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PREAMBLE

This Agreement is entered into by and between the Department of Agriculture, Food Safety and Inspection Service (hereinafter referred to as the Agency), and the National Joint Council of Food Inspection Locals, American Federation of Government Employees AFL-CIO (hereinafter referred to as the Union).

The Congress finds that—

- (1) Experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—
 - (A) Safeguards the public interest,
 - (B) Contributes to the effective conduct of public business, and
 - (C) Facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and
- (2) The public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest. (Title 5 U.S.C., Chapter 71). Pursuant to this policy, the parties have agreed upon the various articles hereinafter set forth. This Agreement constitutes a Collective Bargaining Agreement between the Agency and the Union.

ARTICLE 1

RECOGNITION AND COVERAGE

Unit Definition

The National Joint Council of Food Inspection Locals, American Federation of Government Employees (AFGE), AFL-CIO, is recognized as the exclusive representative of all permanent full-time Food Inspectors, Food Technologists, Import Inspectors, and Consumer Safety Inspectors in the Office of Field Operations of the Food Safety and Inspection Service, U.S. Department of Agriculture, excluding Veterinarians, Non-Veterinary Inspectors in supervisory positions, management officials, and employees described in Title 5, U.S.C., Section 7112 (b)(2), (3), (4), (5), (6), and (7).

This Agreement covers all employees pursuant to said recognition. The parties further agree that should the Union request certification to include other occupations/positions, or units of employees of the Agency, such certification will not be opposed by the Agency, unless the Agency contends that the unit does not constitute an appropriate unit under Title 5 U.S.C., Section 7112. Upon certification by the Federal Labor Relations Authority (FLRA), subsequently represented employees or units also will be covered by this Agreement.

ARTICLE 2

GOVERNING LAWS AND REGULATIONS

Section 1. Policy

In the administration of all matters covered by this Agreement, Agency officials and employees shall be governed by existing laws and government-wide rules and regulations as defined in Title 5, U.S.C., Chapter 71 of the Statute, by published Agency policies and regulations in existence at the time the Agreement is effectuated.

Should any conflict arise between the terms of this Agreement and any current or future laws or government-wide regulations which were in effect on the effective date of this Agreement, the provisions of such laws and regulations shall supersede any conflicting provisions of this Agreement.

Should any conflict arise between the terms of this Agreement and any government-wide or other regulation which is issued after effective date of this Agreement, the terms of this Agreement will govern unless the government-wide regulation implements a provision of law.

Should any conflict arise between the terms of this Agreement and any Agency issuances, manuals, directives, etc., regardless of the date of issuance, the terms of this Agreement will govern, unless the parties agree otherwise.

ARTICLE 3

MANAGEMENT RIGHTS

Section 1. Basic Rights (Title 5 U.S.C. Section 7106)

- (a) Subject to subsection (b) of this section, nothing in this Agreement shall affect the authority of any management official of the Agency—
 - 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, layoff, 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—
 - (i) among properly ranked and certified candidates for promotion; or
 - (ii) any other appropriate source; and
 - (D) To take whatever actions may be necessary to carry out the Agency mission during emergencies.
- (b) Nothing in this section shall preclude the Agency and the Union from negotiating—
 - 1. At the election of the Agency, 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 management officials of the Agency will observe in exercising any authority under this section; or
 - 3. Appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

Section 2. Recognition of Management Rights

The Union recognizes the rights of the Agency and agrees to demonstrate an affirmative willingness to deal with the appropriate management representatives on matters involving the administration of this Agreement.

The above rights do not in any way infringe upon the right of the Union or an employee to express dissatisfaction concerning procedures employed by the Agency in the exercise of these rights and to use the negotiated grievance procedure or any other appropriate appeal procedure.

The requirements of this Article shall apply to all agreements between the Agency and the Union during the tenure of this Agreement.

Section 3. Right to Communicate With Other Organizations

The Agency is not precluded from consulting with religious, social, fraternal, professional, or other associations, not certified as labor organizations, with respect to matters or policies which involve individual members of the association or are of specific applicability to it or its members. Where there exists a duty to consult and/or bargain, the Agency shall fulfill its obligations, pursuant to this Agreement.

ARTICLE 4

UNION REPRESENTATIVES, RIGHTS, AND RESPONSIBILITIES

Section 1. Policy

The Agency recognizes the Union as the exclusive bargaining representative under the provisions of Title 5 U.S.C., Chapter 71 of the Statute.

In all matters relating to personnel policies, practices, and other conditions of employment, the parties will have due regard for the obligations imposed by Title 5, U.S.C., Chapter 71 of the Statute, modifications thereto, and this Agreement.

The Agency shall remain neutral in regard to a labor organization seeking recognition for unit employees.

The National Joint Council (NJC) shall include (1) the Chairperson of the National Joint Council or an individual to act on his/her behalf; and (2) all Council Presidents or individuals designated to act on their behalf.

Section 2. Employee Representation

The Union is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

Prior to meeting with an employee, the Union representative, if an Agency employee, will contact the employee's supervisor concerning arrangements for the meeting.

Section 3. Designation of Union Officials

The Union shall within thirty (30) calendar days of the date of this Agreement, and annually thereafter, provide the LERD Director or their designee with an updated written list of the names, titles, and work telephone numbers of all Union officials, including location and jurisdiction of the Union officers and representatives. Also, the Union shall provide written notice to the LERD Director, appropriate District Managers, and Director, IID or designee(s), of any changes in representatives normally five work days in advance of performing representational duties; however, less notice may be provided in unusual situations if the Union has less notice.

The Union shall contact the Agency official at the lowest possible level to resolve day-to-day matters concerning issues pursuant to this Agreement.

Section 4. Communications with Bargaining Unit Employees

Consistent with Title 5, U.S.C., Chapter 71 of the Statute, the Agency will not communicate directly with employees regarding conditions of employment in a manner that would bypass the Union.

Consistent with Title 5, U.S.C., Chapter 71, Section 7114 (a)(2)(A) of the Statute, the Union shall be given the opportunity to be represented in any formal discussion between one (1) or more representatives of the Agency and one (1) or more employees or their representatives concerning any grievance, personnel policy, practices, or other general condition of employment.

The Agency shall provide the Union with the intended time, place, and purpose of the formal discussion.

Section 5. Information

Upon establishment of the particularized need, the Agency agrees, pursuant to Title 5, U.S.C., Section 7114 (b)(4) of the Statute, to provide the Union with information that is reasonably available, normally maintained by the Agency in the regular course of business, and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. Union requests for information can be made either orally or in writing, including a statement of the particularized need. Requests meeting the requirements of this Section shall be provided in a reasonable time, and at no cost to the Union.

Section 6. Statutory Appeals

The Union has the right to refuse to represent non-dues paying members only in matters outside this Agreement (e.g., statutory appeals of adverse actions, EEO complaints, etc.).

Section 7. Surveys and Questionnaires

The Agency may solicit feedback from bargaining unit employees through verbal or written surveys and questionnaires regarding conditions of employment, without first coordinating the survey with the Union. However, the Agency agrees to provide the Union notice of the survey. This provision extends to all known questionnaires and surveys from all other agencies.

However, the results of survey(s) conducted regarding conditions of employment will be shared with the Union. If a third party conducts a survey and results are distributed to the Agency, the results will be shared with the Union.

Should the Agency decide to effect changes as a result of any survey or questionnaire, and such changes affect conditions of employment of bargaining unit employees, the Union will be notified.

Section 8. New Employee Orientation/Meeting

- a. A Union representative will be afforded an opportunity to attend new employee orientation sessions, and to make up to a fifteen (15) minute presentation during new employee orientation sessions. Reasonable notice of the date, time, and place of the orientation session will be provided by the Agency to the Council Chairperson or designee. Official time will be authorized for attendance at orientation meetings. A Union representative within the local commuting area will be reimbursed mileage for travel to make a presentation at new employee orientation meetings. If a Union representative is not available within the local commuting area, a representative from outside the commuting area will be authorized mileage of up to one hundred (100) miles to attend the orientation meeting. No per diem or overtime will be authorized for attendance at new employee orientation meetings.
- b. As part of the orientation process, the Agency shall provide notice to new employees of the recognition granted to the Union and a copy of the parties' Agreement. The Union representative shall have the right to address the new employee(s) concerning the recognition granted the Union and to introduce the Agreement provided as part of the orientation packet. The Union shall be responsible for providing employees with information regarding AFGE benefit programs.

Section 9. Freedom from Interference

The Agency shall not restrain, interfere with, or coerce representatives of the Union in the exercise of their rights under Title 5, U.S.C., Chapter 71 of the Statute and this Agreement.

The Union will not encourage or initiate any unlawful, concerted activity on the part of an employee or group of employees, which would harm or adversely affect the operation and/or mission of the Agency. It will not condone any such activity by failing to take affirmative action to prevent or stop it.

Unless specifically required by law or government-wide regulation, Union representatives shall not be required to disclose communications with bargaining unit employees which occurred during the performance of representational duties.

ARTICLE 5

EMPLOYEE RIGHTS AND RESPONSIBILITIES

Section 1. Right to Unionize

- a. Unit employees shall have the protection of rights afforded all Federal employees. Additionally, both parties agree to abide by all written understandings reached by the parties with regard to such employees.
- b. Employees have the right to be treated with courtesy, dignity, and respect in all aspects of personnel management.
- c. Employee privacy will be protected in all dealings with the Agency or other entities in accordance with applicable law, rules, regulations, and this Agreement.
- d. No employee will be subjected to intimidation, coercion, harassment, or unreasonable working conditions, nor be used as an example to threaten other employees.

Section 2. Personal Rights

- a. The Agency agrees to annually inform all employees of their rights under Title 5, U.S.C., Chapter 71, Section 7114(a)(2)(B) of the Statute. Each new employee shall be given a copy of the Weingarten Rights during employee orientation.
- b. All employees shall be treated fairly and equitably in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, sexual orientation, parental status, genetic information, age, or disabling conditions, and with proper regard and protection of their privacy and constitutional rights. Additionally, the Agency will not require employees to disclose their marital status, race, sex, national origin, religion, parental status, genetic information, sexual orientation, age, or political affiliation unless required to do so by law, directive, or higher authority.
- c. The parties agree that in the interest of maintaining a congenial environment, both supervisors and employees shall deal with each other in a professional manner with courtesy, dignity, and respect.
- d. Supervisory guidance shall be given in a reasonable and constructive manner. Such supervisory guidance shall be provided to subordinate employees in an atmosphere that will avoid public embarrassment or ridicule.
- e. If an employee is to be served with a warrant or subpoena, it shall be done in private without the knowledge of other employees to the extent it is within the Agency's control.

- f. No employee shall be subjected to intimidation, coercion, harassment, or unreasonable working conditions as reprisal, nor be used as an example to threaten other employees.

Section 3. Freedom from Reprisal

Each employee, without exception, has the right, freely and without penalty of reprisal, to form, join and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right. Except as otherwise expressly provided in Title VII of the Civil Service Reform Act, the right to assist a labor organization extends to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of its views to officials of the Executive Branch, Congress, and other appropriate authority. The Agency shall take the action required to assure that employees are apprised of their rights and that no interference, restraint, coercion, or discrimination is practiced to encourage or discourage membership in the Union.

Section 4. Accountability

Except as required by law or government-wide regulation in effect on the original effective date of this Agreement, employees are accountable for performing duties as assigned and conducting themselves in accordance with governing policies and regulations. The Agency recognizes an employee's right to privacy in his or her off-duty conduct where such conduct does not affect job performance and complies with laws, regulations, and Agency and Departmental policies governing outside activities.

Disciplinary and/or Adverse Actions taken based on off-duty misconduct will be handled in accordance with governing laws, rules, regulations, Agency Directives, and Article 32, Disciplinary and Adverse Action, of this Agreement.

Section 5. Access to Union and Management Officials

Employees shall have the right to contact their Union representative during duty hours in regard to a condition of employment. However, permission to do so shall be made in advance through the first level supervisor. Arrangements to relieve the employee for such contact shall be made in a timely manner. Resulting discussions shall be reasonable in length and shall not ordinarily exceed thirty (30) minutes. Internal Union business will not be conducted during duty hours.

Employees shall have ready access to the next higher level of supervision and management officials. The parties agree to encourage employees to present their work-related problems to the lowest level of supervision that can effectively deal with the problem. Employees may communicate with the following offices or officials:

- a. A supervisor or management official of a higher rank (e.g. Frontline Supervisor, District Manager/IID Director) after discussion with the employee's immediate supervisor;
- b. An EEO counselor;
- c. A District Office through the immediate supervisor; or
- d. Human Resources Office.

The supervisor may request the employee delay the contact for a just and valid reason. Telephone contact with management officials on work-related situations may be made at the expense of the Agency.

Section 6. Personnel Files and Records

- a. An employee's Electronic Official Personnel Folders (e-OPF) and Employee Performance Folders (EPF) shall be maintained in accordance with applicable laws and regulations. Only information authorized by law and regulation shall be maintained in the e-OPF and EPF. Under the e-OPF system, employees may access their personnel records at any time through a secure internet site.
- b.
 - 1) Employees not having access to a government computer at the worksite will receive a hard copy of personnel actions. Upon written request to the servicing personnel office, such employees or their representative may request a hard copy of their e-OPF annually. Employees are encouraged to maintain a copy of their official personnel actions to preclude unnecessary copying of the contents of the employee's e-OPF.
 - 2) Upon receipt of a written request or authorization, the Agency shall forward to the employee or their authorized representative, a copy of the e-OPF together with the following statement:

This is a complete copy of your e-OPF as maintained by the Human Resources Field Office consisting of (number of) pages as of (date).
- c. Employees may request a copy of the EPF annually by submitting a written request to the servicing personnel office.
- d. In accordance with applicable laws and regulations, employees may formally request that a record contained in his/her e-OPF/EPF be corrected or amended. Such requests must be accompanied with supporting documentation.

Section 7. Employee Pay

- a. Employees are entitled to timely payment of salary and travel expenses. Agency officials will assist employees in expediting payment where processing is delayed.
- b. Employees are responsible for arranging for the timely repayment of overpayment.
- c. Employees shall be furnished a Personal Statement of Benefits on an annual basis, which includes a report of their CSRS/FERS contributions to the retirement fund.
- d. Pay Procedures
 1. Procedures governing the pay of bargaining unit employees shall be in accordance with governing regulations. All employees must participate in electronic funds transfer (EFT), (i.e., direct deposit) to receive a federal benefit or salary, to include travel reimbursement, unless a waiver has been specifically requested and approved or granted in accordance with governing regulations.
 2. General Schedule differential rates are paid in accordance with governing regulations.
 3. Where there is any obligation to bargain, the Agency will bargain to the extent required by law.

Section 8. Seniority

- a. For the purposes of this Agreement, the seniority date of an employee shall be defined as the length of service as a permanent full-time bargaining unit employee except in those cases in which another basis is mandated by law or government-wide regulation.
- b. Employees with breaks in service receive credit for prior permanent full-time inspection experience as a bargaining unit employee.

Section 9. Employee Rights to Union Representation

- a. A representative of the Union shall be given an opportunity to be present at an examination, discussion, or interview involving an employee if the employee reasonably believes that the event may result in a disciplinary action and the employee requests such representation.

Once an employee chooses to exercise this right by requesting Union representation, the Union will be allowed reasonable time to provide representation before further questioning or action shall take place.

- b. The Agency retains its right to hold counseling sessions with employees without the presence of the Union. Counseling sessions may include:
 - 1. Informal discussions between individual employees and their supervisors regarding the employee's performance;
 - 2. Work assignments and established procedures;
 - 3. Leave practices and requests;
 - 4. Discussions of a personal nature;
 - 5. Employee progress and final performance reviews; and,
 - 6. Ethics and Conduct.
- c. Consistent with Title 5, U.S.C., Chapter 71 of the Statute, the Agency shall not bypass the Union and deal directly with employees regarding changes in conditions of employment.
- d. It is agreed that the exclusive representative shall be given the opportunity to be present at all formal discussions between the Agency and employees concerning personnel policies, practices, or matters affecting general working conditions of employees.
- e. Employees may be contacted from outside sources regarding work-related issues, (i.e., EEO complaints and FLRA investigations, etc.). Employees have an obligation to cooperate with these individuals as required by applicable laws, rules, or regulations. Employees may invoke their statutory/contractual right to Union representation to these matters.

Section 10. Retirement and Resignation

- a. An employee's decision to resign or retire (if eligible for optional retirement) shall be made freely, in accordance with prevailing regulations, and shall be effective unless rescinded before the effective date of the action.
- b. If an employee is facing removal or termination, the employee may resign freely and in accordance with prevailing regulations any time prior to the removal or termination effective date.
- c. The Agency agrees to provide retirement planning information or counseling to employees, when requested by the employee.

Section 11. Industrial Disputes and Civil Disorders

- a. Employees in the unit are responsible for not taking sides or becoming personally involved in an industrial dispute between the management and employees of the official establishment or plant to which they are assigned. They are responsible during the plant strike periods for reporting to work as scheduled and performing assigned inspection duties unless otherwise directed by their supervisor.
- b. If a plant strike date is announced in advance, the supervisor shall prearrange for safe access of his/her subordinates to the worksite and will be present at the access and exit points whenever subordinates are entering or leaving the worksite unless definite arrangements are made with plant management and officials of the striking union to assure the safety of the inspector(s) involved. The designated Union representative and the affected inspectors will be notified prior to the strike of the arrangements, which have been made.
- c. When the supervisor deems entrances to or exits from the plant to be unsafe, he/she shall inform the inspector(s) involved of the condition and provide further instructions. The local president or designee shall be informed in a timely manner.
- d. If the plant strike is effected without prior notice and the inspector is confronted with a picket line in reporting for work, he/she shall approach the line, produce proper identification, state his/her responsibility for reporting for work, and request that he/she be allowed access. If access is refused, the inspector shall leave the picket line area and promptly report the facts to the supervisor by phone. The supervisor shall remain cognizant of the inspector's safety in any instructions which might be given.
- e. An employee who believes his/her personal safety or property may be in jeopardy because of the civil disorders in the area of his/her assignment shall contact the supervisor for advice and guidance before the scheduled starting time. If the supervisor has prior knowledge of civil disorders within his/her area of responsibility, he/she shall advise the involved subordinates as to what action they should take.
- f. The Agency will assist employees in making claims for any benefits and compensations for which the employees may be eligible under applicable law and regulations.

Section 12. Challenges to Representation

Nothing in this Agreement shall preclude an employee from exercising his/her rights to file a petition with the FLRA if the employee feels there is cause to believe a question of representation exists.

Section 13. Computer Security and Personal Use of Agency Equipment and Resources

- a. The parties recognize that the Agency uses computer systems that contain sensitive information to accomplish its mission and that the Agency has a responsibility to ensure the security and privacy of such sensitive information.
- b. Agency-owned or leased equipment and resources includes, but is not limited to, computer systems (including Internet, Intranet, and E-mail), photocopiers, facsimile machines, telephones, and audio-visual equipment.
- c. The parties recognize that employees have a reasonable expectation of privacy in the workplace. However, employee users of Agency-owned or leased equipment and resources do not have an expectation of privacy while using such equipment or resources at any time, including times of permitted personal usage as set forth in this Article. To the extent that employees desire to protect their privacy, employees should not use Agency-owned or leased equipment and resources.
- d. Agency Internet, Intranet, and E-mail resources are the property of the Agency. Any use of Agency Internet, Intranet, and E-mail resources is made or done with the understanding that such use is not secure, private, or anonymous.

Employees using the Agency's Internet, Intranet, and E-mail resources are subject to having activities monitored by system or security personnel without any further specific notice.

Employees should be aware that when they access the Internet using Internet addresses and domain names registered to the Agency, they may be perceived by others to represent the Agency. Employees shall not use the Internet for any purpose which would reflect negatively on the Agency or its employees.

- e. Agency-owned or leased equipment and resources are for Agency use and not for personal use; however, limited personal use of Agency owned or leased equipment and resources by employees during non-work hours (e.g., before and after working hours or during lunch periods) is considered to be a permitted use of Agency-owned or leased equipment and resources when the following conditions are met:
 1. Such use involves minimal additional expense to the Agency;
 2. Such use does not interfere with the mission or operation of the Agency;
 3. Such use does not violate the Standards of Ethical Conduct for Employees of the Executive Branch;
 4. Such use does not overburden any Government information resources; and

5. Such use is not otherwise prohibited under this Article.
- f. Prohibited or inappropriate use of Agency owned or leased equipment or resources by an employee could result in the loss of use or limitations on the use of such equipment or resources, criminal penalties, financial liability for the cost of inappropriate use, or any other action deemed appropriate by the Agency.
- g. The following uses of Agency owned or leased equipment or resources, either during working or non-working hours, are strictly prohibited:
 1. Activities that are in violation of law, government-wide regulation, or which are otherwise inappropriate for the workplace;
 2. Activities that would compromise the security of any government host computer. This includes, but is not limited to, sharing or disclosing log-in identification and passwords;
 3. Fund raising, partisan political activities, endorsements of any products or services, or participation in any lobbying activity; or
 4. All E-mail communications to groups of employees that are subject to approval prior to distribution and have not been approved by the Agency (e.g., retirement announcements, Union notices or announcements, charitable solicitations).
- h. Use of Agency owned or leased equipment and resources to accomplish work-related responsibilities will always have priority over personal use. In order to avoid capacity problems and to reduce the susceptibility of Agency information technology resources to computer viruses and cyber attacks, employees shall comply with the following requirements:
 1. Personal files obtained via the Internet may not be stored on individual PC hard drives or on local area network (LAN) file servers.
 2. Official video and voice files may not be downloaded from the Internet except when they will be used to serve an approved Agency function.
 3. Internet, Intranet and E-mail etiquette, customs, and courtesies shall be followed when using Agency owned or leased equipment or resources.
- i. Employees shall be informed of the government computer use policy.

Section 14. Mass Fare Subsidy

It is FSIS policy to offer employees transit benefits that encourage commuting to work by methods other than driving alone to reduce congestion and conserve energy.

Employees who wish to participate in the fare subsidy program shall complete an annual "Application for Transit Benefit." All participants shall certify in writing that they are eligible for a transit benefit for their commute to and from work. A renewal application must be timely submitted or is considered barred until the next year.

Section 15. Conflicting Orders/Instructions

When an employee receives conflicting orders/instructions from supervisory officials within their chain of command, he/she shall follow the last order given.

Section 16. Just Financial Obligations

Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations. The Agency will evaluate instances of complaints for debts owed by employees on a case by case basis. This does not include the Government-issued credit card for travel.

Section 17. Campaigns/Drives

Employee participation in the Combined Federal Campaign (CFC) and U.S. Savings Bonds campaign is voluntary. No pressure shall be brought to bear to require such participation.

Section 18. Tort/Indemnification

- a. In the performance of his/her duties, or when acting within the scope of his/her employment, the employee is entitled to protection under the Federal Employees Liabilities Reform and Tort Compensation Act of 1988, (P.L. 100-694).
- b. If, as a result of actions taken within the scope of their employment, a verdict, judgment, or monetary award has been entered against an employee, or a settlement proposal entered into by an employee, the employee may submit a written request for indemnification. Such requests must be supported with appropriate documentation in accordance with applicable guidelines.

Section 19. Agency Meetings

Any meetings away from the facility, scheduled by the Agency, which employees are required to attend shall entitle those employees to official duty time (including, for example, overtime where the meeting is held outside an employee's approved tour of duty), travel, and M&IE (meals and incidental expenses), if applicable, in accordance with applicable regulations.

Section 20. Use of Telephones

On a limited use basis, phones provided by the establishments in government occupied space may be used by employees if allowed by the establishments, and where the use is at no cost.

Section 21. Dependent Care

The parties recognize the relationship of adequate dependent care to employee satisfaction and productivity which contributes to improved morale of employees. Employees seeking assistance with locating dependent and elderly care services may contact the Employee Assistance Program (EAP) for information on services available within a specified geographic location, to include any dependent care facilities federally subsidized, that will assist the employee in making an informed decision.

Section 22. Nursing Mothers

Nursing mothers may request accommodations for the purpose of expressing and saving milk in private while at the workplace.

Requests for such accommodation shall be submitted in writing to the employee's immediate supervisor or designee sufficiently in advance to allow for arrangements for privacy based on the schedule requested by the employee to express milk. Requests will include:

- a. Duration of the request;
- b. Arrangements the employee will make for storing and removing saved milk (i.e. cooler, pick-up arrangements, type of containers, etc.) to ensure consistency with plant policies;
- c. Type of leave employee is requesting, should the time needed exceed the employee's lunch period; and
- d. The schedule or times during the employee's tour of duty for which the employee is requesting time/privacy to express milk.

The Agency will attempt to provide necessary privacy in government-controlled space(s) within the Plant/Establishment.

Section 23. Parking

The Agency shall make a reasonable effort to obtain parking spaces for inspectors at offices and official establishments. This shall include proper marking to preclude use by other than Agency employees. Employees having inspection duties at more than one

location or those having a permanent physical disability will be provided parking spaces at such locations, whenever possible.

An employee who believes his/her personal safety or property may be in jeopardy because of the area of his/her assignment shall contact the supervisor for advice and guidance before the scheduled starting time.

Where there are documented instances of unsafe conditions involving FSIS personnel in parking areas owned and provided to FSIS employees by establishments, the Agency shall take appropriate action, as necessary, within existing authorities to address the safety and well-being of Agency personnel.

Section 24. Smoking Policy

a. Designated Smoking Areas

The parties recognize that the smoking of any tobacco products in any building or facility (or portion thereof) owned, leased, or occupied by FSIS personnel is strictly prohibited. Smoking is also prohibited in USDA owned and GSA or commercially leased vehicles. However, when plant/establishments have designated areas for its employees to smoke, and FSIS employees are permitted access to those areas, FSIS employees may smoke in such areas.

b. Smoking Cessation Classes

Consideration will be given to an employee's request for appropriate leave to attend a Smoking Cessation Program. The type of leave granted will be based on the circumstances of the request.

ARTICLE 6

BARGAINING DURING THE TERM OF THE AGREEMENT

Section 1. Management-Initiated Bargaining

a. Policy

Where there is an obligation to bargain under the Statute or this Agreement, the Agency shall provide reasonable advance written notice of intended changes to the Council Chairperson/designee. Service will be by facsimile, hand delivery, or Federal Express. If hand delivery is used, the notice will be documented immediately to show the receipt date. The notice will be considered received on the next work day when the service is by Federal Express.

If the Union elects to bargain over an Agency scheduled change, the Union shall submit a written request to bargain to the Director, LERD within fifteen (15) calendar days of receipt of the Agency's notice.

The request to bargain shall designate the Union's Chief Spokesperson. The Union may request that the Agency brief the Union on intended change(s) via conference call. The Agency shall honor such Union requests.

1. The advance written notice of the proposed change to the Union shall include a description of the proposed change, an explanation of how and why the change will be implemented, the proposed implementation date, the Agency's Chief Spokesperson, and a point of contact for additional questions or information.
2. If the Union does not exercise its option to request bargaining as stated in this Article, the Agency may proceed to implement the change(s) on the proposed date.

b. Bargaining Routine

The following bargaining process shall be utilized during the term of this Agreement:

1. Bargaining shall commence as soon as possible, but no later than twenty (20) calendar days after the Union's written request to bargain. Should a federal holiday fall within the specified timeframe for bargaining, the timeframe for commencement will be extended seven (7) calendar days. Commencement of bargaining may be extended only by mutual agreement.
2. Proposals by the Union shall be due no later than seven (7) calendar days prior to the actual commencement of bargaining. Proposals shall be

reasonably related to the proposed change and, where applicable as an appropriate arrangement, shall identify the adverse impact upon the employees which the proposal is intended to reduce/remedy.

3. All bargaining sessions shall be held in the Washington, DC, metropolitan area unless the parties mutually agree to conduct bargaining at an alternate site. The bargaining sessions shall commence at 8:00 a.m. and conclude at 4:30 p.m., with thirty (30) minutes allocated for lunch. The Agency agrees to pay for one Union representative's travel and per diem in accordance with government travel regulations.
4. The Agency shall provide a meeting room for bargaining held at the Agency's facilities in the Washington, DC, metropolitan area. The Union may request, no later than seven (7) calendar days prior to bargaining, access to a computer, printer, copier, facsimile, and government-owned or leased telephone for purposes of the negotiations.

Section 2. Union-Initiated Bargaining

- a. A Union-initiated request for mid-term bargaining will address negotiable subjects of bargaining as defined by 5 U.S.C. Chapter 71 and applicable case law.
- b. The Union will provide the Agency with reasonable advance notice of its desire to engage in Union-initiated bargaining.
- c. Union requests for bargaining must be filed with the Director, LERD. The Union's request for bargaining must include proposals and the name of the Union's Chief Spokesperson.
- d. If there is an obligation to bargain, the parties' Chief Spokespersons will make appropriate arrangements for the bargaining session to occur normally within forty-five (45) calendar days from receipt of the Union's request to bargain. The arrangements will be by mutual agreement.
- e. All bargaining sessions shall be held at a location mutually agreed to by the parties. The bargaining sessions shall commence at 8:00 a.m. and conclude at 4:30 p.m., with thirty (30) minutes allocated for lunch. The parties shall bear their own cost. The parties agree that any agreement to combine bargaining sessions must be by mutual agreement. Any cost associated for a meeting room will be shared equally by the parties. Where the parties agree to hold a bargaining session at Agency facilities in the Washington, DC, metropolitan area, the Union may request, no later than seven (7) calendar days prior to bargaining, access to a computer, printer, copier, facsimile, and government-owned or leased telephone for purposes of the negotiations.

Section 3. General Provisions for Bargaining

- a. Bargaining shall normally be held on three (3) consecutive workdays, Tuesday through Thursday. Should a federal holiday fall within the specified timeframe for bargaining, the timeframe for commencement will be extended seven (7) calendar days. The parties shall be deemed to be at impasse after three (3) days of bargaining, unless not released from mediation by an FMCS Commissioner. In such cases, a subsequent session will be held within thirty (30) calendar days from the conclusion of the previous session, unless mutually agreed otherwise. If the Mediator is not available within thirty (30) calendar days, the session will be held as soon as the Mediator is available, unless mutually agreed otherwise. Both parties reserve the right to request the assistance of a mediator from the Federal Mediation and Conciliation Service (FMCS) at any time.
- b. Pursuant to Title 5 U.S.C. §7131, the number of union representatives authorized official time for bargaining shall not exceed the number of individuals designated by the Agency for such purposes. The parties shall exchange the names of their bargaining team members for the specific issues to be negotiated normally no later than seven (7) calendar days prior to the beginning of bargaining. This does not preclude the attendance of technical advisors and subject matter experts by mutual agreement. The requesting party will be responsible for all cost associated with the attendance of technical advisor(s) and/or subject matter expert(s).
- c. During bargaining, the Chief Spokesperson (or an alternate) must be present and have the authority to bargain and reach agreement on behalf of their party. The Chief Spokesperson for each party shall signify agreement on each section by initialing and dating the agreed-upon section. The Chief Spokesperson for each party shall retain his/her copies and initial and date the other party's copies. This will not preclude the parties from reconsidering or revising any agreed-upon section by mutual consent.
- d. Alternates may substitute for bargaining team members. Such alternates shall be entrusted with the right to speak for and to bind the members for whom they substitute.
- e. The ground rules may be altered only upon mutual agreement of the parties. However, no such ground rules may limit the ability of either party to request the assistance of the FMCS or the Federal Service Impasse Panel (FSIP).
- f. Any impasse not resolved through the FMCS may be submitted by either party to the FSIP to consider the matter under its regulations.
- g. Any agreement/memorandum of understanding (MOU) entered into during the life of this contract will be considered an addendum to this contract and subject to

its duration or as otherwise agreed in the MOU. The Agency will make appropriate distribution to the affected employees.

- h. If any proposal is claimed to be non-negotiable by either party and subsequently determined to be negotiable; or the declaring party withdraws its allegations of non-negotiability, the proposal will, upon request, be reopened within thirty (30) calendar days. Nothing shall preclude the right of judicial appeal.

ARTICLE 7

OFFICIAL TIME

Section 1. Policy

The Agency recognizes that in furtherance of good labor-management relations, Union representatives have the responsibility of carrying out representational activities under the Federal Service Labor-Management Relations Statute. The parties agree that Union representatives, when not engaged in authorized labor-management activities, shall accomplish the duties of the position to which they have been assigned. The Agency agrees to recognize the Chairperson, Council Presidents, and a reasonable number of Union representatives of the National Joint Council of Food Inspection Locals under Article 4 as appropriate users of union official time for authorized representational activities.

- a. Union representatives shall represent the Union and the employees for their designated area of representation in meetings with officials of the Agency to discuss appropriate matters.

The parties may use telephone, electronic, and/or video conferencing methods in communicating relative to representational matters to the maximum extent practicable.

- b. Overtime compensation shall not be paid for performance of representational duties and responsibilities.
- c. Union representatives must be in an off-duty status when conducting internal Union business.
- d. No travel and per diem will be permitted unless authorized by the Agency.

Section 2. Release from Duty for Representational Matters

It is recognized that Union representatives (who are employees of the Agency) may need to conduct official labor relations activities and will require a reasonable amount of official time to do so.

The procedure for securing advance approval and conducting such official labor relations activities is as follows:

- a. Union officials/representatives desiring to use official time under this Article shall request permission in writing from their immediate supervisor, or designee, of the need to conduct official labor relations activities and inform the supervisor of the approximate duration of time.

- b. The immediate supervisor, or designee, shall respond to requests for official time in a timely manner. If a request for official time cannot be authorized for the time requested due to a work situation, a release time will be granted as soon as possible.
- c. Union representatives shall inform the supervisor of the location where they can be contacted.
- d. Union representatives shall make advance arrangements with the supervisor in the location to be visited, providing the general nature and expected duration of the business.
- e. The Union representative will check in with the supervisor in the visited area prior to commencing Union representational activities. The Union representative will complete a sign-in and sign-out sheet at the place of business.
- f. The Union agrees to carry out its representational duties promptly.
- g. In situations where two Union representatives are designated from the same location, the Union representatives shall make every reasonable effort to schedule their use of union official time to avoid simultaneous absence of the Union representatives for representational purposes.

Section 3. Use of Official Time

Use of official time will take into account the operational needs of the Agency and the rights of employees to be represented in matters relating to their employment.

Section 4. Provisions for Official Time

- a. Consistent with Title 5 U.S.C. 71 and this Agreement, Union representatives will be granted official time, subject to the availability of official time as described below for the following representational activities. The following activities are examples of, but are not an exhaustive list of, the uses of official time:

T & A Code 35:

- Term Negotiations.

T & A Code 36:

- Time in connection with bargaining during the term of the Agreement.

T & A Code 37:

- Attendance at meetings initiated by the Agency concerning personnel policies, practices, or other general conditions of employment.
- Attendance at labor management meetings as defined in Article 8, Labor-Management Meetings.
- Time in connection with statutory (e.g., MSPB and EEOC) appeal procedures in which the Union is designated as the representative.
- Attendance at meetings of joint committees in which Union representatives are recognized members.
- Attendance at the recognized events to which the Union has been invited by the Agency.
- Attendance at the Health and Safety Committee activities as defined in Article 9, Health and Safety.

T & A Code 38:

- Attendance at oral replies to notices of proposed disciplinary or adverse actions under this Agreement as the employee's designated representative.
- To prepare grievances. Due consideration will be granted to the Union's request to perform duties on authorized official time at a location other than his/her duty station.
- Witness preparation to the extent authorized by law or government-wide rule or regulation and this agreement.
- To review documents that are not available during non-duty hours.
- To prepare a reply to a notice of proposed disciplinary action, adverse action, or unacceptable performance action as the employee's designated representative.
- Arbitration preparation as provided for under Article 34, Arbitration.
- Attendance at meetings for the purpose of presenting reconsideration replies in connection with denial of within-grade increases if acting as the employee's designated representative.
- To prepare reconsideration statements in connection with the denial of a within-grade increase if acting as the employee's designated representative.

- Attendance at meetings with the Agency or FLRA to discuss or present unfair labor practice charges or unit clarification petitions.
- To participate in an Authority investigation or hearing preparation as a representative of the Union.
- To effectuate Congressional contacts, if subpoenaed by a member or committee of Congress to appear.
- To participate in training sponsored by the Union in the administration of Public Law 95-454.
- To prepare and maintain records and reports required of the Union as provided by 5 U.S.C. Section 7120(c).

b. The location where official time is used shall be appropriate to the representational activity for which the time is requested. That location is normally the Union official's headquarters plant, if appropriate facilities are available at the plant. If appropriate facilities are not available, an alternate appropriate facility is acceptable. The union official shall inform the supervisor of the alternate facility where they can be contacted.

c. The Union will be allowed to use up to 15,000 hours per fiscal year for representational activities identified in Section 4 (a). This includes official time authorized pursuant to Title 5 U.S.C. 7131 (a), (c), and (d). Unused official time hours do not carry over into the next fiscal year. The Union shall only receive reasonable official time to fulfill its entitlements under Title 5 U.S.C. 7131 (a) and (c) of the Statute.

The Union has a right to negotiate for additional hours one time during the term of this Agreement when 15,000 hours is insufficient to conduct representational activities in any given year. Upon the submission of a written information request, the Agency will provide the Union with an accounting of the total official time usage. Negotiations of additional hours can be triggered by the Union when there are 1000 hours or fewer remaining in the bank.

d. Time spent by Union representatives representing employees in statutory EEO complaints is official time under Title 29 Code of Federal Regulations and does not count against the bank.

Section 5. Union Designation of Representatives

The Union shall provide, in writing, and maintain with the Agency on a current basis a listing of all union representatives authorized to use official time as referenced above.

Section 6. Tracking of Official Time

It is important that the use of official time is tracked and used properly. Use of official time will be documented on Standard Form FSIS 3530-5 or Standard Form 3504-4 (10/94), Time and Attendance Report. When the Agency implements an automated time and attendance system, this form will no longer be used for reporting of official time.

Section 7. Allegation of Abuse of Official Time

Alleged abuses of official time will be brought to the attention of the appropriate Union representative on a timely basis by an appropriate Agency official. The Agency official will discuss the matter with the Council President or Chairman, NJC, as appropriate, or designee.

Section 8. Training

Joint training sessions on the interpretation and application of the terms of this Agreement shall be held between managers, supervisors, and all local/Council presidents. The training will be scheduled in conjunction with a Labor-Management meeting, and official time and expense will be approved for the training.

ARTICLE 8

LABOR-MANAGEMENT MEETINGS

Section 1. Common Interest

The parties recognize that they have a common interest in effecting a sound and progressive labor-management relations program and in solving issues which might arise between them. Additionally, the Agency recognizes the major contributions the Union can make toward achieving an efficient, effective, fair, and equitable workplace. Therefore, to achieve maximum results, periodic labor-management meetings will be held pursuant to this Agreement.

Such meetings shall be conducted in an orderly and business-like manner, shall encourage solutions rather than positions, demonstrate mutual respect, and encourage the resolution of issues at the lowest level.

Issues proposed for discussion by either party shall be forwarded to the other at least ten (10) calendar days in advance of the meeting in order to prepare a meeting agenda and assure representatives appropriate to the agenda will be present. However, this does not preclude the parties from mutually agreeing to modify the agenda after the list of issues has been transmitted.

Section 2. Meetings

- a. The parties agree that meetings will be utilized to:
 1. Promote more effective, open, and continuous involvement between the parties to further enhance a positive working relationship and advance labor-management cooperation between the parties;
 2. Jointly pursue strategies which emphasize improving employee working conditions; and
 3. Work together to seek ways of improving service consistent with cost considerations.

- b. Agency officials shall meet with the National Joint Council (NJC) at the Agency's Washington, DC, facility two (2) times per year. The meetings shall be facilitated by an individual chosen jointly and scheduled Tuesday, Wednesday, and Thursday beginning at 8:00 a.m. and concluding at 4:30 p.m., with a thirty (30) minute lunch. The Agency will pay for no more than eight (8) Union officials to travel to the meetings. A substitute may be designated to attend by a Council President only if the Council President is on approved absence.

- c. The District Manager or designee shall meet with the Union within his/her district three (3) times a year. Up to a total of six (6) Union officials (limited to local presidents and/or Council presidents, having jurisdiction within the District) may participate on official time and at the Agency's expense. The location, date, time, and duration shall be determined by mutual agreement.

- d. The above does not preclude the scheduling of common interest meetings on a more frequent basis with other management officials. Additionally, conference calls, if mutually agreed to by the parties, may be utilized for sharing information and/or for satisfying the meeting obligations. Common interest meetings will be held at a location and time chosen by Management during official duty hours that does not adversely impact on operations.

ARTICLE 9

HEALTH AND SAFETY

Section 1. Policy

It is the Agency policy to initiate and operate a comprehensive Health and Safety program to:

- a. Reduce or eliminate human and financial losses incurred from injury, illness, and property damage in the workplace;
- b. Motivate employees to work safely;
- c. Ensure the rights of employees to include freedom from reprisal; and
- d. Comply with Federal, Departmental, and Agency regulations, policies, and directives.

Section 2. Agency Responsibilities

- a. The Agency, to the full extent of its authority, shall provide employees with a safe and healthy workplace free from recognized safety hazards and shall comply with applicable laws and regulations relating to the safety and health of employees.
- b. Assure prompt response to reports of unsafe or unhealthful conditions.
- c. Establish procedures to assure that employees are not subjected to interference, discrimination, or other reprisal for reporting unsafe or unhealthy conditions or for participating in Occupational Safety and Health Administration (OSHA) program activities.
- d. Assure that periodic inspections of Agency workplaces are performed by qualified and properly equipped personnel, as determined by the Employer.
- e. Assure abatement of unsafe and unhealthy working conditions in federally owned and leased workplaces.
- f. Assure proper posting of OSHA Notices to identify existing unsafe and unhealthy conditions as determined by management that cannot be corrected immediately.
- g. Take appropriate action to ensure employees are not placed in a position of imminent risk of death or serious bodily harm in the performance of work.
- h. At a minimum, provide employees with adequate welfare facilities, space, light, ventilation, and heat. Additionally, the Agency shall provide hearing protection

for employees exposed to excessive noise levels at their work sites in accordance with applicable regulations. When appropriate, industry officials shall be officially informed by appropriate Agency officials of unsafe and unhealthy conditions existing on its premises, which present a health and safety hazard to Agency employees. If such conditions are not properly corrected, the responsible Agency official shall take such action as is necessary with appropriate authorities to ensure compliance with established health and safety laws and regulations.

Section 3. Union Responsibilities

The Union agrees to cooperate fully with the Agency in fostering an effective and progressive safety program. The Union shall work with Agency officials in an effort to induce employees to strictly observe safety rules and to utilize the safety equipment issued to them.

Section 4. Employee Responsibilities

It is recognized that each employee has a primary responsibility and obligation to know and apply safety rules and practices as a measure of protection.

Employees who reasonably believe they may be exposed to an imminent danger should immediately take the necessary steps to protect their personal safety and then report the matter to the appropriate level of management. Examples of imminent danger may include fire, gas explosion, natural gas leaks, and broken ammonia line.

It is the responsibility of each employee to promptly report unsafe working conditions/practices to supervision. Employees are responsible for recognition of Agency, OSHA Title 29 CFR Part 1960, and industry requirements by regularly wearing and using equipment provided by the Agency and industry.

Failure to comply may result in disciplinary action.

Section 5. Safety Committees

The Agency shall establish advisory, non-certified, health and safety committees at the circuit level to assure an effective health and safety program throughout the Agency. Such committees shall be composed of up to two (2) Union representatives and at least one (1) Agency representative. These committees shall meet semi-annually. When mutually agreed to, a committee may meet more frequently. Travel and per diem expenses will be paid for safety committee Union representatives within the circuit to attend safety committee meetings.

Section 6. Investigations

The Agency shall investigate the circumstances and the causes of accidents as appropriate. The Union will be notified and allowed to designate a Union representative to accompany OSHA inspectors in facilities undergoing inspection by OSHA where Unit employees work. Travel and per diem expenses will be paid for a Union representative from within the circuit to accompany the OSHA inspector(s) conducting inspections within that circuit.

Section 7. Safety Equipment and Clothing

Appropriate supplies, equipment, and clothing necessary to ensure the health and safety of employees in the performance of their assigned duties shall be furnished or reimbursed in accordance with governing regulations.

Section 8. Reports

The Chairperson of the Council, upon written request, shall be provided a copy of the reports required by regulations that implement the Occupational Safety and Health Programs for Federal employees pursuant to 29 CFR 1960. A copy of accident reports shall be submitted to the appropriate circuit health and safety committee.

Section 9. Training

Appropriate health and safety training, as determined by the Agency, will be provided to employees.

Section 10. Reporting Hazards

Agency employees shall promptly report unsafe working conditions on FSIS Form 4791-27, which they will furnish to their immediate supervisor.

Section 11. Health Maintenance

The Agency will, to the extent that funds are available, participate in the Federal Employee Occupational Health Program. Coverage is limited to those employees who work reasonably close to facilities offering such programs to avail themselves of the services provided. Subject to the capability and resources of the local health unit, the following routine services may be provided at no expense to the employee:

- a. Disease screening examinations and immunizations;
- b. Health education programs;
- c. Health maintenance examinations;

However, no Agency expenses will be incurred for employee participation.

Section 12. Plant Reviews by Environment Health and Safety Specialists

At the close of a Plant Review, the Agency will provide for an exit interview with the In-Plant Union representative to discuss health and safety hazards identified by the Union.

Section 13. Health and Safety Conference

The Agency will pay travel and per diem expenses for the eight (8) NJC Council presidents to attend the annual Federal Safety and Health Conference.

ARTICLE 10

EMPLOYEE ASSISTANCE PROGRAM

Section 1. Policy

The Agency and the Union jointly recognize that treatable illnesses and disorders occur in the work force as a result of personal problems, for example, stress, family problems, emotional and situational disorders, financial problems, legal difficulties, child or elder care, alcoholism, and drug dependency. The Agency recognizes that early, constructive intervention can contribute to the Agency's productivity, as well as the employee's well being. Therefore, the Agency provides a chance for employees to receive help with personal problems that are interfering with work performance.

Employees are encouraged to utilize the services of the Employee Assistance Program (EAP) when they determine the need to deal with issues which may adversely affect conduct and performance. Time associated with participation in the EAP is addressed in Section 3 of this Article.

The EAP offers professional and confidential counseling services designed to help address the personal concerns and life issues facing employees. The Agency reserves the right to encourage employees whose work performance is adversely affected to pursue counseling, help, or treatment through the EAP. Referrals can be obtained by calling a toll-free number, which will be published by the Agency for employees' use.

Section 2. Referrals/Resources

The Agency agrees to assist employees in securing counseling services. This is accomplished through providing information and encouragement to the employee to use any of the following types of services:

- a. Referrals to available counseling services in the local community;
- b. Counseling services provided by the Agency either onsite or on an as-needed basis; and
- c. Counseling services provided through joint efforts with other Federal Agencies.

The EAP counselor will assist employees by referral to professionals or organizations within their community. For services outside the scope of the EAP, the counselor will assist employees in working through issues related to identification of resources and health insurance coverage. Employees may also contact health insurance providers for assistance in identifying covered services and information on coverage.

Section 3. Participation

- a. This Article applies to counseling or other assistance under the EAP or outside the EAP.
- b. Employees undergoing evaluation or a prescribed program of treatment(s) shall be granted sick leave (including advanced sick leave), annual leave (including advanced annual leave), or leave without pay for this purpose on the same basis as for any other illness when absence from work is necessary. The Agency may also approve administrative leave for EAP reasons; however, there is no entitlement to administrative leave. Employees are also eligible for entitlements under the Family and Medical Leave Act on the same basis as for any illness when absence from work is necessary. Procedures for such absences will be in accordance with Article 14, Leave, of this Agreement. If an employee informs the immediate supervisor or designee that leave is requested for the above reason, that supervisor or designee shall assist the employee in working out an appropriate schedule for taking leave.

Section 4. Confidentiality

The parties recognize that all confidential information and records concerning employee counseling and treatment shall be maintained and used in accordance with applicable rules and regulations. No information about an employee can be used in any action by the Agency against the employee, without the employee's consent, if the information was obtained under this Article. This does not preclude the notification of law enforcement authorities in "duty to warn" situations as required by law. The Agency will not initiate contacts with EAP counselors or treatment providers for the purpose of obtaining information about the employee.

Section 5. Briefing Request

Upon request, a briefing for the NJC on the EAP will be added as an agenda item for the National Labor-Management Meetings under Article 8.

ARTICLE 11

WORKERS' COMPENSATION

Section 1. Policy

The Agency agrees that when employees suffer injuries or illnesses in the performance of duties, the employees are entitled to compensation and other benefits provided by law under the Federal Employees' Compensation Act (FECA), which is administered by the U.S. Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP).

When an employee suffers an illness or injury while in the performance of duties, as soon as possible, he/she shall inform the supervisor. The supervisor (or designee) will provide the affected employee notice of their rights as soon as possible. These rights include the following:

- a. The employee's right to file for compensation benefits;
- b. The general types of benefits available;
- c. The procedure for filing claims; and
- d. The option to request and use compensation and/or continuation of pay (COP) benefits in lieu of sick or annual leave, where such entitlements exist.

The Agency will make available to all employees the applicable forms for filing claims for compensation due to work-related injuries and illnesses and will provide instructions and counseling to claimants through the appropriate Human Resources Field Office specialists.

Section 2. Procedure for Filing Claims for Workers' Compensation Benefits

- a. As soon as possible after experiencing a job-related injury or illness, the employee should contact his/her supervisor. Written notice of the injury should be given within thirty (30) days of the date of injury. Notice must be filed within three years of the date of injury. However, if a claim is not filed within three years, compensation may still be paid if written notice of injury was given within thirty (30) days, or the Agency had actual knowledge of the injury within thirty (30) days after it occurred.
- b. The employee should obtain Form CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation, or CA-2, Notice of Occupational Disease and Claim for Compensation, as appropriate, from the supervisor (or designee). Compliance with OWCP requirements, including the filing and processing of accurate and timely claims and reports by the supervisor (or designee) and by the employee, is required by law.

The appropriate sections of the form should be completed by the employee and given to the supervisor as soon as possible, but not later than thirty (30) calendar days from the date of occurrence. The supervisor will sign the form and return the Receipt of Notice of the Injury portion to the employee; and take appropriate action to process the claim. If the employee is incapacitated or unable to complete the form on their own behalf, someone acting on his/her behalf may fill out the form and give it to the supervisor.

- c. The Agency agrees to post a notice on all bulletin boards in Agency-owned or controlled facilities advising employees of the procedures to follow in the event of an on-the-job injury or illness; and the location and telephone number for the Human Resources Field Office to obtain information/assistance relevant to Workers' Compensation claims.
- d. Until a decision on the OWCP claim is made, employees have the responsibility to advise the immediate supervisor of the status of their claim and anticipated return to duty by the end of each pay period, unless other arrangements have been made.
- e. The completed claim form will be forwarded within ten (10) workdays to the Human Resources Field Office, which will forward the claim to OWCP within ten (10) workdays.

Section 3. Definitions

- a. Traumatic injury/illness means a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. The injury must be caused by a specific event or incident or series of events or incidents within a single work day or work shift.
- b. Occupational disease means a condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection, continued or repeated stress or strain, or exposure to hazardous elements such as, but not limited to, toxins, poisons, fumes, noise, particulates, radiation, or other continued or repeated conditions or factors of the work environment.

Section 4. Election of Benefits Options

- a. Pending the approval of the compensation claim, an employee with a job-related traumatic injury may elect to be placed on sick or annual leave instead of leave without pay, if incapacitated.
- b. As an alternative to Section 4(a), an employee with a job-related traumatic injury/illness may elect to receive continuation of pay (COP), if the claim is

timely filed, up to forty-five (45) days of incapacitation. The entitlement to COP is not available to employees who file an occupational disease claim.

- c. If the employee's claim is approved, the employee shall have the option of buying back any leave used, as approved by OWCP, and having it reinstated to the employee's account. The Agency will provide employees with the proper form for buying back leave prior to or at the time the employee returns to work. Employees must file claims to buy back leave within one (1) year of their return to duty.
- d. If the employee's claim for compensation is disallowed by the Department of Labor, Office of Workers' Compensation Program, the COP that was previously granted may be converted to sick leave, annual leave, and/or leave without pay. The employee shall be responsible for advising the Agency as to which form(s) of leave is(are) requested, for completing an SF-71, Application for Leave, and for completing and submitting corrected Time and Attendance forms.
- e. The Agency shall assist/advise employees regarding the proper procedures for filing claim appeals to the Department of Labor, Office of Workers' Compensation Program, upon request.

Section 5. Placement of Workers' Compensation Program (OWCP) Claimants

If the Department of Labor, Office of Workers' Compensation Program, determines that an employee who was previously deemed disabled has now recovered and is medically able to be reemployed, the Agency will assist the employee in re-applying for other employment and will make a reasonable effort to offer appropriate available employment.

ARTICLE 12

EQUAL EMPLOYMENT OPPORTUNITY

Section 1. Policy

The Agency and the Union affirm their commitment to the policy of providing equal employment opportunities to all employees and to prohibit discrimination because of race, color, religion, sex, national origin, disabilities, or age. The Agency shall have a positive, continuing and results-oriented program of affirmative action. The parties agree that Equal Employment Opportunity (EEO) shall be administered in accordance with laws, regulations, policies, and executive orders.

Section 2. EEO Complaints

- a. Any employee seeking to file or filing a complaint shall be free from restraint, coercion, interference, reprisal, or discrimination. Any employee who seeks to file an informal or formal complaint shall have the right to select a representative of his or her choosing. If a complaint is filed, the employee shall have the right to be accompanied, represented, and advised by a personally chosen representative subject to applicable regulations and law, and when there is no apparent conflict of interest. The chosen representative may assist the complainant during all phases of the EEO complaint process. A reasonable amount of official time will be authorized to employees and/or to representatives, who otherwise would be in a to participate in statutory complaints in accordance with Title 29 C.F.R., Section 1614.
- b. The parties agree that sufficient numbers of trained EEO counselors are necessary to properly administer the program.
- c. To the extent allowed by law, Union officials representing employees in EEO complaints shall have access, subject to applicable EEOC regulations, to copies of the EEO Counselor and Investigative Reports and the personnel records of the complainant.
- d. The employee will be provided with the Notice of Rights and a summary statement of the issue(s) presented, in writing, at the conclusion of the informal complaint process.
- e. If an employee elects to utilize the grievance procedure with Union representation, instead of the statutory procedure for alleged discrimination, both parties shall have the right of discovery if the grievance is referred to arbitration. All discovery shall be governed by and carried out in accordance with applicable EEOC directives and regulations. A copy of applicable directives and regulations shall be provided to arbitrators upon their selection to the panel.

Section 3. Affirmative Employment Program Plan

- a. Establishment and implementation of the Affirmative Employment Program Plan is required by EEOC regulations. The Agency will continue to provide overall management support and budgetary planning to achieve affirmative action objectives throughout the Activity, as outlined in Title 29 CFR 1614.102.
- b. Prior to submitting the Agency Affirmative Employment Program Plan to the EEOC, or successor Agency, for approval, the Agency shall provide a copy of the plan to the Union, if requested, and, upon request, shall fulfill its duty to bargain under law and this Agreement.
- c. The Union may submit its views with respect to the Affirmative Action Program Plan for individuals with disabilities and disabled veterans.

Section 4. Information and Data

- a. The Agency shall make available to employees written information describing the Affirmative Employment Program Plan and the EEO complaint procedure. EEO posters will be prominently displayed throughout the organization. The EEO poster will provide relevant data needed in order to initiate counseling.
- b. The Agency agrees to furnish the Union the following EEO information annually, upon request, for the bargaining unit:
 1. Workforce profile.
 2. Statistical data concerning discrimination complaints filed by bargaining unit employees.

Section 5. Reasonable Accommodations

Consistent with the Rehabilitation Act and Americans with Disability Act, the process of providing reasonable accommodation to qualified disabled employees includes an interactive process.

- a. An employee may initiate a request for reasonable accommodation by submitting a written memorandum or completing a reasonable accommodation request form.
- b. The employee's request should be submitted to the immediate supervisor or designee. If the employee verbally requests reasonable accommodation, he/she may be asked to complete a reasonable accommodation request form.

- c. If an employee is unable to initiate a request, a family member, healthcare professional or other representative may request reasonable accommodation on behalf of the employee.
- d. Employees requesting reasonable accommodation may be required to provide adequate medical documentation in support of their request.
- e. If a request for reasonable accommodation is denied, the employee will be notified in writing of the reasons for the denial.

Section 6. Settlement Agreements

Where an EEO settlement agreement triggers a duty to bargain consistent with FLRA case law (i.e. change in conditions of employment), the Agency will fulfill its obligation to bargain to the extent required by law.

Unless otherwise agreed to by the parties to this Labor-Management Agreement, EEO complaint settlement agreements shall not conflict with this Agreement.

Section 7. Mediation/Alternative Dispute Resolution

Where a bargaining unit employee files a formal EEO complaint and elects mediation of his/her formal complaint under the Agency's Alternative Dispute Resolution program, the Union will be provided notification and an opportunity to be present during the mediation session, in accordance with 5 U.S.C. §7114(a)(2)(A).

ARTICLE 13

HOURS OF WORK

Section 1. Policy

- a.. Work schedules will be established in accordance with Government-wide regulations and Agency policy and directives governing tours of duty. Except for bargaining unit employees on an approved compressed work schedule, the basic workweek shall consist of five (5) consecutive eight (8) hour work days (excluding the lunch period) within the administrative workweek of Sunday through Saturday except as provided for in Title 5, CFR Part 610.121(a).
- b. The maximum time an employee may work on the slaughter line is ten (10) hours per work day. The maximum time an employee may be assigned to off-line inspection duties (e.g., in a pay status) is twelve (12) hours. However, when determined by the immediate supervisor, based upon Agency staffing needs, employees may be utilized beyond the ten (10) and/or twelve (12) hours to accomplish the Agency's mission. Volunteers normally will be used before non-volunteers are required to work longer than the maximums.
- c. An employee will be excused from a requirement to work in excess of the maximums if, in the circumstances, the employee would suffer adverse effects to health and safety. If employees are required to work in excess of the maximums, the Agency will include the effects of extended hours of work when reviewing employee fitness for duty.

Section 2. Lunch Period

- a. The lunch period is the only officially authorized interruption in the inspector's basic tour of duty once it begins. The lunch period may be thirty (30) minutes, forty-five (45) minutes, or in any case will not exceed one (1) hour in duration. The lunch period is unpaid time and is not included in the employee's basic workweek.
- b. An on-line slaughter inspector's basic tour of duty generally corresponds with a plant's approved hours of operation. The on-line slaughter inspector's lunch period shall be scheduled to coincide with the plant's scheduled lunch break. Once established, lunch periods should remain relatively constant as to time and duration.
- c. In accordance with Title 9 CFR Part 307.4 and Title 9 CFR Part 381.37, lunch periods for inspectors shall not, except as provided herein, occur prior to four (4) hours after the beginning of scheduled operations nor later than five (5) hours after operations begin.

- d. Where an off-line inspector's tour of duty is not linked to a plant shift or in multi-plant assignments, off-line inspectors shall take their lunch within four (4) to five (5) hours after their start as determined by the immediate supervisor. In plants where a company rest break of not less than thirty (30) minutes is regularly observed, approximately midpoint between the start of work and the lunch period, the lunch period may be scheduled as much as five and a half (5 ½) hours after the beginning of the scheduled operations. If operations are due to cease five and one-half (5-½) hours after the start of operations, the requirements of this section shall not apply.

Section 3. Agency Relief Breaks

The parties recognize that relief breaks are desirable. A total of thirty (30) minutes of break time in an eight (8) hour day shall be regularly scheduled. The immediate supervisor shall determine the scheduling of the break time. The break time authorized under this section cannot be scheduled as a block or to extend the lunch period or shorten the work day. If overtime is worked, there will be an additional ten (10) minutes of break time provided when overtime is scheduled for a two (2) hour period.

The above will be in addition to plant breaks. If an inspector works at a plant that provides plant breaks, then the inspector can be assigned work during the plant breaks. Relief breaks are not affected by this provision.

The only exceptions to the above relief break provisions shall be where staffing or the Agency's mission would prevent providing the relief breaks, e.g., where it is not feasible to provide the break time due to a temporary manpower shortage. The supervisor shall advise the Union representative of the reasons an exception exists.

Section 4. When Plants do not Operate for All or Part of the Day

- a. When these circumstances occur for an employee working at an official establishment, the Agency will take one or more of the following actions, as appropriate, in the order listed:
 - 1. Assign or detail the employee to other duties where services are needed.
 - 2. Hold "Work Unit" Meetings.
 - 3. Assign the employee to meaningful on-the-job training, classroom training, or individual instructions.
 - 4. Grant an employee's request for leave to cover the time in non-work status, that is:
 - (a) Annual leave, if available, or
 - (b) Leave without pay (LWOP).

- b. An employee may not remain in a duty status at his/her residence without supervisory approval (i.e., “on call”).
- c. Employees may be excused where appropriate after seven (7) hours of a scheduled 8-hour workday.

Section 5. Flexible and Compressed Work Schedules

The parties agree that employees may use flexible and compressed work schedules to principally improve productivity, provide greater Agency service to the public, enhance employees’ lives, and conserve energy, based on governing regulations and policy, in accordance with the following conditions:

- a. The work unit for purposes of this Section will include all unit employees assigned to an official establishment or rotation pattern, where appropriate.
- b. A majority of unit employees in the work unit must vote to adopt the compressed workweek and be approved by the Administrator before it will be implemented.
- c. The employees in the work unit involved shall hold an election by simple majority. The vote will be by secret ballot and conducted by a Union representative who will certify the results in writing to the appropriate Front Line Supervisor/Regional Import Supervisor, as applicable. An Agency representative may explain the type of compressed work schedule and answer related questions prior to the vote.
- d. Upon written request, and if the District Manager, OFO/Director, IID or their designees, as applicable, determines that participation by an employee in a compressed work schedule would impose a personal hardship on such employee, the District Manager, OFO/Director, IID or their designees, as applicable, shall make every effort to reassign such employee to a non-compressed work schedule assignment within his/her commuting area for which the employee is qualified.
- e. Employees participating in a compressed work schedule shall have an eighty (80) hour biweekly basic work requirement and a daily and weekly basic work requirement consistent with governing regulations and the type of compressed work schedule established.
- f. Employees participating in a compressed work schedule will be entitled to all existing holiday and premium pay benefits including overtime pay for hours in excess of the basic work requirement.
- g. Employees participating in compressed work schedules who are required to work on a holiday, Sunday, or nights, as part of the compressed work schedule, will be

entitled to holiday, Sunday, or night differential pay, as appropriate, under the provisions of Title 5, United States Code, as presently applied.

In accordance with governing regulations, the Administrator may terminate a compressed work schedule if it has caused an adverse impact on Agency operations. Except for a hardship exemption, an individual unit employee or group of employees within a work unit will not be excluded from the compressed schedule once the employees in the work unit have voted to participate in the program.

The contents of this Section shall constitute the total agreement between the parties with respect to a compressed work schedule for unit employees.

Section 6. Preparatory or Concluding Activity

The Agency will compensate employees for activity in accordance with applicable government-wide regulations.

ARTICLE 14

LEAVE

Section 1. Policy

Employees shall be entitled to accrue and use leave in accordance with Government-wide rules and regulations and this Agreement. Employees shall apply in advance for approval of all anticipated leave. Leave may also be granted when it is not scheduled in advance and business permits. Leave for personal emergencies will be granted unless urgent operating requirements require the employee's presence.

All absences shall be charged in increments of a quarter ($\frac{1}{4}$) hour.

Section 2. Annual Leave

- a. Annual leave is a benefit provided by law. Employees are entitled to use such leave for any purpose, including vacations and to meet personal and family needs. Supervisors shall grant or deny annual leave and make reasonable efforts to satisfy the leave requests of employees.
- b. Employees and supervisors share the mutual responsibility of ensuring that annual leave is scheduled in writing each leave year as necessary to prevent any unintended loss at the end of the leave year. Leave approved at the beginning of the current leave year will not be cancelled except in cases of emergency.
- c. Both the needs of the employee and the Agency will be considered prior to any cancellation. Whenever possible, seventy-two (72) hours of advance notice shall be given in writing, or for employees with Field Automation Information Management (FAIM), electronically to the employee whose leave is cancelled or to management if the employee initiates the leave cancellation. Request for cancellation of leave by the employee with less than forty-eight (48) hours of advance notice may be approved at the option of the supervisor.
- d. Extended periods of annual leave should be requested as far in advance as possible so that overall consideration can be given to workload and staffing needs.
- e. An employee scheduled for annual leave for one (1) or more full work weeks is entitled to be free for the full administrative work week. A holiday which falls during the administrative work week for which annual leave has been approved will be included in determining the full work week and the entitlement to be free for the full administrative workweek will apply as provided for in this section.
- f. Employees transferring from one (1) permanent duty station with scheduled annual leave to another permanent duty station shall be authorized the scheduled

annual leave provided relief is available at the new duty station; otherwise, the employee must schedule leave based upon relief for the new duty station.

- g. Employees who earn leave may be granted, at any time after the beginning of the current year, the annual leave which they will earn during the current leave year. Such unearned leave is granted only with the express understanding that, if annual leave is not later earned during the remainder of the current leave year by reason of unanticipated non-pay status, the employee will be required to make a refund for the unearned portion through a salary offset. Advanced annual leave can only be approved or denied by the District Manager (or designee).

Section 3. Tardiness

- a. Only the immediate supervisor, or designee, shall excuse tardiness of employees. If the employee is required to take leave for such period of tardiness, the employee shall not be required to commence work until the leave period has been used in quarter (1/4) hour increments.
- b. When an employee knows that he/she will be tardy, the employee is required to notify the immediate supervisor (or designee) as soon as possible. An employee who is absent from duty without authorization shall have their absence recorded as absence without official leave (AWOL) on the employee's time and attendance report.
- c. The Agency shall post instructions concerning emergency call-in procedures relative to the reporting of tardiness by an employee in the Government inspection office of each assignment. Such instructions shall include the telephone number(s) of the party to be contacted. The instructions will be shared with the appropriate Union representative.

Section 4. Annual Leave Scheduling

- a. Annual leave scheduling for OFO bargaining unit employees shall be as follows:

The parties agree that current annual leave scheduling policies and past practices will remain in effect with the implementation of this Agreement, consistent with the following changes:

- 1. Not later than each October 1, the District Office will determine the number, types and grades of employees who can be on annual leave at any time, at each establishment.
- 2. Not later than each October 15, the District Office will notify the Union of the reason for its determination, if it represents a change from the previous year's numbers, types and grades at that establishment.

3. Effective each October 15, employees who would have use or lose annual leave will schedule use of such leave to avoid loss.
 4. Employees will submit their leave request not later than December 1 to the District Manager or designee.
 5. The Agency will post the approved leave schedules no later than January 1.
 6. Annual leave schedules for 2008 will be honored.
 7. All yearly annual leave scheduling will be performed by the Agency.
- b. Annual leave scheduling for OIA bargaining unit employees shall be as follows:
1. There will be one annual leave roster for each IID relief inspector position.
 2. The Deputy Director, Operations, IID (or designee) will identify the employees to be included on each annual leave roster for the next leave year.
 3. Employee names will be placed on each annual leave roster for the initial leave year by seniority. Thereafter for subsequent leave years, the employee who was at the top of the annual leave roster for the previous leave year will be moved to the bottom and each employee will move up the annual leave roster in rotation. New IID employees will be inserted into the annual leave roster by seniority.
 4. The Deputy Director, Operations, IID (or designee) will notify the employees by e-mail by October 15 that annual leave requests are required for the next leave year and must be received no later than November 15.
 5. Annual leave requests will be for the basic work weeks, and sufficient to utilize the employee's use or lose annual leave for the next leave year. Annual leave rosters will be distributed to employees by December 15.
 6. Employee requests to change scheduled annual leave to less than all scheduled hours of the basic work week will be considered.
 7. Once the annual leave schedule is set for the coming leave year, any subsequent annual leave requests after the initial schedule has been set may be for less than the basic work week. Subsequent annual leave request changes or application for vacant periods will be sent to the Deputy Director, Operations, IID (or designee). Any requests for annual leave after the schedule is set, including vacant periods and annual leave

requests for less than a full week will be considered based on relief capability.

8. Annual leave requests received after January 1 of the current year will be handled on a first come, first serve basis. Employee annual leave requests will be documented on a SF-71, Request for Leave or Approved Absence, or another appropriate form acceptable to the Deputy Director, Operations, IID (or designee).

Section 5. Sick Leave

- a. Subject to paragraphs (b) through (d) of this section, an agency must grant sick leave to an employee when he or she—
 1. Receives medical, dental, or optical examination or treatment;
 2. Is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;
 3. (a) 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; or
(b) Provides care for a family member with a serious health condition;
 4. Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;
 5. Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or
 6. Must be absent from duty for purposes relating to his or her adoption of a child, including appointments with adoption agencies, social workers, and attorneys court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.
- b. The amount of sick leave granted to an employee during any leave year for the purposes described in paragraphs (a)(3)(a) and (4) of this section may not exceed a total of 104 hours.
- c. The amount of sick leave granted to an employee during any leave year for the purposes described in paragraph (a)(3)(b) of this section may not exceed a total of 480 hours, subject to the limitation found in paragraph (d) of this section.

d. If, at the time an employee uses sick leave to care for a family member with a serious health condition under paragraph (c) of this section, he or she has used any portion of the sick leave authorized under paragraph (b) of this section during that leave year, the agency must subtract that amount from the maximum number of hours authorized under paragraph (c) of this section to determine the total amount of sick leave the employee may use during the remainder of the leave year to care for a family member with a serious health condition. If an employee has previously used the maximum amount of sick leave permitted under paragraph (c) of this section in a leave year, he or she is not entitled to use additional sick leave under paragraph (b) of this section.

e. **Advance Sick Leave.**

1. An agency may advance a maximum of 30 days (240 hours) of sick leave to a full time employee at the beginning of a leave year or at any time thereafter when required by the exigencies of the situation for a serious disability or ailment of the employee or a family member or for purposes relating to the adoption of a child. ***Thirty (30) days is the maximum amount of advance sick leave an employee may have to his or her credit at any one time.***

2. The District Manager (or designee) approves advance sick leave. Employees should submit written requests for advance sick leave as far in advance as possible. The request should be supported by medical documentation, which should include a diagnosis, prognosis, and anticipated date of return to duty. Documentation shall include a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, and the period of disability or incapacitation, and legibly show the doctor's name and address. The approving official will consider:

- (a) Expectation of return to duty;
- (b) The need for the employee's services;
- (c) Benefit to the Agency in retaining the employee, and
- (d) Ability of the Agency to require repayment of the amount paid to the employee for advance leave.

3. Advance sick leave will not be approved if it is known (or reasonably expected) that the employee will not return to duty.

f. **Supporting Evidence for the Use of Sick Leave.**

1. Normally, employees will not be required to furnish a medical certificate to substantiate a request for sick leave if their absence is for three (3) consecutive days or less.

2. When a medical certificate is necessary, it shall include a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, and the period of disability or incapacitation, and legibly show the doctor's name and address. An employee must provide administratively acceptable evidence of medical certification for a request for sick leave no later than 15 calendar days after the date the agency requests such medical certification. If it is not practicable under the particular circumstances to provide the requested evidence or medical certification within 15 calendar days after the date requested by the agency despite the employee's diligent, good faith efforts, the employee must provide the evidence or medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the agency requests such documentation. An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to sick leave.
 3. In cases where the nature of the illness is such that the employee would not be expected to see a medical practitioner, the employee's written statement concerning the illness will ordinarily be acceptable. However, for any instance of sick leave, the supervisor may ask for documentation upon reasonable belief that the employee is abusing sick leave. Employees who, because of illness, are released from duty on advice of the appropriate health facility shall not be required to furnish a medical certificate to substantiate the instance of sick leave.
- g. An employee requesting sick leave to care for a family member may be required to provide an additional written statement from the health care provider concerning the family member's need for psychological comfort and/or physical care. The statement must certify that:
1. The family member requires psychological comfort and/or physical care;
 2. The family member would benefit from the employee's care or presence; and
 3. The employee is needed to care for the family member for a specified period of time.
- h. Family member is defined as spouse and parents of spouse; children, including adopted children, and their spouses; parents; brothers and sisters and their spouses; and any individual related by blood or affinity whose close association with the employee is the equivalent of a family member.

Section 6. Sick Leave Restrictions

- a. In individual cases, if there is evidence that an employee's leave pattern gives sufficient reason that an abuse of sick leave exists, the employee shall be counseled that he or she may be placed on restricted sick leave. If the employee's sick leave pattern continues, the employee will be placed on a sick leave restriction and advised in writing that a medical certificate must support all future requests for sick leave.
- b. A medical certificate or completed SF-71 for employees on a sick leave restriction must include a written statement (on physician's or practitioner's letterhead) signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, and the period of disability or incapacitation. The sick leave record of all employees under a sick leave restriction will be reviewed at least every six (6) months and a written decision to continue or lift the restriction will be made and a copy provided to the employee.

Section 7. Leave Without Pay

- a. Leave without pay (LWOP) is an approved leave status which may be requested by employees to cover periods of absence in lieu of or in the absence of accrued annual leave or sick leave.

The District Manager (or designee) approves the use of LWOP. LWOP is granted at the discretion of management, except in the following cases:

1. When a disabled veteran requests LWOP for medical treatment;
 2. When requested by a Reservist or National Guard member for military duties (employees may request such leave after their military leave has been exhausted);
 3. When requested by an employee who has suffered an incapacitating job-related injury or illness and is awaiting adjudication of his or her claim for employee compensation by the Office of Workers' Compensation Programs; or
 4. When an employee makes a request under the Family and Medical Leave Act (FMLA) and meets the criteria for that program as described in Section 8 of this Article.
- b. An employee may be granted leave without pay to engage in Union activities or to work in programs sponsored by the Union or the AFGE upon written request by the appropriate Union office. An employee granted LWOP for this purpose shall

continue to accrue benefits in accordance with applicable civil service regulations. LWOP for this purpose is limited to two (2) years, but may be extended or renewed for up to an additional one (1) year upon proper application.

- c. If written requests for extended periods of LWOP (i.e., more than one pay period) are denied, the reason for such denial will be given to the employee in writing.

Section 8. Family and Medical Leave

The Family and Medical Leave Act (FMLA) of 1993 entitles certain Federal employees up to twelve (12) weeks of LWOP for specific personal and family health conditions or emergencies.

Under certain circumstances, paid leave may be substituted for the LWOP taken under the Family and Medical Leave Program. This is intended for long term absences.

- a. While an employee is off work using FMLA, the duties and responsibilities of the position may be covered temporarily by other means. However, the employee may not be replaced permanently as a result of using FMLA. Whenever possible, the employee returns to the same position and in the same location held before using leave.
- b. When a bargaining unit employee returns to work after using leave under the FMLA and there is a production decrease or the plant has closed, the following policy applies:
 - 1. If it is not possible to return the employee to the same position held before the leave usage because of production reasons, the employee is reassigned to an equivalent vacant position in the commuting area if such a vacancy exists.
 - 2. In the rare instance that no equivalent vacant position exists in the employee's commuting area, a localized work reduction is conducted to determine where to reassign the employee, in accordance with Article 27, Reassignments, of this Agreement.
- c. Employee absences for FMLA must be related to one or more of the following:
 - 1. Birth of a child;
 - 2. Foster care placement or adoption of a child;
 - 3. Care of a spouse, son, daughter, or parent of an employee, if such spouse, son, daughter, or parent has a serious health condition; or

4. Serious health condition of the employee which prevents him/her from working.
- d. Requests for approval of leave under this section are subject to the same documentation and approval requirements described in Section 5 (f) except that thirty (30) days advanced notice shall be given for absences, unless in emergencies, and in that case, notice should be given as soon as practicable.
- e. While an employee is on family and medical leave, the Agency may require subsequent medical recertification from the health care provider if the circumstances described in the original medical certification are subject to change.

Section 9. Maternity/Paternity Leave

- a. Maternity leave is granted to cover a period of absence for maternity reasons. Sick leave will be granted for the period of incapacitation due to pregnancy and confinement. Annual leave or LWOP may be requested in lieu of sick leave. Additional periods of annual leave and LWOP may be granted in whatever order the employee requests for an additional period. The employee may also request and be granted annual leave or LWOP for the period of incapacitation.
- b. Requests for additional leave following the end of the period of maternity leave will be handled in accordance with applicable regulations and this Agreement. In considering requests for sick leave, annual leave, and/or LWOP for maternity reasons, the Agency shall apply pertinent laws, regulations, and this Agreement in the same way they are applied in any other case.
- c. No arbitrary cutoff date requiring an employee to cease work will be established. If a cutoff date is established, it must be based on the physical capability of the employee to perform the duties of the job after a determination by competent medical authority.
- d. A male employee may be absent on annual leave, LWOP, or sick leave under Sections 5 and 8 above for the purpose of aiding, assisting, or caring for the mother of his child or minor children while she is incapacitated for maternity reasons.
- e. The Agency may establish with the employee a firm date for maternity/paternity leave to begin. If agreement cannot be reached and the Agency establishes a particular date, the reasons for the determination will be documented and given to the employee. The employee should submit notice at least one month in advance of the prospective need for maternity/paternity leave.

Section 10. Excused Absence (Administrative Leave)

- a. Excused absence (sometimes referred to as administrative leave) is absence from assigned duties without charge to leave or loss of pay. The parties agree that excused absence may be granted for activities which are in the Government's interest.
- b. Excused time up to four (4) hours may be authorized during an Agency-sponsored or endorsed blood drive for employees who donate blood.
- c. Upon request, subject to certification by a physician, supervisors shall approve excused absence for employees who serve as living donors for bone marrow, organ and tissue donation, and transplantation. The use of excused absence shall be authorized in accordance with governing regulations and shall cover time off for such activities as donor screening, the actual medical procedure, and recovery time.

Section 11. Military Leave

- a. In accordance with laws and regulations, bargaining unit employees who are members of the National Guard or the Armed Forces Reserves are entitled to 120 hours of regular military leave in a fiscal year for active duty, active duty for training, and certain inactive duty training and activities. Employees are only charged military leave for military absences occurring during their scheduled tour of duty. They are not charged military leave for absences during non-duty periods such as holidays and non-work days.
- b. Employees who perform active military duty as Guard members or Reservists may be ordered to duty by the President or a State Governor under the provisions of Title 5 U.S.C. 6323(b) to assist domestic civilian authorities to enforce the law or protect life and property. Also, this leave is provided for employees who perform military duties in support of full-time military service as a result of a call or order to active duty in support of a contingency operation as defined in Section 101(a)(13) of Title 10, U.S.C.

Such employees are eligible to be granted an additional twenty two (22) work days of military leave per calendar year which, when so used, is offset against civilian pay for the same period. Employees may choose to use annual leave instead of military leave for any of the twenty-two (22) work days and no offset against civilian pay will be made.

The employee receives/retains both military and civilian pay during this period if annual leave is used.

Section 12. Adjustment of Work Schedules for Religious Observances

An employee whose personal religious beliefs require abstention from work during certain periods of time may request to engage in compensatory overtime work to compensate for time lost for meeting those religious commitments. Supervisors shall afford the employee the opportunity to work compensatory overtime and approve use of compensatory time off for religious observances to the extent that staffing needs allow and such modifications do not interfere with the accomplishment of work. Whenever possible, the Agency will grant appropriate leave to an employee to meet religious commitments.

Section 13. Hazardous Weather Leave

- a. Due to the nature of the work, unit employees are required to report for work during hazardous or unusually severe weather conditions unless appropriate leave has been requested and/or scheduled and approved. This applies unless the immediate supervisor (or designee) gives specific approval for an absence based on a set of conditions and circumstances for the particular duty station. Inability to report for duty will require that the employee contact the immediate supervisor (or designee) and request leave. The supervisor will consider recommended or ordered travel directives in determining whether it is appropriate to approve requested leave.
- b. *The Front Line Supervisor (or designee) has the discretion to approve administrative leave for hazardous or unusually severe weather conditions after evaluating the circumstances on a case by case basis provided by the employee requesting leave.* Employees on scheduled annual or sick leave that was planned in advance will be charged leave for the period of leave that overlaps a period of hazardous weather.

Section 14. Emergency Leave

Emergency leave is annual leave, sick leave, or leave without pay (LWOP) requested by an employee to deal with a sudden or unanticipated situation.

In making a decision on whether to grant a request for emergency leave, the employee's immediate supervisor or the authorized designee shall evaluate the request against the work requirements and available staffing. If the request is disapproved, the employee may make an immediate appeal to the next higher supervisory level.

Section 15. Court Leave

In accordance with laws and regulations, an employee is entitled to court leave for:

- a. Jury duty;
- b. When summoned to court to serve in an unofficial capacity as a witness for, or to supply evidence for, State or local government; or
- c. When summoned to court to serve in an unofficial capacity as a witness for, or to supply evidence for, a private party when the Federal, D.C., State, or local government is either the plaintiff or defendant.
- d. Court leave is not granted to an employee who appears in court as either a plaintiff or defendant on his/her own behalf or when neither party is a Federal, State, DC, or local government. Employees shall present the court order, summons, or subpoena to the supervisor when requesting court leave to serve as a witness or juror. Upon return to duty, the employee must submit written proof of attendance from the court to the supervisor. The proof of attendance must show the dates (and hours if less than a full day, if possible) served.

Section 16. Voting

The Agency agrees that when voting polls are not open at least three (3) hours either before or after employees' regular hours of work, employees shall be granted an amount of excused leave to vote which will permit them to report to work three (3) hours after the polls open or leave work three (3) hours before the polls close, whichever requires the lesser amount of time.

Section 17. Voluntary Leave Transfer Program

The Federal Employees Leave Sharing Act of 1990 enables qualifying Federal employees to use transferred (or donated) annual leave from other Federal employees to cover LWOP absences and advanced leave indebtedness resulting from personal and family medical emergencies.

Section 18. Leave for Preventative Health Care Screenings

Full time employees who have less than eighty (80) hours of accrued sick leave may be granted up to four (4) hours of excused absence in each leave year to participate in preventive health care screenings. Health care screenings include: screening for prostate, cervical, colorectal, and breast cancer; screening for sickle cell anemia; blood lead level;

blood cholesterol level; immunity disorders such as Human Immunodeficiency Virus (HIV); and blood sugar level testing for diabetes. This leave is for the employee's personal use and not for absences related to family members. Medical absences for stress tests, flu shots, or children's immunizations are not covered by this provision. Sick leave under Section 5 would apply.

ARTICLE 15

PERFORMANCE MANAGEMENT

Section 1. Policy

Performance evaluations shall be administered in accordance with applicable laws, regulations, and internal guidelines. The Agency and the Union recognize and endorse the concept that performance management is a continuous, systematic process by which managers and supervisors integrate the planning, directing, and executing of organizational work with the personnel performance appraisal, pay, awards, promotion, and other systems. Supervisors organize work, make specific assignments, assign duties and tasks, and establish standards for employees to follow when accomplishing the work. Individual employee work elements and standards are documented and communicated in writing. The appraisal cycle for the bargaining unit is from October 1 to September 30 of each year, beginning October 1, 2008.

Section 2. Performance Standards and Ratings

The application of performance standards and critical elements to bargaining unit employees shall be fair, objective, reasonable, and directly related to the duties involved in the employee's official position. At the beginning of the appraisal cycle, employees shall be furnished a copy of the performance elements and standards for their position. Performance expectations will be discussed with employees at the beginning of their appraisal cycles. Employee job performance will be appraised under established performance elements. Ratings will be communicated in writing at the conclusion of the rating cycle.

Ratings will be given in a conducive environment, ensuring privacy and without interruption to the extent possible (i.e., phone calls, intrusions, etc.).

Situations such as doubling of assignments, where employees may be assigned additional duties, as well as periods when employees work out of their normal job classifications will be considered in the applicable performance element during evaluations.

Section 3. Progress and Performance Reviews/Discussions

Performance discussions will occur at appropriate times between employees and supervisors during the appraisal period. At least one progress review is mandatory and should take place approximately midway during the appraisal cycle. 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. The employee will be provided clear guidance on what type of performance will merit a rating of "meets" expectations. Appropriate assistance will be

provided whenever performance is determined by the Agency to not be at the “fully successful” level. Performance progress reviews are excluded from review under Article 33, Grievance Procedure.

At a minimum, an employee will normally be provided twenty-four (24) hours of advance notice prior to the progress review being conducted. Progress reviews will be given in a conducive environment to the extent possible ensuring privacy, and without interruption (i.e., phone calls, intrusions, etc.).

Two-way communication between the supervisor and employee is an effective tool for successful performance. Discussions should be a candid, forthright dialogue between the supervisor and the employee aimed at improving performance. Employees are encouraged to request clarification concerning issues related to their performance with their supervisor as necessary. The employee will be provided guidance as appropriate and as soon as reasonably possible.

Section 4. Rating of Record

Employees must perform the duties of an assigned position for a minimum of ninety (90) days during the rating period to be eligible to receive a performance rating. Sometimes a rating of record cannot be prepared at the time specified. In this case, the appraisal period for the time necessary to meet the ninety (90) day minimum appraisal period may be extended by the supervisor in accordance with governing regulations. At the end of the ninety (90) days, an appraisal is completed.

Section 5. Unacceptable Performance

- a. At any time during the appraisal year that a performance-related problem is identified, a meeting will normally be held with the employee prior to initiating a Performance Improvement Plan (PIP). The employee will be counseled regarding actions necessary to bring their performance to an acceptable level. Counseling sessions shall be documented in writing and the employee provided a copy.
- b. Following the counseling session(s), if the employee’s performance has not improved, the employee shall be notified in writing that he/she shall be placed on a formal PIP and that personnel-related actions related to performance shall be withheld while this level of performance continues. The employee shall also be notified that unless performance in a critical element(s) improves to and is sustained at the “Acceptable” level, the employee shall be reassigned, removed, or reduced to a lower position.

Section 6. Performance Improvement Plan (PIP)

- a. If the supervisor determines that the employee has failed to meet the requirements as documented in the counseling session(s), a written PIP shall be developed and a copy provided to the employee. The PIP will identify the employee’s

deficiencies, the acceptable level of performance, the action(s) that must be taken by the employee to achieve an acceptable level of performance, and the methods that will be employed to measure the improvement. The goal of the PIP is to return the employee to an acceptable performance level as soon as possible.

- b. Under the PIP, the employee will be afforded a reasonable opportunity, normally sixty (60) to ninety (90) calendar days, to demonstrate acceptable performance in the critical element(s) in which he or she is considered to be performing at an “unacceptable” level.
- c. If, at any time during the PIP, the supervisor concludes that the employee’s performance has improved to an acceptable level, the supervisor has the option to terminate the PIP. In that event, the employee shall be notified in writing that the PIP is being terminated and the employee will be appropriately rated.

Section 7. Grievances

Any alleged violations of the performance management system may be grieved under the negotiated grievance procedure. Interim progress reviews may not be grieved, but the failure of Management to provide a progress review to the employee can be grieved.

Section 8. Performance-Based Actions

- a. Change to lower-graded positions, reassignments, or removals for unacceptable performance will be in accordance with law, regulations, and this section.
- b. At the end of the PIP period, if the employee’s performance is unacceptable in any critical element, the employee may be reassigned, placed in a lower-graded position, or removed. The employee also shall be informed of his/her right to representation.
- c. An employee who is reassigned or changed to a lower position shall normally be given a new performance plan within fourteen (14) calendar days of placement in the position to which assigned. However, it is acknowledged that the regulatory timeframe remains thirty (30) days.
- d. An employee who is to be changed to a lower position or removed is entitled to thirty (30) calendar days advance written notice of the proposed action that identifies the specific instances of unacceptable performance on which the proposed action is based and the critical elements of the employee's position involved in each instance of unacceptable performance.

- e. When a change to a lower-graded position or removal is proposed for “unacceptable” performance, the employee is entitled to:
1.
 - a) Advance written notice of thirty (30) calendar days stating the specific reasons for the proposed action, and the evidence upon which the proposed action is based.
 - b) An employee shall be provided with a second copy of any proposed formal action, including the evidence file, for the purpose of informing his or her union representative, if the employee so chooses to be represented by the Union.
 - c) An employee may be represented by the Union or other representative of his or her choice. Designations will be in writing and signed by the employee. Once the designation has been made, all contacts and correspondence will be through the representative.
 2. Right to Reply: Ten (10) calendar days to respond in writing, and/or to request the opportunity to present an oral response, and to furnish affidavits and other documentary evidence in support of the answer. Oral conferences will be conducted in accordance with Article 30, Disciplinary & Adverse Actions, Section 4. The employee has a right to a representative in responding to the proposed action.
 3. Notice of Decision: A written decision, including the action to be taken, the effective date, and applicable rights.
- f. The Agency shall normally make its final decision within thirty (30) calendar days after expiration of the advance notice period and shall issue a written notice of the decision to the employee, except as provided below.
- g. The Agency may extend the advance notice period for a change to a lower graded position or removal for a period not to exceed thirty (30) calendar days. An Agency request for an additional extension of the advance notice period is forwarded to the Office of Personnel Management (OPM) for consideration.

ARTICLE 16

AWARDS

Section 1. Policy

The Agency and the Union agree and recognize that an Awards Program is a necessary and useful mechanism through which employee accomplishments may be recognized. Non-receipt of an award may not be grieved or arbitrated, except for allegations that the criteria in this Article have not been applied fairly and equitably, or nonmeritorious reasons such as discrimination. The Agency shall continue to foster and administer awards programs which shall:

- a. Ensure standards and criteria established for making awards are applied consistently and equitably;
- b. Act promptly on employee contributions so as to encourage maximum employee participation; and
- c. Identify program or operational areas in which superior work results warrant consideration of employees for awards through performance and other reviews.

Section 2. Awards Programs

- a. Performance Awards. Eligibility for awards under this program is based on the individual's performance rating of record. Depending upon the rating and the availability of funds, 1) bargaining unit employees who receive a summary rating of "superior" will receive a cash award; and 2) bargaining unit employees who receive a summary rating of "outstanding" will receive either a cash award or a Quality Step Increase (QSI). Employees involved in current (within the appraisal period) or proposed disciplinary actions may not receive an award. Employees for whom charges are not sustained will receive an award retroactively if they otherwise would have received one.
- b. Superior Accomplishment Awards. Monetary and non-monetary awards are granted to employees for suggestions, inventions, superior accomplishments, productivity gains, or other efforts that contribute to the efficiency, economy, or other improvement of operations or achieve a significant reduction in paperwork. The amount and form of these awards depend upon the value of the employees' contributions.
- c. Monetary Awards. These awards are usually processed through the payroll system.

1. Spot Awards. If the award is under a prescribed amount, employees will receive a Spot Award. Spot Awards serve as a more immediate way of rewarding contributions.
- d. Non-Monetary Award Recognition. Non-Monetary awards may be in the form of:
1. Honorary Awards. This would include certificates, letters, citations, medals, plaques, or other items that have an award or honor connotation.
 2. Informal Recognition Awards. These awards are usually in the form of items that symbolize the employer/employee relationship and are suitable to wear, display, or use in the work environment.
 3. Time-Off Awards. A time-off award is an excused absence, awarded in hourly increments, granted to employees, without charge to leave or loss of pay.
- e. External Awards. The Agency encourages recognition of employees for contributions which benefit the Government and participation in programs sponsored by organizations external to FSIS. These awards can be either monetary or non-monetary. Awards from the regulated industry or their representatives may not be received by employees due to a conflict of interest situation.

Section 3. Statistics

The Agency will, on an annual basis, upon request by the Council Chairperson (or designee), provide the Union with information on awards granted to bargaining unit members, including a breakdown by grade level and type of award.

ARTICLE 17

WITHIN-GRADE INCREASES

Section 1. Policy

Within-grade salary increases shall be granted, delayed, or withheld in accordance with applicable Office of Personnel Management and Department regulations, FSIS Directive 4531.1 and this Article.

Supervisors are responsible for keeping employees informed of the acceptability of their work on a regular basis.

Where employees have been assigned to their present supervisor for less than ninety (90) days, and the supervisor cannot adequately assess the employee's performance, said supervisor shall secure the views of the employee's performance, from the employee's previous supervisor, when available, before making a determination. The employee's previous supervisor, if possible, shall initial the rating form to signify that his/her views were provided to the rating supervisor.

Section 2. Procedures

The Parties agree to the following procedure in withholding a within-grade increase (WGI):

- a. The rating supervisor shall make a tentative determination at least sixty (60) days prior to the employee's WGI anniversary date as to whether the employee's WGI is to be withheld.
- b. If the supervisor concludes that the employee's work is not of an acceptable level of competence, he/she will discuss the situation with the employee and provide a written notification to the employee at least sixty (60) days before the employee's WGI eligibility date. At a minimum, the notification will include:
 1. An explanation of the WGI criteria for an acceptable level of competence and specification of which (either or both) the employee has not met.
 2. If the employee being rated "does not meet" a critical element, specification for which elements are determined to be below the expected level, with examples for each.
 3. If the employee will be rated below "fully successful" on the composite appraisal, specification for each element that will be rated does not meet with examples for each.

4. Advice as to what the employee must do to bring his/her performance up to the acceptable level.
5. A statement that specifies the period of time the employee has to bring his/her performance up to the acceptable level.

The supervisor will inform the employee three (3) weeks prior to the effective date of the WGI if the employee's performance has improved to the point where a WGI will be granted.

- c. If the employee's performance has not sufficiently improved, the District Manager/Director, IID (or their designee) will inform the employee in writing:
 1. that his/her work has been reviewed;
 2. that it has been determined not to be of an acceptable level;
 3. the performance elements and tasks in which it has been determined the employee's work failed to attain the acceptable level;
 4. that the employee may request administrative reconsideration in writing within fifteen (15) calendar days of receipt of the negative determination from the District Manager/Director, IID (or their designee) and the right to appeal to the Merit Systems Protection Board (MSPB) or to grieve through the negotiated grievance procedure, Article 31; and
 5. the name of the person responsible for receiving the request for administrative reconsideration and for making the decision.
- d. In the event the appraisal supervisor fails to make a tentative determination sixty (60) days prior to the employee's WGI anniversary date, the official determination will be delayed for sixty (60) days after the tentative determination. In the event the official determination is then to grant the WGI, the WGI shall be granted retroactively to the original due date.

Section 3. Reconsideration

When reconsideration or appeal to the Merit Systems Protection Board results in a decision favorable to the employee, the within-grade increase shall be effective as of the date it would have been made had the initial determination been favorable.

When the reconsideration or appeal sustains the original unfavorable decision, or the employee does not request reconsideration, a new determination will be made as soon as the supervisor is satisfied that the employee has attained an acceptable level of competence, but no later than fifty-two (52) weeks following the eligibility date for the within-grade increase. The supervisor and the employee shall meet to discuss the

employee's progress or lack thereof ninety (90) days after the withholding date and at the end of each ninety (90) day period thereafter until the re-determination decision is made. A new determination under this Section, if favorable to the employee, shall be effective the first day of the pay period following the new determination.

ARTICLE 18

DRUG-FREE WORKPLACE

Section 1. Policy

It is Agency policy to have a workplace free from illegal drugs to ensure integrity in the accomplishment of the mission, to implement a drug-free workplace plan to provide protection from illegal drug use, and to respect employee dignity and privacy in reaching the goal of a drug-free workplace. Drug testing will be administered in accordance with the Department of Health and Human Services (DHHS) scientific and technical guidelines, Departmental Regulation, and this Agreement. The parties recognize that illegal drug use is incompatible with the Agency's mission. Employees will not be selected for testing for reasons unrelated to the purposes of the drug-free workplace plan.

Section 2. Drug Use Determination

An employee may be found to use illegal drugs on the basis of any appropriate evidence, to include direct observation, a verified test result, an employee's voluntary admission, or an administrative inquiry.

Section 3. Testing

Employees are subject to reasonable suspicion testing, injury, illness, unsafe or unhealthful practice testing and follow-up testing. Employees may also volunteer to be tested. If employees become subject to random testing in the future, such testing will be conducted in accordance with Agency policy. The Union will be notified at least 15 calendar days prior to the issuance of the 30-calendar-day notification that an employee's position will become subject to random testing in accordance with governing regulations.

- a. Reasonable suspicion testing may be required of any employee in any position when there is a reasonable suspicion of on-duty use or on-duty impairment.
- b. If an employee is suspected to have contributed to a job-related accident or unsafe practice resulting in death or personal injury requiring hospitalization, or damage to government or private property estimated in excess of \$10,000, the employee is subject to injury, illness, unsafe or unhealthful practice testing.
- c. Prior to deciding to test an employee for reasonable suspicion, the supervisor, or designee, will document his or her suspicions. The employee will normally be given the reason(s) for ordering the drug test at the time of referral for testing.
- d. The Agency will ensure all documents required to be served on an employee referred for drug testing are provided at the time of notification in accordance with the Agency's testing procedures.

- e. For the purpose of drug testing, if an employee is held past his/her shift end time, he/she will be compensated in accordance with applicable guidelines.

Section 4. Notification and Results of Drug Use and Consequences

Disciplinary or adverse action will be initiated when an employee is found to use illegal drugs. An employee found to use illegal drugs will be referred to the Employee Assistance Program (EAP); however, such referral will not preclude the initiation of disciplinary or adverse action. Employees refusing to obtain counseling or rehabilitation through the EAP after having been found to use illegal drugs are not considered suitable for continued employment.

- a. Employees will be notified of negative drug test results normally within five working days after the Agency receives such notification.
- b. Employees testing positive will be given the opportunity to provide valid reasons for the positive result for consideration by the Medical Review Officer or designee.
- c. The Agency's granting of leave to employees with positive drug testing results in no way affects the Agency's final decision to take disciplinary/adverse action as appropriate.
- d. Annually, upon request by the Chairman (NJC), the Agency will provide in writing the number of referrals for drug testing and the number of disciplinary actions related to findings of illegal drug use.

Section 5. Release of Information

The Agency shall release information concerning employee drug tests only to those individuals with a need to know and in accordance with applicable laws, regulations, and policies.

Section 6. Providing Notice

Employees will be given notice where and when to report for drug testing in as private and confidential a manner as possible. Employees will be provided an "Employee Checklist for Reasonable Suspicion Drug Testing" which includes general information on the collection procedures and second sample collections when notified to report for such testing.

Section 7. Self-Referral

- a. An employee who voluntarily refers himself/herself, prior to any Agency referral, under this Article shall not be subject to disciplinary action based solely on illegal drug use. Every effort will be made to continue the employee in a position

consistent with the protection of public health, safety, and national security. Once the employee voluntarily refers, he/she must:

1. Demonstrate continued successful participation and completion of a rehabilitation program offered through the Agency's Employee Assistance Program (EAP); and
2. Refrain from any further use of illegal drugs or misuse of legal drugs for a period of two (2) years.

b. Self-referral protections do not apply where:

1. The employee has received specific notice that he/she is to be tested for drugs;
2. The Agency is awaiting the results of a drug test taken by the employee;
3. The employee has previously completed an Agency-approved rehabilitation program; or
4. The employee is under investigation by the Agency for alleged illegal drug use and the employee has been made aware of the investigation.

ARTICLE 19

MERIT PROMOTION

Section 1. Policy

The parties agree that the purpose of a Merit Promotion Plan is to ensure that merit principles are applied in a consistent manner with fairness and equity to all employees. The parties further agree that the viability and acceptability of a Merit Promotion Plan is to a great extent dependent on its effectiveness in providing employees a definite opportunity for career advancement through judicious use of the selection process. The provisions of the FSIS Merit Promotion Plan and this Article shall govern promotions to positions within the bargaining unit for which unit employees are eligible to compete.

Pursuant to Title 5 U.S.C., Section 7106(a) (Management Rights), the program does not guarantee employee promotions nor require that vacancies be filled by promotion. Promotions to positions within the bargaining unit for which unit employees are eligible to compete shall be governed by the Agency's Merit Promotion Plan, including the Online Promotion System, and this Agreement.

The parties agree that Merit Promotion Principles shall be applied in a consistent manner without discrimination in regards to political affiliation, race, color, national origin, sex, marital status, politics, membership or non-membership in an employee organization, age, or disability.

Section 2. The Online Promotion System

The Online Promotion System shall be established to cover permanent fulltime Inspector positions that are filled on a periodic basis. The positions covered are:

- a. Consumer Safety Inspector, GS-1862-8, 9, and 10
- b. Egg Products Inspector, GS-1863-8 and 9
- c. Import Inspector, GS-1863-9
- d. Relief Jobs. May include any of the positions listed above.

Section 3. Application Procedure

- a. Applicants will need to complete the one-time online registration process at www.usajobs.gov, which includes posting a resume; or, a hard copy application that includes a resume. Eligible bargaining unit employees will make application for promotion above GS-7 through the Online Promotion System electronically, or may submit a paper application to receive consideration. Either method used will allow the employee to update the original application, for example to include additional education, training, or other qualifying/selection factors.

- b. A separate application must be submitted for each vacancy announcement for which consideration is requested.
- c. Appropriate job competencies are available for each posted vacancy announcement through www.usajobs.gov.

Section 4. Timeframes for Filing Applications

Applications must be submitted by the closing date posted in the vacancy announcement in order to receive consideration for the announced vacancy.

Section 5. Evaluating and Ranking Employees

- a. Automated systems for evaluating and ranking candidates shall be relied upon for use within the Agency.
- b. Employees will be provided guidance on the use of the automated promotion application system upon request. Technical support will be available for employees using the automated system, during normal business hours, through the contact person listed on the vacancy announcement.
- c. An employee, or the employee's designated Union representative, may file a written request with the Human Resources Field Office (HRFO) to review records used as a basis for ranking and selecting employees in the promotion action being grieved by the Union. It is recognized that all documents determined by the Agency to be appropriate for release will be reviewed and sanitized, as necessary, prior to being released.

Section 6. Referral of Candidates for Promotion

- a. Up to ten (10) candidates with the highest ranked scores are referred as "best qualified" for each vacancy filled.
- b. When more than one (1) vacancy can be filled from the promotion certificate, up to three (3) additional candidates are certified for each additional vacancy.
- c. The promotion certificate lists the best qualified candidates alphabetically.

Section 7. Notification of Selection

- a. Applicants may view the status of their on-line application by accessing the "Applicant Status" feature on the Food Safety Jobs On-Line (FSJO) application. Employees may obtain the following information:
 - 1. If they were considered for a specific promotion.

2. If they were found eligible.
 3. Who was selected.
- b. Employees considered for a vacancy shall be notified of selection by the selecting official. The employee may ask the supervisor to provide suggestions for improvement that may enhance the employee's chances for career advancement.

Section 8. Complaints

Employee or Union complaints arising over the interpretation or application of the provisions and requirements of this Article and the Agency's Merit Promotion Plan shall be processed in accordance with the negotiated grievance procedure contained in Article 33 of this Agreement, or a complaint of discrimination.

Section 9. Exceptions to Merit Promotion

Competitive merit promotion procedures do not apply to:

- a. Promotions without current competition when an employee(s) was previously selected under competitive procedures.
- b. Promotions resulting from an employee's position being classified at a higher grade because of additional duties and responsibilities, which meet the criteria established in the Agency Merit Promotion Plan.
- c. Reinstatement, transfer, promotion, reassignment, or change to lower grade provided the position to be filled is not at a higher grade than that previously held under a career or career-conditional appointment, the position has no known promotion potential beyond the highest grade previously held, and the employee was not demoted for cause or for deficiencies in performance.
- d. Placement in a position having no higher promotion potential than as a position previously held on a permanent basis under a career or career-conditional appointment, if the employee was not demoted or separated from the previous position because of performance deficiencies or other "for cause" reasons. The promotion potential of the previous position must be documented in the employees' personnel records, in promotion file records, or there is other acceptable evidence of the promotion potential of the former position on which noncompetitive eligibility is based.
- e. Temporary promotion or details to a higher grade position (or to a position with higher promotion potential) of one hundred twenty (120) days or less. Prior service during the preceding twelve (12) months under noncompetitive temporary promotions and noncompetitive details to higher graded positions counts toward one hundred twenty (120) day total.

- f. All temporary promotions in excess of thirty (30) days will be documented by Standard Form 52, Notification of Personnel Action (or its replacement).

ARTICLE 20

POSITION CLASSIFICATION

Section 1. Classification of Position

All positions in the unit will be classified by comparison with published classification standards issued by the Office of Personnel Management.

Section 2. Position Description

- a. The Agency shall maintain a comprehensive file of position descriptions of all classified positions in the bargaining unit. Classified positions are established after review and approval by the Agency.
- b. Position descriptions furnished to employees shall contain the principal duties, responsibilities and supervisory relationships for classification purposes. Bargaining unit employees' position descriptions shall accurately reflect the duties and functions to be performed. The position description can also be used to identify training, qualifications, and performance requirements of the position.
- c. Employees are encouraged to discuss their position description with the supervisor when there is a question concerning the proper classification of the position. When an employee believes his/her position description does not accurately reflect his or her currently assigned duties and responsibilities (e.g., they are performing additional duties on a regular and recurring basis that are not reflected in their current position description), the employee should discuss the situation with the immediate supervisor, or designee. If necessary, the supervisor shall forward the issue through the chain of command for appropriate review in accordance with Agency procedures. The Agency will determine the appropriate course of action based on the circumstances which may include:
 1. No change;
 2. Amendment of the position description;
 3. Removal of the additional duties by management; or
 4. Reclassification of the position as determined by the Agency.
- d. The employee may file a statutory classification appeal/reconsideration request of his/her position in accordance with the appropriate rules and regulations at any time. The final decisions rendered in a classification appeal/reconsideration shall be promptly implemented by the Agency. Upon request, the Agency will provide the procedures to be followed in filing an appeal/reconsideration request.

- e. The Agency agrees that positions will be reviewed on a periodic basis to ensure that positions are properly classified. When significant changes in the duties and responsibilities of a position occur, the position description will be reviewed and will be amended or rewritten as necessary. The Union will advise the Agency if it has a concern with respect to any of the positions occupied by the members of the unit.

Section 3. Effective Date

Reclassification actions shall be effective on the first pay period following final approval of the personnel action.

Section 4. Employees Affected by a Re-classification Action

The Agency agrees to notify the Union prior to the effective date of any reclassifications actions that result in an obligation to bargain in accordance with the law.

ARTICLE 21

HAZARDOUS PAY

Section 1. Policy

The Agency agrees that employees performing hazardous work as defined in 5 CFR Part 550, Subpart I, shall be compensated at the maximum pay differential rate set forth in such regulations. However, hazard pay differential may not be paid to an employee when the hazardous duty or physical hardship has been taken into account in the classification of the position. The Agency further agrees to monitor positions for inclusion in the hazardous pay category and to act promptly and in concert with the Union in processing any requests for inclusion under such pay differential categories.

Section 2. Union Responsibilities

Should the Union claim that a local work situation warrants consideration for coverage under payable categories, it will provide written notice to the Director, Human Resources Division (HRD), of the title, location, nature of the hazard, and frequency of exposure, to justify payment of hazardous pay differential.

Within thirty (30) days of the Union's claim, the Agency will review the situation and determine if the actual circumstances of the specific hazard or physical hardship have changed from that taken into account in the classification, and forward a response to the Union.

In the event the Union disagrees with the response of the Agency, a second step grievance may be filed in accordance with Article 33, Section 7 with the Director, Labor and Employee Relations Division.

Section 3. Agency Responsibilities

When the Agency determines or proposes that a local work situation is such that it should be included under payable categories, it will notify the Union of the title, locations, and the nature of the hazard to justify payment of hazardous or physical hardship differential.

ARTICLE 22

DETAILS

Section 1. Policy

The Agency retains the authority to detail employees in accordance with this Agreement, applicable laws, and regulations.

Section 2. Definition

A detail is a temporary assignment of an employee to a different or the same type of position for a specified period with the employee returning to his/her regular duties at the end of the detail.

Section 3. Detail Assignment

Details are intended only for meeting temporary needs of the Agency's work program when necessary services cannot be obtained by other desirable or practicable means. The Agency shall make every effort to keep details within the shortest practicable time limits and shall assure that details do not compromise merit principles. Employees will be permitted a return trip to their duty station every third (3rd) weekend in cases where details out of the duty station are for extended periods of time.

Current detail policies and practices shall remain in effect with the implementation of this Agreement. In the event the Agency proposes a change, it will be handled in accordance with Article 6 of this Agreement, Bargaining During the Term of the Agreement.

Section 4. Out of Duty Station Details

Absent a particularized need for specific skills or qualifications, the Agency shall utilize volunteers before requiring employees to participate on details involuntarily unless management determines that there is a need for a specific volunteer to continue to perform his/her regular duties.

The Agency will brief the Union when there is a need identified to make variations from the detail roster, to include any reasons for the variation, such as why there is a need for a specific volunteer to continue to perform his/her regular duties.

As much advance notice as possible shall be given to employees selected for a detail or temporary assignment. This notice shall state the reason for the detail, departure and anticipated return dates, type and mode of travel, T&A transaction codes, and starting time of the assignment(s).

Section 5. Pull Patterns

Current pull procedures shall remain in effect with the implementation of this Agreement. In the event the Agency proposes a change, it will be handled in accordance with Article 6 of this Agreement, Bargaining During the Term of the Agreement.

Section 6. Exceptions

The procedures in this article shall apply, except in the following circumstances:

- a. When the Agency can demonstrate that the position to which an employee must be detailed or assigned requires unique skills and abilities that are not possessed by any other qualified employee;
- b. When the Agency must make a detail or assignment to respond to an unusual, sudden, and unforeseen situation of an urgent nature;
- c. When a bona fide medical or operational emergency requires or precludes the detail or assignment of a particular employee; or
- d. When the Agency makes a detail or assignment to accommodate a substantiated medical or health problem.

Section 7. Vacant Assignment

Detailed employees shall fill the vacant assignment.

Section 8. Details to Higher-Graded Positions

Details for more than one hundred twenty (120) days to a higher-graded position or to a position with known promotion potential shall be handled under competitive merit promotion procedures. Prior service during the preceding twelve (12) months under non-competitive temporary promotions and non-competitive details to higher-graded positions counts toward the one hundred twenty (120) day total.

Employees detailed temporarily to a higher-graded position will, upon request, be provided an oral or written explanation of the principal duties and functions of the position. Except for brief periods, not to exceed sixty (60) consecutive days, employees detailed to a higher-graded position shall be given a temporary promotion if the employee meets applicable time in grade and Office of Personnel Management qualification requirements.

Selection for detail or temporary promotion to a higher-graded position or a position with known promotion potential for up to one hundred twenty (120) days shall be done competitively by seniority among qualified employees. The Agency shall identify: 1) the qualifications needed to perform the details; and 2) from the roster of available

employees for detail, the employees identified as possessing these qualifications. Qualifications identified will be objective and job-related.

Section 9. Record of Detail

Details over thirty (30) consecutive days will be documented by a SF-52, Request for Official Personnel Action, and maintained as a permanent record in the Official Personnel Folder.

Should the requirements of the Agency necessitate detailing an employee to a lower graded position, this will not adversely affect the employee's salary, classification, or job standing.

ARTICLE 23

ASSIGNMENTS AND ROTATION OF ASSIGNMENTS

Section 1. Policy

The parties recognize merit in having a fair and equitable system rotating employees through a series of structured assignments on a regular basis where it is feasible for such a system to be used. Current rotation patterns remain in effect. In the event the Agency proposes a change, it will be handled in accordance with Article 6 of this Agreement, Bargaining During the Term of the Agreement. Rotation patterns shall be designed to preclude any interruption in plant production or interference with the Agency's mission.

An employee shall not be assigned to a position without receiving sufficient training so as to be able to adequately perform the duties involved as determined by the immediate supervisor.

Section 2. Definitions

- a. Assignment – An assignment is a duty or grouping of duties as approved by the Agency.
- b. Rotation – The utilization of employees in a series of assignments for a definite period of time in each assignment.
- c. Interplant – between assignments.
- d. Intraplant – assignments within a plant.
- e. Rotation Pattern – Assignments within a defined geographical area (interplant and intraplant) through which qualified employees at the same grade level and like position (e.g., Food Inspector (Imports), Food Inspector (Egg Products), Consumer Safety Inspector) rotate on a regularly scheduled basis.

Section 3. Trading Assignments

Trading of assignments within the same rotation pattern may be accomplished, if mutually agreed to by the involved inspectors, and subject to approval of the immediate supervisor(s). The involved inspectors shall submit their request in writing to their immediate supervisors four (4) weeks prior to the effective rotation date. Trading of assignments shall not affect the employee's position in the rotation pattern.

Section 4. Volunteers

To the extent possible, volunteers shall be used on relief and night assignments, if acceptable to the immediate supervisor and at no additional expense to the Agency. Additionally, the parties agree that current volunteer policies and practices effective at the time of implementation of this Agreement will remain in effect.

ARTICLE 24

OVERTIME

Section 1. Overtime

- a. If overtime is required, it is the responsibility of the employee covering the assignment. This provision shall not apply to situations such as a combination of assignments, emergencies, reduced inspection requirements, and when the employee can locate a voluntary, qualified, and available replacement at no additional expense to the Agency.
- b. In situations where employees are required to work at least six (6) days per week, after working at least three (3) consecutive weeks, supervisors/District Office shall make a concerted effort to provide sufficient relief from the overtime work to allow the employee(s) adequate time to take care of personal needs. The Agency may excuse an employee from an overtime assignment, provided another qualified employee is available for the assignment, upon receipt of a timely request, and meeting provisions of the first paragraph. Employees must request such relief as soon as possible after learning of the available overtime. Under this provision, an employee will not be required to work involuntarily in order to provide relief to another employee.
- c. This does not preclude the supervisor from authorizing an employee's absence when requested in advance, and the supervisor is able to locate a qualified replacement. An employee who accepts voluntary overtime or is assigned mandatory overtime as a replacement under this Section has the same responsibility to perform the overtime work as the employee who was originally assigned the overtime. It is understood that an employee who has been directed to, or authorized to work overtime and who fails to report and work as directed, may be subjected to disciplinary action for just and sufficient cause. In such case, the employee is required to notify his or her supervisor as soon as practical concerning the reason for failing to report.
- d. The equalization of overtime procedure applies to the above provisions.
- e. Meal periods are the only periods of non-pay status during an employee's assignment to overtime work.

Section 2. Voluntary Overtime Replacement

Employees willing to work voluntary overtime may post their name on a roster for that purpose. These rosters may then be used to assist employees who wish to obtain a qualified replacement for overtime work. Replacement is subject to approval of the supervisor and is to be at no additional cost to the Agency.

Section 3. Equalization of Overtime

Distribution of overtime shall be fairly and equitably assigned by the supervisor among eligible and qualified employees. The parties agree to maintain current overtime roster systems, which are effective at the time of implementation of this Agreement.

The following procedure shall be established if the current policy and practice is no longer practicable or a change is required to provide overtime inspection activities.

The supervisor shall list all bargaining unit personnel on a roster in seniority order, by grade, at the permanent duty location. The Agency shall determine a pool of employees from the roster who are eligible and qualified to perform overtime work, and shall update the pool as qualifications or qualified employees change. The pool will be provided to the Union, upon request, and posted on the official Agency bulletin boards.

Section 4. Overtime and Premium Pay

Employees shall be compensated for overtime, including appropriate premium pay and differentials for Sunday, holiday, and nights, at those rates permissible under appropriate laws, rules, and regulations.

Section 5. Call back

Call back overtime work performed by an employee on a day when work was not scheduled or for which the employee is required to return to the place of employment, is deemed at least 2 hours in duration for the purpose of pay. The supervisor shall call back employees on a voluntary basis to meet Agency work needs before utilizing mandatory overtime rosters.

Employees are not required to hold themselves in readiness for return to work when overtime was not previously scheduled. If contacted to return for overtime work, an employee will be excused if not in a condition to work.

Section 6. Time Spent on Standby Duty or in an On-Call Status

- a. An employee will be considered on duty and time spent on standby duty shall be considered hours of work if:
 1. The employee is restricted to the Agency's premises, or so close thereto that the employee cannot use the time effectively for his or her own purposes; or
 2. The employee, although not restricted to the Agency's premises:

- (a) Is restricted to his or her living quarters or designated post of duty;
and
 - (b) Has his or her activity substantially limited.
- b. An employee will be considered off duty and time spent in an on-call status shall not be considered hours of work if:
 - 1. The employee is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius; or
 - 2. The employee is allowed to make arrangements such that any work which may arise during the on-call period will be performed by another person.

Section 7. Appeals

Any alleged violation of this Article is both grievable and arbitrable pursuant to Article 33, Grievance Procedures, and Article 34, Arbitration, of this Agreement. Grievances concerning backpay will be processed in accordance with Article 33, Section 7, Backpay, Discipline/Adverse Actions, Conflict of Interest and Hazardous Pay of the Grievance Procedures.

ARTICLE 25

CONTRACTING OUT

Section 1. Policy

- a. The Agency and the Union shall cooperate and communicate to the maximum extent possible concerning A-76 Commercial Activities (CA). The Agency shall provide the Union with a list of all CA affecting the bargaining unit employees who are performing the work, which shall be current as of the effective date of this Agreement.
- b. The Agency will maintain an inventory list of all in-house A-76 CA performed by the Agency and this inventory list regarding bargaining unit positions will be furnished to the Union upon request to the extent consistent with law.

Section 2. Commercial Activities

- a. The Agency agrees to notify the Union regarding any review of a function for CA's in accordance with revised OMB Circular A-76 and other applicable laws and governing regulations.
- b. The Agency shall provide the Union with information concerning the CA study. This information will include:
 1. Correspondence from higher authority directing the CA study, if applicable;
 2. The local directive or other correspondence initiating the CA study, if internally directed;
 3. The Plan of Actions and Milestones (POA&M) chart or other similar document setting forth the estimated dates for the CA process; and
 4. Performance work statements if they adversely affect or result in the reduction-in-force (RIF) of bargaining unit positions.
- c. Briefings shall be held, as appropriate, with affected bargaining unit employees for the purpose of providing the status of on-going CA studies. The Union will be given an opportunity to attend consistent with Article 4, Union Representatives, Rights and Responsibilities.

Section 3. Employee Replacement A-76

- a. When employees are adversely affected by an A-76 contracting out decision, the Agency agrees, to the extent possible, to restrict new hires, use attrition, and place

affected employees in available positions for which they are qualified. When the decision to contract out results in employees being demoted or otherwise affected by a RIF, the procedures set forth in Article 26, Reduction-in-Force and Transfer of Function, if appropriate, shall be followed.

- b. As part of the CA process, the Agency agrees to provide information to employees on the right of first refusal and monitor compliance of the contractor, if applicable.

ARTICLE 26

REDUCTION-IN-FORCE (RIF) AND TRANSFER OF FUNCTION

Section 1. Purpose

The Agency and the Union recognize that unit employees may be seriously and adversely affected by a reduction-in-force (RIF) or transfer in function action. The Agency recognizes that attrition, reassignment, furlough, hiring freeze, and early retirement are among the alternatives to reduction-in-force that may be available. This Article describes the procedures the Agency will take in the event of a RIF or transfer of function as defined in this Article. The provisions of this Article apply when reassignment procedures under this Agreement cannot be applied. Actions under this Article shall not be used in lieu of adverse action procedures.

Section 2. Applicable Laws and Regulations

In conducting an action under this Article, the Agency will comply with Title 5 U.S.C. Sections 3501-3504, Title 5 CFR Part 351, other applicable government-wide laws and regulations, and this Agreement.

Section 3. Union Notification

- a. The Agency shall be responsible for properly notifying the Union in conjunction with any of the actions described in this Article.

For actions covered by this Article, the Agency agrees to notify the Union at the earliest possible date, but no later than ninety (90) calendar days prior to the effective date. The Union will be notified sixty (60) days in advance of the effective date that employees are being issued specific notices of an action under this Article.

- b. Notice to the Union under this section shall consist, at a minimum, of the following information:
1. The reason for the action;
 2. The competitive levels to be affected;
 3. The approximate number, types, and geographic location of positions affected; and
 4. The proposed effective date of the action.

- c. Upon the Union's request, the Union shall be provided an unsanitized copy of the retention register for those competitive levels affected by an action under this Article.
- d. When a RIF plan is completed, the Agency shall provide a copy to the Union. Formal written notification shall be given to the appropriate Union representative simultaneously when the specific notice is provided to the affected employee(s).
- e. The Agency shall provide the Union, upon request, with information in accordance with Title 5 U.S.C. 7114 (b)(4).

Section 4. Definitions

- a. Reduction-in-force. A reduction-in-force (RIF) is the release of a competing employee from a competitive level by furlough for more than thirty (30) days, separation, demotion, or reassignment requiring displacement when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; the exercise of reemployment or restoration rights; or reclassification of an employee's position due to erosion of duties when such action will take effect after the Agency has formally announced a RIF in the employee's competitive area and when the reduction-in-force will take effect within one hundred and eighty (180) days.
- b. Transfer of Function. A transfer of function is the transfer of the performance of a continuing function from one competitive area to one or more other competitive areas where the function is not currently being performed, or the movement of the competitive areas in which the function is performed to another commuting area.
- c. Competitive Area. The area in which employees compete for retention in a reduction-in-force is known as a competitive area. A competitive area is defined solely in terms of the Agency's organizational unit(s) or geographical location. The competitive area for RIF for bargaining unit positions is circuit-wide.
- d. Competitive Level.
 - 1. A competitive level consists of all positions in a competitive area which are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the incumbent of one (1) position could successfully perform the critical elements of any other position upon entry into it, without undue interruption and without any loss of productivity. Competitive level determinations are based on each employee's official position, not the employee's personal qualifications.
 - 2. The Agency shall assure that every affected position in the competitive area is assigned to a competitive level prior to the initiation of the RIF.

Section 5. Filling of Vacancies

- a. The need to apply RIF procedures does not suspend the Agency's authority and responsibility to take other legitimate employee actions, such as reassignment, change of duty station, or demotion for unacceptable performance. Such actions may be taken before, during, or after a RIF, in accordance with appropriate procedures.
- b. When the Agency decides to fill a vacant position in the competitive area after the effective date of the RIF, employees who have been separated or demoted by RIF will be offered the vacancy, provided the employee is qualified or has been given a waiver of qualifications for the intended position. Employee entitlement to this special consideration shall be determined in accordance with this Article.

Section 6. Waivers

When the Agency determines to fill vacancies during the RIF process, in order to facilitate placement of affected employees, the Agency may waive all qualifications within its authority to waive, in a position(s) at the same or lower grade, to the maximum extent feasible, when the employee could perform the duties of the position within ninety (90) days.

Section 7. Employee Notification

An individual employee who is adversely affected by actions stated in this Article shall be given a specific notice not less than sixty (60) days prior to the effective date of the action. All such notices shall contain the information required by the Office of Personnel Management (OPM) regulations in addition to the information required by this Article.

An employee is entitled to a new notice period of sixty (60) days if the Agency decides to take a more severe action than that specified in the original notice with respect to that employee. New notice is not required when the Agency takes a less severe action than that specified in the original notice.

Section 8. Content of Notices

1. The content of the specific notice shall include, at a minimum, the following information:
 - a. The specific action to be taken;
 - b. The reasons and plans for the action;
 - c. The proposed effective date of action;

- d. The employee's competitive area, competitive level, group/subgroup and service computation date, and the three most recent performance ratings of record within the last four years;
 - e. The employee's assignment rights (e.g., bumping and retreat);
 - f. The place where the employee may inspect the regulations and records pertinent to his/her case and the procedures to be followed;
 - g. The reasons for retaining any lower standing employee in the same competitive level because of a continuing exception;
 - h. The reasons for retaining any lower standing employee in the same competitive level for more than thirty (30) days because of a temporary exception;
 - i. Grade and pay retention information/entitlement, as applicable;
 - j. The employee's grievance or appeal rights; and
 - k. The employee's rights, if separated, to unemployment benefits, severance pay, lump sum payment for all accrued annual leave, eligibility for Interagency Career Transition Assistance Program (ICTAP), and placement on the reemployment priority list, eligibility for discontinued service retirement, and the effect of RIF on life and health insurance coverage.
2. The Agency shall provide complete information needed by employees to fully understand the action and why they are affected. At a minimum, the Agency shall:
- a. Inform all employees as soon as possible of the plans or requirements for the action in accordance with applicable rules and regulations;
 - b. Inform all employees of the extent of the affected competitive area, the regulations governing such action, and the kinds of assistance provided to affected employees;
 - c. Maintain and publicize a list of vacancies Agency-wide and information regarding access to Government-wide job bulletins; and
 - d. Provide information concerning the right to reemployment consideration and ensure that appropriate career transition assistance services, including counseling for employees by qualified personnel on opportunities and alternatives, is available to affected employees.

Section 9. Employee Official Personnel Files

The employee and the Union representative, if any, has the right to inspect the employee's OPF and other personnel records, and the retention register and other records pertinent to his/her case, including OPM and Agency regulations.

The Union may review any bargaining unit employee's official personnel folder (OPF) and other personnel records, if authorized by the employee in writing, to resolve a complaint or grievance concerning the effect on the employee of an action under this Article.

Submission of updated materials shall be accepted no later than thirty (30) days prior to the proposed date for the issuance of RIF notices.

Section 10. Records

The Agency will maintain all lists, records, and information pertaining to actions taken under this Article for two (2) years.

Section 11. Retention Registers

- a. When it appears that a RIF action may be necessary, the Agency shall prepare a retention register for each affected competitive level within the appropriate competitive area(s). The register shall contain the names of employees within the competitive level first by tenure group and then by subgroup.
- b. Competing employees shall be listed on a retention register on the basis of their tenure of employment, veterans' preference, length of service, and performance in descending order as follows:
 1. By Tenure Group I, Group II, and Group III.
 - (a) Tenure Group I includes each career employee who is not serving a probationary period. (Title 5 CFR 351.501)
 - (b) Tenure Group II includes each career-conditional employee and each employee serving a probationary period required by Title 5 CFR Part 315, Subpart H. (Title 5 CFR 351.501)
 - (c) Tenure Group III includes all employees serving under indefinite appointments, temporary appointments pending establishment of register, status quo appointments, and any other nonstatus nontemporary appointment, as well as appointments which meet the definition of provisional appointments contained in Title 5 CFR § 316.401 & 316.403. (Title 5 CFR 351.501)

2. Within each Tenure Group by veteran preference subgroup AD, subgroup A, and subgroup B as contained in Title 5 CFR § 351.501.
 - (a) Subgroup AD includes each veterans' preference eligible employee who has a compensable service connected disability of thirty (30) percent or more.
 - (b) Subgroup A includes each veterans' preference eligible not included in subgroup AD.
 - (c) Subgroup B includes each non-preference eligible employee.

3. Within each subgroup by years of service as augmented by credit for performance, beginning with the earliest service computation date.
 - (a) Credit for Performance. The service computation date for RIF purposes shall be adjusted for performance for each competing employee. Additional credit will be given based on a mathematical average (rounded in the case of a fraction to the next higher whole number) of the employee's last three (3) annual performance ratings of record, received during the four (4) year period prior to the date of specific reduction-in-force notices, computed on the following basis:
 - (1) Twenty (20) additional years of service for each performance rating of outstanding or equivalent;
 - (2) Sixteen (16) additional years of service for each performance rating of superior or equivalent;
 - (3) Twelve (12) additional years of service for each performance rating of fully successful or equivalent.
 - (b) The Agency will establish a cut-off date of at least sixty (60) days prior to the date of the specific RIF notice. After this cut off date, no new annual performance ratings will be put on record and used for RIF purposes. However, all performance appraisals that are due will be prepared to be considered in the RIF analysis. To be credited under this Section, an appraisal must have been issued to the employee with all appropriate reviews and signatures and must be on record.

Section 12. Retention Standing Ties

When two (2) or more employees are tied in retention standing, i.e., two (2) employees in the same subgroup have the same adjusted RIF service computation date; and one (1) or more, but not all, tied employees must be released from the competitive level; the Agency shall break the tie on the basis of:

- a. length of Agency service;
- b. if a tie remains, government service; then
- c. if a tie still remains, by random selection.

Section 13. Release From Competitive Level

- a. When an employee is to be released from his/her competitive level, the Agency will apply Title 5 CFR 351.601, Subpart F and Subpart G, as described below.
- b. When the Agency selects an employee for release from his/her competitive level it shall:
 1. Offer a position for which the employee is qualified; which shall last at least three (3) months; or
 2. Furlough him/her; or
 3. Separate him/her.
- c. When a Tenure Group I or II employee has been selected for release from the competitive level, the Agency shall offer to assign him/her to a position for which he/she is qualified in another competitive level, in his/her competitive area which requires no reduction, or the least possible reduction, in representative pay when a position in the other competitive level is held by an employee:
 1. In a lower tenure group or in a lower subgroup within the same tenure group AND is no more than three (3) grades or grade intervals below the position from which released; or
 2. With lower retention standing in the same tenure group AND is not more than three (3) grades or grade intervals below the position from which released (except that for a veteran preference eligible with a compensable service-connected disability of thirty (30) percent or more the limit is five

(5) grades or grade intervals AND is the same position or an essentially identical one, previously held by the released employee in a Federal.)

- d. An employee who is offered a position as a result of an action under this Article in a lower grade position than the previous position, and who is otherwise eligible, shall receive grade and pay retention benefits in accordance with Title 5 U.S.C. 5362 and 5363.
- e. An employee shall be given five (5) working days in which to accept or reject a reassignment offer made pursuant to this action.

Section 14. Employee Response to Specific Notice

Upon receipt of a specific notice that an employee is being offered a reassignment or change to lower grade or will be released from his/her competitive level, the employee shall have fourteen (14) days in which to accept or reject the offer made. If a position with a higher representative rate or grade (but not higher than the rate or grade of the employee's current position) becomes available on or before the effective date of the RIF, the Agency will make the better offer to the employee, if the Agency is planning to fill the position. However, making the better offer will not extend the sixty (60) day notice period.

Section 15. Impact of Details and Temporary Promotion

If an employee is released from his/her competitive level during a reduction-in-force, the basis of that action is the employee's official permanent position, not a position to which the employee is occupying temporarily, e.g., via detail or temporary promotion.

Section 16. Transfer of Function

In the event of a possible transfer of function, the Agency shall:

- a. Inform employees as fully and as soon as possible of plans for the transfer of function and the governing regulations;
- b. Notify the employees in writing of the proposed action in sufficient time so that the employees shall be able to consider the action and give a reasonable answer. Where the transfer of function is to another commuting area, the employee shall have no less than thirty (30) days to accept or reject the position offered;
- c. Make every effort to place affected employees in vacant budgeted positions for which they qualify;
- d. Provide information concerning the right to career transition assistance;

- e. Counsel employees in individual rights relating to such matters as retirement and severance pay.

The Agency shall meet with the Union to discuss transfer of function, either by the Agency or any other Government entity, when such transfer of function has been determined to any degree of certainty.

Section 17. Employee Use of Official Time and Agency Facilities

Employees who are identified as surplus or displaced under Career Transition regulations shall be entitled to a reasonable amount of official time to make use of the following services:

- a. Prepare, revise, and reproduce job resumes and/or job application forms.
- b. Participate in employment interviews.
- c. Review job bulletins, announcements, etc.
- d. Use the telephone to locate suitable employment.

Reasonable use of facilities and/or services, such as telephone, Agency computers, reproduction equipment, interagency messenger mail, electronic mail, and career counseling is also permitted under career transition regulations.

Section 18. Re-promotion Rights of Affected Employees

For a period of two (2) years, affected employees demoted by an action covered by this Article are eligible for re-promotion priority, according to the following criteria:

- a. The Agency determines to fill the vacancy;
- b. The employee has the required skills and abilities to perform the position without undue disruption; and
- c. Another qualified employee does not have higher retention standing.

Section 19. Reemployment Priority Rights of Affected Employees

Career and career-conditional employees who have received a specific RIF notice and have not declined a valid job offer at a rate lower than the current grade will be entered on the Agency's Re-promotion Placement Plan (RPP) for the commuting area in which they are qualified and available. Agency components must use the RPP in filling vacancies before otherwise offering employment, in accordance with regulations governing RPP.

ARTICLE 27

REASSIGNMENTS

Section 1. Policy

The Agency has the authority under Title 5, U.S.C., Chapter 71 of the Statute, Section 7106(a), Management Rights, to reassign employees, as needed, to meet the needs of the Agency, in accordance with Title 5, Section 335, of the Code of Federal Regulations.

The parties recognize that personal circumstances change and bargaining unit employees may prefer work in other locations. Therefore, policy and procedures are established for a Voluntary Placement Program (Section 2, below). This Program allows bargaining unit employees to request voluntary placement in a different location or type of position.

The parties further recognize that management may have the need to reassign employees to locations outside of the commuting area in work reduction situations or where there is a critical need for resources in other locations. Such reassignments shall be taken in accordance with (Sections 3 & 4) of this Article.

Section 2. Voluntary Placement of Inspectors

- a. Full-time inspection positions are permanent jobs in the locations to which employees are assigned. The Agency expects employees to remain in the location where they accept a position for at least one (1) year, unless involuntarily relocated due to a localized work reduction. The Voluntary Placement Program applies to all employees in the collective bargaining unit, and allows for:
 1. Voluntary placement of bargaining unit employees to a position for which they are qualified and trained under the provisions of this Article. This includes voluntary reassignments, voluntary demotion, and noncompetitive re-promotion.
 2. Very limited consideration for employees who incur unexpected hardships in their personal lives.
 3. Relocation based on the voluntary placement procedures for the benefit of the employee is at the expense of the employee.
- b. Definitions
 1. Job Swap. Employees in similar or identical jobs in different locations arrange to exchange jobs. An employee is not to job swap during the first

year of full-time employment with the Agency. The District Manager (or designee) must approve a job swap. Job swaps are not subject to the one (1) year requirement after placement.

2. Noncompetitive Re-promotion. An eligible employee is re-promoted to a grade previously held on a permanent basis. Demotion must not have been for deficiencies in performance or "for cause" reasons.
3. Reassignment. An employee changes from one (1) position or geographical location to another without promotion or demotion.
4. Voluntary Demotion. An employee requests a change to a lower grade for personal reasons.
5. Voluntary Placement. A general term used to describe a number of voluntary placement actions including voluntary reassignment, voluntary demotion, and noncompetitive re-promotion.
6. Voluntary Reassignment. An employee requests a reassignment for personal reasons.

c. Exceptions

1. Involuntary reassignments in localized work reductions.
2. Voluntary placements within the same duty station. (EXAMPLE: Moving from one (1) plant to another within the duty station.)
EXCEPTION: If a local practice does not exist, the Voluntary Placement Program is used.
3. Other circumstances where reassignment is determined to be in the best interest of the Agency.
4. Job swaps where employees in similar or identical jobs in different locations arrange to change jobs. Job swaps are subject to local practices within the district.

d. Eligibility

1. All bargaining unit inspectors, unless prohibited by restrictions in item (e), of this section below, are eligible to apply for voluntary movement to any other inspection position at the same grade that they currently hold or have previously held, including voluntary demotions.
2. Noncompetitive re-promotion applicants must have previously held higher-grade positions on a permanent basis. Applicants may be

considered for re-promotion to the highest grade previously held. Consideration is limited to employees who were not demoted for deficiencies in performance or "for cause" reasons.

3. Employees with formal disciplinary action pending, under leave restriction, under a performance improvement plan, or other similar actions may apply for voluntary placement if otherwise eligible. The applicant's control date is established upon receipt of the application, but the employee will not be selected for placement until the situation is resolved.

e. Restrictions

1. Employees are not eligible for voluntary placement until they have completed the probationary period and have served one (1) year in their current position. Employees may submit a request for voluntary placement no more than sixty (60) days before becoming eligible.
2. Employees accepting reassignment under the voluntary placement program or those selected for promotion under merit promotion procedures, are not eligible for another placement until one (1) year after the effective date of the previous personnel action. Employees may submit a request no more than sixty (60) days before becoming eligible.
3. Movement to a specific plant or location may be restricted because of a conflict of interest.

f. Submitting Requests for Voluntary Placement

1. The eligible employee
 - (a) Completes FSIS Form 4335-3, Employee Request for Reassignment Within Field Operations, indicating city and state or county and state to which placement is desired. Employees interested in any location within a state may show the state without listing cities or counties. Employees may indicate availability for up to ten (10) locations.
 - (b) Submits the completed form to:
USDA, FSIS, HRD, HUMAN RESOURCES FIELD OFFICE
BUTLER SQUARE WEST
100 NORTH 6TH STREET, SUITE 420C
MINNEAPOLIS, MN 55403
 - (c) Employees may rescind or change the application or location preferences at any time by notifying the Human Resources Field

Office in writing, at the address in f(1), subparagraph (b) of this section. When the employee adds new locations, the Human Resources Field Office establishes a new control date for the new locations. The existing control date continues to apply for locations already on file.

2. The Human Resources Field Office
 - (a) Informs employees of the appropriate contacts for questions on voluntary placement applications. The name, address, and toll-free number for these contacts will be updated as changes occur via the Beacon.
 - (b) Date stamps the form the day it is received in the mailroom. This is referred to as the "control date." EXCEPTION: If the form is received before the employee's eligibility date, the control date is the eligibility date (that is the date the employee completes one (1) year in their current position), rather than the date received. The control date is established to identify the beginning of the employee's period of eligibility in the Voluntary Placement System.
 - (c) Notifies employees of receipt of their requests.
 - (d) Works with district offices to offer voluntary placements to employees.

- g. Length of Eligibility

FSIS Form 4335-3, Employee Request for Reassignment within Field Operations, is valid until rescinded by the employee, or until the employee moves to a different position, either via voluntary placement or selection for promotion. An employee who moves to another position must remain in that position for one (1) year before submitting a new request for voluntary placement.

h. Procedure for Filling Vacancies

Employees are referred under the Voluntary Placement Program, as follows:

1. Names of employee(s) seeking voluntary placement are made available to the selecting official in the District Office in control date order.
2. The Voluntary Placement List contains the names of any candidates entitled to return rights under Section 3 of this Article and the names of employee(s) requesting voluntary placement.

3. When a Voluntary Placement List is issued with a promotion certificate at multiple grade levels (EXAMPLE: GS-8/9), individuals eligible for noncompetitive placement at the highest grade level are referred. Individuals must be eligible for noncompetitive consideration at the full performance level to be referred. However, when candidates are being considered at multiple grade levels, noncompetitive candidates need not meet qualification requirements for the full performance level, provided they are qualified for a grade level for which a certificate is issued, and they are eligible for noncompetitive consideration at the full performance level.

(EXAMPLE: A GS-7 food inspector who previously held a GS-9 position in another occupation may qualify for a GS-8 inspection position but may not possess qualifying experience at the GS-9 level. In this case, the employee is referred on a Voluntary Placement List at a GS-8 with the GS-9 eligibles).

4. Employees exercising their return rights receive priority over other candidates on the Voluntary Placement List.
5. When district offices elect to fill a position via the voluntary placement list, the selecting official will select on a first come first serve basis. If another individual on the list is selected the specific reasons will be provided in writing to the appropriate Council President.
6. If no selection is made from the voluntary placement list, the selecting official shall request a merit promotion certificate, or use other appropriate staffing sources.
7. HRFO will issue a promotion certificate and provide the selecting official with an updated voluntary placement list for further consideration.
8. If the selecting official does not use the merit promotion certificate, the selecting official may select from the voluntary placement list.
9. Employees offered voluntary placement have three (3) workdays to accept or decline the offer.
10. In some situations, using the Voluntary Placement System may result in a continuing cycle of vacancies. To expedite hiring, the District Manager may need to restrict consideration of candidates available through the Voluntary Placement System to fill subsequent vacancies.
11. Employees must report to the new duty station within thirty (30) days, unless delayed by mutual agreement between the gaining and losing districts.

12. Once an employee is selected for voluntary placement, HRFO cancels any and all requests for voluntary placement that are on file to other locations.

i. Return Rights

Employees who wish to exercise their return rights as specified in Section 3, below, of this Agreement, must submit a request for transfer based on return rights within sixty (60) days of the involuntary reassignment. When an offer is made, the employee is obligated to respond within three (3) working days from the date of the offer. Failure to respond within the timeframe will indicate a declination of rights. Failure to renew a current request before the expiration date results in a permanent loss of return rights.

j. Hardship Requests

Consideration for voluntary placement is granted in situations when there is an unanticipated severe personal hardship. However, a number of employees typically request voluntary placement to other locations to alleviate or minimize personal difficulties in their lives. These personal difficulties vary in nature and degree of severity. While the Agency is concerned with the welfare of its employees, management cannot become involved in personal issues resulting from choices made freely and willingly by employees or applicants for Agency inspection positions; nor can they make judgments that one (1) individual's needs are more severe than another's. Consequently, it is expected that situations warranting hardship consideration will be rare. No consideration will be given to employees requesting hardship reassignments during their first year of full-time employment. Such requests shall be returned to employees without action. Employees and applicants should consider all personal circumstances before accepting a position in the location offered.

1. Employees requesting hardship consideration for voluntary placement must submit to HRFO at the address in Paragraph f, 1(b) of this section.
 - (a) FSIS Form 4335-3, Request for Voluntary Reassignment Within Field Operations.
 - (b) A memorandum describing their circumstances in detail, including actions taken to mitigate the hardship.
 - (c) Any supporting documentation.
2. Hardship consideration is not granted for:
 - (a) Situations where the hardship was created by the employee's acceptance of the position in the current location. (EXAMPLES:

Maintaining two residences, long-distance commuting, or lack of employment opportunity for spouse.)

- (b) Circumstances that could have been reasonably foreseen. (EXAMPLES: Spouse or family is unable or unwilling to relocate or family members with pre-existing medical conditions need medical care.)
 - (c) Situations where the employee knowingly and willingly took action resulting in a hardship. (EXAMPLES: Assistance needed by a spouse in rearing children, need to care for elderly relatives, or marriage or engagement to someone in another location.)
3. The District Manager shall decide, with recommendations from the HRFO, whether to grant a voluntary placement based on hardship.

Section 3. Reassignment of Inspectors in Work Reduction Situations

In the event a staff reduction becomes necessary, the Agency shall make a concerted effort to reassign employees to vacant positions to avoid a reduction-in-force. In those situations where a reduction-in-force becomes necessary, procedures in Article 26, Reduction in Force and Transfer of Function, will govern. Staff reductions generally result from work reduction situations where there is a change in operations at plants where field inspectors are assigned. The following procedures apply when there are no vacancies within the commuting area to offer impacted employees.

a. Area of Competition

The area of competition (competitive area) in work reduction situations includes all plants within a 35-mile radius of the plant where the work reduction occurs (measured from plant-to-plant).

b. Work Reduction Process

- 1. The District Office notifies the HRFO when work reduction procedures are to be implemented, including the impacted duty station, number and type of positions impacted and positions available to be offered to individuals impacted in the work reduction.
- 2. The HRFO tentatively identifies locations to be included in the competitive area and forwards this information to the District Office for confirmation.
- 3. When duty stations included are confirmed, the HRFO prepares retention registers in accordance with regulations governing retention registers for

reduction-in-force purposes. Retention standing is used to determine which employees are offered reassignment outside of the commuting area.

4. Employees subject to reassignment under work reduction procedures may elect to fill a priority vacant position in the commuting area at a lower grade level, in accordance with their standing on the retention register, and subject to the availability of vacant positions.
- c. Return Rights

An employee who has been involuntarily reassigned as a result of a work reduction shall be given the first opportunity to return to his/her original position or a similar position at the employee's expense, if such position is reestablished in the commuting area from which he/she was reassigned. At the time of the work reduction employees shall be provided with instructions for applying for return rights. A request for return rights must be submitted within sixty (60) days of the effective date of the reassignment. Entitlement to return rights remains in effect provided the employee maintains an active request on file (updated annually), and does not turn down an offer of the same or a similar position in the commuting area from which he/she was reassigned.

An employee must respond to an offer of return rights within three (3) working days from the date of the offer. Failure to do so shall indicate a declination of return rights.

- d. When vacancies exist within the commuting area, the District Office reassigns employees impacted in a work reduction.

Section 4. Redeployment

A redeployment of resources occurs when the Agency determines that there is a need to move inspectors to locations with critical staffing shortages. The Agency shall determine when redeployment of resources is required to meet critical staffing needs.

Redeployment shall occur as follows:

- a. The Agency shall identify locations where inspectors are available for redeployment, as well as critical vacancies that need to be filled by redeployment.
- b. Retention registers shall be established as described in Section 3 of this Article, Reassignment of Inspectors in Work Reduction Situations, and employees from the competitive area identified as having employees available for redeployment shall be offered reassignment to a position outside the commuting area based on retention standing.

ARTICLE 28

FITNESS FOR DUTY

Section 1. Scope

The Agency may direct an employee to undergo a fitness for duty examination only under those conditions authorized by this Article.

Section 2. Prerequisite Conditions

The Agency will rely on performance and conduct to determine whether a fitness-for-duty examination is required. When there are reasonable grounds to believe that a health problem may be affecting safe and efficient performance, the employee shall be given an opportunity to provide medical evidence documenting the health problem affecting their performance or conduct, and an opportunity to voluntarily initiate an application for disability retirement on their own behalf. However, fitness for duty is separate from disability retirement, and an employee is not necessarily eligible for disability retirement if he/she is separated from employment for reasons covered under this Article.

Section 3. Medical Determination

- a. When the Agency orders or offers a medical examination under the provisions of the prevailing regulations, it shall inform the employee in writing of its reasons for ordering or offering the examination and the consequences of failure to cooperate.
- b. The Agency will offer the employee an opportunity to submit medical documentation from his or her personal physician or practitioner, and must review and consider all such documentation. If the employee is in the process of securing documentation from his or her personal physician or practitioner, the employee will be afforded a reasonable time to make an appointment with that physician.
- c. If the Agency determines documentation establishes the employee is medically fit to remain in the position as provided in 5 C.F.R. Part 339, then the employee will not be referred for further evaluation.
- d. In the event the employee does not choose to be examined by a personal physician or practitioner, then the Agency shall designate the examining physician.
- e. The Agency shall provide the examining physician and the employee with a copy of any approved medical evaluation protocol, applicable standards and requirements of the position, and a detailed position description of the duties of the position including critical elements, physical demands, and environmental factors.

- f. If medical standards are established, they must be justified on the basis that the duties of the position are arduous or hazardous, or require a certain level of health status or fitness because the nature of the position involves a high degree of responsibility toward the public. The rationale for establishing the standard must be documented. Standards must be established by written directive and uniformly applied, directly related to the actual requirements of the position, and consistent with OPM instructions published in 5 C.F.R. Part 339.
- g. A medical standard or physical requirement must be waived when there is sufficient evidence that an employee, with or without reasonable accommodation, can perform the essential duties of the position without endangering the health and safety of the individual or others.
- h. A candidate may not be disqualified for any position solely on the basis of medical history. For positions with medical standards or physical requirements, or positions subject to medical evaluation programs, a history of a particular medical problem may result in medical disqualification only if the condition at issue is itself disqualifying, recurrence cannot medically be ruled out, and the duties of the position are such that a recurrence would pose a reasonable probability of substantial harm.
- i. The Agency may order a psychiatric examination (including a psychological assessment) only when: 1) the results of a current general medical examination which the Agency has authority to order indicates no physical explanation for behavior or actions which may affect the safe and efficient performance of the individual or others; or 2) a psychiatric examination is specifically called for in a position having medical standards or subject to a medical evaluation program established under 5 C.F.R. Part 339. A psychiatric examination or psychological assessment must be conducted in accordance with accepted professional standards, by a licensed practitioner or physician authorized to conduct such examination, and may only be used to make legitimate inquiry into a person's mental fitness to successfully perform the duties of his or her position without undue hazard to the individual or others.
- j. The Agency may require an employee receiving workers' compensation benefits or assigned to other duties (e.g., through the Work Hardening program) as a result of an on-the-job injury to report for medical evaluation when the Agency has identified an assignment or position (including the employee's regular position) which it reasonably believes the employee can perform.
- k. All medical examinations ordered or offered pursuant to this Section shall be at no cost to the employee and performed on duty time at no charge to leave.

Section 4. Procedures

In seeking a fitness-for-duty examination, which may or may not lead to a disability application, the following rules and procedures shall apply.

- a. In all discussions with any management official, the employee shall be entitled to Union representation. Prior to any discussion, the employee shall be notified of this right, given an opportunity to contact and discuss the matter with their Union representative, and permitted the right of representation in such discussion.
- b. When the results of the medical examination reveal that the employee:
 1. Cannot satisfactorily perform useful and efficient service in their regularly assigned job;
 2. Retains the capacity to do other work at the same grade or pay level within the work location or the same commuting area; and
 3. Otherwise meets the minimum qualifications for an available position that the Agency seeks to fill; the Agency shall ordinarily offer the employee(s) a reassignment to a position at the same grade or pay level in the same commuting area.

Section 5. Counseling

- a. When the Agency determines that the medical evidence reveals:
 1. The employee is totally disabled for service in their current position, and
 2. Reasonable accommodation for another position cannot be made, the Agency shall so advise the employee and provide appropriate counseling, including seeking other Federal employment in the area.
- b. When a disabled employee meets existing disability retirement requirements, the Agency shall counsel the employee concerning disability retirement and explain the procedure for voluntarily applying for disability retirement. In the event that an employee is unable to file on his/her own behalf, the Agency may initiate, with notice to the employee, an application for the employee in accordance with applicable laws and regulations.
- c. The Agency shall provide the employee proper notice, in accordance with applicable regulations, and shall permit the employee thirty (30) days in which to respond in writing. A copy of the applicable regulations will be provided to the employee.

- d. If the medical evidence and performance records establish that the employee retains the capacity to perform satisfactorily in a vacant lower grade position which the Agency seeks to fill within the employee's commuting area, the employee will be informed of their option to request such a demotion.

Section 6. Confidentiality of Records

All records pertaining to the employee's examination and any subsequent personal information included with an application for disability retirement are confidential and may be disclosed only to those with an administrative need to know or specifically authorized by the employee.

ARTICLE 29

CONFLICT OF INTEREST

Section 1. Policy

In accordance with Title 5 CFR 2635.101, each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal government, each employee shall respect and adhere to the principles of ethical conduct set forth in applicable laws, regulations, and executive orders. The Agency will continue to ensure that all employees are trained on conflict of interest matters for which employees are to be knowledgeable and accountable, in conjunction with providing a copy of the Standards of Ethical Conduct for Employees of the Executive Branch. FSIS as a regulatory Agency is governed by supplemental laws and regulations, and as such, employees are held to a higher ethical standard than other employees of the Executive Branch.

The Agency will ensure that ethics requirements are included in the annual performance review as part of the employee and supervisory discussion pertaining to USDA and Agency regulations on employee responsibilities and conduct.

Section 2. Conflict of Interest

A conflict of interest can be defined as a situation in which an employee's official duties are in direct contrast to their own personal gain where a reasonable person with all of the facts may question the integrity of their involvement.

In accordance with the Standards of Ethical Conduct for Employees of the Executive Branch, employees who find themselves in an actual conflict, a potential conflict, or in a situation that could give the appearance of a conflict of interest shall immediately make known to their supervisor the nature of the situation. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards. In accordance with Title 5 C.F.R. 2635.102 (b) (14), whether particular circumstances create an appearance that the law or applicable standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts. The employee shall state any suggestions as to how the situation may be remedied.

Employees who fail to make such situations known within fifteen (15) days may be subject to disciplinary and/or adverse action. In addition, employees who knowingly engage in conflict of interest situations are subject to disciplinary and/or adverse action. Employees shall disclose fraud, waste, abuse, and corruption to appropriate authorities.

Section 3. Employment of Relatives

Employees shall not be assigned to an establishment where a member of his/her immediate family (father, mother, spouse, child, brother, sister) is employed by the establishment without an exception approved by the Agency. Employees shall not be assigned to an establishment where extended family members (father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, aunt, uncle, niece, nephew, grandparents, grandchildren), who are residents of the employee's household are employed by the establishment without an exception approved by the Agency.

Employees shall not be assigned to an establishment where extended family members, are employed in a supervisory, managerial, or policymaking capacity of the establishment, without an exception approved by the Agency.

Employees shall not be assigned to an establishment where they have product inspected or graded or their immediate family has product inspected or graded without an exception approved by the Agency.

An establishment can be defined as a single or complex managed plant and does not encompass the entire corporation.

Employees with regulatory oversight responsibilities must file FSIS Form 4735-2:

- a. At the commencement of their employment or change in assignment, such as a lateral reassignment or promotion.
- b. At any time when an employee has personal knowledge that an immediate or extended family member accepts employment at an establishment where they perform regulatory duties.
- c. When they are applying for vacant positions at an establishment where an immediate or extended family member is employed.

Section 4. Personal Relationships

Personal Relationship is defined as dating, living with, engagement, or financial (examples: child support, alimony, palimony, or general household finances).

In addition a personal relationship may also be defined as having a financial responsibility such as child support, alimony, palimony, or general household finances.

Exceptions to the policy are determined on a case by case basis due to the nature of society as it relates to blended families. These decisions are made by the Agency prior to employment and/or assignment.

Section 5. Outside Employment

An employee shall not engage in outside employment or other outside activity that conflicts with his/her official duties. An activity conflicts with an employee's official duties: if it is prohibited by Statute or by an Agency supplemental regulation; or, if under the standards set forth in government-wide regulations, it would require the employee's disqualification from matters so central or critical to the performance of the duties of the position, that performance of those duties would be materially impaired.

Employees must obtain prior approval for all outside employment or activities whether paid or unpaid. Exceptions:

- a. Memberships or volunteer work with charitable, religious, social, fraternal, recreational, public service, civic, or similar non-business and nonprofit organizations.
- b. Simple membership in professional organizations. NOTE: If an employee holds an official position within the organization or has decision-making authority with respect to the organization, the employee must obtain prior approval from the Agency.
- c. Performance of duties in the Armed Forces, Reserve, or National Guard.
- d. Acting as an officer of a labor organization pursuant to Title VII of the Civil Service Reform Act of 1978.

Requests must be made through supervisory channels to the approving official on FSIS Form 4735-3, Request For Approval Of Outside Employment or Activity, prior to the beginning of the employment or activity. Employees are prohibited from engaging in outside employment or activities that conflict with their official duties or give the appearance of a conflict of interest. Requests for employment with any regulated corporation are determined on a case by case basis.

Employees may be required to recertify on a periodic basis. If required to do so, he/she will be notified in writing by the Agency.

Section 6. Reports of Misconduct

Employees who have reason to believe that misconduct has been committed shall report it promptly to their supervisor. If the circumstances of the case are such that the employee feels his/her report should not be routed through his/her supervisor, it shall be reported to the next appropriate level of supervision. Employees are covered by the Whistleblower Protection Act (WPA). Nothing herein shall affect the right of employees to petition Congress or other officials.

Section 7. Ethics Official

Employees will be notified of the identity and phone number of the Agency's Designated Ethics Official. Employees who have questions about the application of ethics requirements or any particular situations should seek advice from the Agency Ethics Official. Disciplinary action for violating such requirements or any supplemental Agency regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an Agency Ethics Official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances.

Section 8. Bribery or Attempted Bribery

Any employee who is offered a bribe has the responsibility for immediately reporting the facts of the case to the Office of the Inspector General (OIG) by the most expeditious means available.

The employee shall not disclose the information reported, or that it was reported, without the prior approval of OIG or the Federal Bureau of Investigation (FBI). The Agency shall maintain a listing of appropriate OIG reporting points which shall be readily available to employees in field locations.

If an employee has reasonable cause to believe that he/she is the personal subject of a bribery investigation, he/she has the right to contact a representative of his/her choice.

Section 9. Farm/Ranch

Any outside employment or financial interest in land used for commercial production of any commodities inspected, graded, regulated, or otherwise controlled by FSIS must be reported through supervisory channels for appropriate conflict of interest review and approval.

Section 10. Applicability of Employment Restrictions

Employment restrictions will apply when there is an appearance of a conflict of interest or a conflict of interest between one's off-duty activities and performance of inspection duties.

Section 11. Purchase of Product/Equipment

Employees may purchase products, personally or through another individual, from a plant or establishment regulated, inspected, or otherwise controlled by the Agency only if the establishment operates a public retail operation where the employee and the general public can both purchase the product at the same price. However, the employee cannot be distinguishable through clothing, insignia, or other apparel as an Agency employee. This also includes establishments other than the employee's assigned duty station.

Employees may purchase equipment necessary for the performance of their official duties directly from the establishment only if the equipment is purchased at fair market value.

Section 12. Political Activity

Employees will not be subject to additional limitations on political activity beyond those provided by law.

Section 13. Member of Family Conduct

Although Agency employees will not be held responsible for the conduct of their adult family members, they will be held responsible to acknowledge and report all situations in which any adult family member's employment, duties, or financial interests may create or give the appearance of a conflict of interest in relation to the employee's employment and/or assignment.

Section 14. Previous Employment Restrictions

Employees who previously worked for a regulated corporation for any amount of time during the year prior to becoming an Agency employee, may not be assigned in any capacity to establishments under their previous employer's corporate umbrella for a period of one year upon commencement of their employment without an exception approved by the Agency.

This one-year prohibition pertains to new hires and permanent employees applying for a reassignment or promotion. On a case-by-case basis, the Agency may determine that it is in the best interest of the Agency to assign an employee to a different plant (other than the one where the employee worked) owned by the same former employer, as long as there is a different management team. Factors to be considered in making this determination will include:

- a. The nature of the employee's duties with the former employer;
- b. The nature of the personal relationship between the employee and the former employer;
- c. The adverse financial effect that resolution of the matter would have upon the employee involved;
- d. The degree to which the employee is permitted to exercise his/her discretion in making decisions affecting the former employer;
- e. The difficulty involved to reassign another employee instead; and
- f. Adjustments that could be made to reduce or eliminate questioning of the employee's impartiality.

Employees may not be temporarily or permanently assigned to an establishment owned or affiliated with a company or corporation from which they are receiving an annuity or pension without an exception from the Agency.

Section 15. Gifts

All employees authorized to perform duties under the Federal Meat Inspection Act (FMIA) are prohibited from receiving anything of value given with the intent to influence their performance of official duties. Specifically, employees may not accept gifts or engage in business and financial dealings (example: buying from, selling to, or trading with) with regulated establishments or their employees. All things of value are considered given with the intent to influence except:

- a. Exchanging social gifts in family or personal relationships when the relationship rather than the business is the motivating factor (examples: employee and parents, spouse, employee's children or close personal friends).
- b. Accepting loans from banks or other financial institutions on customary terms to finance proper and usual employee activity (examples: automobile and home mortgage loans).
- c. Accepting unsolicited advertising or promotional material of low value (examples: pens, pencils, note pads, calendars, and other things of nominal value). Accepting gifts such as meat products, alcoholic beverages, boxes of candy, wallets, jewelry and cufflinks are strictly prohibited.
- d. Exchanging occasional customary social courtesy that is free of embarrassing or improper implications and has low value (examples: a soft drink or cup of coffee).
- e. Accepting food and refreshments of nominal value on infrequent occasions when the interest of the Government is served by the participation of Agency employees in industry-sponsored activities at which a luncheon or dinner may be served, and where the discussion of matters of mutual interest to the Government and industry will take place. Only authorized employees may accept participation in non-Agency sponsored meetings and events under this exception.
- f. Products and services offered by establishment employees and advertised to the general public are not considered gifts from outside sources. Employees must pay fair market value and provide information showing that their knowledge of the goods or services was through the advertisement and not from any official affiliation with the regulated industry.

Section 16. Grievances over Conflict of Interest Determinations

Grievances over Agency actions under this Article shall be filed in accordance with Section 7 of Article 33, Grievance Procedure.

Section 17. Transportation during Hazardous Weather/Emergency Situations

Employees will not be held in a conflict of interest situation where Agency officials give prior approval for arrangements for transporting employees to and from the worksite in company-owned vehicles during hazardous or unusually severe weather. The Agency official will promptly confirm in writing, such approvals. Employees are not required to accept such transportation from a company.

ARTICLE 30

TRAINING AND CAREER DEVELOPMENT

Section 1. Policy

The parties agree that the primary function of training is to assure the optimum use of human resources in attaining organizational needs and, when feasible, to provide career development opportunities to employees. The parties further recognize that development of employee's knowledge, skills, and abilities through effective training and education is an important factor in maintaining efficient operations.

The Agency agrees to comply with all laws, rules, regulations, and FSIS Directive 4338.1 regarding training.

The Agency shall train employees in those appropriate inspection phases of the Program to the maximum extent practicable. A concerted effort will be made to provide specialized technical training through job-related courses for eligible employees.

Pursuant to 5 U.S.C. 7106 (a) (Management Rights), the Agency shall determine employee training and education needed to meet workforce needs. The Agency shall provide training and education subject to the availability of funds and shall determine the methods and means to provide the training. Management is responsible for determining when training will be conducted and the employees to be trained.

The following approaches to employee training and career development will be utilized when determined by the Agency to be in its best interest:

- a. In-service and on-the-job training to improve capabilities to perform their current duties. Such training may include programs, such as computer-based training, some of which may be completed at the work site.
- b. Cross-training and assignments in complimentary positions, whenever feasible.
- c. Enrollment of employees in part-time educational programs at local educational institutions or in correspondence courses and the like.

Section 2. Employee Initiative

The parties recognize that each employee is responsible for applying reasonable effort, time, and initiative in increasing his/her potential value to the Agency through self-development, training, and education. Employees are encouraged to take advantage of training and educational opportunities that will enhance skills and qualifications needed to increase efficiency in the performance of their duties and responsibilities and for possible advancement within the Agency.

Employees will be granted duty time, when appropriate, to participate in approved programs or courses.

Section 3. Individual Development Plan

The parties encourage employees to develop a personal plan for career self-development. FSIS Form 4410-1, Individual Development Plan, will be made available for employees' use to develop this plan. In developing this plan, employees may seek counseling and advice from the immediate supervisor, and shall be given reasonable opportunities to discuss training needs and opportunities with their supervisors. The Agency shall provide employees with information on available training, education, and career development opportunities upon request.

Section 4. Announcements

The Agency agrees to provide all employees with information on training, educational, and career enhancement opportunities. Employees will be advised of the requirements to enter such training programs and will be assisted in applying. Employees applying for a course will be notified prior to the start of the course of their selection or non-selection. Reasons for non-selection will be given to an employee.

Section 5. Record of Training

A record of satisfactorily completed training, if known, will be maintained by the Agency. The employee is responsible for furnishing information on outside training courses that were completed if he/she wants the information included with their file, (college, technical courses, etc.).

When training is documented in the employee's record, employees without access to a government computer will receive written verification of such documentation for non-CFL courses.

Section 6. Training Costs

The Agency will support approved training courses that would be beneficial, as determined by the Agency. However, the amount it will pay for each approved training course will be limited by such factors as the measure of the program benefit and the availability of training funds.

Section 7. Reports

The Agency agrees to advise the Council Chairman (or designee) of the training activities which have taken place within FSIS during the preceding year, upon request. Such information shall enumerate training received by employees by grade level and organizational unit for those employees in the recognized unit only.

Section 8. Training as a Condition of Employment

- a. All employees in covered positions are to begin mandatory training within ninety (90) calendar days of entrance into a covered position. Any delay in beginning training by the employee must be fully documented and for good cause and approved by the appropriate program official.
- b. All covered employees in that assignment shall be provided a copy of the Directive 4338.1 and must meet the validated course/academic standards specified for each training program for continued employment in that assignment. Course validation ensures a passing score is attainable. Covered employees will be provided reasonable time to review the Directive. Arrangements regarding reviewing the Directive will be made through the employee's supervisor or designee. Employees who are attending Training as a Condition of Employment (TCOE) training will continue to contact their immediate supervisor, or designee, regarding leave requests, unless they are provided other contact information.
- c. Employees must sign a Training Agreement that outlines the mutual obligation of the Agency and the trainee. The employee agrees to begin the training program within ninety (90) calendar days and satisfactorily complete the mandatory training within twelve (12) months of the effective date of assignment to the covered position. In accordance with the Directive, where the Agency fails to schedule a non-probationary employee to allow attendance within these timeframes, the timeframe will be extended for a reasonable period of time to allow for scheduling and attendance.

Probationary employees terminated through no fault of their own due to the Agency not scheduling required training will be notified that they may reapply for future vacancies.

- d. Upon request, assistance, as appropriate, will be provided to employees where needed to facilitate successful completion of training, such as coaching, tutoring, or mentoring. During the period of training, employees may request assistance and guidance from the training staff. When possible, such assistance will be provided during the regular duty hours of the student.
- e. Covered employees who have successfully completed required training (i.e., attained a passing grade) in the past and are rehired may be required to retake all or selected components of the training at the discretion of the Agency. Rehires into covered positions that previously attended and successfully completed the required training for the position encumbered may request that the Center For Learning (CFL) or designee consider a waiver for attending the required training a second time.
- f. Test results will be made available to students normally within seven (7) calendar days after completing the class.

- g. An employee who departs from required training for emergency reasons or extenuating circumstances, where approved by the Agency official, will be rescheduled to attend at a later date provided the training can be completed within twelve (12) months from the effective date of assignment to the covered position. The twelve month time limit will be extended for non-probationary employees.
- h. Employees who fail to successfully complete the training for their position by failing to attain a passing grade will be given one (1) opportunity to retest. However, probationary periods for new hires will not be extended for purposes of retesting. Such employees will be notified of their retesting date.
- i. It is the Agency's policy to promote those selected for higher graded positions within a reasonable timeframe, generally within two pay periods from the date the employee accepts the position.
- j. In addition to the successful completion of mandatory training, all employees entering a covered position must:
 - 1. Demonstrate satisfactory job performance.
 - 2. Submit to a required background investigation.
 - 3. Meet other conditions of employment indicated in the vacancy announcement (e.g., travel availability, etc.).

Section 9. Training Materials

The Agency, on an annual basis, will provide a listing of available training DVDs and CDs to all employees.

ARTICLE 31

OFFICIAL TRAVEL

Section 1. Policy

Pursuant to 5 U.S.C., Section 7106(a), the Agency has the management right to make assignments involving travel. Employees may be excused from assignments involving official travel when they are medically incapacitated for duty, have a personal emergency or hardship such that leave from duty is approved, or arrange for a substitute traveler who is acceptable to the supervisor at no additional cost to the Agency. Employees are entitled to reimbursement for expenses incurred in official travel in accordance with applicable travel regulations.

To the maximum extent practicable, employees assigned duty involving official travel away from their duty station shall be provided written travel instructions. This notice shall state the reason for the travel, departure and anticipated return dates, type and mode of travel, T&A transaction codes, and starting time of the assignment(s). When not possible to provide written instructions prior to start of the assignment, the written instructions will be provided as soon as possible thereafter.

Section 2. Travel Time

The Agency agrees that to the maximum extent practical, employees shall be assigned to travel within their regular tour of duty. In those cases in which official travel cannot be scheduled within the assigned employee's tour of duty, the employee shall be compensated for travel time in accordance with applicable pay laws and regulations governing overtime pay.

Section 3. Travel Expenses

A voucher for travel expenses shall be submitted by the employee within five (5) work days of the conclusion of the official travel.

Employees on continuous travel assignment shall submit a travel claim every thirty (30) days (to avoid late reimbursements a claim should be submitted every two (2) weeks, when possible). Allowances will be made for late receipt of reimbursement to the employee following timely submission of travel vouchers.

Upon request, employees shall be provided assistance to properly complete vouchers where necessary (e.g. infrequent travelers).

Under normal circumstances, the Agency shall timely process travel vouchers to ensure that employees are promptly reimbursed for travel-related expenses.

Section 4. Government Credit Cards

The Government Issued Charge Card for Travel (GICCT) is “For Official U.S. Government Travel Only,” and is to be used solely for official travel-related expenses.

Employees engaged in official travel shall be considered for issuance of a Government credit card for charging reimbursable official travel-related expenses.

An employee who is expected to travel more than two times a year will be issued a government credit card and shall be required to use the card for official travel-related purposes. **USE OF THE CARD FOR PERSONAL USE IS PROHIBITED.**

Adequate guidance on proper use of the GICCT will be provided to the employees in the form of the cardholder agreement, Agency notices, directives, policies, Departmental memoranda, and internal information vehicles (e.g. The Beacon). Contact information regarding questions with the travel credit card will be provided at New Employee Orientation.

The Agency has a right at such time as automated training becomes available, to condition issuance of a GICCT upon mandatory completion of training.

Employees approved for the Government credit card shall abide by the credit agreement issued with the card, including the requirement that charges be paid by the due date specified on the billing statement. Employees are not relieved of their obligation to pay the travel charge card bill in full in those rare instances when the Agency has not reimbursed them within 30-days after receipt of a timely submitted voucher.

The Travel and Transportation Reform Act of 1998 requires the Agency to reimburse employees within 30 calendar days after employees submit a proper voucher (Form AD-616) to their approving officials. Employees will be held responsible for performing their duties whether or not their account has been suspended or cancelled.

Employees who do not agree with a credit card charge, or whose planned official travel is canceled or postponed, also can dispute the bill.

Employees who misuse the GICCT and/or have their accounts suspended or canceled due to non-payment may be subject to disciplinary and/or adverse action.

Section 5. Travel Advances

Travel advances for employees whose cards are cancelled for cause are limited to meals and incidentals and miscellaneous expenses. Travel advances in these situations are not given to cover hotel, car rental, or airline expenses. The Government Transportation System (GVTS) may be used to cover official transportation tickets when no other option is available or feasible.

An advance of funds for anticipated official travel shall be issued to an employee only in circumstances when, at the discretion of the appropriate management official, it is considered impractical to issue the employee a Government credit card (e.g., new employees, employees with a charge card application pending, or employees not expected to travel more than twice a year).

Advanced travel funds may be used only to pay reimbursable expenses incurred during official travel and must be repaid as soon as possible by prompt submission of travel voucher(s) for the official travel expenses.

Section 6. Time Spent in a Travel Status for Travel Compensatory Time Off

Employee eligibility for compensatory time for travel is governed by the Federal Workforce Flexibility Act of 2004 (appendix to this Agreement) and any subsequent revisions effectuated throughout the terms of this Agreement.

Section 7. High Mileage Drivers

The Agency agrees to publish an “Annual Notice to High Mileage Drivers” in the form of an all-employee notice. The Notice will include a definition of high mileage driver and a blank Annual Notice to High Mileage Drivers form. Employees shall follow the instructions in the Notice, determine whether they fit the definition of high mileage driver as set forth in the Notice, and complete and submit the high mileage form to their immediate supervisor within the time frames specified in the Notice.

The determination as to whether or not an employee is a high mileage driver will be based upon a forecast of the number of miles the employee is expected to drive for the coming fiscal year. The number of miles driven during the past fiscal year will be a prime factor in making this forecast, except where the employee is (1) reassigned to a different duty station, (2) reassigned to a different position at the same duty station, (3) assigned more or fewer establishments to cover, or (4) assigned less frequently to the establishments currently covered.

Section 8. Authorization of the Use of a Privately Owned Vehicle (POV) or General Services Administration (GSA) Owned or Leased Vehicle

The use of a vehicle on patrol assignments will be determined by the responsible Agency official and authorized when it is deemed advantageous to the Government and will best assure that the mission of the Agency is accomplished.

Employees who meet the definition of a high mileage driver as set forth in the annual Agency Notice shall make a commitment to operate either their POV or a GSA vehicle by checking the appropriate box on the form. Upon receipt of the employee’s completed form, the responsible Agency official shall then determine the best means by which the employee will perform the official travel for the coming fiscal year.

The decision to authorize the use of POV or GSA owned or leased vehicles shall be based upon such factors as cost, the type of operation, workload of the assignment, relative safety of the neighborhood, driving conditions, fuel efficiency, parking facilities for the vehicle, physical strain on the employee, night work, and the efficient use of the employee's time. The authorizing official may wish to further discuss with the affected employee before making a determination. Employees issued a GSA owned or leased vehicle shall follow all requirements set forth for use of the vehicle.

When authorized a GSA owned or leased vehicle, the employee shall be on official time for the pick up and return of the vehicle from a GSA facility.

Section 9. Mileage Allowances for High Mileage Drivers Using POVs

High mileage drivers who request a GSA vehicle shall be eligible to claim the maximum mileage allowance rate for use of their POV until such time as a GSA vehicle is furnished to them.

High mileage drivers who elect to use their POV shall be eligible to claim a reduced mileage allowance rate in accordance with the applicable regulations for mileage expenses.

Section 10. Relocation Expenses

Payment of relocation expenses will be in accordance with the Federal Travel Regulations (FTR) and Agency policy.

Relocation expenses will be authorized only when the Agency determines relocation expenses are primarily in the interest of the government. Such determinations are made on a case by case basis. Where authorized, entitlement to reimbursement for various categories of relocation allowances may include house-hunting trip (maximum of five consecutive days), travel (including mileage), per diem, temporary storage, temporary quarters subsistence expense allowance (maximum of fifteen (15) consecutive calendar days), shipment of household goods, miscellaneous expenses, expenses incurred in the buying and selling of a residence, and/or termination of a lease as determined under the provisions of the FTR.

Section 11. Telephone Calls While on Official Travel

- a. Employees traveling on official business for more than one (1) night may make a brief personal call, each night, to their residence or to a location within their regular commuting area of their official duty station to speak to members of their immediate family, such as spouse, minor children, or anyone sharing the same residence with the employee. Reimbursement allowed is covered by existing Departmental travel regulations.

- b. This does not change the reimbursement for official business calls. The Agency will reimburse all business calls when authorized by an approving official as a necessary expense related to travel.

ARTICLE 32

DISCIPLINARY AND ADVERSE ACTIONS

Section 1. Purpose and Policy

The parties agree that the objective is to correct and improve employee conduct and/or performance so as to promote the efficiency of the Agency. Where appropriate, the parties agree to the concept of progressive discipline designed primarily to correct and improve employee behavior. Bargaining unit employees shall be the subject of disciplinary and/or adverse action only for just cause. The parties recognize that employee misconduct may be serious enough to warrant the proposal of an adverse action even for a first offense.

Section 2. Definitions

- a. Disciplinary Action - a written reprimand, or a suspension from duty for fourteen (14) calendar days or less.
- b. Adverse Action - a suspension for more than fourteen (14) calendar days, furlough without pay for thirty (30) calendar days or less, removal, or involuntary demotion in grade or pay.
- c. Informal Actions - includes oral warnings, oral admonishments, and written letters of caution as opposed to letters of instruction or similar issuances that are considered guidance to employees, the purpose of which are to inform or clearly convey practices, procedures, or instructions.
- d. Formal Action - includes letters of reprimand, suspensions without pay, involuntary reduction in grade or pay, removals, or furloughs of thirty (30) days or less.

Section 3. Informal Actions

Letters of Caution may be issued by any supervisor in the employee's supervisory chain of command, or by anyone with authority to take disciplinary and adverse actions. These letters are not filed in the employee's Official Personnel Folder (OPF), but are retained for up to one (1) year by the supervisor.

Section 4. Formal Actions

- a. Letters of Reprimand will be retained in the employee's Official Personnel Folder for up to two (2) years from the effective date.
- b. An employee against whom a suspension for fourteen (14) days or less is proposed is entitled to:

1. Advance written notice stating the specific reasons for the proposed action, and the evidence upon which the proposed action is based;
 2. Ten (10) calendar days to respond in writing, and/or to request the opportunity to present an oral response, and to furnish affidavits and other documentary evidence in support of the answer. At the discretion of the Agency, oral conferences may be conducted in person, by telephone, or by videoconferencing; and
 3. A written decision, including the action to be taken, the effective date, and applicable rights.
- c. An employee against whom an adverse action is proposed (removal, suspension for more than fourteen (14) calendar days, reduction in grade or pay, and furlough of thirty (30) calendar days or less) is entitled to:
1. Advance written notice of thirty (30) calendar days stating the specific reasons for the proposed action, and the evidence upon which the proposed action is based;
 2. Ten (10) calendar days to respond in writing, and/or to request the opportunity to present an oral response, and to furnish affidavits and other documentary evidence in support of the answer. The advance written notice will include the oral conference options available to the employee, that is, in person or by telephone. It also will include video conferencing, if that is available. The Agency will honor the employee's choice whether to have an oral conference, and if so, the method to be used.
 3. A written decision, including the action to be taken, the effective date, and applicable rights.
- d. The thirty (30) day advance notice period and other time frames are curtailed for actions taken under the crime provision where there is reason to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed.

Section 5. Representation

- a. An employee shall be provided with a second copy of any proposed formal action, as described in Section 4, for the purpose of informing his or her Union representative, if the employee so chooses to be represented by the Union.
- b. An employee may be represented by the Union or other representative of his or her choice. Designations will be in writing and signed by the employee. Once the designation has been made, all contacts and correspondence will be through the representative.

Section 6. Written Allegations or Charges by Industry

- a. Written charges or allegations by industry will be processed in accordance with applicable Agency guidelines.
- b. No record of a complaint, determined to be unfounded or not investigated, will be placed in the employee's Official Personnel Folder (OPF).
- c. Employees will be advised of written complaints or allegations pertaining to an employee within a reasonable period after receipt by the Agency, unless the release of such information is prohibited by law or relates to a pending or ongoing investigation. If a determination is made to conduct a review of the situation, the employee(s) against whom the complaint is directed will be provided a copy of the complaint provided release is not prohibited or restricted as indicated above.

ARTICLE 33

GRIEVANCE PROCEDURE

Section 1. Purpose

The purpose of this Article is to provide a fair and mutually acceptable method for the prompt and equitable settlement of grievances filed by an employee(s), the Union or the Agency. This negotiated grievance procedure shall be the exclusive procedure available to the parties to this Agreement and bargaining unit employees for resolving grievances as hereinafter defined except as specifically provided in Section 2 of this Article.

Most grievances arise from misunderstandings that can be settled promptly and satisfactorily on an informal basis at the immediate supervisor level. The Agency and the Union agree that every effort shall be made by management and the aggrieved party(s) to settle grievances at the lowest possible level. Inasmuch as dissatisfactions and disagreements arise occasionally among people in work situations, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, or the employee's performance, or loyalty/desirability to the organization. The parties to the Agreement and employees shall maintain a healthy atmosphere in which parties can speak freely and have frank and professional discussions of problems. All grievances will be given fair and impartial consideration at each step of the procedure.

The Union shall be recognized as the representative of the aggrieved employee(s) unless such employee(s) desires to personally handle the grievance and so informs the Union and the official to whom the grievance is being presented. When the Union is representing the employee(s), it may present the grievance with or without the employee being present. No employee(s) representative other than the Union will be recognized under these procedures.

If an employee presents a grievance on his or her own behalf, the Union shall have the right to have a representative present during the grievance proceeding on official time during all steps of the grievance process.

The Union shall be given a reasonable amount of official time to gather relevant facts, prepare, and present grievances for the purpose of representing employees in the negotiated grievance and arbitration procedures.

In accordance with Section 5, grievance responses shall be transmitted simultaneously to the grievant and the grievant's designated representative, if represented. The Agency shall provide the Union representative with information in accordance with statutory requirements.

Section 2. Definitions

- a. For the purposes of this Article, a grievance means any complaint:
 1. by any unit employee concerning any matter relating to the employment of the employee;
 2. by the Union concerning any matter relating to the employment of the employees; or
 3. by any employee, the Union, or the Agency concerning:
 - (a) The effect of interpretation, or claim of breach of this exclusive bargaining agreement; or
 - (b) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

- b. Grievance Procedure Coverage. Except where established by law, rule, regulation, or excluded by the terms of this Agreement, this procedure shall be the exclusive procedure available to the parties to this Agreement, and the employees in the unit for resolving grievances subject to this procedure. Grievances excluded from consideration under this article include:
 1. Any claimed violation relating to prohibited political activities;
 2. Any complaint concerning retirement, life insurance, or health insurance;
 3. Any suspension or removal for national security reasons;
 4. Any examination, certification, or appointment, including the removal of a probationary employee during his/her probationary period;
 5. The classification of any position which does not result in the reduction in grade or pay of an employee;
 6. Notices of proposed disciplinary and adverse actions, furloughs, or removals. Issues relating to such proposals may, however, be raised in connection with any grievance over the final decision on the proposed action;
 7. Performance progress reviews;
 8. Non-selection from a group of properly ranked and certified candidates, provided another grievable issue(s) is not also alleged, e.g. illegal discrimination.

c. Terminology:

1. Accept: The grievance meets all contractual requirements for filing.
2. Reject: The grievance fails in one or more respects to meet the contractual requirements for filing. The reason for the rejection will be stated in the response rejecting the grievance.
3. Deny: The decision concludes that the evidence does not support the allegations put forth in the grievance in whole or in part. The reason for the denial will be stated in the grievance response.
4. Sustain: The grievance review concludes that the evidence supports the grievance in whole or in part.
5. Return: A grievance timely filed by an employee on his/her own behalf may be returned to the employee for clarification where the responding official determines further clarification is needed to respond to the grievance. Such a grievant will be granted up to three (3) business days, as determined by the responding official, to submit the requested clarification.

Section 3. Appeal and Grievance Options

- a. An employee affected by a removal or reduction in grade, based on adverse action (5 U.S.C., Chapter 75) or unacceptable performance (5 U.S.C., Chapter 43) may at his or her option raise the matter under a statutory appellate procedure or the negotiated grievance procedure, but not both. For the purpose of this section and pursuant to Title 5, U.S.C., Chapter 71, Section 7121 of the Statute, an employee shall be deemed to have exercised his or her option to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure when the employee files a notice of appeal under the appellate procedures or files a grievance in writing under the negotiated grievance procedure, whichever occurs first.
- b. An employee affected by a prohibited personnel practice may raise the matter under a statutory procedure (Office of the Special Counsel or MSPB) or the negotiated grievance procedure, but not both. Employees shall be deemed to have exercised their option at such time as they file a grievance in writing or initiate formal action under the appellate procedure within prescribed time frame(s).

Section 4. Contents of Grievances

At each step of the grievance procedure, grievances must state the nature of the grievance, any known violations of law(s), rule(s), regulation(s), or article(s) and

section(s) of this Agreement, all relevant facts known at the time, and the corrective action(s) requested (relief).

If the deciding official at any step believes the grievance lacks sufficient information to decide the allegations, or is otherwise deficient, he/she will issue a decision stating the alleged defect. In that case, the grievant is free to submit the grievance to the next step of the procedure. Grievances must be signed by the grievant(s) or the Union representative filing the grievance.

Grievances can be filed by an employee on his or her own behalf, or by the Union on behalf of one or more than one grievant, or on its own behalf.

Union/Management (Institutional) grievances are addressed in Section 8 of this Article.

Section 5. Procedures for Filing Grievances

Grievances must be filed within thirty (30) calendar days after the date of the event or the date that the grievant or Union became aware of or should have known of the actions which form the basis for the grievance. For the purpose of expediting the processing of grievances, the parties agree that each grievance decision will be responsive to relevant issues raised in the grievance and that specific issues allegedly not reconciled at the previous step will be sufficiently identified and adequately supported with relevant information when submitted to the succeeding step. This information will not expand on the issues established at the initial step of the grievance procedure. The grievance decision will include why the relief sought is not granted, in whole or in part.

The grievant/grievant's representative, if represented, are encouraged to orally discuss and attempt to resolve the complaint with the immediate supervisor before initiating a grievance.

All grievances will be given fair and impartial consideration at each step of the grievance procedure. Efforts to resolve the complaint informally will not extend the time limits for filing a grievance.

True copies of documents are acceptable as submissions in the procedure.

The grievant(s), or representative, shall file grievances as follows:

First Step: Grievances shall be filed with the immediate supervisor, or designee, in writing using a Union Grievance Form or equivalent writing. The grievance should be neat and legible. The grieving party may include documentary evidence he or she believes is pertinent to the grievance, as well as affidavits or statements. Grievances must be signed by the grievant(s) or the Union representative filing the grievance.

EXCEPTION: Grievances that involve back pay, discipline/adverse actions, conflict of interest determinations, and hazardous duty pay, are to be filed in accordance with Section 7 of this Article.

A meeting on the grievance can be held, and can be by telephone.

The immediate supervisor or designee shall render a decision in writing to the grievant or to the grievant's Union representative, if represented, within ten (10) work days after receipt of the grievance.

If the designated Union representative is not within the grievant's duty station, a Union representative will be authorized mileage, not to exceed fifty (50) miles round trip, to attend face-to-face grievance meetings. No per diem will be authorized.

In the event that the grievance involves matters outside the immediate supervisor's authority to resolve, the supervisor or designee will promptly notify the grievant or Union representative (if represented) and elevate the grievance to a level in the chain of command that has authority to render a decision on the grievance. Such elevation shall extend the time limits for a decision on the grievance by the time required to elevate the grievance to the appropriate level or individual to respond. The First Step decision will include the address where the Second Step grievance is to be filed.

Second Step: If the grievance remains unresolved, the grievant (or Union representative, if represented) may, within ten (10) work days of receipt of the first step decision, file the grievance in writing to the second Step official (District Manager for OFO employees, or the Director of IID for OIA employees, or their designees). The Second Step grievance will include the first step grievance and first step decision, an explanation as to why that decision was not acceptable, and any supporting documents addressing issues raised in the First Step decision. A meeting on the grievance can be held, and can be by telephone. The second step official shall review and render a written decision on the grievance within twenty (20) work days after receipt.

If the designated Union representative is not within the grievant's duty station, a Union representative will be authorized mileage, not to exceed fifty (50) miles round trip, to attend face-to-face grievance meetings. No per diem will be authorized.

Third Step: If the grievance is not resolved, a member of the National Joint Council Executive Committee, or their designee(s), may invoke arbitration within twenty five (25) work days after receipt of the decision at the second step. The procedure and conditions for invoking arbitration are contained in Article 34, Arbitration, of this Agreement.

Section 6. Grievability/Arbitrability

In the event either party should declare a grievance non-grievable or non-arbitrable, the original grievance shall be considered amended to include this issue, which will become a threshold issue in arbitration.

Either party may raise any question of grievability or arbitrability of a grievance at any time during the grievance procedure up to the date an Arbitrator is selected, if known, and provide notice to the other party.

Section 7. Back Pay, Discipline/Adverse Actions, Conflict of Interest, and Hazardous Pay

If a grievance involves back pay, discipline/adverse actions, conflict of interest determinations, and hazardous duty pay, it shall be sent to the LERD Director, or designee at the following address:

Room 3175-S
1400 Independence Avenue, SW
Washington, DC 20250

The LERD Director or designee will either respond to the grievance or refer it to the appropriate official for response. If referred, the time frame to respond is extended by up to 3 work days. If the grievant(s) remains dissatisfied following the second step response, the grievance may be pursued to arbitration in accordance with Article 34, Arbitration.

Section 8. Union/Agency (Institutional) Grievances

A Union grievance will be filed with the Director, Labor and Employee Relations Division or designee.

An Agency grievance will be filed with the Council Chairperson or designee.

Grievances must be filed within thirty (30) calendar days after the date of the event or the date that the Agency or Union became aware or should have known of the actions which form the basis for the grievance. The grievance shall be filed using the attached grievance form at the end of this article, or an equivalent in writing.

The Director, Labor and Employee Relations Division, or designee, shall respond within twenty (20) workdays after receipt of the grievance from the Council Chairperson, or designee. The Council Chairperson, or designee, shall respond within twenty (20) workdays after receipt of the grievance from the Director, Labor and Employee Relations Division, or designee.

If the grievance is not resolved, a member of the National Joint Council Executive Committee, or the Director, LERD, or their designee(s), may invoke arbitration within twenty five (25) work days after receipt of the decision. The procedure and conditions for invoking arbitration are contained in Article 34, Arbitration, of this Agreement.

If an individual is filing a grievance as a designee of the Chairperson, on behalf of the National Joint council, or as a designee of the Director, LERD, the designation will be in writing.

Section 9. Service and Time Limits

All time limits stated in the grievance procedure may be extended by written mutual consent of the parties involved. Service of grievances and the decision thereof, including arbitration notices, shall be accomplished either by personal delivery, U.S. Mail, facsimile, or by other recognized delivery service(s) (e.g., FedEx, etc.). As applicable, time limits shall begin to run from the day following the date of receipt of the document that triggers that particular time limit. Service will be deemed timely if the required document is personally delivered, postmarked, confirmed, or receipted within the specified time limit. The parties agree that they will act in good faith in the receipting for documents and will not attempt to evade the service of documents upon them.



AGENCY USE ONLY
GRIEVANCE No _____

THIS GRIEVANCE IS FILED UNDER THE PROVISIONS OF THE LMA:

Grievant's Name LAST		FIRST	MI	Contact Telephone #
Address to Which Grievance Response Must be Mailed.				
Position Title, Series, Grade, and Duty Station			OFO/OIA	District/Region
Date of Alleged Violation	Official Against Whom Filed	Local Number	Council Name	

GRIEVANCE DESCRIPTION – Nature of the grievance (reason for dissatisfaction), including dates, applicable law(s), rule(s), regulation(s), Collective Bargaining Agreement Article(s) allegedly violated, names and addresses of witnesses where applicable may be included, and supporting documents and evidence. (Attach additional pages as necessary)

EFFORTS TO RESOLVE (NOT REQUIRED) - written description of verbal and written supervisory decisions and why those decisions were not acceptable

CORRECTIVE ACTION DESIRED

Grievant Signature	Date
Union Representative's Signature (if represented)	Filing Date
Print Union Official Name, Title, and Location	Telephone No.

ARTICLE 34

ARBITRATION

Section 1. Invoking Arbitration

If the grievance is not settled under the negotiated grievance procedure, it may be submitted to arbitration within twenty-five (25) workdays from the date the Agency's or Union's final decision is received. Only the Council, through the Chairperson, NJC (or designee) or the Agency, through the Director, LERD (or designee) may invoke arbitration.

Section 2. Appointment of Arbitrator (Traditional)

- a. Within five (5) workdays of the date of the notice to seek arbitration, the Agency shall request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven (7) impartial persons qualified to act as Arbitrators. The parties shall equally share the cost of the processing fee.
- b. Within ten (10) workdays of receipt of such a list, the moving party shall contact the other party by phone to agree upon one of the listed Arbitrators.
- c. If they cannot agree, the Agency and the Union will each strike one Arbitrator's name from the list of seven (7) Arbitrators and will then repeat this procedure until one name remains. This will be the duly selected Arbitrator. The parties shall alternate in striking names. The first party to strike on each case invoked for arbitration will alternate between the parties. A striking log will be maintained by LERD to reflect which party strikes first on each case. The Agency will strike first on the first case invoked for arbitration on or after the effective date of this Agreement.
- d. This process shall be relied upon unless the parties mutually elect to use the arbitration panels established in Section 3.
- e. The Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an arbitrator to hear the case in the event either party refuses to participate in the selection of an Arbitrator or unduly delays such a selection.

Section 3. Arbitration Panels

- a. The parties agree to maintain the existing panels of Arbitrators. Within ninety (90) days after the effective date, the parties will replenish any panel that does not have a full complement using the procedures in 3(b) below and perform the review as described in 3(g) below.

- b. Each panel shall be comprised of six (6) Arbitrators. Arbitrators serving on a panel may hear either regular or expedited cases.
- c. Arbitrators shall be assigned based upon the date of the invocation of arbitration. The invocation shall specify if the case is a regular or expedited arbitration.
- d. Arbitrators selected by the parties shall be placed on a roster in alphabetical order and shall be selected in turn. If an Arbitrator is not available for a hearing, the Arbitrator shall be passed and not selected again until the time comes for normal selection of that Arbitrator again.
- e. If, for any reason, arbitration is canceled, the Arbitrator scheduled to hear the case would be placed on top of the respective roster.
- f. If possible, the Arbitrator shall hear a case within 120 calendar days of notification by the moving party, unless the parties mutually agree otherwise. A copy of the notification to the arbitrator shall be simultaneously served upon the other party. If the Arbitrator is unavailable to conduct the hearing within six months from notification of selection, the Arbitrator's name shall be placed at the bottom of the panel rotation list. Should an Arbitrator decline to hear a case, he or she shall be removed from the panel.
- g. The parties shall review the arbitration panels annually, during the anniversary month of the effective date of the Agreement. At that time, each party may remove one (1) Arbitrator from the list from each panel, and the parties shall jointly select replacement Arbitrator(s), and establish a process to strike and select any cases previously assigned. In addition, the parties may at any time mutually agree to discontinue the service of Arbitrators on the panels and select others to replace them.

Section 4. Pre-hearing Conference

The parties will arrange for a pre-hearing conference, with or without the Arbitrator, to consider possible settlement and means of expediting the hearing. For example, this can be done by reducing the issue(s) to writing, stipulating facts, outlining offers of proof, authenticating proposed exhibits, exchanging lists of witnesses, or waiving the use of a transcript.

Section 5. Billing Information

Prior to the hearing, the parties shall give the name, position, and address of their designated representatives to whom the Arbitrator shall forward billings and decisions. It will be the Arbitrator's responsibility to make sure that he/she has such information prior to the close of the hearings.

Section 6. Arbitration Procedures

- a. Consistent with this Agreement, the Arbitrator shall determine the procedures used to conduct the arbitration.
- b. All parties shall be entitled to call and cross-examine witnesses and shall be entitled to a hearing before the Arbitrator.
- c. The arbitration hearing will be conducted as an oral proceeding. Either party may file a brief and/or request a verbatim transcript at its expense. If either party requests a transcript, that party shall bear the entire cost of such transcript.
- d. The arbitration hearing will be held on Agency premises or another public facility during the regular work hours of the basic workweek at a location within the commuting area of the grievant's duty station, unless the grievant has transferred from the site of the dispute. In such cases, the hearing will be held within the commuting area of the site of the dispute, if possible. All participants in the hearing shall be on official time, however employees assigned to other than the day shift must be identified by the Union as a witness prior to the beginning of the administrative workweek during which the hearing is scheduled.
- e. The parties recognize each other's right to dismiss any pending arbitration for failure to prosecute should the moving party fail to take reasonable steps to have a hearing held within one (1) year of the case being invoked.
- f. If the parties fail to agree on a joint submission of the issue for arbitration, each shall submit a separate submission and the Arbitrator shall determine the issue or issues to be heard.
- g. The Arbitrator shall have the authority to define the explicit terms of this Agreement. The Arbitrator shall have no authority to add to, subtract from, alter, amend, or modify any provision of this Agreement.
- h. The Arbitrator's decision and award shall be final and binding. However, either party may file an exception to the Arbitrator's award in accordance with applicable law and regulations.
- i. The Arbitrator shall be requested by the parties to render a decision as quickly as possible, but in any event not later than thirty (30) calendar days after the close of the record.
- j. At least seven (7) calendar days prior to the scheduled hearing date, the parties will exchange proposed witness lists. Only material and relevant witnesses shall be called. If any listed witness is opposed by the other party, the Arbitrator will be contacted at that time to resolve the issue.

- k. If either party wishes to postpone or cancel a hearing, that party shall pay the full costs associated with the postponement and/or cancellation, unless the parties agree otherwise.
- l. Unless otherwise provided by law, each party shall be responsible for payment of their respective travel-related expenses of approved witnesses who are Agency employees.
- m. The Arbitrator's fee and the expenses of the Arbitrator, shall be borne equally by the Agency and the Council.
- n. The Arbitrator shall have full authority to award attorney fees in accordance with provisions of the Civil Service Reform Act.
- o. The designated Union representative will be allowed up to forty (40) hours of official time for the purpose of arbitration. This does not include time spent in the actual arbitration hearing.
- p. The Agency will reimburse the Union representative for mileage up to 100 miles to attend the arbitration hearing.
- q. Absent a negative Arbitrator's decision upon the arbitrability of a grievance, the Arbitrator shall hear arguments regarding both the arbitrability and the merits of the case at the same hearing. However, the parties may mutually agree otherwise in complex cases which would involve several days of hearing.

Section 7. Expedited Arbitration Procedure

- a. When arbitration is invoked in accordance with this Article, the party invoking arbitration may make a request in writing that an expedited method of arbitration be utilized.
- b. The expedited procedure will be used for informal actions, as defined in Article 32, Disciplinary and Adverse Actions, performance ratings (not involving unacceptable performance), leave usage or denial, formal letters of reprimand, and for such cases as the parties mutually agree.
- c. Conduct of Hearing: The parties agree that the primary purpose of this expedited arbitration procedure is to provide a swift and economical method for the resolution of identified disputes. The parties agree to take positive action to see this purpose is fulfilled; and, in addition, the arbitrator shall have the authority to take steps necessary to see the purpose is fulfilled. To this end, the following guidelines will apply:
 - 1. The hearing shall be informal.

2. No briefs shall be filed or transcripts made.
3. Formal rules of evidence shall not apply.
4. The Arbitrator shall have the obligation of assuring that the necessary facts and the representatives of the parties bring considerations in the most expeditious manner. In all respects, the Arbitrator shall assure that the hearing is a fair one.
5. The Arbitrator will be urged to issue a bench decision at the hearing, but in any event, the Arbitrator shall render the decision within forty-eight (48) hours after the conclusion of the hearing. This decision will be final and binding on both parties. However, either party may file exceptions to an award with the Federal Labor Relations Authority under regulations prescribed by the Authority.

ARTICLE 35

USE OF OFFICIAL FACILITIES

Section 1. General

- a. The Union's access to and use of the Agency's communication resources shall not interfere with the mission or operation of the Agency.
- b. Any and all Union communications using Agency communication resources or distributed on Agency premises will not violate the law, advocate violating the law, or contain items relating to partisan political matters.
- c. The Union shall be responsible for the proper care and use of the facilities, services, and equipment provided in this Article.

Section 2. Meeting Space

The Agency agrees to provide a reasonably-sized Government conference room for the National Joint Council for national labor-management meetings in Washington, DC.

Upon request, management officials shall permit the use of government owned or leased space by Union locals for meetings held outside business hours, provided space is available and use of such space does not conflict with the performance of official functions. The Union is responsible for exercising reasonable care in the use of such facilities.

Section 3. Space for Discussions

The Agency agrees that a Union representative is entitled to privacy when conducting an authorized discussion or presentation of a grievance with Agency officials.

Section 4. Use of Bulletin Boards

The Union will be provided bulletin board space in Agency owned or controlled facilities.

One exclusive bulletin board for union postings will be provided in these locations if requested by the Union. Items placed on such bulletin boards must be in accordance with limits imposed on labor organizations engaging in protected activity.

Section 5. Distribution

Union representatives may distribute material in all facilities where bargaining unit employees exist, on Agency-occupied premises in work areas to individual employees before and after scheduled working hours subject to internal security requirements, or in

the non-work areas during scheduled work hours, provided that both the employee distributing and the employee reading such material are on their own time (breaks, lunch, or off the clock). Distribution of material will not pose an undue disruption of work activities.

Section 6. Use of Equipment

a. At Headquarters:

Copiers maintained by the Agency in Washington, DC, shall be made available to the members of the Council while in DC, upon request, for purposes associated with employee representation. The extent of such reproduction and the numbers of copies requested shall be reasonable as determined by the official receiving the request.

If available, access to a computer with Internet/Intranet capability shall be provided to members of the Council, upon request, for official labor-management business. Also, reasonable use of FSIS inter-office mail and facsimile machines will be allowed, upon request, for official labor-management business. The Council will be provided mailing privileges consistent with applicable law. Meetings space will be provided for the conducting of official labor-management relations business or internal union business provided such use is not conducted on official time and does not exceed one hour.

b. In the Field:

1. **Computers.** Reasonable access to government computers will be made available to Council and, if available, to Local Presidents for conducting representational activities, provided such use does not disrupt the official business of the Agency.
2. **Faxes and copiers.** If available at the work site, designated Union representatives will be granted reasonable access to Agency facsimile machines and copiers for the performance of official representational duties.
3. **Telephones.** Designated union representatives will be permitted the use of Agency-leased or controlled telephones to fulfill their functions under law and this Agreement. Use of telephones provided and paid for by the official establishment may be permitted for use of official union business provided there is no cost and use does not interfere with official business of the Agency.

In the interest of maintaining communication, each Council President will be issued a Government Calling Card for use limited to contacting Agency management in the performance of their representational duties. In

accepting the card, the Council Presidents agree that they have exclusive use of the card and acknowledge that it is subject to Agency monitoring as with any government issued calling card.

4. Email and Internet/Intranet. Council Presidents shall have access to the Agency's email, internet, and intranet. The chairman of the NJC shall have access to an Agency issued Blackberry type device, with telephone access, for the purpose of carrying out representational matters. Access and use shall be subject to law, rules, regulations, and Agency policies.

Section 7. E-Mail/Internet/Intranet

The parties understand that access to and use of the Agency's electronic mail shall not interfere with the mission or operation of the Agency. Therefore, the Union will be provided access to and use of the Agency's electronic mail, subject to the following:

- a. The Union agrees its access and use for activity by designated Union representatives will comply with applicable laws and government-wide regulations, Agency policies in effect and this Agreement.
- b. Access and use will be on official time of representatives and employees, or on non-work time.
- c. Electronic mail cannot be used for internal union business.
- d. Consistent with law, electronic mail transmissions shall not be used to urge or promote lobbying activities by non-union representative employees either in support of or in opposition to any legislation or appropriation of Congress.
- e. Electronic email system may be used to communicate with Agency officials and individual bargaining unit employees; however, it may not be used to communicate in mass mailings without advance approval from the immediate supervisor, or designee. Requests for such mass mailings will be infrequent and not unduly denied.

Section 8. Bargaining Unit Employee Information

Upon request of the NJC Chairperson, or designee, the Agency will provide annually an electronic list of the names of bargaining unit employees, positions titles, grades, and duty stations of all employees in the bargaining unit.

Section 9. Use of Internet

The parties agree that access to and use of the Internet through government computers by designated Union representatives will be for official labor-management business only. Such use will not interfere with the official business of the Agency. The Union agrees its

use will comply with all applicable government-wide and Agency policies and this Agreement.

Section 10. Work/Office Space

The Council Presidents, National Joint Council, will be provided adequate work space for conducting representational responsibilities. The Union shall be provided one locking 4-drawer file cabinet per District, and one shall be provided to each Council President.

Section 11. Contact Information

Employees may locate NJC Council Presidents and Agency officials through the Agency's Email address book and Employee Locator available on the USDA Webpage.

ARTICLE 36

DUES WITHHOLDING

Section 1. Authorization and Eligibility

Members of the unit are authorized to effect voluntary allotment for the payment of dues of Locals affiliated with the Council subject to the procedures and stipulations set forth in the Memorandum of Understanding between the U.S. Department of Agriculture and the American Federation of Government Employees currently in effect, as modified in accordance with this Agreement. By this Labor Management Agreement, the National Joint Council of Food Inspection Locals, AFGE, concurs with the Memorandum of Understanding and agrees that for the duration of this Agreement it will continue to designate the National Office of the American Federation of Government Employees as the recipient of dues allotted pursuant to 5 U.S.C., Section 7115. Union dues shall be deducted from an employee's pay each pay period and remittances will be made each pay period to the National Joint Council, or designee, when the following conditions have been met. To be eligible to make a voluntary allotment for the payment of Union dues, an employee must:

- a. Be a bargaining unit employee;
- b. Have a net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues;
- c. Apply for membership in the Union by requesting the allotment on the prescribed form, SF-1187 Form (Request and Payroll Deduction for Labor Organization Dues); and
- d. Have the authorized Union official certify the form.

Section 2. Union Responsibilities

- a. Obtain and distribute the SF-1187 (Request for Payroll Deductions for Labor Organization Dues) Form to its members;
- b. Certify on the SF-1187 Form the amount of dues to be withheld initially each biweekly pay period, and identify the Local to receive the dues deductions;
- c. Forward the SF-1187 Form to the Human Resource Field Office (HRFO), at no expense to the Agency;
- d. Furnish written notification to the servicing HRFO concerning the titles of Union officials authorized to certify the SF-1187 Forms; and

- e. Provide the servicing HRFO with written notification concerning any changes in the amount of Union deductions; where dues remittances should be sent; the name of any employee who has been expelled or ceases to be a member in good standing in the Union within ten (10) days of such determination; and the name of any employee on check-off who transfers from one Local to another, and any change in the Local that receives dues.

Section 3. Agency Responsibilities

- a. Upon request, the Agency shall furnish and process the SF-1187 and SF-1188 (Cancellation of Payroll Deductions for Labor Organization Dues) forms in accordance with the terms and conditions specified on the forms and this Agreement;
- b. Automatically reinstate the dues withholding of a bargaining unit employee returning to a bargaining unit position from a temporary reassignment or a temporary promotion to a position outside the bargaining unit;
- c. Automatically reinstate the dues withholding of a bargaining unit employee returning to pay status from a non-pay status (e.g., LWOP);
- d. Dues deductions will be effective as soon as possible, but in no case will it be later than two (2) full pay periods following receipt of the SF-1187 Form by HRFO. Changes in the amount deducted for Union dues will be effective as soon as possible, but in no case will it be later than two (2) full pay periods following receipt by the HRFO of the Union's certification of changes in its dues;
- e. Deductions and remittances will be made each pay period; and
- f. Provide the Union the title and address of Agency personnel authorized to receive notification under this article.

Section 4. Termination of Allotments

- a. Dues will terminate automatically:
 - 1. Upon loss of exclusive recognition by the Union, effective at the beginning of the first full pay period after such loss of recognition;
 - 2. When the dues withholding agreement is terminated;
 - 3. When an employee ceases to be eligible for inclusion in the Union, such as through promotion to a non-bargaining unit position; and

4. When an employee ceases to be in good standing, effective with the first full pay period after receipt by HRFO of written notice from the authorized Union official.
- b. Voluntary dues termination:
- An employee may submit a SF-1188 Form, in duplicate, for the revocation of an allotment within thirty (30) days of the anniversary date when the bargaining unit employee joined the Union. Human Resource Field Office will process the request within two (2) full pay periods and retain a copy for the payroll records. A copy of the form shall be returned to the Union and the employee at the address provided on the SF-1188 form.

Section 5. Administrative Errors

Administrative errors in remittance will be corrected by reductions and corrections in subsequent remittance checks. If the employee organization is not scheduled to receive a remittance check after discovery of the error, the employee organization agrees to promptly refund the amount of erroneous remittance. However, the Agency will waive the requirements for remittance where statutory conditions for such waiver are met.

Section 6. Disputes

In those cases wherein the Agency and the Union disagree regarding the eligibility of an employee for dues withholding, both parties acknowledge that such representational disputes are the sole function of the Federal Labor Relations Authority.

Dues withholdings will terminate for employees in positions where there is a dispute as to whether the position is appropriate for inclusion in the unit.

The Union retains the right to pursue any appropriate remedy if it is determined by a third party upon challenge that an employee was improperly removed from the bargaining unit and/or taken off dues deduction.

ARTICLE 37

COMMUNICATIONS

Section 1. Policy

The Parties recognize that a mutual commitment to cooperation promotes both the efficiency of the Agency's operations and the well-being of its employees.

Section 2. Distribution of Regulations

The Agency will continue to provide the Chairperson of the Council or designee with current Agency regulations, directives, and other issuances; as well as Departmental regulations and issuances.

All unit employees will be notified promptly and in writing of any significant changes in policies or regulations affecting personnel policies, practices, and conditions of employment.

Section 3. Distribution of Agreement

- a. The Agency will reproduce and provide copies of this Agreement to the Union in quantities necessary for ratification purposes.
- b. The Agency will provide, at no cost to the Union, copies of the Agreement, printed on 8-1/2" x 11" paper, in type that can be read easily, with a table of contents, index, and glossary of terms, to each employee on the distribution date and to all employees entering on duty after that date. The Agency will also provide a maximum of one hundred (100) additional copies to the Union.
- c. The distribution as shown in this section shall be made within ninety (90) days of the effective date of this Agreement or as soon as possible thereafter.

ARTICLE 38

DURATION OF AGREEMENT

Section 1. Effective Date

This Agreement shall be implemented and become effective:

- a. When it has been reviewed pursuant to Title 5, U.S.C., Chapter 71, Section 7114(c) of the Statute; or
- b. When it has been completed pursuant to Title 5, U.S.C., Section 7119(b)(2) if binding arbitration is necessary under the parties' ground rules.

Section 2. Duration of Agreement

This Agreement is effective on _____, and shall remain in full force and effect for a period of three (3) years after its effective date. It shall be renegotiated if either party gives the other party written notice of its intention to renegotiate this Agreement no less than sixty (60) days and no more than one hundred and five (105) days prior to its termination date.

Section 3. Renewal

If neither party serves written notice of intent to renegotiate, this Agreement shall be automatically renewed for one (1) year periods after the third year described above; it will be renegotiated if either party serves written notice on the other of intent to renegotiate no less than sixty (60) days or no more than one hundred and five (105) days prior to the termination of an extension year. Such written notice concerning the above shall also be accompanied by initial written proposals, which may be supplemented during renegotiations.

Negotiations shall begin no later than thirty (30) days after these conditions have been met. If renegotiations of an agreement are in progress, but not completed upon the termination date of this Agreement, this Agreement shall be automatically extended until a new agreement is in effect.

Section 4. Negotiability Disputes

The Parties may mutually agree to conclude a new Agreement exclusive of those issues declared non-negotiable by the Agency. If such a partial Agreement is concluded, it will be reopened for negotiation on the disputed issues in the following circumstances:

- a. The Agency withdraws the claim of non-negotiability,
- b. The FLRA declares the equivalent language to be negotiable,

- c. The Union revises its proposal(s) to overcome questions of negotiability, or
- d. Language awarded by binding arbitration is invalidated by the FLRA pursuant to 5 C.F.R. Part 2425.

In the case of any of the above circumstances, negotiations shall commence within thirty (30) calendar days of the action, or as mutually agreed by the parties. Any agreement by the parties on these issues will be included as part of this Agreement and will have the same duration.

IN WITNESS THEREOF, the parties hereto have caused this National Labor-Management Relations Agreement to be executed on this _____ day of _____ (month) _____ (year).

For the United States Department of
Agriculture, Food Safety and Inspection
Services

For the National Joint Council of Food
Inspection Locals, AFGE

ALFRED V. ALMANZA
Administrator
Food Safety and Inspection Services

STANLEY PAINTER
Chairman
National Joint Council of Food Inspection
Locals

WILLIAM P. MILTON, JR.
Assistant Administrator
Office of Management

DAVID RODRIGUES
Chief Negotiator
AFGE

KENNETH PETERSON
Assistant Administrator
Office of Field Operations

ALEX GONZALEZ
Council President - Southwestern
NJC

WILLIAM JAMES
Deputy Assistant Administrator
Office of International Affairs

TERRY JENSEN
Council President - Northern
NJC

ROBINN A. DECECCO
Director
Labor and Employee Relations Division

KEN WARD
Council President – North Central
NJC

LOUISE A. FOX
Manager
Human Resources Field Office

TRENT BERHOW
Council President - Midwest
NJC

KIMBERLY MOSELEY
Deputy Director
Labor and Employee Relations Division

ROLAND W. FRAVEL III
Branch Chief
Labor and Employee Relations Division

MYRON GREENHOW
Labor Relations Specialist
Labor and Employee Relations Division

APPENDIX

U.S. Code

[TITLE 5](#) > [PART III](#) > [Subpart D](#) > [CHAPTER 55](#) > [SUBCHAPTER V](#) > § 5550b

§ 5550b. Compensatory time off for travel

- (a) *Notwithstanding section [5542 \(b\)\(2\)](#), each hour spent by an employee in travel status away from the official duty station of the employee, that is not otherwise compensable, shall be treated as an hour of work or employment for purposes of calculating compensatory time off.*
- (b) An employee who has any hours treated as hours of work or employment for purposes of calculating compensatory time under subsection (a), shall not be entitled to payment for any such hours that are unused as compensatory time.

Compensatory Time Off for Travel

(from OPM Web Site - http://www.opm.gov/oca/pay/HTML/compensatory_time.asp)

Description

Compensatory time off for travel is earned by an employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable.

Employee Coverage

Compensatory time off for travel may be earned by an "employee" as defined in 5 U.S.C. 5541(2) who is employed in an "Executive agency" as defined in 5 U.S.C. 105, without regard to whether the employee is exempt from or covered by the overtime pay provisions of the Fair Labor Standards Act of 1938, as amended. This includes employees in senior-level (SL) and scientific or professional (ST) positions, but not members of the Senior Executive Service or Senior Foreign Service, Foreign Service officers, or prevailing rate (wage grade) employees.

“Compensable”

Compensatory time off for travel may only be earned for time in a travel status when such time is not otherwise "compensable." Compensable refers to periods of time creditable as hours of work for the purpose of determining a specific pay entitlement. For example, certain travel time may be creditable as hours of work under the overtime pay provisions in 5 CFR 550.112(g) or 51.422. (See fact sheet on [hours of work for travel](#).)

Creditable Travel

To be creditable under this provision, travel must be officially authorized. In other words, travel must be for work purposes and must be approved by an authorized agency official or otherwise authorized under established agency policies.

For the purpose of compensatory time off for travel, time in a travel status includes—

- Time spent traveling between the official duty station and a temporary duty station;
- Time spent traveling between two temporary duty stations; and
- The "usual waiting time" preceding or interrupting such travel (e.g., waiting at an airport or train station prior to departure). The employing agency has the sole and exclusive discretion to determine what is creditable as "usual waiting time." An "extended" waiting period—i.e., an unusually long wait during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes—is not considered time in a travel status.

Commuting Time

- Travel outside of regular working hours between an employee's home and a temporary duty station or transportation terminal outside the limits of his or her official duty station is considered creditable travel time. However, the agency must deduct the employee's normal home-to-work/work-to-home commuting time from the creditable travel time.
- Travel outside of regular working hours between a worksite and a transportation terminal is creditable travel time, and no commuting time offset applies.
- Travel outside of regular working hours to or from a transportation terminal within the limits of the employee's official duty station is considered equivalent to commuting time and is not creditable travel time.

Crediting and Use

Compensatory time off for travel is credited and used in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes). Employees must comply with their agency's procedures for requesting credit within the time period required by the agency. Employees must also comply with their agency's policies and procedures for scheduling and using earned compensatory time off for travel.

Forfeiture

Compensatory time off for travel is forfeited—

- If not used by the end of the 26th pay period after the pay period during which it was earned. (See Notes 1 and 2.)
- Upon voluntary transfer to another agency;
- Upon movement to a noncovered position; or
- Upon separation from the Federal Government. (See Note 1.)

Under no circumstances may an employee receive payment for unused compensatory time off for travel.

Limitations

Compensatory time off for travel may not be considered in applying the biweekly or annual premium pay caps or the aggregate limitation on pay. There is no limitation on the amount of compensatory time off for travel an employee may earn.

References

5 U.S.C. 5550b
5 CFR 550, subpart N

U.S. Office of Personnel Management –

(from OPM Website - <http://www.opm.gov/oca/compmemo/2005/2005-03-att1.asp>)

Questions and Answers on Compensatory Time Off for Travel

Q1. What is compensatory time off for travel?

A. Compensatory time off for travel is a separate form of compensatory time off that may be earned by an employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable.

Q2. Are all employees covered by this provision?

A. The compensatory time off provision applies to an "employee" as defined in 5 U.S.C. 5541(2) who is employed in an "Executive agency" as defined in 5 U.S.C. 105, without regard to whether the employee is exempt from or covered by the overtime pay provisions of the Fair Labor Standards Act of 1938, as amended. This includes employees in senior-level (SL) and scientific or professional (ST) positions, but not members of the Senior Executive Service or Senior Foreign Service, Foreign Service officers, or prevailing rate (wage grade) employees.

Q3. Are intermittent employees eligible to earn compensatory time off for travel?

A. No. Compensatory time off for travel may be used by an employee when the employee is granted time off from his or her scheduled tour of duty established for leave purposes. (See 5 CFR 550.1406(b).) Also see the definition of "scheduled tour of duty for leave purposes" in 5 CFR 550.1403. Employees who are on intermittent work schedules are not eligible to earn and use compensatory time off for travel because they do not have a scheduled tour of duty for leave purposes.

Q4. What qualifies as travel for the purpose of this provision?

A. To qualify for this purpose, travel must be officially authorized. In other words, travel must be for work purposes and must be approved by an authorized agency official or otherwise authorized under established agency policies. (Also see Q5.)

Q5. May an employee earn compensatory time off when he or she travels in conjunction with the performance of union representational duties?

A. No. The term "travel" is defined at 5 CFR 550.1403 to mean officially authorized travel—i.e., travel for work purposes approved by an authorized agency official or otherwise authorized under established agency policies. The definition specifically

excludes time spent traveling in connection with union activities. The term "travel for work purposes" is intended to mean travel for agency-related work purposes. Thus, employees who travel in connection with union activities are not entitled to earn compensatory time off for travel because they are traveling for the benefit of the union, and not for agency-related work purposes.

Q6. An employee receives compensatory time off for travel only for those hours spent in a travel status. What qualifies as time in a travel status?

A. Travel status includes only the time actually spent traveling between the official duty station and a temporary duty station, or between two temporary duty stations, and the usual waiting time that precedes or interrupts such travel.

Q7. Is travel in connection with a permanent change of station (PCS) creditable for compensatory time off for travel?

A. Although PCS travel is officially authorized travel, it is not travel between an official duty station and a temporary duty station or between two temporary duty stations. Therefore, it is not considered time in a travel status for the purpose of earning compensatory time off for travel.

Q8. What is meant by "usual waiting time"?

A. Airline travelers generally are required to arrive at the airport at a designated pre-departure time (e.g., 1 or 2 hours before the scheduled departure, depending on whether the flight is domestic or international). Such waiting time at the airport is considered usual waiting time and is creditable time in a travel status. In addition, time spent at an intervening airport waiting for a connecting flight (e.g., 1 or 2 hours) also is creditable time in a travel status. In all cases, determinations regarding what is creditable as "usual waiting time" are within the sole and exclusive discretion of the employing agency.

Q9. What if an employee experiences an "extended" waiting period?

A. If an employee experiences an unusually long wait prior to his or her initial departure or between actual periods of travel during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes, the extended waiting time outside the employee's regular working hours is not creditable time in a travel status. An extended waiting period that occurs during an employee's regular working hours is compensable as part of the employee's regularly scheduled administrative workweek.

Q10. Do meal periods count as time in a travel status?

A. Meal periods during actual travel time or waiting time are not specifically excluded from creditable time in a travel status for the purpose of earning compensatory time off for travel. However, determinations regarding what is creditable as "usual waiting time" are within the sole and exclusive discretion of the employing agency.

Q11. What happens once an employee reaches a temporary duty station?

A. Time spent at a temporary duty station between arrival and departure is not creditable travel time for the purpose of earning compensatory time off for travel. Time in a travel status ends when the employee arrives at the temporary duty worksite or his or her lodging in the temporary duty station, wherever the employee arrives first. Time in a travel status resumes when an employee departs from the temporary duty worksite or his or her lodging in the temporary duty station, wherever the employee departs last.

Q12. When is it appropriate for an agency to offset creditable time in a travel status by the amount of time the employee spends in normal commuting between home and work?

A. If an employee travels directly between his or her home and a temporary duty station outside the limits of the employee's official duty station (e.g., driving to and from a 3-day conference), the agency must deduct the employee's normal home-to-work/work-to-home commuting time from the creditable travel time. The agency must also deduct an employee's normal commuting time from the creditable travel time if the employee is required—outside of regular working hours—to travel between home and a transportation terminal (e.g., an airport or train station) outside the limits of the employee's official duty station.

Q13. What if an employee travels to a transportation terminal within the limits of his or her official duty station?

A. An employee's time spent traveling outside of regular working hours to or from a transportation terminal within the limits of his or her official duty station is considered equivalent to commuting time and is not creditable time in a travel status for the purpose of earning compensatory time off for travel.

Q14. What if an employee travels from a worksite to a transportation terminal?

A. If an employee travels between a worksite and a transportation terminal, the travel time outside regular working hours is creditable as time in a travel status, and no commuting time offset applies. For example, after completing his or her workday, an employee may travel directly from the regular worksite to an airport to attend an out-of-town meeting the following morning. The travel time between the regular worksite and the airport is creditable as time in a travel status.

Q15. What if an employee elects to travel at a time other than the time selected by the agency?

A. When an employee travels at a time other than the time selected by the agency, the agency must determine the estimated amount of time in a travel status the employee would have had if the employee had traveled at the time selected by the agency. The agency must credit the employee with the lesser of (1) the estimated time in a travel

status the employee would have had if the employee had traveled at the time selected by the agency, or (2) the employee's actual time in a travel status at a time other than that selected by the agency.

Q16. How is an employee's travel time calculated for the purpose of earning compensatory time off for travel when the travel involves two or more time zones?

A. When an employee's travel involves two or more time zones, the time zone from point of first departure must be used to determine how many hours the employee actually spent in a travel status for the purpose of accruing compensatory time off for travel. For example, if an employee travels from his official duty station in Washington, DC, to a temporary duty station in San Francisco, CA, the Washington, DC, time zone must be used to determine how many hours the employee spent in a travel status. However, on the return trip to Washington, DC, the time zone from San Francisco, CA, must be used to calculate how many hours the employee spent in a travel status.

Q17. How is compensatory time off for travel earned and credited?

A. Compensatory time off for travel is earned for qualifying time in a travel status. Agencies may authorize credit in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes). Agencies must track and manage compensatory time off for travel separately from other forms of compensatory time off.

Q18. Is there a limitation on the amount of compensatory time off for travel an employee may earn?

A. No.

Q19. How does an employee request credit for compensatory time off for travel?

A. Agencies may establish procedures for requesting credit for compensatory time off for travel. An employee must comply with his or her agency's procedures for requesting credit of compensatory time off, and the employee must file a request for such credit within the time period established by the agency. An employee's request for credit of compensatory time off for travel may be denied if the request is not filed within the time period required by the agency.

Q20. Is there a form employees must fill out for requests to earn or use compensatory time off for travel?

A. There is not a Governmentwide form used for requests to earn or use compensatory time off for travel. However, an agency may choose to develop a form as part of its internal policies and procedures.

Q21. How does an employee use accrued compensatory time off for travel?

A. An employee must request permission from his or her supervisor to schedule the use of his or her accrued compensatory time off for travel in accordance with agency policies and procedures. Compensatory time off for travel may be used when the employee is granted time off from his or her scheduled tour of duty established for leave purposes. Employees must use accrued compensatory time off for travel in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes).

Q22. In what order should agencies charge compensatory time off for travel?

A. Agencies must charge compensatory time off for travel in the chronological order in which it was earned, with compensatory time off for travel earned first being charged first.

Q23. How long does an employee have to use accrued compensatory time off for travel?

A. An employee must use his or her accrued compensatory time off for travel by the end of the 26th pay period after the pay period during which it was earned or the employee must forfeit such compensatory time off, except in certain circumstances. (See Q24 and Q25 for exceptions.)

Q24. What if an employee is unable to use his or her accrued compensatory time off for travel because of uniformed service or an on-the-job injury with entitlement to injury compensation?

A. Unused compensatory time off for travel will be held in abeyance for an employee who separates, or is placed in a leave without pay status, and later returns following (1) separation or leave without pay to perform service in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102) and a return to service through the exercise of a reemployment right or (2) separation or leave without pay due to an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81. The employee must use all of the compensatory time off for travel held in abeyance by the end of the 26th pay period following the pay period in which the employee returns to duty, or such compensatory time off for travel will be forfeited.

Q25. What if an employee is unable to use his or her accrued compensatory time off for travel because of an exigency of the service beyond the employee's control?

A. If an employee fails to use his or her accrued compensatory time off for travel before the end of the 26th pay period after the pay period during which it was earned due to an exigency of the service beyond the employee's control, the head of an agency, at his or her sole and exclusive discretion, may extend the time limit for up to an additional 26 pay periods.

Q26. May unused compensatory time off for travel be restored if an employee does not use it by the end of the 26th pay period after the pay period during which it was earned?

A. Except in certain circumstances (see Q24 and Q25), any compensatory time off for travel not used by the end of the 26th pay period after the pay period during which it was earned must be forfeited.

Q27. What happens to an employee's unused compensatory time off for travel upon separation from Federal service?

A. Except in certain circumstances (see Q24), an employee must forfeit all unused compensatory time off for travel upon separation from Federal service.

Q28. May an employee receive a lump-sum payment for accrued compensatory time off for travel upon separation from an agency?

A. No. The law prohibits payment for unused compensatory time off for travel under any circumstances.

Q29. What happens to an employee's accrued compensatory time off for travel upon transfer to another agency?

A. When an employee voluntarily transfers to another agency (including a promotion or change to lower grade action), the employee must forfeit all of his or her unused compensatory time off for travel.

Q30. What happens to an employee's accrued compensatory time off for travel when the employee moves to a position that is not covered by the regulations in 5 CFR part 550, subpart N?

A. When an employee moves to a position in an agency not covered by the compensatory time off for travel provisions (e.g., the United States Postal Service), the employee must forfeit all of his or her unused compensatory time off for travel. However, the gaining agency may use its own legal authority to give the employee credit for such compensatory time off.

Q31. Is compensatory time off for travel considered in applying the premium pay and aggregate pay caps?

A. No. Compensatory time off for travel may not be considered in applying the biweekly or annual premium pay limitations established under 5 U.S.C. 5547 or the aggregate limitation on pay established under 5 U.S.C. 5307.

Q32. When are criminal investigators who receive availability pay precluded from earning compensatory time off for travel?

A. Compensatory time off for travel is earned only for hours not otherwise compensable. The term "compensable" is defined at 5 CFR 550.1403 to include any hours of a type creditable under other compensation provisions, even if there are compensation caps limiting the payment of premium pay for those hours (e.g., the 25 percent cap on availability pay and the biweekly premium pay cap). For availability pay recipients, this means hours of travel are not creditable as time in a travel status for compensatory time off purposes if the hours are (1) compensated by basic pay, (2) regularly scheduled overtime hours creditable under 5 U.S.C. 5542, or (3) "unscheduled duty hours" as described in 5 CFR 550.182(a), (c), and (d).

Q33. What constitutes "unscheduled duty hours" as described in 5 CFR 550.182(a), (c), and (d)?

A. Under the availability pay regulations, unscheduled duty hours include (1) all irregular overtime hours—i.e., overtime work not scheduled in advance of the employee's administrative workweek, (2) the first 2 overtime hours on any day containing part of the employee's basic 40-hour workweek, without regard to whether the hours are unscheduled or regularly scheduled, and (3) any approved nonwork availability hours. However, special agents in the Diplomatic Security Service of the Department of State may count only hours actually worked as unscheduled duty hours.

Q34. Why are criminal investigators who receive availability pay precluded from earning compensatory time off when they travel during unscheduled duty hours?

A. The purpose of availability pay is to ensure the availability of criminal investigators (and certain similar law enforcement employees) for unscheduled duty in excess of a 40-hour workweek based on the needs of the employing agency. Availability pay compensates an employee for all unscheduled duty hours. Compensatory time off for travel is earned only for hours not otherwise compensable. Thus, availability pay recipients may not earn compensatory time off for travel during unscheduled duty hours because the employees are entitled to availability pay for those hours.

Q35. When is it possible for criminal investigators who receive availability pay to earn compensatory time off for travel?

A. When an employee who receives availability pay is required to travel on a non-workday or on a regular workday (during hours that exceed the employee's basic 8-hour workday), and the travel does not meet one of the four criteria in 5 U.S.C. 5542(b)(2)(B) and 5 CFR 550.112(g)(2), the travel time is not compensable as overtime hours of work under regular overtime or availability pay. Thus, the employee may earn compensatory time off for such travel, subject to the exclusion specified in 5 CFR 550.1404(b)(2) and the requirements in 5 CFR 550.1404(c),(d), and (e).

Under the provisions in 5 U.S.C. 5542(b)(2)(B) and 5 CFR 550.112(g)(2), travel time is compensable as overtime hours of work if the travel is away from the employee's official duty station and—

- (i) involves the performance of work while traveling,
- (ii) is incident to travel that involves the performance of work while traveling,
- (iii) is carried out under arduous conditions, or
- (iv) results from an event which could not be scheduled or controlled administratively.

The phrase "an event which could not be scheduled or controlled administratively" refers to the ability of an agency in the Executive Branch of the United States Government to control the scheduling of an event which necessitates an employee's travel. If the employing agency or another Executive Branch agency has any control over the scheduling of the event, including by means of approval of a contract for it, then the event is administratively controllable, and the travel to and from the event cannot be credited as overtime hours of work.

For example, an interagency conference sponsored by the Department of Justice would be considered a joint endeavor of the participating Executive Branch agencies and within their administrative control. Under these circumstances, the travel time outside an employee's regular working hours is not compensable as overtime hours of work under regular overtime or availability pay. Therefore, the employee may earn compensatory time off for such travel, subject to the exclusion specified in 5 CFR 550.1404(b)(2) and the requirements in 5 CFR 550.1404(c), (d), and (e).

Q36. If an employee is required to travel on a Federal holiday (or an "in lieu of" holiday), is the employee entitled to receive compensatory time off for travel?

A. Although most employees do not receive holiday premium pay for time spent traveling on a holiday (or an "in lieu of" holiday), an employee continues to be entitled to pay for the holiday in the same manner as if the travel were not required. Thus, an employee may not earn compensatory time off for travel during basic (non-overtime) holiday hours because the employee is entitled to his or her rate of basic pay for those hours. Compensatory time off for travel may be earned by an employee only for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable.

Q37. If an employee's regularly scheduled tour of duty is Sunday through Thursday and the employee is required to travel on a Sunday during regular working hours, is the employee entitled to earn compensatory time off for travel?

A. No. Compensatory time off for travel may be earned by an employee only for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. Thus, an employee may not earn compensatory time off for travel for traveling on a workday during regular working hours because the employee is receiving his or her rate of basic pay for those hours.

Q38. May an agency change an employee's work schedule for travel purposes?

A. An agency may not adjust the regularly scheduled administrative workweek that normally applies to an employee (part-time or full-time) solely for the purpose of including planned travel time not otherwise considered compensable hours of work. However, an employee is entitled to earn compensatory time off for travel for time spent in a travel status when such time is not otherwise compensable.

Q39. Is time spent traveling creditable as credit hours for an employee who is authorized to earn credit hours under an alternative work schedule?

A. Credit hours are hours an employee elects to work, with supervisory approval, in excess of the employee's basic work requirement under a flexible work schedule. Under certain conditions, an agency may permit an employee to earn credit hours by performing productive and essential work while in a travel status. See OPM's Handbook on Alternative Work Schedules at http://www.opm.gov/oca/worksch/HTML/Cred_hrs.htm#travel for the conditions that must be met. If those conditions are met and the employee does earn credit hours for travel, the time spent traveling would be compensable and the employee would not be eligible to earn compensatory time off for travel. If the conditions are not met, the employee would be eligible to earn compensatory time off for travel.

Q40. May an agency restore an employee's forfeited "use-or-lose" annual leave because the employee elected to use earned compensatory time off for travel instead of using his or her excess annual leave?

A. Section 6304(d) of title 5, United States Code, prescribes the conditions under which an employee's forfeited annual leave may be restored to an employee. (See fact sheet on restored annual leave at <http://www.opm.gov/oca/leave/HTML/RESTORE.asp>.) There is no legal authority to restore an employee's forfeited annual leave because the employee elected to use earned compensatory time off for travel instead of using his or her excess annual leave.

Q41. If an employee is eligible to receive overtime pay for a period of travel because the travel meets one of the four criteria in 5 CFR 550.112(g)(2), is the employee eligible to earn compensatory time off for travel for any portion of the travel which may not be compensable because of the biweekly cap on premium pay?

A. No. Compensatory time off for travel may be earned by an employee only for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. The term "compensable" is defined at 5 CFR 550.1403 to make clear what periods of time are "not otherwise compensable" and thus potentially creditable for the purpose of earning compensatory time off for travel. Time is considered compensable if the time is creditable as hours of work for the purpose of determining a specific pay entitlement (e.g., overtime pay for travel meeting one of the four criteria in 5 CFR 550.112(g)(2)) even when the time may not actually generate additional compensation because of applicable pay limitations (e.g., biweekly premium pay cap).

The capped premium pay is considered complete compensation for all hours of work creditable under the premium pay provisions.

In other words, even though an employee may not receive overtime pay for all of his or her travel hours because of the biweekly premium pay cap, all of the travel time is still considered to be compensable under 5 CFR 550.112(g)(2). Under these circumstances, the employee has been compensated fully under the law for all of the travel hours and the employee may not earn compensatory time off for any portion of such travel not generating additional compensation because of the biweekly cap on premium pay.

Q42. May an employee who receives administratively uncontrollable overtime (AUO) pay under 5 U.S.C. 5545(c)(2) earn compensatory time off for travel?

A. If such employee's travel time is not compensable under 5 CFR 550.112(g) or 5 CFR 551.422, as applicable, and meets the requirements in 5 CFR part 550, subpart N, the employee is eligible to earn compensatory time off for travel for time spent in a travel status.

Q43. If a part-time employee's regularly scheduled tour of duty is Monday through Friday, 8:00 a.m. to 2:30 p.m., and the employee is required to travel on a Friday from 2:30 p.m. to 4:30 p.m., is the employee entitled to earn compensatory time off for travel for those 2 hours?

A. It depends. If the travel qualifies as compensable hours of work under 5 U.S.C. 5542(b)(2)(B) and 5 CFR 550.112(g)(2)—i.e., the travel involves or is incident to the performance of actual work, is carried out under arduous and unusual conditions, or results from an event which could not be scheduled or controlled administratively—the employee may not be credited with compensatory time off for travel hours. (Such travel time outside a part-time employee's scheduled tour of duty, but not in excess of 8 hours in a day or 40 hours in a week, would be non-overtime hours of work compensated at the employee's rate of basic pay.) If the travel time does not qualify as compensable hours of work and meets the other requirements in 5 CFR part 550, subpart N, the part-time employee would be entitled to earn compensatory time off for those 2 hours. We note travel time is always compensable hours of work if it falls within an employee's regularly scheduled administrative workweek. (See 5 U.S.C. 5542(b)(2)(A) and 5 CFR 550.112(g)(1).) For a part-time employee, the regularly scheduled administrative workweek is defined in 5 CFR 550.103 as the officially prescribed days and hours within an administrative workweek during which the employee was scheduled to work in advance of the workweek. An agency may not adjust the regularly scheduled administrative workweek normally applied to an employee (part-time or full-time) solely for the purpose of including planned travel time otherwise not considered compensable hours of work.

Q44. Does an upgrade in travel accommodations impact an employee's entitlement to compensatory time off for travel?

A. Allowing an employee to upgrade his or her travel accommodations (e.g., to business class) does not eliminate his or her eligibility to earn compensatory time off for travel.

GLOSSARY OF TERMS

Agreement, Negotiated - A collective bargaining agreement between the employer and the exclusive representative.

Applicable Laws- Applicable Laws within the meaning of Title 5, United States Code, Section 7106(a)(2), include statutes, the Constitution, judicial decisions, certain Presidential executive orders, and regulations "having the force and effect of law"--i.e., regulations that (1) affect individual rights and obligations, (2) are promulgated pursuant to an explicit or implicit delegation of legislative authority by Congress, and (3) satisfy certain procedural requirements, such as those of the Administrative Procedures Act.

Appropriate Arrangement - One of three exceptions to management's rights. Under Title 5, United States Code, Section 7106(b)(2), a proposal that interferes with management's rights can nonetheless be negotiable if the proposal constitutes an "arrangement" for employees adversely affected by the exercise of a management right and if the interference with the management right isn't "excessive" (as determined by an excessive interference balancing test).

Arbitrator - An impartial third party to whom the parties to an agreement refer their disputes for resolution.

Grievance Arbitration - When the Arbitrator interprets and applies the terms of the collective bargaining agreement--and/or, in the Federal sector, laws and regulations determining conditions of employment.

Assign Employees - A management right relating to the assignment of employees to positions, shifts, and locations. This right includes discretion to determine "the personnel requirements of the work of the position, i.e., the qualifications and skills needed to do the work, as well as such job-related individual characteristics as judgment and reliability." It also includes discretion to determine the duration of the assignment.

Assign Work - A management right relating to the assignment of work to employees or positions. The right to assign work includes discretion to determine who is to perform the work; the kind and the amount of work to be performed; the manner in which it is to be performed; as well as when it is to be performed. It also includes "[t]he right to determine the particular qualifications and skills needed to perform the work and to make judgments as to whether a particular employee meets those qualifications."

Automatic Renewal Clause - Many, perhaps most, collective bargaining agreements in the Federal sector have a provision, usually located at the end of the agreement, stating that if neither party gives notice during the agreement's 105-60 day open period of its intent to reopen and renegotiate the agreement, the agreement will automatically renew itself for a period of one (1) year.

Back Pay - Pay awarded an employee for compensation lost due to an unjustified personnel action is governed by the requirements of the Back Pay Act, Title 5, United States Code, Section 5596.

Bargaining (Negotiating) - A process of offer and counteroffer whereby parties to the bargaining process try to reach agreement on the terms of exchange.

Bargaining Impasse - When the parties have reached a deadlock in negotiations they are said to have reached an impasse. The statute provides for assistance by Federal Mediation and Conciliation Service (FMCS) mediators and the Federal Service Impasse Panel (FSIP) to help the parties settle impasses.

Binding Arbitration - Title 5, United States Code, Section 7121(b)(2)(A), requires that collective bargaining agreements contain a negotiated grievance procedure that terminates in binding arbitration of unresolved grievances.

Budget - A right reserved to management. The Authority has fashioned a two-prong test that it uses to determine whether a proposal interferes with an agency's right to determine its budget: namely, the proposal either has to prescribe particular programs, operations or amounts to be included in an agency's budget, or the Agency can substantially demonstrate that the proposal would result in significant and unavoidable cost increases that are not offset by compensating benefits.

Certification - The FLRA's determination of the results of an election or the status of a union as the exclusive representative of all the employees in an appropriate unit.

Collective Bargaining - Bargaining between and/or among representatives of collectivities (i.e., bargaining between labor organizations and employers.)

Civil Service Reform Act of 1978 (CSRA) - Legislation enacted in October 1978 for the purpose of improving the civil service. It includes the (FSLMRS), Chapter 71 of Title 5 of the United States Code.

Confidential Employee - An employee who acts in a confidential capacity to formulate or effectuate management policies in the field of labor-management relations. Confidential employees must be excluded from bargaining units.

Conditions of Employment (COE) - Under Title 5, United States Code, section 7103(a)(14), conditions of employment "means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise (e.g., by custom or practice), affecting working conditions, except that such term does not include policies, practices, and matters--(A) relating to political activities prohibited under subchapter III of Chapter 73 of Title 5; (B) relating to the classification of any positions; or (C) to the extent such matters are specifically provided for by Federal statute.

"Covered By" Doctrine - A doctrine under which an agency does not have to engage in midterm bargaining on particular matters because those matters are already "covered by" an existing agreement.

Days - Unless otherwise stated, days refer to calendar days.

Direct Employees - The management right to supervise and guide employees in the performance of their duties on the job.

Discipline - A right reserved to management that includes the right to investigate to determine whether discipline is justified and to use the evidence obtained during the investigation.

Dues Withholding (Checkoff) - Dues withholding is a service provided by the Agency to the Union. The service is provided without charge to the union. Employee dues assignments must be voluntary and may not be revoked except at yearly intervals, but must be terminated when the agreement ceases to be applicable to the employee or when the employee is expelled from membership in the union.

Duration Clause (Term of Agreement) - Article in this Agreement that specifies the time period during which the Agreement is in effect.

Duty to Bargain - Broadly conceived, it refers to both (1) the circumstances under which there is a duty to give notice and, upon request, engage in bargaining (see midterm bargaining) and (2) the negotiability of specific proposals.

Employee - The term "employee" includes an individual employed in the bargaining unit of the Agency or whose employment in the Agency has ceased because of any unfair labor practice, but does not include supervisors and management officials or anyone who participates in a strike or members of the uniformed services or employees in the Foreign Service or aliens occupying positions outside the United States.

Exceptions to Arbitration Awards - A claim that an arbitration award is deficient on grounds similar to those applied by Federal courts in private sector labor-management relations or because it violates law, rule or regulation. Some of the grounds similar to those applied by Federal courts are: the award doesn't draw its essence from the agreement, the award is based on a nonfact, the arbitrator didn't conduct a fair hearing, or the arbitrator exceeded his/her authority.

Excessive Interference - A balancing test that the FLRA applies to proposals that are arrangements for employees adversely affected by the exercise of management's rights in order to determine whether they are negotiable appropriate arrangements. The test involves balancing the extent to which the proposal ameliorates anticipated adverse effects against the extent to which it places restrictions on the exercise of management's rights.

Exclusive Recognition - Under the Federal Service Labor-Management Relations Statute, exclusive recognition is normally obtained by a union as a result of receiving a majority of votes cast in a representational election. The rights a union is accorded as a result of being certified as the exclusive representative of the employees in a bargaining unit include, among other things, the right to negotiate bargainable aspects of the conditions of employment of bargaining unit employees, to be afforded an opportunity to be present at formal discussions, to free checkoff arrangements and, at the request of the employee, to be present at *Weingarten* examinations.

Exclusive Representative - The union that is certified as the exclusive representative of a unit of employees either by virtue of having won a representation election or because it had been recognized as the exclusive representative before passage of the CSRA.

Fair Representation, Duty of -The union's duty to represent the interests of all bargaining unit employees without regard to union membership.

Federal Labor Relations Authority (FLRA) – Federal Agency that provides leadership in establishing policies and guidance relating to matters under Title 5, United States Code, Chapter 71, and, except as otherwise provided, shall be responsible for carrying out the purpose of the Federal Service Labor-Management Relations Statute.

Federal Service Labor-Management Relations Statute (FSLMRS). Title 5, United States Code, sections 7101 - 7135.

Formal Discussion - Under Title 5, United States Code, Section 7114(a)(2)(A), the exclusive representative must be given an opportunity to be represented at any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any *grievance* or any personnel policy or practices or other general condition of employment.

Free Speech - Under Title 5, United States Code, Section 7116(e), the expression of personal views or opinions, even if critical of the union, is not an unfair labor practice if such expression is not made in the context of a representational election and if it contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions. During the conduct of an election, however, management officials must be neutral. This limited right of free speech applies to Agency representatives.

Good Faith Bargaining - A statutory duty to approach negotiations with a sincere resolve to reach a collective bargaining agreement, to be represented by properly authorized representatives who are prepared to discuss and negotiate on any condition of employment, to meet at reasonable times and places as frequently as may be necessary and to avoid unnecessary delays, and, in the case of the agency, to furnish upon request data necessary to negotiation.

Government-wide Regulations - Regulations bearing on conditions of employment that must be complied with by agencies. Such regulations are a major limitation on the Agency discretion and therefore on the scope of bargaining. Agencies chiefly involved in

issuing such regulations are the Office of Personnel Management (on personnel management) and the General Services Administration (on property management).

Grievance - Under Title 5, United States Code, Section 7103(a)(9), a grievance means any complaint--(A) by an employee concerning any matter relating to the employment of the employee; (B) by any labor organization concerning any matter relating to the employment of any employee; or (C) by an employee, labor organization, or agency concerning--(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or (ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

Grievance Procedure - A systematic procedure, devised by the parties to this Agreement, by which a grievance moves from one level of authority to the next higher level until it is settled, withdrawn, or referred to Arbitration.

Impact and Implementation (I&I) Bargaining - Even where the decision to change conditions of employment of unit employees is protected by management's rights, there is a duty to notify the union and, upon request, bargain on that which management will follow in implementing its protected decision as well as on appropriate arrangements for employees expected to be adversely affected by the decision.

Information - The Union, to the extent not prohibited by law (e.g., the Privacy Act), is entitled, under certain circumstances (see "particularized need"), to available data for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining. The agency must provide that information free of charge.

Internal Security Practices - A right reserved to management by Title 5, United States Code, Section 7106(a)(1). The right to determine the internal security practices of the Agency isn't limited to establishing those policies and actions which are part of the Agency's plan to secure or safeguard its physical property against internal and external risks, to prevent improper or unauthorized disclosure of information, or to prevent the disruption of the Agency's activities. It also extends to safeguarding the Agency's personnel.

Labor Organization - An organization (i.e., Union) composed, in whole or in part, of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment.

Layoff Employees - Right reserved to management by Title 5, United States Code, Section 7106(a)(2)(A). It includes discretion, in accordance with applicable laws, to determine the order in which employees are laid off.

Management Official - An individual who formulates, determines, or influences the policies of the Agency. Such individuals are excluded from appropriate units.

Management Rights - Refers to types of discretion reserved to management officials by statute.

Core rights - Consists of the rights to determine the mission, budget, organization, number of employees, and internal security practices of the agency.

Operational rights - Consists of the rights, in accordance with applicable laws, to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees, to assign work, to make determinations with respect to contracting out, to determine the personnel by which agency operations shall be conducted, to make selections for appointments from among properly ranked and certified candidates for promotion, or any other appropriate source, and to take whatever actions may be necessary to carry out the agency mission during emergencies.

Three exceptions -The three (3) Title 5, United States Code, Section 7106(b) exceptions to the above involve (1) title 5, United States Code, section 7106(b)(1) permissive subjects of bargaining (e.g., staffing patterns, technology) on which, under the statute, agencies can elect to bargain, (2) procedures management will follow in exercising its reserved rights, and (C) appropriate arrangements for employees adversely affected by the exercise of management rights.

1. "Permissive" subjects exception - This exception to management's rights deals with staffing patterns (i.e., the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty and with the technology, methods, and means of performing work). Such matters are negotiable at the election of the agency.

2. "Procedural" exception - Title 5, United States Code, Section 7106(b)(2), dealing with procedures, really isn't an exception to management's rights as the Authority has held that a proposed procedure that "directly interferes" with a management right is not a procedure within the meaning of Title 5, United States Code, Section 7106(b)(2).

3. Appropriate arrangement exception - Title 5, United States Code, Section 7106(b)(3) applies only if the proposal is intended to ameliorate the adverse effects of the exercise of a management right. Where such is the intent of the proposal, the FLRA applies a balancing test in which it weighs the extent to which the proposal ameliorates the expected adverse effects against the extent to which it interferes with the management right and determines whether or not the specific proposal "excessively" interferes with the management right. If the interference is "excessive," the proposal isn't an appropriate arrangement and therefore is nonnegotiable. If otherwise, the proposal is a negotiable appropriate arrangement, even though it interferes with management's rights.

Mediation. - Use of a third party, usually a neutral without authority to impose a settlement, to assist the parties to reach agreement.

Med-Arb - A process in which a neutral with authority to impose (or to recommend the imposition of) a settlement, first resorts to mediation techniques in an attempt to get the parties to voluntarily agree on unsettled matters, but who can later impose a settlement if mediation fails.

Midterm Bargaining - Literally, all bargaining that takes place during the life of the contract. Usually contrasted with term bargaining--i.e., with the renegotiation of an expired (or expiring) contract. Midterm bargaining includes I&I bargaining, and union-initiated midterm bargaining on new matters. It excludes matters that are already covered by the term agreement.

Mission of the Agency - A right reserved to management by Title 5, United States Code, Section 7106(a)(1). Although illustrative case law on this particular right is meager, it is generally recognized that the right encompasses the determination of the products and services of an agency.

Negotiability Disputes - Disputes over whether a proposal is nonnegotiable because (a) it is inconsistent with laws, rules, and regulations establishing conditions of employment and/or (b) it interferes with the exercise of rights reserved to management. Negotiability disputes normally are processed under the FLRA's procedures.

Negotiated Grievance Procedure - A collective bargaining agreement (CBA) must contain a grievance procedure terminating in final and binding arbitration. The NGP, with a few exceptions involving statutory alternatives (e.g., adverse and performance-based actions), is the exclusive administrative procedure for grievances falling within its coverage. Apart from the matters excluded from the coverage of the NGP by statute -- e.g., retirement, life and health insurance, classification of positions--the NGP covers those matters specified in the definition of grievance in Title 5, United States Code, Section 7103(a)(9) minus any of those matters that the parties agree to exclude from the NGP. That is, under the FSLMRS program, the parties negotiate to determine what matters to *exclude* from the procedure rather than what matters it is to *include*--just the opposite from pre-FSLMRS and private sector practices.

Number of Employees of an Agency - A right reserved to management by Title 5, United States Code, Section 7106(a)(1).

Office of Personnel Management (OPM) - Agency that issues Government-wide regulations on personnel matters that may have a substantial impact on the scope of bargaining; consults with labor organizations on those regulations; provides technical advice and assistance on labor-management relations matters to Federal agencies; also provides information on personnel matters to Federal agencies and the general public; exercises oversight with regard to statutory and regulatory requirements relating to personnel matters; and provides support services to the National Partnership Council.

Official Time - Paid time for employees serving as union representatives. Title 5, United States Code, Section 7131(d) allows the parties to negotiate the amount of official time that shall be granted to specified union representatives for the performance of specified representational functions.

Open Period - The 45-day period (105 - 60 days prior to the expiration of the agreement) when the union holding exclusive recognition is subject to challenge by a rival union or by unit employees who no longer want to be represented by the union.

Organization - A right reserved to management. This right encompasses an Agency's authority to determine its administrative and functional structure, including the relationship of personnel through lines of control and the distribution of responsibilities for delegated and assigned duties. It also includes the authority to establish career ladders.

Particularized Need - The FLRA's analytical approach in dealing with union requests for information under Title 5, United States Code, Section 7114(b)(4). Under this approach, the Union must establish a "particularized need" for the information and the Agency must assert any countervailing interests.

Past Practice (Established Practice) - Existing practices sanctioned by use and acceptance that are not specifically included in the collective bargaining agreement. Arbitrators use evidence of past practices to interpret ambiguous contract language. In addition, past practices can be enforced under the negotiated grievance procedure because they are considered part of the agreement. To qualify as an enforceable established practice, the practice has to be legal, in effect for a certain period, and known and sanctioned by management.

Procedures - Under Title 5, United States Code, Section 7106(b)(2), the procedures observed by management in exercising its reserved rights are negotiable. To qualify as a negotiable (b)(2) procedure, the proposed "procedure" must not require the use of standards that, by themselves, directly interfere with management's reserved rights or otherwise have the effect of limiting management's reserved discretion.

Representation Election - Secret-ballot election to determine whether the employees in an appropriate unit shall have a union as their exclusive representative.

Representational Functions - Activities performed by union representatives on behalf of the employees for whom the union is the exclusive representative regarding their conditions of employment. It includes, among other things, negotiating and policing the terms of the agreement, attending partnership council meetings, being present at formal discussions and, upon employee request, *Weingarten* examinations.

Representation Issues - Issues related to how a union gains or loses exclusive recognition for a bargaining unit, determining whether a proposed unit of employees is

appropriate for the purposes of exclusive recognition, and determining the unit status of various employees.

Retain Employees - A right reserved to management.

Scope of Bargaining - Matters about which the parties can negotiate.

Selection (with respect to filling positions) - The Statute reserves to management the right to make selections for appointments from any appropriate source. The right to select includes discretion to determine what knowledge, skills and abilities are necessary for successful performance in the position to be filled, as well as to determine which candidates possess these qualifications.

Standards of Conduct for Labor Organizations - Standards regarding internal democratic practices, fiscal responsibility, and procedures to which a union must adhere to qualify for recognition. The Department of Labor has responsibility for making known and enforcing standards of conduct for unions in the Federal and private sectors.

Supervisor - Under Title 5, United States Code, Section 7103(a)(10), a “supervisor” is an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising such authority. The individual need exercise only one of the indicia of supervisory authority, not a majority of them, to qualify as a “supervisor” for the purposes of the Statute, provided it involves the consistent exercise of independent judgment.

Unfair Labor Practice (ULP) - A violation of any of the provisions of the Federal Service Labor-Management Relations Statute. ULP charges are filed with the Authority by an individual, a union, or an employer. They are investigated by the General Counsel who issues a ULP complaint if the General Counsel concludes the charge(s) have merit, and who prosecutes the matter before an Administrative Law Judge in a factfinding hearing and before the Authority, which decides the matter.

Union - A labor organization "composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment.

Union-Initiated Midterm Bargaining on New Matters - Absent a bargaining waiver, the union has the right to initiate bargaining on matters not "covered by" the CBA.

Weingarten Right - Under Title 5, United States Code, Section 7114(a)(2)(B), an employee being examined in an investigation (an investigatory examination or interview) is entitled to Union representation if the examination is conducted by a representative of

the Agency, the employee reasonably believes that the examination may result in disciplinary action, and the employee asks for representation. Such examinations are called *Weingarten* examinations because Congress, in establishing this right, specifically referred to the private sector case establishing such a right.

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