

LABOR-MANAGEMENT AGREEMENT

BETWEEN

**THE UNITED STATES DEPARTMENT OF
AGRICULTURE FOOD SAFETY AND
INSPECTION SERVICE**

AND

**THE NATIONAL JOINT COUNCIL OF
FOOD INSPECTION LOCALS, AMERICAN
FEDERATION OF GOVERNMENT
EMPLOYEES, AFL - CIO**

EFFECTIVE JUNE 7, 2023

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ARTICLE 1

RECOGNITION AND COVERAGE

Section 1. 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 non-supervisory Food Inspectors and Consumer Safety Inspectors in the Office of Field Operations of the Food Safety and Inspection Service, U.S. Department of Agriculture.

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.

Section 2. Governing Laws and Regulations

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.

Unless otherwise stated specifically herein, this agreement supersedes all previous agreements and past practices.

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. The referenced links contained herein will be managed by the governing office of primary interest.

Section 3. Management Rights

The Agency retains all rights as stated in Title 5 U.S.C. Section 7106.

ARTICLE 2

UNION REPRESENTATIVE, 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 Chairman of the National Joint Council or an individual(s) to act on his/her behalf; and (2) all Council Presidents or individuals designated to act on their behalf.

Section 2. Employee Representation

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

Section 3. Designation of Union Officials

- a) The NJC Chairperson or their designee shall within forty-five (45) calendar days of the date of this Agreement provide an initial list to the LERD Director or their designee with a written list of the Executive Council and the names, titles, email addresses and telephone numbers of all Union officials to include: location, and AFGE Council and Local affiliation. Current employees will utilize the Agency email system, the Union shall provide email addresses for union officials who are not employed by the Agency.

Thereafter, annually on October 1st or upon changes, the NJC Chairperson shall provide the LERD Director or designee with an updated list of the Executive Council. Council Presidents shall provide updates for their respective council.

- b) The parties mutually agree they may resolve issues at the lowest possible level, pursuant to this Agreement. For example:

Council Presidents, or designee: All aspects of the District within his/her jurisdiction

National Joint Council Chairperson, or designee - Office of the Administrator,
Headquarter Point of Contacts, FSIS Management Council

Section 4. Communications with Bargaining Unit Employees

Consistent with Title 5, U.S.C., Chapter 71 of the Statute, the Agency will not directly communicate 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, 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. Surveys and Questionnaires

The Agency may solicit feedback from bargaining unit employees through verbal or written surveys and questionnaires and will provide this information to the Union prior to conducting the survey/questionnaire.

This provision extends to known questionnaires and surveys from other agencies.

The results of all survey(s) conducted will be shared with the Union.

If a third party conducts a survey and results are obtained by the Agency, the results will be shared with the Union upon receipt by the Agency.

In the event the Agency intends to survey BUEs regarding conditions of employment, the Agency shall notify and share the survey with the Union prior to distribution.

Should the Agency decide to effect changes as a result of any survey or questionnaire, and such changes affect conditions of employment, the Union will be given notice and opportunity to bargain.

Section 7. New Employee Orientation/Meeting

The Union will be afforded the opportunity to make up to a thirty (30) minute presentation and time for the Union to brief new employees(s) on the Union's role in the workplace and membership benefits the Union has to offer.

Reasonable notice of the date, time, and location of the orientation session will be provided by the Agency to the appropriate Council President or designee.

A Union representative within the local commuting area (50 miles) will be reimbursed mileage for travel to make a presentation at new employee orientation meetings.

ARTICLE 3

EMPLOYEE RIGHTS and RESPONSIBILITIES

Section 1. 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, and the Labor-Management Agreement. The Agency shall demonstrate a nexus between the alleged off-duty misconduct and job requirements.

Section 2. Access to union and management officials

Employees shall have the right to contact their Union representative during duty hours regarding representational issues including but not limited to matters of conditions of employment. However, permission to do so during duty hours shall be made 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. 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.

Section 3. 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 4. Employee Rights to Union Representation

- a. In accordance with Title 5, U.S.C., Chapter 71, Section 7114(a)(2)(A) and (B) of the Statute, the Union will be afforded notice and opportunity to: attend any formal discussion related to conditions of employment and 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. (Weingarten Rights)

Each new employee shall be given a copy of the Weingarten Rights during employee orientation, and annually thereafter.

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. 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 5. Industrial disputes and civil disorders

In the event of a strike or civil disorder at a regulatory establishment, employees will communicate with their supervisor and await further instructions. As soon as practicable, the Agency will notify the appropriate Council President and NJC Chairman or designee of the establishment and procedures for reporting.

Employees are responsible during the plant strike periods for reporting to work as scheduled and performing assigned inspection duties unless otherwise directed by their supervisor. In the event the direct supervisor is not available, employees are to contact their District Manager or designee for further instruction.

If a plant strike date is announced in advance, agency officials shall meet with plant management and officials of the striking union to make definite arrangements to assure the safety of the inspection workforce.

If the plant strike is affected without prior notice and an employee(s) 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, employee(s) shall leave the picket line area and promptly report the supervisor by phone.

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 applicable Human Resources Office consisting of (number of) pages as of (date).
- c. 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. 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 8. Parking

The Agency shall make a reasonable effort to obtain parking spaces for inspectors at offices and official establishments.

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

Where there are documented instances, whether written or verbal, 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 9. Freedom from reprisal

Each employee, without exception, has the right under 5 U.S.C. § 7102 to, freely and without penalty of reprisal, 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. 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 10. Employee Pay

- a) Employees are entitled to timely payment of salary. Agency officials will assist employees in expediting payment where processing is delayed.
- b) Reasonable amount of time will be given to bargaining unit employees to prepare, complete submit and validate the time & attendance per pay period, while in a pay status.

Section 11. 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 employees.

Section 12. Tort/indemnification

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).

Section 13. 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 14. Nursing mothers

As required by 29 U.S.C. §207 (r) and in accordance with any other applicable law or rule, the Agency will provide employees who are nursing mothers with breaks and accommodations for the purpose of expressing and saving milk in private while at the workplace.

ARTICLE 4

LABOR-MANAGEMENT MEETINGS

Section 1. Purpose

The intent of Labor Management meetings is to effectively conduct business between the parties. Such meetings shall be conducted face-to-face or via conference call in an orderly, professional, and business-like manner. Meetings shall encourage solutions rather than positions, demonstrate mutual respect, and encourage the resolution of issues at the lowest level. The parties agree to ensure that taxpayer-funded time is used efficiently and authorized in amounts that are reasonable, necessary, and in the public interest.

If a party has topics it would like placed on a meeting agenda, it shall submit them to the other party at least 20 calendar days before the meeting. No party may add more than 5 topics to a meeting agenda. Topics are to be specific for the office, i.e., management will address HQ-related topics at the HQ meeting and District related topics at each District LM meeting. Topics will be addressed as an overarching presentation to share policy and operational matters that are applicable to FSIS employees.

However, this does not preclude the parties from mutually agreeing to modify the agenda after the list of items has been received by both parties.

For meetings held virtually, it is expected that cameras will remain on, and participants' faces will be visible within any technological limitations at the time of the meeting.

Section 2. Headquarters Labor-Management Meetings

Agency officials shall meet with the National Joint Council (NJC) (or Union) at least twice per fiscal year, once face-to-face at the Agency's Washington, D.C. office and once virtually. The meetings shall be scheduled Tuesday, Wednesday, and Thursday beginning at 8:00 a.m. and concluding at 4:30 p.m. each day. Up to a total of eight (8) Council Presidents or designees may attend the face-to-face meeting. If appropriate, upon mutual agreement, additional meetings may be held via face-to-face or video conference. Face-to-face meetings will be at Agency expense.

Section 3. District Labor-Management Meetings

Each District shall meet with the number of Union Representative's within corresponding council(s) 2 times every fiscal year, face-to-face. The location and duration of the face-to-face meeting shall be conducted by mutual agreement based upon effective use of tax-payer money. Union representation will reflect a maximum of up to nine (9) representatives for in-person meetings, and up to twelve (12) for virtual meetings, which may be a combination of corresponding Council Presidents (or designee) and Local Presidents (or designees) in order to provide appropriate representation of the bargaining unit. Face-to-face meetings will be at Agency expense. If appropriate, upon mutual agreement, additional meetings may be held via video conference.

ARTICLE 5

HEALTH AND SAFETY

Section 1. Policy

It is Agency policy to provide employees with a safe and healthy workplace free from recognized hazards and to initiate and operate a comprehensive Health and Safety program to reduce injuries and illnesses, motivate employees to work safely, ensure employees are free from reprisal and comply with all relevant occupational, safety and health regulations, policies and directives as required by FSIS Directive 4791.1 and described on the OSHA poster “Federal Agency Occupational Safety and Health Protection for Employees. ”

Section 2. Agency Responsibilities

- a. Ensure prompt response to reports of unsafe or unhealthful conditions as described in [FSIS Directive 4791.1, Rev 3, Basic Occupational Safety and Health Program](#).
- b. Ensure that employees are not subjected to interference, discrimination, or other reprisal as required by FSIS Directive 4791.1.
- c. If hazardous conditions that have been identified by the Agency are not properly corrected, the responsible Agency official will remove IPP from the unsafe work area and shall take such action as is necessary with appropriate authorities to ensure compliance with established health and safety laws and regulations.
- d. Take appropriate action when hazards have been identified in the workplace to ensure employees are not placed in a position of imminent risk of death or serious bodily harm in the performance of work.
- e. The Agency will ensure that all required forms and posters will be distributed and displayed.
- f. 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, compliant, and progressive safety program. The Union agrees to work with Agency officials to ensure employees 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 responsibility and obligation to know and comply with safety rules and practices as described in FSIS directives. Additionally, each employee is to promptly report unsafe working conditions/practices to supervision and comply with Agency policy regarding the use of Personal Protective Equipment.

Employees who reasonably believe they may be exposed to 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.

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) designated Union Representative appointed by the Union and at least one (1) Agency representative.

The Safety Committee is to complete activities outlined in Directive 4791.1.

Section 6. Investigations

The Agency supervisor shall investigate the circumstances and the causes of accidents as required by OSHA record keeping regulations. Supervisors shall record accident investigations on OSHA form 301 and summarize investigations on OSHA form 300.

A representative or designee of the Union shall be provided with reasonable advance notice from the District Office and an opportunity to accompany, but not interfere with an occupational safety inspection conducted by the Environmental, Safety and Health Group. At the close of the inspection, the Occupational Safety and Health Specialist or Industrial Hygienist will provide a closing conference to discuss the findings.

The Union will be notified and allowed to designate a Union representative to participate in the opening conference of an OSHA investigation. The Union representative will be allowed to accompany OSHA inspectors during safety investigations in facilities undergoing inspection by OSHA where Unit employees work. Should it become necessary, travel expenses will be handled in accordance with the Federal Travel Regulations.

The Agency will ensure that OSHA Notices are posted in the USDA office to alert FSIS employees of the items that need to be corrected by the Establishment.

Section 7. Safety Equipment and Clothing

When engineering controls are not available, appropriate supplies, equipment, and clothing necessary to decrease or eliminate exposure to hazards in the performance of their assigned duties shall be furnished or reimbursed in accordance with governing regulations.

The Agency shall provide personal protective equipment (PPE) for employees exposed to safety and health hazards at their work sites in accordance with applicable regulations and FSIS Directive 4791.1.

Section 8. Reports

The Chairperson of the Council, upon written request, shall be provided a copy of the accident

reports (OSHA form 301) Safety Inspection Reports, and/or Industrial Hygiene Reports created at the completion of an investigation into reported accidents and/or potential hazards in the workplace. A copy of the same reports shall be made available to the appropriate safety committee at the completion of the investigation.

Section 9. Training

Appropriate health and safety training, as described in Agency Directives will be provided to employees. All training will be recorded by the Agency and retained for a minimum of three years.

Section 10. Plant Reviews by Environmental Health and Safety Specialists

When a Safety Review is conducted the Union will be provided proper advance notice, which will allow the Union Official the ability to attend the opening meeting, be actively involved in the review, and attend exit interview(s).

Section 11. Introduction of new chemicals

When a new chemical is approved for use in Federally regulated establishments, the Agency will notify the NJC Chairperson.

Section 12. Use of firearms by establishments

[FSIS Directive 6090.1, Firearms Safety in Official Livestock Establishments](#)

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 electronic mail, express/overnight mail, or hand delivery. 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 workday when the service is by express/overnight mail.

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, and a point of contact for additional questions or information.

If the Union elects to bargain over an Agency scheduled change, the Union shall submit a written request (via electronic submission or mail) to bargain to the Director, LERD within ten (10) workdays of receipt of the Agency's notice.

**Director, LERD
1400 Independence Ave., SW
Room 3150 Mailstop 3730
Washington D.C., 20250**

b. Bargaining Routine

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

1. After the Union's request to bargain, the Union will then have five (5) additional workdays to provide the Agency with proposals that are reasonably related to the proposed change and shall identify the adverse impact upon the employees which the proposal is intended to reduce or remedy.
2. If the Union's proposals are not provided to the Agency within the five (5) workdays as stated above, then the request to negotiate will be deemed waived and closed, and the Agency may proceed with implementation, unless an extension is requested and approved in advance.
3. Bargaining shall commence as soon as possible, but no more than seven (7) workdays after the Agency's receipt of the Union's proposals, unless the Parties mutually agree to extend the period. Parties will endeavor to reach an agreement and conclude bargaining within ten (10) workdays from the start of negotiations, but that period may be extended by mutual agreement of the Parties.

4. Bargaining sessions shall be held in an Agency designated office. The Agency agrees to pay for one Union representative's travel and per diem in accordance with government travel regulations.
5. The Agency shall provide a meeting room for bargaining held at the Agency's facilities.

Section 2. Union-Initiated Bargaining

- 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 twenty-two (22) workdays from receipt of the Union's request to bargain.
- e. Bargaining sessions shall be held in an Agency designated office. The Parties shall mutually agree on bargaining dates. Each Party shall bear their own cost. The Parties agree that any agreement to combine bargaining sessions must be by mutual agreement.

Section 3. General Provisions for Bargaining

- a. 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).
- b. 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.
- c. 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.
- d. 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.

- e. 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 fourteen (14) calendar days. Nothing shall preclude the right of judicial appeal.

ARTICLE 7

OFFICIAL TIME

Section 1. Policy

Each employee's foremost responsibility is the completion of the duties of his/her Agency position of record. However, the parties recognize that in the furtherance of good labor-management relations as provided for in the Civil Service Reform Act of 1978, union representatives may use limited amounts of union time under the conditions described in this Article.

Section 2. Designation

The Union shall maintain an updated list of all designated union representatives, to include name, union position, council, local, duty location, and telephone number of each designated union representative. Only those employees identified on the list provided by the Union will be authorized to use union time.

Section 3. Release From Duty For Representational Matters

- a. Each Union representative will be required to submit a request for official time two (2) workdays in advance, except in circumstances where such advance notice is not possible. Requests shall be submitted in the Agency's Time & Attendance System unless the Union representative's position is not incorporated into the system, in which case the Union representative is required to submit a written request to their immediate supervisor.
- b. The completed request shall specify:
 1. In reasonable detail the tasks the representative will undertake;
 2. The number of hours to be used;
 3. Where and when the official time will be used;
 4. How the tasks are related to Union Representational duties; and
 5. A telephone number and email where the employee can be reached.
- c. Request that does not contain sufficient information for management to assess whether the request is consistent with law, regulation, and the terms of this Agreement will be denied.
- d. Approval from an authorized supervisor/management official must be obtained by an employee prior to their engaging in union time as a representative. Any employee who uses union time without advance supervisor/management approval will be considered absent without leave and subject to appropriate disciplinary action. The employee will immediately inform the supervisor when he/she returns to work.
- e. If management is unable to approve a request for union time, the reason for denial will be provided. If an operational need does not permit the employee to use the union time when

requested, management will generally make a reasonable effort to allow the employee to use the requested union time within two workdays, keeping in mind the interests of the union, as well as the needs of the employer.

- f. An employee serving as a Union Representative is responsible for accurately recording union time on their time and attendance for pay purposes.

Section 4. Provisions for Union Time

A. Consistent with Title 5 U.S.C. 7131 and this Agreement, Union representatives will be granted Official time, subject to the availability as described below, for the following representational activities:

1. Term Negotiations (T&A Code 35) – to negotiate a collective bargaining agreement, in accordance with 5 U.S.C. 7131(a).
2. Mid-Term Negotiations (T&A Code 36) – to negotiate over issues raised during the life of a term agreement, in accordance with 5 U.S.C. 7131(a).
3. Preparation for Term and Mid-Term Negotiations (T&A Code 35 or 36) authorized under 5 U.S.C. 7131(d).
4. General Labor-Management Relations (T&A Code 37) –perform miscellaneous representational activities authorized under 5 U.S.C. 7131(d).
5. Representational Duties (T&A Code 38) –
 - a. Prepare and file appropriate charges, replies to disciplinary/adverse actions/unacceptable performance, arbitration preparation and proceedings, training in accordance with PL-95-454.
 - b. 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.
 - c. To prepare reconsideration statements in connection with the denial of a within-grade increase if acting as the employee’s designated representative.
 - d. To participate in an Authority investigation or hearing preparation as a representative of the Union.
 - e. To effectuate Congressional contacts, if subpoenaed by a member or committee of Congress to appear.
6. The following do not count against the Union bank:
 - a. To appear in proceedings before the Federal Labor Relations Authority during such time as an employee would otherwise be in a duty status, in accordance with 5 U.S.C. 7131(c).
 - b. Time in connection with statutory (e.g., MSPB and EEOC) appeal procedures in which the Union is designated as the representative.

- B. The NJC Chairperson will be allowed to use up to 100% official time.

- C. Union officials not identified in Section 4(B) will be allowed up to 16,000 hours per fiscal year for representational activities identified in Section 4(A). This amount does not include statutory official time. The Agency will furnish Official Time reports each pay period to the NJC Chairperson or designee. The Agency will notify the NJC Chairperson or designee when the Official Bank Hours reach 1,500 during any fiscal year. Unused Union bank hours do not carry over into the next fiscal year. If the bank of hours drops below 500 hours during any fiscal year, another 1,000 hours will be immediately available for the Union's use. The Official Bank Hours (16,000 hours) will reset every fiscal year and the additional 1,000 hours will be immediately available each fiscal year if the bank of hours drops below 500 hours.

Section 5. Tracking of Official Time

The Agency will be responsible to keep a running total of official time hours used to generate a report. That report will include the hours, Union Personnel name and code used for Official Time. The Agency will share the report to the NJC Chairperson or designee.

ARTICLE 8

WORKERS' COMPENSATION AND EMPLOYEE ASSISTANCE PROGRAM

Section 1. References

The following references provide USDA and Agency Policies pertaining to the Workers' Compensation Program (WC):

[DR 4430-3, Workers' Compensation Program](#)
[DR 4430-005, Workers Compensation Program: Return to Work](#)
[FSIS Directive 4810.1, Rev 4, On-the-Job Injury and Illness Compensation Program](#)
FSIS Supervisory Guide to Worker's Compensation, published
[FSIS Directive 4630.2, Leave](#)

The following references provide USDA and Agency policies pertaining to the Employee Assistance Program (EAP):

[DR 4430-792-1, Employee Assistance Program](#)
[Federal Occupational Health \(FOH\) Website](#)

Section 2. Policy

The Agency agrees when an employee suffers an injury or illness in the performance of duties, the employee is 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's (DOL) Office of Workers' Compensation Program (OWCP).

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 guidance to claimants through the appropriate Workers' Compensation Technician.

- a. 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 Workers' Compensation Office to obtain information/assistance relevant to Workers' Compensation claims.

Section 3. Placement of Workers' Compensation Program (OWCP) Claimants

When 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 9

WORKPLACE HARASSMENT

Section 1. Objective

The Parties agree to mutually establish and maintain a work environment that is safe, positive, respectful, and productive, and free of conduct or language that may contribute to harassment and/or workplace violence.

In accordance with [Departmental Regulation \(DR\) 4200-001](#), “Workplace Violence Prevention and Response Program,” bullying, violent behavior of any kind or threats of violence, either implied or direct, against persons or property will not be tolerated.

Section 2. Definition

Defines bullying as repeated, health-harming mistreatment of one or more people by one or more perpetrators. It is abusive conduct that includes:

- Threatening, humiliating, or intimidating behaviors.
- Work interferences/sabotage that prevents work from getting done.
- Verbal abuse.

All employees will be treated with dignity and respect.

Section 3. Reporting Incidents

Employees who believe that they have been subjected to harassment and/or workplace violence incidents instigated by other FSIS employees or outside entities should immediately report it in accordance with FSIS Directive 4735.4, ‘Preventing Harassment and Workplace Violence.’

If an employee is reluctant to report the bullying a report can be filed on their behalf. All employees have the right to file FSIS Form 4735.4.

ARTICLE 10

EQUAL EMPLOYMENT OPPORTUNITY (EEO)

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 (including pregnancy, equal pay, sexual orientation, and gender identity), national origin, disability, age (40 years and over), genetic information, retaliation for prior EEO participation, and all other bases provided by USDA regulation. The Agency shall have a positive, continuing and results-oriented program of affirmative action. The parties agree that EEO shall be administered in accordance with laws, regulations, policies, and executive orders.

Section 2. EEO Complaints

- a) In the matter of EEO complaints, the Agency shall follow 29 CFR 1614 and 5 U.S.C. §7114(a)(2)9A).
- b) If an employee elects to utilize the grievance procedure with Union representation, instead of the statutory procedure for alleged discrimination, both parties will have the right of discovery if the grievance is referred to arbitration. All discovery will be governed by and carried out in accordance with applicable EEOC laws and regulations.
- c) Where an employee elects to utilize the grievance procedure instead of the EEO complaints process for a claim of alleged discrimination, the parties acknowledge that simultaneous or subsequent use of the informal EEO process on the same claims is permitted to the extent that informal counseling does not represent an election of forum. However, if an employee first files a grievance and then subsequently files a formal complaint of discrimination on the same claim, the complaint will be dismissed without prejudice from the EEO process pursuant to the employee's right to proceed through the negotiated grievance procedure, including the right to appeal the final grievance decision to the EEOC.
- d) Unless otherwise agreed to by the parties to this Labor-Management Agreement, EEO complaint settlement agreements shall not conflict with this Agreement. 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.

Section 3. Affirmative Employment Program Plan

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.

The Agency shall provide a copy of the final plan to the Union.

Section 4. Reasonable Accommodations

In accordance with the Rehabilitation Act of 1973, the Agency shall follow applicable policy regarding Reasonable Accommodations.

[FSIS Directive 4306.2, Reasonable Accommodation and Accessibility for People with Disabilities](#)

- 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 promptly in writing of the reasons for the denial.

Section 5. Information and Data

- a) The Agency shall make available to employee's information describing the Affirmative Employment Program Plan and the EEO complaint procedure.
- b) The Agency agrees to annually furnish the Union with statistical data concerning discrimination complaints filed by bargaining unit employees.

ARTICLE 11

PERFORMANCE MANAGEMENT

Section 1. Policy

The Agency will administer the Performance Management program in accordance with [5 USC Chapter 43](#), [5 CFR, Part 430](#) and [DR 4040-430, Employee Performance Management](#). Terms used in this Article that relate to the Performance Management System, such as “appraisal,” “critical element,” or “performance rating,” will have the same meaning as in 5 C.F.R. Part 430.

Section 2. Critical Elements and Performance Standards

The Agency will comply with 5 CFR Part 430 when making its reserved management right decision as to the number of levels of performance for each critical element, and when determining whether a rating level will have a written performance standard. Application of all performance standards shall be fair and equitable, and consistent with 5 C.F.R. Part 430.

Section 3. Communications

- a. Normally within the first thirty (30) calendar days of every rating period or within thirty (30) calendar days of employment or reassignment, the supervisor will discuss and issue the performance plan with each employee.
- b. During the rating period, the supervisor will discuss with and notify the employee of any changes in the employee’s Critical Elements or performance standards, annotate them in the performance plan, and provide a copy of the revised performance plan to the employee.
- c. Performance discussions:
 - a. Progress reviews and a closeout of current appraisal period and establishment of standards for the new appraisal period discussion must take place each appraisal period.
 - b. Performance discussions should occur throughout the performance appraisal period. Employees are encouraged to seek feedback from their supervisor about their performance throughout the performance appraisal period.
 - c. Performance discussions between the supervisor and the employee will be aimed at improving the work process or product and developing the employee. As appropriate, the discussion will provide the opportunity to assess accomplishments and progress and identify and resolve problems.
 - d. Employees must be working under a performance plan for a minimum of ninety (90) days before a rating can be given.
 - e. Performance discussions are not formal discussions.
 - f. The Agency will provide employees 24 hours advance notice of a progress review and/or rating as is practicable.

Section 4. Addressing Unacceptable Performance

- a. At any time during the rating period, if the supervisor identifies that an employee's performance in one or more Critical Elements is at the Unacceptable level, the supervisor will discuss the matter with the employee. The discussion may occur during or in addition to a regular performance review. Thereafter, the Supervisor may officially notify the employee of the Critical Elements for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance with the issuance of a Demonstration Opportunity Plan (DOP).
- b. The DOP must inform the employee that unless his or her performance in the Critical Element(s) at issue improves and is sustained at an acceptable level of performance, the employee may be reassigned, demoted, or removed from employment.
- c. The DOP of 60 calendar days is normally sufficient to demonstrate acceptable performance under the Critical Elements at issue, commensurate with the duties and responsibilities of the employee's position.
- d. During the DOP period, the supervisor will offer assistance to the employee in improving unacceptable performance.
- e. A supervisor can issue an Unacceptable rating prior to issuing a DOP. However, no reduction in grade or removal action will be taken under 5 C.F.R. Part 432 until the completion of the DOP period.
- f. Once the DOP period has ended or the supervisor determines that the opportunity period is no longer needed, the supervisor will provide the employee with a written notice of his/her determination of the employee's level of performance at that time.
- g. The provisions in this Article shall not preclude the Agency from taking an action for unacceptable performance under 5 U.S.C. Chapter 75.

Section 5. Performance Improvement Plan

Employees on a demonstration opportunity plan/performance improvement plan will be afforded 60 days to demonstrate acceptable performance in the critical element(s) in which they are considered at an unacceptable level.

Section 6. Grievances

Any alleged violations of the performance management system may be grieved under the negotiated grievance procedure. Interim progress reviews may be grieved, as well as the failure of Management to provide a progress review to the employee.

Section 7. IPPS Reviews

Employees will be provided with all questions and Topics, in writing, that will be asked/discussed of the Inspector(s) at least 5 working days prior to the IPPS review session.

IPPS reviews will be conducted in accordance with FSIS Directive 4430.3.

IPPS reviews will not take the place of progress reviews, nor will they be held simultaneously with a progress review.

In the event that more than one management personnel will be conducting/attending the review, the employee shall have the right to Union Representation.

IPPS reviews will not be given more weight than a progress review when an employee is rated, (direct supervision observation, indirect supervision observation) etc.

ARTICLE 12

AWARDS

Section 1. Policy

The Parties acknowledge the importance of timely recognition of employees for high quality contributions to the Department and its mission. Recognition and encouragement by the Agency as an important incentive that increases employee job satisfaction and contributes to the overall quality of work performance.

FSIS will administer awards in accordance with:

[5 U.S.C. 2301, Merit Systems Principles](#)

DR 4040-451-1, USDA Employee Awards and Recognition Program

DR 4040-430, Employee Performance Management

Section 2. Awards Programs -Agency

- a. Management retains their right to exercise discretion to issue or not to issue employee awards. It is recognized by the Parties that there are no entitlements to awards, and all awards should be issued in the best interest of the Agency.
- b. Awards will be granted in a consistent and objective manner without discrimination, and in accordance with applicable laws, rules, and regulations.

Awards may include but are not limited to the following: performance awards, Quality Step Increases (QSIs), time off awards, on-the-spot awards, and special act awards to individuals or groups, if they meet the criteria for such an award. Awards must be in accordance with current Department policy and applicable laws, rules, and regulations.

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 13

HOURS OF WORK

Section 1. Policy

- a. Work schedules will be established in accordance with the current versions 9 CFR Chapter III, Government-wide regulations and Agency policy and directives governing tours of duty. The workday excludes the lunch period but includes all time spent performing duties while in a pay status.
- b. The maximum cumulative time a BUE may be assigned on-line post-mortem inspection duties is ten (10) hours per workday. The maximum time a BUE may be assigned to perform inspection duties (e.g., in a pay status) is twelve (12) hours per workday. Employees will have 10 full hours (non-pay status) between assigned work. These limits may be suspended on a case-by-case basis if the immediate supervisor, based upon the Agency's staffing needs, determines suspension is necessary to accomplish the Agency's mission. Volunteers normally will be used before mandating BUEs to work beyond these limits.

Section 2. Lunch Period

In accordance with Title 9 CFR art 307.4 and Title 9 CFR Part 381.37, the lunch period 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 and is the only officially authorized interruption in the inspector's basic tour of duty once it begins. The lunch period may be any length of time from thirty (30) minutes to one (1) hour in duration. The lunch period is unpaid time and is not included in the BUEs basic workweek.

Unless doing so would conflict with the above-referenced regulations, on-line slaughter inspectors' lunch periods shall be scheduled to coincide with the plant's scheduled lunch break.

Section 3. Agency Relief Breaks

- a. The parties recognize that relief breaks to BUEs from performing inspection duties are desirable. A total of thirty (30) minutes of break time in an eight (8) hour day shall be given. Break times will remain consistent with what is currently in place. The break time authorized under this section cannot be scheduled as a thirty (30) minute block, extend the lunch period, arrive after the scheduled start, or shorten the workday. If overtime is scheduled or unscheduled for a two-hour period, an additional ten (10) minute break will be authorized by the immediate supervisor.
- b. 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 staffing shortage, the supervisor shall advise the local Union representative of the reasons.

Section 4. 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 rotation pattern, where appropriate.
- b. Majority of unit employees in the work unit must vote to adopt the compressed workweek and be approved by the Administrator 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 Frontline 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 or their designees, as applicable, determines that participation by an employee in a compressed work schedule would impose a personal hardship/adverse impact on such employee, the District Manager, OFO/Director 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 for unit employees.
- 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.

ARTICLE 14

LEAVE POLICY

Section 1. Policy

The Agency shall follow all applicable laws, rules, Departmental Regulations, and Agency Directives pertaining to leave. Additional guidance may be found at the following links:

[FSIS Directive 4630.2 Rev 2 - Leave](#)

[DR 4060.630.-001- Creditable Service for Annual Leave Accrual](#)

[DR 4060-630-002-Leave Administrative, Excused Absence and Administrative Leave](#)

[OPM Fact Sheets - Leave](#)

[5 CFR 630.405 – Supporting Evidence for the Use of Sick Leave](#)

[Investigative and Notice Leave 5 USC §6329b\(b\) \(1\)](#)

[5 CFR Part 550 - Pay Administration](#)

[5 CFR 630 - Absence and Leave](#)

[29 U.S.C. Chapter 28 - Family and Medical Leave](#)

[29 CFR Part 825 - The Family Medical Leave Act](#)

[CFR 630.1206\(b\) - Substitution of Paid Leave](#)

Section 2. Annual Leave

- a) Employees are responsible for 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.
- b) Leave approved at the beginning of the current leave year may be cancelled if necessary, to meet valid operational needs or as requested by employees.
- c) Both the needs of the employee and the Agency will be considered prior to any cancellation.
- d) Whenever possible, seventy-two (72) hours of advance notice shall be given to the employee or to management if the employee initiates the leave cancellation.
- e) 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.
- f) 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. Supervisors will provide a definitive written response as to whether the leave is granted or denied.

- g) Prior to returning to duty status, BUEs are required to ensure they are aware of location and reporting requirements for the upcoming administrative workweek. This may include logging into the Agency issued device to retrieve assignments for the upcoming administrative workweek.
- h) BUEs shall be compensated appropriately in accordance with applicable laws.

Section 3. Tardiness

1. Only the immediate supervisor, or designee, shall excuse tardiness of employees.
2. 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.
3. 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.
4. The Agency shall post or email instructions concerning emergency call-in procedures relative to the reporting of tardiness by an employee.
5. Posting will only take place in offices of employees without email access. 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

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

1. All yearly annual leave scheduling will be performed by the Union or designee. The District Office will determine the number, types, and grades of employees who can be on annual leave at any time, at each establishment, group of establishments, circuit, or circuits.
2. Not later than October 15, the District Office will notify the appropriate Council President of determination, if it represents a change from the previous year's numbers, types and grades at each establishment, group of establishments, circuit, or circuits.
3. The Union will provide the Agency the BUEs annual leave selections no later than December 1st.
4. The Agency will post the approved leave schedules no later than January 1st.
5. Annual leave schedules in place when a new LMA is issued will be honored for the remainder of that year.

Section 5. Sick Leave Restrictions

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.

A medical certificate or completed OPM-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 justification as to why the restrictions should continue or lift the restriction will be made and a copy provided to the employee.

Section 6. 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.

The employee will be allowed paid time in order to make this appeal.

ARTICLE 15

WITHIN GRADE INCREASES

Section 1. Policy

Within-grade salary increases shall be granted, delayed, or withheld in accordance with [5 CFR 531.406](#) and [FSIS Directive 4531.1](#).

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

- 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 (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 (or their designee) and the right to appeal to the Merit Systems Protection Board (MSPB) or to grieve through the negotiated grievance procedure, 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 to include all back pay and interest.

ARTICLE 16

DRUG FREE WORKPLACE

Section 1. Policy

The Agency will manage its Drug Free Workplace in accordance with:

[DR-4430-792-2](#)

[Executive Order 12564, Drug Free Federal Workplace](#)

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. 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

Employees are subject to reasonable suspicion testing. 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 may volunteer to be tested and in doing so will not be randomly tested or subject to random testing. If employees become subject to random testing, such testing will be conducted in accordance with Agency policy. The NJC Chairman or his/her designee, 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 and the Union will be provided notice and opportunity to bargain per the statute and the contract prior to implementation.

- a. Reasonable suspicion testing may be required of any employee in any position when there is a reasonable suspicion of on-duty use.
- b. Prior to deciding to test an employee based on appropriate evidence, the supervisor, or designee, will promptly prepare a written report detailing the facts and circumstances that warranted the testing. The employee will normally be given the reason(s) for ordering the drug test time prior to a referral for testing. The employee will be provided with a written copy of the referral/allegations.
- c. 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.

- d. 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.
- e. Employees who desire will be provided with the opportunity to have a portion of the sample, split sample, for testing at a lab of their choice. The employee will be allowed to watch the splitting of the sample.

Section 4. Notification and Results of Drug Use and Consequences

Disciplinary or adverse action could be initiated when an employee is found to use illegal drugs. An employee found to use illegal drugs could be referred to the Employee Assistance Program (EAP); such referral could preclude the initiation of disciplinary or adverse action. Employees are encouraged to obtain counseling or rehabilitation through the EAP or similar services, after having been found to use illegal drugs.

- 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 certified Medical Review Office.
- c. Annually, the NJC Chairperson, or designee, 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.
- d. Unit employees will be provided the same special treatment as non-unit employees.

Section 5. Release of Information

The Agency shall release information concerning employee drug tests only in accordance with applicable laws and regulations.

Section 6. Providing Notice

Employees will be given notice where and when to report for drug testing in a private and confidential manner. Employees will be provided a written 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. 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 17

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 [DR 4030-335-002](#).

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

ARTICLE 18

POSITION CLASSIFICATION

Section 1. Classification of Position

All positions in the unit will be classified by comparison with Office of Personnel Management classification standards and:

[5 U.S.C. Chapter 51, Classification](#)

[5 C.F.R., Part 511, Classification under the General Schedule](#)

[5 C.F.R. §1201.21, Notice of Appeal Rights](#)

[5 C.F.R. §1201.22, Filing an Appeal and Responses to Appeals](#)

[5 C.F.R. §1201.23, Computation of Time](#)

[5 C.F.R. §1201.24, Content of Appeal; Right to Hearing](#)

Section 2. Position Description

The Agency shall maintain a comprehensive file of position descriptions of all classified positions in the bargaining unit which it shall make available to the NJC Chairman, or designee annually. Classified positions are established after review and approval by the Agency.

Section 3. Effective Date

Reclassification actions shall be taken as soon as administratively possible.

Section 4. Employees Affected by a Re-Classification Action

The Agency agrees to notify the Union in writing prior to the effective date of any reclassification actions, whether or not the actions result in an obligation to bargain.

ARTICLE 19

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 the classification of the position.

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 grievance may be filed in accordance with Article 34, 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 20

DETAILS AND PULL PATTERNS

Section 1. Policy

The Agency will provide sufficient information (i.e., travel regulations and supervisory instruction) to inform the employee of the position being assigned and duration of assignment. This information should be consistent with the information provided to employees who are assigned to official travel (as described in Article 31, Section 1), where applicable. The Agency will also provide the anticipated IPS assignment number to which the employee is anticipated to be assigned, with the understanding that the employee may be assigned other duties to fulfill the Agency mission.

As much advance notice as possible shall be given to BUEs selected for a detail or temporary assignment.

Section 2. Definitions

- a. Detail – 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. 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.
- b. Pull Pattern – The order in which BUEs are detailed to perform mission critical duties as assigned.

Section 3. Out of Duty Station Details

- a. Supervisors will endeavor to find qualified volunteers before directing employees.
- b. BUEs 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.
- c. The Agency will notify the Union when there is a need to make a variation from the Agency maintained detail roster and pull patterns.

Section 4. Pull Patterns

Supervisors shall follow the established rosters or lists that are in place to determine the employee that is pulled to cover the position and shall ensure that pull patterns are done in an equitable manner.

Section 5. Vacant Assignments

Unless otherwise directed by their supervisor, detailed employees shall fill the vacant assignment.

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. Details to Higher Graded Positions - Agency

Details to higher- graded positions shall be consistent with current Agency rules, regulations and policies.

[DR 4030-335-002, Merit Promotion and Internal Placement](#)

Section 8. Record of Detail

Details over thirty (30) consecutive days will be in accordance with [FSIS Directive 4300.5, Details of Personnel](#).

ARTICLE 21

ASSIGNMENTS AND ROTATIONS 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.

Rotating employees within the establishment will allow for employees to gain knowledge that is needed to maintain proficiency in their jobs.

Current rotation patterns, practices, and durations, remain in effect with the implementation of this agreement. Rotation patterns shall be designed to preclude any interruption in plant production or interference with the Agency's mission.

If a change is needed to current rotations, the Agency will notify the union. The Union is the NJC Chair or their designee.

Section 2. Definitions

- a. Assignment – An assignment is a duty or grouping of duties as approved by the Agency with a targeted workload measurement of 75% - 125%.
- b. Rotation – The utilization of employees in a series of assignments within an establishment for a definitive period of time.
- c. Rotation Pattern – Assignments within a defined geographical area (interplant and intraplant) through which qualified employees in the same job series rotate on a regularly scheduled basis.

Section 3. Trading Assignments

Trading of assignments within the establishment assignment 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 at least three (3) weeks prior to the effective rotation date.

Section 4. Volunteers for Relief and Night Assignments

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. Volunteer policies and practices effective at the time of implementation of this Agreement will remain in effect.

ARTICLE 22

OVERTIME

Section 1. Responsibility for Overtime

- a. In accordance with 5 USC §7106, (a), (2), when overtime is required, the Agency retains the right to assign the overtime through use of appropriate FSIS policies.
- b. In situations where BUEs are required to work at least six (6) days per week, after working at least three (3) consecutive weeks, supervisors shall, upon request from the assigned BUE, make a concerted effort to provide sufficient relief from the overtime work to allow the BUE(s) adequate time to take care of personal needs. The Agency may excuse a BUE from an overtime assignment, provided another qualified BUE is available for the assignment, upon receipt of a timely request. BUEs must request such relief as soon as possible after learning of the available overtime. Agency supervisors stationed at slaughter facilities will ensure employees are notified in advance of irregular overtime.
- c. In the event that an emergency arises, and the Agency contacts a BUE that is in an approved leave status (annual, sick, etc.) or while in a non-pay status, the BUE will be compensated at overtime rates for the actual time spent responding to the Agency communication.
- d. Supervisors may combine overtime assignments during periods of reduced inspection coverage requirements when they deem it operationally necessary (e.g., during Saturday work when all establishments within a patrol assignment are not operating).

Section 2. Voluntary Overtime Replacement

BUEs willing to volunteer to work overtime may post their names on a roster for that purpose. Supervisors may utilize the roster to obtain a qualified replacement. Replacement is subject to the 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 BUEs. Current overtime practices will remain in place at the implementation of this agreement and may be supplemented by using the following procedure:

1. The Agency shall determine the pool of BUEs deemed qualified and eligible to perform overtime work and shall update the pool as qualifications of BUEs change.
2. One roster of all BUEs in seniority order, by grade shall be maintained and shared.
3. The pool will be made available to involved BUEs.
4. Consistent with Section 1 of this Article, a BUE who is scheduled on the roster for overtime duty is responsible for the overtime.

Section 4. Overtime and Premium Pay

In assigning standby duty or on-call status, the Agency shall comply with 5 CFR 551.

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. Appeals

Any alleged violation of this Article is both grievable and arbitrable pursuant to Article 34, Grievance Procedures, and Article 35, Arbitration, of this Agreement. Grievances Concerning backpay will be processed in accordance with Article 34, Section 7, Backpay, Discipline/Adverse Actions, Conflict of Interest and Hazardous Pay of the Grievance Procedures.

ARTICLE 23

CONTRACTING OUT

In Accordance with A-76, (*dated May 29, 2003 revised*), Section 4 (b) and Attachment A Section (b)(1), the parties agree that the nature of BUE work is an inherently Government function. The Agency will notify the Union regarding decisions that may impact BUE's in implementing Office of Management and Budget (OMB) Circular A-76.

ARTICLE 24

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, 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 the following:

[5 CFR Part 330, Subpart F – Agency Career Transition Assistance Plan CTAP for Local Surplus and Displaced Employees](#)

[Title 5 U.S.C.-Sections 3501-3504](#)

[Title 5 CFR Part 351.501](#)

[Title 5 CFR Part 351.203](#)

[Title 5 U.S.C. 7114\(b\)\(4\)](#)

[Title 5 CFR 351.601, Subpart F](#) and [Subpart G](#)

Office of Management (OPM) Government-Wide Laws and Regulations

[DR 4030-330-002, Special Selection Priority Programs](#)

Section 3. 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 4. Transfer of Function

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.

ARTICLE 25

FURLOUGH

Section 1. Policy

In the event of a furlough, the Agency shall comply with the following and any other applicable government-wide laws and regulations.

[OPM Furlough Guidance](#) - Where possible the agency will provide hard copies of relevant information to the affected BUEs without computer access.

[5 CFR 752](#)

There are two types of furloughs:

1. **Administrative furloughs** are planned by an agency. They are designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any budget situation other than a lapse in appropriations. Furloughs resulting from sequestration are generally considered administrative furloughs.
2. A **shutdown furlough** results from a lapse in appropriations. It can occur at the beginning of a fiscal year, if no funds have been appropriated for that year, or upon expiration of a continuing resolution, if a new continuing resolution or appropriations law is not passed. Agencies affected by a shutdown furlough must shut down any activities funded by annual appropriations that are not excepted by law. Agencies usually have little, if any, lead time to plan and implement a shutdown furlough.

Section 2. General Information

The parties recognize that bargaining unit employees may be designated as excepted employees and may be required to work in the event of a government-wide shutdown due to a lapse in appropriations. Excepted employees who work during a shutdown furlough period will be retroactively paid and otherwise compensated at the rate consistent with their pay, to the extent permitted by the law and regulation.

An administrative furlough will identify the expected time frames, if known prior to the beginning of the furlough and updated as information becomes available:

- a. The reason for the action;
- b. The bargaining unit employees excepted and not excepted by names, series, and location.
- c. The proposed effective date of the action.

Shutdown furloughs will identify, to the employee, the expected time frames, if known prior to the beginning of the furlough and updated as information becomes available during a furlough period. The Agency agrees to notify the Union at the earliest possible time and/or date, both verbally and in writing.

The Agency agrees in the event of a furlough to put forth a concerted effort to expedite processing requests for outside employment.

ARTICLE 26

VERA/VSIP

Section 1. Purpose

In conducting an action under this Article, the Agency shall comply with applicable government-wide laws and regulations. Information on VERA/VSIP will be shared through official Agency channels.

Section 2. Applicable Laws and Regulations

VERA

[5 U.S.C. 8336\(d\)\(2\)\(D\)](#) for CSRS

[5 U.S.C. 8414\(b\)\(1\)\(B\)](#) for FERS

[5 CFR Part 831.114](#) for CSRS

[5 CFR Part 842.213](#) for FERS

VSIP

[5 U.S.C. 3521](#)

[5 CFR Part 576](#)

[5 U.S.C. 2105](#)

Section 3. General Provisions

The Agency and Union recognize that employees may be seriously and negatively affected by restructuring, reshaping, or downsizing. The Agency recognizes that Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payment (VSIP) are useful authorities to help alleviate impact on employees and complete needed organization change with minimal disruption to the workforce.

- a. VERA authority encourages more voluntary separations by temporarily lowering the age and service requirements to increase the number of employees eligible for retirement.
- b. VSIP (or buyout) authority is an incentive to voluntarily separate by offering employees lump-sum payments in accordance with OPM regulations or an amount equal to the severance pay an employee would be entitled to receive, whichever is less.

The Agency shall advise the Union of the anticipated implementation date(s) for any VERA/VSIP approved by OPM.

All bargaining unit employees will be provided the complete VERA/VSIP information packet to the last known address of record, provided by the employee.

Section 4. Approval Authority

FSIS must request and receive approval to use VERA and/or VSIP authority from the Office of Personnel Management (OPM). The approval from OPM will stipulate who is covered, timeframes, expiration date, and any possible extension.

In the event VERA/VSIP authority is approved for implementation, the Agency will conduct a minimum of two all-employee Town Hall conference calls regarding VERA/VSIP. Employees that are at work can participate without loss of pay and not use leave, provided it does not impact the mission. The union will be notified in a timely manner to afford an opportunity to attend during the tour of duty. The Agency will provide the conference call information.

In the event the Agency requests an extension of time or additional positions to be offered, employees will be notified. This information will be shared through official Agency channels.

ARTICLE 27

REASSIGNMENTS

Section 1. Policy

The Agency retains the authority under 5 USC §7106 (a) to assign employees as needed to meet the operational needs of the Agency, in accordance with Title 5, CFR §335.

The parties recognize that BUE personal circumstances and job location preferences may change. Therefore, policy and procedures are established for a Voluntary Placement Program, under which BUEs may request voluntary placement to a different work location or type of position.

The parties further recognize that management may have a need to reassign employees to locations outside of their commuting area in work reduction situations or where there is an operational need for resources in other locations. Such reassignments shall be taken in accordance with this Article.

Section 2. New System Implementation

At the present time FSIS Form 4335.3 is being used to request a reassignment. Form will be submitted to:

**Office of Human Resources
Office of Management
USDA FSIS
920 2nd Avenue South
Suite 1300
Minneapolis, MN 55402**

At such time the Agency intends to discontinue the use of FSIS Form 4335.3, the Agency will issue an FSIS Notice that speaks to instruction and guidance on using the OHR portal for reassignments. The instruction will include the completion and submission of the reassignment request online. The FSIS Notice will be sent 45 days prior to the implemented change from FSIS Form 4335.5 to the online version to request a reassignment.

Section 3. Voluntary Placement of Inspectors

- a. Full-time inspection positions are permanent jobs in the locations to which employees are assigned. 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. 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.
4. Non-bargaining unit employees will not be placed on a voluntary placement list(s) with Unit employees.

b. Definitions

1. Job Swap. Employees in similar or identical jobs in different locations arrange to exchange jobs. The District Manager must approve a job swap.
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. 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, or other similar actions may apply for voluntary placement if otherwise eligible, the applicant's submission date is established upon receipt of the application, however, 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. 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 ninety (90) days after the effective date of the previous personnel action.
3. If OPM regulations change, the agency will provide notice and opportunity to the Union to bargain over those changes.

f. Submitting Requests for Voluntary Placement

1. The eligible employee
 - (a) Eligible employees shall continue to complete FSIS Form 4335-3 until such time that the Agency provides the Union notice of implementation of another means to complete the process of applying for a lateral reassignment.
 - (b) Once any new means is implemented, employees may indicate availability for up to five (5) locations. The agency will ensure that employees will be placed on all appropriate locations. Upon request, the appropriate Council President will be provided the reassignment list that was used in filling the position.
2. The Human Resources Field Office
 - (a) Informs employees of the appropriate contacts for questions on voluntary placement. The name, address, and toll-free number for these contacts will be updated as changes occur, which will be provided to the Union and employees electronically.
 - (b) Notifies employees, in writing, of receipt of their requests.

- (c) Upon request, the Council or Local Presidents will be furnished updated lists within their respective jurisdictions.

g. Length of Eligibility

Employee's Request for Reassignment within Field Operations is valid for a 1-year period from the time the application is submitted (i.e., if submitted on July 1st it will be active until July 1st the subsequent year) unless rescinded by the employee. If an employee moves to another position, Section 3(e) above would apply.

If during the 1-year period, referenced above, a BUE is offered the same location from the same voluntary placement list on three (3) separate occasions and doesn't accept, they will be removed from that 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 4 of this Article and the names of employee(s) requesting voluntary placement.
3. Employees exercising their return rights receive priority over other candidates on the Voluntary Placement List. This will be done in the same 1-year (i.e., if submitted on July 1st it will be active until July 1st the subsequent year) cycle.
4. Employees offered voluntary placement shall have three (3) workdays to accept or decline the offer.
5. Employees must report to the new duty station within sixty (60) days. A request for a delay of more than 60 days can be made by the employee.

i. 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, cannot 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 OHR (Office of Human Resources):
 - (a) Request for Voluntary Reassignment Within Field Operations can be submitted with FSIS form 4335-3 or within the OHR portal once implemented.
 - (b) A request describing their circumstances in detail, including actions taken to mitigate the hardship.
 - (c) Any supporting documentation.
 - (d) In the event a hardship request is granted, the appropriate Council President and the employee will be serviced simultaneously of the requested hardship approval.

Section 4. Reassignment of Inspectors in Work Reduction Situations

In the event a work 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 24, Reduction in Force and Transfer of Function, will govern. Work reductions generally result from situations where there is a change in operations at plants where BUEs 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) Measuring will be calculated as the actual driving amount driven by an agency representative, with the Union being offered the opportunity to accompany the agency official conducting the study. The Union official will be on official time and expenses, if applicable.

b. Work Reduction Process

1. The District Office notifies the OHR, who will then request a retention roster of affected employees, 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. Employees will select available locations within the commuting area based on their standing on the retention roster.
2. The OHR tentatively identifies locations to be included in the competitive area and forwards this information to the District Office for confirmation.
3. OHR identifies and confirms locations to be included in the competitive area and prepares retention registers in accordance with appropriate regulations. Retention

standing is used to determine which BUEs are offered reassignment outside the commuting area.

4. BUE 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.
5. The agency will provide, to the appropriate Council President, all retention rosters sent for their districts of the affected area.

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.

A BUE 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.

Section 5. Redeployment

A Redeployment of resources occurs when the Agency determines that there is a need to move BUEs to locations with critical staffing shortages. The Agency shall determine when redeployment of resources is required to meet critical staffing needs. Redeployment shall be conducted as follows:

- a. The Agency shall identify locations where BUEs 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, Reassignment of BUEs in Work Reduction Situations** above and BUEs from the competitive area identified as having BUEs 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 shall administer a fitness for duty program in accordance with 5 C.F.R. Part 339 and applicable FSIS directives.

[5 C.F.R. Part 339, Medical Qualification Determinations.](#)

Section 2. 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.

Section 3. Privacy

Employees are entitled to privacy regarding all stages of a request for fitness for duty. The agency will not discuss or disclose any information regarding the employee's mental or physical condition with anyone. The agency will honor all privacy laws and the HIPPA act.

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.

Section 2. Applicable Laws, Regulations, and Guidance

[5 CFR Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch](#)

[5 CFR Part 8301, Ethics Guide for US. Department of Agriculture Employees](#)

[FSIS Directive 4735.3, Rev 1, Employee Responsibilities and Conduct](#)

[FSIS Directive 4735.9, Office of Field Operations Assignment Restrictions and Rule of Gifts from Industry](#)

[USDA Office of Ethics, \[www.ethics.usda.gov\]\(http://www.ethics.usda.gov\)](#)

[Department Regulation 4070-735-001, Employee Responsibilities and Conduct](#)

ARTICLE 30

TRAINING AND CAREER DEVELOPMENT

Section 1. Policy

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

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. It is the Agency's intent to utilize multiple means and methods as appropriate to facilitate training, which include, but are not limited to, in-service, on-the-job, computerized, and cross-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 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 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. 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 4. Record of Training

A record of satisfactorily completed training, if known, will be maintained by the Agency. The employee is responsible for furnishing information to the Human Resource Department 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 5. Training Cost

The Agency will support approved training courses that would be beneficial, such as but not limited to Continuing Education Program, 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 6. Training Materials

The Agency, on an annual basis, will provide a listing of available training.

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 are entitled to reimbursement for expenses incurred in official travel in accordance with applicable laws, rules, and regulations regarding travel and compensation while in travel status including, but not limited to:

[Federal Travel Regulations \(FTR\)](#)
[DR 2300-005 Agriculture Travel Regulations](#)
[FSIS Directive 3900.1 Temporary Duty Travel](#)

The Agency will provide sufficient information to inform the employee of the position being assigned and duration of assignment, including, if applicable: The reason for the travel, departure and anticipated return dates, type and mode of travel, T&A transaction codes, starting time of the assignment(s), physical address of the facilities, travel authorization code, IPS assignment and the name and contact information of the reporting supervisor.

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 a no additional cost to the Agency.

Section 2. 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 3. Per Diem - Agency

Travel and per diem entitlements will be governed by the Federal Travel Rule, [DR 2300-005, Agricultural Travel Regulation](#). Per diem rates can also be found at the following GSA link: <https://www.gsa.gov/travel/plan-book/per-diem-rates>.

Section 4. Travel Expenses

A. Upon request, employees shall be provided assistance to properly complete vouchers (AD-616 and/or 617 including vouchers and/or authorizations within the government travel system i.e., Concur) where necessary.

- B. Employees shall complete all vouchers as well as all other administrative duties only during approved, compensable time. Employees shall request time from the supervisor, if needed, to complete vouchers and other administrative duties.
- C. The Agency shall timely process travel vouchers to ensure that employees are promptly reimbursed for travel-related expenses.

Section 5. Telephone Calls on Official Time - Union

Employees traveling TDY may make a personal call each day to speak to members of their immediate family, such as spouse, children, or anyone sharing the same residence with the employee. Travelers will be reimbursed for these calls may not exceed limits established in the FTR or ATR. This does not change the reimbursement for official business calls.

ARTICLE 32

GOVERNMENT TRAVEL MANAGEMENT SERVICES

Section 1. Use of Government Travel Management Services

- A. Employees with electronic access will use the electronic travel system (ETS) to make travel arrangements, request travel authorization, and file travel claims for reimbursement as required by federal travel regulations.
- B. Employees are to use government provided resources and time to make travel arrangements. Those who do not have access to computers will be provided resources such as Federal Agency Travel Administrator (FATA) to assist.

Section 2. Government Credit Cards

Employees engaged in official travel shall be considered for issuance of a Government credit card for charging reimbursable official travel-related expenses. 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. Use of the Card for Personal Use is Prohibited. Travel and credit card use shall be governed by the following government-wide regulations and policies listed below:

[Federal Travel Regulation \(FTR\)](#)

[DR 2300-005, Agriculture Travel Regulation \(ATR\)](#)

[FSIS Directive 3800.1, Rev, Amend 14](#)

[FSIS Directive 3800.2, Rev 3. Use of POV](#)

[FSIS Directive 3800.12, Travel Advances](#)

[FSIS Directive 3805.1, Rev 1, Travel Authorizations](#)

[Directive 3805.3, Rev 1, Invitational Travel](#)

[FSIS Directive 3810.1, Travel Vouchers, Responsibilities of Reviewers and Approvers](#)

[FSIS Directive 3810.3, Rev 1, Travel Vouchers](#)

[FSIS Directive 3820.1, Rev 4. Relocation](#)

[FSIS Directive 3830.2, Rev 5 GOVCC](#)

[FSIS Directive 3840.1 Foreign Travel](#)

[FSIS Directive 3850.1 Conferences](#)

Section 3. Travel Advances

At the Agency's election and when operational needs require, the Agency shall provide travel advances to employees. Travel advances are limited to meals and incidentals and other miscellaneous expenses. Travel advances do not include hotel, car rental, and/or airline expenses.

In general, employees will not be issued an advance of funds for anticipated official travel unless there are extenuating circumstances as determined by an appropriate management

official. When an exception to the above rule is granted, any 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. Travel advance limitations stipulated in the FTR and ATR must be followed.

ARTICLE 33

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. Performance actions will be labeled and acted upon as performance, not misconduct.

When there is a proposal for action sent to LERD for review, the affected employee(s) will be notified in writing the day the proposals are sent to LERD. The employee will be notified in writing of the allegations.

Nothing shall be placed in the evidence file that does not relate to a specification.

Previous allegations that have not been proven shall not be considered or mentioned in any proposal.

Stale discipline shall not be considered or mentioned in a proposal.

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 2. Formal Actions

- a. Any notice of proposed disciplinary or adverse action will advise the employee of his/her applicable rights.
- b. Letters of Reprimand will be retained in the employee's eOPF for up to two (2) years from the effective date.

Section 3. Representation

- a. 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. Upon request, the Agency will provide the designated representative an electronic copy of the evidence file.
- b. An employee may be represented by the Union or other representative of his or her choice. Designations will be in writing. Designations received electronically from the employee will suffice as proper designation. Once the designation has been made, all contacts and correspondence will be through the representative.
- c. In the event of a proposed adverse action, the oral conference will be held via teleconference or video conference.
- d. In instances where an employee designates a union representative, the scheduling of an oral conference or the proceedings of the disciplinary action case shall not be delayed.
- e. Official time will be paid by the Agency for all cases where known discipline is delivered.

Section 4. Outside Activities

Activities that are not reasonably related to the job of the employee shall not be considered in a disciplinary action or adverse action.

Section 5. Splitting Suspension

Whenever possible, the Agency will split discipline of more than one week between pay periods.

ARTICLE 34

GRIEVANCE PROCEDURES

Section 1. Purpose

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.

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.

In accordance with this Article, grievance response(s) as well as the grievance and all supporting documentation, shall be sent simultaneously to the grievant and the grievant's designated representative. The Agency shall provide the Union representative with information in accordance with statutory and contractual 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; or
2. by the Union concerning any matter relating to the employment of 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;
7. Performance progress reviews; and
8. Non-selection from a group of properly ranked and certified candidates, provide another grievable issues (s) is not also alleged, e.g., illegal discrimination.

c. Terminology: The party responding will use at least one of the terms below

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 under the aforementioned 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 Merit System Protection Board) 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 – Agency

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 reject or return the grievance as defined in Section 2. 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.

For the purpose of this Article, grievant is defined as the aggrieved employee and not the Union.

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 the actions which form the basis for the grievance.

For the purpose of expediting the processing of grievances, the parties agree that grievances shall be filed with the District Manager or designee where the alleged contractual violation occurred. Each grievance decision will be responsive to relevant issues raised in the grievance and that specific issues allegedly not reconciled will be sufficiently identified and adequately supported with relevant information when submitted to the succeeding step.

The grievance decision will include why the relief sought is not granted, in whole or in part.

The grievant/grievant's representative, are encouraged to orally discuss and attempt to resolve the complaint with the management official where the violation occurred before initiating a grievance.

All grievances will be given fair and impartial consideration throughout 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.

Grievances shall be filed as follows:

First Step: Grievances shall be filed using a Union Grievance Form or equivalent writing. The grievance shall be filed with the appropriate District Manager or designee where the issue arose.

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 party filing the

grievance. If the grievance is believed to be procedurally flawed, with the exception of untimely filed, it will be returned.

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.

The District Manager or designee shall render a decision in writing to the grievant and to the grievant's Union representative, within thirty (30) workdays after receipt of the grievance.

The Union representative may request a meeting with the Management Official involved.

If the Union representative is not within the grievant's duty station, a Union representative will be authorized mileage, not to exceed one hundred fifty (150) miles round trip, to attend face-to-face grievance meetings. Per diem will be authorized if within the Federal Travel Regulations.

Second 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) workdays after receipt of the decision. The procedure and conditions for invoking arbitration are contained in Article 35, 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 or arbitration process and provide notice to the other party.

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

If a grievance involves backpay, discipline/adverse actions (or) disciplinary actions, and conflict of interest determinations, it shall be sent to the LERD Director, or designee 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 action which form the basis for the grievance by emailing to LERD@usda.gov. Should the Agency email address change, the Union shall be provided timely notice.

**1400 Independence Ave., SW
Room 3150, Mailstop 3730
Washington, D.C. 20250**

The LERD Director or designee will either respond to the grievance or refer it to the appropriate official for response. The LERD Director or designee shall respond within twenty (20) workdays after receipt of the grievance from the Council Chairperson, or designee. If the grievant (2) remains dissatisfied, the grievance may be pursued to arbitration in accordance with the provisions identified in the Arbitration section.

Section 8. Union/Agency (Institutional) Grievances

Grievances must be filed within 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.

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 will be by electronic mail, express/overnight mail, or hand delivery.

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 of documents and will not attempt to evade the service of documents upon them.

Section 10. Numbering System

The Agency will designate appropriate staff/office(s) who will apply the number and identification to the grievance upon receipt. These numbers are to be sequential and in the order the grievance is received. This will aid in the responses of the grievances. Example: FY- District-XXX (e.g., 22-Denver-001).

ARTICLE 35

ARBITRATION

Section 1. Invoking Arbitration

- A. Only the Union, through the Chairperson, NJC (or designee), or the Agency, through the Director, LERD (or designee), may refer to arbitration any grievance that remains unresolved after the final step under the Grievance Procedures of this Agreement.
- B. The notice to invoke arbitration shall be made in writing to the opposite party within thirty (30) calendar days after receipt of the written decision rendered in the final step of the grievance procedure. Service will be by express/overnight, electronic mail, regular mail, facsimile, or hand delivery pursuant to Article 34 of this Agreement.
- C. The notice invoking arbitration shall also state whether:
 - 1. The nature of the grievance including relevant facts, names of BUE's or group(s) of individuals impacted and the Article(s) and Section(s) of the LMA alleged to have been violated;
 - 2. Any other known violations of law(s), rules, or regulations; and
 - 3. Corrective actions and requested relief.
- D. The written arbitration shall also state whether:
 - 1. The party is requesting the use of the traditional Arbitrator Panel or the services of the Federal Mediation Conciliation Services (FMCS) to obtain an Arbitrator; and
 - 2. An expedited method of arbitration is being requested.

Section 2. Arbitrator Appointment – Traditional Arbitration Panels

- A. The parties shall maintain an existing panel of Arbitrators for each one of the Agency District Office or similar organizational unit. Each Agency District Office or similar organizational unit shall be comprised of five (5) Arbitrators.
- B. On the effective date of this Agreement, the total Arbitrators for each Agency District Office or similar organization unit will be selected and established. Placement of the Arbitrators will be determined to the extent possible based upon the states they are located within the Agency District Office or similar organizational unit, in order to minimize litigation costs. The Arbitrators will be placed per each Agency District Office or similar organizational unit panel in alphabetical order using their last name and selected in turn for the duration of this Agreement. The Agency shall track the order of Arbitrators selected to hear cases and provide the tracking sheet to the NJC Chairperson or designee upon request.

- C. Once the parties have established the Arbitration Panels, the Agency shall issue written notification to the Arbitrators of their selection to serve on the panels. The Agency shall simultaneously provide a copy of the notification to the NJC Chairperson or designee.
- D. The Arbitrators serving on the panels may hear regular or expedited cases.
- E. When an invocation of arbitration is received, the Agency will select an Arbitrator within a reasonable amount of time. not to exceed forty-five (45) calendar days of the date of the invocation.
- F. The Arbitrator shall be notified in writing by the Agency of his/her appointment to hear a case. The Agency shall simultaneously provide a copy of the notification to the Union Representative.
- G. If an Arbitrator is not available to hear a case once appointed, he/she shall be passed and not selected again until the time comes for normal selection of that Arbitrator per the established order in the Agency District panel.
- H. If possible, the Arbitrator shall hear a case within one hundred and twenty (120) calendar days of notification by the Agency of his/her appointment, unless the parties mutually agree otherwise. Should an Arbitrator decline to hear a case within one hundred and twenty (120) calendar days of notification by the Agency of his/her appointment, he/she will be removed from the district panel.
- I. The parties shall review and replenish the panels annually, during the anniversary month of the effective date of the Agreement. At that time, each party may request in writing to remove one Arbitrator from the list, propose the addition of, or and jointly select replacement Arbitrator(s) to replenish the panels. 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.
- J. The parties may at any time mutually agree in writing to discontinue the service of Arbitrators on the agency district office panels. The Arbitrator will be notified in writing by the Agency that the parties are discontinuing his/her service. The Agency will simultaneously provide a copy of the notification to the NJC Chairperson or designee. The parties will then select a replacement for any opening as soon as possible or during the anniversary month of the effective date of the Agreement.
- K. The parties may seek the services of the FMCS to select new Arbitrators or create a list of proposed names and a striking process to obtain replacements.

Section 3. Arbitrator Appointment - FMCS Process

- A. The parties agree that the services of the FMCS may be used to select an Arbitrator to hear a case instead of the traditional Arbitration Panel established under this Agreement.
- B. The party invoking arbitration shall make such request at the time of the written arbitration request.

- C. When FMCS is used to select an Arbitrator, the parties shall complete the necessary paperwork and FMCS forms to ensure the request for an Arbitrator is sent in a timely manner. The parties understand and agree that should FMCS procedures or steps for making service requests change, they shall cooperate in good faith to ensure requests under this section are sent as soon as possible.
- D. Within thirty (30) calendar days of receipt of the FMCS list of impartial individuals qualified to serve as an Arbitrator, either side may contact the other party to conduct striking to select one of the listed Arbitrators.
- E. Each party shall strike one Arbitrator from the FMCS list until such time only one Arbitrator remains. The Agency shall maintain a striking log to reflect which party strikes first on each case. The list shall be shared with the NJC Chairperson or designee whenever the FMCS process is used to hear a case.
- F. Unless mutually agreed, the parties shall conduct striking to select an Arbitrator within ninety (90) calendar days after the date arbitration is invoked.
- G. 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 4. Arbitration Cost

- A. Arbitrator Fees: Unless otherwise provided by law each party shall equally bear Arbitrator travel costs and fees. It will be the Arbitrators responsibility to ensure both parties are provided cost estimates, billing information invoices prior to the hearing, and invoices after a decision on a case has been rendered.
- B. FMCS Fees: Unless otherwise provided by law, each party shall equally bear any FMCS processing costs or related fees.
- C. Hearing Transcripts: Either party may arrange or request a verbatim transcript at its own expense. If either party elects to have a copy of the transcript, that party shall bear the costs.
- D. Witness Travel Expenses: If travel is necessary for a bargaining unit employee witness approved by the Arbitrator to testify, the parties agree that travel expenses of such witnesses will be paid at Agency expense in accordance with applicable law.
- E. Union Representative Travel Expenses: If travel is necessary for a designated Union Representative representing the grievant in the arbitration proceedings, the parties agree that travel expenses will be paid for by the Agency in accordance with applicable law and shall be limited to one Union Representative.
- F. Other Union Official Travel Expenses: The parties also agree that the Union will be responsible for travel expenses for any additional Union officials (technical experts) that participate in the proceedings.

- G. Non-Agency Travel Expenses: If travel is necessary for a non-Agency witness(s) approved by the Arbitrator to testify, each party will be responsible to cover such travel expenses.
- H. Cancellation: If either party wishes to postpone or cancel a hearing, that party shall pay the full costs associated with the postponement/cancellation unless the parties agree otherwise.

Section 5. Participation in Arbitration Proceedings

- A. The parties agree that official time will be provided for the designated Union Representative to participate in the arbitration process as set forth in Article 7.
- B. The parties agree that bargaining unit employees, including the Grievant and approved witnesses will participate in arbitration hearings in duty status. Participation time shall be limited to witness preparation, any necessary travel, and time spent in the actual hearing. Approved duty time to participate is subject to impact on staffing and Agency operational needs.
- C. The parties agree to cooperate in scheduling participation in arbitration hearings as described in A and B of this Section in order to minimize disruptions to the workplace and limit the impact on Agency staffing and operational needs.

Section 6. Designation of Representative

- A. Upon appointment of an Arbitrator to hear a case, the parties agree to submit a written Designation of Representative. The Designation shall be served upon the Arbitrator and opposing party and will indicate the name, phone number, e-mail contact, address, and any other relevant contact information for the Agency and/or the Union Representative assigned to represent the parties in the case.
- B. The parties agree that upon such designation, all pertinent case discussions shall be through the Designated Representative. At any time, either party may substitute a designated representative upon written notification to the Arbitrator and opposing party.

Section 7. Pre-hearing Procedures

- A. The parties shall engage in a prehearing procedure to promote the prompt and efficient resolution of disputes in arbitration. To this effect, the parties shall conduct a prehearing conference call no later than thirty (30) calendar days prior to the hearing to discuss settlement, witnesses, issues, and possible means of expediting the hearing. Either party has the right to request that the Arbitrator attend the prehearing conference call to facilitate resolution of prehearing issues and any disputes.
- B. No later than twenty (20) calendar days prior to the hearing date, the parties shall each submit and exchange a written prehearing statement. The prehearing statement will include the proposed issue(s) to be decided by the Arbitrator, proposed witnesses, list of proposed exhibits to be offered at the hearing with copies attached, and proposed stipulations of fact (if any).

- C. Failure to identify and exchange witnesses and prehearing statements as stated in the sections above may result in the Arbitrator excluding such witnesses and/or evidence from the record except for good cause shown.
- D. If the parties cannot agree that a witness is necessary, the matter shall be submitted to the Arbitrator, whose decision shall be final and binding. The Arbitrator shall also have the authority to rule on requests by either party to exclude exhibits, evidence or witnesses not relevant and/or material to the issue(s) to be decided.

Section 8. Arbitration procedures and hearings

- A. Consistent with this Agreement, the Arbitrator shall determine the procedures to manage assigned cases and to conduct the hearing. The Arbitrator shall have the authority to define the explicit terms of this Agreement and to make all grievability and /or arbitrability determinations prior to addressing the merits of the original grievance.
- B. Parties need to reconcile.
- C. The Arbitrator shall have full authority to award attorney fees in accordance with applicable laws and regulations.
- D. The Arbitrator shall have no authority to add to, subtract from, alter, amend, or modify any provision of this Agreement.
- E. The hearing shall be informal and shall be conducted as an oral proceeding. No formal rules of evidence will apply.
- F. The parties shall be entitled to examine and cross examine witnesses.
- G. The Parties may submit written post hearing briefs.
- H. Either party may request a decision based on written briefs in lieu of a hearing. The Arbitrator shall have the authority to approve a party's request to decide the grievance on the record in lieu of a hearing. Such instances can include but are not limited to circumstances when the parties agree on the relevant facts.
- I. The hearing may be held in person, by phone, videoconferencing, or other means of testifying. Either party may submit a written request for such methods to the Arbitrator.
- J. If the hearing is held in person, it shall be done, when possible, on Agency premises or other available space during regular work hours of the basic work week at a location within the commuting distance of the aggrieved employee's duty station. In cases where the grievant no longer works at the original duty station, the hearing will be held near the original duty station. The parties agree that the choice of a hearing location should be made with the goal of reducing costs of travel expenses. Nothing in this section prevents the parties from mutually agreeing to a location of the parties' choice or to extend the duration of the hearing proceedings.

- K. Hearings for institutional grievances as defined in this Agreement shall be held in Washington, D.C. metropolitan area unless otherwise mutually agreed by the parties. Arbitrators for institutional grievances shall be selected from either FMCS or the Raleigh District arbitrator panel.
- L. Only material and relevant witnesses shall be permitted to testify. In the event either party opposes a witness identified by the other party, the party may request a prehearing ruling as to whether the witness is material or relevant by the Arbitrator whose decision shall be final and binding. However, either side may file an exception in accordance with applicable laws.
- M. The Arbitrator shall be requested to render a decision as quickly as possible, but no later than sixty (60) calendar days from submissions of post hearing briefs.
- N. The Arbitrator's decision and award shall be final and binding. However, either side may file an exception in accordance with applicable laws.

Section 9. Time Limits

The parties recognize that the party invoking arbitration is the moving party and as such is responsible for taking reasonable steps to prosecute the case and schedule a hearing. The parties recognize the non-moving party's right to dismiss any pending case if the moving party has failed to take reasonable steps to schedule a hearing within one year, of the date arbitration is invoked. The notification to dismiss pursuant to this section shall be in writing and served in accordance with delivery procedures in this Agreement to the other party with a copy to the Arbitrator.

Section 10. Expedited arbitration procedure

- A. The party invoking arbitration must make the request for an expedited arbitration at the time the invocation is made per Section 1. Once this method has been agreed upon by the parties, it cannot be changed.
- B. The parties agree that an expedited arbitration procedure shall be employed for the prompt resolution of any grievance when mutually agreed to by the parties.
- C. Hearing Conduct: The parties agree that for the purpose of providing a swift and economical resolution of the dispute the following guidelines apply:
 - 1. The Arbitrator will be appointed using the traditional Arbitrator Panel or FMCS described in this Article.
 - 2. Upon mutual agreement of the parties, the Arbitrator may decide the grievance based on the submission of written briefs in lieu of holding a hearing.
 - 3. If a hearing is done it shall be scheduled as soon as reasonably possible and conducted via teleconference unless the parties mutually agree otherwise.

4. The parties may mutually agree to forgo prehearing exchange requirements set forth in this Article.
5. No post hearing briefs shall be filed, or transcripts made.
6. The Arbitrator may issue a bench decision and close the hearing, or if a written decision is issued, the Arbitrator shall render it within (5) calendar days after the conclusion of the hearing.

ARTICLE 36

USE OF OFFICIAL FACILITIES

Section 1. General

The Union's access to and use of the Agency's communication resources shall not interfere with the mission or operation of the Agency.

Section 2. Space for Representational Duties

Upon request, management officials shall permit the use of government owned or leased space by Union representatives for the performance of representational duties, provided space is available and the 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.

The Agency shall make a reasonable effort to provide privacy to Union representatives when conducting representational duties.

Section 3. Use of Bulletin Boards

Upon request, the Agency shall maintain space for a Union bulletin board at each headquarter plant in accordance with limits imposed on labor organizations engaged in protected activity.

Section 4. Distribution

Union representatives may distribute materials to employees in all facilities where bargaining unit employees work, before and after scheduled working hours. This is subject to internal security requirements, or in the non-work areas during scheduled workhours, 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 5. Use of Equipment

At the Agency's Headquarters facility and other Agency-occupied premises, Union representatives shall be afforded access to Agency equipment so long as there is no conflict with the performance of official functions and equipment is available.

Section 6. E-Mail/Internet/Intranet

The Union will be provided access to and use of the Agency's electronic mail. Union access and use of Agency electronic mail system will comply with applicable laws, government-wide regulations, Agency policies, and this Agreement. Access and use will be on official time of representatives and employees, or on non-work time.

The above provisions apply only to Union officials who are FSIS employees.

ARTICLE 37

USE OF AGENCY EQUIPMENT AND RESOURCES

Agency-owned or leased equipment and resources include, but are not limited to, all electronic devices and associated systems as well as any systems or equipment, such as network, telecommunications, video or audio transmissions, duplication/printing and storage equipment and tools. The Parties recognize that the Agency uses approved electronic systems that contain sensitive information to accomplish its mission and that the Agency has a responsibility to ensure the security and protection of designated sensitive information. The Parties also recognize the importance of securing equipment in order to deter theft. As such, all employees are expected to follow applicable laws, rules, regulations,

Departmental Regulations and FSIS policies policy pertaining to security. As such use of Agency equipment and shall be governed by the following:

5 U.S.C. § 7106

[DR-3300-001](#), Telecommunications and Internet Services and Use

[DR-4070-735-001](#), Employees Responsibilities and Conduct

[FSIS Directive 1300.4](#), Access to Electronic and Information Technology Systems

[FSIS Directive 1300.7](#), Managing Information Technology (IT) Resources

[FSIS Directive 1310.1](#), Electronic Communications Operations Persons (E-COP) Procedures

- a. The Agency shall determine what electronic equipment, access and/or systems are needed to perform the duties of an assignment.
- b. Employee users of Agency-owned or leased equipment and resources do not have an expectation of privacy or anonymity while using such equipment or resources at any time, including times of permitted personal usage as set forth in Agency and Department policy and guidance. To the extent that employees desire to protect their privacy, employees should not use Agency-owned or leased equipment and resources.
- c. 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, discipline for misconduct, criminal penalties, financial liability for the cost of inappropriate use, or any other action deemed appropriate by the Agency.
- d. The following specific uses of Agency-owned or leased equipment or resources, either during working or non-working hours, are strictly prohibited and are not limited to the items below:

1. Activities that are in violation of law, government-wide regulation, ethics or which are otherwise inappropriate for the workplace;
2. Activities that would compromise the security of any government host computer or network. This includes, but is not limited to, sharing or disclosing log-in identification, PIN numbers and passwords;
3. Use of government-furnished email addresses for personal use;
4. Activities prohibited by the Hatch Act, fund raising, partisan political activities, endorsements of any products or services, or participation in any lobbying activity; or

Use of Agency-owned or leased equipment and resources to accomplish work-related responsibilities will always have priority over personal use.

- a. Current Agency and Department information technology limited personal use, privacy, security and other policy and guidance can be found on USDA and Agency web sites. Generally, relevant Agency policies can be located in the 1,000, 2,000, 5,000 and 13,000 series policies as well as current Agency Notices. Generally, relevant Department policy and guidance can be located in the 1,000, 3,000 and 5,000 series of Departmental Regulations and any associated Departmental Manuals.
- b. Both parties recognize that personnel are to perform inspection duties using their knowledge, skills, and abilities of statutes, regulations, and Agency policy issuances when electronic equipment and/or applications are not available due to malfunctions, connectivity issues or system unavailability.
- c. Information contained in this Article does not supersede changes to Federal law, policy or guidance nor does it supersede changes to Department or Agency policy or guidance.

ARTICLE 38

WORK PERFORMED AT PRISON/CORRECTIONAL FACILITIES

Section 1. Policy

Prior to being assigned to prison/correctional facilities, BUE's will be provided written guidance about working in such facilities.

ARTICLE 39

PILOT PROGRAMS/DEMONSTRATION PROJECTS

Section 1. Policy

The Parties recognize that innovations and modernization may result in a more efficient operations within the Food Safety Inspection Service. Both parties also agree that there may be different ways of completing various activities which may benefit both parties.

Section 2. Union Responsibilities

Prior to implementing any type of new pilot program, the Agency will provide written notification to the NJC Chairperson of the Agency's intent. Written notification will include at least the:

1. Nature of the pilot program
2. Scope of the program
3. Anticipated duration
4. Grades affected
5. Locations affected
6. Desired outcome of the program

Following receipt of the Agency's notice, the parties will arrange a teleconference briefing to discuss the proposed program.

ARTICLE 40

DUES WITHHOLDING

Section 1. General

Bargaining Unit Employees (BUE) who occupy positions represented by the Union may have their dues withheld through payroll deduction. Dues withholding is to be voluntary on the part of the individual employee. The Union is responsible for informing the BUE of the voluntary nature of dues withholding and the conditions governing a BUE revocation of dues withholding.

In implementing the dues deduction program, the Employer and Union will be governed by the provision of [5 U.S.C., Section 7115](#) , [Allotments to Representatives](#), [5 CFR § 2429.19](#) and this Article.

Section 2. Supply of Forms

The Union will be responsible for the distribution of Standard Form (SF) 1187, available online at [REQUEST FOR PAYROLL DEDUCTIONS](#), for the use by an eligible member of the Union who wishes to authorize the deduction of his/her dues.

Standard Form 1188 will also be available through the Union, the appropriate Human Resources Office, or online at www.opm.gov/forms/pdf_fill/sf1188.pdf, for employees who wish to revoke the allotment as described in Section 4.

Section 3. Requesting Dues Withholding

In order to initiate dues withholding, a BUE must complete and sign an SF-1187. BUEs must themselves submit the completed, signed, and certified SF-1187 forms to the appropriate Human Resources Office for concurrence, at no expense to the Agency. The Agency will provide contact information to where/who the SF-1187 can be mailed, faxed, or emailed in the Human Resources Office. The Union, its representatives, or another individual may not submit the forms on the BUE's behalf. Dues will be withheld beginning no later than two pay periods following receipt of Standard Form 1187.

Section 4. Termination of Dues Withholding

1. Automatic

All allotments of Union dues withholding will be automatically terminated in the following events:

- (a) Loss of Exclusive Recognition. All deductions of Union dues provided for in this Article will automatically terminate in the event of loss of exclusive recognition.
- (b) Temporary assignment to a non-BUE position. If the employee is on a temporary assignment to a non-BUE position, the Employer will notify Payroll to cease the allotment of Union dues deduction and so inform the Union. The employee will be

responsible for submitting a new SF-1187 upon returning to a BUE position if they elect to voluntarily continue to pay Union dues through Payroll deduction.

- (c) Separation or transfer. Any individual allotment for dues withholding shall automatically terminate upon the separation of the employee from the Agency or transfer of the employee from the bargaining unit.
- (d) Change in membership status. The Union will certify to management any member who ceases to be a member in good standing.

2. Voluntary

An employee may submit a SF-1188 Form for the revocation of an allotment within thirty (30) days of the anniversary date when the bargaining unit employee joined the Union.

Section 5. Correction of Errors

The Employer agrees that the total error in the amount of dues withheld from BUE shall be adjusted as soon as practicable after the Employer has discovered the error or has received written notification of the error from the Union or the Union's designee. The parties agree that the Agency will be held harmless for any corrected errors.

If a BUE has been improperly separated and is ordered reinstated by the appropriate authority to a BUE position, the employee is required to initiate a new SF-1187 to restart dues withholding if they voluntarily elect to do so.

ARTICLE 41

NEGOTIATION OF LOCAL AGREEMENTS

As provided for below, local agreements may be negotiated at the Local/Circuit level by the Council President which represents all the bargaining unit employees assigned to an effected Local/Circuit. It is understood by the Parties to this Agreement that this is the Master Agreement and that only a local agreement may be negotiated at the local level. It is understood that the purpose of local supplemental agreements is for coverage of matters specifically applicable to the respective Local/Council. The Agency and the Union must mutually agree to the subject for bargaining. The LMA is governing, and as such nothing may be included in the local agreement which is in conflict with the LMA. If any conflict arises between any supplemental agreement and this Master Agreement, the terms of the LMA shall prevail.

All bargaining sessions shall be held in the District Office where the Local Agreement will govern unless the parties mutually agree to conduct bargaining at an alternate site. The timelines will follow those set forth in Article 6 - Bargaining During the Term of the Agreement Section 1(b). For the General provision for bargaining the Parties shall follow the provision set forth in Article 6 - Bargaining During the Term of the Agreement Section 3(a) General Provisions for Bargaining.

The Agency's Chief Negotiator and the NJC Chairman shall review and resolve any conflicts in the negotiated Local Agreements within 14 calendar days prior to finalization.

ARTICLE 42

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 and Issuances

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

Section 3. Distribution of Agreement

- a. Upon ratification an electronic/digital version of the Agreement will be made available for all BUEs with agency-issued computers via the Agency's intranet. The Agency will distribute a hard copy to those without computers. Subsequently the Agreement will be available in electronic/digital version (i.e. .pdf) on the Agency's website.
- b. The Agreement will be available within ninety (90) days of the effective date of this Agreement. Should any errors occur in the printed version, corrections will be made in an updated electronic version available to all employees.

ARTICLE 43

DURATION OF AGREEMENT

Section 1. Effective Date

This Agreement shall be implemented and become effective upon final review and approval of Agency Head review pursuant to Title 5 USC. §7114 (c) or §7119 (b)(5).

Section 2. Duration of Agreement

- A. This Agreement shall remain in full force and effect until three (3) years from its effective date. Following the 3rd anniversary, the parties will exchange initial written proposals on a new Agreement no later than six months prior to the 4th anniversary date.
- B. 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.
- C. Either Party may reopen three (3) articles of this contract during the thirty (30) calendar days surrounding the 18th month anniversary of this Agreement. The parties agree that a maximum of six (6) articles of this agreement may be re-opened during the 18th month execution of this agreement.

Section 3. 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

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.

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.

Lay off 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.