COLLECTIVE BARGAINING AGREEMENT

American Federation of State, County and Municipal Employees, Local 3870, member of, and agent for, American Federation of State, County and Municipal Employees District Council 20

and

USDA Rural Development, Rural Utilities Service and Rural Business and Cooperative Development Service, Washington, D.C.

Effective Date: May 1, 2024

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Article 1 - Parties to the Agreement, Recognition, and Definition of Bargaining Unit

1.1 Parties to the Agreement

The Parties to this Collective Bargaining Agreement (hereinafter Agreement) are the Employer and the Union. The Employer, USDA Rural Development (RD), Washington, D.C., is within the United States Department of Agriculture (hereinafter the Agency). The Union, American Federation of State, County, and Municipal Employees (AFSCME) Local 3870, AFL-CIO, is the agent of the certified exclusive representative, American Federation of State, County and Municipal Employees, District Council 20, AFL-CIO (hereinafter AFSCME District Council 20).

1.2 Units of Recognition

This Agreement covers the following employees for which the Federal Labor Relations Authority (hereinafter FLRA) certified AFSCME District Council 20 as the exclusive representative and for which the Employer recognizes AFSCME District Council 20 as the exclusive representative of all members (hereinafter employees or bargaining unit employees).

The unit of employees in Rural Development in FLRA Case Nos. WA-RP-21-0038 and WA-RP-22-0024 or as amended by the FLRA in any future certifications:

Included: All professional and nonprofessional employees employed by the U.S. Department of Agriculture, Rural Business and Cooperative Development Service in the Washington, DC Metropolitan area.

Excluded: All management officials, supervisors and employees described in 5 USC 7112(b)(2),(3),(4),(6) and (7).

Included: All nonprofessional employees employed by the U.S. Department of Agriculture, Rural Utilities Service, Washington, DC metropolitan area.

Excluded: All professional employees, management officials, supervisors and employees described in 5 USC 7112(b)(2),(3),(4),(6) and (7).

For the purposes of this Agreement, the following employee classifications are examples of professional employees:

Economists - 110 Series Architects/Engineers - 800 Series

1.3 Coverage of the Agreement

A. This Agreement covers only those positions included in the previously described bargaining unit.

B. The terms employee and employees are used in this Agreement to refer to bargaining unit employees only.

Article 2 - Dues Withholding

2.1 General

A. Voluntary allotment by employees for the payment of dues to the Union shall be authorized and processed according to the procedures set forth below.

B. These procedures are subject to and governed by 5 USC 7115, by regulations issued by the Office of Personnel Management (5 CFR 550.301, 550.311, 550.312, 550.321 and 550.322), and shall be modified as necessary by any future amendments to said rules, regulations and law.

C. The Employer shall permit any employee of the Employer who is a member of the bargaining unit represented by the Union to make a voluntary allotment for the payment of dues to the Union. Such deductions shall begin upon request by the appropriate Union official and shall be at no cost to the Union. This Article establishes the only authorized method for obtaining dues withholding.

2.2 Employee Procedure

The employee who wishes to begin making a voluntary allotment shall: (i) obtain a SF-1187, "Request for Payroll Deductions for Labor Organization Dues" or successor, from the Union; and (ii) file the completed SF-1187 with the designated Union representative. The Union shall instruct the employee to complete the top portion and Part B of the form. No number shall appear in block 2 of the form except the employee's Social Security number.

2.3 Processing Roles

A. The President or other authorized official of the Union shall:

1. certify on each SF-1187 that the employee is a member in good standing of the Union;

2. insert the amount to be withheld (or provide the dues withholding percentage), and the appropriate Local number; and

3. submit the completed SF-1187 to Employee Services Division (ESD) through the HR Service Request ticketing tool or successor.

B. ESD shall:

1. certify the employee's eligibility for dues withholding;

2. insert the AFSCME code (47); and

3. process the form through the Employer's automated payroll/personnel processing system.

2.4 Effective Date

An employee's initial dues deduction shall become effective the first full pay period after the receipt by ESD of the employee's certified SF-1187, provided it is received three (3) business days before the beginning of the pay period. For SF-1187's received after this cut-off, the Employer shall

attempt to begin dues withholding effective the first full pay period after receipt, but if this is not possible, dues withholding shall become effective the following pay period. When ESD determines that an SF-1187 cannot be processed, ESD shall promptly return the form to the Union, annotated with the reason for its return. In most cases, this annotation will be one word, such as confidential or supervisor. The Employer shall not deduct dues for an employee who does not receive compensation sufficient to cover the total amount of the allotment.

2.5 Dues Withholding List for the Union

Deductions shall be made each pay period and remittances shall be made on the Employer's pay day to the payee designated by the Union. A grace period of seven (7) business days shall be permitted in unusual circumstances. The Employer shall also promptly forward to the Union a listing of dues withheld showing: (i) the name of each member employee from whose pay dues were withheld; (ii) the amount withheld; (iii) the code of the Employer; and (Iv) the number of the Local to which each employee belongs. The listing shall: (i) be in alphabetical order of the employees' last names; and (ii) show the number of members for whom dues were withheld, the total amount withheld, and the amount due to the Local. Each list shall also include: (i) the name of each employee Union member who previously made an allotment for whom no deduction was made that pay period; and (ii) whether the absence of a deduction was due to leave without pay or other cause. Such employees shall be designated with an appropriate explanatory term.

2.6 Dues Amount

The amount of dues certified on the SF-1187 by the authorized Union official (see Section 2.5 above) shall be the amount of regular dues, exclusive of initiation fees, assessment, back dues, fines, and similar charges and fees. One standard amount for all employees or different amounts of dues for different employees may be specified. If there should be a change in the dues structure or amount, the authorized Union official shall notify Labor Relations. If the change is the same for all members of the Local, a blanket authorization may be used which includes only the Local number and the new amount of dues to be withheld. If the change involves a varying dues structure, then the Union shall provide a revised rate schedule to Labor Relations. The change shall be effected at the beginning of the first full pay period after the certification is received by the National Finance Center which shall be no later than thirty (30) calendar days after the Union provides written notification to Labor Relations of the change in dues. The Union may make only one such change in any 6- month period.

2.7 Dues Revocation

A bargaining unit employee may revoke an allotment for dues withholding as of the first full pay period following the initial one-year anniversary of the pay period in which the allotment began or any time after. An employee who wishes to revoke an allotment must complete an SF-1188, "Cancellation of Payroll Deductions for Labor Organization Dues" (or a memorandum containing all the information required by the SF-1188) and submit it to ESD through the HR Service Request ticketing tool or successor. ESD shall verify the information, forward to the designated Union official a copy of each revocation received as appropriate notice of the revocation and terminate the allotment.

2.8 Termination of Allotments

In addition, the Employer shall terminate an allotment:

1. as of the beginning of the first full pay period following receipt of notice that exclusive recognition has been withdrawn;

2. at the end of the pay period during which an employee member is separated or assigned to a position not included in the bargaining unit; and

3. at the end of the pay period during which ESD received a notice from the Union that an employee member has ceased to be a member in good standing.

2.9 Positions Outside of the Bargaining Unit

ESD and the employee members have a mutual responsibility to assure timely revocation of an employee's allotment for Union dues when the employee is promoted or assigned to a position not included in the bargaining unit. If the dues allotments continue and the employee fails to notify ESD, the Employer shall consider waiving erroneous payments to the Union in accordance with 5 USC 5584.

2.10 Resolution of Problems

If problems occur in the administration of this Agreement and dues withholding, the Union and Labor Relations will work to facilitate resolution of problems. This provision should not be construed as waiving any legal, regulatory, or contractual right. Grievances or other appeals concerning this Article will be filed in accordance with Article 18, Negotiated Grievance Procedure.

Article 3 - Rights of Employees, Union and Employer

3.1 Employee Rights

A. The Federal Service Labor-Management Relations Statute (FSL-MRS) provides that each bargaining unit employee has the right to become a Union member, to serve as a Union representative, and to be represented by the Union in grievances, negotiations, and other matters pertaining to collective bargaining.

In accordance with 5 USC Section 7114(a)(5), employees have the right to be represented by an attorney or other representative of their own choosing, other than the Union, when exercising grievance or appellate rights established by law, rule, or regulation. The Union remains the exclusive representative of employees in grievances filed under Article 18, Negotiated Grievance Procedure.

B. An employee has the right to Union representation, upon request, at any examination of the employee in connection with an investigation that the employee reasonably believes could lead to disciplinary action (sometimes called *Weingarten* meetings). The employee shall be given reasonable time to obtain such representation. The determination of reasonableness shall be made on a case-by- case basis and shall be dependent upon the totality of the circumstances including, e.g., the nature of the matter leading to the investigative meeting. The Employer shall remind employees of this right on an annual basis.

C. No employee will be disciplined or otherwise discriminated against for exercising their rights under the FSL-MRS or for filing complaints or appeals under the terms of any other statute.

D. Employees covered by this Agreement, may, without fear of penalty or reprisal, disclose information which the employee reasonably believes evidences a violation of law, including, but not limited to law, the No Fear Act, rule, or regulation; or evidences mismanagement, a waste of funds, an abuse of authority, or a danger to health or safety, in accordance with applicable laws and regulations.

E. Employee counseling or cautions on conduct or unacceptable performance, or verbal warnings shall be conducted in a setting that protects the employee’s confidentiality.

F. In accordance with applicable law, an employee may review any and all records about them upon request and shall be given copies of the records upon proper request.

3.2 Union Rights

A. The Union is the exclusive representative of the bargaining unit and is entitled to act on behalf of bargaining unit employees on all matters pertaining to collective bargaining. The Union is responsible to represent the interests of all bargaining unit employees whether or not they are dues-paying Union members.

B. Under Section 7114(a)(2)(A) of the FSL-MRS, the Employer is obligated to provide the exclusive representative of an appropriate unit in an agency the 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 practice or other general condition of employment. Thus, the Employer shall give the Union President or designee, reasonable notice of any such

discussion. The determination of reasonableness shall depend on the circumstances of each case, and to the extent possible, shall normally be not less than twenty-four (24) hours unless there is a compelling reason for a shorter notice period.

C. Under Section 7114(a)(2)(B) of the FSL-MRS, the Employer is obligated to provide the Union an opportunity to be represented at any examination of an employee in the unit by a representative of the Employer in connection with an investigation if:

  1. the employee reasonably believes that the examination may result in disciplinary action against the employee; and

  2. the employee requests representation.

D. Under Section 7114(b)(4) of the FSL-MRS, the Employer is obligated to provide, when requested by the Union, such data/information as is both relevant and necessary for the Union to perform its function as exclusive representative of the bargaining unit and its employee members.

  1. The Union shall submit all requests for data/information supported by a particularized statement of its need for each item, to the Employer's designated labor relations point- of-contact;

  2. When the Union submits such a request, the Employer shall respond within ten (10) business days:

     a. by producing the requested data/information; and/or

     b. when the Employer believes it has good and reasonable cause to deny the request, the Employer shall explain in writing and in detail the reason(s) the requested data is not being provided; and/or

     c. when the Employer believes it has good and reasonable cause for not meeting the deadline to provide the requested data/information, it shall explain in written detail the reason(s) it will provide the requested data more than ten (10) business days after the date of the request, and by naming the earliest date when it reasonably expects to deliver the requested information.

  3. Before the Employer responds in the manner described by Section D 2 b and/or D 2 c above, the Employer shall attempt to work out with the Union a mutually acceptable agreement that satisfies efficiently and effectively the legitimate interests of both Parties.

E. Procedures regarding notice of changes in conditions of employment can be found in Article 30, Mid-Term and Impact and Implementation Bargaining.

F. The Parties agree to hold consultation meetings in order to communicate and exchange points of view on any subject affecting bargaining unit employees. Normally there will be two (2) such meetings each year, but no less than one. By mutual consent, additional meetings may be called to discuss matters of mutual concern. Consultation meetings may be telephonic, VCT or face-to-face

3.3 Management Rights

The Employer retains its management rights as provided by Section 7106 of the Statute.

A. Nothing in this Article shall affect the authority of any management official:

   1. to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

   2. in accordance with applicable laws:

      a. to hire, assign, direct, layoff, and retain employees, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against employees;

      b. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

      c. with respect to filling positions, to make selections for appointments from (i) among properly ranked and certified candidates for promotion or (ii) any other appropriate source; and,

      d. to take whatever actions may be necessary to carry out the agency mission during emergencies.

B. Nothing in this Section shall preclude any agency and any labor organization from negotiating:

   1. at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

   2. procedures which management officials of the agency will observe in exercising any authority under this Section; or

   3. appropriate arrangements for employees adversely affected by the exercise of any authority under this Section by such management officials.

3.4 Bargaining Unit Listing

The Employer shall provide the Union with a list of bargaining unit employees semi-annually. The report shall list employees as of pay period 13 and the last pay period of the leave year (usually pay period 26, but sometimes pay period 27). The Employer shall provide the reports to the Union within thirty (30) calendar days of the last day of the relevant pay period. In addition, on an as needed basis, the Union may request and be provided additional bargaining unit lists.

Article 4 - Official Time

4.1 Prior Agreements

All existing memoranda of understanding and settlement agreements between the Parties concerning official time are hereby rendered null and void.

4.2 Definition

Official Time. Duty time during which employees serving in their capacities as Union representatives perform activities set forth in Section 4.3 below without loss of pay or charge to leave, as they are entitled by 5 USC 7131(a) and (c), and as the Employer and Union have agreed, under the authority of 5 USC 7131(d) is reasonable, necessary and in the public interest.

4.3 Use of Official Time

A. Permitted Use of Official Time. Union representatives may request official time from the Employer, and the Employer shall grant the use of official time for purposes identified in Section of this Article. The Representative shall not be released from their work assignments until the supervisor or designee grants approval for the official time.

   Everything in this Article applies whether the Representative will be using official time at their workstation or away from their workstation. For brief (less than 10 minutes) incoming and outgoing telephone calls and/or personal visits with the Union representative by an employee or representative of the Employer to discuss a representational matter, no prior approval is required. Official time shall be approved unless approval would result in interfering with the completion of key work assignments of the work unit.

B. Designation of Union Officials for Use of Official Time. The Union shall have the right to designate eighteen (18) representatives and alternates including the eleven (11) elected officers, one of whom shall be the Chief Steward. These representatives may be granted official time for representational purposes covered in Section 4.4 of this Article. The representatives and their alternates shall provide geographic representation for the work area to which they are assigned. However, this shall not preclude the Union from assigning a representative to matters outside of their normal area under special circumstances when mutually agreed by the Parties. Examples of such special circumstances include, but are not limited to, a steward's unavailability due to leave, travel, or training; the need for a steward's special expertise; the regularly assigned steward has the grievance or problem; or the need for on-the-job training for a new steward. The Employer shall give serious consideration to such special circumstances when deciding whether to agree to assign a steward to a matter outside of their geographic area and shall not withhold agreement unreasonably. The Union shall determine and designate its own regular assignments of representatives and alternates at each location. If the Union cannot find a representative for a specific location, the Union may elect to assign a temporary representative from another location. The eleven (11) elected officers, including the Chief Steward, shall not be restricted by geographic location.

C. List of Stewards and Officers. The Union shall provide the Employer with a list of officers, representatives, and their alternates who are authorized by the Union to request and use official time and shall indicate on the list the assigned location(s) of each. This list may be updated and modified from time to time. Normally, the Union shall submit any changes to the list in writing to the Employer's representative three (3) business days before the individual will be recognized by the Employer as having authority to represent the Union

and be granted official time for representational duties. In exceptional circumstances (e.g., when a new steward replaces an existing steward and is immediately confronted with a situation requiring Union representation), the Union may notify the Labor Relations staff or other representative orally, after which it shall send a written confirmation within three (3) business days.

4.4 Purposes of Official Time

A. Official time for representational purposes or activities is covered by 5 USC Section 7131 and shall include the following:

1. Attending or preparing to attend any formal discussion between one or more representatives of the Employer and one or more employees in the unit or their representatives concerning any grievance, personnel policy, practice, or other general condition of employment.

2. Attending or preparing to attend any examination of an employee in the unit by a representative of the Employer in connection with an investigation if: (i) the employee reasonably believes that the examination may result in disciplinary action against the employee, and (ii) the employee requests representation.

3. Attending or preparing to attend any meeting between a Union representative(s) and one or more representatives of the Employer that is initiated by either the Employer representative or the Union representative.

4. Preparing for and participating in bargaining, including mediation and/or the resolution of any bargaining impasse and/or negotiability question.

5. Preparing for and participating in proceedings of the Federal Labor Relations Authority, Federal Mediation and Conciliation Service, Federal Service Impasses Panel, Merit Systems Protection Board, and before an Arbitrator appointed under Article 19, Arbitration, of this Agreement.

6. Preparing for and participating in the following:

   a. Filings to the agencies referenced in Section 4.4, A 5 above.

   b. Grievances, adverse actions and other appeals under relevant USDA/Rural Development regulations, and this Agreement.

   c. Any other negotiation (impact and implementation), grievance or arbitration procedures as outlined in this Agreement.

7. The Employer shall approve up to five hundred (500) hours per year for the Union's representatives to attend Union-sponsored Labor-Management relations training. Joint Labor-Management training shall not count toward the five hundred (500) hours. Union representatives submitting requests for such official time shall include an agenda showing the actual hours and subject matter of the training.

8. Visiting, phoning and writing elected representatives concerning pending or desired legislation which would impact the conditions of employment of bargaining unit employees.

9. The Secretary and Treasurer of the Union shall each be allowed up to twenty-four

(24) hours of official time per calendar year to (i) prepare financial and membership reports required by the U.S. Government, including reports to the U.S. Department of Labor and Internal Revenue Service, and (ii) maintain the records required by those reports. Further, the Secretary shall be granted reasonable official time to process Standard Forms 1187 (dues withholding).

B. The Union recognizes the Employer's responsibility to ensure that all official time approved under this provision is used for legitimate representational purposes and activities.

C. If the Union determines that official time is required for purposes other than those enumerated above, the Union and Employer shall negotiate concerning such use of official time.

4.5 Prohibited Uses of Official Time

Official time shall not be permitted, used, granted or utilized for internal Union business including, but not limited to, the following:

A. Attending meetings for internal Union business;

B. Solicitation of membership;

C. Collecting dues;

D. Elections of Union officials;

E. Preparing and distributing Union newspapers, flyers, bulletins or other publications; or

F. Discussing internal Union business by telephone, in person or otherwise.

4.6 Amount of Official Time

The Union representative's supervisor may approve official time for the purposes set forth in Section 4.4 in amounts that are necessary to accomplish the purpose for which official time is requested.

4.7 Procedures for Requesting Use of Official Time

The following procedures shall be followed for requesting the use of official time for purposes set forth in Section 4.4 of this Article.

A. All requests for the use of official time shall be for finite periods of time and must be made in advance, normally at least forty-eight (48) hours, unless sufficient extenuating and unforeseeable circumstances prevent the employee from doing so.

B. Requests for official time should include when, how long and the general purpose for which the time will be used as referred to in Section 4.11 B of this Article.

   i. The purpose should provide enough detail that the authorizing official can reasonably ascertain whether the requested time is reasonable and necessary to accomplish such tasks (i.e., attending a formal discussion or Weingarten meeting, preparation for term negotiations, participation in mediation). The requesting employee shall not be required to betray confidences or compromise the privacy or strategy of the Union's representational activities.

C. Requests for the use of official time shall be made by the Union representative to their immediate supervisor or delegated official, or the second level supervisor if the immediate supervisor is absent or unavailable.

D. Supervisory approval of the period of official time must be obtained prior to the use of such official time.

E. In the event the Union representative using official time requires additional time due to unforeseen circumstances, the representative shall request and be granted an extension of time by telephone or other appropriate means. The request shall be made to the approving supervisor or, in that supervisor's absence, the delegated official or any available supervisor of the person's unit, section or division.

F. Upon the completion of a period of official time that is reasonable and necessary, the Union representative shall promptly return to work and notify the supervisor who approved the official time.

G. It is understood by the Parties that unforeseen needs may arise precluding advance approval, such as unexpected telephone calls to a Union representative. On such occasions, the Union representative shall: (i) notify the supervisor as soon as possible; and (ii) request approval by close of business on the same day.

H. The Employer shall respond to requests for official time in a timely manner, normally within twenty-four (24) hours, unless sufficient extenuating and unforeseeable circumstances prevent the Employer from doing so.

I. In the event that a Union representative's advance request for the use of official time is disapproved in whole or in part, the Employer shall notify the representative and Labor Relations in writing with the basis for the denial. Denials may be appealed directly to the Assistant Administrator in RUS or the Deputy Administrator in RBCS or designees.

J. If, after making a good-faith effort, the Union is unable to designate an alternative representative to engage in the activity, the Employer shall make a reasonable effort to reschedule events or modify deadlines.

4.8 Official Time for Specifically Designated Union Officials

A. In advance of the administrative work week, the Union may send the Employer notice designating up to two (2) elected officials from the bargaining unit for whom the Employer shall normally approve official time for the purpose of conducting Union business up to a combined total of fourteen (14) hours per week.

B. Designated Union officials on official time shall report to the Union office or telework during the designated day(s) per week. To assure confidentiality required by the duties, the Union office shall be a private office.

C. Union representatives utilizing official time under this Section are not restricted to only fourteen (14) hours of official time per week. They may also request reasonable official time in accordance with Section 4.7 Procedures for Requesting Use of Official Time.

4.9 Union Official Rights

A. Each designated Union official shall be free to apply for any vacancy and shall be fairly considered for any promotional opportunity within the Employer. The performance of

Union work on official time shall be viewed with neutrality by selecting official(s).

B. In the event of a reduction in force (RIF), each designated Union official shall have the same rights as other RD employees, and their position of record shall be viewed with neutrality in any RIF planning.

C. Each designated Union official shall be eligible to attend training or conferences necessary to maintain the professional skills of their assigned permanent position of record. Criteria for approval or disapproval shall be the same as applied to other employees in that work unit.

4.10 Employees' Right to Official Time

A. Employees are entitled to a reasonable amount of official time to consult with Union representatives on conditions of employment and to prepare for and attend meetings with the Employer regarding conditions of employment, including the participation in appeal proceedings. Employees shall obtain supervisory approval to use official time.

B. In the event that an employee's request for the use of official time is denied, the employee may submit a request: (i) to use official time at an alternate date/time and/or (ii) that the deciding official reschedule representational events and/or modify deadlines in order to enable the employee to prepare and respond adequately to the event or action that gives rise to the request.

C. In the event that an employee's advance request for the use of official time is disapproved in whole or in part, the Employer shall notify the representative in writing with the basis for the denial.

4.11 Time and Attendance

A. Official time must be recorded in WebTA or successor using the appropriate Transaction Code, and the employee's normal accounting code. The Program Entry should be *RD00 Rural Development,* and the Activity Code should be *Sup-HR 512*.

B. Official time used is to be recorded on the Union representatives' or employees' biweekly time sheet using the following codes:

1. Transaction Code 35 Term Negotiations. Any bargaining unit employee spending time on the clock preparing for and negotiating a term agreement (new agreement or re- opening) including ground rules, mediation, impasse proceedings and negotiability proceedings. This includes the chief spokesperson, note taker, and members of the Union negotiating team. This also applies to briefings, Interest Based Bargaining, Statutory bargaining, drafting proposals or information requests relating to bargaining.

2. Transaction Code 36 Mid-Term Negotiations. Any bargaining unit employee spending time on the clock preparing for and negotiating a mid-term agreement, including ground rules, mediation, impasse proceedings and negotiability proceedings. This includes the chief spokesperson, note taker, and members of the Union negotiating team. This applies to bargaining over issues raised during the life of a term agreement and includes briefings, Interest Based Bargaining, Statutory bargaining, drafting proposals or information requests relating to bargaining/change bargaining.

3. Transaction Code 37 General Labor-Management Relations. Any bargaining unit employee spending time on the clock representing the Union, which does not fall within transaction codes 35, 36 or 38 normally will be 37. This includes but is not limited to: Labor Management Forum meetings and working groups, working groups when acting for the Union, formal discussions, investigatory/Weingarten meetings, Union sponsored training/events, joint training, briefings, and consultation meetings.

4. Transaction Code 38 Dispute Resolution. Any bargaining unit employee spending time on the clock representing the Union in grievances or arbitrations, adverse action meetings, ADR meetings, EEO functions if designated by the Union, and ULP proceedings. Bargaining unit employees attending grievance meetings or representing themselves should also be using this code.

Article 5 - Use of Official Facilities and Services

5.1 General

A. The Employer agrees to provide furnishings and equipment such as computers, printer/fax/copier (may be an all-in-one machine), telephone with speaker and conferencing capabilities, email access, carpet, window coverings, conference table and chairs, desks, and desk chairs, file and storage cabinets with locks, etc. The Agency shall allot additional private office space to the Union if there is any available.

B. When available, and during non-duty hours, the Union may reserve and use the Employer's conference rooms or other suitable space for internal business meetings of its officers, stewards, and members subject to official needs. The Employer shall not be obligated to incur any additional expenses for use of such facilities, such as heating and air conditioning.

C. The Employer shall permit reasonable use of copying equipment in Agency facilities to reproduce material related to representational activities.

D. The Employer agrees to provide the Union access to all current Agency written issuances on personnel policies, practices, and working conditions.

E. The Union office shall have use of an Agency-provided functioning telephone which is equipped with the following:

1. Full access to current Government phone service used by Rural Development.
2. Voice mail capabilities which are currently used by other Agency telephones in the Washington, D.C., National Office.

F. For the purpose of fostering effective and efficient communications between the Parties, the Employer shall provide the Union access to the e-mail system to facilitate communications between the Union and the Labor Relations Staff.

5.2 Bulletin Boards

The Union shall have access to a bulletin board outside of Room 1330 in South Ag Building, Wing 3, first floor. The Union may post material on bulletin boards. The Union President is fully responsible for any and all material posted which shall comply with Departmental Regulation 1620-003 Facilities and Space Management or successor.

5.3 Union Publications

The Union may distribute Union publications in working areas during non-duty hours. The Union shall have access to the internal mailing system and email for distribution of the Union Newsletter throughout the work area provided the Union prepares the material for mailing; this applies to sorting, addressing, bundling, etc.

Article 6 - Effective Date, Duration and Distribution of the Agreement

6.1 Effective Date

A. This Agreement shall become effective on the earlier of the following two dates: (1) the 31st calendar day after it was executed by the Parties, unless the Agency Head has disapproved it pursuant to 5 USC 7114(c)(2); or (2) the day it is approved by the Agency Head.

B. On the date this Agreement becomes effective, all past practices that are inconsistent with the terms of this Agreement and affect employees' conditions of employment shall be null and void.

C. On the date this Agreement becomes effective, all existing MOAs, MOUs, or other such agreements shall be null and void.

6.2 Duration

This Agreement shall remain in effect for four (4) years from its effective date.

6.3 Renegotiation and Renewal

A. The Employer and the Union may each request to re-negotiate the Agreement by submitting written notice of its intent to do so to the other Party at least sixty (60), but not more than one hundred twenty (120) calendar days prior to the Agreement's expiration date. In the event the Parties re-open the Agreement for re-negotiation, the current terms shall remain in effect until superseded by a new Agreement. In the event neither Party submits a notice of its intent to re- negotiate, the Agreement shall renew itself automatically for successive periods of one year except for provisions which conflict with applicable law or Government-wide regulation.

B. In the event one of the Parties gives notice pursuant to 6.3 A, the Parties shall meet within fifteen (15) business days thereafter to negotiate ground rules.

6.4 Distribution

Within fifteen (15) business days of the effective date of this Agreement, the Employer shall provide an electronic copy of the Agreement to the Union.

Article 7 - Mid-Term CBA Reopener

7.1 Right to Reopen

Either Party may reopen negotiations after both the end of the 18th month of this Agreement and the end of the 36th month of this Agreement in accordance with the following:

A. At least thirty (30) but not more than sixty (60) calendar days before the end of the 18th month and before the end of the 36th month of this Agreement, the moving Party may serve the other Party with written notice of its intent to reopen negotiations, citing the specific article(s) it wishes to renegotiate and providing a brief explanation of its interests underlying the renegotiation of those articles. The moving Party may reopen up to four (4) articles.

B. The other Party is then free, if it wishes, to reopen four (4) additional articles and shall notify the moving Party in writing within fifteen (15) business days of receiving the notice described in 7.1 A above. If so, the Party shall specify which article(s), if any, it chooses to reopen, and provide a brief explanation of its interests underlying the re-negotiation of those articles.

C. Until agreement is reached in accordance with the terms of this provision, the current provisions of the Agreement shall remain in full force and effect.

7.2 Process

A. The Agency shall notify the Union of the size of its bargaining team and the Union shall be allowed to have an identical number of bargaining unit members on its team on official time. Official time shall be governed by the provisions of Article 4, Official Time. At all negotiating sessions and impasse proceedings, each Party shall be represented by a chief negotiator with the authority to reach a binding agreement.

B. Each Party who gave notice to reopen any Article shall send its written proposal(s) to the other Party no later than fifteen (15) business days after the notice given under Section 7.1 A or 7.1 B, whichever is later. Proposals shall be structured in the form of contract articles and shall contain desired contract language. Proposals shall not merely present a concept. Negotiations shall begin no later than fifteen (15) business days after the receipt of proposals. During the initial round of negotiations, the Parties shall discuss the proposals presented by each Party. The purpose of the initial discussion shall be to develop an understanding of the other Party's position and underlying interests for each of its proposals. The Parties shall question each other about the meaning and intent of the proposals and shall identify potential problems with the other Party's proposals. Although the initial round of negotiation is to develop an understanding of each Party's positions and interests, either Party is free to make counteroffers, agreements, or modifications to its proposals at any time. The goal of the Parties is to complete the initial round of discussions in two (2) negotiation sessions.

C. After the initial round of discussion, there shall be a one-week break in negotiations. During the break, the Parties shall modify their proposals and develop counter proposals to the extent possible.

D. After the break, negotiations on the second round of bargaining shall begin. The Parties shall discuss each article and attempt to reach agreement. The goal of the Parties is to complete this phase of negotiations in three (3) negotiation sessions.

E. After all articles have again been discussed, there shall be a one-week break. At the

conclusion of that period, the final phase of bargaining shall begin. The Parties shall again discuss all articles. After three (3) negotiation sessions in this final phase, if agreement has not been reached, all articles for which there is not agreement shall be considered at impasse.

F. If impasse is reached on any article, either Party may contact the Federal Mediation and Conciliation Service (FMCS) for assistance. If the mediator is unsuccessful at resolving all items at impasse, either Party may request assistance from the Federal Service Impasses Panel (FSIP), after which the Parties shall proceed in accordance with the Panel's directives.

7.3 Negotiating Sessions

A. Negotiations may be conducted virtually or face-to-face. The Agency shall notify the Union orally at the close of each negotiating session of the location of the next session.

B. Negotiation sessions shall take place on Monday, Tuesday, Wednesday, and Thursday of each week from 9 am to 3:30 pm as needed. By mutual agreement of the chief negotiators, negotiations during any day may be cancelled, shortened, extended, or rescheduled at any time.

7.4 Agreements

When the Parties reach a tentative agreement on an article, they shall develop final contract language for that article. The chief negotiators shall initial and date the article signaling tentative agreement. It is understood that every agreement is tentative, and none is final until all articles reopened for bargaining have been agreed to and all impasses have been resolved.

7.5 Disputes over Negotiability

A. The Parties shall make every attempt to resolve negotiability disputes through discussion and rephrasing of proposals.

B. If the Employer declares a Union proposal non-negotiable, it shall provide the Union a written allegation of non-negotiability in accordance with the regulations of the Federal Labor Relations Authority (FLRA). The Union may then challenge the Employer's allegation through the appropriate FLRA procedures.

C. Negotiability disputes shall be severed from the negotiations and will not delay implementation of the new Agreement. When disputed matters are resolved they will be incorporated into the Agreement.

7.6 Union Ratification and Agency Head Review

A. The Union reserves the right to ratify the Agreement concerning the reopened articles and shall have obtained such ratification before the Agreement concerning the reopened articles is presented to the Agency Head for review. If the membership rejects any portion of the Agreement, all reopened articles are considered rejected.

B. The Union shall have fifteen (15) business days to accomplish ratification. This 15-day period shall commence upon receipt of a final version of the CBA from the Employer.

C. Once ratified, the Agreement on the reopened articles shall be signed by the Parties and forwarded to the Agency Head in accordance with the terms of Section 7114 (c) of the

Statute. If the Agency Head rejects any portion of the Agreement, the Union is free to challenge that decision through FLRA negotiability procedures or to return to the table to renegotiate only the rejected portion(s) of the Agreement.

Article 8 - Work Schedules and Hours of Work

8.1 General Provisions

The work schedule arrangements for bargaining unit employees shall be governed solely by the provisions of law, Government-wide regulations, and the terms of this Agreement.

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

8.2 Definitions

For the purposes of this Agreement and consistent with Federal Regulations, the following definitions are used:

A. Alternative Work Schedule (AWS). Refers to both flexible and compressed work schedules.

B. Basic Work Requirement. The number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award.

C. Biweekly Pay Period. The 2-week period for which an employee is scheduled to perform work.

D. Compensatory Time Off. Time off in lieu of overtime pay for regularly scheduled or irregular or occasional overtime work.

E. Compressed Work Schedule (CWS). Work under a fixed work schedule that has:

    1. In the case of a full-time employee, an 80-hour biweekly basic work requirement that is scheduled for fewer than ten (10) days.

    2. In the case of a part-time employee, a biweekly basic work requirement of less than eighty (80) hours that is scheduled for less than ten (10) workdays and that may require the employee to work more than eight (8) hours in a day.

F. Core Hours. The time periods during the workday, workweek, or pay period that are within the tour of duty hours during which an employee covered by a Flexible Work Schedule (FWS) is required by the Employer to be present for work. Core hours are between 9:00 a.m. and 2:30 p.m.

G. Core Time Deviation (CTD). An absence during the core hours, requested by an employee on an FWS, authorized in advance by the supervisor, which must be made up within the same pay period during flexible time in lieu of charge to any type of leave. Supervisory approval of CTD requests must be fair and equitable.

H. Credit Hours. Those hours within an FWS that an employee voluntarily elects to work in excess of their basic work requirements so as to vary the length of a workweek or workday. Credit hours may be earned between 6:00 a.m. and 6:00 p.m., Monday through Friday, with advanced supervisory approval.

I. Flexilunch. With supervisory approval and on an occasional basis, employees on any FWS may expand their lunch break within the lunch band on any given day without charge to leave, provided starting and/or stopping times are adjusted by an equivalent amount on that day.

J. Flexitour Schedule. A type of FWS in which an employee has a basic work requirement of eight (8) hours each day and forty (40) hours each week and selects starting and stopping times within the flexible hours. The starting and stopping times do not have to be the same every day; however, once selected, the hours are fixed unless a change is authorized by the supervisor.

K. Flexible Work Schedule (FWS). A work schedule that:

1. In the case of a full-time employee, has an 80-hour biweekly basic work requirement that allows an employee to determine their own schedule consistent with the procedures in this Article; and

2. In the case of a part-time employee, has a bi-weekly work requirement of less than eighty (80) hours that allows an employee to determine their own schedule consistent with the procedures in this Article.

L. Gliding Schedule. An FWS under which an employee has a basic work requirement of eight (8) hours per day, forty (40) hours per week, and the employee may select a starting and stopping time each day and may change starting and stopping times daily within the established flexible hours. See Section 8.6, Gliding Work Schedule.

M. Lunch Band. The period of time between 11:00 a.m. and 2:00 p.m. when an employee may take their lunch break. An employee will not be required to work more than six (6) hours without a lunch break.

N. Lunch Period. The thirty-, forty-five-, or sixty-minute mealtime requested by the employee and approved by the supervisor.

O. Maxiflex Schedule. A type of flexible work schedule that allows an employee to vary their start and stop times on a given workday and to schedule work for fewer than ten (10) days per two- week pay period so long as the eighty (80) hour per pay period requirement is met. See Section 8.7, Maxiflex Work Schedule.

P. Overtime Hours (full-time employees who are FLSA nonexempt).

a. For employees under a CWS, (i) all officially ordered and approved hours of work in excess of the CWS and (ii) any hours worked outside the CWS that are suffered or permitted; or

b. For employees under an FWS, all hours of work officially ordered in advance in excess of the approved FWS (for a day or biweekly pay period); or

c. For employees under a traditional work schedule who are FLSA nonexempt, (i) all officially ordered or approved hours of work in excess of eight (8) hours in a day or forty (40) hours in a week and (ii) any hours worked outside the traditional work schedule that are suffered or permitted.

Q. Overtime Pay. The compensation paid to an employee for work during overtime hours. The rate of such compensation for employees with rates of basic pay equal to or less than the

rate of basic pay for GS-10, step 1 is one and one-half times the usual hourly rate. The rate of compensation for employees with rates of basic pay greater than the basic pay for GS-10, step 1 is the greater of one and a half times the hourly rate of basic pay for GS-10, step 1 or the employee's hourly rate of pay.

R. Standard Work Schedule. A schedule of Monday through Friday, eight (8) hours a day, with a 30-to-60-minute meal period scheduled to occur between 11:00 a.m. and 2:00 p.m., and a preset starting time occurring between 6:00 a.m. and 9:30 a.m.

S. Suffered or Permitted Work. Any work performed by an employee for the benefit of the Employer, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed, and has an opportunity to prevent the work from being performed.

T. Temporary Schedule Change. A temporary work schedule change, as used in this Article, means two (2) pay periods or less.

U. Tour of Duty. The number of hours (except overtime hours) an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award. A full- time employee's basic work requirement is eighty (80) hours in a pay period. A part-time employee's basic work requirement is the number of hours that the employee and supervisor agree that the employee is officially scheduled to work each pay period.

8.3 Work Schedule Options

A. Bargaining unit employees may choose to work a standard or alternative work schedule.

B. The following tables summarize alternative work scheduling options.

Table 1. Available Compressed Work Schedule Options

	5-4/9 Option	4-10 Option
Tour of Duty	Eight (8), nine- (9)-hour days and one (1), eight- (8)-hour day per pay period	Four (4), ten- (10)-hour days per week as scheduled
Start time	9-hour day: may begin as early as 6:00 a.m., but no later than 8:30 a.m. 8-hour day: may begin as early as 6:00 a.m. but no later than 9:00 a.m.	May begin as early as 6:00 a.m. but no later than 7:30 a.m.
Nonwork day	One (1) day per pay period as established	One (1) day per week as established
Glide (starting and stopping times may vary)	Ineligible	Ineligible
Credit hours	Ineligible	Ineligible
Overtime	Eligible (Section 8.13)	Eligible (Section 8.13)
Compensatory Time	Eligible (Section 8.12)	Eligible (Section 8.12)
Flexilunch	Ineligible	Ineligible
Holiday Pay	Eight (8) hours on short day Nine (9) hours on long day	Ten (10) hours

Table 2. Available Flexible Work Schedule Options

	Maxiflex	**Gliding Schedule**	**Flexitour**
Tour of Duty	As scheduled up to eleven and one half (11 1/2) hour days	Eight- (8-) hour work day	Eight- (8-) hour work day
Non-work day	One (1) or more as established	Ineligible	Ineligible
Start time	May begin as early as 6:00 a.m. but no later than 9:00 a.m.	May begin as early as 6:00 a.m. but no later than 9:00 a.m.	May begin as early as 6:00 a.m. but no later than 9:00 a.m.
Glide (starting and stopping times may vary)	Eligible	Eligible	Eligible
Credit hours	Eligible (see Section 8.11)	Eligible (see Section 8.11)	Eligible (see Section 8.11)
Overtime	Eligible (Section 8.13)	Eligible (Section 8.13)	Eligible (Section 8.13)
Compensatory Time	Eligible (Section 8.12)	Eligible (Section 8.12)	Eligible (Section 8.12)
Core Time Deviation	Eligible	Eligible	Eligible
Flexilunch	Eligible	Eligible	Eligible
Holiday Pay	Eight (8) hours	Eight (8) hours	Eight (8) hours

C. Employees shall record their time worked using current recording practices. Should the Employer wish to change such practices it shall meet, consult, and bargain with the Union pursuant to Article 30, Mid-Term and Impact and Implementation Bargaining.

8.4 Procedures for Requesting Work Schedules

A. Employees shall request a work schedule and designated lunch period (30, 45, or 60 minutes) using the Time and Attendance system. The lunch period should be taken between the hours of 11:00 a.m. and 2:00 p.m. The supervisor may disapprove an employee's request for an AWS if such schedule will result in increased costs, reduced productivity, or a decrease in customer service. Once approved, the supervisor may cancel such a schedule only for the same reasons. Disapproval or cancellation of a FWS or CWS is subject to the requirements of the Federal Employees Flexible and Compressed Work Schedules Act.

   The supervisor's approval or disapproval of employees' requests for particular compressed days off or start/quit times shall be dependent upon workload, office coverage, and customer service needs of each office.

   A supervisor or manager shall approve or disapprove a work schedule option request normally within two (2) business days of actual receipt. It is the employee's responsibility to ensure the supervisor's actual receipt of the request. If the work schedule option requested is disapproved, the reasons for such disapproval must be provided in writing at the time of the disapproval.

   B. If the supervisor cannot honor an employee's request for a particular compressed day off or start/quit time, the supervisor or other management official shall meet with the employee in an attempt to reach a mutually acceptable alternative schedule. If no agreement can be reached, the supervisor or other management official shall make the final determination concerning the schedule.

C. Time and attendance shall be recorded using the Employer's timekeeping system.

8.5 Compressed Work Schedule

A. CWS are arranged to allow employees to fulfill their basic work requirements in fewer than ten

   (10) days during a biweekly pay period. There are two (2) types of CWS – the 5/4-9 plan and the 4-10 plan.

B. Employees on CWS have a fixed starting time which may begin as early as 6:00 a.m. but no later than 9:00 a.m., and a fixed ending time not later than 6:00 p.m.

C. Employees on CWS may not earn credit hours.

D. Full-time employees working a CWS who are relieved or prevented by Federal statute or Executive Order from working on a day designated as a holiday (or an in-lieu-of holiday) are entitled to their rate of basic pay for the number of hours of the CWS on that day.

E. Part-time employees working a CWS who are relieved or prevented by Federal statute or Executive Order from working on a day designated as a holiday are entitled to their rate of basic pay for the number of hours on the CWS on that day. Part-time employees are not entitled to an in-lieu-of holiday if the official holiday occurs on their non-workday.

F. Employees may request CWS changes no more than four (4) times in a year.

8.6 Gliding Work Schedule

A. Employees on a Gliding work schedule must work an 8-hour day Monday through Friday. They may vary the starting and stopping times of their workdays on a daily basis.

B. Employees shall be allowed to request Gliding schedule changes as needed throughout the year.

C. Employees on a Gliding work schedule may earn and use credit hours between 6:00 a.m. and 6:00 p.m. on Monday through Friday. See Section 8.11, Credit Hours, for more information on credit hours.

8.7 Maxiflex Work Schedule

A. Employees select a starting time each day (so the supervisor may know generally when to expect the employee). However, the employee may change the starting times daily within the established flexible hours of 6:00 a.m. to 9:00 a.m. The scheduled number of hours for a day must be completed by 6:00 p.m.

B. Supervisors may require that an employee provide advance notice when the employee will not be arriving within one hour of their anticipated arrival time. This advance notice requirement does not apply to unforeseen situations beyond the employee's control in which the employee must notify the supervisor as soon as possible.

C. Employees on a Maxiflex work schedule may earn and use credit hours between 6:00 a.m. and 6:00 p.m. on Monday through Friday. See Section 8.11, Credit Hours below for more information on credit hours.

D. Employees shall be allowed to request Maxiflex schedule changes as needed throughout the year.

8.8 Flexitour Schedule

A. Employees shall choose a biweekly schedule within the hours of 6:00 a.m. and 6:00 p.m. The requested hours are limited to an 8-hour, 5-day workweek.

B. Employees on Flexitour have a fixed starting and ending time.

C. Employees on Flexitour are eligible to earn credit hours.

D. Employees shall be allowed to request Flexitour schedule changes as needed throughout the year.

8.9 Breaks

A. Full-time employees shall receive two (2) daily rest breaks of fifteen (15) minutes duration.

B. Part-time employees shall receive one daily rest break of fifteen (15) minutes duration for each four (4) hours of work.

C. Rest breaks may not be used to arrive late for duty, to leave early from duty, or in conjunction with the lunch period.

8.10 Work Schedule Changes

This Section refers to a change from one type of work schedule to another type of work schedule (e.g., changing from a CWS to a Maxiflex Work Schedule).

A. The Employer may temporarily change an employee's work schedule after discussion with the employee. A temporary schedule change may be made based upon an employee's demonstrated attendance or performance problems, and to accommodate such matters as workload, training needs, attendance at meetings, travel, office coverage needs, and operational exigencies. Employees may be required to adjust or change their work schedule or tour of duty for the pay period(s) affected by official travel or training.

B. Employees may request to change to another type of schedule at any time during the year. However, to avoid disruption, changes normally may not be made more than four (4) times a year. In emergency situations or in cases of personal hardship, the Employer may approve an employee's request for more than four (4) changes a year. Requests for change in work schedule must be made at least one pay period in advance of the change, unless the employee's personal situation does not allow for such time.

C. Should the Employer need to make work schedule changes for two (2) or more employees in the same unit predicated on a management-initiated change, it shall give the Union notice and an opportunity to bargain in accordance with the provisions of Article 30, Mid-Term and Impact and Implementation Bargaining.

8.11 Credit Hours

A. Credit hours are earned by working in excess of the basic workday or workweek requirement on a voluntary basis. Employees do not receive overtime pay for these extra hours. Although credit hours are worked voluntarily, the length of time to be worked and the type of work to be completed must be approved in advance by the supervisor.

B. Credit hours may be earned by employees on an FWS only. They may not be earned by employees on a Standard or CWS.

C. There is no limit to the total number of credit hours that may be worked in a workday so long as the total hours worked including regular tour of duty and credit hours does not exceed twelve (12) hours.

D. Full-time employees may carry over no more than twenty-four (24) credit hours from pay period to pay period. Part-time employees are limited on a pro-rata basis and may carry over an amount of credit hours equal to one-fourth of their biweekly work requirements.

E. Credit hours may be earned in 15-minute increments on Monday through Friday between the hours of 6:00 a.m. and 6:00 p.m.

F. Credit hours may not be earned while employees are traveling because travel in connection with Government work is not voluntary in nature. Credit hours may not be earned by working on Saturday or Sunday.

G. An employee requesting to use earned credit hours shall obtain advance authorization by submitting the request via the Employer's timekeeping system.

H. If an employee transfers to another agency, separates, or is no longer subject to an FWS,

the employee shall be paid for their balance of credit hours at the employee's basic hourly rate.

8.12 Compensatory Time Off

A. There must be an entitlement to overtime before compensatory time off may be granted. The Employer retains final approval authority for granting compensatory time off.

B. Employees requesting to use earned compensatory time off shall be approved in advance in the same manner as annual leave. Compensatory time off must be used within twenty-six (26) pay periods from when it was earned and before annual leave is used, except in cases when an employee will forfeit annual leave that cannot be carried forward into the next leave year. If compensatory time off is not taken within the specified time limit, the Employer shall compensate FLSA-nonexempt employees at the overtime rate in effect during the pay period in which the compensatory time off was earned. FLSA-exempt employees who fail to take earned compensatory time off within twenty-six (26) pay periods from when it was earned will be required to forfeit the unused compensatory time off unless failure to use the compensatory time off is due to an exigency of the service beyond the employee's control.

C. Employees on an approved FWS (e.g., Flexitour) may request to earn compensatory time off in lieu of overtime pay whether or not the excess work hours were irregular or occasional in nature.

The Employer may require an employee who is exempt under the overtime provisions of the Fair Labor Standards Act (FLSA) and whose basic rate of pay exceeds the maximum rate established by law or Government-wide regulation to be compensated for irregular or occasional overtime work with compensatory time off in lieu of overtime pay. However, an exempt employee whose basic rate of pay is less than the maximum rate established by law or Government-wide regulation cannot be required to accept compensatory time off in lieu of overtime pay.

The Employer may grant compensatory time off in lieu of overtime pay to a non- exempt employee, regardless of grade level, only when specifically requested by the employee.

D. Employees on an approved CWS may request compensatory time off in lieu of overtime pay only for irregular or occasional work performed by the employee.

The Employer may require an exempt employee whose basic rate of pay exceeds the maximum rate established by law or Government-wide regulation to be compensated for irregular or occasional overtime work with compensatory time off. However, the Employer may not require an exempt employee whose basic rate of pay is less than the maximum rate established by law or Government-wide regulation to accept compensatory time off in lieu of overtime pay.

The Employer may grant compensatory time off in lieu of overtime pay to a non- exempt employee, regardless of grade level, only when specifically requested by the employee.

8.13 Overtime

A. Overtime pay shall be administered consistent with the applicable provisions of Title 5 of U.S. Code, the FLSA, and Government-wide regulations, 5 CFR Part 550 and Part 551. An employee who has performed overtime work is entitled to overtime pay or may elect compensatory time off in lieu of overtime pay, as appropriate. The Employer shall provide an

employee with as much advance notice as possible when assigning overtime.

B. For employees on an approved Standard and FWS, overtime hours are all hours of work in excess of eight (8) hours in a day or forty (40) hours in a week which are officially ordered and approved in advance. This applies to non-exempt and exempt employees under the FLSA. However, because the Employer participates in an AWS program as defined by 5 USC 6122, overtime work for employees on an FWS does not include hours that are worked voluntarily, including credit hours, or hours that an employee is suffered or permitted to work when they have not been officially ordered in advance. For example, an employee on Maxiflex who schedules fifty (50) hours in the first week of the pay period and thirty (30) hours in the second week.

C. For employees on an approved CWS, overtime hours are all officially ordered and approved hours of work in excess of the approved CWS. Overtime work for non-exempt employees shall also include any hours worked outside the approved CWS that are suffered and permitted. Overtime work for a part-time employee is hours in excess of the approved CWS for a day (must be more than 8 hours) or for a week (but must be more than 40 hours).

8.14 Holiday Pay

A. In Lieu of Holidays. A holiday is a day on which the Agency is closed because of the occurrence of an official Federal holiday or when ordered by Federal statue or Executive Order. All full-time employees, including those on an FWS or CWS, are entitled to an in lieu of holiday when a holiday falls on a non-workday. In such cases, the employee's holiday is the basic workday immediately preceding the non-workday. A basic workday for this purpose includes a day when part of the basic work requirement for an employee under an FWS or CWS is planned or scheduled to be performed. Part-time employees are not entitled to in lieu of holidays.

1. There are three (3) exceptions:

    a. If the non-workday is Sunday (or an in lieu of Sunday), the next basic workday is the in lieu of holiday. (See Section 3 of E.O. 11582, February 11, 1971.)

    b. If Inauguration Day falls on a non-workday, there is no provision for an in lieu of holiday.

    c. If the head of an agency determines that a different in lieu of holiday is necessary to prevent an adverse agency impact, they may designate a different in lieu of holiday for full-time employees under CWS. (See 5 USC 6131(b).)

2. In addition, on a case-by-case basis, if a supervisor and employee agree that a different in lieu of holiday is preferable, the parties may agree to change the regularly scheduled non-workday so that the in lieu of holiday occurs on an alternate workday.

B. When the official federal holiday or in-lieu-of holiday falls on an employee's scheduled workday, the employee is entitled to holiday leave according to the following:

1. For employees on a CWS, the total number of hours scheduled for that day. For example, if a holiday falls on Monday and the employee is scheduled to work nine (9) hours, the employee shall be paid nine (9) hours for the holiday.

2. For employees on any type of FWS, the employee is entitled to eight (8) hours holiday leave, regardless of whether the holiday or in-lieu-of holiday falls on a nine

(9) or ten (10) hour workday.

C. When a federal holiday occurs on a day that a part-time employee is:

1. Not scheduled to work, the employee is not entitled to holiday leave;

2. Scheduled to work, the part-time employee is entitled to be paid for the number of hours scheduled for that day, up to eight (8) hours.

8.15 Night Differential Pay

A. If an employee's tour of duty includes eight (8) or more hours available for work between 6:00

a.m. and 6:00 p.m., they are not entitled to night differential pay even if the employee voluntarily elects to work during hours for which night pay is normally required.

B. The Employer shall pay night differential pay for those hours that must be worked between 6:00

p.m. and 6:00 a.m. to complete an 8-hour daily tour of duty.

C. An employee is entitled to night differential pay for any non-overtime work performed between 6:00 p.m. and 6:00 a.m. during designated core hours.

D. An employee who is entitled to overtime pay for regularly scheduled overtime work performed at night is also entitled to night differential pay.

8.16 Excused Absences/ Court/ Military Leave Under Flexible Work Schedules

A. The supervisor shall grant excused absence with pay to employees covered by a FWS under the same circumstances as excused absence would be granted to employees covered by other work schedules.

B. For employees on an FWS, the amount of excused absence to be granted should be based on the employee's established basic work requirement in effect for the period covered by the excused absence.

C. If an employee receives notice after starting the pay period that the employee is scheduled for military/court leave later during the same pay period, or if the military/court leave requirement is not for an entire pay period, the employee may request to use provisions of one of the available AWS in Section 8.3, Work Schedule Options, to complete the pay period.

8.17 Reasonable Accommodation

Core hours and/or tour of duty reporting procedures may be waived for a disabled employee as a form of reasonable accommodation. A full-time employee must still meet the 40-hour weekly or 80-hour biweekly basic requirement.

Article 9 - Merit Promotion

9.1 General

The Merit Promotion Program affecting bargaining unit positions shall be governed solely by the provisions of this Agreement, Departmental Regulation 4030-335-002, Merit Promotion and Internal Placement or successor, and any other applicable USDA regulations, Government-wide regulations, and applicable laws. Where this Agreement and the Departmental Regulation conflict, this Agreement takes precedence.

9.2 Purpose

The purpose of this Article is to ensure that:

1. all competitive promotions and other placement actions comply with Merit System principles;

2. all basically qualified applicants receive fair consideration for positions filled under competitive procedures.; and

3. are made without discrimination.

The Employer recognizes the value of promoting from within.

9.3 Coverage

A. The policies and procedures outlined in this Article apply to the following actions:

   1. Competitive promotion;

   2. Reassignment or change to a lower grade position with known promotion potential greater than the employee's current position (except as permitted by RIF regulations, if applicable);

   3. Transfer to a higher graded position or to a position with greater-known promotion potential than the position previously held;

   4. Reinstatement to a permanent or temporary position at a higher grade or with greater promotion potential than the last non-temporary position previously held;

   5. Selection for details for more than one hundred twenty (120) calendar days to a position at a higher grade or to a position with higher promotion potential (prior service during the preceding 12 months under both (i) non-competitive details to higher graded positions and (ii) non-competitive time-limited promotions count toward the 120-calendar day total);

   6. Selection for training that is any one of the following:

      a. Part of an authorized training agreement;

      b. Part of a promotion program;

c. Required before an employee may be considered for promotion;

d. Part of a Career Enhancement Program;

7. Temporary or time-limited promotions for more than one hundred twenty (120) calendar days to a higher-graded position (prior service during the preceding twelve (12) months under non-competitive time-limited promotions and non-competitive details to higher graded positions counts towards the 120-calendar day total). A temporary promotion may be made permanent without further competition provided the temporary promotion was originally made under competitive procedures and the fact that it might lead to a permanent promotion was made known to all potential candidates, i.e., statement included in the vacancy announcement. Time-limited promotions made under competitive procedures may be extended up to five (5) years. Extensions beyond (5) years must be approved by the Office of Personnel Management (OPM).

B. The requirements of this Article do not apply to the following actions:

1. Competitive selection from an OPM certificate or a certificate issued by the Employer under delegated examining authority;

2. Promotion resulting from an employee's position being reclassified to a higher grade because of accretion of duties and responsibilities;

3. Promotion resulting from the upgrading of a position, without significant change in the duties and responsibilities, due to the issuance of a new classification standard or the correction of an initial classification error;

4. Career-ladder promotion when an employee was previously selected for an assignment intended to prepare them for the position being filled. Sources of initial selection may be an OPM certificate, a list of employees issued under delegated examining authority, selection under competitive promotion procedures, or any direct hire authority;

5. Promotion, reassignment, change to a lower grade, transfer, reinstatement or detail from one position to another having no greater promotion potential than that of the position the employee currently holds or previously held on a permanent basis in the competitive service and did not lose for performance or conduct reasons;

6. Detail or temporary promotion, not longer than one hundred twenty (120) calendar days, to a higher-graded position or to a position with known promotion potential. All details to higher-grade positions and temporary promotions held during the preceding 12-month period are counted in the calculation of the 120-day total.

   Employees who (i) are assigned to higher-graded duties for more than thirty (30) calendar days and (ii) meet the qualification requirements of the position shall be temporarily promoted to cover the period of time not to exceed one hundred twenty (120) calendar days. The Employer shall not evade promoting an employee temporarily by repeatedly rotating one or more employees in and out of a position for thirty (30) calendar days or less.

7. Action taken as a remedy for failure to receive proper consideration in a competitive

promotion action;

8. Promotion of an employee upon exercise of reemployment rights if the employee's former position was reclassified during their absence;

9. Selection of a candidate from the Reemployment Priority List (RPL) for a position up to the highest grade previously held in the competitive service;

10. Position change permitted by Reduction-in-Force (RIF) regulations;

11. Repromotion to a grade or position from which an employee was demoted as a result of RIF;

12. Permanent promotion to a position held under temporary promotion when:

    1. the assignment was originally made under competitive procedures; and

    2. it was made known under competitive procedures (noted on the job announcement) to all individuals at the time that it might lead to a permanent promotion;

13. Selection of an eligible Career Transition Assistance Plans (CTAP) or Interagency Career Transition Assistance Plan for Displaced Employees (ICTAP) candidate.

14. A promotion on or after non-competitive conversion of a Pathways employee, Veterans' Recruitment Appointment (VRA) appointee, Presidential Management Fellow, or another authorized program, provided the full performance level of the position was identified upon initial hire for Pathways recent graduates and VRA appointments, or prior to conversion for Pathways interns and Presidential Management Fellows;

15. A promotion from a trainee position when the employee was selected for the target position and grade level under competitive procedures;

16. Accretion of duties across organizational lines.

9.4 Vacancy Announcements

A. Vacancies may be filled by any appropriate method including, but not limited to, special placement programs, new appointment, reassignment, transfer, reinstatement, and promotion. The Employer shall not use short details for the sole purpose of denying an employee the opportunity to be promoted temporarily.

B. Vacancy announcements shall be posted to the USAJOBS website when filling vacancies through the competitive procedures described in this Article. The Human Resources Office (HRO) may notify employees through electronic mail (e-mail) about announced vacancies.

C. Vacancy announcements shall be open a minimum of seven (7) business days, not including weekends and Federal Holidays. Additionally, vacancy announcements are not to open or close on a weekend or Federal Holiday.

D. Vacancy announcements shall include the information required by the USDA Departmental

Regulations then in effect.

E. Employees wishing to be considered for posted vacancies must submit an application and any supplemental documents as specified in the vacancy announcement. Failure on the part of an applicant to submit the required material shall result in the applicant not being considered for the position. Additional materials not specified in the vacancy announcement, e.g., position descriptions, publications, award certificates, shall not be considered in the ranking process. The HRO may permit exceptions to this requirement for reasons such as extended power outages and severe weather.

F. Employees for whom applying online poses a hardship may apply via alternative methods in accordance with the instructions referenced in the specific vacancy announcement. An applicant's failure to submit required documentation will disqualify them from consideration.

G. Applications shall normally be accepted from candidates under special hiring authorities such as, but not limited to, Veterans Recruitment Act (VRA) appointments, 30% Disabled Veteran, and Persons with Disabilities. Qualified candidates shall be referred on the appropriate certificate as non-competitive referrals.

H. Employees within the area of consideration who are absent from their positions for legitimate reasons (such as detail, authorized leave, temporary duty, training, Intergovernmental Personnel Act (IPA) assignments, transfer to a public international organization, or military service) are eligible to receive consideration (for promotion) under the provisions of this Plan. Employees are responsible for seeking information on positions of interest and applying for such positions by the required application deadline.

I. Employees who applied for a vacancy using the USAJOBS website and wish to learn whether their application was received, and/or the status of their application, and/or the status of the vacancy for which they applied are encouraged to do so by:

   1. Using the USAJOBS website; and if unable to do so by that means
   2. Contacting the Human Resources contact person listed on the announcement.

   Employees who applied for a vacancy using an alternate method because applying online posed a hardship should contact the Human Resources contact person listed on the announcement.

9.5 Qualification Standards

A. Applicants shall be rated basically eligible for a position if they meet the minimum qualification requirements as prescribed by the OPM Operating Manual – Qualification Standards for General Schedule Positions and Qualification Standards for Trades and Labor Occupations for Federal Wage System. In addition, applicants must meet any positive education requirements and selective and/or other factors identified in the announcement as essential to establish basic eligibility for consideration.

B. Applicants must meet all U.S. citizenship requirements by 11:59 p.m. Eastern Time of the closing date of the vacancy announcement. Normally, information submitted after the closing date will not be considered. Exceptions may be made by the HRO and acceptance of materials will be applied consistently to all applicants for the specific vacancy announcement.

9.6 Evaluation and Ranking Procedures

A. The method(s) used to evaluate applicants must be identified in the vacancy announcement. The evaluation process assures that the selection is made from among those applicants rated best qualified. Evaluations must be based on job-related requirements and applied fairly and consistently. Evaluation methods may include the use of crediting plans or rating guides, questionnaires, and/or other assessment tools such as structured interviews and performance exercises.

B. Once a vacancy announcement closes, the HR Specialist/Assistant shall assess all applications to determine if the applicant:

1. Is within the area of consideration;

2. Meets the basic qualification requirements, any applicable selective factor(s), and time- in-grade restrictions (if applicable) for the position based on the information contained in their resumes, self-certification question responses, applicant assessment question responses, and any SF- 50s, performance appraisals, CTAP/ICTAP/RPL documentation, DD-214s (to confirm Veteran Employment Opportunities Act (VEOA)/Veterans Recruitment Authority (VRA) eligibility), licenses, transcripts, foreign education equivalencies, and/or Schedule A documentation received; and

3. Has submitted all required documents.

C. If there are eleven (11) or more qualified competitive applicants, the Employer may use a panel according to the following procedures:

1. Evaluation for positions shall be made by a Merit Promotion panel. The panel shall consist of three (3) or five (5) Subject Matter Experts (SMEs) at an equivalent or higher- grade level than the full performance level of the position being filled who are not supervised by the position. A HR Specialist shall serve as a facilitator.

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

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

4. When there are ten (10) or fewer well qualified applicants per grade level, formal rating and ranking is not required; all well qualified applicants may be deemed best qualified and referred in alphabetical order to the selecting official for equal consideration among all those referred.

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

D. Applicant Referral.

1. Certificates referring the applicants to be considered should list candidates in alphabetical order. Certificates expire fifteen (15) calendar days from issuance, but fifteen (15) calendar day extensions up to a total of ninety (90) calendar days may be granted.

2. Competitive Applicants. Applicants must be listed in alphabetical order without their scores. VEOA candidates must be listed on the same certificate as merit promotion candidates. A separate certificate must be issued for each grade level and geographic location advertised.

3. Non-Competitive Applicants. Applicants eligible for non-competitive consideration will be identified on a referral certificate/list separate from the list of promotion applicants. Under a merit promotion announcement, the Employer must consider eligible, qualified military spouses in the same manner as it considers other applicants who are eligible for non-competitive appointments (e.g., Peace Corps volunteers, 30% or more disabled veterans, VRA, Schedule A, etc.). 5 CFR 315 Subpart F, Career or Career- Conditional Appointment under Special Authorities, contains a complete list of non-competitive hiring authorities.

4. Should the original area of consideration fail to produce a sufficient number of well qualified applicants (less than three (3), the selecting official may decide to re-advertise the position using a wider area of consideration. Selecting officials have the right to select or not select and to consider applicants from any appropriate recruitment source (e.g., merit promotion certificate, reassignment, transfer, reinstatement, delegated examining certificate, special hiring authority, etc.). While a selecting official is not required to make a selection from the certificate(s), it is improper to return it/them unused in order to obtain another certificate at a later date. Selecting officials are required to document the reason(s) for not using a certificate and file the documentation with the announcement case file.

E. Reconsideration of Qualifications or Rating.

1. When a request for reconsideration is received in writing from an applicant, the HR Specialist reviews the case and forwards a summary of their initial rating decisions and any proposed changes along with the reconsideration request to the next higher level (i.e., their team leader or direct supervisor) for the decision. The team leader or direct supervisor will respond in writing with their decision directly to the applicant, providing a copy to the HR Specialist.

2. If the applicant requests in writing a second level review, that request, along with decision documentation from the first review is forwarded to the HR Specialist's second level supervisor (i.e., the Branch Chief or the HR Director or designee), for additional review and a final decision. The Branch Chief or HR Director then responds in writing with their decision directly to the applicant, providing a copy to the HR Specialist and first level reviewer.

3. An applicant's request for reconsideration must be received within five (5) business days of receipt of not qualified or best qualified notification letter. The HRO response must be provided within five (5) business days of receipt of applicant's

request for reconsideration. A second level request and corresponding response also must each be within five (5) business days.

F. Sharing of Certificates.

1. In an effort to promote efficiency in the hiring process, every effort is to be made to share resumes of best-qualified applicants among HR staff. HR Specialists are strongly encouraged to conduct internal pre-recruitment surveys (prior to posting an announcement) to see if an opportunity exists to share a vacancy announcement and/or certificate. To ensure a valid opportunity exists, all aspects of the vacancies must be the same, including the title, series, grade(s), promotion potential, general job responsibilities, location (or note dual locations), selective factors, competencies documented in the job analysis, and any evaluation/testing requirements stated in the original announcement.

2. If a certificate is less than ninety (90) calendar days old, based on issuance date, the certificate may be used to make a selection for a like position (same series, grade(s), and location) without issuing a new, separate vacancy announcement. Management is not required to select from prior job opportunity announcement (JOA) certificates for like positions.

G. Applicant Interviews

1. When considering best-qualified candidates from a merit promotion certificate, interviewing is strongly recommended in evaluating candidates' competency levels. If interviewing, the selecting official must interview at least five (5) candidates (or all those referred, if fewer than five (5)) on that certificate. Selecting officials are encouraged to interview non-competitive referrals, but such is not required.

2. The selecting official coordinates interview arrangements. Interviews may be conducted either in person or telephonically. Phone interviews are a viable option when it is logistically cumbersome for a face-to-face interview.

3. To further ensure fairness and equity in the hiring process, managers must develop standard questions for each vacancy. Follow-up questions may be asked. Selecting officials should take notes during the interview and retain them in the event the interviews need to be reconstructed.

4. Selecting officials and/or servicing HRO staff may receive requests for reasonable accommodation for the interview process from applicants with disabilities. Requests for reasonable accommodations should be responded to quickly and effectively. The Disability Employment Program Manager may be contacted to assist with these provisions.

9.7 Order of Referral

A. When a position is announced with an area of consideration limited to all or some portion of the USDA workforce, the order of consideration for priority and other candidates is as follows:

1. Employer CTAP eligibles

2. USDA CTAP eligibles
3. Employer/USDA repromotion eligibles
4. Employer priority consideration eligibles
5. All other applicants within the area of consideration and
6. RPL registrants at the option of the selecting official

B. When a position is announced with an area of consideration which exceeds the current USDA workforce, e.g., Government-wide or all sources, the order of consideration for priority and other candidates is as follows:

1. Employer CTAP eligibles
2. USDA CTAP eligibles
3. USDA RPL registrants
4. USDA ICTAP applicants
5. Employer/USDA repromotion eligibles
6. Employer priority consideration eligibles
7. ICTAP eligibles (other than those displaced by USDA) and
8. All other applicants

9.8 Selection

A. The selecting official will comply with the law and this Agreement. The selecting official must consider candidates for the position according to the following order:

1. Career Transition Assistance Program (CTAP) applicants who are well qualified;
2. Former Department employees who are on the Department's priority reemployment or repromotion list; and
3. Best qualified applicants from all other sources.

B. The selecting official is not required to fill a vacancy by selection of one of the best-qualified candidates listed on the promotion certificate. They may:

1. Request extension of the area of consideration;
2. Request additional recruitment efforts; and/or
3. Fill the job by some other type of placement action.

C. The selecting official's decision to select a particular candidate is subject to law, regulation, or Government-wide mandate.

D. Bargaining unit employees covered by this Agreement will be notified of their selection by the HRO and will be released from their existing positions promptly, normally at the end of the first full pay period after selection or another date mutually agreed upon by the HRO, the gaining and losing supervisors, and the employee. Applicants not selected for the position may contact the hiring official to discuss reasons for their non-selection.

9.9 USDA Repromotion Placement Plan

Employees downgraded through no fault of their own are entitled to priority consideration for a period of two (2) years from the effective date of the downgrade.

9.10 Priority Consideration

A. Employees are entitled to priority consideration when reconstruction of a promotion action shows that, but for an error, e.g., incorrect qualification determination, failure to consider, improper rating, failure to follow required competitive procedures, the employee would have appeared on a promotion certificate. The employee shall be entitled to one bona fide consideration for the type of position affected by the error (same grade, same type of position, same promotion potential).

B. A priority consideration certificate shall be forwarded to the selecting official prior to the issuance of a competitive certificate. Documentation of consideration by the selecting official and reasons for any non-selection must be maintained as part of the vacancy case file. Upon request, this documentation will be provided to a non-selected priority consideration candidate.

9.11 Information

Upon request to the HRO, employees are entitled to the following information:

1. Explanation and supporting regulations concerning this merit promotion plan;
2. Qualifications required for a position;
3. Whether the employee was considered and basically qualified, and if not, an explanation of the reasons;
4. Whether the employee was among the best qualified and how the employee was evaluated by the Employer's HR personnel based on the applicant's answers to assessment questions;
5. The cut-off score for best qualified;
6. Scores of other candidates, not identified by name;
7. The number of qualified candidates;
8. The number of candidates certified as best qualified; and
9. The name of the selectee (once all candidates have been informed of whether or not they were selected).

Article 10 - Reassignments and Details

10.1 Definitions

A. Reassignment. The permanent movement of an employee from one position or duty station to another at the employee's current grade level. A reassignment may be either directed (involuntary) or requested (voluntary).

B. Detail. The temporary assignment of an employee to a different position for a specified period with the employee returning to their regular duties at the end of the detail.

10.2 Procedures

A. The Employer agrees to give an employee who is going to be reassigned or detailed as much notice as possible before effecting the reassignment or detail. Directed reassignments out of the commuting area require minimum advance notice of thirty (30) calendar days.

B. When possible, prior to effecting a directed/involuntary reassignment or detail, the Employer shall solicit for qualified volunteers. The Employer shall identify the necessary qualifications for the detail or reassignment at the time of solicitation. Responsibility for soliciting for volunteers rests with the individual supervisor who has the authority to effect the reassignment or detail. Solicitation of volunteers shall be in writing and issued to all qualified employees from the organizational component of the supervisor who has the authority to recommend reassignments or details. When no volunteers are available, the supervisor may designate a qualified individual.

C. When the designated employee indicates that the reassignment or detail may result in undue personal hardship, the Employer shall give reasonable consideration to the employee's substantiated claim.

D. Merit Promotion procedures do not apply when a detail is at the same or lower grade level.

10.3 Requested Reassignments and Details

A. Any eligible employee who submits a request for reassignment or detail shall be provided:

1. Bona fide consideration of the reasons for requesting the assignment,

2. Appropriate consideration of any documented hardship reasons submitted in support of the request,

3. Within twenty (20) business days, the employee shall receive written notice that they were considered for a position and whether they were selected, and

4. If not reassigned, the employee is also entitled, upon request, to be advised in writing of the job-related reason(s) for not being reassigned.

B. When the employee's request for reassignment documents an adverse effect (i.e., health-related, childcare, or transportation hardship) which is impacting the employee in their current job assignment and may reasonably be expected to be alleviated by reassignment,

the Employer shall grant the request unless there are business reasons for not complying with the request. Health-related reasons used as a basis for requesting reassignment must be supported by medical documentation. Childcare problems refer to employees who have sole responsibility for the care of children (i.e., preteens) or other dependents, during the hours/days in question. Transportation problems refer specifically to problems arising from dependence on public transportation.

C. Training and professional development details shall be handled according to Article 12, Professional Development and Training.

10.4 Selection of Employees

A. Details, assignments, and reassignments shall not be made or denied solely to punish or reward an employee or be used instead of taking appropriate disciplinary action.

B. The provisions of this Article are not intended to restrict the Employer from detailing or reassigning an employee or otherwise adjusting the work assignment of an employee:

1. **b**ecause of demonstrated performance problems; or

2. When such action is being taken to avert a disruption to the safety or security of the employees or the work area; or

3. When an employee's conduct is the subject of a disciplinary inquiry and the employee's reassignment or detail is determined to be consistent with providing a safe and secure environment for the Employer and its employees.

Such action shall be taken consistent with the provisions of law, controlling regulations, and this Agreement.

Article 11 - Space and Related Issues

11.1 General

A. The Employer shall provide employees with adequate space, equipment, and furniture to perform their assigned duties.

B. Office or workstation space and storage for files, bookcases, office supplies, and equipment shall be in compliance with Departmental guidelines as specified in DR 1620-2, USDA Space Management Policy. Employees shall be provided adequate storage for files.

C. Employees having special needs (e.g., wheelchair or other medical needs, etc.) shall be provided with a work environment that accommodates their needs to the extent such accommodation does not pose an undue burden on the Employer.

D. Carpeting shall meet the prescribed accessibility standards, where required, as specified in the Uniform Federal Accessibility Standards. Carpeting shall be maintained to ensure employees' safety (e.g., to avoid potential trip hazards).

E. Subject to the needs of the organizational work unit, the Employer shall provide adequate space for mail staging, faxing, copying, binding, etc.

F. The Parties agree that it is desirable to house employees in facilities that provide access to a health unit and fitness center, except for those employees participating in telecommuting or other work-at-home arrangements. It is recognized, however, that such decisions may at times be outside the Employer's control and are also subject to the availability of funds.

G. The Employer shall provide a break area for employees.

11.2 Union Notification

The Employer shall notify the Union and give it an opportunity to bargain about changes to working conditions that involve new configuration of space for one or more organizational units (e.g., branch) or one or more employees.

11.3 Workspace Changes

A. When changes are made to employee workspaces, the Employer will:

1. Determine appropriate workspaces/areas specific to affected employees based upon operational considerations.
2. Solicit workplace preferences from affected employees.
3. Work with the Union to determine workspace assignments based upon preferences submitted.
4. Resolve preference conflicts using the greater of the following criteria, in consecutive order:
    a. General Schedule grade/step level;

b. Service Computation Date for leave (as found on SF-50);

c. Continuous seniority in Rural Development agencies;

d. Continuous USDA seniority.

5. Assign, at its discretion, any employee who did not participate in the foregoing procedure or expressed a preference that could not be granted.

B. During the absence of an employee, nothing shall bar the Employer from using temporarily, for work purposes and subject to the usual workplace rules, any workspace and/or the non-personal contents of that workspace.

C. Any complaint by a bargaining unit employee that the Employer violated this Agreement shall be subject to the negotiated grievance procedure of this Agreement.

Article 12 - Professional Development and Training

12.1 Policy

A. Professional development and training are defined as any Rural Development mission-related formal or on-the-job training which enables employees to develop to their maximum potential and contributes to increased Employer efficiency and effectiveness. The Employer is committed to providing professional development and training opportunities to all employees through a positive, proactive approach. The Employer also encourages the continuous upgrading and maintenance of skills in specialized occupational areas and is committed to providing training and developmental assignments through various sources, including other Agencies, to accomplish these objectives. The employee and supervisor shall jointly develop an Individual Development Plan (IDP) to assure that the training needs of the employee in obtaining career goals are being met and that Employer training needs are planned and budgeted. The employee and supervisor shall mutually commit to meet the objectives of the IDP. Where costs are involved, Rural Development shall, subject to the availability of funds, pay or reimburse the employee for: (1) all of the necessary expenses of training that the Employer requires and/or considers necessary to improve the employee's ability to perform their current duties; and (2) all or a part of the necessary expenses of other training. This Article does not apply to performance improvement plans in accordance with Article 16, Actions Based on Unacceptable Performance, Section 16.3 Procedural Requirements.

B. Authorities

1. The Government Employee Training Act (5 USC 4101-4118) and regulations issued pursuant thereto;
2. The Equal Employment Opportunity Act (5 USC 2000-e), as amended;
3. The Affirmative Employment Plan;
4. Other applicable statutory or regulatory provisions.

C. The Parties shall encourage employees to take advantage of educational opportunities and training that enhances work efficiency and provides needed skills for advancement based on Employer priorities and availability of training funds.

D. The Employer shall notify employees directly of their selection or non-selection for Employer- controlled training or educational opportunities for which they applied or were nominated within fifteen (15) business days of the closing date, or five (5) business days before the start of the training, whichever is sooner.

12.2 Definitions

A. Training. The process of providing for and making available to an employee, and placing or enrolling the employee in, a planned, prepared, and coordinated program, course, curriculum, subject, system, or routine of instruction or education, in scientific, professional, technical, mechanical, trade, clerical, fiscal, administrative, or other fields which will improve individual and organizational performance and assist in achieving the Employer's mission and performance goals.

B. Career Development Training. An educational activity undertaken to increase the knowledge, competency, ability, and skill of employees in the performance of those duties

which support the Employer mission and performance goals. These include potential duties in a different job or occupation at the same or higher level than the one currently held.

12.3 Training

A. It shall be a major goal to improve in general the job performance of all employees through the establishment of fair and equitable opportunities for training within clearly defined career fields.

B. The following approaches to employee training shall be utilized, as appropriate:

1. In-house, external, or on-the-job training to improve employee capabilities to perform their current duties;

2. Training, detail and rotational assignments in complementary positions;

3. Enrollment of employees in part-time job-related or career related development educational programs at local educational institutions and/or in correspondence courses; and

4. Competitive long-term training in Federal and non-Federal educational institutions, i.e., training which, because of its duration and/or scope, provides development beyond the needs of an employee's position.

C. The Employer shall maintain information and furnish guidance about suitable and available education, training, and career development resources.

D. If an employee requests training or to be reassigned for the purpose of on the job or other training but is denied, the Employer shall give the employee written notice of the reasons for the denial within fifteen (15) business days following denial, or at least five (5) business days before the start of the requested training/reassignment, whichever is earlier.

E. Normally at the time of the mid-year performance review, as well as immediately subsequent to the performance evaluation, or at any other time necessary, supervisors shall discuss with employees training needs and opportunities that would help the employee to improve performance in their current position. Unscheduled discussions concerning an employee's training needs and performance improvement opportunities may be initiated by the employee or supervisor.

F. Employees shall receive training and/or orientation appropriate for any job in which they are placed or to which they are reassigned under Article 10, Reassignments and Details.

G. When training is requested primarily to prepare employees for advancement, or if the requested training would fulfill specific qualification requirements for a position with known promotion potential, selection for such training shall be made under competitive promotion procedures, including those contained in Article 9, Merit Promotion.

H. Employees in career-ladder positions who have not yet reached the highest grade level in the career ladder usually shall not be required to compete for training which the Employer deems necessary for their accession to the next grade level in the career ladder.

I. When membership in a professional organization is not a trainer-determined or vendor-determined prerequisite for attendance at a training session, the Employer shall not

consider membership as the sole factor in determining which employees receive the training.

12.4 New Processes and Training

When it is determined that new skills are necessary to perform in a current bargaining unit position as a result of the introduction of new equipment or new processes which are more than *de minimis* and which are changes in the working conditions of employees, the Employer shall notify the Union in accordance with Article 30, Mid-Term and Impact and Implementation Bargaining.

12.5 Career Development Counseling

A. Employees shall be given reasonable opportunity and time necessary to discuss their career development with their supervisors.

B. If an employee becomes dissatisfied with their job because of limited advancement possibilities or changing career goals:

1. The employee may request to meet with an appropriate Employer Human Resources representative for the purpose of career counseling;

2. The employee's request, if any, for a lateral reassignment to a different job or for a change to a lower-grade job shall not be considered a factor in any adverse action concerning that employee under Article 17, Disciplinary and Adverse Actions.

12.6 Individual Development Plan

A. Concurrent with the issuance of the performance plan at the start of employment, the Employer shall encourage new employees to develop an IDP and discuss such IDP with their supervisor.

B. Supervisors and their employees shall discuss and identify skill sets for short- and medium-term training needs. The results shall provide the framework for the IDP. The Employer shall consider the training needs of employees both those duties the employee currently performs and for career development, giving priority to the former. The employee shall have the opportunity to explain why they requested both: (1) particular job related/career development training; and (2) particular timing for the training.

C. An IDP is a living document, which can be updated as necessary.

12.7 Tuition Assistance

Budget permitting, the Employer shall pay all or part of the costs of training or education (including the cost of tuition; purchase or rental of books, materials and supplies; and library and laboratory fees) for eligible employees (current career or career-conditional employees who have completed one year of continuous federal service) who take courses at educational institutions provided:

A. The employee submits a timely written request for tuition assistance:

1. identifying those specific costs to be covered by the Employer and by the employee respectively; and

2. indicating whether the Employer is being asked to pay the vendor in advance of the employee's participation in the course or to reimburse the employee after they successfully complete the course;

B. The course will enable the employee to increase their ability in presently assigned duties or duties the employee will be performing (i.e., the course is job- or Employer mission-related). If the employee says the course is Employer mission-related, the Employer shall review the detailed particulars of the course;

C. The employee agrees to:

1. complete a post-course Human Resources Training Branch evaluation, if requested to do so; and

2. provide a copy of the official final grade report, if the employee is requesting assistance to take a college course;

D. The Employer approves.

12.8 Employee Obligation to Repay the Employer

A. For courses of eighty (80) or more classroom hours, the employee must agree in writing to stay with the Employer three (3) times the actual length of the course as computed according to 5 CFR 410.310. Failure to complete this required service shall result in the employee being required to repay costs incurred by the Employer. This requirement may be waived at the Employer's discretion.

B. An employee who fails to complete a course or receives a grade of less than C, shall reimburse the Employer unless the Employer grants a waiver.

12.9 Variance in Work Hours

Requests for a variance in regular working hours and/or appropriate leave for training purposes shall be granted unless it would interfere with the performance of the critical day-to-day mission of the work unit or does not conform to existing laws, regulations or this Agreement.

12.10 Enhancing Career Opportunities for Employees

Federal agencies are required, and it is USDA policy, that employees who are in positions or occupational series which do not enable them to realize their full work potential shall receive the maximum opportunity to develop to their highest potential and attain their highest career opportunities. Among the means sometimes used for this purpose are details and rotational assignments (see Article 10, Reassignments and Details), individual development plans (see Section 12.6, Individual Development Plan above), formal study (see Section 12.7, Tuition Assistance above), mentoring, job shadowing, cross-training, developmental assignments, and a Career Enhancement (CE; formerly called Upward Mobility) program.

A. Programs to Enhance Career Opportunities for Employees

1. Aspiring Leader Program is offered at no cost to employees through the USDA Training Officers Consortium and the Virtual University, and is intended for employees GS-9 through GS-12 who seek to enhance the following competencies: accountability; decisiveness; conflict management; influencing/negotiating;

customer service; and team building.

2. Mentoring is a formal or informal relationship between two (2) people, i.e., a senior mentor (usually outside the protégé's chain of supervision) and a junior protégé. Mentoring has been identified as an important influence in professional development in both the public and private sector. The war for talent is creating challenges within organizations not only to recruit new talent, but to retain talent. Benefits of mentoring include increased employee performance, retention, commitment to the organization, and knowledge sharing. See USDA Departmental Regulation 4740-001, USDA Mentoring Program or successor.

3. Coaching is designed to provide employees with the support they need to become better performers, and so it is common practice to preface coaching with some form of performance assessment or evaluation. Like mentoring, coaching programs can be formal or informal.

4. A Career Enhancement Program (CEP) is a system which the Employer may conduct, and which focuses on Federal personnel policies and practices in developing and implementing specific career opportunities for lower-level (GS-1 through GS-9) employees who are in positions or one-grade interval occupational series that do not enable them to realize their full potential.

    a. The goals of the CEP are to:

        1. Provide a vehicle through which employees with demonstrated potential may be competitively selected and thereafter trained for new career fields;

        2. Provide the opportunity for further career enhancement in the chosen field, depending on work performance and capabilities;

        3. Provide a planned selection, training, and development process for employees who have demonstrated the talent and potential to move to a more technically advanced job and to qualify them in the career area;

        4. Obtain a more effective use of the employee’s capabilities;

        5. Provide employees with opportunities to enhance their qualifications in their career fields;

        6. Motivate employees and create a climate conducive to an increase in productivity;

        7. Prepare the trainee to function effectively in a target position and to utilize the skills of the employee while they are functioning in the trainee position; and

        8. Provide a broader base for the selection of personnel for technical, administrative, program, and professional positions and thus, diversify the employee population in those careers.

    b. The following definitions apply:

        1. Trainee position. The position in a technical, professional, program,

or administrative career area to which a CEP participant will be assigned when selected for the program. In the position, the trainee shall receive on-the-job and/or formal training necessary to achieve the skills, knowledge, and technical ability to successfully perform in the target position.

2. Target position. The position in a technical, professional, program, or administrative career area that a participant selected for a trainee position will normally be promoted into after the successful completion of training and demonstrated performance at intermediate grade levels.

c. After an employee is selected for a CE position, the Employer shall ensure that an employee assigned to a CE position will be provided such assistance as would normally be necessary to assure success in the position. Upon satisfactory completion of training and successful performance on the job, the employee shall normally progress at a regular rate through job levels toward and into the target position. Ordinarily, the target position shall be one or two (2) grades higher than the trainee's present grade. This is dependent upon whether the target position is normally classified at one- or two-grade intervals. This does not preclude the Employer from establishing a target position more than two (2) grades higher than the trainee position. Additional development of program participants beyond the target position shall follow normal promotion procedures. As soon as possible after being selected, the trainee shall be reassigned to the appropriate office and begin in the trainee portion of the program.

d. Once an employee has been accepted into the program, the Employer will make reasonable efforts to ensure that funding for the trainee is made continuously available.

B. Requesting to Participate in such Opportunities. An employee who wishes to request such training or opportunity may do so in the manner appropriate for that program. Subject to budgetary limitations, the Employer shall approve the length and timing of the training or developmental assignment, provided neither interferes with the work of the employee. The official responsible for approving or disapproving a request for training or developmental assignment shall respond in writing within fifteen (15) business days. If the official denies the request, they shall state the reasons for denial.

C. Changes to Programs to Enhance Career Opportunities for Employees. If the Employer decides to establish, change or end any program of activities to enlarge employees' career opportunities, it shall notify the Union and give it an opportunity to bargain about the matter.

Article 13 - Health and Safety

13.1 Policy Statement

A. The Employer and the Union agree that the good health, wellness, safety and comfort of all employees are essential to the performance of the Employer's mission and are matters of high priority. Accordingly, the Employer and the Union agree to work cooperatively to maintain a healthy and safe working environment.

B. The Employer shall, to the extent of its authority and consistent with the applicable statutes and regulations (e.g., Title 29 part 1960 of the Code of Federal Regulations), as well as other applicable health and safety codes, provide and maintain safe and healthy working conditions for all employees. The Employer shall also provide places of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm. The Union shall cooperate to that end and encourage all employees to work in a safe manner.

13.2 Employer Responsibilities

A. The Employer shall work with all persons, entities, or organizations which own and/or control workspace to which employees are assigned to ensure that healthy and safe working conditions are maintained and to ensure compliance with applicable laws, rules, and regulations. The Employer shall also take appropriate action to ensure that any reported hazardous or unsafe working conditions are examined and, if necessary, corrected.

B. The Employer shall:

1. Provide information concerning Federal Employee Health Benefits and Life Insurance Programs, pre-retirement planning, retirement benefits information, and occupational health services;

2. Make reasonable efforts to provide clean restrooms in which normal supplies shall be available at all times and in which all equipment is in working order;

3. Provide and maintain adequate fire and disaster plans and equipment on each floor, including smoke detection devices and exit signs that are visible during power failure;

4. Work with the building manager, the Department, General Services Administration (GSA), and private lessors to have safe electrical equipment and adequate ventilation in all work areas;

5. Provide an environment free of pests and vermin through a regular extermination program and such other measures as may be necessary for the purpose of pest control. Spraying for extermination of pests shall be accomplished during non-duty hours, or employees shall be given the opportunity to work an appropriate distance from their work site during such extermination. All employees shall be given the opportunity to work away from the site during and for a period of twelve (12) hours following spraying and any other activity adversely affecting air quality, e.g., painting;

6. Comply with applicable statutory and regulatory directives (e.g., Americans with

Disabilities Act, GSA regulations) by providing facilities appropriate and adequate to accommodate the needs of qualified persons with disabilities; and

7. Inform the Union of any decision to introduce new office equipment into the workplace so that the Union may, thereafter, request bargaining on impact and implementation of the new equipment on working conditions.

13.3 Union Responsibilities

The Union shall take appropriate action to encourage all employees to work safely with due consideration for the safety, health, wellness, and comfort of all fellow employees. To avoid preventable unhealthy or unsafe working conditions, the Union shall encourage respect and care by employees for the Employer's facilities, equipment and work environment.

13.4 Employee Reports of Unsafe or Unhealthy Working Conditions

A. Each employee must report any unsafe or unhealthy working condition to their immediate supervisor as soon as any such condition comes to their attention. The Employer shall respond to a report of an unsafe or unhealthy condition within:

    1. Twenty-four (24) hours for imminent dangers;
    2. Three (3) business days for potentially serious conditions; or
    3. Twenty (20) business days for such conditions that are not serious.

B. No employee will be required to continue working in a situation posing the threat of imminent danger or potentially serious conditions.

    An employee's right to refuse to do a task is protected if all of the following conditions are met:

    1. Where possible, the employee has asked the Employer to eliminate the danger, and the Employer failed to do so; and

    2. The employee refused to work in good faith. The employee must genuinely believe that an imminent danger exists. Refusal cannot be a disguised attempt to harass the Employer or disrupt business; and

    3. A reasonable person would agree that there is a real danger of death or serious injury; and

    4. There is not enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an Occupational Safety and Health Administration (OSHA) inspection.

C. The Employer shall assess the reported condition within twenty-four (24) hours of receiving notice of the unsafe or unhealthy condition and may refer the situation to (a) the appropriate Rural Development or USDA office, (b) GSA, (c) OSHA, (d) the Public Health Service (PHS) Health Unit, or (e) other appropriate official. When the Employer refers a situation to one of the foregoing, it shall immediately notify the Union of the referral, keep the Union up to date with specific information concerning whether an inspection will result, and give the Union an opportunity to accompany any inspector during their inspection. The Union representative shall be granted official time for this purpose.

D. If the Employer assigns an employee to perform duties which the employee believes endanger their health or well-being, the employee shall immediately notify their immediate or second-line supervisor of the situation. If the supervisor cannot solve the problem and agrees with the employee, the supervisor shall delay the assignment and refer the matter through the proper channels for appropriate action. Where the supervisor does not agree with the employee's concerns, the employee shall perform the work, except as may be permitted by Section 13.4 B. In any event, the employee has the right to consult with the Union and the right to file a report according to applicable Employer or Departmental regulations.

E. If the Employer determines that an existing condition is hazardous to employees, the Employer shall notify the Union and the involved employees within twenty-four (24) hours of confirming the existence of the hazardous condition. Upon request, the Employer shall meet with the Union and to the extent permitted by law, rule, regulation, and/or Executive Order, negotiate and/or consult with the Union regarding the matter.

F. The Employer shall take measures ensuring prompt abatement of any unsafe or unhealthy working conditions found to exist by the Employer in conjunction with the Department, GSA, OSHA, PHS, and/or other appropriate officials. When the Employer cannot implement such measures, it shall develop an abatement plan setting forth a timetable for abatement and a summary of interim steps to protect employees. When the hazard cannot be abated without the assistance of GSA or another Federal lessor agency, the Employer shall work with the lessor agency to seek abatement.

G. No employee shall be subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthy working condition, or other authorized participation in occupational safety and health program activities.

13.5 Occupational Injury or Illness

When an employee sustains a job-related injury or occupational illness: (1) the employee shall report the injury or illness to the Employer (usually their supervisor) as soon as reasonably practicable; (2) the Employer (usually the supervisor) shall refer the employee to the Human Resources (HR) Staff or the Health Unit or other medical service as appropriate and as permitted by applicable law, rule, or regulation; and (3) the Employer (usually the supervisor) shall also advise the employee to contact the HR Staff to obtain information on benefits under the Federal Employees' Compensation Act (5 USC 8101- 8193). The Employer and employee shall cooperate promptly in processing all paperwork in connection with compensation claims.

13.6 Employee Assistance Program

A. The Employer presently maintains an Employee Assistance Program (EAP), which provides, at little or no cost, counseling, information and other services for employees dealing with emotional, behavioral, and well-being problems (i.e., alcoholism, substance abuse, emotional illness, marital/family problems, divorce, death in the family or financial difficulties). The Employer shall publicize the program to employees and supervisors annually via electronic mail.

B. Employees whose performance is negatively affected by alcoholism or other forms of substance abuse shall be given a reasonable opportunity to obtain professional assistance in overcoming the problem and to participate in programs such as Alcoholics Anonymous. As required by the EAP, the Employer shall approve requests for time for employees to obtain, on a completely confidential basis, the services of a qualified counselor specializing in alcohol and substance abuse problems.

C. Upon request, whenever an employee must be absent from work in order to complete a prescribed program of treatment for a problem recognized under EAP, the Employer shall make a reasonable concerted effort to grant the employee appropriate leave to the extent necessary to complete such program.

D. The fact that an employee has a substance abuse or alcohol problem and/or requests assistance or participates in a prescribed program of treatment shall not be the basis for discipline; however, the Employer retains its right to take appropriate disciplinary or adverse action because of an employee's conduct or performance. The Employer shall consider an employee's involvement in the EAP when deciding whether it should take disciplinary and/or adverse action and, if so, what action to take.

E. The Employer shall continue participating in the EAP.

F. Employees' participation in the EAP shall be treated with the utmost confidentiality.

13.7 Occupant Emergency Plan

A. The Employer shall maintain an Occupant Emergency Plan (OEP) that complies with all currently applicable directives for each building in which employees work. If an OEP for a building does not already exist, the Employer shall establish one within one hundred twenty (120) calendar days of the effective date of this Agreement. On request, the Employer shall give copies of these plans to the Union.

B. The Employer may provide, but is not obligated to provide, training to interested employees for cardiopulmonary resuscitation (CPR) during duty or non-duty hours.

13.8 Joint Health, Wellness and Safety Committee

The Employer shall establish a joint Health, Wellness and Safety Committee, comprised of Employer and Union personnel, to study and make recommendations to the Employer concerning issues related to the Parties' mutual efforts to ensure the good health, wellness, and safety of all employees. This Committee shall conduct an annual walk-through inspection of the workplace. The time for this inspection shall be set by the Committee members. The inspection shall consist of checks for health and safety conditions of the workplace. Upon completion of this inspection, the Committee shall submit a report of its findings to the Union.

13.9 Health and Wellness

A. The Employer and the Union encourage bargaining unit employees to participate in USDA-wide Health and Wellness Programs and initiatives which encourage active and healthy lifestyles (e.g., health care screenings, health fairs, on-site locker rooms, showers, exercise equipment and facilities). When the Employer and/or USDA permits the use of duty time and/or excused absence so employees may participate in an officially sponsored and sanctioned Health and Wellness Program or initiative, the Employer shall normally permit interested employees to participate on duty time and/or excused absence.

B. The Employer shall continue supporting employees' ready access to, and use of, the fitness and health facilities and programs currently operated and offered on-site, and at any work site where bargaining unit employees are located.

C. The Employer's support also includes the following:

1. The Employer shall, consistent with budget and business needs, approve requests from employees for up to two and one half (2-½) hours per week of time (i.e., use of flexible work hours, credit hours, or accrued leave) in order to exercise. If the Department issues guidance authorizing duty time and/or excused absence in order to exercise, such approvals shall be for duty time and/or excused absence.

2. If the Department issues guidance under which the Employer is authorized to reimburse employees for any portion of their dues and/or fees for membership in and use of the on- site fitness facilities and programs, the Employer shall reimburse employees up to 50% of the total paid during a Fiscal Year (FY) at least thirty (30) calendar days prior to the end of that FY, subject to the following:

    a. Availability of funds; and

    b. Employee uses the facility at least ninety (90) minutes weekly; and

    c. Reimbursement requests are received at least sixty (60) calendar days prior to the end of that FY.

    Note: The amount of the dues and/or fees for membership in and use of the on-site fitness facilities and programs (for which employees may be reimbursed a portion) shall be based on the total of dues and fees for basic membership at the site where most bargaining unit employees are located.

3. The Union reserves the right to bargain to the fullest extent permitted by law and Executive Order over fitness and health facilities and programs if bargaining unit employees' access to such facilities and programs changes.

D. The Employer shall provide nursing mothers with a reasonable break time to express breast milk whenever needed throughout the workday. The frequency and length of such breaks may vary depending on the needs of the nursing mother, e.g., the time required to express milk. If extra time is needed, an option may be for time to be made up before or after work, through telework arrangements, or by using other work schedule flexibilities. If the Department issues guidance under which the Employer is authorized to permit nursing mothers additional paid time to express milk, the Employer shall notify the Union and give it an opportunity to bargain about the subject. No adverse action or recourse will be based on an employee's desire to breastfeed. For further guidance regarding Breastfeeding see the USDA Nursing Mothers Support Program Handbook.

Article 14 - Performance Management System

14.1 Policy

The Parties strive for excellence in employee performance in order to fulfill their commitment to provide the highest quality public service. The purpose of the performance management system is to improve individual and organizational performance, program effectiveness, and accountability by involving employees in a process of continuous communication with their supervisors in order to: (a) develop employees; and (b) plan, evaluate, appraise and recognize the performance of employees and of teams.

A. The performance management system shall be governed solely by the provisions of law, Government-wide regulations, USDA Departmental Regulation 4040-430, Employee Performance and Awards or successor, and the terms of this Agreement. Where this Agreement and the Departmental Regulation conflict, this Agreement takes precedence.

B. The performance management system:

   1. Focuses on results, quality of service, and customer satisfaction;
   2. Aligns performance standards and elements with organizational goals and strategic plans; and
   3. Does so transparently and fairly.

C. As an integral part of a sound employee/supervisor relationship, the continuous and joint process of performance appraisal is designed to:

   a. Include and increase constructive on-going feedback between employees, customers and supervisors concerning both job requirements/expectations and the quality/level of performance necessary to achieve them; and

   b. Improve the employees' performance and progress towards meeting stated objectives.

D. The Employer shall:

   a. Communicate individual and organizational goals to employees;
   b. Identify individual responsibility for accomplishing team and organizational goals;
   c. Provide feedback to employees regarding their performance;
   d. Evaluate employees' performance; and
   e. Use performance appraisal results as a basis for appropriate personnel actions.

14.2 Definitions

Appraisal. The process under which performance is reviewed and evaluated.

Appraisal Period. The period of time covered by a specific performance plan, during which performance will be evaluated against elements and standards, and for which a rating of record will be prepared. The minimum appraisal period is ninety (90) calendar days. The full appraisal period is October 1- September 30 (also referred to as the performance year.)
Appraisal Unit. The unit of measure used to establish the relative weighted value of critical and

non- critical performance elements.

Critical Element. An element of a performance plan which covers an aspect of a job for which an employee can be held individually accountable, and that must be done successfully in order for the organization to complete its mission. It is of such importance that failing to attain the Fully Successful level of the element would result in a determination that an employee's summary rating would be Unacceptable. Such elements must only be used to measure performance at the individual level, such that the critical element describes performance that is reasonably measured and controlled at the individual employee's level.

Decision Table. A matrix used to derive a summary rating from appraisals of individual performance elements.

Element Rating. The level of performance assigned to a specific performance element, as measured by a comparison of accomplishments to the performance standards established for that element.

Individual Development Plan (IDP). An annual plan developed jointly by the employee and supervisor that identifies the employee's short- and long-term learning and developmental goals. This plan may contain approved elective and required training, education and developmental activities to acquire the competencies required to meet the organization's goals and/or employee's career goals.

Interim Rating. A written appraisal of an employee's performance conducted before the end of the appraisal period. Interim ratings may be required for situations such as changes in supervisors, promotions, significant changes in responsibilities, and details and temporary promotions of ninety (90) or more calendar days. Interim ratings must be based on expectations formally communicated in a performance plan.

Mid-year Review. A required progress review conducted halfway through the performance year, or at the midpoint of another appraisal period of at least one hundred eighty (180) calendar days, to ensure that performance elements and standards are appropriate, and to advise an employee of current performance.

Minimum Appraisal Period. The minimum 90-day period of performance that must be completed on a performance plan before a rating of record may be prepared. Interim ratings may be based on ninety

(90) or more days of performance, and advisory assessments may be based on fewer than ninety (90) days of performance in a detail or temporary promotion.

Mission Results (Critical) Element. A mandatory performance element which aligns performance expectations and outcomes directly to USDA and Agency or Staff Office mission, goals, initiatives and objectives. Commonly used mission results element names include Mission Results, Mission Support and Program Management.

Performance Improvement Plan. A written plan that provides an employee an opportunity to demonstrate an acceptable level of performance in one or more critical elements previously rated or determined to not be at the Fully Successful level.

Performance Plan. The written or automated document that communicates to the employee what is expected on the job. A plan must include all critical elements, non-critical elements if used, and their performance standards and measures on which the employee will be evaluated.

Performance Standard. The expression of objective criteria to define how well an employee has to perform on the associated element in order to be appraised at a specific level. Standards must be attainable and verifiable. Performance standards must include credible performance measures.

Progress Review. Formal communication, normally a joint discussion between the rating official and the employee, regarding the employee's progress toward achieving the expectations set forth in the performance standards for critical and non-critical elements. This review is not a rating, and its content is not grievable.

Rating of Record. The performance rating prepared at the end of an appraisal period for performance of assigned duties over the applicable period and the assignment of a summary rating.

Summary Rating. The overall rating (e.g., Fully Successful) determined by the formula applied to all of the element ratings.

14.3 Appraisal Period

A. Appraisals must cover a minimum period of ninety (90) calendar days. The normal appraisal period is October 1 through September 30.

B. Each employee shall be issued an appraisal as soon as practicable after the end of the appraisal period.

14.4 Performance Plans

A. The Employer shall develop, communicate and apply performance standards and elements to employees. Performance plans shall, to the maximum extent reasonably feasible, permit the accurate evaluation of job performance on the basis of objective criteria, related to the position in question.

B. Performance plans are developed on the written and/or automated Forms AD-435A, "Performance Plan, Progress Review and Appraisal Worksheet", and AD-435B, "Performance Plan, Progress Review and Appraisal Worksheet Continuation Sheet", or electronic equivalent and shall specify the performance elements and standards on which employees are rated, designating the number of elements as prescribed in the Employer's Performance Management Program/System.

C. Normally, performance plans shall be developed within thirty (30) calendar days of an employee's appointment, reassignment, promotion, or detail for more than the minimum appraisal period. A new performance plan may also be established when an employee's duties change substantially during the appraisal period.

D. Performance elements and standards contained in the performance plan shall be based solely on the individual's position and may address the employee's performance as a member of a team. Only those elements and standards included in the performance plan shall be used in arriving at the summary rating.

E. Performance plans shall:

1. Include any mandatory performance elements specified for the position (and may include generic performance elements and/or other specific, job-related performance elements);

2. Include any mandatory performance elements specified for the position (and may include generic performance elements and/or other specific, job-related performance elements);

3. Include, where appropriate, timeframes and appropriate procedures derived directly from applicable regulatory guidelines, procedural guides, Agency program instructions, etc.;

4. Specify required quantifiable measures of attainment, e.g., timeframes, quantity, quality, cost-effectiveness, or manner of performance;

5. Relate to performance of work (i.e., not conduct or personality traits);

6. State the level of performance expected:

   a. For the grade held by the employee; and
   b. On the basis of factors within the control of the employee.

D. An employee may request that standards or elements be reconsidered in light of employee comments and/or significant changes to the duties of the position. The rating official has final authority over the content of the performance plan.

E. The substance of elements and performance standards may not be grieved.

F. The employee and the rating official shall certify at the beginning of the appraisal period that they have discussed the performance plan, and that the employee has had an opportunity to obtain an understanding of expectations. If there is a disagreement over the content of the performance plan, the rating official's decision prevails. An employee's refusal to sign the plan does not negate its implementation.

14.5 Employee Involvement

A. Rating officials shall encourage employees to be involved in developing new performance plans and when making substantial revisions to performance plans. Joint participation may be accomplished by means including, but not limited to, the following:

1. Employee(s) and rating official discuss and develop performance plan together;

2. Employee(s) provide rating official a draft performance plan for consideration by rating official;

3. Employee(s) comment on draft performance plan prepared by rating official. Employees should be provided up to five (5) business days to comment on draft performance plans;

4. Employee(s) who occupy similar positions prepare performance plan(s) for consideration by rating official;

5. Employee(s) and supervisor discuss and develop IDP together.

B. Meetings between one or more Employer officials and a group of bargaining unit employees to determine the content of performance plans are formal discussions as defined in the Federal Service Labor-Management Relations Statute. The Union shall be notified of such meetings and given an opportunity to attend.

C. The above procedures do not preclude individual employees from discussing the content of performance plans with their rating officials without the involvement of the Union in order to ask questions and obtain clarification of performance expectations.

14.6 Progress Reviews

A. Rating officials are responsible for initiating communication with the employee about actual performance and ensuring progress reviews are held. It is the employee's responsibility to seek that feedback or initiate the review if one is not scheduled by the supervisor.

B. Progress reviews provide an opportunity to identify and resolve problems in the employee's performance.

C. A Progress review is a discussion of an employee's strengths and/or weaknesses in relation to the performance elements and standards contained in the performance plan. It does not involve the issuance of the summary rating. The rating official may make written comments concerning the employee's performance on the Forms AD-435A and B or electronic equivalent.

D. At a minimum, there should be at least one progress review held at about the mid-point of the appraisal period, and one discussion of the summary rating held at the end of the appraisal period. Other feedback/performance discussions may occur at the discretion of the rating official or upon an employee's request.

E. The content of a progress review (i.e., the rating official's evaluation) is not subject to the negotiated grievance procedure. However, an employee or the Union may initiate a grievance over an employee's failure to receive a progress review.

F. The employee and the rating official shall certify on the Forms AD-435A and/or AD-435B or electronic equivalent that they held the progress review discussions. The employee will have access to any written comments.

14.7 Ratings of Record

A. Performance elements shall be assigned individual element ratings which shall be used to determine the summary rating.

B. Supervisors shall prepare a narrative overall assessment of the employee's performance during the appraisal period. Employees are strongly encouraged to submit a statement of accomplishments. Both the supervisory assessment and the employee statement of accomplishments, if completed, shall be included with the appraisal package.

C. Element Ratings. Each performance element is rated at Fully Successful and Does Not Meet Fully Successful. Any element rated at the Does Not Meet Fully Successful level requires written justification. The written justification must show clearly and specifically how the employee's performance failed to meet the Fully Successful standard of the element.

D. Calculating the Summary Rating. If all elements are rated Fully Successful, the summary rating is Fully Successful. If any element is not rated Fully Successful, the summary rating is Unacceptable.

E. A rating of record may be grieved through the negotiated grievance procedure. An employee's signature on the rating form indicates receipt of the rating and does not necessarily indicate agreement with the rating. The rating of record is official and becomes a part of the employee's record whether the employee signs the form or not.

F. The Parties to this Agreement recognize that determining the number of rating levels used in a performance management system is a Management right. If, during the life of this Agreement, the Employer decides to exercise its right to change the number of summary rating levels used in the performance management system, the Employer shall notify the Union and give it the opportunity to negotiate the impact of such change on the working conditions of bargaining unit employees.

14.8 Additional Performance Feedback

As provided below, each supervisor shall: (a) prepare interim ratings for each employee under their supervision who has served under a performance work plan for at least ninety (90) calendar days; and (b) give each such employee the opportunity to discuss and provide feedback about their own performance. Supervisors shall preserve this feedback so a subsequent gaining and/or permanent supervisor can consider it when preparing the employee's final rating of record.

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

B. Supervisory Change. Each individual who supervised the employee for ninety (90) calendar days or more during the appraisal period shall document the employee's accomplishments, discuss them with the employee and forward them to the current supervisor.

C. Position and Supervisory Change. When an employee who has occupied a position for at least ninety (90) calendar days leaves that position, the supervisor shall document the employee's accomplishments, discuss them with the employee, and forward them to the new supervisor.

D. Position Change Without a Supervisory Change. When an employee changes positions but retains the same supervisor, the supervisor shall prepare written comments on the employee's performance and discuss them with the employee. This information must be considered in the employee's rating of record.

14.9 Timing of Mid-Year Review and Ratings of Record

The mid-year performance review and the rating of record normally shall be completed within thirty (30) calendar days of the mid-year date or end of the appraisal period. However, the mid-year review or rating of record may be delayed for good cause, e.g., absence of employee or rating official, travel, or the need to extend the rating period under Section 14.3, Appraisal Period of this Article.

Article 15 - Employee Awards and Recognition

15.1 General

The employee recognition program covering bargaining unit employees shall be governed solely by law and Government-wide regulations, Departmental Regulation 4040-430, USDA Employee Performance and Awards or successor, and the terms of this Agreement. Where this Agreement and the Departmental Regulation conflict, this Agreement takes precedence. Recognitions not listed in this Agreement that are approved by the Department or instituted by individual Agency organizational components during the life of this Agreement may be awarded to bargaining unit employees without further negotiation of this provision.

15.2 Purpose

The employee recognition program is designed to recognize and reward individuals and groups for excellence in service. The program acknowledges contributions that lead to achievement of organizational, team, and individual results. Outstanding accomplishments should be recognized in a timely manner and approved recognition of employees should be widely publicized. Recognition may be given for a specific outstanding accomplishment such as a superior contribution on a short-term assignment or project or a significant cost savings. Bargaining unit employees are eligible for all of the awards and recognitions listed in this Article.

15.3 Monetary Awards

Monetary awards provide recognition for a particular accomplishment. The value of the benefit and the application of the contribution to the Agency's or Department's mission or goals determine dollar amounts. Taxes shall be added to the award amount (grossed-up) and paid by the Agency. Monetary award categories include achievement awards, rating based awards, group awards and referral bonus awards. Recognition is most effective when it is given as close to the achievement or contribution as possible.

A. Achievement awards are non-rating-based lump sum monetary or time off awards that recognize specific accomplishments that are in the public interest and have exceeded normal job requirements.

   Examples of such accomplishments include, but are not limited to:

   1. Making a high-quality contribution involving a difficult or important project assignment;

   2. Creating a knowledge management product to document the materials and processes for carrying out a significant job function;

   3. Displaying initiative and skill in successfully completing an assignment or project before the deadline, to the benefit of the program, staff or customer;

   4. Using initiative and creativity in making improvements in projects, activities, programs, or services; and

   5. Ensuring the mission of the work unit is accomplished during a challenging period by successfully completing additional work or a special project assignment while maintaining the employee's own workload.

Award amounts depend on the achievement being recognized according to the Measurable and Non-measurable Benefits Scales (Appendix A). The minimum monetary award is $100. These awards may be for individual group contributions.

B. Performance Awards. Performance-based awards are based solely on an employee's performance rating of record assigned at the end of the appraisal period and are intended to recognize sustained levels of successful performance over the course of the rating period.

Timing. Performance-based awards should be processed and paid out as close to the end of the performance year as possible, normally within 60-90 days.

Note: Monetary awards for performance ratings are not authorized for two-tier summary rating systems because it does not differentiate among levels of successful performance.

C. Achievement awards may be granted to groups of employees. Each employee must have contributed to the accomplishment being recognized.

D. Referral bonus awards may be granted when the Employer has determined a difficulty in recruiting high quality candidates. Referral bonuses do not follow the criteria in Appendix A. More information on referral bonuses can be found in Departmental Regulation 4040-430, USDA Employee Performance and Awards or successor.

15.4 Non-Monetary Awards

A. Non-monetary awards provide recognition for a particular accomplishment. These may include certificates of merit, certificates of appreciation, keepsake items, letters of commendation, thank you cards and letters, individual time-off award, group time-off award, and honorary awards. The limitation of expenditures for non-monetary awards is $250 on any one item, with higher amounts normally reserved for high-level honorary award or other major accomplishments.

1. Certificates of merit, certificates of appreciation, letters of commendation, letters of appreciation and thank you cards may be given to employees for noteworthy contributions.

2. Keepsake items are casual and low-cost items of nominal value which emphasize symbolic recognition of significant contributions. The item must have lasting trophy value and must clearly symbolize the employer-employee relationship in some fashion. Keepsakes can include such items as paperweights, key chains, clocks, plaques, jackets, T- shirts, coffee mugs, pens and pencil sets, etc.

3. Length of service award is given to recognize an employee's Federal service. Employees may receive recognition at five (5) years of service and each 5-year increment thereafter. Recognition shall be timely, as close to the anniversary date as possible. Lapel pins, charms or equivalent may also accompany length of service certificates.

4. Honorary awards are given to an employee(s) to recognize their performance/ contribution to the organization. Honorary awards are generally symbolic.

B. Time-off awards are another nonmonetary award category for which all employees are eligible. A full-time employee may be granted up to eighty (80) hours of time-off during a

leave year, but not more than forty (40) hours for a single achievement. (See Appendix A) A part-time employee or an employee with an uncommon tour of duty may be granted up to the average number of hours worked in a pay period or the employee's scheduled tour of duty. Awards are in full hour increments.

A time-off award must be scheduled and used within twenty-six (26) pay periods from the effective date of processing. After the 26th pay period, except as permitted by the governing Departmental Regulation, any unused time-off shall be automatically forfeited and may not be restored or otherwise substituted. A time-off award may only be taken after it has been entered in the payroll/personnel system and is available in the National Finance Center database.

Before using any time off, the supervisor must approve the requested dates. Any unused time- off shall be forfeited once an employee separates or transfers to another USDA or other Federal agency. If forfeited, no other award or compensation may be substituted. Under no circumstances does time-off convert to cash or transfer to another USDA or other Federal agency.

15.5 Quality Step Increase

A. A Quality Step Increase (QSI) is a one-step increase in pay granted to an employee for the most exceptional levels of performance based upon outstanding performance as reflected in the employee's most recent rating of record. A QSI requires certification that the employee's performance exceeds the normal requirements of the position, and based upon the employee's past performance, that it is likely such high-quality performance will be sustained.

B. A QSI does not change the effective date of the employee's normal within-grade increase (WGI) except when the QSI places the employee in the fourth or seventh step. In this case, the employee would enter into a prescribed longer waiting period. When a WGI and QSI are effective on the same day, the WGI should be processed before the QSI to avoid situations where the QSI may place the employee in a longer waiting period.

C. In order to be eligible for a QSI an employee must:

1. Occupy a position which is eligible for WGIs (i.e., GS employees occupying permanent positions);

2. Be at the full performance level of their position;

3. Be below step ten (10) of their grade level;

4. Have performed in the same grade and type of position for at least twelve (12) months before the end of the appraisal cycle;

5. Have demonstrated sustained performance of high quality and have received a rating of record of at least Fully Successful for most recent performance year;

6. Have demonstrated sustained performance of the highest quality, significantly and demonstrably above the expectations defined at the Fully Successful level of their performance plan;

7. Have achieved accomplishments that contributed substantially to the organization's

goals, commensurate with the classification of their position;

8. Be expected to continue the same high level of performance; and

9. Not have received a QSI within the previous fifty-two (52) weeks.

15.6 Nomination Procedures

A. Any employee may nominate another employee, group of employees, or management official for any award except performance-based awards. Nominations for performance-based awards may be made only by rating officials or managers in the chain of command of the employee(s) being nominated. Employees may not nominate themselves or anyone in their supervisory chain, except in the context of a formal program, such as a Supervisor of the Year award.

Nominations for recognition shall be made by completing Form AD-287-2, "Recommendation and Approval of Awards" or successor. An employee nominating another employee or group of employees for recognition shall submit the completed form to the immediate supervisor of the employee(s) being nominated. The supervisor shall process the nomination in accordance with delegations of approval authority established by the Agency.

B. An employee nominating another employee or group of employees for recognition shall specify the time of performance covered by the nomination and provide an explanation of the accomplishment. The employee should explain how the nominee(s) exceeded expectations in one or more of the following areas:

1. Improving quality;

2. Timely completion of a project;

3. Increasing productivity;

4. Overcoming adverse obstacles or working under unusual circumstances;

5. Using unusual creativity;

6. Saving the Agency time and/or money; and

7. Increasing program effectiveness.

The nomination should specify, to the extent possible, the results achieved through the efforts of the nominated employee(s), e.g., a project accepted, technological advancement realized.

C. An employee nominating another employee or group of employees for cash recognition must address the items covered in 15.3 B and must include the amount of cash the employee or group should receive using Appendix A Measurable and Non-Measurable Benefits Scales.

D. Rating officials and managers nominating employees for recognition, including performance- based awards, QSIs, and time-off awards shall also follow the procedures described in 15.3 A through 15.3 C of this Article, and if required by delegations of

authority established by the Agency, shall obtain higher level approval of nominations.

E. Employees working as a team may be recognized when team contributions and results exceed expectations. Team recognition may be approved only when a strong interdependence exists among team members and team outcomes and clear team goals were established in advance of the team performance and evaluation. Team recognition shall not necessarily be distributed to team members equally. Instead, recognition may be based on individual performance within the team.

F. Nothing in this provision guarantees that award nominations will be approved. Final decisions on the availability of funds as well as the merits of award nominations shall be made by the Agency and are not subject to the grievance procedure unless such action is alleged to have been taken for discriminatory reasons prohibited by statute, as provided in Article 18, Negotiated Grievance Procedure, Section 18.4 E 1, Exclusions.

15.7 Peer-to-Peer Incentive Awards Committee

A. Each Agency Administrator is encouraged to develop and implement a peer-to-peer incentive awards committee.

B. The Parties agree that an incentive awards system is a necessary and useful mechanism by which employee accomplishments may be recognized, and strongly encourage employees and managers to take an active part in the system by objectively recognizing and rewarding contributions which increase productivity, empower employees, and promote team building. This Section is subject to 15.6, Nomination Procedures above.

15.8 Suggestion Award

The Employee Suggestion Program is designed to increase benefits to Agencies and Staff Offices, the Department, or the Government by encouraging, fostering, and carefully considering employee ideas for productivity improvements. Recognition is appropriate for an adopted suggestion that improves the efficiency or effectiveness of Government operations. The types and/or amount of the award or recognition received will be determined in conjunction with the Measurable and Non-measurable Benefits Scale (Appendix A). Recognition may be monetary or non-monetary. The USDA Employee Suggestion Program Brochure covers guidelines for submitting and evaluating employee suggestions.

15.9 Secretary's Honor Award

USDA currently has a specialized category of non-monetary award called the Secretary's Honor Awards. These awards are the highest award granted by the Secretary of Agriculture to an individual or group for a contribution or achievement in support of the Department's mission. Currently, the Secretary presents awards annually at the USDA Honor Awards Ceremony; however, the program parameters are solely at the Secretary's discretion and subject to change at any time. For a complete list of Secretary issued awards see Departmental Regulation 4040-430, USDA Employee Performance and Awards or successor.

Appendix A - Measurable and Non-Measurable Benefits Scales

Use the Measurable Benefits Scale when a contribution, suggestion or invention results in a quantifiable benefit, such as a process improvement that saves a program a particular monetary amount. The benefit is calculated based on the first 52 weeks of the contribution, invention, or of the implemented improvement or suggestion.

Table 1. Measurable Benefits Scale

Benefit	Award
Up to $10,000	10% of the benefits
$10,001 - $100,000	$1,000 for the first $10,000 in benefits, plus 3% of benefits over $10,000
$100,001 or more	$3,700 for the first $100,000 in benefits, plus 0.005% of benefits over $100,000. Award amount may not exceed 20% of recipient's basic pay.

Use the Non-Measurable Benefits Scales when a contribution, suggestion or invention results in benefits which cannot be readily quantified, such as contributions described in the examples after Table 2.

Table 2. Non-Measurable Benefits Scale for Monetary Awards

Scope	Type of Contribution			
	Limited	Moderate	Significant	Substantial
Level 1	Up to $250	Up to $500	Up to $1,000	N/A
Level 2	Up to $500	Up to $750	Up to $1,500	N/A
Level 3	N/A	Up to $1,000	Up to $2,000	Up to $3,500
Level 4	N/A	Up to $1,250	Up to $3,000	Up to $5,000
Level 5	N/A	Up to $1,500	Up to $4,000	Up to $7,500
Level 6	N/A	Up to $2,000	Up to $5,000	Up to $10,000

Table 3. Non-Measurable Benefits Scale for Time Off Awards

Scope	Type of Contribution			
	Limited	Moderate	Significant	Substantial
Level 1	Up to 4 hours	Up to 8 hours	Up to 16 hours	N/A
Level 2	Up to 8 hours	Up to 10 hours	Up to 20 hours	N/A
Level 3	N/A	Up to 12 hours	Up to 24 hours	Up to 40 hours
Level 4	N/A	Up to 20 hours	Up to 30 hours	Up to 40 hours
Level 5	N/A	Up to 30 hours	Up to 40 hours	Up to 40 hours
Level 6	N/A	Up to 40 hours	Up to 40 hours	Up to 40 hours

Table 4. Key to Types of Contribution

Type	Examples
Limited	a. Assisted a colleague on a project to help meet a deadline; b. Provided support for a specific initiative by scheduling meetings, c. tracking documents through approval, following up on deliverable due dates, etc.; d. Served in an acting capacity for two pay periods (without a temporary promotion); and e. Served as a team member on a short-term project.
Moderate	a. Developed an administrative process improvement; Provided technical expertise and guidance to a project team; b. Performed an absent colleague's duties for 60 days, as well as the awardee's own workload; c. Served as the lead on a short-term project; and d. Served as a fully contributing team member on a large, long-term project.
Significant	a. Developed a strategic program enhancement which facilitated Mission Area, agency, or staff office decision-making, or improved delivery to external customers; b. Delivered an important project with high quality on a very short timeline; and c. Served as the lead on a large, long-term project, accountable for the results.
Substantial	a. Led an interagency initiative to develop a new methodology to improve program delivery to USDA's external stakeholders; and b. Led a research team that developed a ground-breaking agricultural industry innovation.

Table 5. Key to Scope of the Contribution's Impact

Scope	Definitions of Levels
Level 1	a. The operations of the immediate office; b. The employees of an entire division up to 300 employees; or Equivalent.
Level 2	a. The operations of a division; b. The services delivered to the local community; c. The employees of an entire agency, or staff office up to 3,000 employees; or Equivalent.
Level 3	a. The operations of an entire small agency or staff office (up to 3,000 employees); b. A significant mission-centric program delivered agency-wide; c. A subset of the general public equivalent to an entire small State; d. The employees of an entire medium agency (3,001 - 10,000) employees; or Equivalent.
Level 4	a. The operations of an entire medium agency (3,001 –10,000 employees), or all the offices of multiple agencies serving an entire State; b. The services delivered by multiple States, or by multiple agencies to the entire State; c. A mission program delivered agency-wide; d. A subset of the general public equivalent to an entire medium or large State; e. The employees of multiple agencies, or an entire large agency (over 10,000 employees); or Equivalent.
Level 5	a. The operations of an entire large agency (over 10,000 employees), multiple agencies, multiple Regions, or a bureau or independent agency outside USDA; b. The services delivered by multiple Regions; c. A program delivered Department-wide; d. A subset of the general public equivalent to multiple States; The employees of the entire Department; or Equivalent.
Level 6	a. The operations of the entire Department; b. A significant mission-centric program delivered Department-wide; c. The general public of the entire Nation; or Equivalent

Article 16 - Actions Based on Unacceptable Performance

16.1 Scope and Definition

A. This Article applies only to employees who have completed their probationary or trial period. It does not apply to employees serving on a probationary or trial period or under a temporary appointment limited to one year or less, except as defined in Article 1, Parties to the Agreement, Recognition, and Definition of Bargaining Unit.

B. Action based on unacceptable performance is defined as follows: the (i) reassignment or (ii) reduction in grade or (iii) removal of an employee whose performance is unacceptable in one or more critical performance elements.

16.2 Performance Improvement Plan

A. When an employee's performance in a critical element is at the Unacceptable level, as early as reasonably possible: (1) the employee's attention shall be called to areas of performance needing improvement; and (2) the employee shall be placed on a written Performance Improvement Plan (PIP). See Article 14, Performance Management System.

B. The PIP shall be developed in writing and the employee shall be given five (5) business days to comment on the PIP prior to its implementation. Final authority for the establishment and the content of the PIP rests with Management.

C. The PIP shall include the following:

1. Identification of the critical element(s) and performance standard(s) for which performance is evaluated at the Unacceptable level;

2. Specific examples of how the employee's performance is failing to meet the Fully Successful standard;

3. Requirements to be achieved in order for the employee to bring their performance up to the Fully Successful performance level for the critical element(s);

4. A statement of the frequency (e.g., bi-weekly/monthly) with which the employee will be informed of their performance as it relates to the critical element;

5. Specific information as to how the Employer will assist the employee in that effort; a description of any assistance, training, or meetings expected to take place during the PIP;

6. A statement that establishes the duration of the PIP during which the employee is to bring their performance up to the Fully Successful level for the critical element(s). The duration of a PIP will normally be ninety (90) days but may be shorter and will not be established for a period exceeding one hundred twenty (120) days. Management shall decide as to the appropriate length; and

7. The consequences of not improving their performance to the required level.

D. The employee shall be given a written letter outlining the results of the PIP. Should the

employee's performance improve to the required level during the PIP, the employee must maintain fully successful performance of that performance element(s) for a one-year period from the date the PIP started. If, during that one-year period, the employee's performance of that critical element (provided the standard is not changed), again is at the Unacceptable level, Management may initiate a reassignment or propose a change to lower grade or removal without placing the employee on another PIP.

E. When an employee requests a change to a lower grade due to their inability to perform the duties of their current position, the supervisor shall make a reasonable effort to place the employee in a vacant lower-graded position which the supervisor believes the employee can successfully perform.

16.3 Procedural Requirements

The procedural requirements prescribed by USDA/Rural Development regulations and this Agreement apply in processing unacceptable performance actions. At a minimum, the employee shall be given written notice of the proposed action stating:

1. The specific reasons of unacceptable performance;
2. The action proposed;
3. The procedure for responding;
4. The employee may review all the evidence relied upon by the supervisor in preparing the notice; and
5. The employee is entitled to Union representation in preparing and presenting their oral and/or written response.

16.4 Written Notice of Proposed Action

A. In all cases of a proposed action based on unacceptable performance, the employee shall be given, at least thirty (30) calendar days advanced written notice of the specific reasons on which the proposed action is based.

B. The advance written notice shall include the following:

1. The critical element and performance standard not attained;
2. Specific instances of the employee's unacceptable performance during the PIP;
3. The employee's right to be represented; by the Union or other Representative.
4. The employee's right to answer orally and/or in writing; and
5. The employee's right to review the material relied upon to support the specific reasons.

C. Neither the Union nor the employee may grieve either the substance or the procedural aspects of this notice; however, a final decision may be grieved.

16.5 Employee Response to Proposed Action

A. The employee shall be given the opportunity to respond orally and/or in writing before a proposed action. Any request for an oral reply must be submitted within five (5) business days of receiving the proposed action; a written reply must be submitted within fifteen (15) business days.

B. If the employee elects to make an oral reply, the deciding official or their designee shall document the oral reply and provide a copy to the employee.

16.6 Decision Letter on Proposed Action

A. The deciding official shall render a written decision on the proposed action giving consideration to the employee's reply or replies.

B. The decision letter shall also:

1. Address factual disputes, if any, identified in the employee's reply by stating the reasons why each factual claim by the employee was rejected;

2. State whether the employee has a right to appeal the final decision to the Merit Systems Protection Board or through the negotiated grievance procedure; and

3. Indicate the effective date of the action.

16.7 Time Extensions on Proposed Action

Unless established by statute or Government-wide regulation, any of the time limits set forth in this Article may be extended or waived by mutual agreement of the parties.

Article 17 - Disciplinary and Adverse Actions

17.1 General

All disciplinary and adverse actions shall be consistent with Agency regulations and existing laws. All actions/agreements shall be fair and equitable to each party. The Parties encourage early communication between the employee involved and the supervisor to achieve resolution. Thus, if either the employee involved or the supervisor believes that resolution would be aided by involving the Union in early discussions, they are encouraged to contact the appropriate Union steward.

17.2 Definitions

A. Adverse action. Refers to a suspension, a reduction in grade, a reduction in pay, a furlough of thirty (30) days or less, and a removal.

B. Alternative Discipline Agreement. An agreement used, when the traditional penalty would be less than proposed removal, as a form of alternative dispute resolution (ADR) that, like more traditional ADR techniques such as mediation, facilitation, etc., can effectively resolve, reduce, or even eliminate workplace disputes that might arise in circumstances where disciplinary action is appropriate. As the term suggests, alternative discipline is an alternative to traditional discipline.

C. Deciding Official. A management official who: (i) reviews an adverse action proposal and any oral/written response by employee; (ii) decides whether charges and specifications of misconduct are supported by the evidence; and (iii) decides whether to sustain, mitigate or cancel the action. The Deciding Official must be a higher-ranking official in the Agency than the official proposing the action.

D. Disciplinary action. Less severe actions used to correct inappropriate behavior and conduct. Disciplinary actions are divided into two (2) categories: informal and formal. Informal discipline consists of oral and written counseling. Written reprimands are categorized as formal discipline.

E. Furlough. As used in this Article, furlough refers to an administrative furlough which is an event planned and implemented by an Agency to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any budget situation other than a lapse in appropriations. Unlike a shutdown furlough which is caused by a lapse in appropriations and is not subject to adverse action procedures, an administrative furlough may be an adverse action and is, as such, subject to adverse action procedures. See Article 26, Furloughs.

F. Letter of Reprimand. A temporary formal disciplinary action informing an employee of the misconduct or other deficiency giving rise to the need for the action.

G. Suspension. The temporary placement of an employee in a non-pay/non-duty status for disciplinary reasons.

17.3 General Provisions

A. All disciplinary and adverse actions shall be fair, equitable, for just cause, to promote the efficiency of the service, and consistent with applicable regulations and existing laws.

B. Employees shall be entitled to representation in all phases of the procedure. The Employer shall comply with its obligation to protect employee rights associated with investigative meetings as set forth in Article 3, Rights of Employees, Union, and Employer.

C. To clarify the underlying facts surrounding an employee's alleged misconduct before a supervisor decides whether and what type of discipline to implement or propose, the supervisor shall provide the employee with an opportunity to explain their behavior/actions by meeting with the employee in a timely fashion in order to discuss the specific incident(s), consistent with Article 3, Rights of Employees, Union, and Employer.

D. The Employer shall not discipline and/or subject any employee to disciplinary or adverse action for exercising their rights, or on the basis of the protections afforded them under 5 USC 2302 (Prohibited Personnel Practices) and 42 USC Chapter 21, Subchapter VI (Civil Rights - Equal Employment Opportunities).

E. Any disciplinary and/or adverse action will be taken in accordance with applicable law, rule, Government-wide regulations and this Agreement. Before deciding on a particular penalty, the Employer shall consider the applicable *Douglas* factors (*Douglas v. VA*, 5 MSPR 280, 305-06 (1981)), and Agency regulations, including the USDA penalty guide, if any.

F. The Employer shall administer disciplinary and adverse actions in a timely manner.

G. Whenever the Employer issues a Letter of Reprimand, or proposes to take an adverse action, the employee may request to review the material on which the Employer relies, and the Employer shall furnish the employee a copy of such materials in duplicate. The employee shall be responsible for providing a copy of such documentation to their representative, if any.

H. Employees may grieve disciplinary and adverse actions in accordance with the terms of Article 18, Negotiated Grievance Procedure.

I. In emergencies, notwithstanding any provision of this Article, the Employer has the right to take any action necessary to protect the health and safety of the workforce.

J. The Parties encourage employees and supervisors to enter into an Alternative Discipline Agreement, if appropriate, after consulting with the Union and Human Resources.

17.4 Letter of Reprimand

A. Consistent with 17.3 C above, the Employer will give the employee an opportunity to explain their behavior/actions before deciding to issue a Letter of Reprimand.

B. The Employer may maintain a Letter of Reprimand temporarily in the employee's Official Personnel Folder (OPF) for a period not to exceed two (2) years.

C. An employee may request that the Employer remove a Letter of Reprimand from their OPF. The Employer may reduce the period of retention when it determines that circumstances warrant a shorter period, e.g., because of a demonstrated improvement in the employee's behavior and/or unlikelihood that the employee will repeat the misconduct in the future.

D. Letters of Reprimand which have been overturned as a result of a grievance, EEO decision, or other authority, shall be removed from the employee's OPF immediately.

17.5 Adverse Actions

A. When the Employer proposes to suspend an employee for fourteen (14) calendar days or less, the Employer shall give the employee written notice of the following at least fourteen (14) calendar days in advance of the effective date of the proposed action:

1. The type of action being proposed;

2. The specific reasons for the proposed action;

3. The opportunity to:

   i. Request and review the evidence that is relied upon to support the proposed action; and

   ii. Request, with explanation, an extension of the time they are permitted to make an oral and/or written reply to the proposal;

4. The right to be represented; and

5. The right to make an oral and/or written reply to the proposal, and to furnish affidavits and other documentary evidence in support of the reply, within fourteen (14) calendar days from their receipt of the proposal. If the employee requests to review the material on which the Employer relies, the fourteen (14) calendar days shall pause until the Employer provides that material.

The Employer shall approve a reasonable amount of official time for the employee to: (i) review all material relevant to their case; (ii) prepare their oral and/or written response; (iii) consult with their Union representative with regard to their case; and (iv) if applicable, secure any pertinent affidavits.

B. When an adverse action is proposed that consists of a suspension lasting fifteen (15) calendar days or more, a removal, a reduction in grade or pay, or an administrative furlough, the Employer shall give the employee written notice of the following not less than thirty (30) calendar days before the effective date of the proposed action:

1. The type of action being proposed;

2. The specific reasons for the proposed action;

3. The opportunity to:

   i. request and review the evidence that is relied upon to support the proposed action, and

   ii. request, with justification, an extension of the time they are permitted to make an oral and/or written reply to the proposal;

4. The right to be represented; and

5. he right to make an oral and/or written reply to the proposal, and to furnish affidavits and other documentary evidence in support of the reply, within fourteen (14) calendar days from their receipt of the proposal. If the employee requests to review the material on which the Employer relies, the fourteen (14) calendar days shall pause until the Employer provides that material.

The Employer shall approve a reasonable amount of official time for the employee to: (i) review all material relevant to their case; (ii) prepare their oral and/or written response; (iii) consult with their Union representative with regard to their case; and (iv) if applicable, secure any pertinent affidavits.

If the Employer proposes the action invoking the Crime Provision, it need not give this written notice at least thirty (30) calendar days in advance of the proposed action but may do so as little as seven (7) calendar days in advance.

C. Action by the Deciding Official:

1. The Deciding Official shall consider the proposal carefully in light of the:

    a. evidence of record;
    b. employee's response(s), if any; and
    c. *Douglas* factors.

    In arriving at a decision, the Deciding Official shall consider only those reasons specified in the notice of proposed action and any response(s) made by the employee and/or the employee’s representative, if any.

2. After expiration of the reply period, the Deciding Official shall issue a final decision to:

    a. institute the proposed action; or
    b. propose alternative discipline (if not a decision to remove); or
    c. institute a lesser action; or
    d. cancel the proposed action.

3. If the Deciding Official chooses to institute an action or actions covered by this Article, the decision letter shall: (i) identify the charge(s) and specification(s) sustained by the deciding official; (ii) respond to factual disputes identified in the employee's reply; (iii) specify the effective date of the decided action; and (iv) advise the employee of their rights to challenge the decision.

    a. In the case of suspensions lasting fourteen (14) calendar days or less, the decision letter shall inform the employee of their right to challenge the decision by filing a grievance under the negotiated grievance procedure.

    b. In the case of suspensions lasting fifteen (15) calendar days or more, removals, reduction in grade or pay, or administrative furloughs, the decision letter shall: (i) inform the employee of their option to appeal the action to the Merit Systems Protection Board (MSPB) or grieve through the negotiated grievance procedure, but not both; and (ii) inform the employee that they will be deemed to have exercised their option to raise the matter under one procedure or the other at the time the employee timely files a written grievance or files a notice of appeal under the applicable MSPB procedure.

4. If the Deciding Official chooses to institute an action or actions less than removal, the employee may request that the Employer exercise discretion to defer the effective date of the action(s) for up to fourteen (14) calendar days.

17.6 Alternative Discipline

A. Whenever the Employer offers the opportunity for an employee to enter into an Alternative Disciplinary Agreement or Last Chance Agreement, the subject employee has the right to consult with and have a Union representative present at any meeting or discussion with an Employer representative concerning a proposed agreement.

B. Alternative discipline processes and agreements will comply with Departmental regulations and be voluntary on the part of the employee. An employee who is being provided the option to enter into an Alternative Discipline Agreement shall be given a reasonable amount of official time to review all material relevant to their case, including documents cited in Sections 17.5 and 17.6 of this Article, as applicable; and consult with their Union representative with regard to the case and proposed agreement.

17.7 Disability Retirement

In those cases where an employee has applied for disability retirement prior to a personnel action, the employee or their Union representative may request that Employer either place that employee in leave without pay (LWOP) status or delay their removal, pending a decision on the employee's disability retirement application.

17.8 Time Limit Extensions

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

Article 18 - Negotiated Grievance Procedure

18.1 Purpose

The purpose of this Article is to provide a mutually acceptable method for the prompt resolution of grievances filed by bargaining unit employees, the Union, or the Employer, in an atmosphere of cooperation and respect. Individual employees, the Union and the Employer shall make reasonable efforts to resolve complaints at the lowest possible level without resorting to the grievance procedure. However, it is the right of individual employees, the Union and the Employer to file good faith grievances, and filing such a grievance does not reflect unfavorably on either the Grievant or those at whose actions the complaints are directed. The efforts of grieving parties to resolve problems without resort to this procedure shall neither negate nor initiate the time frame for filing grievances, nor should efforts to resolve a problem by agreement cease merely because a grievance has been filed.

18.2 General

A. Grievances which involve more than one employee but have the same issue and arise from the same set of facts or actions may, by agreement of the Employer and Union, be joined and processed as one.

B. The application of time limits delineated in this Article to specific individual grievances may be modified (e.g., shortened, lengthened, suspended, etc.) at any time by written agreement of the Employer and Union, or, if the grieving employee is not represented by the Union, between the Employer and the employee.

C. To be recognizable as a grievance within the meaning of this Agreement, a complaint shall be set forth in written format so long as it identifies:

   1. The Grievant(s);

   2. The official who, the Grievant(s) believe(s), has immediate authority and/or responsibility to resolve the matter;

   3. The law, regulation, or provision of this Agreement allegedly violated;

   4. A description of the act(s) or event(s) which allegedly caused the violation;

   5. To the extent known, the date(s) and identity of the perpetrator(s) of the act(s) or event(s); and

   6. The remedy sought by the Grievant.

   Any complaint that does not set forth the foregoing grievance elements shall not be recognizable as a grievance.

D. If the Party against which the grievance was filed claims the would-be grievance lacks any of the information required by Section 18.2 C, that Party shall return the grievance to the Grievant with a request that the Grievant remedy the deficiency and resubmit the grievance by the later of (a) the Step One grievance filing deadline or (b) the end of the second business day following receipt of the request to remedy the deficiency.

E. At meetings held to discuss grievances, employee Grievant(s) may be assisted by one or more Union representative(s), and supervisors/managers may be assisted by one or more members of the Labor Relations or Human Resources Staff. If an employee Grievant chooses not to be represented by the Union, and the Union has not waived its rights on that particular matter, the Employer shall notify the Union of the grievance meeting and provide it an opportunity to attend on its own behalf.

F. At any Step, when the deciding official will be a designee of an appropriate Agency Administrator or the Chief Operating Officer for the Business Center (COO), that designee may not be an official who made the decision at any previous step of the grievance procedure.

18.3 Definitions

A. Individual and group employee grievance. A complaint filed by an individual bargaining unit employee or by a group of such employees on behalf of themselves or filed by the Union on behalf of an individual or group of such employees concerning any matter within the Employer's control relating to the employment of the employee(s).

B. Union (institutional) grievances. A complaint filed by the Union claiming the Employer violated, misinterpreted, or misapplied law, regulation, or the terms of this Agreement in a manner adversely affecting the Union as an institution and/or all or substantially all members of the bargaining unit. The Union may not file an institutional grievance that involves the same issue and factual circumstances as an individual employee grievance.

C. Employer (institutional) grievances. The Employer may file complaints claiming the Union violated, misinterpreted, or misapplied law, regulation, or the terms of this Agreement.

18.4 Scope

The procedures in this Article shall be the exclusive procedures available for resolving grievances covered under the terms of this Agreement except as expressly limited by the following:

A. Employees who believe they have been subjected to a prohibited personnel practice as defined in 5 USC 2302 which also falls under the coverage of this grievance procedure have the option of raising the matter under a statutory procedure or this grievance procedure, but not both.

B. Employees aggrieved by an action taken by the Employer under 5 USC Chapter 43 (an action for unacceptable performance) or 5 USC Chapter 75 (adverse actions) which is appealable to the Merit Systems Protection Board (MSPB) have the option of either appealing to the MSPB or filing a grievance under the negotiated grievance procedure, but not both.

C. Allegations of unfair labor practices under 5 USC 7116 (a) or (b) made by an employee, the Union, or the Employer may be processed under either the unfair labor practice provisions of the Federal Service Labor-Management Relations Statute or this negotiated grievance procedure, but not both.

D. A party has elected one of the options covered by subsections A, B, and C of this Section when that party files a written grievance under this Article or a written appeal or complaint under the statutory process.

E. Exclusions. Complaints or dissatisfactions regarding the following matters are excluded from the scope of the negotiated grievance procedure.

1. Non-selection for promotion from a list of best qualified candidates, unless such action is alleged to have been taken for discriminatory reasons prohibited by statute, in which event the issue of discrimination may be grieved under this procedure;

2. A violation relating to prohibited political activities;

3. Retirement, life insurance, or health insurance;

4. An examination, certification, or appointment;

5. The classification of any position that does not result in the reduction in grade or pay of an employee;

6. A suspension or removal under Section 7532 of Title 5 U.S. Code;

7. Counseling, warning, or a proposal of an action that, if effected, would be grievable under this procedure or appealable under a statutory procedure;

8. Actions taken under a Reduction in Force;

9. The substance of elements and performance standards;

10. A progress review under the Employer's performance management system; and

11. The termination, demotion, or reassignment of a probationary or temporary employee, and any other matter excluded by law or by Federal Labor Relations Authority (FLRA) or court precedent.

F. Performance Improvement Plans (PIPs). Employees may file a grievance on a limited basis over the Employer's decision to issue a formal performance improvement plan under 5 USC Chapter 43. Such a grievance may only allege that the Employer's decision to issue the PIP was arbitrary, capricious, or the product of unlawful discrimination. Neither the content and length of a PIP nor the content of the performance standard(s) upon which a PIP is based may be grieved.

18.5 Representation

The Union is the exclusive representative of employees in grievances filed under this negotiated grievance procedure. An employee, however, may elect to process a grievance through the internal steps of the negotiated grievance procedure without Union representation. The Union has the right to be present at any formal discussion of the grievance between an Employer representative and an employee who has elected self-representation. An employee who chooses not to be represented by the Union is not entitled to a personal representative, e.g., an attorney, unless such representative is approved in writing by the Union, and the Union has waived its right to represent the employee on that particular matter.

18.6 Individual Employee Grievance Procedure

A. Filing a Grievance

1. A Grievant (i.e., an employee or Union Representative) may file a grievance by submitting the complaint in written form to the immediate supervisor with a copy furnished to the Labor Relations Staff within fifteen (15) business days of the incident that gave rise to the grievance or within fifteen (15) business days of the date the Grievant became aware of the incident or reasonably should have become aware of the incident.

2. In the case of an ongoing or recurring occurrence, a grievance may be filed within fifteen (15) business days of the most recent occurrence.

B. Step One

1. Within fifteen (15) business days of receiving the grievance, the Employer shall both: (i) hold a meeting to discuss the grievance; and (ii) provide both the employee and the Union their copies of the official's written Step One response to the grievance. The meeting normally shall be conducted by the employee's immediate or second level supervisor. If the grievance names another management official as having the authority and/or responsibility to resolve the matter, the Employer shall consider having that official hold the grievance meeting. In addition to responding to the grievance, the written response shall also: (i) describe the Grievant's right to elevate the grievance to Step Two; and (ii) give the name and title of the official designated to hear the grievance at that level.

2. If the deciding official at Step One was not one of the Employer's two (2) Agency Administrators or the COO, the Grievant has the right to elevate the grievance from Step One to Step Two if they are dissatisfied because the Employer failed to hold the Step One meeting timely, or the Employer failed to provide the written Step One response timely, or the Grievant disagrees with the Step One response. If the Grievant wishes to elevate the grievance to Step Two:

    a. They must file a copy of the written grievance with both: (i) the management official immediately above the supervisor who was responsible for responding at Step One if there was no timely Step One response, or the management official designated to hear the grievance at Step Two if there was such a Step One response; and (ii) the Labor Relations Staff.

    b. Such filing must be done within five (5) business days of one of the following dates, as appropriate: (i) the last date when the Step One meeting should have been held; or (ii) the date when the written Step One response was due; or (iii) the date the Grievant received the written Step One response.

3. If the Grievant fails to elevate the grievance to Step Two timely, the parties shall regard the grievance as having been withdrawn. Thus, e.g., any Step One written response or non-response shall become the final resolution of the matter without any right of the Grievant to have the grievance reviewed further.

4. By written agreement, the Grievant and Employer may waive Step Two of this Individual Employee Grievance Procedure and elevate the grievance directly from

Step One to Step Three.

C. Step Two

1. Within fifteen (15) business days of receiving the grievance at Step Two, the official designated to hear the grievance at Step Two, or the official immediately above the official who presided or should have presided at the Step One meeting if there was no written Step One response, shall both: (i) hold a meeting with the Grievant and Union representative(s) to discuss the grievance; and (ii) provide both the employee and the Union their copies of the official's written response to the grievance. In addition to responding to the grievance, the written response shall also: (i) describe the Grievant's right to elevate the grievance to Step Three; and (ii) give the name and title of the official designated to hear the grievance at that level.

2. If the deciding official at Step Two was not one of the Employer's two (2) Agency Administrators or the COO, the Grievant has the right to elevate the grievance from Step Two to Step Three if they are dissatisfied because the Employer failed to hold a Step Two meeting timely, or the Employer failed to provide a written Step Two response timely, or the Grievant disagrees with the Step Two response. If the Grievant wishes to elevate the grievance to Step Three:

    a. They must file a copy of the written grievance with both: (i) the appropriate Agency Administrator or the COO; and (ii) the Labor Relations Staff.

    b. Such filing must be done within five (5) business days of one of the following dates, as appropriate: (i) the last date when the Step Two meeting should have been held; or (ii) the date when the written Step Two response was due; or (iii) the date the Grievant received the written Step Two response.

3. If the Grievant fails to elevate the grievance to Step Three timely, the parties shall regard the grievance as having been withdrawn. Thus, e.g., any Step Two written response or non-response shall become the final resolution of the matter without any right of the Grievant to have the grievance reviewed further.

D. Step Three

1. Within fifteen (15) business days of receiving the grievance at Step Three, the appropriate Agency Administrator or COO or a designee with the authority to effectively recommend the final decision shall both: (i) hold a meeting with the Grievant and Union representative(s) to discuss the grievance and; (ii) provide both the employee and the Union their copies of the official's written response to the grievance. In addition to responding to the grievance, the written response shall also describe: (i) the option of mediation (see Section 18.9, Mediation); and (ii) the Union's right to elevate the grievance to arbitration.

2. The Union has the right to elevate the grievance from Step Three to arbitration if the employee and/or Union is dissatisfied because the Employer failed to hold a Step Three meeting timely, or the Employer failed to provide a written Step Three response timely, or the Grievant disagrees with the Step Three response. If the Union wishes to elevate the grievance to arbitration, it must do so by following the procedures set forth in Article 19, Arbitration.

3. If the Union fails to elevate the grievance to arbitration timely, the parties shall regard the grievance as having been withdrawn. Thus, e.g., any Step Three written response or non-response shall become the final resolution of the matter without any right of the Grievant to have the grievance reviewed further.

4. Except as provided in Section 18.6 E of this Article, a grievance shall not be processed above the level of Agency Administrator or COO.

E. Grievances over Adverse Actions

1. Grievances over matters covered by 5 USC Section 7512 (removal, suspension for more than 14 days, reduction in grade, reduction in pay, furlough for 30 days or less) or by 5 USC Section 4303 (reduction in grade or removal for unacceptable performance) may be elevated to the Office of the Under Secretary if the Agency Administrator or COO has issued a response on the matter at Step One or Two of the grievance procedure. If a grievance reaches the Office of the Under Secretary, it shall be decided by the Under Secretary or an official designated by the Under Secretary.

2. To file a grievance with the Office of the Under Secretary, the employee/Union must file its written complaint with the Labor Relations Staff within fifteen (15) business days of receiving the response of the Agency Administrator or COO. If the Agency Administrator or COO has failed to answer the grievance in a timely manner, and the employee/Union wishes to elevate the grievance to the Office of the Under Secretary, the grievance must be filed within five (5) business days of the date the response was due.

3. The designated official in the Office of the Under Secretary shall, within fifteen (15) business days: (i) hold a meeting with the Grievant and Union representative(s) to discuss the matter; and (ii) issue a written response to the employee with a copy to the Union. The official may arrange for the presence at the meeting of any management official the official believes necessary. The Grievant may also have present at the meeting any other representation that they believe is necessary. If the Grievant is not represented by the Union, the Employer shall inform the Union of any meeting held to discuss the grievance and provide the Union an opportunity to attend. If the employee has been represented by the Union, a copy of the response shall be issued to the Union representative. If the employee has elected self-representation, the response shall be provided directly to the employee with a copy to the Union. In addition to responding to the grievance, the written response shall also describe: (i) the option of mediation (see Section 18.9, Mediation); and (ii) the Union's right to elevate the grievance to arbitration.

4. If the Grievant is dissatisfied because the Office of the Under Secretary failed to hold the meeting timely, or because it failed to provide the written response timely, or because the Grievant disagrees with the response, the Union has the right to elevate the grievance to arbitration pursuant to Article 19, Arbitration.

18.7 Union and Employer Institutional Grievance Procedure

A. The Employer or Union may file a grievance in writing with the opposite party concerning a particular action within fifteen (15) business days of the occurrence of the action that is the subject of the grievance or within fifteen (15) business days of the date that the grieving party became aware or reasonably should have become aware of the action.

B. The Union shall file the grievance with the Labor Relations Staff. The Union may name the

management official it believes responsible for the resolution of the matter. The Employer shall file the grievance with the Union President.

C. If requested by either Party within five (5) business days of the filing of the grievance, a meeting to discuss the grievance shall be held within fifteen (15) business days of receipt of the grievance between the Union President or their designee and the Employer official having the authority to resolve the matter and/or to effectively recommend resolution of the matter.

D. The Employer or Union shall issue a written response to the grievance within fifteen (15) business days of its receipt of the grievance or within fifteen (15) business days of the grievance meeting if one is held. If the Employer or Union fails to respond in a timely manner, the Employer or Union may elevate the grievance to arbitration pursuant to Article 19, Arbitration.

18.8 Denial Based on Questions of Grievability

A. The Party against whom a grievance is filed may deny the grievance on the grounds that it is untimely or does not conform to the procedures outlined in this Article (e.g., failure to remedy a deficiency by providing, as requested, required information (see Section 18.2 C&D) or concerns a matter not within the scope of this negotiated grievance procedure. A Party's failure to deny a grievance on any of these then existing grounds in its first written response to the grievance shall waive that Party's right to raise questions of grievability on that basis at any later stage of the negotiated grievance procedure.

B. If a Party whose grievance has been denied on one of these grounds wishes to contest that denial, the question of grievability shall be heard in accordance with the provisions of Article 19, Arbitration, Section 19.4 General Provisions Covering Arbitrations, subsection C.

18.9 Mediation

A. Mediation, using the services of neutral third parties to assist in negotiating mutually acceptable resolutions to disputes, may be an efficient, effective and economical method of resolving grievances which would otherwise be submitted to arbitration. Therefore, any party to any grievance may propose at the completion of Step Three that the grievance be mediated.

B. If all the Parties to a grievance agree, the grievance shall be mediated according to the terms of their agreement.

C. An agreement to mediate shall suspend indefinitely the running of time limits to process that grievance unless and until:

1. The parties agree to a specific duration for the suspension of the running of time limits; or
2. The mediation has been completed; or
3. Either party notifies the other that it no longer wishes to continue mediation.

D. Mediation will occur when Federal Mediation and Conciliation Service mediators are available.

Article 19 - Arbitration

19.1 Right to Arbitration

A. Arbitration may only be invoked by the Employer or the Union. Any unresolved grievance processed under Article 18, Negotiated Grievance Procedure shall, upon written request, be submitted to binding arbitration. The request for arbitration shall be delivered to the Union President or the Employer's Labor Relations Staff. The request for arbitration must be made within thirty (30) business days of receiving the final level written decision of the grievance process.

B. If the Union requests, under the Federal Service Labor-Management Relations Statute, information relevant to a grievance and files an Unfair Labor Practice charge alleging that the Employer has unlawfully failed to provide the information, the Union may postpone a previously scheduled arbitration hearing concerning the grievance until such time as the Federal Labor Relations Authority (FLRA) renders a decision on the charge.

19.2 Selection of the Arbitrator

A. Within ten (10) calendar days of the date of the request for arbitration, the Party invoking arbitration shall request from the Federal Mediation and Conciliation Service (FMCS) a list of seven (7) impartial persons qualified to act as arbitrators and shall also provide a copy of the request to the other party.

B. The Parties shall confer within ten (10) calendar days after receiving the list of names from the FMCS and select one of the listed arbitrators. If they cannot mutually agree upon a selection, the Parties shall alternately strike one name from the list. The Party requesting arbitration shall strike the first name from the list. When the list contains only one name, that person shall be the duly selected Arbitrator.

C. If for any reason either Party refuses to participate in selecting the Arbitrator, the other Party shall choose the Arbitrator.

D. Upon selection of the Arbitrator in a particular case, the respective representatives for the Parties shall communicate with the Arbitrator and each other in order to select a mutually agreeable date for the arbitration hearing.

19.3 Fees and Expenses

A. The Arbitrator's fee and expenses, if any, shall be borne by the losing party, except that in any decision not clearly favoring one Party's position over the other, the Arbitrator may specify that all costs should be borne equally by the Parties.

B. If either Party requests that the Arbitrator clarify their decision, the requesting party shall pay for any additional fees and expenses. The Arbitrator shall be requested to complete the clarification within thirty (30) business days. If the Parties submit a request for clarification jointly, the costs shall be shared jointly.

C. Either Party may request and arrange for a court reporter to provide a verbatim transcript of the hearing. The Party arranging for the transcript shall pay the costs and the transcript becomes the property of that Party. If both Parties request a transcript, each shall have its own copy and they shall share the costs equally.

D. The grievant and any employee called as a witness shall prepare for and participate in the hearing to the extent necessary on official time. Questions raised as to whether a witness is necessary shall be resolved by the Arbitrator prior to the hearing. If necessary, the Agency shall authorize reasonable travel expenses for necessary witnesses in accordance with established Agency travel policies and procedures.

19.4 General Provisions Covering Arbitrations

A. Arbitration hearings shall be held at the Employer's premises in Washington, D.C. during regular business hours of the basic work week.

B. Since joint submission of a stated issue (or issues) is highly desirable, the Parties shall make a good faith effort to agree on the issue(s) and submit it (them) to the Arbitrator. If the Parties fail to agree on a joint submission, each Party shall submit to the Arbitrator its own separate statement of the issue(s) and the Arbitrator shall determine the issue(s) to be heard.

C. If the Party against whom the grievance is filed believes the matter to be outside the scope of the grievance procedure or otherwise non-grievable, it shall declare the matter non-grievable in its Step One written response to the grievance. Failure to do so shall preclude the Parties from later claiming that the matter is non-grievable or non-arbitrable. The Arbitrator shall have the authority to make all grievability and/or arbitrability determinations. Threshold questions of arbitrability shall be heard by the Arbitrator on the same hearing date as the hearing on the merits of the case, unless otherwise agreed by the Parties.

D. The Arbitrator's authority is limited to the adjudication of issues raised in the grievance procedure (see Article 18, Negotiated Grievance Procedure) and matters concerning the conduct of the arbitration. The Arbitrator shall not have authority to add to, subtract from, alter, amend, or modify any provision of this Agreement, or any supplement thereto. The Arbitrator shall apply all applicable law.

E. Only those persons necessary and relevant to the hearing may participate in the hearing, including witnesses. The Arbitrator has the final authority to determine the witnesses.

F. The Parties shall exchange lists of proposed witnesses, representatives, and observers no later than forty-eight (48) hours in advance of the hearing.

G. A maximum of six (6) observers (three (3) from Management and three (3) from the Union) is permitted at arbitrations for institutional grievances. Observers are not permitted at hearings concerning individual employee grievances. An observer may not be a witness.

H. In considering grievances concerning actions based on unacceptable performance and adverse actions appealable to the Merit Systems Protection Board (MSPB), the Arbitrator shall apply the same standards in deciding the case as would be applied if the action were appealed to the MSPB.

19.5 The Specific Forms of Arbitration

The specific forms of arbitration shall be one of the following as agreed by the Parties:

A. Expedited Arbitration.

1. A stipulation of facts to the Arbitrator can be used when both Parties agree to the facts at

issue and a hearing would serve no purpose. In such a case, the Parties jointly submit their data, documentation, etc., to the Arbitrator with a request for a decision based upon the stipulated record.

2. An Arbitrator's inquiry may be used to expedite the resolution of the grievance. In this case, the Arbitrator would: (a) make such inquiries as they deems necessary; (b) prepare a brief summary of the facts; and (c) render an on-the-spot decision with a summary opinion. The Parties may mutually agree to eliminate the summary opinion.

B. Mini-Arbitration. In this case, an oral hearing shall be held. The Arbitrator shall prepare a brief summary of the facts and render a decision with a summary opinion.

C. Formal Hearing. A submission to arbitration hearing should be used when a formal hearing is necessary to develop and establish the facts relevant to the issue. In the case, a formal hearing is convened and conducted by the Arbitrator.

If the Parties do not agree to one of the forms of expedited arbitration, a formal hearing shall be held.

19.6 Post-Hearing Matters

A. The Arbitrator shall be requested to render the decision and remedy to the Parties within thirty (30) calendar days after the conclusion of the hearing, unless the Parties mutually agree to extend this time limit. However, a failure to issue an award within thirty (30) calendar days shall not result in the Arbitrator's losing authority to issue an award.

B. The Arbitrator shall submit all findings in writing, and this award shall decide all issues raised by either Party, including arbitrability.

C. An employee who is found to have been affected by an unjustified or unwarranted personnel action which resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee is entitled to appropriate relief in accordance with the Back Pay Act.

D. The arbitral award shall be binding on all Parties and implemented without delay, unless a party excepts or appeals.

1. A Party dissatisfied with an arbitral award may file exceptions with the Federal Labor Relations Authority (FLRA) and/or seek review by the MSPB or other reviewing authority as permitted by law and Government-wide regulation for a period of thirty (30) calendar days following receipt of the award.

2. If no exception or appeal to the arbitral award is filed within thirty (30) calendar days of receipt of the award, the award shall be final and binding.

Article 20 - Leave

20.1 General Principles

A. All leave (e.g., annual leave, sick leave, compensatory time off, and credit hours) shall be administered in accordance with applicable law, Government-wide regulations, USDA Departmental Regulations, Rural Development Instructions, and the provisions of this Agreement, in increments of fifteen (15) minutes.

B. All leave shall be documented (e.g., accrual, requests to use, approval or disapproval of requests) using the Employer's timekeeping system.

C. The Employer shall not deny leave requests as a substitute for taking disciplinary, adverse, or other corrective action. Nor shall the Employer deny any employee, or remove any employee from consideration for, promotion, training, or other opportunities as a result of the taking of leave when taking the leave was protected by statute or regulation.

D. Normally, employees shall make a reasonable effort to request scheduled or non-emergency leave no later than two (2) business days before the requested start of the leave in order to allow their supervisors sufficient time to consider the request and plan for the employee's absence. Should another official be acting for a supervisor who is not in a work status, the employee must, in addition to submitting a request in the timekeeping system, alert the acting official of the submitted request and get the acting official's approval before utilizing the leave. Approving officials shall make a reasonable effort to respond to the employee's request, normally within one business day from submission of the request.

E. If more than one employee requests to use leave for the same time period and the Employer is not able to approve all requests, the Employer shall permit the employees an opportunity to work out the conflict among themselves, subject to the Employer's approval. If a conflict still exists, the Employer shall decide which request(s) to approve based upon the first request received.

F. When the Employer's needs do not permit the approval of a request, the appropriate official shall disapprove that request and provide the reason for disapproval in the timekeeping system. The official shall take such steps as may be necessary to ensure that the employee receives notice of the disapproval promptly. On these rare occasions, the employee and the supervisor shall work together in an attempt to schedule leave at an agreed upon time.

G. When unscheduled leave is necessary, an employee requesting emergency leave is responsible to communicate to their supervisor or designee, if possible, before the end of the first hour of the employee's normal tour of duty on the first day of the absence, the type of leave requested and the reason for the absence. If the supervisor or designee is not available, the employee may request leave by leaving a voicemail, email or text message with the supervisor or designee. Leaving a message does not guarantee or imply that a request is or will be approved.

H. The failure of an employee to comply with Section 20.1 subsections D, E, F & G above may result in the absence being unauthorized and the employee being charged with being Absent Without Leave (AWOL). This can be changed to an approved leave category if the supervisor decides the employee had an acceptable explanation for failing to comply.

20.2 Advances of Annual Leave

A. A permanent employee who expects to remain in service through the leave year may request

advance of annual leave in an amount not exceeding that which the employee will accrue for the remainder of the leave year.

B. An employee who wishes to request an advance of annual leave shall submit in the timekeeping system both the request and an explanation of the reason for the request.

20.3 Sick Leave

A. The use of accrued sick leave shall be granted for absences required by:

1. the employee's or family member's illness, injury, medical, dental or psychological appointments and/or treatment/therapy;

2. a serious health condition of the employee or family member;

3. to make arrangements necessitated by the death of a family member and attend the funeral of a family member; and/or

4. certain circumstances involving contagious diseases.

B. The use of accrued sick leave may also be granted as a substitute for unpaid leave granted under the Family and Medical Leave Act (see Section 20.8 below).

20.4 Advances of Sick Leave

A. The Employer may approve requests for advanced sick leave after considering whether:

1. the employee has applied properly;

2. the employee will be able to repay the advance;

3. the employee has a serious illness or injury; and

4. the evidence supporting the request, if required by the Employer, is acceptable (see Section 20.5 below).

B. A permanent full-time employee may be advanced a maximum of two hundred forty (240) hours of sick leave for a personal medical situation, and the amount that has been advanced shall not exceed two hundred forty (240) hours at any time.

C. There is no limit on the number of times an employee may request an advance of sick leave, and the Employer shall consider requests for advanced sick leave even when an employee has not exhausted all annual leave. The approving official shall consider each such request on its individual merits and in accordance with the considerations listed above.

20.5 Evidence Supporting the Use of Sick Leave

A. An employee's illness, injury, or other incapacitation, examination, or treatment may be documented by:

1. self-certification, i.e., the employee's request in the timekeeping system, regardless of the duration of the absence; or

2. medical certification, i.e., a statement signed by a licensed practicing physician or other state-licensed practitioner, certifying to the occurrence and period of the employee's incapacitation, examination, or treatment; or

3. other administratively acceptable evidence.

B. The Employer may require the employee to submit acceptable evidence:

1. for any absence where sick leave abuse is suspected;

2. for a period of illness, injury, or other incapacitation in excess of three (3) consecutive work days;

3. when the employee is seeking an advance of sick leave;

4. when an employee claims an entitlement under the Family and Medical Leave Act (FMLA) and/or seeks to substitute accrued annual or sick leave for unpaid leave under FMLA; or

5. when an employee requests leave without pay for a health-care related reason.

C. Documentation for any of the purposes in Section 20.3, Sick Leave, shall be consistent with governing laws and regulations, e.g., 5 CFR Part 630.405.

D. The Employer shall notify the employee in writing of the requirement to submit evidence, and the due date (normally within fifteen (15) calendar days, but no later than thirty (30) calendar days from the date of the request).

E. When the Employer requires evidence for a leave request, the employee shall provide it to their immediate supervisor. The confidentiality of an employee's medical documentation is protected under the Privacy Act and shall be safeguarded in accordance with statutory requirements.

20.6 Leave Restriction

A. The Employer may place an employee on a leave restriction letter when the employee has had recurring or excessive undocumented unplanned absences reportedly due to illness, injury, or incapacitation such as to:

1. affect the employee's ability to accomplish assigned duties; or

2. interfere with the organization's ability to accomplish its mission; or

3. place an undue burden on co-workers.

B. Before issuing a leave restriction letter to any employee, the Employer shall counsel the employee at least once and give them an opportunity to improve. A memorandum for record of the counseling shall be given to the employee.

C. Leave restriction letters are normally in place for sixty (60) calendar days, at the end of which the employee's leave usage shall be reviewed. The leave restriction letter may be extended if the employee's use of unplanned leave has not improved. If an employee who has been removed from a leave restriction letter again experiences similar problems with unplanned undocumented absences within a twelve-month period following the removal of the leave restriction letter, another leave restriction letter may be imposed without additional counseling.

20.7 Administrative Leave (Excused Absences)

A. Administrative leave is an excused absence from duty administratively authorized without loss of pay and without charge to other types of leave.

B. The Employer shall follow the OPM-issued Washington, D.C. Area Emergency Dismissal or Closure Procedures for National Capital Area employees developed in consultation with the Metropolitan Washington Council of Governments. The procedures are updated annually and can be viewed or printed from the OPM website: http://www.opm.gov/. For those employees outside the National Capital Area, the Employer may grant administrative leave in the event of local inclement weather or other local emergency situations based on local conditions.

C. Upon approved advance request to donate blood without compensation, the Employer shall grant administrative leave of up to four (4) hours for travel and rest and recuperation at the donation site unless to do so would interfere with work operations. The actual time needed to donate is in addition to the four (4) hours.

D. The Employer shall grant administrative leave for bone marrow and/or organ donations in accordance with applicable law and regulation.

E. Consistent with OPM guidance, employees may be granted up to four (4) hours of administrative leave on election day or during early voting to vote in Federal, State, county, municipal, Tribal, territorial, and Federal special Congressional elections, in referendums on any civic matter in their community for each election event, so long as the absence does not seriously interfere with valid operational needs. Employees may separately be granted up to four (4) hours of administrative leave per leave year to serve as a non-partisan poll worker or participate in non-partisan observer activities at the Federal, State, county, municipal, Tribal, territorial level, so long as the absence does not seriously interfere with valid operational needs.

F. The Employer shall grant administrative leave for up to four (4) hours per calendar year for Government-approved health care screenings.

G. The Employer may excuse employees without loss of leave or pay for a reasonable period of time immediately before and immediately after the employees attend local area Government training including conferences, conventions or other special events. The term reasonable period of time shall be determined by the appropriate Employer official in consultation with the employee and shall not exceed two (2) hours of the workday.

H. The Employer shall not charge sick leave but shall grant administrative leave as needed on the day of a job-related injury to an employee who is absent for initial or immediate examination, treatment, or recuperation because of that injury.

20.8 Family and Medical Leave Act

The FMLA entitles eligible employees of covered employers to take unpaid, job- protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Eligible employees are entitled to:

1. Twelve workweeks of leave in a 12-month period for:

    a. the birth of a child and to care for the newborn child within one year of birth;

b. the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;

c. to care for the employee’s spouse, child, or parent who has a serious health condition;

d. a serious health condition that makes the employee unable to perform the essential functions of their job;

e. any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on covered active duty; or

2. Twenty-six (26) workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member’s spouse, son, daughter, parent, or next of kin (military caregiver leave).

More information on FMLA can be found on the OPM website.

20.9 Leave Transfer Program

The Employer shall continue its Voluntary Leave Transfer Program in accordance with current law and Government-wide regulation.

Article 21 - Telework and Remote Work

21.1 General Provisions

The Telework Program shall be governed by the terms of this Article. The Employer fully supports and promotes the broadest possible use of telework by eligible employees. Effective use of telework enables the Employer to realize tangible savings in terms of reduced real estate and physical space demands, utilities, and transit subsidy costs. Telework and other workplace flexibilities also enhance employee recruitment and retention.

21.2 Definitions

A. Alternative Worksite. A worksite location, other than the traditional office that satisfies all requisite Federal health and safety laws, rules and regulations pertaining to the workplace, where an employee performs their official duties. Supervisors may authorize telework from several alternative worksites. Temporary authorizations or changes in the location of designated alternative worksites do not require a new AD-3018, USDA Telework Agreement.

B. Classified Materials. Information which, for reasons of national security, is specifically designated by a United States Government Agency for limited or restricted dissemination or distribution.

C. Hoteling. Shared office space in an Agency location designed for use by teleworkers.

D. Locality Pay Area. An Office of Management and Budget defined metropolitan statistical area or combined statistical area that determines certain location-based pay entitlements based on the employee's official duty station as documented on the employee's SF-50, Notification of Personnel Action.

E. Mobile Work. Work that is characterized by routine and regular travel to conduct work in a customer's or other worksite as opposed to a single authorized alternative worksite. Examples include site audits, site inspections investigations, property management, and work performed while commuting, traveling between worksites, or on Temporary Duty (TDY). Mobile work is not considered telework; however, mobile workers may be eligible to participate in telework, as applicable.

F. Official Duty Station (ODS)/Official Worksite. The ODS or official worksite is the management-approved location where employees regularly perform their official duties. If the employee's work involves recurring travel or the employee's work location varies on a recurring basis, the official worksite is the location where the work activities of the employee's position of record are based, as determined by the employing agency, subject to the requirement that the official worksite must be in a locality pay area in which the employee is required to regularly perform work. The Employer must document an employee's official worksite on the employee's Notification of Personnel Action (Standard Form 50 or equivalent).

G. Opt-Out. A telework-eligible employee who voluntarily declines to participate in the Telework Program. Employees who opt-out must sign and check the voluntary opt-out box on the AD- 3018, Telework Agreement.

H. Remote Work. A workforce flexibility arrangement under which an employee is scheduled to perform work within or outside the local commuting area of their Employer's worksite and is not required to report to the Employer's worksite on a regular and recurring basis.

I. Remote Work Arrangement. A work arrangement in which:

1. The employee performs assigned official duties and other authorized activities at an approved alternate work location, typically the employee's residence, within or outside of the local commuting area of the Employer's worksite;

2. On a regular and continuing basis;

3. Is not required to physically report to the Employer's worksite on any frequent, regular, or recurring basis; and

4. The approved alternate worksite is, for pay and other purposes, the employee's official duty station, as indicated on the employee's SF-50, per 5 CFR 531.605, Determining an employee's official worksite.

J. Remote Work Eligibility. A determination that a position's required duties and tasks can be completed away from the Employer's worksite with no frequent, regular, or recurring requirement to be physically present at the Employer's worksite.

K. Routine Telework. (also referred to as core telework). Regularly scheduled telework that occurs no less than one day and no more than eight (8) days (without exception) scheduled per biweekly pay period, on a recurring basis and is part of an approved work schedule.

L. Situational Telework. (also referred to as ad hoc, episodic, unscheduled, and intermittent). Telework that is approved on a case-by-case basis, where the hours worked were not part of a previously approved, ongoing, and regular, telework schedule.

M. Telework. A work arrangement in which an employee performs and completes official duties and responsibilities from an alternative worksite. Telework may be authorized for an entire duty day or a portion of one. Telework does not include the following: 1. Work performed while on official travel status; 2. Work performed while commuting to/from work; 3. Mobile work; or 4. Remote work.

N. Telework Agreement (AD-3018). A written agreement that outlines the terms and conditions of the telework arrangement as approved by the supervisor.

O. Teleworker. An eligible employee with an approved Telework Agreement who performs their official duties at an alternative worksite.

P. Telework-Ready. Refers to all eligible employees with an approved Telework Agreement and who are prepared and equipped to telework. If unable to telework when required, use of paid or unpaid leave may be requested.

Q. Unscheduled Telework. Telework that is authorized in response to specific duty status announcements issued by the Office of Personnel Management (OPM) or other authorized Agency officials for use during periods of inclement weather, a pandemic or public health crisis, or other emergency situations, or with prior supervisory approval, telework used to maintain productivity during short-term disruptions to normal operating procedures.

21.3 Telework Policy

A. The Employer fully supports and promotes the use of telework, up to the maximum extent appropriate, for and by eligible employees. The Telework Program is designed to fully implement

the Telework Enhancement Act of 2010 and enhance work/life balance for employees. Telework should be used as a strategic tool for attracting a diverse pool of potential applicants, qualified candidates, and for retaining valued employees.

B. Employees may request to telework up to eight (8) days per pay period. The appropriateness of the type and amount of telework suitable for eligible employees is a determination reserved for Agency management. Supervisory decisions as to type and frequency of telework participation should be made on an individual, case-by-case basis, determined by the nature of the position, job requirements, and mission criteria, and should involve a discussion between the supervisor and employee.

C. All approved telework arrangements must be documented on an AD 3018, USDA Telework Agreement form.

D. A teleworker's official duty station will remain unchanged if they report physically to their employing office worksite location for two (2) full workdays or a combination of workday and some form of personal leave each biweekly pay period on a regular and recurring basis. The two (2) full workdays may be consecutive days in the same week. If a holiday falls on a teleworker's day to physically report to the employing office worksite, it is not required to add an alternate day to the employee's requirement to physically report to the employing office worksite for that specific biweekly pay period. The Employer shall ensure that employee personnel records correctly reflect the employee's ODS.

E. Telework should be used as a strategic tool to recruit and retain a diverse workforce and support employee work-life balance.

F. Use of telework is a key component of the Employer's ability to operate in situations in which working from the official worksite is unsafe or unavailable. Unscheduled telework will be considered and may be authorized or required during inclement weather, emergency situations that involve national security, extended emergencies, or other unique situations as determined by the OPM or the Employer. Agency offices should incorporate telework into their Continuity of Operations Plan.

G. Eligibility

    1. All employees, regardless of tenure, grade, job series, title, or supervisory designation are presumed eligible for telework, unless prohibited by other exclusionary provisions in Section 21.3 G 5 below.

    2. Employees in positions ineligible for telework and those performing similar functions will be treated as fairly and equitably as those that telework.

    3. Positions may be identified as ineligible for telework based only on the following criteria:

        a. Position duties require daily physical presence and do not include any portable or administrative work that can be accomplished from an alternate office or location.

        b. Position responsibilities require daily access to specialized equipment located at the official worksite and do not include any portable or administrative work that can be accomplished from an alternate office or location.

        c. Position activities require daily access to classified materials and do not include any

portable or administrative work that can be accomplished from an alternate office or location.

4. If the Employer determines that a position is ineligible for teleworking, it shall provide the Union with a written explanation.

5. Employees may be identified as ineligible for telework based only on the following criteria:

    a. Performance. An employee is ineligible for telework if they received a less than fully successful performance rating within the past twelve (12) months and may remain ineligible for up to twelve (12) months from the date of the documented performance rating.

    b. Conduct. An employee is ineligible for telework due to conduct issues resulting in official, formal disciplinary action, as filed in the employee's Official Personnel File (OPF) as a matter of personnel record and may remain ineligible for up to twelve (12) months from the date that the discipline was effectuated.

    c. Permanent Ineligibility. As specified in the Telework Enhancement Act, an employee is permanently ineligible for telework if they have been formally disciplined for the following:

        1. Violation of 5 CFR 2635, Subpart G, Misuse of Position, of the Standards for Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing their official duties; or

        2. Absence Without Leave (AWOL). AWOL is a non-pay status that covers an absence from duty that is not approved. Any employee AWOL for five (5) or more days in any calendar year is permanently ineligible.

6. Temporary Eligibility. In certain circumstances, the Employer may temporarily designate the location of the Agency worksite for an employee's position (i.e., the place where the employee would normally work, absent a Telework Agreement) as the official worksite even though the employee is not able to report at least twice each biweekly pay period on a regular and recurring basis to the Employer's worksite. The employee must be expected to return to the Employer's worksite at some point in the future on a regular and recurring basis. It is the responsibility of the employee's immediate supervisor to decide when it no longer is proper to apply the temporary exception. However, if a teleworking employee is not expected to report to the Employer's worksite on a regular and recurring basis in the future, the temporary exception would no longer be applicable. Supervisors must periodically review (at least every three(3) months) an employee's temporary full-time telework arrangement to ensure any approved temporary exception continues to apply. A supervisor may waive this requirement on a temporary basis in situations such as:

    a. Recovery from an injury or medical condition;

    b. Emergency conditions that prevent an employee from commuting to the official worksite, such as a severe weather emergency or public health crisis;

    c. An extended period of approved absence from work, e.g., paid leave;

d. A period during which the employee is in temporary duty travel status away from the official worksite; or

e. A period during which an employee is temporarily detailed to work at a location other than a location covered by a Telework Agreement.

H. Supervisors always have flexibility to approve additional or in lieu of telework days.

21.4 Telework Procedures

A. Telework Participation

1. Telework Agreements remain in effect until a change is initiated, though it is a good practice for supervisors to review Telework Agreements with employees on an annual basis. Either management or an employee may initiate a change to a Telework Agreement with a minimum of forty-five (45) calendar days advance written notification, except in emergency situations where the timeframe may be shorter.

   a. Teleworking employees are expected to perform their duties and responsibilities at the fully successful performance level. In accordance with the terms and provisions of this Article, participation in telework may be changed, suspended, or terminated by management if an employee no longer meets the eligibility criteria or performance expectations.

   b. Before the Employer modifies/terminates/suspends an employee’s participation in the Telework Program: the supervisor and employee shall attempt to work out any specific problems; and the Employer shall give the employee written notice at least forty-five (45) calendar days in advance, unless shortening the advance notice is justified by an emergency. This notice shall indicate the reason(s) for the modification/termination/suspension. Obtaining the signature of the employee as evidence of their consent or acknowledgement is not required for the modification/termination/suspension to take effect.

   c. Unless otherwise indicated, the employee may re-apply to participate in the Telework Program after thirty (30) calendar days provided the reason for the modification/termination/suspension no longer exists. If the Employer modifies/terminates/suspends the employee’s participation because of mission-related reasons, the employee may ask for reconsideration of the modification/ termination/suspension when the mission-related reasons change or end.

2. Management reserves the right, normally with at least one day notice, to require employees to return to the ODS location for imperative mission related purposes, even on scheduled telework days. Emergency situations may require a shorter timeframe. Management will make every attempt to minimize requests to call employees back to the office when employees are scheduled to telework. When the Employer requires an employee to report to the ODS on the employee’s routine telework day, the employee may request an alternate telework day. The Employer shall, absent a valid mission need, approve the request for an alternate telework day. The alternate telework day must be coded as Telework – Other.

3. Teleworkers and remote workers may participate in flexible and compressed work schedules, or other flexible work arrangements. Teleworkers shall be permitted to swap or

change their scheduled telework days with prior supervisory approval.

4. Changes (e.g., change in position or change requested by management or employee) will require a new or updated Telework Agreement to be completed. When an employee with an approved Telework Agreement moves to a different position, the employee shall request a new Telework Agreement, except in cases of reorganizations or realignments where the position remains essentially the same. A new Telework Agreement is not needed for temporary changes in position or supervisor (e.g., due to detail, temporary promotion, or assignments of a short duration).

5. Employees must report the number of participation days in the Routine Telework Agreement, so their Transit Subsidy reflects the correct amount.

6. Telework is voluntary for all employees. At a minimum, every employee must decide either to participate in the telework program or affirmatively opt out of the telework program by completing the AD-3018 form and giving it to their immediate supervisor. Employees with a Routine Telework Agreement shall be presumed to be eligible also for Situational/ Unscheduled telework.

B. Unscheduled and Emergency Telework

1. OPM or Agency authorized officials may announce emergency operating status guidance allowing for unscheduled or required telework beyond that outlined in the OPM early dismissal guidance for weather events.

2. Employees with Telework Agreements in place may choose to participate in unscheduled telework as indicated by OPM or the Agency, without supervisory approval. However, employees who make this choice must inform their supervisors of their intent to telework and telework status by email, phone, or voicemail.

   Employees with a Telework Agreement are expected to telework or take other authorized leave (e.g., administrative leave, annual leave, leave without pay), paid time off, or a combination of both, as approved by the Agency office.

3. Teleworkers who are working in the office when an early departure is announced generally may receive weather and safety leave for time required to commute home (excluding the period for an unpaid lunch break). This means that telework participants must complete the remaining hours of their workday (if any) either by teleworking or taking leave (paid or unpaid) or other paid time off once they arrive home.

4. When Federal offices are closed due to weather or other emergency conditions, in order to maintain the continuity of the Employer's operations:

   a. All telework-ready employees (see Section 21.2 P above) may be required to work at their alternative worksites, except an employee shall be excused if:

      i. they are prevented from safely teleworking by an act of God (i.e., natural disasters such as earthquakes, floods, and snowstorms), terrorist attack or other similar circumstance not in the employee's control that prevents working safely; and

      ii. either (A) the occurrence of such condition(s) could not, in the Agency's

judgement, reasonably be anticipated, or (B) the employee is prevented from safely teleworking despite having taken reasonable steps within their control to prepare to telework (e.g., by taking home the needed equipment and/or work) and is otherwise unable to perform productive work at their telework site.

iii. an employee prevented from traveling to or performing work at an approved location, due to circumstances arising from one or more of the circumstances in (i) above, is prevented from safely teleworking.

b. Employees who do not have Telework Agreements and were otherwise scheduled to report to the closed Federal office shall not be required to work but shall be excused. Different provisions may apply to employees who do not have a Telework Agreement but are designated as emergency or mission-critical emergency employees.

5. When federal offices are not closed, if technical difficulties (including, e.g., the unavailability or inaccessibility of specialized equipment necessary for teleworking, power outages, and interference with internet connectivity) prevent an otherwise telework-ready employee from teleworking at/on a time/day when they were required or expected to do so, the employee will contact their supervisor or designee to determine an appropriate course of action which may include work that can still be conducted offline, appropriate leave, or return to the office.

6. If on a day that an employee is teleworking, the Employer directs an employee to report to the ODS, the employee's time driving from their approved telework site to the ODS shall be compensable as duty time.

C. Time and Attendance (applies to teleworkers and remote workers)

1. Employees must follow this Agreement for accurately coding time spent teleworking and working remotely.

2. Agency procedures for requesting and approving overtime, credit hours, and leave apply to all employees, including teleworkers and remote workers and are governed by this Agreement.

D. Safety

1. Teleworkers and remote workers are encouraged to be proactive in ensuring a safe alternate worksite and safe work habits.

2. As a remote worker or while teleworking from an alternate worksite, employees may be covered by the following:

a. Federal Tort Claims Act (FTCA), 28 United States Code (USC) 2671- 2680, Tort Claims Procedure; and

b. Federal Employees' Compensation Act (FECA), 5 USC Chapter 81, Compensation for Work Injuries.

3. Employees are covered by FECA at their alternate worksite if an injury occurs while

performing their official duties.

4. If an injury occurs, the employee must notify their supervisor immediately, provide details of the incident or injury, and complete the following Department of Labor (DOL), Occupational Safety and Health Administration (OSHA) forms:

   a. OSHA, Form 301, Log of Work-Related Injuries and Illnesses; and

   b. DOL, FECA Form CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation; or

   c. DOL, FECA CA-2 Form(s):

      i. Form CA-2, Notice of Occupational Disease and Claim for Compensation; and

      ii. Form CA-2a, Notice of Recurrence; and

   d. As applicable, for Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation (CA-1) situations, employees can access the DOL Employees' Compensation Operations and Management Portal (ECOMP) through the How to File a Form website.

5. The Government is not liable for damages to the employee's personal or real property while the employee is teleworking, except to the extent the Government is held liable by the FTCA.

E. Reasonable Accommodation and Medical Telework

1. Telework should be considered for reasonable accommodation requests for employees with a disability or for accommodation of religious beliefs. All reasonable accommodation requests, including those for telework, must comply with DR 4300-008, Reasonable Accommodations and Personal Assistance Services for Employees and Applicants with Disabilities, OPM and Government-wide regulations, and this Article.

   The determination as to whether an employee may be granted the accommodation requested should be made through a flexible interactive process between the Employer and the employee.

2. Employees seeking long-term (exceeding 6 months) or permanent telework as a Reasonable Accommodation should follow the rules and procedures outlined in DR 4300-008, Reasonable Accommodations and Personal Assistance Services for Employees and Applicants with Disabilities.

3. Any employee who seeks an appropriate short-term (6 months or less) telework arrangement because of temporary medical issues should submit a normal telework request and engage in a flexible interactive process with the Employer to determine the scope of the employee's capabilities, etc. Telework may also be combined with annual or sick leave during recovery or on days of recurring medical appointments.

4. It is not a requirement to document or track a Telework Agreement or an Agency office unique remote work agreement approved for a reasonable accommodation. However,

written documentation in another format may be needed to document the efficacy of the organization’s reasonable accommodation arrangement with the employee.

F. Telework Appeals

1. Appeals of a telework participation denial will be governed by the procedures of Article 18, Negotiated Grievance Procedure, and Article 19, Arbitration.

2. Employees may appeal the following denials of telework:

    a. A written decision of ineligibility based on the duties of the position or the employee’s suitability for telework;

    b. Denial of an employee’s request to telework documented by the submission of a Telework Agreement;

    c. Management termination of an existing Telework Agreement; and

    d. Denial of an employee’s request to telework without a valid business reason, yet the employee is approved for situational telework.

21.5 Remote Work Policy

A. The Employer fully supports and promotes remote work arrangements for and by employees occupying remote work eligible positions. The Employer’s remote work policy is intended to enhance the work-life balance for employees.

B. Remote work is an arrangement under which employees are scheduled to perform their position’s job duties at an approved alternate worksite, typically the employee’s residence. The remote worksite may be within or outside of the local commuting area of the Employer’s worksite. Remote work employees will be expected to work at a designated approved location, typically the employee’s residence, on a regular and continuing basis.

C. Remote work arrangements may be used for a variety of business reasons, including, but not limited to:

1. Retaining high performing employees who must move for personal reasons and would otherwise leave the Agency;

2. Recruiting employees with specialized skills, who may not want or be able to relocate for personal reasons;

3. Achieving Agency office real estate or other business cost reductions;

4. Reducing costs associated with filling vacancies when employees must relocate; and

5. Increasing employee work-life balance, resulting in increased morale.

D. Remote Work Eligibility. At a minimum, the following conditions or criteria will be considered when a remote work arrangement is requested or when included in a Job Opportunity Announcement (JOA) for merit promotion vacancies for bargaining unit positions:

1. As part of the ongoing position management processes, the Employer will review positions to determine eligibility for a remote work arrangement. Eligibility must be determined prior to posting a JOA; and

2. The Employer must consider:

    a. Job duties that only can be performed onsite and the amount of time required to complete such duties in a typical bi-weekly pay period;

    b. The amount of time required each week to participate in other aspects of the work unit operations such as training, meetings, or collaboration, including collaboration with stakeholders that cannot be conducted virtually;

    c. The type and frequency of travel associated with the position; and

    d. Any requirement for accessing classified information.

E. Remote work arrangements will be approved based upon a specific work location and will not include a requirement for the employee to remain within the local commuting area. Changes to official duty stations/remote work arrangements require supervisory approval.

21.6 Remote Work Procedures

A. Remote work arrangements should be cost-neutral or low-cost, to the extent practical, after factoring in the net cost savings accrued moving each employee to a remote arrangement.

B. Although remote employees generally are not expected to report to the Agency worksite, the supervisor can require the presence of a remote employee at the worksite in certain situations, e.g., random drug testing, training, or an official meeting.

C. Supervisors should minimize official travel between the remote work location and the Agency worksite unless necessary to accomplish mission critical needs or where alternative virtual communication means (e.g., teleconference, virtual meetings) are not available.

D. When travel is required, clear communication between the employee and supervisor will ensure an accurate understanding of mutual responsibilities and obligations. When an Agency office authorizes a remote employee to travel to an office worksite for official duty, the Agency will pay travel costs consistent with the Federal Travel Regulations and other applicable Federal laws and Government-wide rules and regulations.

E. Remote employees must be treated equitably for appraisals of job performance, training, awards, reassignment, promotions, changes in grade, work requirements, approval of overtime work, flexible and compressed work schedules, and other actions within management's discretion. Remote employees are entitled to receive progress reviews and annual performance appraisals from their supervisors in accordance with the Employer's performance management policies.

F. Remote employees who are required by their supervisor to report to an Agency worksite will be:

1. given as much advanced notice as possible, normally at least three (3) business days, less if a mission critical need requires it. This provision does not apply to drug testing;

2. considered to be in official travel status, if traveling from outside the local commuting area

on a travel authorization, for the duration of the visit;

3. reimbursed for travel expenses associated with reporting to the office, (e.g., parking, mileage, tolls), if traveling within the local commuting area. If the employee is not in the local commuting area, they will be provided a travel authorization, and

4. provided with a dedicated workspace, if one is available, for the duration of the visit. (Remote work employees generally will not have a permanently assigned workspace at the Agency worksite.)

21.7 Establishment or Changing a Remote Work Arrangement

A. When creating a JOA for merit promotion announcements for bargaining unit positions, hiring managers must identify:

1. Whether the position is eligible for a telework or remote work arrangement; and

2. Whether a remote work arrangement is required for the position. Candidates accepting a position where a remote work arrangement is required must accept the arrangement as a condition of employment.

B. Employees may request to work remotely, to change an existing remote work arrangement, or to terminate their remote work arrangement. Absent urgent circumstances, employee requests to change their remote work location or remote work arrangement are limited to once every six (6) months. The employee requesting a change must:

1. Discuss the request with their supervisor. Changing the employee's duty station likely will affect the employee in several ways (e.g., locality pay, Reduction-in- Force competitive area, bargaining unit status, unemployment compensation). When discussing such requests with the employee, management must address other available workplace flexibilities, including but not limited to, alternative work schedules, details, leave options (e.g., extended leave without pay, and shared leave programs).

2. The employee then may submit a request for a remote work arrangement, change to a remote work arrangement, or termination of a remote work arrangement in writing. The request must include the proposed duty station and effective date.

C. To the extent the eligibility criteria in Section 21.5 D 2 of this Article are met, supervisors shall normally approve requests to set up a remote work arrangement from employees occupying positions that are remote-eligible.

Normally employees shall not be denied a remote work arrangement based upon the locality pay of the remote worksite. If denied, the Employer will provide a written justification to the employee.

D. Supervisory considerations of employee requests to change or terminate a remote work arrangement include:

1. That the proposed creation or change of a remote work arrangement does not negatively affect the Employer's budget or ability to execute its mission; and

2. Requests to terminate a remote work arrangement may be denied due to space

limitations within an Employer worksite.

E. Generally, to the extent the eligibility criteria in Section 21.5 D 2 of this Article are present, employees may be considered eligible for a remote work arrangement. However, as with telework, an employee becomes permanently ineligible for a remote work arrangement if they have been formally disciplined for either:

   1. A violation of Subpart G, Misuse of Position, of the Standards for Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computing device to include cell phones and tablets or while performing official, Federal Government duties; or

   2. AWOL for five (5) or more days in any calendar year.

F. Performance and Conduct. Employees on remote work arrangements are subject to the same laws, rules, regulations, and policies that address performance deficiencies and employee misconduct.

G. Appeals to a denial of a request for a remote work arrangement are governed by Article 18, Negotiated Grievance Procedure, and Article 19, Arbitration.

H. Employees approved to work remotely will be permitted to pack any personal items located in the Agency workspace on duty time, if applicable.

21.8 Pay, Holiday, and Time and Attendance

A. The basic rate of pay of a remote employee is determined by the employee's base pay rate, the applicable locality pay rate and any special pay rate associated with the employee's official duty station of record, as recorded on the employee's OPM Standard Form (SF)-50, Notification of Personnel Action. For remote employees, the official worksite typically is their residence.

B. Teleworker and remote workers are required to follow the procedures in this Agreement for requesting and using approved leave.

C. The Employer generally should not pay relocation expenses related to remote work arrangements such as expenses to relocate to a new official duty station or to return to the Agency office worksite when such arrangements were requested by the employee and is not the result of a directed reassignment.

D. Remote work employees traveling on official business are eligible for the same travel benefits as non-remote work employees. Supervisors should, whenever possible, minimize official travel for remote employees. Alternate communication technologies should be leveraged to the greatest extent possible to minimize travel unless necessary.

E. All required training and travel for remote employees as determined by the supervisor (e.g., mandatory participation at meetings or conferences at the Agency office worksite) will be subject to normal training approval requests, applicable travel regulations, and funding.

F. Remote work employees may be eligible for Workers' Compensation benefits for work-related injuries or illnesses sustained while in the performance of duty under FECA, which is administered by the DOL's Office of Workers' Compensation Programs (OWCP). For further

information, see 5 USC 81.

21.9 Domestic Employees Teleworking Overseas

A. Domestic Employees Teleworking Overseas (DETO) are overseas work arrangements that allow Federal Executive Branch employees to perform the work requirements and duties of their positions temporarily from approved overseas locations via DETO agreements. Employees have no authorization to telework from a foreign location without approval from USDA and the Department of State (DOS).

B. Employees who may be considered for a DETO are those who are the spouse or domestic partner of a sponsoring Foreign Service Officer, Federal Civil Service employee, Department of Defense employee, or uniformed service member assigned overseas. To be considered for a DETO, the employee must be on the U.S. Government orders of the sponsoring individual assigned overseas.

C. DETO requests will be considered on a case-by-case basis. Employees must consult with the OHRM as early as possible in the process because DOS approval can take from six (6) months to a year, if not longer.

D. Any DETO request must be approved by the applicable Agency office prior to submission to the DOS and must follow the requirements in Departmental Regulation 4080-811-002, Telework and Remote Work Programs, the DOS Executive Secretary Memorandum, Requirements for Executive Branch Employees Teleworking in Foreign Locations, dated June 7, 2016, and the DOS Foreign Affairs Manual, 3 FAM 2370, Domestic Employee Teleworking Overseas (DETO) policy guidance, dated August 11, 2021.

E. Before approval, the employee must complete a DETO agreement using the DOS DETO agreement form, fulfill any overseas training requirements, and obtain proper documentation (e.g., passports, visas, work permits) to perform work overseas. The completed DETO agreement must be submitted through the employee's supervisory chain of command for approval. Once approved, it must be submitted to the DOS.

F. A DETO may entail significant costs to the Employer the employee, or both. Therefore, prior to approving a DETO agreement, the Employer must be prepared to address any contingencies or problems with the overseas telework arrangement, including situations when the employee or the Employer may need to terminate the DETO.

G. Upon approval of a DETO agreement, the approved case must be forwarded to the servicing Human Resource Office to change the employee's duty station to the overseas location. The DOS regulation 3 FAM 2370 governs the availability of overseas allowances, including the termination of locality pay, and other differentials for employees.

H. DOS policy requirements apply to all employees working under a DETO.

21.10 Roles and Responsibilities

A. The Employer shall:

1. Promote the Telework and Remote Work Programs and give all eligible employees the opportunity to participate in telework or remote work arrangements;

2. Determine the suitability of positions for remote work arrangements;

3. Administer Telework and Remote Work Programs in accordance with this Agreement;

4. Incorporate information about the availability of telework, remote work, and related policies into new employee orientation and other training programs;

5. Evaluate all teleworkers, remote workers, and non-teleworkers under the same employee performance management system and afford the same professional opportunities, assignments, and treatment about work projects assigned, appraisal of job performance, awards, recognition, training and developmental opportunities, promotions, and retention incentives;

6. Provide the following equipment to teleworkers and remote workers:

    a. One laptop or workstation with Jabber or successor;
    b. One keyboard and mouse;
    c. One docking station; and
    d. One monitor at their ODS.

    Additional equipment (e.g., printer, scanner, cell phone, headset) may be provided if duties require such equipment.

7. Designate a Telework Program Coordinator (TPC) to manage the program;

8. Ensure all employees are notified of their eligibility to telework and encourage them to annually review or update their Telework Agreements or opt-out by selecting the AD-3018 Opt-Out Section check boxes;

9. Ensure supervisors are aware of the requirement that teleworkers who are designated as emergency employees or mission-critical emergency employees are identified as such in their Telework Agreements;

10. Ensure managers are aware of the requirement for teleworkers to complete required training prior to implementing a Telework arrangement;

11. Coordinate with relevant parties on inventories of available computers, laptops, printers, and other office equipment for use in the Telework Program prior to reporting the property as excess;

12. Report the required telework program information, as requested by the Department;

13. Maintain all documentation in accordance with National Archives and Records Administration, General Records Schedule 22.2, Section 080, Supervisor's personnel files, which requires Telework Agreements to be retained for one year after the end of the employee's participation in the program;

14. Ensure employees are provided information on the Employer's Telework and Remote Work Programs, including eligibility criteria and application procedures;

15. Establish a system to receive feedback from employees about the implementation effectiveness and impact of the Telework and Remote Work Programs;

16. Provide copies of approved agreements and notices of agreement terminations in a timely manner;

17. Notify all assigned employees of their eligibility to telework, work remotely, or opt-out. Require each eligible new employee to request a new or updated Telework Agreement, remote work arrangement, or Opt-Out statement within ninety (90) calendar days of the arrival of the new employee. Require and account for Telework Agreements or Opt-Out Statements from all eligible employees.

18. Within ten (10) business days of receipt of a telework or remote work request, meet with the employee to approve, modify, or deny the request based on the Telework Enhancement Act of 2010 and this Article. If the request is denied or terminated, provide written justification to the employee, the Agency TPC and the Union;

19. Provide written notification and explanation to employees who are not authorized to participate in the Telework and Remote Work Programs.

20. Review approved Telework Agreements with all assigned employees annually;

21. Ensure consistent and fair administration of the Telework and Remote Work Programs policies and procedures;

22. Upon approval of a Telework Agreement, Remote Work Agreement, or Opt-out arrangement, establish and communicate reasonable and clear expectations with employees regarding methods of communication, (i.e., customer service, time frame for returning phone calls, voicemail messages, and email communication), staff meeting attendance, duty hours, and the accurate coding of telework for time and attendance purposes;

23. Ensure a personnel action is effected to document the correct official duty location for each employee approved for remote work. Temporary exceptions may apply as set out in Section 21.3 G 6, Temporary Eligibility, above;

24. Resolve telework denial and remote work denial appeals or grievances in a timely manner and in accordance with this Agreement;

25. Ensure compliance with approved telework and remote work agreements;

26. Ensure remote employees are provided office supplies from approved sources as appropriate. Reimbursement for office supplies will only occur if a request has been submitted and is pre-approved by the immediate supervisor before the purchase is made;

27. Promote and cooperate with employees and the Union in following the appeal procedures of Article 18, Negotiated Grievance Procedure, and Article 19, Arbitration, to resolve appeals of telework participation denials. Examples of employee appeals include but are not limited to:

    i. A written decision of ineligibility based on the duties of the position and/or the employee’s suitability for telework;

    ii. Denial of a Telework Agreement, when an employee has been notified that they

are eligible to telework;

iii. Management termination of an existing Telework Agreement;

iv. Frequent denials of individual requests to telework when approved for an ad hoc Telework Agreement, without valid business reasons.

B. Employees shall:

1. Follow the conditions of their approved telework or remote work agreements;

2. Follow the Employer's safety requirements and ensure proper security of Agency equipment, information, and materials;

3. Provide the same level of support, availability, and accessibility to customers, coworkers, and their supervisor(s) as if working at an Agency official duty location;

4. Meet all organizational and individual work requirements as established (e.g., customer service, time frame for returning phone calls, voicemail messages, and email communication), staff meeting attendance, duty hours, and the accurately coding time and attendance;

5. Complete all applicable mandatory training courses;

6. Ensure appropriate arrangements for the care of dependents while teleworking. Telework is not a substitute for dependent care. However, this Article does not preclude a teleworking employee from having a caregiver in the home who provides care to the dependent(s) while the employee teleworks. Also, a dependent may be permitted in the home provided they do not require constant supervision or care (i.e., older child or adolescent) and their presence does not disrupt the ability to telework effectively;

7. Ensure the alternate worksite provides adequate connectivity and technology to accomplish work tasks. Employees are expected to provide internet service and other general utility costs at their own expense, however, in cases involving extenuating circumstances, the Agency may explore other temporary connectivity options.

8. Acknowledge, in the applicable Telework or organizational remote work agreement forms that they are bound by the Standards of Ethical Conduct for Employees of the Executive Branch while teleworking or working remotely;

9. Understand that travel provisions applicable to employees working at an official duty station also apply to teleworkers and remote workers. A teleworker or remote worker who is directed to travel to another worksite (e.g., official duty station) during their regularly scheduled basic tour of duty would have the travel hours credited as hours of work. Similarly, teleworkers who are required to travel to the official duty location after their regularly scheduled telework basic tour of duty to perform irregular or occasional overtime work are entitled to at least two (2) hours of overtime pay or compensatory time off (5 CFR 550.112 (h), Call-back overtime work, and 5 CFR 551.401(e)); and

10. For remote employees, work with IT support to resolve malfunctions of Agency-supplied equipment. Employees will notify their supervisor of any work stoppage and

discuss a work plan which, based upon the circumstances, may include alternative work assignments and/or administrative leave. An employee who experiences a work stoppage through no fault of their own due to a malfunction of Agency-supplied equipment will not be disciplined for the stoppage. Agency equipment may be shipped to/from the employee's residence or travel to an Agency worksite may be required.

Article 22 - Employee Subsidies

22.1 Transit Subsidy

Mass transit subsidies shall continue to be implemented in accordance with Government-wide regulations, USDA Departmental Regulation 4080-811-04, Commuter Transit Subsidy Benefit Program, dated July 29, 2015, or successor, and relevant USDA guidance. Where this Agreement and the Departmental Regulation conflict, this Agreement takes precedence.

22.2 Childcare Subsidy

Section 630 of Public Law 107-67, the Treasury and General Government Appropriations Act, 2002, permanently authorizes Executive agencies that provide or propose to provide childcare services for Federal employees to use appropriated funds otherwise available to such agency for salaries and expenses to provide childcare in a Federal or leased facility, or through contract, for civilian employees of such agency.

USDA supports programs that provide childcare tuition assistance to lower income employees and that allows them to receive quality childcare services. This program assists in the recruitment and retention of employees while also improving morale.

The Employer is authorized to provide childcare tuition assistance, and may use appropriated funds, including revolving funds, that are otherwise available to agencies for salaries and expenses, to assist lower income Federal employees with the cost of childcare in childcare centers and licensed family childcare homes.

For childcare tuition assistance, the Employer will comply with the USDA CCTAP procedures in DR 4080-811-01, USDA Child Care Tuition Assistance Program, Appendix A, or successor, to ensure that the program may be treated as a dependent care assistance program under Section 129 of the Internal Revenue Code.

Article 23 - Contracting Out

23.1 General

A. The Employer shall comply with all controlling law and Government-wide regulations that concern contracting out bargaining unit work, including the Federal Activities Inventory Reform Act (FAIR Act) (PL 105-270), the Federal Acquisition Regulation (48 CFR Section 7.3 *et seq.*), and OMB Circular A-76 as it may be revised from time to time by the Office of Management and Budget.

B. The Parties shall, to the maximum extent reasonably possible, cooperate and communicate with one another concerning the contracting out of work performed by bargaining unit employees.

23.2 Reports and Studies

A. The Employer shall give the Union the opportunity to review and make comments on the Employer's annual Commercial Activities Inventory required by OMB Circular A-76. The Employer is not required to delay its submission of the report to OMB or Congress for this to take place and may, when necessary to ensure timely submission, obtain the Union's review and comments post-submission.

B. The Employer shall:

1. notify the Union when it initiates a study concerning the feasibility of contracting out work currently performed by bargaining unit employees;

2. invite the Union to appoint a representative or representatives to participate on any committee, group or task force organized for this study; and

3. invite the Union to provide input into the development of supporting documents and proposals including, e.g., performance standards, performance work statements, management plans/efficiency studies, the milestone chart for conducting the study, in- house and contract cost estimates, and other detailed supporting data used to develop any of the above.

B. The Employer shall notify the Union and affected bargaining unit employees of an impending cost comparison; and major milestones in the process for the purpose of providing timely information concerning contracting studies. Such notice shall include the names of all directly affected groups of employees.

23.3 Soliciting Proposals

A. The Employer shall not solicit proposals from potential contractors to perform work then being performed by bargaining unit employees until it has provided the Union with a copy of any relevant Statement of Work which has been developed; and permitted the Union to have ten (10) calendar days to comment on the Statement.

B. The Employer shall provide the Union with copies of any Requests for Proposal/Invitations for Bid (RFP/IFB) involving work of a type then being performed by members of the bargaining unit. After the Agency has issued a RFP/IFB, if the Union learns the identity of

any bidder and/or the content of a question or questions submitted by any bidder and/or an answer or answers given by the Agency in response, the Union shall not disclose any such information to any person other than officers and representatives of the Union who have a need to know without first obtaining the Employer's written approval.

23.4 Bargaining Rights

A. The Employer shall make reasonable efforts to assist employees who are subject to a reduction in force because it has decided to contract out bargaining unit work.

B. Except in cases of overriding need, when the Employer has decided to contract out work of a type being performed by bargaining unit members, the Employer shall notify the Union at least thirty (30) calendar days before implementation and give the Union a reasonable opportunity to negotiate, consistent with 5 USC Chapter 71, regarding procedures which management officials shall observe in implementing that decision and/or appropriate arrangements for employees adversely affected by such implementation.

C. On request and to the extent permissible under applicable laws, rules and regulations, the Employer shall provide the Union timely access to all information relevant to the contracting out.

23.5 Appeals

A. Actual A-76 decisions are not grievable under this Agreement but may be pursued under the appeal process contained in OMB Circular A-76.

B. Federal employees adversely affected by a decision to convert to contract or to Interservice Support Agreements:

1. have a Right-of-First-Refusal; and
2. are not deemed to have waived any appeal grievance rights under applicable law, regulations or this Agreement if they decline to exercise their Right-of-First-Refusal.

C. In a standard competition:

1. as set out in OMB Circular A-76, a majority of directly affected employees may appoint an agent to contest certain actions; and
2. the appointed agent may be the Union.

Article 24 - Equal Employment Opportunity

24.1 Policy

A. Consistent with current law, Government-wide and Departmental regulations, the Employer affirms its commitment to the policy of providing equal employment opportunities (EEO) for employees and preventing discrimination against employees. The Union agrees to cooperate with the Employer in assuring equal employment opportunity.

B. The Employer shall administer its EEO program in accordance with Government-wide and Departmental Regulations. Employees have a right to have a representative of their choice present at all EEO counseling sessions, including the first one.

24.2 MD 715 Report

The Employer shall provide a copy of: (1) the most recent EEOC Management Directive 715 Report (MD 715 Report) or equivalent and Federal Employment Opportunity Recruitment Plan (FEORP) to the Union no later than the 21st calendar day after the MD 715 report/equivalent/FEORP is generated until such time as the Employer begins making them generally available by posting them at an internet or intranet site and gives the Union access to that site; and (2) other data (e.g., concerning promotions, training, accessions, disciplinary/adverse actions, awards, etc.) no later than the 21st calendar day after the Union submits a written request for such data. The Employer shall adhere to the provisions of the Privacy and Freedom of Information Acts in providing such data.

24.3 Official Time

Official time for representational activities under this Article shall be requested in accordance with Article 4, Official Time.

Article 25 - Labor-Management Forums

25.1 General

The Employer and the Union recognize that partnerships vary by organization, but all have one essential characteristic- a changed labor-management relationship. As this relationship matures, collaborative problem solving becomes the preferred method of resolving workplace issues.

The establishment and continuation of a Labor-Management Forum may be done if both Parties mutually agree.

25.2 Guiding Principles

The participants adopt the following guiding principles for USDA Rural Development, Headquarters, Metropolitan D.C. area Labor-Management Forum:

A. The Forum will contribute positively to the performance of the Agency.

B. The Forum will promote the economic and workplace interests of employees and managers.

C. The Forum will operate with a clear understanding that grants the participants broad authority to develop solutions jointly on issues that fall both within the scope of bargaining and outside the scope of bargaining.

D. The Employer will engage in pre-decisional involvement (PDI) with the Union whenever practicable. PDI may be utilized for all workplaces matters without regard to whether those matters are negotiable subjects of bargaining under 5 USC 7106 or 22 USC 4105. During PDI, the Parties will make a good faith attempt to resolve issues concerning proposed changes in conditions of employment, including those involving the subjects set forth in 5 USC 7106(b)(1) and 22 USC 4105(b)(1), through discussions within the Forum.

E. Management, Union officials, and participants in the Forum will receive appropriate training as decided by the Forum and in accordance with the Executive Order and the guiding principles, that could assist with problem-solving and conflict resolution.

F. The Forum will set goals, measure performance, and communicate results.

G. In the spirit of the labor-management engagement process, all participants should take a cooperative approach to collective bargaining within the Forum; and

H. The Forum shall be led by relevant decision makers and supported by appropriate staff.

25.3 Membership

A. The membership of the Forum will be comprised of four (4) members from management and four (4) from the labor organization. One representative from Labor Relations will also participate in order to facilitate and advise.

B. Management and the Union will each designate a Co-Chair.

C. Guests may attend Forum meetings at the discretion and approval of permanent members who shall instruct their guests that they may speak only when recognized by the presiding

Co-Chair.

25.4 Mission

The Forum's mission shall be:

A. Delivering the highest quality Rural Development services to the American people.

B. Improving the quality of work life for employees; and

C. Promoting satisfactory labor-management relations.

25.5 Roles

In accomplishing its mission, the Forum will:

A. Develop guidance and supply problem solving assistance for employees.

B. Provide PDI for agency-wide initiatives that impact workplace matters of bargaining unit employees where practicable.

C. Model collaborative behaviors; and

D. Communicate issues undertaken and decisions made by the Forum to their constituents.

25.6 Meetings

A. Co-Chairs will preside over forum meetings. Notification of a change in the designated Co-Chair by either labor or management will be provided to the opposite Co-Chair as soon as practicable. The Co-Chairs will be responsible for assuring that necessary preparations are made for up- coming meetings, including developing and distributing agendas, meeting notifications, meeting summaries or minutes, and meeting logistics. The Co-Chairs will also be responsible for communicating decisions made by the Forum and taking steps to effectuate those decisions. Additional or emergency meetings can be called as needed.

B. The Forum will meet at least every other month and at such other times as may be mutually agreed to by the Parties. Normally, cancellations will be made at least seven (7) calendar days in advance of the meeting. Meetings will be held virtually. The time, and date of meetings will be jointly set by the Co-Chairs. The duration of meetings will be determined jointly by the Co- Chairs and will be based on the time estimated to work through the agenda.

25.7 Decision-Making Process

For issues concerning Forum governance or operation, the members or their designees will use consensus in reaching decisions. Consensus is reached after all participants have had an opportunity to be heard and agree that the decision is acceptable. Co-Chairs from each group will have the final say when members cannot come to a consensus.

25.8 Subject Matter Experts

Subject matter experts may be invited to meetings with mutual consent of the Co-Chairs.

25.9 Subgroups

The Forum may create subgroups and may delegate specific responsibilities to such subgroups. Forum participants will jointly determine the size of the subgroups and will allow the appointment of an equal number of labor and management members.

When formed, subgroups will have their work defined by the Co-Chairs and will include a description of deliverables, projected time to complete, and any resources that might be available. Subgroups will report their progress, findings, and/or completed work to the Forum.

25.10 Agendas

Co-Chairs will normally solicit agenda items from Forum members fourteen (14) calendar days prior to Forum meetings. Generally, Co-Chairs will distribute agendas for the upcoming meeting at least seven

(7) calendar days before the meeting. Additional agenda items may be added during the Forum meeting with consensus from the Forum. Meetings will only be held if there are agenda items.

25.11 Minutes

Each side will alternate note taking responsibility for meetings.

Discussions with follow up actions reached during the Forum meeting will be documented by the note takers and reviewed by the Co-Chairs, prior to distribution to the Forum for approval and acceptance. Copies will be forwarded to all members of the Forum for review within fourteen (14) calendar days following the Forum meeting. Approval of the actions will be the first order of business at the next meeting. Action items will be summarized at the end of each meeting and made available to employees via electronic mail.

25.12 Communications

The members may jointly communicate to employees on Forum activities; however, this does not prevent labor organizations from communicating separately with its members on Forum activities or the Employer from communicating with its employees.

25.13 Pre-Decisional Involvement

PDI means those activities where employees, through their elected exclusive representatives, are afforded, by management, the opportunity to shape decisions which impact on the work the employees perform. PDI does not waive management's statutory right to make decisions under the Federal Service Labor Management Relations Statute, nor does it waive labor unions' rights to engage in bargaining prior to implementation of changes to working conditions to the extent required by law.

Article 26 - Furloughs

26.1 General Provisions

A. Sometimes there are circumstances beyond the control of the Employer which may make it necessary to furlough employees.

B. The Employer has complete authority and responsibility with respect to all decisions regarding the furloughing of employees, including but not limited to, the specific employees furloughed, the days, dates, and times of the furlough, and the duration of the furlough.

C. y agreeing to this Article, the Union does not waive any individual employee's rights.

D. The Employer shall implement furloughs in accordance with the applicable governing statutes, rules and/or regulations, and Office of Personnel Management Guidelines (hereinafter referred to collectively as law) current at the time of the furlough.

E. This Article addresses the policy and procedures associated with two (2) types of furlough:

   1. Shutdown or Emergency Furloughs; and

   2. Save Money Furloughs.

F. Upon receiving official notice of a potential furlough, the Employer shall notify the Union, as soon as practical, of the following:

   1. Whether the furlough is a Shutdown (also called Emergency) or a Save Money Furlough;

   2. The expected beginning date of the furlough; and

   3. The expected duration of the furlough.

G. For every furlough, the Employer shall compile a list of excepted employees (those employees not subject to the furlough). After it approves a finalized list, the Employer shall provide the Union with a list of the excepted employees at or around the same time it provides the information to the excepted employees. Furlough notices distributed to employees will contain all the information required by Statue or regulation including, if applicable, an explanation of why the employee is being furloughed if not every employee in their competitive level and competitive area is being furloughed.

H. During the period of a Shutdown (or Emergency) Furlough, an employee shall be regarded as in furlough status during the employee's normal Tour of Duty and Work Schedule, including Compressed Work Schedules, Alternative Work Schedules, Part-Time Work Schedules and associated Off Days. To the best of the Employer's ability, the Employer shall refer to furlough periods in terms of hours rather than days.

I. During a furlough, and unless contrary to law, leave status shall be handled as follows:

   1. Annual, sick, court, military leave, credit or compensatory time shall be suspended during the term of the furlough.

2. Employees on approved leave without pay (LWOP) shall remain on LWOP.

3. Employees on Continuation of Pay (COP) status shall remain on COP status.

4. Employees may accept outside employment while on furlough provided such employment does not pose a conflict of interest with their official duties. Employees wishing to engage in outside employment should refer to the Office of Ethics website at www.usda.gov/ethics; and

5. Employees on LWOP under the Family Medical Leave Act (FMLA) during the furlough shall continue to be charged LWOP or be placed in a furlough status. However, employees on FMLA but in a pay status must be placed on furlough instead; the furlough time shall not reduce the 12-week entitlement period.

J. Based on the length of the furlough, the Employer shall adjust Performance Plan Standards as needed.

K. The Employer shall not use furloughs as punishment or discipline in lieu of other means of addressing behavior, conduct, or performance.

L. All time periods within which a party or employee may or must act pursuant to the terms of this Agreement shall be tolled for the duration of any furlough.

26.2 Save Money Furloughs

A. The Employer will make reasonable effort to avoid the need for non-emergency furloughs using hiring freezes, reduction in travel and training, reduction of contracts with consultants and contractors, and other expenses that are not critical to the mission of the Employer.

B. In nonemergency furlough situations, employees will be given as much advance notice as possible but not less than the minimum notice required by Statute or regulation.

C. If the Employer must furlough employees as a means of addressing a budget shortfall, the Employer may solicit volunteers to be placed in extended LWOP status; or

a. If the Employer must furlough employees as a means of saving or reducing expenditures, the Employer shall solicit volunteers to work reduced hours in conjunction with LWOP; and

b. Allow affected employees to choose which workdays shall serve as their furlough days, with advanced approval of a supervisor and in accordance with Employer leave request requirements.

D. Management reserves the right to deny a request for LWOP.

E. Should an insufficient number of employees in a work unit volunteer for LWOP and the Employer must furlough employees in that work unit, the Employer shall furlough qualified employees by reverse seniority, where the least senior employees are the first employees furloughed. In determining an employee’s seniority, the Employer shall use the Retirement Service Computation Date.

26.3 Shutdown (Emergency) Furloughs

A. As soon as a Shutdown (or Emergency) Furlough is announced, the Employer shall provide all non-essential employees with all relevant and necessary instruction and information available to the Employer.

B. If directed by the Employer, all furloughed employees shall report to work on their next workday following the first day of the Shutdown (or Emergency) Furlough for a period of either four (4) hours or as long as is required to complete those tasks necessary for an orderly shutdown, whichever is less. If a furloughed employee has any telework agreement in place (scheduled or *ad hoc*), they may seek approval from their supervisor to telework on the first day and complete their shutdown activities remotely.

C. As often as practical, the Employer shall keep employees apprised of the status of the furlough.

D. Employees on scheduled leave at the conclusion of the furlough may remain on leave until their previously scheduled return to duty date.

E. Non-essential employees shall be paid for the Shutdown (Emergency) Furlough days in accordance with Government-wide law, rule and regulation. Excepted employees shall be paid, and non-essential employees shall be paid for any time worked pursuant to Section 26.3 B above, but not until a continuing resolution or appropriation is enacted.

F. Furlough days count towards an employee's time-in-grade, within grade increases, and probationary period because once the lapse in appropriations ends and retroactive pay is payable, employees will be considered to be in pay status during the furlough period.

G. Enrolled employees will continue to be covered under the Federal Employees Health Benefits Program (FEHB) during a lapse in appropriations if the Employer is unable to make its premium payments on time. Following the lapse, each employee who returns to pay status will automatically begin to repay their share of FEHB premium that accumulated during the lapse through payroll withholding. If FEHB premiums are not withheld from retroactive pay, one additional payment in addition to the current pay period amount will be withheld in each subsequent pay period until the employee's accumulated share of premiums have been paid.

26.4 Retirement Benefits

For purposes determining length of service for retirement benefits, credit is allowed for periods of LWOP or furlough that do not exceed six (6) months in aggregate during any calendar year.

26.5 Life Insurance (FEGLI)

Coverage continues at no cost to the employee for up to twelve (12) months of furlough duration. The regular biweekly premium will be deducted automatically when funding resumes and the employee receives pay.

Article 27 - New Employee Orientation

27.1 Notice of New Employees

No later than seven (7) calendar days after the new employees' official start date, the Agency will notify the Union of the new employee(s) filling positions in the bargaining unit and will include the employee(s) name, organizational unit, position title, and work location.

27.2 Union Orientation

A. Union representative(s) will be provided an opportunity to make a 30-minute presentation for new bargaining unit employees. The scheduled starting time of the Union presentation will be subject to mutual agreement between the Union and the new employee(s), with a preference for it to be in conjunction with the lunch break.

B. The Union representative(s) shall be entitled to distribute to each new bargaining unit employee an introductory letter and a package of materials prepared by the Union.

27.3 Official Time

The Union representative(s) making the presentation will be authorized official time.

The Parties recognize that in accordance with 5 USC 7131 (b) and Article 4, Official Time, any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a nonduty status.

27.4 Introductions

Stewards and/or Union officers may introduce themselves to new employees and inform them of their availability for representational functions.

27.5 Copies of Collective Bargaining Agreement

Each new bargaining unit employee shall receive a copy of this Agreement from the Employer.

27.6 CBA Training

The Employer agrees to conduct joint Employer-Union training sessions on official duty time when a new or successor Agreement is established. Such training shall be primarily concerned with orienting and briefing Union officials, Management officials, and bargaining unit employees on the requirements and administration of this Agreement.

Article 28 - Position Descriptions

28.1 Definitions

A. Position Classification. A process for assigning the pay plan, series, grade level, and title to positions, based on the position duties, responsibilities, and qualification requirements.

B. Position Description. The official description of Management's assignment of duties, responsibilities, and supervisory relationships to a position.

C. Other Duties as Assigned. Because minor duties normally do not affect the classification of the position, are usually unimportant to work operations, and change frequently, it is generally not necessary to mention them in the position description. A statement, such as "Performs other duties as assigned," covers such situations adequately. Sometimes, however, minor duties can influence both grade and series determinations and the qualifications required for the work. In cases such as these, what seem to be minor duties must be described and evaluated.

28.2 General

A. A copy of the current position description will be filed in the Official Personnel Folder for each employee.

B. Position descriptions shall be current and accurately reflect the principal duties, responsibilities, and supervisory relationships of the position as assigned by the Employer. Supervisors and employees will annually review position descriptions and update as necessary to accurately reflect the principal duties and responsibilities of the position as assigned by the Employer. Employees may submit draft revisions for assigned position descriptions.

C. Supervisors and employees are encouraged to discuss the accuracy of the position description during quarterly and annual performance reviews.

D. Upon request, the Employer shall furnish each employee with a copy of the employee's applicable position description and the next higher grade, if any, for the position.

E. Temporary duties should not be ignored when they become a regular part of the job. Position descriptions will be reevaluated if temporary duties extend over a long period of time (e.g., several months), and it is reasonable to assume that the duties will continue to recur. Once the position description is classified, a copy will be provided to the employee by the supervisor no later than the following pay period or unless mutually agreed that a different timeframe is needed.

F. Employees newly hired to the Agency shall be furnished a current, accurate copy of the position description as part of their orientation process.

G. In accordance with law, rule, regulation and Article 18, Negotiated Grievance Procedure, employees may grieve reductions in grade, pay, or loss of promotion potential that result from a position classification decision.

28.3 Classification Standards

A. Positions are classified by comparing the duties, responsibilities, and supervisory relationships in the official position description with the appropriate classification and job grading standard.

B. The Employer will furnish the Union copies of draft Office of Personnel Management (OPM) classification standards for bargaining unit positions that are referred to the Employer.

C. Upon request, the Employer will provide information to employees regarding their concerns about the titles and series of their position. Employees who believe their positions should be reclassified may ask the Employer for an explanation as to why it would or would not be appropriate to do so under the relevant classification standards. If the employee chooses, they may file a classification appeal.

28.4 Notification to the Union

Official notification of changes to position descriptions will be provided to the Union in accordance with Government-wide law, rule, regulation and Article 30, Mid-Term and Impact and Implementation Bargaining.

28.5 Classification Appeal Procedures

A. Employees may appeal the pay plan, title, series, and/or grade level of the position at any time.

B. Employees may not file a classification appeal over:

1. The content or accuracy of their official position description;

2. The accuracy of a classification standard;

3. The Employer's proposed classification decision;

4. The classification of a position to which the employee is not officially assigned; or

5. The classification of a position to which the employee is detailed or temporarily promoted for a period of less than two (2) years.

A request for appeal cannot be based on qualifications that are not required for the work of the assigned position; how well the work is done; or how much work is done.

C. Employees have the following options to file an appeal:

1. Written appeal, following Department procedures, to USDA, Office of Human Resources Management; and/or

2. Written appeal directly to OPM.

D. An employee receives the maximum number of reviews if the appeal is filed first with the agency, then with the Department, and lastly with OPM. If the appeal is filed directly with OPM, it is the first and final review. An employee chooses which office(s) to send their

appeal.

E. An employee must include the following information in an appeal:

   1. Employee’s name, mailing address, office telephone number, office fax number (if available), and electronic mail address.

   2. Present title, series, and grade level of the employee’s position.

   3. Reasons why the employee believes the position is not correctly classified. The employee is encouraged to include references to appropriate classification standards.

   4. Title, series, and grade level the employee is requesting for their position.

   5. Copy of the employee’s official position description and either a statement affirming that it is accurate or a detailed explanation of the inaccuracies and an explanation of the employee’s efforts to correct the PD.

   6. Any additional information about the employee’s position that will aid in understanding it.

F. The employee’s servicing Human Resources staff is available to provide more specific information on classification appeal procedures.

28.6 Retroactive Effective Dates of Position Classification Actions or Decisions

A. In accordance with 5 CFR 511.703 Retroactive effective date, and applicable Government-wide law, rule and regulation, a retroactive effective date for position classification actions or decisions may be required only if the employee was wrongfully demoted.

B. The effective date of a classification appellate certificate or agency appellate decision can be retroactive only if it corrects a classification action which resulted in a loss of grade or pay.

C. In order for the decision to be made retroactive, the employee must file the initial request for review with either the agency or OPM not later than fifteen (15) calendar days after the effective date of the reclassification action.

D. If the appellate decision raises the grade of the position above the original grade, retroactivity will apply only to the extent of restoration to the original grade.

E. The right to a retroactive effective date provided by 5 CFR 511.703 is preserved on subsequent appeals from an agency or OPM classification decision when the subsequent appeal is filed not later than fifteen (15) calendar days following receipt of written notification of a final agency administrative decision or fifteen (15) calendar days after the effective date of the action taken as a result of the classification decision, whichever is later.

F. Retroactivity may be based only on duties and responsibilities existing at the time of demotion and cannot be based on duties and responsibilities assigned later.

G. The right to a retroactive effective date provided by 5 CFR 511.703 may be preserved at the discretion of OPM, on a showing by the employee that they were not notified of the applicable time limit and were not otherwise aware of it, or that circumstances beyond their

control prevented filing an appeal within the prescribed time limit.

Article 29 - Reorganizations

29.1 Definition

Reorganization. The planned elimination, addition, or redistribution of functions or duties in an organization.

29.2 Notification

Official notification of reorganizations will be provided to the Union with the opportunity to negotiate in accordance with Government-wide law, rule, regulation and Article 30, Mid-Term and Impact and Implementation Bargaining.

Article 30 - Mid-Term and Impact and Implementation Bargaining

30.1 General

A. Mid-Term Bargaining. Negotiations occurring while this Agreement is in force, rather than waiting until this Agreement needs to be renewed or re-initiated. Barring mutual agreement, only new issues or issues not in this Agreement can be negotiated mid-term.

B. Impact & Implementation Bargaining. Bargaining when the Employer makes a change in conditions of employment. Bargaining occurs over the impact of the change and its implementation because under the Federal Service Labor-Management Relations Statute, the Union can only bargain over procedures and appropriate arrangements.

C. Pursuant to 5 USC 7106 and the terms of this Agreement, when the Employer wishes to implement changes in personnel policies, practices, and working conditions, (except for *de minimis* changes or changes covered by this Agreement), the Employer will provide the Union notice of the proposed changes in conditions of employment even if covered by a management right.

D. The Parties to this Agreement have the responsibility of conducting negotiations and other dealings in good faith and in such manner as will further the public interest.

E. Either Party has the right to request negotiations over matters not covered by this Agreement or in response to changes in law, Government-wide regulation, or court decision.

30.2 Steps for Bargaining

Changes involving conditions of employment shall be governed by the following:

A. The Employer will provide the Union written notice of the proposed change in conditions of employment. The notice will include the following:

   1. a description of the change or proposed change;

   2. an explanation of how the change will/would be implemented; and

   3. the anticipated date of implementation or proposed implementation.

B. If the Union wishes to negotiate on the proposed changes, it will notify the Employer and submit negotiation proposals within fourteen (14) calendar days after receipt of the Employer's notice. If the Union needs additional information and/or explanation to evaluate the impact to the bargaining unit, and the request is submitted to the Employer within the fourteen (14) calendar days' time frame, the remaining time will be tolled until the Employer responds to the request.

C. If a written request to negotiate and negotiation proposals are not submitted within the time frames specified above, it will be considered acceptance of the proposals and will allow the Employer to implement the change.

D. The Parties may mutually agree to extend the time limits described above.

E. With regard to the proposed change, the Parties shall bargain over all matters that are negotiable consistent with Government-wide law, rule, regulation and this Agreement.

F. Union proposed changes in conditions of employment submitted to the Employer will follow the steps outlined in this Section.

30.3 Negotiability Procedures

A. Either Party declaring any proposal(s) non-negotiable will first provide to the other Party an informal statement of non-negotiability and the reasons why the Party believes the proposal(s) to be non-negotiable. In the event that the Parties remain unable to informally resolve remaining disputes, at the Union's request, the Employer will formally allege, in writing, the non- negotiability of the disputed proposal(s). Once the Union has been served with the requested formal allegation of non-negotiability, the Union will have fifteen (15) calendar days to file its petition for review with the Federal Labor Relations Authority.

B. Any proposals subject to a non-negotiability dispute will be severed from the remaining proposals being negotiated, unless the proposals under dispute and the remaining proposals are interdependent. Should the Parties reach agreement on those proposals not subject to dispute, the agreed upon proposals shall be implemented independently of any ongoing negotiability proceedings.

30.4 Impasse Procedures

A. Where the Parties are unable to reach agreement on all outstanding issues, the Parties, individually or jointly, may request the Federal Mediation and Conciliation Service to provide mediation services for those issues that remain in dispute.

B. If the Parties are unable to resolve all outstanding issues at mediation, either may seek the assistance of the Federal Service Impasses Panel (FSIP) pursuant to 5 USC 7119. If the request to the FSIP is made individually, the other Party will be notified at the time the assistance is sought. The utilization of mediation and the involvement of the FSIP does not, in any respect, preclude the Parties from engaging in direct negotiations at any time prior to a FSIP decision, to attempt to resolve the disputes at issue.

Article 31 - Personnel Records

31.1 General

Employees' official personnel records are contained in the electronic Official Personnel Folders (eOPFs). Records of disciplinary and adverse action proposals and decision memos, including the documentation upon which such proposals are based, are maintained by the Employer. If the proposed disciplinary or adverse action is sustained, an SF-50 documenting the action is filed in the eOPF. Letters of Reprimand are also filed in the eOPF for up to two (2) years; however, the Employer may remove the reprimand from the eOPF at any time. Employees may have access to all of these records under the conditions set forth in Article 3, Rights of Employees, Union and Employer.

31.2 Supervisory Files

A. Supervisors of bargaining unit employees may maintain worksite files on such matters as emergency locator information, time and attendance records, training, award, and promotion histories, and other matters pertinent to the performance of their personnel management responsibilities. Any of these records not maintained in the eOPF, other than reports of an ongoing criminal investigation, shall be disclosed upon request to the employee who is the subject of the information or to their designated representative. Personal notes that a supervisor may keep as a memory jogger are not considered records and are not releasable to employees, unless relied upon by the supervisor in taking a formal disciplinary or adverse action.

B. Employees may make a written statement to the Employer in response to information they consider unfavorable to themselves which is maintained by the supervisor as a record.

C. Access to official personnel records and other records shall be limited to authorized channels and those whose official duties require such access. The Employer shall be sensitive to individual rights to personal privacy and shall not disclose information from any personnel record unless disclosure is part of their official duties or required by Executive Order, regulation, or statute.

D. Employees and/or their designated representative have the right to review and request all information, including worksite personnel files, used as a basis for disciplinary or adverse action at the time of the proposed action.

31.3 Form and Disposition of Records

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

B. All personnel files maintained General Records Schedule and other applicable laws.

31.4 Employee Records

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

B. Contents of the eOPF may be released and records of such information disclosures will be maintained in accordance with provisions of 5 CFR 293 and 297.

C. Employees may access and make copies of their eOPF during business hours.

D. Any information, including documentary information, that is unfavorable, derogatory or which reflects adversely upon an employee's character or Government service shall be maintained in the eOPF only in accordance with applicable law and regulation. Employees may review and/or seek to amend any such information in accordance with 5 CFR Part 297, Subpart C, Amendment of Records.

Article 32 - Reduction in Force and Transfer of Function

32.1 Definitions

Reduction in Force (RIF). Occurs when the Agency releases an employee from their competitive level by separation, demotion, and furlough for more than thirty (30) continuous workdays or more than twenty-two (22) discontinuous workdays. A RIF also occurs when there is a reassignment requiring displacement because of lack of work or funds, reorganization, change to lower grade based on reclassification of an employee's position, or for other applicable reasons.

Transfer of Function (TOF). A transfer of function takes place when a function ceases in one competitive area and moves to one or more other competitive areas that do not perform the function at the time of transfer.

32.2 General

A. All RIF and TOF actions will be conducted in accordance with Government-wide law, rule and regulation.

B. All provisions of this Article shall be applied fairly, equitably and in a nondiscriminatory manner.

C. Before instituting a RIF, the Employer will make reasonable efforts to avoid and/or mitigate the scope of the RIF by addressing budget cutbacks and/or other changes. These steps may include attrition, hiring freezes, reassigning employees, furloughs, reductions in non-mission critical travel or training, or reductions in contracts to consultants and contractors, as well as all other non-mission critical expenses.

D. A RIF will not be instituted in lieu of disciplinary measures, or a performance based adverse action against any employee(s).

E. The Employer may minimize the displacement of employees potentially adversely affected by a prospective RIF through the reassignment of such employees to vacant positions for which they might qualify, provided that there is a need, as determined by the Employer, to fill such vacancies, and further provided that such reassignment(s) are consistent with applicable law, rule, and regulation. Such reassignment would be to a vacant position at the same grade or pay. Employees reassigned under this Section shall be provided with additional training as is deemed necessary by the Employer to successfully perform the requirements of the new job.

F. The Union shall be provided with a list of appropriate Office of Personnel Management (OPM) position qualification standards should the Employer make exceptions to those standards in order to place affected employees in available vacant positions.

G. Upon request, the Employer will provide the employee with a copy of OPM's retention regulations in 5 CFR 351.

32.3 Notification to the Union

A. When the Employer has decided to implement a RIF, the Union shall be provided written notification as soon as possible, at least sixty (60) calendar days before the anticipated effective date of the RIF. The notification shall include the following information:

1. The anticipated effective date of the RIF;

2. Reasons for the RIF;

3. Efforts the Agency has taken to avoid a RIF;

4. Expected outcomes of the RIF;

5. Number and types of positions to be affected;

6. Names of employees to be affected by the RIF, when available;

7. As available, copies of the notices being distributed to employees. The Union shall receive copies no later than the date of their distribution to employees; and

8. The specific functions to be transferred and identification of employees assigned to this function, if conducted in conjunction with a TOF.

It is understood that the above information may change during the sixty (60) calendar day period. The Union will be notified of any changes made.

B. Should the Union need further information regarding the RIF it may request such information pursuant to 5 USC 7114 (b)(4).

C. The Union will be invited to participate in any meetings with affected employees concerning the RIF in accordance with Section 3.2 B of this Agreement.

32.4 Employee Notification

When the Employer has decided to implement a RIF, affected employees shall be provided written notification as soon as possible, at least sixty (60) calendar days before the anticipated effective date of the RIF. The notification shall include the following information required per 5 CFR 351.802 and 803:

1. The action to be taken, the reasons for the action, and its effective date;

2. The employee's competitive area, competitive level, subgroup, service date, and three (3) most recent ratings of record received during the last four (4) years;

3. The place where the employee may inspect the regulations and record pertinent to the action;

4. The reasons for retaining a lower-standing employee in the same competitive level under 5 CFR 351.607 or 5 CFR 351.608;

5. Information on reemployment rights, except as permitted by 5 CFR 351.803(a);

6. The employee's right to appeal to the Merit Systems Protection Board (MSPB) under the provisions of the Board's regulations;

7. Information concerning the right to reemployment consideration and career transition assistance (e.g., Career Transition Assistance Plan (CTAP) and Reemployment Priority List (RPL);

8. The time frame in which an employee must accept or decline a placement offer;

9. Where and how to apply for unemployment insurance; and

10. Information regarding continued health benefits, life insurance benefits, and other benefit entitlements after RIF separation.

It is understood that the above information may change during the sixty (60) calendar day period. The employees and the Union will be notified of any changes made.

32.5 RIF Regulations

The Employer has the right to decide what positions are abolished, whether a RIF is necessary, and when the RIF will take place. When the Employer determines a need to implement a RIF action, the procedures to be followed are contained in 5 CFR 351. For informational purposes, the following summary of key terms is provided with the understanding that the regulations are the authoritative source for RIF information:

1. Competitive Area. The geographical and organizational limits within which employees compete for job retention during a RIF. A competitive area may consist of all or part of an agency.

2. Competitive Level. Within each competitive area, the Agency groups interchangeable positions into competitive levels. Each competitive level includes positions with the same grade, classification series, and official tour of duty (e.g., full-time, part-time, seasonal, or intermittent).
3. Retention registers. After grouping interchangeable positions into competitive levels, the Agency applies the four (4) retention factors in establishing separate retention registers for each competitive level that may be involved in the RIF. Retention register is the ranking of employees in the competitive level after the Agency applies the four (4) retention factors.

4. Tenure. Beginning with Group I, the Agency ranks competitive service employees on a retention register in three (3) groups according to their types of appointment:

    i. Group I- includes career employees not serving on probation.

    ii. Group II- includes career-conditional employees, and career employees who are serving a probationary period because of a new appointment.

    iii. Group III- includes employees serving under term and similar non-status appointments.

5. Veteran's preference. The Agency divides each of the three (3) tenure groups into three (3) subgroups based upon employees' entitlement to veterans' preference for RIF purposes:

    i. Subgroup AD - Includes veterans who are eligible for RIF preference and who have a compensable service-connected disability of 30% or more.

    ii. Subgroup A - Includes veterans eligible for RIF preference who are not eligible for subgroup AD (including eligible spouses, widowers, and mothers of veterans).

    iii. Subgroup B - Includes nonveterans and others not eligible for RIF preference in subgroups AD and A.

6. Veterans' Preference for Retired Members of the Armed Forces. By law (i.e., the Dual Compensation Act of 1964, as presently codified in Section 3501(a) of Title 5, USC), a

retired member of the Armed Forces is a veteran under the RIF regulations only if the employee meets one of the following three (3) conditions:

i. The Armed Forces retirement (without regard to benefits from the Department of Veterans Affairs) is directly based upon a combat-incurred disability or injury; or

ii. The Armed Forces retirement is based upon less than twenty (20) years of active duty; or

iii. The employee has been working for the Government since November 30, 1964, without a break in service of more than thirty (30) days.

7. Total Creditable Service. Within each subgroup, the Agency ranks employees by their respective service dates. For example, the Agency places the employee with the most service at the top of the subgroup and places the employee with the least service at the bottom of the subgroup.

8. Performance. Employees receive extra retention service credit for performance based upon the average of their last three (3) annual performance ratings of record received during the 4-year period prior to the date the Agency either issues specific RIF notices, or at its option, freezes ratings before issuing RIF notices. If an employee received more than three (3) ratings during the 4-year period, the Agency uses the three (3) most recent annual ratings of record.

32.6 RIF Requirements

A. Employees separated because of a RIF will be placed on the reemployment priority list for all competitive positions in their local commuting area for which the employees are qualified in accordance with 5 CFR 330 Subpart B and Departmental Regulation 4030-330-002, Special Selection Priority Programs, or successor. Acceptance of a temporary appointment will not alter the employee's right to be offered permanent employment.

B. Employees receiving a RIF notice have the right to review the complete retention register with their name and other relevant retention information and the complete retention registers for other positions that could affect the composition of their competitive level and/or determination of their assignment rights. Such review shall be subject to the Agency's lawful authority to withhold identifying information under the Privacy Act. Examples of sample retention lists can be found on the OPM website at opm.gov.

C. Employees shall be released from a competitive level in the inverse order of retention standing, beginning with the employee with the lowest retention standing on the retention register unless, in accordance with 5 CFR 351.601, an exception applies.

D. The factors and procedures used for determining employee retention standing will be in accordance with 5 CFR part 351 Subpart E.

E. The Employer must notify any employees reached for release out of the regular order (such as under a temporary or a continuing exception in order to retain an employee with special skills) of the reasons for the exception.

F. Employees released from a competitive level may have rights to other positions by exercising assignment rights, referred to as bumping and retreating, in accordance with 5 CFR 351 Subpart G.

G. As a result of a RIF, employees assigned to positions at a lower grade than the position from which they have been released, shall be entitled to retain the grade held immediately before the reduction for a period of two (2) years under the circumstances prescribed in 5 CFR 536.

H. Prior to issuing RIF notices, the Employer may ask employees to submit any updates to their qualifications.

I. Federal employees adversely affected by a decision to convert to contract or to Interservice Support Agreements:

    1. Have a Right-of-First-Refusal; and

    2. Are not deemed to have waived any appeal grievance rights under applicable law, regulations or this Agreement if they decline to exercise their Right-of-First-Refusal.

J. The Employer shall provide adversely affected employees with information on early retirement and eligibility, and upon request, provide retirement counseling.

K. In accordance with Departmental Regulation 4030-330-002, Special Selection Priority Programs, or successor, employees subject to separation by a RIF shall be eligible for placement in the Career Transition Assistance Plan (CTAP) and/or placement on the USDA Reemployment Priority List (RPL). Once separated, such employees may also be eligible for placement assistance through the Interagency Placement Assistance Plan (ICTAP). The Employer shall inform eligible employees of these programs.

L. Career transition services will be provided to affected employees in accordance with Departmental Regulation 4030-330-002, Special Selection Priority Programs, or successor, which includes career transition workshops, training, skills development, and administrative leave to make use of these services.

M. In order to allow separated employees to apply for unemployment compensation, the Agency shall make every reasonable effort to ensure that separated employees receive a copy of the Separation RIF-SF 50 or equivalent form prior to the employee's effective separation date. Separated employees will be given information concerning how to apply for unemployment insurance.

N. Eligible employees who have been involuntarily separated from the Agency as a result of a RIF shall be granted severance pay in accordance with subpart G of 5 CFR part 550.

32.7 Transfer of Function

A. Official notification of transfers of function will be provided to the Union along with the opportunity to negotiate the impact and implementation of the change in accordance with Government-wide law, rule, regulation and Article 30, Mid-Term and Impact and Implementation Bargaining.

B. Regardless of an employee's personal preference, an employee occupying a position that has been identified for transfer has no right to transfer with their function, unless the alternative in the competitive area losing the function is separation or demotion.

C. The Agency shall notify the affected employees and the Union of the upcoming transfer of function as soon as possible, normally at least sixty (60) calendar days before the transfer of function is implemented. For transfer of functions not resulting in RIFs, notices shall

include information agreed to by the Parties resulting from agreements reached in accordance with Article 30 Mid-Term and Impact and Implementation Bargaining of this Agreement. In situations where RIFs are conducted in conjunction with a transfer of function, notices shall contain the information specified in Section 32.3 and 32.4 of this Article.

D. When a transfer of function will result in employees moving to a different local commuting area, the losing competitive area may use a transfer of function canvass letter to determine which employees wish to be considered for positions in a different local commuting area. A transfer of function canvass letter does not guarantee an employee a position at the new location, but simply asks the employee to state an interest in transferring with the function.

E. If a RIF is conducted in association with a TOF, it shall be done in accordance with USDA and Federal regulations, and provisions of this Article and Agreement.

32.8 RIF Appeals

A. An employee who has been separated or demoted under a RIF may file an appeal with the Merit Systems Protection Board (MSPB) in accordance with Government-wide law, rule and regulation.

B. In addition to the RIF notification in Section 32.4 of this Article, in accordance with 5 CFR 1201.21, adversely affected employees shall be provided with the following:

1. Notice of the time limits for appealing to the MSPB, that appeals not submitted within the time set by MSPB will be dismissed unless a good reason for the delay is shown, and the address of the appropriate MSPB office for filing the appeal;

2. A copy, or access to a copy, of MSPB's regulations; and

3. A copy, or access to a copy, of the MSPB appeal form available at http://www.mspb.gov.

C. Employees may not use the negotiated grievance procedure to appeal a RIF action.

D. An employee may not file an appeal before the effective date of the RIF action.

Article 33 - Workers' Compensation Program

33.1 Workers' Compensation Program

When an employee suffers illness or injury that the employee believes is job-related and reports it to their supervisor, the Employer will make available to the employee information and counseling or directions for obtaining information and counseling, about their rights and responsibilities under the Federal Employees Compensation Act including utilization of the online filing procedure.

33.2 Employee Options

A. An employee with a job-related injury/illness (including conditions aggravated by job related factors) may request to be placed on sick or annual leave instead of leave without pay, pending approval or disapproval of their compensation claim.

B. In accordance with RD Instruction 2069-B, Safety and Injury Compensation, or successor, employees shall have the option of buying back the leave used and having it reinstated to their account if their claim for compensation is approved.

IN WITNESS WHEREOF, the undersigned adopt this Collective Bargaining Agreement on this 16th day of April 2024.

For the American Federation of State, County and Municipal Employees (AFSCME) Local 3870

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Lachond Holmes
Chief Negotiator
Federal Staff Representative
AFSCME District Council 20

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Derek L Jones
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