prohibited within any interior space owned or leased by MARO, or leased by GSA for use by MARO, or within twenty-five (25) feet of any entrance and air intake ducts to these spaces.

Smoking or having a lighted tobacco product is prohibited in any vehicle owned or leased by the Government.

## Article 16

### Hours of Work, Alternative Work Schedules and Telework

#### Section 1 – General

The Agency and AFGE Local 2735 jointly recognize the mutual benefits of a flexible workplace program to the Agency and its employees. The Parties also agree that balancing work and family responsibilities, assistance to disabled employees, and meeting environmental, financial, and commuting concerns are among its advantages. In recognizing these potential benefits, successful implementation of this program requires leadership and support from both Parties. The Parties also acknowledge the needs of the Agency to accomplish its mission.

All employees must have a pre-established and approved tour of duty. Accordingly, Bargaining Unit employees may participate in the types of schedules listed in this Article subject to the following criteria: The Employer reserves the right to assign work and to approve, disapprove or change all work schedules or telework arrangements based on the needs of the Agency. If more than one employee submits a new tour of duty request on the same day to be effective for the same pay period that will create inadequate office coverage or workload conflicts, the first priority will be given based upon employee seniority as determined by service computation date. Employees with approved tour of duty schedules are not impacted by new requests.

#### Section 2 – Definitions

1. Adequate Office Coverage at the Official Duty Location – A minimum of 30 percent of the work unit staff is required to work on-site to be considered adequate coverage. Exceptions will be addressed by management on a case-by-case basis. In the event that staff is recalled to ensure adequate office coverage, volunteers will be sought first, and then recalled from telework on a rotational basis, starting with the employee with the most recent service computation date.
2. Alternate Work Schedules (AWS) – Work schedules that are different than the basic work schedule. AWS schedules include both compressed work schedules and flexible work schedules.
3. Alternate Work Site – An alternate location at which an employee is approved to work in lieu of reporting to the official duty location.
4. Available Work Hours – The Mid-Atlantic Regional Office will be open Monday through Friday, from 7:00 a.m. to 7:00 p.m. Under no circumstance may an employee work before 7:00 a.m. or after 7:00 p.m. without receiving prior written approval from the Employer.
5. Basic Work Schedule – The basic work schedule for full time employees is five (5) days per week, Monday through Friday, with eight (8) hours each day. The schedule must contain forty (40) hours per week and eighty (80) hours per pay

period. The occurrence of holidays will not affect the designation of the basic work schedule. Employees may select fixed starting and ending times in quarter hour increments.

6. Compressed Work Schedule (CWS) – Employees on a CWS must select fixed starting and ending times consistent with their selected compressed schedule. On holidays, employees on a CWS will be credited with the number of hours pre-scheduled for that day. When a holiday falls on an employee’s scheduled day off, the preceding workday shall be the employee’s “in lieu of” holiday. The following are available CWS options:
  - a. CWS 5/4/9 – Employees on this schedule work eight nine-hour days, one eight-hour day, and have one day off, for a total of eighty (80) hours per pay period.
  - b. CWS 4/10 – Employees on this schedule work four ten-hour days and have one day off for a total of 40 hours per week, and eighty (80) hours per pay period.
7. 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 a basic or flexible work schedule is required by the Agency to be present for work. MARO core hours are from 9:30 a.m. to 3:30 p.m. Employees must work the core hours, except for absences on approved leave, holidays, credit hours, compensatory time, and mandatory lunch break. Additionally, an employee working a 4/9/4 Flexible Work Schedule will have core hours waived only on the two days that the employee’s scheduled daily tour of duty is four (4) hours.
8. Credit Hours – The hours within a maxiflex flexible work schedule that an employee is approved to work in excess of her or his basic work requirement so as to vary the length of a workweek or workday. At no time may credit hours earned exceed twenty-four (24) hours.
9. Flexible Hours – The hours during the workday, workweek, or pay period within the tour of duty during which an employee covered by a flexible work schedule may choose to vary times of arrival and departure from the work site consistent with the duties and requirements of the position. Flexible hours for arrival shall range from the time the office is open for business (7:00 a.m.) to the start of core hours (9:30 a.m.), and from the end of core hours (3:30 p.m.) to the time the office closes for business (7:00 p.m.).
10. Flexible Work Schedule (FWS) – Work schedule, in the case of a full-time employee, with an 80-hour biweekly schedule that allows an employee to determine his or her own schedule within the limits set by the Employer. Those hours of a workday within the available work hours of the office during which employees covered by a maxiflex schedule may choose to vary their times of arrival to and departure from the work site consistent with their established work schedule.

11. Maxiflex Work Schedule – A type of flexible work schedule that contains core hours on fewer than 10 workdays in the biweekly pay period and in which a full-time employee has a work requirement of 80 hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours worked on a given workday or the number of hours worked each week within the limits established.
12. Official Duty Station – The location where the work activities of the employee’s position of record are based, as determined by the employing agency, subject to the requirement that the official duty station must be in a locality pay area in which the employee regularly performs work. The official duty station is documented on an employee’s Notification of Personnel Action (Standard Form 50 or equivalent).
13. Telework – The Telework Enhancement Act defines telework or teleworking as a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee’s position, and other authorized activities, from an approved worksite other than the official duty station. In practice, telework is a work arrangement that allows an employee to perform work, during any part of regular, paid hours, at an approved alternate work site.
14. Telework Ready – Refers to all eligible employees with an approved Telework Agreement who are prepared and equipped to telework. If unable to telework when required, use of paid or unpaid leave may be requested.
15. Tour of Duty – The hours in a day, the days in an administrative workweek, and the hours and days of a biweekly pay period that constitute an employee’s pre-approved regularly scheduled basic work requirement. Under a flexible work schedule, this means the limits set by an Agency within which an employee must complete his or her basic work requirement. Under a compressed work schedule or other fixed schedule, tour of duty is synonymous with basic work requirement.
16. Work Unit – An entity located at one place with a specific mission, headed by a supervisor authorized to approve time and attendance records and approve leave. Within MARO, all employees who report to a supervisor, including the supervisor, constitute a work unit.

### Section 3 – Available Work Schedules

Employees may request one of the following types of work schedules (see Section 2, Definitions, for additional information):

1. Basic Work Schedule – 5/8; 5 days per week, eight (8) hours per day – Fixed Schedule
2. Compressed Work Schedules

- a. CWS – 5/4/9 – Fixed Work Schedule
  - b. CWS – 4/10 – Fixed Work Schedule
3. Flexible Work Schedules
- a. Basic – Flexible schedule with credit hours
  - b. 4/9/4 – Flexible schedule with credit hours
  - c. Maxiflex – Flexible schedule with credit hours

Employees may request a work schedule or change to their current work schedule by completing a Tour of Duty Form (Attachment A). Arrival and departure times of all work schedules must begin and end on quarter hour increments. Previously approved schedules will remain in effect until supervisory approval is received for a requested change and an effective date is established.

For permanent changes, the Tour of Duty Form must be submitted to the supervisor at least ten (10) calendar days prior to the start of the proposed pay period covered by the new schedule. For temporary changes, the Tour of Duty Form must be submitted to the supervisor for consideration as soon as possible but at least prior to the start of the proposed pay period covered by the temporary change.

For minor temporary changes (e.g. “off” day), employee must receive prior approval from their supervisor. These requests should be submitted on the Tour of Duty Form prior to the start of the proposed affected pay period. In emergency situations, the supervisor may approve a temporary modification without prior notification. Temporary changes that increase hours on a holiday will not be approved.

Employees must reflect their approved Tour of Duty changes in WebTA.

#### Section 4 – Maxiflex Work Schedule

The following conditions apply to maxiflex work schedules:

1. All hours must fall within the available work hours, defined as Monday through Friday, from 7:00 a.m. to 7:00 p.m.
2. Employees must request a schedule in which they report for work no later than the beginning of core hours and leave no earlier than the ending of core hours, except for such absences covered by approved leave, credit hours, holidays, excused absences, special circumstances for a limited period of time that are approved and documented, or compensatory time off.
3. No schedule shall contain fewer than eight days with core hours in a biweekly pay period.

4. Employees may not have a pre-established tour of duty of more than ten (10) hours per day.
5. Employees must have a pre-established Tour of Duty with scheduled starting and ending times and days off, if any, noted on the Tour of Duty Form, to equal eighty (80) hours in a biweekly pay period. Employees shall not work in excess of eighty (80) hours in a biweekly pay period unless the employee has received written supervisory approval to work credit hours, overtime hours or compensatory time.

In a given pay period, employees on a flexible work schedule (basic or maxiflex), not those on a fixed work schedule, may vary their scheduled arrival and departure times on a daily basis during the flexible hours. Employees do not have to obtain supervisory approval to vary their scheduled arrival and departure times of one hour or less during flexible hours. Employees will call or email their supervisor if they are going to arrive an hour or more passed their normal tour of duty. Employees are not required to submit a new Tour of Duty Form in order to vary their scheduled arrival and departure times during the flexible hours unless they are varying the number of hours that they are scheduled to work for that day.

- For example, if an employee is scheduled to work 8 hours from 8:00 a.m. to 4:30 p.m. and the employee arrives at 9:00 a.m. on a particular day, then the employees must work until 5:30 p.m. that day. If the employee does not work until 5:30 p.m., then she/he must use leave or credit hours.
  - In the event of an emergency or unforeseen circumstance, the employee will contact the supervisor for approval as soon as possible of a change in her or his arrival time and/departure time. Employees are responsible for properly recording all approved changes to their schedule on an amended Tour of Duty Form and providing it to their supervisors for timekeeping purposes. Employees must reflect their approved changes in their Tour of Duty in WebTA.
6. Employees who wish to change their day off must get prior approval from their supervisors, prior to the start of the affected pay period.
  7. On holidays, full-time employees working a flexible schedule will be credited with eight (8) hours regardless of the number of hours they were scheduled to work. Part-time employees will be credited with the scheduled number of hours of work for that day, or the typical or average number of hours normally worked on that day, not to exceed eight (8) hours.

#### Section 5 – Earning and Using Credit Hours

Only employees on flexible work schedules may earn credit hours, but not more than ten (10) credit hours in a pay period. An employee may not routinely use credit hours to establish a standard work schedule of greater than 10 hours a day or a different schedule

other than her or his approved schedule. Full-time employees may accumulate and carry over not more than twenty-four (24) credit hours from one biweekly pay period to a succeeding biweekly pay period. Part-time employees may accumulate and carry over up to one fourth of the employee's biweekly work requirement. Requests to earn credit hours will be submitted on a Credit Hour Request form (Attachment B) and must be approved in advance by the supervisor. Requests to use earned credit hours will be submitted on form SF-71 (Request for Leave or Approved Absence) and through WebTA and must be approved in advance by the supervisor. A supervisor may deny the request for credit hour for employees' safety, adverse impact on the mission, demonstrated poor performance, and demonstrated leave abuse. If a request to earn or use credit hours is denied, the employee may request that the supervisor provide specific reasons for the denial to the employee in writing.

Credit hours:

1. An option only for employees on a flexible work schedule, **not** for employees on a compressed or basic work schedule.
2. Must be requested by the employee and subject to supervisory approval; Credit hours may be earned when work is available or circumstances support continuing work. An employee may not "save" work that could otherwise be completed during the regular tour of duty in order to earn credit hours.
3. Cannot be earned or used on Saturdays, Sundays, holidays or outside of office hours.
4. An employee may not be paid overtime pay, Sunday premium pay, or holiday premium pay for credit hours. Credit hours must always be part of the employee's non-overtime basic work requirement. Sunday premium pay may be paid only when an employee works on Sunday, with the exception of paid leave and excused absence, and then only when permitted by law. Holiday premium pay may be only or work on a holiday.
5. When an employee used credit hours, such hours are to be counted as a part of the basic work requirement to which they are applied. An employee is entitled to her or his rate of basic pay for credit hours, and credit hours may not be used by an employee to create or increase entitlement to overtime pay.
6. Must be earned and reflected in WebTA before being used (in half hour increments).
7. Are limited to a maximum accumulation and/or carryover of twenty-four (24) hours from one biweekly pay period to a succeeding biweekly pay period (credit hours in excess of the twenty-four (24)- hour limit will be forfeited);
8. To be earned, credit hour must be requested and approved in advance on the Credit Hour Request Form (Attachment B); to be used, must be requested and approved in advance on the form SF-71; and/or approved in WebTA.

9. May only be earned during flexible hours (before and after core hours) and may not exceed two (2) hours per day, ten (10) hours per pay period, and twenty-four (24) hours in the aggregate; on days where an employee on a flexible schedule works 10 hours they may only earn one (1) credit hour.
10. Are non-overtime hours; therefore, overtime pay or compensatory time may not be substituted for credit hours in excess of the twenty-four (24)-hour limit.
11. Should be used as soon as possible but, may be carried forward from one pay period to another, subject to the twenty-four (24)-hour limitation, not to exceed one year. When an employee requests a change in their tour of duty to a non-flexible work schedule, any accumulated credit hours must be used prior to the effective date of the change.
12. May not be earned for travel because travel in connection with government work is not voluntary in nature.
13. May not be earned for time spent in training.
14. A supervisor should not approve the use of credit hours solely to prevent the forfeiture of the excess credit hours. Supervisors and employees must manage the use of credit hours in conjunction with annual leave balances. Use or lose annual leave will not be restored solely because an employee was using credit hours instead of leave.

#### Section 6 – Adjustment to Work Schedule and Telework When on Travel Status

1. When on a review or work activity that is expected to last five (5) days in one week (first or second week of a pay period) including travel time – all employees traveling together or independently must revert to a basic flexible 5/8 work schedule for that week. The other week of that pay period may or may not need to be adjusted, depending on the employee's regular tour of duty. Employees must discuss their schedules with their supervisor before traveling.
2. Typically for reviews or work activity lasting four (4) days or less including travel time – all employees traveling together or independently should revert to a basic flexible 5/8 work schedule for that week. However, subject to management discretion and approval, employees may be able to maintain their pre-established tours of duty.
3. Overtime should not typically be necessary. However, if the Employer determines, based on the needs of the Agency, that overtime will be needed, the written request to the employee to work overtime will be made by the Employer before Sunday of the week in which the overtime work will be performed.

#### Section 7 – Telework

1. Telework, is a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee's position, and other authorized

activities, from an approved worksite other than the official duty station. Participation in telework is voluntary, and does not change the terms and conditions of appointment. The overall interests of the Agency must take precedence over telework agreements. Employees who wish to participate in regular or core telework may request it by submitting the appropriate forms (see Attachments A, C, D, E, and a copy of the signed Personal Custody Property Receipt (FNS-694)). Criteria for participation in telework are:

- a. A performance rating of at least “Fully Successful”.
- b. Telework training must be completed prior to telework participation
- c. Completion of a one-year observation period for supervisor to assess performance of an employee on an initial appointment with Food and Nutrition Service.
- d. 120 days experience in current position and have demonstrated the ability to perform the duties of the position independently prior to being considered for participation. The supervisor will determine an appropriate telework schedule depending on employee performance and needs of Agency.
- e. The employee should have defined work that can be measured or otherwise evaluated in terms of timeliness, quality, and/or quantity. All subject to management discretion.
- f. Employees must be available and accessible by Microsoft Lync (IM, Video, Call, Share), phone, e-mail and voicemail to all routine contacts (such as, supervisors, FNCS employees, state and federal contacts, and customers) at all times while teleworking, with the exception of during authorized breaks.
- g. As one of the critical determining factors, the Employer will approve or deny an employee request based on the nature of the duties of her/his position and/or the job function, not the title of the job.
- h. The Employer or employee may terminate participation in the telework program at any time, in accordance with item two (2) of the Telework Agreement.
- i. Failure to meet the terms of the Telework Agreement, a decline in performance, or any instance of abuse or misconduct, may result in termination of the Agreement.
- j. Employees working at an alternate work site cannot use duty time to provide dependent care of for any purpose other than the official duties.

- k. Employees are subject to the same laws, rules and regulations while on duty at the alternate site as at the official duty station.
  - l. When a new telework request conflicts with one or more other approved requests to the extent that to grant approval would create a workload problem or inadequate office coverage, the request will not be approved.
  - m. If more than one employee submits a new telework request on the same day to be effective for the same pay period that will create inadequate office coverage or workload conflicts, the first priority will be given based upon employee seniority as determined by service computation date.
  - n. Telework agreements are valid for one year.
2. Episodic Telework – Episodic or situational telework arrangements may be authorized for short periods of time. Such situations are not permanent and are not regular or recurring.
- a. The employee must obtain prior supervisory approval, at least twenty-four (24) hours prior to the beginning of the episodic telework, unless an emergency situation such as inclement weather, prevents advance notice. Such episodic arrangements must be documented in writing. The Telework Application (Attachment C) is not required. However, the employee must have a signed copy of her/his Personal Custody Property Receipt (FNS-694), Telework Agreement (Attachment E) and Employee Self-Certification Safety Checklist for Telework (Attachment D) on file dated within the past year.
  - b. Employees should ensure the information on the forms is current prior to each request. These arrangements will normally be for one (1) day or less, but could last longer if the situation necessitates more time.
  - c. If an arrangement lasts longer than one (1) pay period, the normal process for participation in telework should be followed. If an episodic arrangement is going to last longer than two (2) consecutive pay periods or is requested more than twice in a two (2) month period, this is considered recurring and the employee will be required to follow the process for regular telework.
3. Telework Work Schedule – Employees must be scheduled to work a minimum of two (2) days per week at the official duty station. The actual number of days approved for telework is subject to management discretion and will be based on employee performance, adequate office coverage, and the mission of the Agency.
4. Equipment – Subject to budget, availability, and other limitations, the Employer agrees to provide computer equipment it deems necessary for approved telework requests. Employees may request such equipment using the request form (Attachment F).

- a. Employees may use their own peripheral equipment such as printers and fax machines.
  - b. Employees participating in Episodic Telework may request supervisory approval to use their personal computer provided assignments they will perform do not require access to any files stored on the agency's LAN and/or do not require any specialized software be installed. Under these circumstances, when an employee, for any reason, uses her/his own peripheral or computer equipment, the employee is responsible for its service and maintenance.
  - c. Employees in Telework arrangements will be governed by Agency policy regarding computer security, access, and use of government owned equipment and information, and shall use it only for official government purposes. Employees will return all assigned equipment to the Agency when directed to do so by the Employer, or when discontinuing the Telework arrangement.
5. Alternative Office Space – Employees participating in telework must have a designated work area for performance of their duties at the alternate work site. The employee is responsible to certify (Attachment D) and ensure that the alternate work site has adequate facilities that meet acceptable standards, such as workspace, light, telephone service, and power. Requirements will vary depending on the nature of the work and the equipment needed to perform the work. Employees are responsible for informing their supervisors of any significant changes in safety conditions at their alternate work site as soon as practicable. The Employer retains the right to visit and inspect these premises at its discretion.
  6. Utility Expenses – Utility costs associated with working at an alternate work site will not be paid by the Agency.
  7. Miscellaneous Expenses – The Employer will provide employees with office supplies it deems necessary. Costs associated with the copying of work-related materials, fax charges, express mail, etc., will not be reimbursed by the Employer unless written approval has been given in advance. Employees participating in the telework are responsible for completing duties such as these while at the official duty station, using supplies and services available there. To the extent possible, costs associated with the copying of work-related materials will be kept to a minimum by limiting the duplicate copies/records produced in connection with telework.
  8. Injuries – Injuries that arise in the performance of duty at the alternate work site are subject to the Federal Employees' Compensation Act.
  9. Agency Files and Materials – No classified documents (hard copy or electronic) may be taken to an employee's home. Employees may take home other Agency files and materials only with advance supervisory approval. Employees are

responsible for safeguarding all materials and information in conformance with the Privacy Act.

10. Participation and Approval – A request to participate in telework must be submitted to the supervisor at least one pay period prior to the proposed effective date of the schedule. After receiving a telework application, the supervisor will evaluate the request using the governing criteria and respond to the employee within ten (10) working days after their receipt of the request. When telework applications are denied or the telework arrangement is terminated, the supervisor will provide the reasons to the employee in writing.
11. Recall Procedure – Employees participating in telework programs, excluding those assigned to work exclusively at home or alternative work locations, must be accessible and available for recall to their official duty station as requested by the Employer. Examples include: to ensure adequate office coverage, training, special meetings, new work requirements and emergencies (i.e. emergencies may include national emergencies or disasters; recall directed by the Department Secretary or Sub-Agency Administrator, or a bona fide team emergency, such as work production with an enhanced deadline). These examples are for illustrative purposes and are not meant to be all encompassing.
  - a. In the event that staff is recalled to ensure adequate office coverage, volunteers will be sought first, and then recalled on a rotational basis, starting with the most recent service computation date.
  - b. Employees recalled to the office on their telework day(s) will not be provided with another alternate telework day. However, on an individual basis, an employee may request an alternate telework day within the same pay period, subject to supervisory approval.
  - c. If an employee is recalled after the tour of duty has started on the same day she/he is teleworking, travel time to the office is considered duty time. In situations where the employee is given advance notice before the recall day, travel to and from the office is not considered duty time.
  - d. If an employee is recalled for a specific event, which is in close proximity to the official duty station, the Employer will determine if it will be considered towards meeting the two (2) days per week at the official duty station requirement.

#### Section 8 – Records and Time & Attendance

In accordance with regulations, employees must account for all hours scheduled using the Agency's Time and Attendance system, WebTA and updated Tour of Duty Forms. The required records and related forms must be submitted to the supervisor timely for accountability and timekeeping purposes. In the event of an office emergency or unforeseen circumstance (i.e. delayed opening, early dismissal or office closure), in which an employee is unable to enter her/his time in the system, the employee's timekeeper will default to the prescheduled tour of duty for an employee on a maxiflex schedule. Although the Mid Atlantic Regional Office Tour of Duty Form reflects the options for "Permanent"

and “Temporary” schedule changes, timekeepers will use the most current Tour of Duty Form on file when inputting time in the event an employee is unable to enter her/his own time in the system. Therefore, it is the employee’s responsibility to submit a new Tour of Duty Form for all schedule change requests. The timekeeper will use the most recent Tour of Duty Form on file as the most current schedule until a new form is submitted.

#### Section 9 – Implementation

Telework schedules and telework provisions of this Article will take effect after completion of training for supervisors and employees on these issues. This training shall be completed within sixty (60) calendar days of the signing of this Agreement unless otherwise mutually agreed to by both Parties, or delayed by circumstances beyond the control of either Party. By mutual agreement, the Parties may jointly develop and present this training to bargaining unit employees.

## MARO Tour of Duty Form

Name:	Type of Change Requested: ( ) Permanent    ( ) Temporary	Date:
-------	---	-------

Pay period(s) and date(s) this action will be in effect:

**Basic Work Schedule:**

\_\_\_\_\_ 8-Hour Day    Start \_\_\_\_\_ End \_\_\_\_\_

**Compressed Work Schedule** (check one of the following):

\_\_\_\_\_ **4/10**    \_\_\_\_\_ Start    \_\_\_\_\_ End    Off Day: \_\_\_\_\_ 1<sup>st</sup> Week    \_\_\_\_\_ 2<sup>nd</sup> Week

\_\_\_\_\_ **5/4/9 (Pay period = 8 - 9 hr days + 1 day off + 1 - 8 hr day)**

9-Hour Day: \_\_\_\_\_ Start    \_\_\_\_\_ End

8-Hour Day: \_\_\_\_\_ Start    \_\_\_\_\_ End    \_\_\_\_\_ 1<sup>st</sup> Week    \_\_\_\_\_ 2<sup>nd</sup> Week

Off Day: \_\_\_\_\_ 1<sup>st</sup> Week    \_\_\_\_\_ 2<sup>nd</sup> Week

**Flexible Work Schedule** (complete the following):

\_\_\_\_\_ **Basic (Pay period = 10 8-Hour Days)**    Start \_\_\_\_\_ End \_\_\_\_\_

\_\_\_\_\_ **4/9/4 (Pay period = 8 - 9 hr days + 2 - 4 hr days)**

4-Hour Days: 1<sup>st</sup> Week: Day \_\_\_\_: \_\_\_\_\_ Start    \_\_\_\_\_ End    2<sup>nd</sup> Week: Day: \_\_\_\_: \_\_\_\_\_ Start    \_\_\_\_\_ End

9-Hour Days: \_\_\_\_\_ Start    \_\_\_\_\_ End

\_\_\_\_\_ **Maxiflex Work Schedule** (complete the following):

**Week 1:** Start    Mon. \_\_\_\_\_    Tues. \_\_\_\_\_    Wed. \_\_\_\_\_    Thurs. \_\_\_\_\_    Fri. \_\_\_\_\_

End    Mon. \_\_\_\_\_    Tues. \_\_\_\_\_    Wed. \_\_\_\_\_    Thurs. \_\_\_\_\_    Fri. \_\_\_\_\_

**Week 2:** Start    Mon. \_\_\_\_\_    Tues. \_\_\_\_\_    Wed. \_\_\_\_\_    Thurs. \_\_\_\_\_    Fri. \_\_\_\_\_

End    Mon. \_\_\_\_\_    Tues. \_\_\_\_\_    Wed. \_\_\_\_\_    Thurs. \_\_\_\_\_    Fri. \_\_\_\_\_

**Telework:** (If applicable, fill out in addition to work schedule above.)

Days at Official Duty Station:  
Week 1(circle): M T W Th F  
Week 2(circle): M T W Th F

Days at Alternate Work Site (circle):  
Week 1(circle): M T W Th F  
Week 2(circle): M T W Th F

**Employee Certification of Work Schedule**

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Supervisor Decision:  
( ) Approved    ( ) Disapproved

Supervisor's Signature and Date: \_\_\_\_\_



**MARO Employee Telework Application**

Employee Name: \_\_\_\_\_

Program: \_\_\_\_\_

Beginning Date \_\_\_\_\_

Ending Date \_\_\_\_\_

**Provide the address and phone # of the alternate work site:**

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_

**Describe in detail the work you will perform at the alternate work site. List the results that will be produced, being as specific as possible.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Describe the designated work area within the alternate work site including the space to be used such as home office, den, dining table, etc., available equipment such as fax machine, printers, etc., internet connectivity (e.g. high speed connection or dial up), and security-related equipment such as locked file cabinet.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*\* Attach Tour of Duty Request Form with your work schedule*

Signature: \_\_\_\_\_

**(Employee)**

\_\_\_\_\_

**(Date)**

Determination: Approved \_\_\_\_\_

Disapproved \_\_\_\_\_

Signature: \_\_\_\_\_

**(Supervisor)**

\_\_\_\_\_

**(Date)**

**\*If disapproved or rescinded state reason.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## MARO Self-Certification Safety Checklist for Telework

*The following checklist is designed to assess the overall safety of your alternate work site. Please read and complete the self-certification safety checklist. Upon completion, the employee will sign and date the checklist in the spaces provided and submit to your supervisor. Management may visit your alternate work site with advance notice to inspect for safe working conditions.*

Name:	Business Telephone:
Organization:	
City/State:	

The alternate work site is: \_\_\_\_\_

Describe the designated work area in the alternate work site:

\_\_\_\_\_

\_\_\_\_\_

### A. Workplace Environment

	Yes	No
1. Are temperature, noise, ventilation, and lighting levels adequate to maintain your normal level of job performance?		
2. Are all stairs with four or more steps equipped with handrails?		
3. Are all circuit breakers and/or fuses in the electrical panel labeled as to intended services?		
4. Do circuit breakers clearly indicate if they are in the open or closed position?		
5. Is all electrical equipment free of recognized hazards that would cause physical harm (frayed wires, bare conductors, loose wires, flexible wires running through walls, exposed wires to the ceiling)?		
6. Will the building's electrical system permit the grounding of electrical equipment?		
7. Are aisles, doorways, and corners free of obstructions to permit visibility and movement?		
8. Are file cabinets and storage closets arranged so drawers and doors do not open in walkways?		
9. Are chairs safe (no loose rungs, legs or casters)?		
10. Are the phone lines, electrical cords, and extension wires secured under a desk or alongside a baseboard?		
11. Is the office space neat, clean, and free of excessive amounts of combustibles?		
12. Are floor surfaces clean, dry, level, and free of worn or frayed seams?		
13. Are carpets well secured to the floor and free of frayed or worn seams?		
14. Is there enough light for reading?		

**B. Workstation**

	Yes	No	NA
15. Is your chair adjustable?			
16. Do you know how to adjust your chair?			
17. Is your back adequately supported by a backrest?			
18. Are your feet on the floor or fully supported by a footrest?			
19. Do you have enough leg room at your desk?			
20. Are you satisfied with the placement of your monitor and keyboard?			
21. Is it easy to read the text on your screen?			
22. Do you need a document holder?			
23. Is the screen free from noticeable glare?			
24. Is the top of the screen at eye level?			
25. Is there a place to rest the arms while not keying?			
26. When keying, are your forearms parallel with the floor?			
27. Are your wrists straight when keying?			

**Employee's Signature/Date:** \_\_\_\_\_

**Supervisor's Signature/Date:** \_\_\_\_\_

**Approved [ ] Disapproved [ ]**

Note: The supervisor and employee should retain a copy of this checklist along with the written telework agreement. If either the supervisor or employee has safety concerns about the alternate work site, they should be resolved before the telework agreement is approved.

**MARO Telework Participation Agreement**

The following constitutes an agreement on the terms and conditions of telework between the FNS, Mid Atlantic Regional Office (MARO), and the employee\_\_\_\_\_

1. The Employee volunteers to participate in the program and to adhere to the applicable guidelines and policies. The Employer concurs with employee participation.
2. The Employee will participate in the MARO Telework on the dates specified in the Employee's Application, not to exceed one year (may be renewed with the concurrence of supervisor). The supervisor or employee may terminate participation at any time. Upon termination, employee will resume working at the official duty station as soon as possible, but no later than five (5) working days after notification of termination. The supervisor will provide the reasons for termination in writing, if requested by the employee.
3. The employee's tour of duty will be as approved by the supervisor on the MARO Tour of Duty Form. These dates/times may be modified as needed to meet mission requirements as required or approved by the supervisor.
4. Requirements for the Employee's time and attendance are unchanged by participation in the telework. The employee's timekeeper will have a copy of the employee's Tour of Duty Form and access to the Employee's Time and Attendance record in WebTA and will record the employee's time and attendance as performing official duties at the official duty station.
5. The Employee's official duty station is not changed by participation in the program. All pay, leave, and travel entitlements will be based on the Employee's official duty station.
6. The Employee must follow established office procedures in obtaining prior supervisory approval for the use of accrued leave, credit hours, overtime and compensatory time.
7. Employees will continue to work in pay status while working at the alternate work site. If the Employee works overtime that has been ordered and authorized in advance, she/he will be compensated in accordance with applicable law and regulations. The Employee understands that he/she will not be compensated for overtime work that has not been ordered or authorized in advance.
8. Subject to budget, availability, and other limitations, the Employer agrees to provide computer equipment it deems necessary for approved telework applications. Employees may use their own peripheral equipment (e.g. printers, fax machines, copiers). The employee is responsible for protecting any government-owned equipment that is provided. The Employee is responsible for installing, servicing, and maintaining her/his own peripheral equipment if used. The Employer will service and maintain government-owned equipment.

9. Employees must make a reasonable attempt to ensure a safe work environment.
10. The Government will not be liable for damages to an Employee's personal or real property during the course of performance of official duties or while using Government equipment in the Employee's residence, except to the extent the Government is held liable by claims arising under the Federal Tort Claims Act or Military Personnel and Civilian Employees Claims Act.
11. The Government will not be responsible for the provision of or costs associated with utilities, home maintenance, or any other incidental costs associated with the use of the employee's alternate work site. Costs associated with copying of work-related materials, fax charges, express mail, etc. will not be reimbursed by the Agency unless written approval has been given in advance.
12. The Employee is covered under the Federal Employee's Compensation Act if injured in the course of actually performing official duties at the alternate work site, to the extent permitted by law. Any accident or injury occurring at the alternate work site during duty hours must be brought to the immediate attention of the supervisor.
13. The Employee will meet with the Supervisor to receive assignments and to review completed work as necessary or appropriate. Performance expectations will remain the same and the Employee will be evaluated in accordance with criteria prescribed in the Employee's performance standards.
14. Employees may take home Agency files and materials only with advance supervisory approval. The Employee will apply approved safeguards to protect Government/agency records from unauthorized disclosure or damage and will comply with Privacy Act requirements set forth in the Privacy Act of 1974, Public Law 93-579, codified at Section 552a, title 5 U.S.C. and specific agency confidentiality requirements.
15. The Employee agrees to safeguard the physical security of Government/agency records by keeping them in a secure locked space such as a lockable desk drawer, file cabinet or safe, when not performing official duties at the home workplace which involve accessing the records.
16. The Employee agrees that the permanent repository of Government/agency records is the official duty station, and agrees to return Government/agency records to the official duty station upon the Employee's next return to the official duty station after work is completed.
17. With advance notice, the employee agrees to permit home inspections by the Employer the alternate work site during the Employee's normal duty hours to ensure proper maintenance of Government-owned property and work site conformance with safety standards and other requirements of this agreement.
18. The Employee agrees that non-official tasks, including dependent care, will not be performed during his/her tour of duty.

19. The Employee agrees that on the day of a weather or emergency related closing he/she is generally expected to continue working from their alternate work site if the closure occurs on her/his telework day.
20. Failure to comply with all provisions of this agreement may result in termination of the telework arrangement and/or other appropriate disciplinary action.

Employee's Signature \_\_\_\_\_ Date: \_\_\_\_\_

Supervisor's Signature \_\_\_\_\_ Date: \_\_\_\_\_

**REQUEST FOR USE OF TELEWORK EQUIPMENT**

Date: \_\_\_\_\_

Name of Employee: \_\_\_\_\_

When Needed: Date: \_\_\_\_\_ Time: \_\_\_\_\_

Date of Return: \_\_\_\_\_

Equipment requested (please be specific):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Property Received: Item 1: \_\_\_\_\_ Serial #: \_\_\_\_\_

Item 2: \_\_\_\_\_ Serial #: \_\_\_\_\_

Item 3: \_\_\_\_\_ Serial #: \_\_\_\_\_

Item 4: \_\_\_\_\_ Serial #: \_\_\_\_\_

Item 5: \_\_\_\_\_ Serial #: \_\_\_\_\_

Item 6: \_\_\_\_\_ Serial #: \_\_\_\_\_

Employee's Receipt of Property: \_\_\_\_\_ Date: \_\_\_\_\_

**I request permission to use my personal equipment, including the following items:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ITS or OIC approval: \_\_\_\_\_ Date: \_\_\_\_\_

Supervisory approval: \_\_\_\_\_ Date: \_\_\_\_\_

## ARTICLE 17

### Overtime

#### Section 1 - General

Employees may earn and will be compensated for approved overtime, compensatory time and holiday work in accordance with the Fair Labor Standards Act (FLSA), OPM policy, and other applicable laws and regulations as appropriate to the employee status.

The Employer may require overtime/holiday work as a condition of employment. If more than one employee is qualified to perform the work, the Employer may consider the employee's personal circumstances or availability of volunteers.

Absent extenuating circumstances, the Employer will provide an employee reasonable notice when scheduling the employees to work beyond their normal tour of duty.

#### Section 2 - Definitions

1. Exempt employee – An employee who is not covered by the Fair Labor Standards Act (FLSA).
2. Non-exempt employee – An employee who is covered by the FLSA.
3. “Suffered or permitted work” – Any work performed by an employee for the benefit of the Agency, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed.
4. Officially Ordered or Approved Overtime – Overtime work that was ordered or approved in advance by a supervisor with such authority, or was approved by the supervisor after emergency work was performed.
5. Overtime Work for Exempt Employees – For exempt employees, overtime work is defined as follows:
  - a. Employees who work more than their scheduled work hours in a day (e.g., 4, 8, 9 or 10) or more than 80 hours in a pay period earn overtime compensation.
  - b. Basic work schedule: work performed by an employee in excess of eight (8) hours in a day or forty (40) hours in an administrative workweek that is officially ordered or approved.

- c. Compressed work schedule: work in excess of the established compressed work schedule that is officially ordered or approved.
  - d. Flexible work schedule: work in excess of eight (8) hours in a day or forty (40) hours in an administrative workweek which is officially ordered in advance, excluding credit hours.
6. Overtime Work for Nonexempt Employees – For non-exempt employees, overtime work is defined as follows:
- a. Employees who work more than their scheduled work hours in a day (e.g., 4, 8, 9, 10) or more than 80 hours in a pay period earn overtime compensation.
  - b. If FLSA non-exempt employees are suffered or permitted to work, they must be compensated for the overtime they work.
  - c. Basic work schedule: work performed by an employee in excess of eight (8) hours in a day or forty (40) hours in an administrative workweek that is officially ordered or approved, or suffered or permitted.
  - d. Compressed work schedule: work in excess of the established compressed work schedule that is officially ordered or approved, or suffered or permitted.
  - e. Flexible work schedule: work in excess of eight (8) hours in a day or forty (40) hours in an administrative workweek which is officially ordered in advance, excluding credit hours. “Suffered or permitted” work cannot count as overtime work for non-exempt employees on the flexible work schedule.
7. Overtime Work for Part-time Employees – Hours in excess of the established work schedule for the day (but more than at least eight (8) hours) or for the week (but more than at least forty (40) hours).

### Section 3 - Overtime or Compensatory Time for Non-Exempt Employees

Non-exempt employees are covered by both the FLSA and 5 USC for overtime purposes. Where the FLSA and 5 USC are inconsistent, non-exempt employees will be compensated for overtime by the law that provides the greater pay benefit. Employee’s grade levels do not solely determine whether they are exempt or non-exempt. Generally, the majority of employees in non-supervisory and program specialist positions are covered by the FLSA overtime provisions. The Employer shall compensate an employee who is non-exempt for all overtime hours worked at a rate equal to 1.5 times the employee’s regular hourly rate of pay. Upon the advance written request of an employee the Employer may grant

compensatory time off on an hour basis in lieu of overtime pay. The Employer may not require that a non-exempt employee be compensated for overtime work with compensatory time off, in lieu of granting overtime pay.

#### Regular Overtime

1. Scheduled in advance of the workweek (before Sunday of the week in which the overtime work will be performed).
2. All regularly scheduled overtime must be compensated in overtime pay.
3. \*Caveat: employees on flexible schedules may request compensatory time in lieu of overtime, regardless of FLSA status.

#### Irregular Overtime

1. Scheduled on or after the Sunday of the week in which the overtime work is to be performed.
2. All employees who are eligible to earn overtime may be granted compensatory time in lieu of overtime pay for irregular overtime. (FLSA exceptions apply)
  - a. The Employer shall compensate an employee who is not-exempt for all hours worked in excess of the employee's normal tour of duty at a rate equal to 1.5 times the employee's hourly regular rate of pay.
  - b. At the request of an employee, the Employer will grant compensatory time off from an employee's tour of duty instead of overtime pay, for an equal amount of overtime work.
  - c. The Employer may not require that an employee be compensated for overtime work under this subpart with an equivalent amount of compensatory time off from the employee's tour of duty.

#### **Calculation of overtime pay for FLSA Non-Exempt:**

1.5 times the employee's hourly regular rate of pay.

#### **Calculation of overtime pay for FLSA Exempt:**

1. For an employee whose rate of basic pay is not more than the rate for GS-10, Step 1, the overtime hourly rate is 1.5 times her/his hourly rate of basic pay.
2. For an employee whose rate of basic pay is more than the rate for GS-10, Step 1, the overtime hourly rate is equal to the greater of
  - a. 1.5 times the hourly rate of basic pay for GS-10, Step1; or 1 times the employee's hourly rate of basic pay.

#### Section 4 - Overtime or Compensatory Time for Exempt Employees

Exempt employees are not covered by the FLSA. Usually, employees occupying positions classified as supervisory, managerial, or administrative are not covered by the overtime provisions of the FLSA. They are compensated for overtime work by application of 5 USC.

Employees whose rate of pay does not exceed the rate of pay for GS-10, step 10 will be compensated for overtime work with overtime pay unless the employee is on a flexible schedule and is earning credit hours or he/she requests compensatory time in lieu of overtime. The Employer may grant compensatory time off in lieu of overtime pay for overtime work upon the advance, written request of the employee.

Employees whose rate of pay exceeds the rate of pay for GS-10, step 10 will be compensated for overtime work with either (1) an equivalent amount of compensatory time off or (2) at the greater of (a) 1.5 times the hourly rate of basic pay for GS-10, step 1, or (b) the employee's hourly rate of basic pay (except as provided in 5 U.S.C. 5542(a)(3) and (5)), at the discretion of the Employer.

#### Section 5 - Using Compensatory Time

If compensatory time is earned, employees must use it by the end of the 26<sup>th</sup> pay period after the pay period during which it is earned. Subject to management approval, compensatory time must be used before annual leave, provided this will not result in the forfeiture of annual leave. If compensatory time off is not requested or taken within the established time limits, or by the time of the employee's separation or transfer, the employee must be paid for overtime work at the overtime rate in effect for the work period in which it was earned.

#### Section 6 - Pre-Authorization of Overtime/Compensatory Time/Compensatory Travel Time

When a supervisor anticipates that overtime work is necessary, the supervisor will notify the employee to complete form FNS-703 Compensatory Time & Overtime Authorization, and submit to the supervisor for approval to completing overtime work. The issue of overtime pay versus compensatory time will be resolved prior to approval of the overtime.

Compensatory and Compensatory travel hours should be requested as follows:

1. Requests for compensatory time must be approved in advance of travel using Form FNS-703.
2. Upon return of travel the employee must:
  - a. Update the approved FNS-703 with the actual hours earned

- b. Sign the “Employee Post-Certification of Actual Time: line on the FNS-703.
- c. Submit the FNS-703 to her/his supervisor for final approval.
- d. If an employee is submitting an approved FNS-703 **for the current pay period**, the employee must enter a premium pay request in WebTA.
- e. If the employee is submitting an approved FNS-703 **for time earned outside the current pay period**, a timekeeper must process any necessary corrections in WebTA.

## **ARTICLE 18**

### **Official Travel**

#### Section 1 – Entitlement to Reimbursement for Travel

Entitlement to reimbursement for travel performed by employees will be determined by the Employer, based on the application of appropriate laws and regulations.

#### Section 2 - Return to Duty Station

Employees are expected to return to the duty station during normal duty hours. Any travel outside of the normal duty hours require written supervisory approval.

#### Section 3 - Advance Notice of Travel

If employees are required to travel, the Employer will provide employees with advance notice as soon as reasonably possible.

#### Section 4 - Emergency Travel: Cash Advances

In cases of emergency job-related travel and for cash advances in general, employees may obtain cash advances in accordance with existing regulations and policy. Travel advances will be made available prior to the date of departure to those employees who make timely application.

#### Section 5 - Use of Private Vehicle

When use of a privately owned vehicle for official business is advantageous to the Employer, the employee providing such automobile will be reimbursed at the rate allowable by regulation. In no case, may an employee be required to use her/his privately owned vehicle in connection with official business.

#### Section 6 - Extended Travel

The Employer may approve reimbursement for round-trip travel expenses for periodic travel home on non-work days and return travel to their official duty station, for employees who are required to perform work for an extended period at a temporary duty station.

#### Section 7 - Criteria for Overnight Travel and Per Diem

If an employee is traveling to a temporary duty station that is at least fifty (50) miles from the employee's official duty station and fifty (50) miles from the employee's home, she/he may stay overnight if approved by the Employer and be reimbursed in accordance with appropriate travel regulations.

## Section 8 - Government Credit Card

An employee must obtain and use the official government credit card for hotel and transportation (airline, train, auto rental, etc.) expenses related to official travel, unless a merchant will not accept the card, or the employee requests and is granted an exemption by the Employer for one or more of the following reasons:

The employee-

1. Is a new employee required to perform temporary duty travel en route to her/his first post of duty;
2. Is an intermittent or seasonal employee;
3. Does not expect to travel more than twice per year;
4. Has had her/his government credit card canceled for cause by the issuing bank;  
or
5. Has issues concerning credit (e.g., credit problems or issues, past or present).

At the employee's option and in accordance with federal regulation, the following expenses may be charged to the government credit card: laundry/dry cleaning, parking, local transportation systems, taxis, tips, telephone calls, and other expenses covered by the meals and incidental expenses allowance (M&IE).

## Section 9 - Travel as Hours of Work under the FLSA

Time spent traveling away from the official duty station is considered hours of work under the FLSA if the employee:

1. Travels during regular working hours.
2. Drives a vehicle or performs other work while traveling.
3. Travels as a passenger on a one-day assignment away from the official duty station.
4. Travels as a passenger on an overnight assignment away from the official duty station during hours on non-workdays that correspond to the employee's regular working hours.

## Section 10 - Travel as Hours of Work under 5 USC

Time spent traveling away from the official duty station is considered hours of work under 5 USC if:

1. The employee travels during regular working hours; or
2. The travel-
  - a. Involves the performance of actual work while traveling.
  - b. Is incidental to travel that involves the performance of work while traveling.
  - c. Is carried out under such arduous and unusual conditions that the travel is inseparable from work.
  - d. Results from an event which could not be scheduled or controlled administratively.

#### Section 11 – Application of Travel as Hours of Work

For the purpose of determining overtime pay for work, Sections 9 and 10 above are both applicable to non-exempt employees. Only Section 10 is applicable to exempt employees.

#### Section 12 – Alternative Mode of Travel

In accordance with Federal Travel Regulation, Chapter 301, Subchapter B, Part 301-13, the employer may authorize additional travel expenses to accommodate an employee with a special physical need which is either:

1. Clearly visible and discernible.
2. Substantiated in writing by a competent medical authority.

Requests for accommodation, will be handled in accordance with Departmental Manual DM 4300-002, “Reasonable Accommodation Procedures,” and Agency policy.

## **ARTICLE 19**

### **Parking**

#### Section 1 - Parking Expenses

Subject to GSA regulations, employees will not incur parking expenses for GSA vehicles parked at their worksites. In any case where it has discretion, the Employer will not charge parking fees to employees.

#### Section 2 - Disabled Parking

Upon request by an employee who suffers a temporary or permanent ambulatory disability, the Employer shall attempt to provide a parking space near the entrance to his/her work location. Disabled parking spaces shall be provided at the Regional Office.

#### Section 3 - Car Pools

At worksites where all employees are assigned private parking spaces, special assignment rights will be given to car pool vehicles of three (3) or more employees.

#### Section 4 - Snow and Ice Removal

After a snowfall or ice storm, the Employer will make a reasonable effort to assure that Building Management clears and salts walkways, parking areas and driveways as soon as possible. Reasonably safe walking and driving conditions should be maintained at all times; however, it is understood that this is often beyond the control of the Employer.

#### Section 5 – Lighting

The Employer will contact Building Management to address problems concerning parking lot lighting when appropriate.

## ARTICLE 20

### Performance Management

#### Section 1 - General

The performance appraisal system (PAS) shall be in compliance with regulations and is designed to promote a motivated and effective workforce and continuous improvement in meeting the Agency's mission. The provisions of this Article shall apply to all bargaining unit employees except those excluded by law, government-wide regulations, or other provisions of this Agreement. The purpose of the PAS is to:

1. Identify employee job duties and responsibilities as they relate to organizational goals and objectives;
2. Assess and improve performance;
3. Identify and address developmental needs of the employee;
4. Provide a basis for recognizing and rewarding employee accomplishments; and
5. Provide a basis for appropriate personnel actions.

The PAS shall, to the maximum extent possible, provide a fair, accurate and objective evaluation of job performance and ensure that the employee's rating of record is based only on actual job performance during the designated appraisal period as per 5 CFR 430.208. Employees should not assume a level of performance based on any non-merit factor. Ongoing, two-way communication and feedback is encouraged. Employees will receive written performance ratings, normally at least annually, based on written performance standards and elements that are related to official duties. The Employer may provide assistance to employees in meeting performance standards as needed, including communicating expectations and providing training and developmental opportunities as appropriate.

#### Section 2 - Definitions

1. **Critical Element.** A work assignment or responsibility of such importance that unacceptable performance in the element would result in a determination that an employee's overall performance is unacceptable.
2. **Non-Critical Element.** A dimension or aspect of individual, team, or organizational performance, exclusive of a critical element, that is used in assigning a summary level. Such elements may include, but are not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance.

3. **Performance Standard.** The management-approved 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, quality, quantity, timeliness, and manner of performance.

### Section 3 - Performance Elements and Standards

Employees will be provided with written elements and standards. The final authority for establishing elements and standards rests with the Employer. The Employer shall determine if performance standards should be comparable for subordinates with the same position, title, series, grade, and duties within a unit. In resolution of disputes that challenge the legality of standards, the Union will be permitted to review all similar standards in the unit. Performance elements and standards will be based on work assignments and responsibilities of the employee's position. Each employee will have at least one critical element. The rating official should strive to describe performance standards in words and phrases that denote objectively verifiable qualities of the work performed.

The Employer will define performance required to achieve the "Meets Fully Successful" level of performance for all elements of employees' performance plans. Upon request from an employee, the employee's supervisor will discuss performance expectations at other levels.

Employee input and involvement in the development of performance elements and standards will be encouraged. The supervisor may allow individual employees or work units with comparable duties to develop or propose changes to elements and standards. However, the supervisor has the final authority to approve, reject, or alter the proposals. During the process of providing input, employees may consult with union representatives if they choose to do so.

After consideration of any employee input, performance elements and standards shall be communicated in writing and discussed with each employee prior to the beginning of the rating period and whenever elements and/or standards change. The performance plan will be signed and dated by the employee and the rating official. By signing, the employee signifies only receipt of the plan, not necessarily agreement. If an employee has an objection to the final elements or standards, he/she may note the objections in writing and attach them to the official performance plan. Ratings may be grieved. However, the substance of elements and standards cannot be grieved unless it is alleged that a law or regulation was violated. Elements and standards should be reviewed at least once a year, normally at the beginning of the rating period, to ensure that they are still relevant to the work actually performed by the employee.

An action or a failure to act that occurred prior to the communication of an element may not be considered at the time of evaluation of that element unless the same element was

previously in effect. If a previously unanticipated problem with a performance element or standard emerges during the rating period, either party should communicate it to the other as soon as possible so it can be revised if appropriate, or the nature of the problem recorded for reference at the annual evaluation.

#### Section 4 - Mid-Term Evaluation

Employees will receive an evaluation approximately at the mid-point of the performance evaluation period at which time the rating official shall counsel the employee on his/her progress in meeting the standards previously set. In addition, the rating official and the employee may meet on a more frequent basis if desired by either party, and are encouraged to have ongoing dialogue and feedback as needed regarding performance, accomplishments, work unit goals, or training and development opportunities and needs.

#### Section 5 - Annual Performance Appraisal

Normally, appraisals will be conducted within ninety (90) days of the end of the rating period, absent extenuating circumstances, although an appraisal may be conducted or delayed at any time the Employer determines it to be merited, consistent with law and regulations. Rating officials will determine the rating for each element and the appropriate summary rating. No pre-established distribution of expected summary level totals will be created. The appraisal will be signed and dated by the rating official and the reviewing official.

Appraisals will be presented and discussed with employees. Rating officials are encouraged to present orally and/or in writing, a descriptive assessment of employee performance including accomplishments, and may also discuss how employees could strengthen their performance and relevant developmental needs. Employees may provide information to rating officials regarding their performance such as accomplishments and notable achievements, prior to the appraisal discussion. When determining appraisals, rating officials will consider any factors that may impact on performance but are beyond the employee's control.

The employee should sign and date the appraisal; since this signifies only that the appraisal has been discussed, not that they necessarily agree with it. If an employee refuses to sign the appraisal, the rating official should so note this, and sign and date it. Whether or not the employee signs, the rating is official and a copy of the appraisal and any attachments will be provided to the employee.

#### Section 6 - Minimum Appraisal Period

An employee must be in his/her current job for at least ninety (90) calendar days in order to receive a rating. If the minimum time is not met at the end of the rating period, it will be extended. If an employee worked for another supervisor for a previous part of the appraisal period, including details of ninety (90) days or more, the supervisor may obtain input for that service to be considered in the official year-end appraisal. An employee detailed to a

classified position in excess of ninety (90) days shall be given the elements and standards for the detail position.

### Section 7 - Marginal Ratings

If a rating official determines that an employee is not performing successfully on a non-critical element, the rating official should inform the employee, discuss the deficient performance, and explain what the employee needs to do to improve performance to an acceptable level on the element. Training and assistance in improving performance may be offered to the employee, if available and appropriate. A marginal rating or marginal performance may adversely affect receipt of a within grade increase.

### Section 8 - Disputes Regarding Ratings

An employee who disputes a rating may grieve the rating using the Negotiated Grievance Procedure. The burden of proof is primarily on the employee to demonstrate that the rating should be higher than fully successful, and primarily on the Employer to demonstrate that the rating should be less than fully successful.

### Section 9 - Unacceptable Performance: Performance Improvement Plan

At any time, a supervisor may determine that an employee's performance is unacceptable in one or more critical elements and the employee will be so notified. The rating official at his/her option may afford the employee an informal opportunity to improve performance and provide appropriate guidance to the employee. When unacceptable performance exists in a critical element, the Employer will develop a written Performance Improvement Plan (PIP). The PIP shall contain the following information:

1. An identification of the critical element(s) for which performance is unacceptable;
2. A description of the performance standards that must be attained in order to demonstrate acceptable performance;
3. A statement that the employee has ninety (90) calendar days in which to improve performance to an acceptable level;
4. A statement that the Employer will offer assistance to the employee in improving unacceptable performance; and
5. A statement that unless the employee's performance in the critical element(s) improves to and is sustained at an acceptable level, the employee may be reduced in grade or removed.

During the PIP period, the supervisor will monitor the employee's performance and may have periodic meetings with the employee as necessary to discuss work assignments and

performance. The employee may also request a meeting with the supervisor at any reasonable time. If the employee has not had a reasonable opportunity to demonstrate acceptable performance during the PIP period, it may be extended.

If the employee's performance improves to an acceptable level and is sustained for one year following the beginning of the PIP period, any entry or other notation of the unacceptable performance for which the action was proposed shall be removed from any agency record relating to the employee. If the employee's performance again becomes unacceptable on a critical element after one year, the employee will be provided with another PIP. However, if performance becomes unacceptable again within a one-year period, a new PIP is not needed.

#### Section 10 - Notice of Proposed Action for Unacceptable Performance

If the employee's performance in the critical element(s) does not improve to an acceptable level after the ninety (90) day PIP period or is not sustained for one year, the Employer may choose to reassign the employee to another position, or propose a reduction-in-grade or removal action. An employee whose reduction in grade or removal is proposed is entitled to:

1. Advance proposed notice. The Employer will afford the employee a minimum of thirty (30) days of advance written notice of the proposed action that identifies both the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical element(s) involved in each instance of unacceptable performance. The proposed action may be based only on instances of unacceptable performance which occur within a one year period ending on the date of the notice of proposed action.
2. Opportunity to answer and right to representation. The notice will inform the employee that they have the right to respond to the proposed action orally and/or in writing within eight (8) working days and that they have the right to Union or other representation.
3. Consideration of medical condition. The Employer will allow an employee who wishes to raise a medical condition that may have contributed to his/her unacceptable performance to furnish medical documentation of the condition for the Employer's consideration. However, employees are strongly advised to bring such medical condition to the attention of the Employer at the earliest possible time.

#### Section 11 - Final Decision: Appeal and Grievance Rights

The Employer will issue a final decision as soon as practicable after expiration of the thirty (30) days advance notice period. In arriving at its decision, the Employer will consider all available evidence including the response of the employee and/or the employee's representative. The Employer will issue a written notice of its decision to the employee at or

before the time the action will be effective. If the decision is to remove or downgrade the employee, the notice will specify the instances of unacceptable performance by the employee on which the action is based and inform the employee of the right to file a grievance under the Negotiated Grievance Procedure or to appeal to the Merit System Protection Board (MSPB), but that the employee may not do both.

#### Section 12 – Negotiations for Change in Performance Appraisal System

The Employer is encouraged to involve the Union when developing any new performance appraisal system, and, in any case, will afford the Union the opportunity to negotiate on those aspects of a change that are negotiable in accordance with law and regulation, e.g., impact and implementation.

## ARTICLE 21

### Employee Recognition and Awards

#### Section 1 - Awards

In accordance with regulations, the Employer may provide performance-based monetary awards based on the availability of funds. No later than July 15 of each year, the Employer will determine the amount of funds available, based on valid fiscal considerations, for performance awards for employees rated “Outstanding” and “Superior” and discretionary awards. The Employer will dedicate no less than eighty-five (85%) of the total award pool to fund the performance awards and no more than fifteen percent (15%) to fund all other discretionary awards.

#### Section 2 – Performance Awards

The performance award payout process to distribute the pool will be as follows: The Employer will determine the amount of funds available based on the percentages in Section 1. The funds will be distributed in such a way such that the employees receiving an “Outstanding” rating receive 1.75% above the amount distributed to employees receiving a “Superior” rating. The example below illustrates this process.

Example:

1. Fiscal Year total bargaining unit salaries: \$3,500,000
2. Fiscal Year Bargaining unit Outstanding ratings: 10
3. Fiscal Year Bargaining unit Superior ratings: 50

*Total Salaries:* \$3,500,000

- a. 1%: \$35,000
- b. 85%: \$29,750 (*performance*)
- c. 15%: \$5,250 (*discretionary*)

i.  $10(1.75)(y) + 50(y) = \$29,750$

ii.  $17.5(y) + 50(y) = \$29,750$

iii.  $67.5(y) = \$29,750$

iv.  $Y = \$440.74$

v.  $1.75(y) = \$771.30$

### Section 3 - Extra Effort and Spot Awards

Extra effort and Spot Awards are monetary awards provided for a special or noteworthy achievement or accomplishment that furthers the mission of the Agency or improves internal operating procedures. Awards may be given on a team or individual basis. The Employer will consider awards for employees when their /achievement warrants an award. The Employer will attempt to provide awards on a timely basis, contingent on the availability of funds. An employee may nominate another employee or a team for an award in writing to the supervisor of the employee or team

### Section 4 - Time-off Awards

An employee may be offered a time-off award for a special achievement at the discretion of the Employer. The minimum amount of time that can be granted for a time-off award is ½ hour. The scheduling and use of time-off awards shall be subject to the same approval process as that used for leave. The time-off award must be scheduled and used within one year after the date the award was granted, or it will be forfeited.

### Section 5 - Award Information

Upon request, but not more frequently than semi-annually, the Employer will provide the Union summary information on awards granted to bargaining unit employees. The breakdown of the information may be requested by such variables as grade level, program, location, and type of award if such information is readily available to the Employer.

## ARTICLE 22

### **Employee Development and Training**

#### Section 1 – General

The Employer and the Union recognize that on-going employee development and training is essential to ensure that the Agency has an effective, efficient, and high quality workforce. Employee development and training may occur on an individual employee basis, or involve groups of employees. The Employer may develop a plan for employee development and training that includes goals and objectives for training of all employees in subject matter relevant to meeting the Agency's mission.

#### Section 2 – Policy

The Employer will attempt to maintain a proactive and systematic training policy that establishes a connection with the Agency's mission, vision, and goals. Training is an investment in the future of FNS and MARO, and resources should be allocated to address organizational objectives. Training should be utilized as an important tool to shape our future organization and facilitate managerial and cultural changes needed to fully respond to concerns identified by the Parties. Training and employee development opportunities should be made available on an equitable basis.

#### Section 3 – Orientation

The Employer will provide orientation training and provide a copy of this Agreement to each newly appointed or transferred bargaining unit employee. Training may include, but is not necessarily limited to, employee rights and obligations, travel regulations, an overview of FNS programs, and/or the administrative structure of the Agency. Within thirty (30) days, the employee will be given an explanation of basic job requirements and assigned duties. The Employer will inform each new bargaining unit employee of the right to join or refrain from joining the Union.

#### Section 4 - Employee Training Method

Each fiscal year, the Employer will analyze training needs and priorities. When training needs and priorities have been determined, the Employer may research the availability and cost of common training across program lines to meet these needs. The Employer may allocate funding when available to accomplish identified training priorities.

Employees are encouraged to use individual development plans, FNSU program, including learning labs, the tuition reimbursement program, on-line training, and the Leadership Institute, as well as other available resources such as FNS Headquarters and regional training resources, Internet websites, FNS electronic bulletin boards, catalogs, and individual training offerings.

### Section 5 - Training for Advancement

Training may include courses or seminars to improve the long-term promotion potential of employees. If this opportunity is not made available to all eligible, equally qualified and interested employees, selection for this training will be made through competitive procedures.

### Section 6 – Individual Development Plan (IDP)

Employees are encouraged to work with their supervisor to develop an IDP as a tool to improve skills and competencies related to the agency's mission.

## ARTICLE 23

### Position Classification

#### Section 1 - Purpose and Content of Position Descriptions

The purpose of a position description is to describe officially, for pay and classification purposes, the predominant skills and duties particular to a position. The Employer will maintain written, accurate and numbered position descriptions for all positions and will provide to each employee a copy of his/her position description, including those employees on classified details in excess of ninety (90) days. A position description need not list every duty an employee may be assigned, but usually reflects only those major duties that are regular and recurring, as well as series and grade controlling. If a term such as "other duties as assigned" or its equivalent is used, it will normally refer to other incidental work assignments or tasks that are reasonably related to the functions performed by the Agency. However, this will not preclude the Employer from assigning unrelated work to an employee on an irregular basis when determined to be in the Government's best interest.

Regardless of the content of a position description, nothing in this Article or Agreement will affect the statutory right of the Employer to assign work. Work assignments of an employee may be changed at any time, provided such actions do not unjustly prejudice an employee's pending classification appeal.

#### Section 2 - Classification

The Employer agrees that every effort will be made to properly classify all positions within a reasonable period of time and to place the position in the series that most appropriately reflects the responsibilities and duties performed by the employee.

#### Section 3 - Union Access to Proposed Classification Standards

The Employer will furnish the Union copies of proposed Office of Personnel Management classification standards for bargaining unit positions that are referred to the Employer for comment.

#### Section 4 - Union Input on Changes to Employee Position Descriptions

The Union will be offered the opportunity to provide written comments and suggestions to the Employer prior to changing or creating new position descriptions that affect significant numbers of bargaining unit employees. The Union may make recommendations regarding the accuracy of a standardized position description when a bargaining unit employee's duties differ significantly from the position description. Upon request, the Employer will advise the Union in writing of its decision regarding Union recommendations.

## Section 5 – Classification Reviews and Appeals

An employee should first discuss any disagreement or dispute concerning his/her position description and/or assigned duties with the immediate supervisor. If unresolved, an employee who disputes the accuracy of his/her position description or classification may submit a written request for review or audit, through the supervisor, to the Human Resources Division.

If an employee disagrees with the decision of the Human Resources Division, he/she may initiate a classification appeal in accordance with applicable regulations. An employee who requests a review/audit or files an appeal with the Employer may obtain union representation during this process. The employee or the union representative may provide a written statement supporting their viewpoint. However, a union representative present at an audit may not answer questions directed to the employee.

## ARTICLE 24

### Merit Promotion and Internal Placement

#### Section 1 - General

In accordance with Statute, the Employer has the right to make selections for vacancies from any appropriate source. Nothing in this Agreement will be construed as affecting the Employer's right to fill a vacancy, refrain from filling a vacancy, or to determine the source (or sources) from which candidates may be considered and selected. When the Employer elects to use the internal merit promotion program as a potential source for bargaining unit vacancies or for other actions described in Section 3, it will ensure that fair consideration is given to all applicants, and that systematic and equitable procedures based on merit will be used, in compliance with all regulations. Notwithstanding the Employer's right to fill vacancies from any appropriate source or to forego filling them, if selections are made from this source, they will be made from among properly ranked and certified candidates

#### Section 2 - Objectives of the Merit Promotion Process

The objectives of the merit promotion process are to:

1. Bring highly qualified candidates to the attention of the Employer based on merit;
2. Provide qualified employees an opportunity to receive fair consideration for higher level positions; and
3. Provide an incentive for employees to improve their performance and develop their knowledge, skills, and abilities.

#### Section 3 - Inclusion in the Merit Promotion Process

The competitive procedures set forth in this Article will apply to the following:

1. Filling a position in the competitive service by promotion;
2. Reassignment, reinstatement, transfer or change to a position with more promotion potential than a permanent position previously held in the competitive service;
3. Transfer or reinstatement to a position at a higher grade or with greater promotion potential than a permanent position previously held in the competitive service;

4. Selection for a temporary or time-limited promotion for more than 120 calendar days to a higher graded position;
5. Selection for a detail for more than 120 calendar days to a higher graded position or to a position with higher promotion potential; or
6. Selection for training where eligibility for promotion depends on completion of training by the employee.

#### Section 4 - Exclusion from the Merit Promotion Process

The competitive procedures set forth in this Article will not apply to the following:

1. Career ladder promotions, when the career ladder grades were initially documented (e.g., on the position description or a vacancy announcement) and the position was properly filled;
2. Promotions resulting from an employee's position being reclassified at a higher grade because of additional duties and responsibilities, issuance of a new classification standard, or correction of a classification error;
3. Reinstatement, transfer, promotion (including temporary or term), reassignment, detail, or change to a lower grade, to a position having no higher grade or promotional potential than a position previously held on a permanent basis in the competitive service, provided the employee was not removed from that position for cause;
4. Temporary promotion of 120 calendar days or less;
5. Selection for details of 120 calendar days or less to a higher graded position or to a position with higher promotion potential;
6. Position changes permitted by reduction-in-force regulations;
7. Promotions to a grade previously held on a permanent basis in the competitive service from which an employee was separated or demoted for other than performance or conduct reasons;
8. Actions taken as a remedy for an EEO, MSPB, or negotiated grievance procedure settlement or decision, or for failure to receive proper consideration in a competitive promotion action; or
9. Selection for training, other than training under Section 3, number 6.

### Section 5 - Temporary Promotions Made Permanent

A temporary promotion that was filled under competitive procedures may be made permanent without further competition provided the fact that it might lead to a permanent promotion was made known to all potential candidates at the time it was originally announced.

### Section 6 - Area of Consideration

The minimum area of consideration for merit promotion vacancies is established in the FNS Merit Promotion Instruction. However, the Employer may change or extend the area of consideration as it deems necessary for recruitment purposes.

### Section 7 – Job Analysis

The Employer will conduct a job analysis to identify the knowledge, skills and abilities required for the position. These will be used to develop the evaluation criteria that will be used in the assessment questionnaire.

### Section 8 - Vacancy Announcements

When the Employer elects to utilize the merit promotion process as a source to fill a vacancy or for other actions described in Section 3, the Employer will post a vacancy announcement in accordance with merit promotion procedures. The announcement will be posted on USAJOBS and the on the Human Resources Division, or its service providers' intranet site or other electronic bulletin board and remain open for a minimum of ten (10) working days. Applications received or post-marked on or before the closing date and time as stated in the vacancy announcement and in the manner stated in the vacancy announcement will be accepted. Employees are urged to check online in MYUSAJOBS or contact the official listed on the vacancy announcement to confirm receipt.

At a minimum, the vacancy announcement will contain:

1. Announcement number;
2. Opening and closing dates (an open continuous announcement will be so indicated);
3. Position title, series, and grade(s) and salary range, including identification of full performance range;
4. Organizational location and duty station;
5. Promotion and career ladder potential, if any;

6. Area of consideration and whether applications will be accepted from outside area of consideration;
7. When the area of consideration is government wide or All Sources, Veteran Employment Opportunities Act (VEOA) information, including documentation required for proof of eligibility;
8. VRA, 30% Disabled Veterans , or other special appointment authority statement;
9. Principle duties, including estimated potential for travel if any;
10. Agency's intent to accept applications from groups eligible under non-competitive hiring authorities;
11. Qualification standards for General Schedule positions or other qualification standards permitted by OPM, necessary for filling the position, and any selective placement factors;
12. Evaluation criteria and method;
13. Procedures for applying;
14. Identification of probation periods for new employees and supervisors (if applicable)
15. Bargaining unit status
16. Statement of Equal Employment Opportunity; and
17. Number of positions expected to be filled if more than one.

#### Section 9 - Use of Office Equipment

Employees may use office computers, including the Internet and Email, fax machines, copy machines, telephones, and blank envelopes for preparing an application for promotion or other Federal government employment. Employees, however, may not use official work time for preparing applications. Employees may use the office mailing system for mailing applications to the FNS Human Resources Division or its service provider; however, employees must supply appropriate postage. Using government-paid postage for this purpose is prohibited.

#### Section 10 - Selective Placement Factors and Basic Eligibility

The Employer will determine if selective placement factors are essential to the successful performance of a position. In such cases, they will constitute a part of the minimum

eligibility requirements for the position and will be stated on the vacancy announcement. Applications that are received will be evaluated by the Human Resources Division or its service provider for basic eligibility requirements, time-in-grade restrictions and any selective placement factors.

#### Section 11 – Candidate Evaluation

An automated staffing process shall be used to assign a score based on applicants' answers to assessment questions. Narrative responses may be required to support applicants' responses. In order to assure full consideration, the application must include all information and documentation specified in the vacancy announcement. This may include information such as awards, training, education, employment, and outside activities. For all vacancies covered by this Article, the candidate's most recent appraisal will be used.

#### Section 12 – Ranking and Referring Candidates

The best qualified candidates are those who receive the highest scores in the evaluation process. They will be referred to the selecting official in alphabetical order. Normally, no more than ten (10) candidates for each grade level announced will be referred to the selecting official. However, in the event of a tied score at the cut-off point, the number of referrals may be increased to include all candidates who are tied at the cut-off score.

#### Section 13 - Selection Process

1. The selecting official may select from among any source provided, or may choose not to fill the vacancy. If an insufficient number of candidates are referred, the selecting official may request that the area of consideration be extended and re-announce the vacancy.
2. The selecting official may select from any source based on his/her judgment of how well the candidates will perform in the particular job being filled. If one candidate is interviewed from a merit promotion certificate, all must be interviewed. When an interview panel is used, panel members will remain consistent for all interviews absent extenuating circumstances such as travel or leave. When candidates cannot be easily interviewed in person, e.g., not within the local commuting area, the interview may be conducted by telephone. Otherwise, any selection technique/method or criteria utilized by the selecting official should be uniformly applied to all candidates referred to the selecting official.
3. The selecting official should make a decision to select or not to select as soon as possible but not later than fifteen (15) calendar days from the date of issuance of the certificate(s). The Selecting Official may request an extension of the certificate not to exceed an additional fifteen (15) days. If the selection certificate cannot be returned in ninety (90) days, the Union will receive an explanation upon request.

4. The selecting official will comply with merit promotion principles when making a competitive promotion selection under this Article.
5. Upon request, the Employer will inform the applicants of the status of their application.
6. Upon request, the Employer will advise the Union of the name of the selected candidate for bargaining unit positions.

#### Section 14 - Effective Date of Promotion

The effective date for a promotion will be the first day of the pay period in which the selected candidate assumes the duties of the position for which selected.

#### Section 15 - Career Guidance

Employees determined by the Employer to be not qualified for a vacancy may request career guidance from the Human Resources Division or its service provider. This guidance may include a description of the minimum qualification requirements for the position and an analysis of the employee's current qualifications as they relate to that position.

Employees who met the basic qualifications may request the following additional information from the Human Resources Division or its service provider:

1. Explanations of any part of the Merit Promotion Plan;
2. Details of the evaluation techniques;
3. The qualifications required for the position;
4. If the employee was among the best qualified;
5. The total points awarded on the assessment questionnaire in the automated staffing process;
6. Minimum number of total points which were needed to make the best qualified list; and
7. The name of the selected candidate;

#### Section 16 - Priority Consideration

If the Employer or an arbitrator determines that an employee was improperly excluded from the best qualified list for a vacancy, he/she will receive priority consideration for the next appropriate vacancy for which he/she is qualified. An appropriate vacancy is one in

the same commuting area, at the same grade level, and with equal promotional opportunity as the position for which the employee was denied proper consideration.

Priority consideration means that the employee will be given bona fide consideration by the selecting official before any other candidates, except for others with priority rights, are referred for the position to be filled. Priority candidates are entitled only to priority consideration, not selection, and may receive priority referral one time only. In the event two or more employees receive priority consideration for the same promotion action, they may be referred together or separately. Unless regulations specify differently, the selecting official may consider them in any manner. Upon request, an employee with priority consideration will be provided written justification if not selected, unless another priority candidate was selected. The employee will not be considered in competition with other candidates nor compared to other candidates unless he/she subsequently submits an application for competition after an announcement is issued.

#### Section 17 - Release of Evaluative Material and Assessment Questionnaire to the Union

When processing grievances related to actions taken under the terms of this Article, the employee's representative will be provided, upon request, the relevant evaluative material used in assessing the qualifications of the eligible candidates in regard to a grieved promotion action. This is subject to the following conditions:

1. The release of any information will only occur if fully in accordance with law, regulations and related case law.
2. In order to safeguard the content of assessment questionnaires, in lieu of releasing this material, the Employer may arrange for it to be reviewed in the presence of an authorized official.
3. All information may be sanitized to protect an individual's right to privacy.

#### Section 18- Impact of Investigation on Consideration for Promotion

The fact that an employee is the subject of a conduct investigation will not necessarily prevent or delay his/her proper consideration for promotion.

#### Section 19 - Demotion Due to Inability to Perform at Required Level

If an employee is promoted and subsequently within a year is demoted for inability to perform at the required level, the Employer may consider reasonable efforts to return the employee to his/her former position or a similar one.

#### Section 20 - Use of Annual/Sick Leave as Basis for Non-selection

An employee's use of approved annual or sick leave will not be considered by a promotion panel, nor should it be used by a selecting official as the sole reason for non-selection, unless a pattern of leave abuse exists.

#### Section 21- Release of Merit Promotion Information to the Union

Upon request from the Union, but no more often than quarterly, the following information will be provided if in accordance with law, regulation and case law, within a reasonable period of time, if available. This information may be sanitized in accordance with the Privacy Act to protect the privacy of candidates and panel members:

1. Announcement number;
2. Date of Report;
3. Number of vacancies;
4. The series and grades of the employees referred;
5. Whether or not the candidates were employees within the unit;
6. Selection action;
7. Date of selection action; and
8. Date the selected candidate is eligible for promotion.

#### Section 22 - Retention of Promotion and Selection Information

The Employer will maintain promotion and selection records in accordance with governing laws, rules, and regulations.

## ARTICLE 25

### Details, Temporary Promotions and Reassignments

#### Section 1 – General

Details, temporary promotions and reassignments are all optional sources available to the Employer in accordance with its statutory right to fill temporary or permanent staffing needs in order to accomplish the work of the Agency. The Employer may utilize these sources in accordance with regulations and the provisions of this Article. Employees may request a reassignment or a detail at any time and the Employer agrees to give consideration to all requests.

#### Section 2 - Details

A detail is defined as the temporary assignment of an employee to a different position or to different duties for a period of time, after which the employee is returned to his/her regularly assigned duties. Officially, an employee remains in his or her position of record during a detail. Details are intended to meet the temporary work needs of the Employer and are an available option of the Employer's right to assign work.

If the Employer deems it practical, it will assign details to higher graded positions equitably among all employees in a given organizational unit who are interested and equally qualified, and will refrain from continually assigning the same individuals to details and special projects unless it determines there are compelling reasons to do so. The Employer will take the employee's personal situation into consideration when making decisions to assign details that involve extended time away from the official duty station.

Supervisors shall document any detail in excess of two (2) weeks. Details in excess of thirty (30) calendar days will be documented using a form SF-52, Request for Personnel Action, and appropriate supporting attachments.

An employee who is detailed to a classified position in excess of ninety (90) days will be furnished performance elements and standards for the detail position. If the supervisor of that detail is not the employee's official supervisor, a summary performance appraisal for the detail period will be prepared for consideration by the official supervisor when completing the official annual appraisal.

Upon written request, the Union will be informed of all MARO bargaining unit employees presently on formal details.

#### Section 3 - Temporary Promotions in Lieu of Detail

An employee who is detailed to a higher graded position for more than thirty (30) consecutive calendar days will be temporarily promoted to that position and paid accordingly, effective no later than the beginning of the first full pay period following the

30<sup>th</sup> day of the detail, provided the employee meets the appropriate qualification standards and time-in-grade requirements. The Employer may also elect to promote an employee at an earlier date in a detail or for a shorter detail when it determines this to be appropriate and justified.

When an employee is detailed to a higher graded position for more than thirty (30) consecutive calendar days, but is not eligible for a temporary promotion, the employee's performance at an acceptable level of competence or better in the higher graded position will be cause for consideration for issuing a special achievement award to that individual.

Unless otherwise excepted by regulations, an employee detailed or temporarily promoted for more than 120 calendar days to a higher graded position or to a position with higher promotion potential, can only be selected competitively through the merit promotion process. All prior service of that employee during the preceding twelve (12) months in a noncompetitive temporary promotion or detail to a higher graded position or position with higher promotion potential counts toward this 120 day limitation.

#### Section 4 – Reassignments

The Employer has the right to reassign employees to positions with the same pay, grade, and promotion potential, consistent with law and the provisions of this Article. The Employer's decision to reassign employees will be based on management considerations in the interest of the Employer. Reassignment to a position with higher promotional potential requires the use of merit promotion competition.

When the Employer determines that reassignment of one or more employees is necessary to correct a staffing imbalance or because of workload needs, and the use of details or merit promotion is inappropriate, the Employer will first consider volunteers from among the affected employees who are qualified. The Employer may select a volunteer or choose not to do so.

If an involuntary reassignment becomes necessary for any reason, the Employer will determine the method in which the employee will be identified and reassigned, in accordance with appropriate regulations. When implementing a decision to involuntarily reassign an employee, the Employer will give written notification of the reassignment and reasons to the employee and Union prior to the effective date. The employee will be allowed to have a union representative, at his/her option, at meetings with management officials concerning the action. The Employer will take into consideration the personal and family hardship that can result if a change in duty station is involved.

## ARTICLE 26

### **Probationary Employees**

#### Section 1 – General

In accordance with OPM regulations, the first year of employment of an employee who is given a career or career conditional appointment from a certificate of eligibles is a probationary period. In addition, a reinstated employee who has not previously completed a probationary period must serve a new one. The probationary period is the last step in the hiring process. The purpose of a probationary period is to give an Agency the opportunity to determine the fitness of a new employee for continued employment, and to terminate that employee without formal procedures if he/she fails to demonstrate fully acceptable conduct or performance.

The Parties recognize that new employees often require training, counseling, and/or assistance as appropriate during the probationary period. A reasonable effort will be made to provide bargaining unit probationary employees with the necessary training and assistance to enable them to demonstrate the ability to successfully perform assigned duties.

The provisions of this Article do not apply to former bargaining unit employees who have been promoted and are serving a probationary period in a supervisory/managerial position.

#### Section 2 - Probationary Report

In accordance with regulations and established procedures, the supervisor of a probationary employee shall complete a probationary report that certifies that the employee's performance and conduct are satisfactory or unsatisfactory, and recommending that the employee be retained or separated.

#### Section 3 - Termination of Probationary Employees for Unsatisfactory Performance or Conduct

The separation of a probationary employee must be effected before the employee has completed the probationary period. When the Employer decides to terminate a probationary employee because his/her work performance or conduct fails to fully demonstrate fitness or qualification for continued employment, it shall notify him/her in writing as to the reason(s) for the termination and the effective date of the action. The employee has no right to reply.

#### Section 4 – Termination of Probationary Employees for Conditions Arising Prior to the Appointment

When the Employer proposes to terminate a probationary employee for reasons based in whole or in part on conditions arising prior to the appointment, the employee is entitled to the following:

1. Advance written notice of proposed adverse action stating the reasons for the proposed action;
2. A reasonable amount of time to file a written response to the proposed action; and
3. A written final decision stating the reasons for the action, and delivered to the employee on or prior to the effective date.

The final notice shall inform the employee of the right to appeal to the Merit Systems Protection Board (MSPB) and the time limit for filing the appeal. These procedures will not cause the Employer to miss a deadline to terminate a probationary employee.

#### Section 5 -Appeal Rights

A probationary employee may appeal a termination decision to the MSPB only for the following reasons:

1. When the employee alleges that the termination was based on partisan political reasons or marital status; or
2. When the employee alleges the Agency failed to follow the procedures for a termination, based on reasons in whole or in part on conditions arising prior to the appointment (see Section 4).

When a probationary employee alleges that the termination is due to discrimination, a complaint may be filed using the EEO process.

The employee has the right to appeal to MSPB or to file a discrimination complaint to the EEOC in accordance with their regulations and timeframes. The employee may not utilize both the MSPB appeal procedure and the EEO complaint procedure.

#### Section 6 - Voluntary Resignation in Lieu of Termination

Probationary employees may choose voluntary resignation in lieu of termination at any time prior to the date of their termination. If the probationary employee voluntarily resigns, the employee's official personnel folder will reflect the voluntary resignation.

## ARTICLE 27

### **Part-time Employment**

#### Section 1 - Definition

A part-time employee is an employee in a permanent position with a regularly scheduled tour of duty that is set in advance, of normally from sixteen (16) hours to thirty-two (32) hours in an administrative workweek; or for flexible schedules, normally from (32) hours to sixty-four (64) hours per pay period.

#### Section 2 – Requesting Part-time Employment

The Employer will consider a written request from a full-time employee to convert to a part-time schedule when continuity of operations, workload and other employees are not adversely affected. If approved, it is with the understanding that the employee has no right to convert back to a full-time tour of duty at some later date. When requests for part-time employment are denied, the Employer will provide notice to the employee in writing including the reasons for the denial. The Employer retains the right to determine work schedules and whether a position is full-time or part-time.

Part-time employment may be appropriate for, but not necessarily limited to, the following:

1. Employees seeking gradual transition into retirement;
2. Employees with disabilities or who require a reduced work week;
3. Parents who must balance family responsibilities with the need for additional income; or
4. Students who must finance their own education or vocational training.

#### Section 3 – Benefits

Part-time employment benefits are established by law and OPM regulations. Part-time employees receive a full year of service credit for each calendar year worked (regardless of tour of duty) for retention, retirement, career tenure, probationary period, within grade increase, leave accrual and time-in-grade requirements. In general, part-time employees are eligible for the same types of benefits as full-time employees, but usually at a reduced level due to the fact that they are working fewer hours. Prior to conversion to part-time, employees should discuss the impact of the conversion with the Human Resources Office on the following areas: qualifications, leave earnings, health and life insurance, retirement benefits, competitive levels for reduction in force and converting back to full time.

#### Section 4 – Holidays

When a holiday falls on a part-time employee's regularly scheduled workday, the employee will be paid for the number of hours he/she was scheduled to work on that day. A part time employee is not paid for a holiday that falls on a workday that is not included in his/her schedule.

#### Section 5 – Limitations

The Employer will not abolish any position occupied by a full-time employee in order to make the duties of such a position available to be performed on a part-time career employment basis. This does not preclude permitting a full-time employee to voluntarily change to a part-time schedule.

A person who is employed on a full-time basis shall not be required to accept part-time employment as a condition of continued employment. This does not preclude the Employer, at its discretion, from offering a part-time vacancy to a full-time employee in lieu of separation due to RIF, performance, or conduct reasons.

#### Section 6 – Request to Change to Full-time Schedule

An employee has no right to return to full-time status after having been permitted to convert to a part-time position. However, the Employer will consider an employee's written request to convert to a full-time schedule based on the employee's circumstances and the needs of the Employer, consistent with workload, budget and ceiling requirements.

#### Section 7 - Temporary Schedule Changes

Subject to the Agency's needs, an employee's request for a temporary adjustment of an established part-time work schedule may be granted if based on personal need, or to permit participation in management-approved details, other assignments, or training. This adjustment may also be directed by the Employer. Such adjustment shall not normally result in a permanent change of the established work schedule unless required by the Agency's needs, and in accordance with the limitations in this Article, and regulations.

Part-time employees will normally have equal access to employee activities and will not be denied opportunities to attend training courses solely because of part-time status. The Employer has the right to require a change in work schedule to attend these activities and training.

## ARTICLE 28

### Equal Employment Opportunity

#### Section 1 – Supporting the EEO Program

The Parties, within their respective areas of responsibility, will fully support the Equal Employment Opportunity (EEO) program at all levels. The purpose of the federal EEO Program is to eliminate existing unlawful discrimination against federal employees and applicants, prevent future discrimination, address the effects of past discriminatory practices on workforce representation of women, minorities and people with disabilities, and strive for a federal workforce that reflects our nation's diversity. The EEO program provides equal opportunity in federal employment and prohibits discrimination in employment because of race, color, national origin, religion, sex, age, disability, equal pay, genetic information, or pregnancy. Retaliation against employees who properly exercise rights under the EEO Program is prohibited.

#### Section 2 – Administering the EEO Program

The Employer will implement and administer the EEO program as outlined in Title VII of the Civil Rights Act of 1964, Equal Employment Opportunity Commission (EEOC) Regulation 29 CFR Part 1614, EEOC Management Directives, and other applicable federal, Departmental and Agency regulations and policy. The EEO program includes the alternative dispute resolution program, EEO complaint procedures and affirmative action reporting requirements.

#### Section 3 – Affirmative Employment Report and Plan

The Employer will develop a regional Affirmative Employment Report and Plan as directed, and will provide a copy to the Union upon request. This document provides a statistical analysis of the regional workforce and progress toward EEO goals in accordance with appropriate EEOC directives.

#### Section 4 – Representation

In accordance with EEO laws and regulations, an employee who files a complaint under the EEO procedures has the right to union or other representation throughout the process, or to forgo representation. Employees may utilize the Employer's private facilities for EEO related issues.

#### Section 5 – Reasonable Accommodation

Requests for reasonable accommodation shall be processed in accordance with Departmental Manual DM 4300-002, "Reasonable Accommodation Procedures," located on the MARO Intranet web site under CR/EEO issues. In accordance with 29 CFR 1614

and Department and Agency regulations and policies, the Employer will consider a request for reasonable accommodation from an employee with a physical or mental disability. The employee may be required to provide sufficient and reasonable medical documentation of the condition. The Employer will decide requests for accommodation on a case-by-case basis, taking into consideration all related factors such as the employee's specific disability, the employee's suggested accommodation, the work environment, the Agency's operations, and undue hardship imposed on the organization.

The Employer will make reasonable efforts to modify work assignments as appropriate for employees who are temporarily unable to perform their regularly assigned tasks for valid medically certified reasons.

When requests for reasonable accommodation are denied by the Employer, the employee may file a complaint under either EEO procedures or the Negotiated Grievance Procedure, but not both.

## ARTICLE 29

### Reduction in Force

#### Section 1 – General

The Employer will minimize the adverse impact of a staff reduction utilizing attrition when practicable. The Employer will inform the Union of its intent with respect to a staff reduction or transfer of function of the work force as far in advance of notification to affected employees as possible, and prior to any final action taken on the matter. Upon request, the Parties will negotiate on the impact and implementation of a reduction-in-force (RIF) or transfer of function, as appropriate consistent with law and regulation. A RIF will be implemented in accordance with applicable laws, rules, and regulations.

#### Section 2 - Notice to Union

The Employer will provide the Union with advance written notification, of at least fifteen (15) calendar days if possible, prior to the issuance of the specific notice to employees. The information to be furnished to the Union will include the following, if available:

1. The reason for the action;
2. The approximate number of employees who may be affected initially;
3. The types of positions anticipated to be affected initially; and
4. The anticipated effective date that action will be taken.

The Employer will provide to the Union, upon request, information related to the proposed action in accordance with 5 USC 7114(b)(4).

#### Section 3 – Notice to Employees

The Employer will provide affected employees at least sixty (60) days specific written advance notice prior to the effective date of a RIF, unless otherwise prescribed by regulation or the Agency receives approval from OPM for a shorter period. The content of the notice shall comply with OPM regulations. Affected employees and their designated representatives may inspect regulations, retention registers and other records pertinent to their situation, subject to Privacy Act requirements.

#### Section 4 – Use of Vacancies

The Employer at its discretion may use vacancies to place employees who would otherwise be separated in a RIF action.

## Section 5 – Re-employment Priority List

In accordance with regulations, the Employer will establish and administer a re-employment priority list of employees separated due to a RIF action.

## ARTICLE 30

### Disciplinary Actions

#### Section 1 - Definition

In accordance with regulations, disciplinary actions for purposes of this Article include formal written reprimands and suspensions of fourteen (14) calendar days or less, for such cause as will promote the efficiency of the service. Employee means (1) an individual in the competitive service who is not serving a probationary period; (2) an employee in the competitive service serving in an appointment which requires no probationary or trial period, and who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; (3) an employee with competitive status who occupies a position under Schedule B of 5 CFR Part 213; or (4) an employee who was in the competitive service at the time his or her position was first listed under Schedule, A, B, or C of the excepted service and still occupies that position.

#### Section 2 - Informal Counseling

Normally, the Employer will follow the general principal of progressive discipline. A disciplinary action may be preceded by counseling and assistance of an informal nature, which may include an oral or written caution.

#### Section 3 - Official Reprimands

A reprimand is a written document that describes the conduct or other deficiency giving rise to the reprimand, and provides official notice that failure to correct the conduct or deficiency or repeated instances shall result in more severe action. Material used by the Employer to support the reprimand will be made available to the employee and/or the union representative upon request, subject to Privacy Act requirements. Reprimands shall not be retained in the employee's Official Personnel Folder for more than two years from the date of issuance, and may be retained for less than the two-year time period at the discretion of the Employer.

#### Section 4 – Suspensions

A suspension is the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay for fourteen (14) calendar days or less. When the Employer proposes to suspend an employee for a period of fourteen (14) calendar days or less, the following procedures will apply:

1. The employee will be given fifteen (15) calendar days advance written notice stating:
  - a. The specific reason(s) for the proposed suspension;

- b. That the employee has ten (10) calendar days to respond orally and/or in writing;
  - c. The official to whom the reply should be sent;
  - d. That the employee has the right to review the material that is relied on to support the reason(s) for the action, subject to Privacy Act requirements; and,
  - e. That the employee has the right to union or other representation.
2. The employee may submit affidavits or other documentary evidence in support of the response.
3. The Employer will reply in writing with the final decision and the specific reasons at the earliest practicable date after the receipt of the reply or the expiration of the reply period. This decision will be made by a higher level official than the proposing official. The action will not take effect prior to the final decision notice being provided or sent to the employee. The final decision notice will inform the employee of the effective date and the right to file a grievance using the Negotiated Grievance Procedure.
4. The employee has the right to union representation throughout this process.
5. Copies of relevant notices, replies (including summaries of oral replies), final decisions, and supporting documentation will be maintained by the Agency and will be made available to the employee and/or the union representative upon request, subject to Privacy Act requirements.
6. By mutual agreement of the Parties, deadlines may be extended.

#### Section 5 - Grievance Rights

A reprimand or suspension for fourteen (14) calendar days or less may only be grieved using the Negotiated Grievance Procedure.

#### Section 6 - Non-Sustained Actions

If a disciplinary action against an employee is not sustained, all reference to such action will be eliminated from the Employee's Official Personnel Folder other than settlement agreements and related documentation.

## **ARTICLE 31**

### **Adverse Actions**

#### **Section 1 – Definition**

In accordance with regulations and for the purpose of this Article, an adverse action is defined as an involuntary reduction in grade or pay, removal, suspension for more than fourteen (14) calendar days, or furlough of thirty (30) calendar days or less.

It does not apply to:

1. A suspension or removal under 5 USC 7532 (National Security);
2. A reduction-in-force action under 5 USC 3502;
3. The reduction in grade of a supervisor or manager who has not completed a probationary period under 5 USC 3321(a)(2) if the reduction is to the grade held immediately before becoming a supervisor or manager;
4. A reduction in grade or removal under 5 USC 4303 (Unsatisfactory Performance);
5. An action initiated under 5 USC 1215 or 5 USC 7521;
6. An employee serving under an initial probationary period; or
7. Any other statutory or regulatory exclusion not specifically mentioned above.

#### **Section 2 - Informal Counseling**

Normally, the Employer will follow the general principal of progressive discipline. An adverse action may be preceded by counseling and assistance.

#### **Section 3 – When Initiated**

Adverse action may be initiated to promote the efficiency of the service when an employee's action or inaction is alleged to be out of conformance with an acceptable standard of conduct that is directly related to his/her employment, or for outside conduct where a nexus to employment exists.

If the Employer determines that adverse action is warranted, the Employer shall initiate it within a reasonable period of time after becoming aware of the incident or incidents upon which the action is based.

#### Section 4 - Notice of Proposed Action

An employee against whom an adverse action is proposed will be given thirty (30) calendar days advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, or statute or regulations mandate a different time period or provide for other exceptions. The notice shall state in specific detail the reasons for the proposed action. The notice will also state that the employee has the right to union or other representation, and will include the name of the official to whom a reply should be addressed, usually the deciding official or his/her designee. Material used by the Employer to support the reasons stated in the notice will be made available to the employee.

If the Union has been designated as the official representative by the employee, it will be provided a copy of all material to which the employee is entitled. If not so designated by the employee, the Union will be provided with a copy of the proposed action notice with information deleted as determined necessary by the Employer, to protect the privacy and anonymity of the bargaining unit employee concerned.

#### Section 5 - Right to Reply

An employee may reply in writing and/or orally. The Employer will grant the employee and one (1) designated union representative a reasonable amount of official time, not to exceed a total of eight (8) hours each, to prepare a reply. The employee may be accompanied by a representative of his/her choice. A written and/or oral reply will be addressed to the official designated in the notice. The employee will be given ten (10) working days to respond. The Employer may consider a request to extend these time periods. The employee may submit affidavits or other documentary evidence in support of the response.

#### Section 6 - Final Decision

The Employer will provide the final decision with specific reasons in writing to the employee and the Union, if representing the employee, as soon as practicable. If the Union is not the designated representative of the employee, it will be provided written information concerning only the offense and penalty. The action will not take effect prior to the final decision notice being provided or sent to the employee. If the final decision is made to take adverse action, the employee will be informed of appeal and grievance rights available, and the time limits for filing an action under those rights. The Agency will state in the decision letter where information concerning the pursuit of a written appeal or grievance may be obtained.

#### Section 7 – Appeal/Grievance Rights

Adverse Actions may be grieved using the Negotiated Grievance Procedure or appealed to the Merit Systems Protection Board (MSPB), but not both. Subject to MSPB approval, if the Union is not the employee's designated representative, it may have one representative

present during hearings before the MSPB, and at any other appropriate time. The Employer shall make employees available on behalf of either Party for interviews and affidavits, and as witnesses at hearings, when determined appropriate by MSPB.

#### Section 8 - Adverse Action Files

If an adverse action against an employee is not sustained, no reference to such action will be included in the employee's Official Personnel Folder. The Agency, however, is required to maintain separate adverse action files. These files will be kept in accordance with appropriate rules and regulations concerning the security, confidentiality, and maintenance of these official records. Files on proposed adverse actions that are not sustained will not be made available to officials making decisions on promotions.

## ARTICLE 32

### Negotiated Grievance Procedure

#### Section 1 – Purpose

The purpose of this Article is to provide a mutually acceptable method for the prompt and equitable settlement of grievances in accordance with existing laws and regulations. In using this procedure, an employee is entitled to elect union representation or to forgo representation.

#### Section 2 - Exclusive Procedure

This Negotiated Grievance Procedure (NGP) shall be the exclusive procedure available to the Union and employees in the Bargaining Unit for resolving all disputes, except when otherwise provided for in this Agreement, statute or regulations.

#### Section 3 – Definition

A grievance means any complaint by:

1. An employee concerning any matter relating to the employment of the employee;
2. The Union concerning any matter relating to the employment of an employee;  
or
3. An employee, the Union, or the Employer concerning:
  - a. The effect or interpretation, or a claim of breach of a collective bargaining agreement; or
  - b. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

#### Section 4 – Excluded from the NGP

Excluded from the NGP are matters concerning the following:

1. A claimed violation related to prohibited political activities (5 USC 73, Subchapter III);
2. Retirement, life insurance, or health insurance;
3. A suspension or removal for national security reasons (5 USC 7532);

4. Any examination, certification, or appointment;
5. The removal of probationary employees;
6. The classification of any position which does not result in the reduction in grade or pay of any employee;
7. The exercise of the authority of the Employer to establish tours of duty or to revise tours of duty, unless specifically covered elsewhere in this Agreement, except that the employee may grieve inequitable application of this authority;
8. The content of published Agency regulations and policy;
9. Non-selection for promotion from a group of properly ranked and certified candidates, unless the employee alleges a violation under 5 USC 2302, prohibited personnel practices, or civil rights statutes;
10. A preliminary warning notice;
11. An action which terminates a temporary promotion;
12. The substance of the critical elements and performance standards of an employee's position which have been established in accordance with law and regulations;
13. The receipt of or failure to receive (1) a Quality Step Increase, cash award, or honorary award, unless the employee alleges a violation of 5 USC 2302, or (2) the adoption of or failure to adopt an employee suggestion;
14. The return of an employee from an appointment as a supervisor or manager to a non-supervisory or non-managerial position for failure to satisfactorily complete the probationary period; or
15. Any matter properly being considered under another statutory appeal procedure (see Section 12).

#### Section 5 - Informal Resolution

Reasonable efforts should be made by the Parties and the aggrieved employee to settle grievances informally at the lowest possible level. Informal resolution of grievances is encouraged at any phase of the procedure and a grievant may withdraw a grievance at any time. The employee may have union representation during the informal stage. The Parties and the aggrieved employee are encouraged to use the Alternative Dispute Resolution (ADR) Program at any point in the process. The Union can meet with the supervisor with or without the grievant to try and resolve any dispute.

## Section 6 – Filing Grievances

The filing of a grievance shall not be construed as reflecting unfavorably on an employee's performance, loyalty, or good standing in the organization.

## Section 7 – Union Observer at Grievances

If an employee presents a grievance on his/her own behalf to the Employer, the Union shall have the opportunity to have an observer present at any meetings between the employee and the Employer and to review written, sanitized grievance correspondence, at its discretion. The observer will take no part in the proceedings but will be allowed to present the Union's position to the Employer at a mutually agreed upon time.

## Section 8 - Steps for Filing Employee Grievances

Step 1: If a grievance cannot be resolved informally, the concerned employee and/or union representative shall first present the grievance, in writing, to the first-line supervisor or appropriate official authorized to settle the matter. Grievances must be presented within fifteen (15) working days from the date of occurrence or the date the employee or Union became aware of the problem. The employee and/or Union must identify the matter of concern and indicate that the grievance process is being initiated.

The written grievance shall contain the following information:

1. Date of the grievance, name, and work telephone number of the grievant(s);
2. Issues and description of circumstances giving rise to the grievance including approximate time, date, and place of the incident, if available;
3. If relevant, the article and section of the Agreement or any rule, regulation, or law alleged to be violated;
4. The remedy or relief requested;
5. The name and signature of the grievant and/or designated union representative, if applicable; and
6. Request for a meeting with the official, if desired.

Supporting documentation or materials may be attached to the grievance. If requested by either party, the official shall meet with the employee and/or union representative concerning the grievance. The official will provide a decision, in writing, to the employee and/or the union representative, if designated, within fifteen (15) working days after receipt of the grievance. The decision will include the name and title of the next higher level to which the grievance may be directed, if not resolved at this step.

Step 2: If the grievance is not settled at Step 1, the employee and/or union representative may, within five (5) working days, forward the grievance in writing to the official identified in the decision in Step 1. If requested by either party, the official should meet with the employee and/or union representative concerning the grievance. The official will provide a decision, in writing, to the employee and/or union representative, if designated, within fifteen (15) working days after receipt of the grievance. The decision shall contain the name and title of the official to whom the grievance may be directed if not resolved at this step.

Step 3: If the grievance is not settled at Step 2, the employee and/or the union representative may, within five (5) working days, forward the grievance to the official identified in the decision in Step 2. If requested by either party, the official may meet with the employee and/or union representative concerning the grievance. The official will provide the employee and/or the union representative, if designated, a written decision within fifteen (15) working days after receipt of the grievance.

If the grievance is not satisfactorily resolved at Step 3, the Union may invoke arbitration in accordance with Article 33. Employees may not invoke arbitration on their own behalf.

#### Section 9 - Union or Employer Grievances

Either Party may file a grievance against the other Party. If an issue cannot be resolved informally, the aggrieved Party may submit a written grievance within fifteen (15) working days of the event, or when the event became known, to the official of the other Party authorized to settle the matter. The grievance shall contain all appropriate information identified in Step 1 of the employee grievance process. If requested by either Party, the Parties will meet to discuss the issue. The other Party shall respond in writing within fifteen (15) working days after receipt of the formal grievance. If the grievance is not settled, either Party may invoke arbitration.

#### Section 10 - Time Limits

Time limits contained in the NGP will be strictly observed unless an extension has been mutually agreed upon in writing. Failure to adhere to a time limit for filing a grievance at any step shall result in cancellation of the grievance. Failure to respond within the given time limit at any step allows a grievant to escalate the grievance by filing at the next step. If a Party fails to respond timely at the step that precedes arbitration, the grieving Party may invoke arbitration. When a grievant, union representative, or agency official is in official travel status, time extensions will be granted in an amount equal to the travel involved. The actual productive time available at the assigned permanent site, therefore, will be the same as specified in the step procedures above.

#### Section 11 - Effective Date

When it is appropriate to establish an effective date for an action covered under the NGP, the Employer will determine the effective date and the action will take place on that date.

## Section 12 - Grievance/Appeal Options

In accordance with 5 USC 7121, certain actions provide affected employees with more than one option. An employee affected by a prohibited personnel practice under 5 USC 2302 may raise the matter under the appropriate statutory procedure or the NGP, but not both. An employee who alleges discrimination may raise the matter under either the Equal Employment Opportunity (EEO) discrimination system or the NGP, but not both. Adverse actions or performance-based actions may be challenged under the appellate procedures of the MSPB or the NGP, but not both. An employee will have exercised his/her option when the employee files a written appeal or grievance, whichever occurs first, in accordance with appropriate procedures and time frames.

## Section 13 - Question of Grievability/Arbitrability

If either Party declares an issue non-grievable or non-arbitrable, the original grievance shall be amended to include this issue. The Parties will raise a question of grievability or arbitrability no later than the issuance of the final written answer in the step of the NGP that precedes arbitration. Disputes concerning grievability or arbitrability shall be referred to arbitration as a threshold issue and will be decided first.

## **ARTICLE 33**

### **Arbitration**

#### **Section 1 - Invoking Arbitration**

If a grievance is not resolved under the Negotiated Grievance Procedure, it may be referred to arbitration by either Party, but not by an employee. The referring Party will give written notice to the other Party of its intention to invoke arbitration, no later than fifteen (15) working days after receipt of the final decision or date a decision should have been rendered.

#### **Section 2 – Requesting and Selecting Arbitrators**

Within five (5) working days from the date of the written request for arbitration, the Parties jointly or the requesting Party shall submit a request to the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven (7) impartial persons with federal sector experience who are qualified to act as arbitrators. The Parties shall meet within ten (10) working days after both have received the list. If the Parties cannot agree upon one of the listed arbitrators, they will strike alternately one arbitrator's name from the list until one name remains who shall be the duly selected arbitrator. A coin toss shall determine who strikes the first name.

#### **Section 3 - Designation of Arbitrator**

If a Party unduly delays, fails to act, or refuses to participate in the selection process, the other Party may unilaterally request the FMCS to appoint an arbitrator so that the dispute can be speedily resolved. If either Party refuses to participate in the hearing without just cause after due notice, the hearing will proceed and the arbitrator will render an award based on the evidence presented. If a selected arbitrator is unable to schedule the hearing within a reasonable period of time, the Parties may agree to any other name on the list or may request a new list and repeat the selection process.

#### **Section 4 – Defining Issues for Arbitration**

If the Parties are unable to agree on a joint submission of the issues for arbitration, each may present a separate submission to the arbitrator who shall determine the issue or issues to be heard. If grievability or arbitrability is at issue, it shall be resolved by the arbitrator, prior to addressing the substance of a grievance.

#### **Section 5 - Cost of Arbitration**

The cost of arbitration, including the arbitrator's fee, shall be borne equally by the Employer and the Union. The arbitration hearing will be held on the Employer's premises during the regular day shift hours of the basic workweek, if possible. All participants in the

hearing deemed appropriate by the arbitrator shall be authorized official time when in a duty status.

#### Section 6 – Evidence and Witnesses

If either Party refuses to cooperate or produce evidence or witnesses, the arbitrator will be empowered to direct that such evidence or witness be produced. In the event the absence of cooperation continues, the arbitrator will be empowered to render the award. Either Party may file a brief.

#### Section 7 - Arbitrator's Award

The arbitrator will be requested to render an award as quickly as possible, but not later than thirty (30) calendar days after the conclusion of the hearing, unless the Parties mutually agree to extend the time limit. The arbitrator shall have no authority to make an award contrary to this Agreement or to add to or modify any provisions of this Agreement in issuing an award. However, recommendations made by the arbitrator will be considered by both Parties. The arbitrator shall have the authority to award representative fees in accordance with the provisions of applicable laws and regulations.

#### Section 8 – Exception to Arbitrator's Award

Either Party may file an exception to an award with the Federal Labor Relations Authority (FLRA) under regulations prescribed by the FLRA within thirty (30) days of receipt. If no exception has been filed during the thirty (30) day period, the award will be final and binding on the Parties.

#### Section 9 - Application of Award

Any dispute over the application of an arbitrator's award, including remanded awards, shall be returned to the arbitrator for clarification or settlement.

#### Section 10 – Transcripts

Normally, arbitration under this Article will be conducted as oral proceedings with no verbatim transcript. However, either Party may request that a verbatim transcript be taken and that Party will pay all associated costs. The other Party will not receive a verbatim transcript. If both Parties request or receive verbatim transcripts they will share equally the associated costs.

## ARTICLE 34

### Alternative Dispute Resolution

#### Section 1 – General

The Parties shall maintain and support a voluntary and informal Alternative Dispute Resolution (ADR) Program in MARO that complies with FNS Instruction 113-9 and ADR regulations and policies. In this Article, the term “party” or “parties,” in lower case, may refer to the Employer, the Union, employees, or supervisors/managers.

#### Section 2 – Use of the ADR Procedures

A party to a complaint or dispute may request, either orally or in writing, the use of ADR to attempt to resolve the issue informally at any time. The request must be submitted to the Regional ADR Coordinator. Employees participating in ADR may have union representation during the proceedings. The use of ADR is voluntary and shall not adversely affect the rights of individuals to seek the resolution of issues through formally established complaint, grievance, and appeal systems. A party may terminate the ADR process at any time and pursue a formal procedure or system.

When ADR is used to address an EEO issue, it shall be consistent with 29 CFR and EEOC Management Directive 110 with regard to timelines and other requirements or guidance on the use of ADR in the EEO Complaint Process.

When ADR is used to address a grievance, the grievance process shall be put on hold while the ADR process is utilized. The Parties shall mutually determine the process and time limits to be followed when pursuing a formal grievance in the event ADR is unsuccessful in resolving the dispute.

Notwithstanding the right of the Parties to file an unfair labor practice (ULP), the Parties agree in the best interest of labor management relations to notify the other Party prior to filing a ULP, whenever practicable, in order to make a reasonable effort to resolve the dispute or misunderstanding.

#### Section 3 – Neutrals

When appropriate, and as specified in FNS Instruction 113-9, mediators and other ADR neutrals may be utilized to assist the parties in resolving disputes, provided they meet qualifications and standards established by the Agency. A neutral works with the parties to aid in reaching a resolution that is mutually satisfactory to both parties. A neutral may not impose a solution; the solution or agreement must be reached voluntarily by the parties.

#### Section 4 – Confidentiality

Strict confidentiality must be maintained by everyone involved in the ADR proceedings.

#### Section 5 – Settlement Agreements

All written settlement agreements are legally binding and enforceable documents. In order to ensure enforceability of ADR settlement agreements, the Parties will assure that a representative with settlement authority will participate in or be accessible during ADR meetings.

#### Section 6 – Training

The Employer will provide training to bargaining unit employees on the ADR Program, as appropriate.

## ARTICLE 35

### Union Dues Deductions

#### Section 1 - Deduction Agreement

In accordance with the terms outlined in this article, the Employer will deduct such dues as are in effect in the Local from the pay of each bargaining unit member who voluntarily requests this deduction. The Union will inform members of the voluntary nature of these allotments.

#### Section 2 - Requesting Dues Deductions

Employees may request dues deductions by completing a form SF-1187. The Union will assist employees in the proper completion of this form and will promptly submit it to the Human Resources Division (HRD) for processing.

#### Section 3 - Changes to Deductions

The Union will inform all members of the conditions for termination of dues deductions, which will be in accordance with the MOU. The Union will promptly request termination of a member's dues deductions by submitting a signed form SF-1188 to HRD.

#### Section 4 – Termination of Allotment

The payroll office of the USDA will terminate an allotment per a request received in accordance with any one of the following:

1. As of the beginning of the first full pay period following receipt of notice that exclusive recognition has been withdrawn;
2. At the end of the pay period during which an employee member is separated from the USDA;
3. At the end of the pay period during which the payroll office receives notice from AFGE or a Local of the AFGE that the employee member has ceased to be a member in good standing;
4. On the annual anniversary date of the allotment.

## ARTICLE 36

### Duration, Publication and Revision of Agreement

#### Section 1 – Effective Date

This Agreement shall become effective the date it is approved by USDA, or thirty-one (31) days after signing if USDA does not act.

#### Section 2 – Initial Term of Agreement

This Agreement will remain in full force and effect for three (3) years from its effective date.

#### Section 3 – Publication of Agreement

The Employer will post this Agreement electronically within thirty (30) calendar days of the effective date. Copies may be printed from the electronic version, if desired.

#### Section 4 – Renegotiations

If either Party wishes to renegotiate this Agreement, it must give written notice to the other, not more than one hundred twenty (120) nor less than sixty (60) days prior to the expiration date. The existing Agreement will remain in effect until a new Agreement has become effective.

#### Section 5 - Automatic Renewal

If neither Party serves notice that it wishes to renegotiate this Agreement, it shall automatically continue in effect for additional one (1) year periods, subject to the provisions of this Article.

#### Section 6 - Agreement Revisions

During the duration of this Agreement, either Party may notify the other, in writing, of its desire to negotiate revisions when deemed necessary. Unless mandated by changes in laws or published rules or policies from higher authority, negotiations on revisions will take place by mutual consent only. All negotiated revisions will remain in effect in accordance with the provisions of this Agreement.

#### Section 7 - Larger Bargaining Unit

This Agreement will not prevent a Federal Labor Union from petitioning the Federal Labor Relations Authority for a larger bargaining unit or a consolidation of bargaining units that would include this unit.

COLLECTIVE BARGAINING AGREEMENT SIGNATORIES

This collective Bargaining Agreement was negotiated by the parties in accordance with 5 U.S.C 7114. The following representatives of the Parties agreed to and signed this Agreement on July 3, 2017. subject to the provisions of 5 U.S.C. 7114 (c).

FOR THE EMPLOYER:

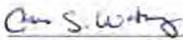


Patricia Dombroski  
Regional Administrator  
Mid Atlantic Regional Office

FOR THE UNION:



Melvin Moore  
President  
AFGE Local #2735



Carlos S. Worthy  
Chief Negotiator  
Mid Atlantic Regional Office

Negotiation Team Members:

For the Employer:

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Deputy Regional Administrator

Jamie M. Van Lieu  
Branch Chief, Supplemental Food Programs, SNP

Lynne Direda  
Human Resources Liaison

Carlos S. Worthy  
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Yvette Banker  
HR Specialist (Employee and Labor Relations)  
Employee and Labor Relations Branch  
Food and Nutrition Service

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