COLLECTIVE BARGAINING AGREEMENT

Between

Food and Nutrition Service
United States Department of Agriculture

and

Mid-Atlantic Regional Office

Local #2735
American Federation of Government Employees

Effective Date: December 9, 2020

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PREAMBLE

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

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

ARTICLE 1

Recognition and Employee Coverage

Section 1 - Exclusive Recognition

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

Section 2 - Bargaining Unit Designation

(a) The AFGE Local #2735 Bargaining Unit consists of the positions and all employees who work at the Mid-Atlantic Regional Office (MARO) of the Food and Nutrition Service (FNS), including employees who administratively report to MARO and those whose official duty station is MARO and they are physically located at MARO in Robbinsville, NJ.

(b) Excluded are supervisors, management officials, temporary employees, and student employees.

Section 3 - Bargaining Unit Changes

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

ARTICLE 2

Governing Laws and Regulations

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

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

ARTICLE 3

Employee Rights

Section 1 - Work-Related Matters

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

Section 2 – Right to Join or Assist a Labor Organization

(a) Each bargaining unit employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each bargaining unit employee will be protected in the exercise of such right.

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

Section 3 – Right to Representation

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

(a) Any formal discussion between one or more representatives of the Employer and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or,

(b) 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.

(c) Prior to an examination relating to an investigation, the employee will be informed of the purpose of the examination and the right to representation. When an employee exercises this right and a representative of the Union is not immediately available, the investigation will be delayed for a reasonable period of time to permit the presence of a Union representative. The Employer will ensure that bargaining unit employees are

informed annually of their rights under 5 U.S.C., Chapter 71, Section 7114 (a) (2) (B) of the Statute.

Section 4 - Fair Treatment

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

Section 5 – Union Membership

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

Section 6 – Employee Morale

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

Section 7 – Employee Official Personnel File (OPF)

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

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

Section 8 – Supervisor's Record of Employee

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

ARTICLE 4

Union Rights/Representatives

Section 1 - Union's Rights

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

Section 2 - Recognition of Representatives

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

Section 3 – Union Representation

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

(a) Any formal discussion between one or more representatives of the Employer and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or,

(b) 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.

Section 4 - New Employees

The Employer will notify new bargaining unit employees where they can access the current Agreement. Union representatives may use official time to introduce themselves to new employees and to make brief presentations concerning official representational duties. If a face-to face meeting is not practical, this presentation will be done electronically.

Section 5 - Union Visitors

The Employer will recognize visitors who are employees of the Union, attorneys, and other representatives who are duly authorized by the Union. These individuals will be permitted on the premises for representational matters and for official Union functions, only with prior written approval by the Employer. The Union will notify the Employer of any visitor(s) in advance and provide the date, name of the visitor(s), the individual being visited, and the purpose of the visit. The union representative and/or employee involved will obtain the prior approval of his/her supervisor for official time, not to exceed one hour. If the purpose of the visit is not official, it shall be scheduled to occur during non-working hours or the Union representative and/or employee visited will use approved leave. The use of work site space for unofficial meetings will not be approved by the Employer.

ARTICLE 5

Employer's Rights

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

(a) To determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and,

(b) In accordance with applicable laws:

(1) To hire, assign, direct, lay off, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(2) To assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;

(3) 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

(4) To take whatever actions may be necessary to carry out the Agency mission during emergencies.

ARTICLE 6

Information Sharing and Use of Facilities

Section 1 – Employee Information

Upon receipt of a written request from an authorized union official, the Employer will provide to the Union updated copies of organizational chart, but not more frequently than quarterly. The information shall contain the name, series, title, grade, program, bargaining unit status and official duty station of each bargaining unit employee.

Section 2 - Health Benefits

The Employer agrees to inform each eligible new employee during onboarding of the health benefit plans available to him/her, and to make available to employees information received for that purpose during the annual Open Season. The Parties will encourage employees to utilize related Internet web sites to locate information, reduce paperwork and expedite the enrollment process.

Section 3 – Use of Facilities for Union Meetings

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

Section 4 - Use of Facilities for Official Representational Duties

In exchange for a fee in an amount to be determined by the Employer, the Union will be provided reasonable access during office hours to existing communication equipment and services when available and not needed by the Employer for the work of the Agency. The Union recognizes that its internal needs are subordinate to the official business of the Agency. The Employer retains the right to set priorities for official business. The Union agrees that these facilities will be used in the most economical way possible. Such access or use will not be free or discounted, unless such free or discounted use is generally available for non-Agency business by employees when acting on behalf of non-Federal organizations.12

Section 5 - Use of Facilities for Internal Union Business

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

(a) The Union may send newsletters and meeting minutes to each bargaining unit member through use of the office e-mail system but no more frequently than monthly and no more than seven (7) pages per issuance.

(b) The Union may make two (2) brief announcements to bargaining unit employees over the public address system prior to meetings. Announcements for other purposes must have prior approval by the Employer. The Union will be responsible for the content of all announcements.

Section 6 - Directory Listings

The Employer will include the names and phone numbers of the Local's President, District Vice-Presidents and Chief Shop Steward in MARO's internal telephone directory.

Section 7 - Bulletin Board Space

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

ARTICLE 7

Official Time

Section 1 - Union Representatives' Official Time

(a) The Parties agree that union representatives are expected to accomplish the duties of their official positions and to carry out their union responsibilities as described in this Agreement. Under the terms of this Agreement and subject to the Statute and workload requirements, a reasonable and efficient amount of official time (not to exceed one hour per bargaining unit employee) will be granted by the Employer to union representatives, upon request, for the following:

   (1) Meetings agreed upon between the Parties on issues affecting the Bargaining Unit;

   (2) Preparation for and participation in negotiations;

   (3) On-site consultations with AFGE district representatives regarding official representational matters;

   (4) Preparation for and attendance at third party proceedings, hearings or formal discussions where the Union is an official participant in the proceedings as provided for by this Agreement and appropriate laws and regulations, and statutory appeals procedures; and

   (5) Appeals where the Union is an official participant in the proceedings;

(b) When the Union exercises its right to attend a formal hearing or proceeding, its representative(s) will be granted official time needed for this purpose.

(c) AGFE representatives will be granted a pool of hours for official time equal to the number of bargaining unit employees (i.e., one hour per employee) on duty as of October 1st of each year. This number will be updated annually at the beginning of each new fiscal year. The allocation of those hours will be at the discretion of the Union.

Section 2 – Representational Activities

A union representative desiring to leave the immediate work area during duty hours to perform representational duties in accordance with this Agreement shall first provide a written request to his/her immediate supervisor and secure approval prior to leaving. At that time, the supervisor shall be informed of the destination, type of representational duty to be performed, and estimated amount of time required. If other areas are visited, the representative will so inform the supervisor prior to leaving the original destination. The supervisor shall normally grant the requested time unless workload demand requires the

presence of the union representative at the work site, or if the total allocation of official time has been exhausted. If the time cannot be granted when requested, and sufficient time is still available in the total allocation, a later time will be established. Representatives and employees will inform their supervisors directly after the completion of representational duties and appointments.

Section 3 - Bargaining Unit Employees' Official Time

(a) Bargaining unit employees will be granted excused absence upon request that is mutually agreed to be reasonable, necessary and in the public interest for the following:

  (1) Consultation with union representatives concerning complaints and grievances;

  (2) Attendance as witness at Agency third party proceedings; and,

  (3) Participation in Agency task forces and work teams authorized by the Employer.

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

Section 4 - Union Training

Training of union officers and representatives on Labor-Management Relations is considered to be of mutual interest to the Union and the Employer. If taken as official time, union sponsored training hours shall be counted against the official time bank. Requests to use official time for union- sponsored training must be submitted in writing at least fourteen (14) calendar days in advance of the training. A copy of the training agenda must be submitted along with the training request. The request will normally be approved, unless doing so would interfere with the unit's work assignments. Both Parties agree that no financial claim will be submitted or approved (including but not limited to tuition, travel or per diem) in relation to union training.

Section 5 – Exclusions

Official time shall not be authorized to prepare or pursue grievances (including the arbitration of grievances) brought against an agency under procedures negotiated or for time spent on internal union business, including, but not limited to, lobbying activities, attending union meetings, soliciting members, collecting dues, posting internal information, conducting elections, and preparing internal union newsletters or other internal documents.

Section 6 - Abuse of Official Time

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

Section 7 - Travel and Per Diem

Union representatives may not be reimbursed for expenses incurred performing non-agency business, unless required by law or regulation.

Section 8 - Recording Official Time

(a) All official time used must be properly recorded and verified in the Employer's official Time and Attendance system.

(b) Upon request by the Union President, but not more often than biannually, the Employer will provide the union with a report of official time used to date.

(c) Union representatives will make every effort to properly designate the official time through the available transaction codes (e.g., Union Contract Negotiations (35), Midterm Negotiations (36), Labor Management Relations (37), and Grievances/Appeals (38).

ARTICLE 8

Mid-Term Bargaining

Section 1 – Negotiations:

The Parties agree that the Agency has the right to make changes to conditions of employment in the exercise of its management rights pursuant to 5 U.S.C. §7106(a)(1) and (2). However, the Agency does recognize its obligation, consistent with applicable laws, rules and regulations, to notify the Union of such changes and to negotiate the impact and implementation of same, upon request of the union, pursuant to 5 U.S.C. §7106(a)(1) and (2).

Section 2 - Notification of Changes (I&I Bargaining):

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

(b) Within seven (7) days of receiving the Employer's notice of proposed changes, the Union may request a briefing regarding the proposed changes. The Employer shall hold the briefing no later than fourteen (14) days after receipt of the Union request for a briefing.

(c) Within ten (10) days of submission of a request to negotiate, or the date of a briefing (whichever is later), the Union will submit its proposals. Reasonable extensions of time for submitting proposals will be granted.

(d) Unless the parties agree otherwise, negotiations over mid-term changes shall commence no later than fifteen (15) workdays after the Employer responds to the Union's proposals.

Section 3 - Changes in Law or Regulations:

When changes in laws, rules or government-wide regulations require the Employer to make changes which impact on the bargaining unit and are determined to be in conflict with this Agreement, the Employer will afford the Union the opportunity to negotiate on the changes, in accordance with the law.

Section 4 – Mid-Point Term Bargaining:

(a) Not more than sixty (60) or fewer than thirty (30) days prior the mid-point of this Agreement, either Party may give notice to the other of its intent to reopen for negotiation revisions at least one (1), but no more than four (4), articles of this Agreement.

(b) When the Employer proposes to implement more than de minimis changes to the conditions of employment of bargaining unit personnel, the Employer will provide the Union advance notice of the proposed changes and will afford the Union the opportunity to negotiate on the changes.

Section 5 - Union/Employer Relationships:

On a continuing basis, the Parties agree to emphasize cooperation and interest-based relationships to identify problems, challenges, and priorities facing MARO. Pre- decisional involvement and open sharing of information is encouraged. The Parties support the goals of enhanced productivity, flexible work processes, improved working conditions, continuous quality improvement, and improved service to customers.

ARTICLE 9

Annual Leave

Section 1 - General

(a) Use of accrued annual leave is a right of the employee, subject to supervisory approval and the needs of the Agency (e.g. workload, office coverage). Employees will attempt to use leave throughout the year to prevent excessive use of “use or lose” leave at the year's end.

(b) Absent unforeseen circumstances, all requests for annual leave must be submitted as far in advance as is reasonably possible, but no later than twenty-four (24) hours in advance of the date needed. Management will timely approve or disapprove requests for leave.

(c) The Employer will approve or disapprove requests for leave in a timely manner. A request for annual leave not in excess of two (2) weeks is reasonable for employees, and generally will be approved unless needs of the Agency otherwise prevent the granting of accrued leave. However, these requests normally must be submitted at least thirty (30) calendar days in advance of the effective date of the leave requested. Employees who request leave at least thirty (30) calendar days prior to the proposed leave date will receive a response to their requests within fourteen (14) calendar days from the date of the request. The response may be an approval, a denial, or an acknowledgment of receipt with additional details, including when the request will be approved or denied.

(d) For requests submitted for a date that is fewer than fourteen calendar days in advance, the Employer will normally respond to such requests no later than three (3) days before the date of the proposed leave.

(e) When an employee makes a request for leave, the supervisor must either approve the request or, if that is not possible because of a business-related reason such as a project-related deadline or the agency's workload, deny such request. If a leave request is denied, the supervisor will provide specific reason(s) for the denial. Notification of absence or intended absence does not constitute approval.

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

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

Section 2 - Scheduling Annual Leave

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

Section 3 - Procedures for Requesting Annual Leave

(a) All formal requests for annual leave must be entered into WebTA, the Agency’s Time and Attendance System (or a successor time and attendance system). When the employee submits a formal request for annual leave through WebTA, the Employer will respond through WebTA. All requests for annual leave shall be made solely to the employee's supervisor or other designated approving official. A supervisor who denies a request for annual leave shall indicate the reason(s) for the denial.

(b) If an employee submits an informal request for annual leave through email or other means, the Employer may respond using the same method of communication used by the employee (i.e., email or other means).

Section 4 - Emergency Leave

In the event of an emergency where advance approval is not possible, requests for approval of annual leave shall be called in to the supervisor or designee as soon as possible, but normally not later than two hours after the start of the employee's scheduled tour of duty. If the supervisor or designee is unavailable, the employee may discuss it with the next higher level manager. If the leave is granted, the employee must input the request into the official Time and Attendance system as soon as practicable. In order to permit the efficient scheduling of work and provide adequate coverage, requests should be for genuine emergencies and held to a minimum.

Section 5 - Advance Annual Leave

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

balance for reasons other than for death or disability retirement will be required to reimburse the Employer.

ARTICLE 10

Sick Leave and Family Friendly Leave Act

Section 1 - Use of Sick Leave

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

(1) When incapacitated for duty by physical or mental illness, injury, pregnancy, or childbirth;

(2) When undergoing medical, dental, or optical examination or treatment, including time spent traveling to and from appointments;

(3) Upon exposure to a contagious disease that would endanger the health of co-workers;

(4) When care is needed for an immediate family member who has a contagious disease as certified by a public health official; or

(5) For purposes relating to the adoption of a child.

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

Section 2 - Definition of "Family Member"

A "family member" is defined as the following:

(a) Spouse, and his/her parents;

(b) Sons and daughters, and their spouses;

(c) Parents, and their spouses;

(d) Brothers and sisters, and their spouses;

(e) Grandparents and grandchildren, and their spouses;

(f) Domestic partners and their parents, including domestic partners of any individual in subsections (2) through (5) of this section; and

(g) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship

Section 3 - Family Friendly Leave Act (FFLA)

In accordance with the provisions of the FFLA and related regulations, sick leave may also be used by employees to give care or otherwise attend to family members having an illness, injury, or other condition, which would justify the use of sick leave by the employee. Additionally, the FFLA authorizes the use of sick leave for purposes relating to the death of a family member, including making final arrangements and attending the funeral of such family member. Sick leave used for these purposes must meet all requirements of the FFLA and related regulations, including documentation and limitations on the amount of sick leave that can be used. The FFLA authorizes covered full-time employees to use a total of up to one hundred and four (104) hours of sick leave each leave year for the purposes described in this section. For part-time employees, the amount of sick leave permitted under this section is the number of hours of sick leave he or she normally accrues during a leave year.

Section 4 – Family Member with Serious Health Condition

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

Section 5 - Procedures for Requesting Sick Leave

Whenever possible, employees will obtain advanced approval from supervisors for leave needed for medical, dental, or optical examinations or treatment, to care for a family member, or for funeral or adoption purposes. When advanced approval is not possible, an employee will notify the immediate supervisor or a designated official of an absence due to illness or urgent family care as soon as possible, but normally not later than two (2) hours after the start of the employee's scheduled tour of duty. If the supervisor or designee is unavailable, the employee may notify the next highest official. The request for sick leave shall be recorded in the Agency's time and attendance system using the appropriate codes.

Section 6 - Medical Certification

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

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

Section 7 - Advanced Sick Leave

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

(1) At no time may an employee’s negative leave balance exceed 240 hours;

(2) The employee is eligible to earn sick leave;

(3) The request will not exceed 240 hours maximum advance sick leave;

(4) The request is supported by medical evidence certifying the seriousness of the condition and including the estimated date of return to duty; and,

(5) There is reasonable assurance the employee will return to duty.

(b) Advanced sick leave is a privilege afforded by the Employer; the employee has no right or entitlement to this leave. Employees are encouraged to consider the Volunteer Leave Transfer Program when facing a medical situation who has exhausted his or her available paid leave. Employees who leave the agency with a negative leave balance for reasons other than death or disability retirement will be required to reimburse the Employer.

ARTICLE 11

Family and Medical Leave Act

Section 1 - Entitlement to Leave

The Family and Medical Leave Act (FMLA) of 1993, PL 103-3, provides employees who have completed at least twelve (12) months of service with entitlement to leave without pay (LWOP) (or paid leave, as provided for under the Federal Employee Paid Leave Act (FEPLA) of 2020, PL 116-92), not to exceed twelve (12) administrative workweeks during any twelve (12) month period, for a personal or family illness or emergency. This includes the birth of a child of the employee and care of such child; the placement of a child with the employee for adoption or foster care; the care of a spouse, child, or parent of the employee who has a serious health condition; or a serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.

Section 2 - Request and Medical Certification Requirements

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

Section 3 - Job Benefits and Protection

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

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

Section 4 - Substituting Paid Leave for LWOP

In accordance with the FMLA, an employee may request approval to substitute paid leave (e.g., annual, sick, or earned compensatory leave) in lieu of LWOP. Paid leave may be substituted when available and if approved, in accordance with applicable regulations and

this Agreement. However, an employee may not retroactively substitute paid leave for LWOP under the FMLA.

Section 5 - Holidays

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

Section 6 - Special Leave Entitlement for Birth or Adoption Purposes

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

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

ARTICLE 12

Leave Without Pay

Section 1 – General

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

Section 2 – Requests

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

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

    (1) The employee must be committed to return to duty after a period of LWOP (except certain disability situations);

    (2) LWOP must meet the needs of the Employer as well as the employee; and

    (3) The reasons for the requested LWOP meet all requirements, and are valid and acceptable to the Employer. In case of a request for LWOP for medical reasons, the sick leave provisions will apply.

ARTICLE 13

Administrative Leave

Section 1 - Definition

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

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

On an individual case basis, the Employer may excuse tardiness for up to two (2) hours for hazardous conditions that affect the employee's ability to safely get to his/her workplace. Such factors as the distance between an employee's home and the work site, availability of public transportation, reasonable efforts made by the employee, and the success of other similarly situated employees to get to the work site will weigh heavily in the Employer's decision.

Section 3 - Blood Donation Leave

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

Section 4 - Voting Leave

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

Section 5 - Leave for Bone Marrow or Organ Donation

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

Section 6 - Weather and Safety Issues

The Employer, acting in accordance with the decision of the Departmental or Regional decision-making body, may approve a provision of leave under this section to an employee (or group of employees), if the employee (or group of employees) is (are) prevented from safely traveling to, or performing work at, an approved location due to an environmental condition.

(a) Employees with a Telework Agreement: In accordance with law and regulation, employees who are participating in the FNS telework program and are able to safely travel to and/or work at an approved telework site may not be granted weather and safety leave. Employees who are eligible to telework and currently taking part in the FNS telework program are presumed to have the ability to safely perform work at their approved telework site (e.g., home). If an employee is prevented from safely working at the approved telework site during a weather and safety event, the Employer may, at its discretion, provide weather and safety leave to the employee.

(b) Employees without a Telework Agreement: If an emergency situation or inclement weather condition prevents an employee without a telework agreement from reporting to work when their official duty location is closed, weather and safety leave may be granted.

Section 7 - Investigative Leave and Notice Leave

The Employer may place an employee on (a) investigative leave, if the employee is the subject of an investigation; (b) notice leave, if the employee is in a notice period, or (c) notice leave following a placement in investigative leave. The conditions under which these types of leave will be assigned is strictly determined by the Employer.

ARTICLE 14

Other Leave Provisions

Section 1 - Leave for Union Business

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

Section 2 - Leave or Compensatory Time for Religious Observances

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

Section 3 - Court Leave

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

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

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

Section 4 - Military Leave

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

Section 5 – Tardiness

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

ARTICLE 15

Health, Safety and Office Environment

Section 1 – General

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

Section 2 - Computer Furniture and Equipment

The Employer shall ensure Agency offices are equipped with furniture and equipment that meet reasonable and acceptable ergonomic design criteria. Wrist rests will be provided upon request. The Employer will make determinations regarding reasonable accommodations requests for employees who have a documented medical condition that meet the requirements established under the law.

Section 3 - Harmful Chemicals

The Employer will inform the Union when potentially harmful chemicals will be used in its buildings, such as paint, pesticides, or cleaning agents (beyond what is used for routine cleaning), as soon as the Employer is aware that such chemicals will be used. Employee illnesses triggered by the use of such chemicals will be handled on a case-by-case basis. If the employee deems it required, he/she may submit a request for an accommodation to the supervisor.

Section 4 - First Aid Kits; CPR

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

Section 5 - Office Environment

(a) The Agency will ensure the office environment is maintained in accordance with established codes and applicable laws and regulations. The Parties will address issues regarding the office environment, such as temperature, air, and water quality on an on-going basis. Air temperatures have been pre-set by Administrative Services, and the controls are locked to ensure a comfortable temperature. When the temperature in an office drops or rises below what is considered comfortable, as determined by the

Employer, the Employer may direct employees who are eligible and telework ready to complete their tour of duty at an approved alternate work site.

(b) Potable water and reasonably clean and safe lavatory facilities are basic human amenities. When a complete interruption in services occurs in all available areas and cannot be restored within a reasonable period of time, the Employer will authorize employees who are eligible and telework ready to complete their tour of duty at an approved alternate work site.

Section 6 - Accidents and Workers' Compensation Claims

For workers injured in a work-related accident, the Employer will inform the employee of the proper procedures for filing claims under the Federal Employees' Compensation Act.

Section 7 - USDA Smoking Policy

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

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

Article 16

Hours of Work, Alternative Work Schedules and Telework

Section 1 – General

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

(b) All employees must have a pre-established and approved tour of duty. Accordingly, Bargaining Unit employees may participate in the types of schedules provided for under this Article. The Employer reserves the right to assign work and to approve, disapprove or change all work schedules or telework arrangements based on the needs of the Agency.

(1) If more than one employee submits a new tour of duty request on the same day to be effective for the same pay period that will create inadequate office coverage or workload conflicts, the first priority will be given based upon employee seniority as determined by service computation date.

(2) Employees with approved tour of duty schedules are not impacted by new requests.

Section 2 – Definitions

(a) Adequate Office Coverage at the Official Duty Location – Adequate coverage is defined as thirty percent (30%) or more of the total number of staff in a given work unit. In the event staff is recalled to ensure adequate coverage, volunteers will be sought first, and then recalled from telework on a rotational basis, starting with the employee with the most recent service computation date.

(b) Alternate Work Schedules (AWS) – AWS schedules include both compressed work schedules and flexible work schedules.

(1) *Compressed Work Schedule (CWS)* – a compressed work schedule means that an employee's basic work requirement for each pay period is scheduled (by the agency) for fewer than ten (10) workdays.

(2) *Flexible Work Schedule (FWS)* – a flexible work schedule includes designated hours (core hours) and days when an employee must be present for work. A flexible work schedule also includes designated hours during which an employee

may elect to work in order to complete the employee's basic (non-overtime) work requirement.

(c) Alternate Work Site – An alternate location at which an employee is approved to work in lieu of reporting to the official duty location.

(d) Available Work Hours – The Mid-Atlantic Regional Office will be open Monday through Friday, from 7:00 a.m. to 7:00 p.m. Under no circumstance may an employee work before 7:00 a.m. or after 7:00 p.m. without receiving prior written approval from the Employer.

(e) Basic Work Schedule – The number of hours, excluding overtime hours, that 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. All work schedules are between the hours of 7:00AM and 7:00PM.

(1) Any work schedule that extends beyond 7:00PM must be established as a flexible work schedule.

(2) Employees must use the Agency's time and attendance (currently, WebTA) to request a new or modify an existing work schedule.

(3) Available start times for "fixed" work schedules are between the hours of 7:00AM and 9:30AM. The schedule must contain forty (40) hours per week and eighty (80) hours per pay period. The occurrence of holidays will not affect the designation of the basic work schedule. Employees may select fixed starting and ending times in quarter hour increments.

(f) Core Hours – The time periods during the workday, workweek, or pay period that are within the tour of duty during which an employee covered by a basic or flexible work schedule is required by the Agency to be present for work. MARO core hours are from 9:30 a.m. to 3:30 p.m. Employees must work the core hours, except for absences due to approved leave, holidays, credit hours, compensatory time, and mandatory lunch break.

(g) Credit Hours – Those hours within a flexible work schedule that an employee elects to work, with prior supervisory approval, that are in excess of his or her basic work requirement so as to vary the length of a workweek or workday. Credit hours may only be worked on days the employee is scheduled to work, and may not be earned on any Saturday, Sunday or AWS day(s) off. Credit hours are limited to a maximum carryover of 24 hours.

(h) Flexible Work Schedule (FWS) – FWS consist of workdays with core hours and flexible hours. Core hours are the designated period of the day when all employees must be at work. Flexible hours are the part of the workday when employees may (within limits or "bands") choose their time of arrival and departure. Employees are not

required to obtain supervisory approval to vary their scheduled arrival and departure times of one hour or less during flexible hours.

(1) A **Gliding** schedule is a FWS in which the employee has a basic work requirement of eight (8) hours in each day and forty (40) hours in each week, may select a different arrival time for each workday, may select a different start and stop time for each workday and may flex/change their start and stop time daily, provided the change(s) is (are) within the one (1) hour flexible time band set by the Agency.

(2) A **Maxiflex** schedule is a type of FWS that contains core hours on fewer than ten (10) workdays in the biweekly pay period and in which a full-time employee has a work requirement of eighty (80) hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours worked each week within the limits established.

(3) A **Variable** Schedule is a type of FWS that contains core hours on each workday in the workweek (Monday through Friday) and in which a full-time employee has a basic work requirement of five (5) days and forty (40) hours per week. However, the employee may vary the number of hours worked on any given workday and the start time for each day of the week within the limits established by the Agency.

(4) Available start times for all "flexible" work schedules other than 4/10 are between the hours of 7:00AM and 9:30AM. Employees who choose to work ten (10) hour days for four (4) days a week may establish a work schedule with a start time no later than 8:30AM.

(5) Flexible hours for arrival shall range from the time the office is open for business (7:00 a.m.) to the start of core hours (9:30AM), and from the end of core hours (3:30 p.m.) to the time the office closes for business (7:00 p.m.).

(6) For full-time employees, a FWS has an 80-hour biweekly basic work requirement. For part-time employees, a FWS has a biweekly basic work requirement of less than 80 hours. FNS provides for four (4) different FWS options, Gliding, Maxiflex and Variable (Workday and Workweek). If a flexible work schedule includes 8 or more hours available for work between 7:00AM and 7:00PM, the employee is not entitled to night pay for voluntarily working flexible hours between 7:00PM and 7:00AM, including while earning credit hours.

(i) Official Duty Station – The location where the work activities of the employee's position of record are based, as determined by the employing agency, subject to the requirement that the official duty station must be in a locality pay area in which the employee regularly performs work. The official duty station is documented on an employee's Notification of Personnel Action (Standard Form 50 or equivalent).

(j) Telework – A work flexibility arrangement under which an employee performs the duties and responsibilities of such employee's position, and other authorized activities,

from an approved worksite other than the official duty station. In practice, telework is a work arrangement that allows an employee to perform work, during any part of regular, paid hours, at and approved alternate work site.

(k) Telework Ready – Refers to all eligible employees with an approved Telework Agreement. Any employee with an approved telework agreement and who elects to not telework, must utilize some form of leave (paid or unpaid) or paid time off or a combination of both during adverse weather conditions or other emergencies that result in the official duty station being closed.

(l) Tour of Duty – The hours in a day, the days in an administrative workweek, and the hours and days of a biweekly pay period that constitute an employee's pre-approved regularly scheduled basic work requirement. Under a flexible work schedule, an employee may complete his or her basic work requirement within the limits set by the Agency. Under a compressed work schedule or other fixed schedule, tour of duty is synonymous with basic work requirement. All tours of duty must be recorded in the Agency's official time and attendance system.

(m) Work Unit – An entity located at one place with a specific mission, headed by a supervisor authorized to approve time and attendance records and approve leave. Within MARO, all employees who report to a supervisor, including the supervisor, constitute a work unit.

Section 3 – Available Work Schedules

(a) Basic 40-Hour Work Schedule: This fixed schedule consists of work hours on each working day of the pay period; and, the work hours on each workday are the same (8 hours per day, Monday through Friday).

(1) Employees with this type of work schedule:

a) May not vary their work schedules or individual tours of duty outside of Agency policy or the procedures established in this Article;

b) May not earn credit hours; and,

c) Will earn holiday pay for the eight (8) hours they are normally scheduled for that day for federal holidays when no work is performed.

(b) Compressed Work Schedules: Employees on a CWS must select fixed starting and ending times consistent with their selected compressed schedule. On holidays, employees on a CWS will be credited with the number of hours pre-scheduled for that day. When a holiday falls on an employee's scheduled day off, the preceding workday shall be the employee's "in lieu of" holiday.

(1) 5/4/9 – Employees on this schedule work eight nine and one half-hour days, one eight and one half-hour day, and have one day off, for a total of eighty (80) hours per pay period.

(2) 4/10 – Employees on this schedule work four ten and one half-hour days and have one day off for a total of 40 hours per week, and eighty (80) hours per pay period.

(3) Employees on a Compressed Work Schedule:

a) May not vary their actual start/stop times from their approved start/stop times.

b) May not earn credit hours.

c) Will earn holiday pay equal to the number of hours they were scheduled and would have worked on the day on which the federal holiday is observed.

d) Absent prior supervisory approval, must schedule and take their "in-lieu-of" RDO/AWS holiday prior to the end of the pay period in which the holiday falls.

(c) Flexible Work Schedules:

(1) *4/9/4* – Employees on this schedule work eight (8) nine (9)-hour days, and two (2) four (4)-hour days, for a total of eighty (80) hours per pay period. Core hours are waived on the two (2) four (4)-hour days.

(2) *Maxiflex Work Schedule*: Employees with this work schedule type may work fewer than ten (10) workdays in pay period while satisfying the basic work requirement of 80 hours per pay period. Employees may vary the number of hours worked on any given workday and/or the number of hours worked in a work week, provided the hours fall within the flexible time bands established by the Agency. Employees on a Maxiflex schedule:

a) Must establish a regular tour of duty for their workdays and work hours by submitting a request in accordance with the procedures outlined in this Article.

b) May vary the start time, end time and total number of hours to be worked each day. Regular tours of duty must include work on no fewer than four (4) days of each week for no fewer than four (4) and no more than ten (10) hours per day.

c) All hours must fall within the available work hours, defined as Monday through Friday, from 7:00 a.m. to 7:00 p.m.

d) Employees must request a schedule in which they report for work no later than the beginning of core hours and leave no earlier than the ending of core hours, except for such absences covered by approved leave, credit hours, holidays,

excused absences, special circumstances for a limited period of time that are approved and documented, or compensatory time off.

e) No schedule shall contain fewer than eight days with core hours in a biweekly pay period.

f) Employees may not have a pre-established tour of duty of more than ten and one -half (101/2) hours per day.

g) Employees will call or email their supervisor if they are going to arrive an hour or more past their normal tour of duty. Employees are not required to submit a new Tour of Duty request in the Agency time and attendance system in order to vary their scheduled arrival and departure times during the flexible hours unless they are varying the number of hours that they are scheduled to work for that day.

(i) For example, if an employee is scheduled to work 8 hours from 8:00 a.m. to 4:30 p.m. and the employee arrives at 9:00 a.m. on a particular day, then the employees must work until 5:30 p.m. that day. If the employee does not work until 5:30 p.m., then she/he must use leave or credit hours.

(ii) In the event of an emergency or unforeseen circumstance, the employee will contact the supervisor for approval as soon as possible of a change in her or his arrival time and/or departure time. Employees are responsible for properly recording all approved changes in the Agency time and attendance system.

h) Employees who wish to change their day off must get prior approval from their supervisors, prior to the start of the affected pay period.

i) On holidays, full-time employees working a flexible schedule will be credited with eight (8) hours regardless of the number of hours they were scheduled to work. Part-time employees will be credited with the scheduled number of hours of work for that day, or the typical or average number of hours normally worked on that day, not to exceed eight (8) hours.

(3) *Variable Work Schedules*: The variable schedule options are Variable Workday and Variable Workweek. Under these schedules, employees are required to work ten (10) days and eighty (80) hours per pay period.

(4) Employees on Flexible Work Schedules:

a) Must be present for core hours on scheduled workdays. Flexible hours for arrival shall range from the time the office is open for business (7:00 a.m.) to

the start of core hours (9:30 a.m.), and from the end of core hours (3:30 p.m.) to the time the office closes for business (7:00 p.m.).

b) May flex (or deviate from) their established tour of duty by up to one (1) hour at the start and/or end of each work day without prior supervisory approval, provided that the total number of hours worked on the day the hours are flexed does not deviate by more than one (1) hour from the number of hours required under the employee's established tour of duty. This flexibility may not be applied to core hours.

c) Earn eight (8) hours of pay on federal holidays when no work is performed.

d) Absent prior supervisory approval, must schedule and take their "in-lieu-of" RDO/AWS holiday prior to the end of the pay period in which the holiday falls.

Section 4 – Work Schedules Procedures

(a) Employees may request a work schedule or change to their current work schedule by requesting a schedule change in the Agency time and attendance system. Arrival and departure times of all work schedules must begin and end on quarter hour increments. Previously approved schedules will remain in effect until supervisory approval is received for a requested change and an effective date is established.

(b) For permanent changes, the request for a schedule change must be submitted to the supervisor in the Agency time and attendance system at least ten (10) days prior to the start of the proposed pay period covered by the new schedule. For temporary changes, the request for a schedule change must be submitted to the supervisor in the Agency time and attendance system as soon as possible, but no later than the day before the start of the proposed pay period covered by the temporary change.

(c) For minor temporary changes (e.g. "off" day), employees must receive prior approval from their supervisor. These requests should be submitted to the supervisor in the Agency time and attendance system prior to the start of the proposed affected pay period. In emergency situations, the supervisor may approve a temporary modification without prior notification. Temporary changes that increase hours on a holiday will not be approved.

Section 5 – Earning and Using Credit Hours

(a) Only employees on flexible work schedules may earn credit hours, but not more than ten (10) credit hours may be earned in any given pay period. Employees with compressed work schedule may not earn credit hours.

(b) Employees may not exceed two (2) credit hours per day. On days where an employee on a flexible schedule works ten (10) hours they may only earn one (1) credit hour.

(c) Credit hours may not be earned or used on Saturdays, Sundays, holidays or outside of office hours. A maximum of twenty-four (24) credit hours may be accumulation and/or carried-over from one pay period to the next.

(d) An employee may not routinely use credit hours to establish a standard work schedule of greater than ten (10) hours a day or a different schedule other than her or his approved schedule. Full-time employees may accumulate and carry over not more than twenty-four (24) credit hours from one biweekly pay period to a succeeding biweekly pay period. Part-time employees may accumulate and carry over up to one fourth of the employee’s biweekly work requirement.

(e) Requests to earn credit hours must be submitted in the Agency time and attendance system and must be approved in advance by the supervisor. In his/her sole discretion, a supervisor may approve or deny an employee’s request to earn credit hours. If a request to earn or use credit hours is denied, the employee may request that the supervisor provide specific reasons for the denial to the employee in writing.

(f) Credit hours may be earned when work is available or circumstances support continuing work. An employee may not "save" work that could otherwise be completed during the regular tour of duty in order to earn credit hours.

(g) An employee may not be paid overtime pay, Sunday premium pay, or holiday premium pay for credit hours. Credit hours must always be part of the employee’s non-overtime basic work requirement. Sunday premium pay may be paid only when an employee works on Sunday, with the exception of paid leave and excused absence, and then only when permitted by law. Holiday premium pay may be paid only for work on a holiday.

(h) When an employee uses credit hours, such hours are to be counted as a part of the basic work requirement to which they are applied. An employee is entitled to her or his rate of basic pay for credit hours, and credit hours may not be used by an employee to create or increase entitlement to overtime pay.

(i) Credit hours must be earned and reflected in the official time and attendance system before being used, and they must be used in half hour increments.

(j) May not be earned for travel and may not be earned for time spent in training.

(k) Supervisors may not approve the use of credit hours solely to prevent the forfeiture of the excess credit hours. Supervisors and employees must manage the use of credit hours in conjunction with annual leave balances. Use or lose annual leave will not be restored solely because an employee was using credit hours instead of leave.

Section 6 – Telework

(a) Telework, is a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee’s position, and other authorized activities,

from an approved worksite other than the official duty station. Participation in telework is voluntary and does not change the terms and conditions of appointment.

(b) The overall interests of the Agency must take precedence over telework arrangements. Employees who wish to participate in the Agency's telework program must request to do so by submitting the appropriate form(s).

(c) All requests to participate in the Agency's telework program must be submitted to the supervisor at least one (1) pay period prior to the proposed effective date of the schedule requested. After receiving a telework application, the supervisor will evaluate the request using the governing criteria (listed below) and respond to the employee within ten (10) workdays after their receipt of the request. When telework applications are denied or the telework arrangement is terminated, the supervisor will provide the reasons to the employee in writing.

(d) Criteria for participating in the Agency's telework program are as follows:

(1) Employee must have a performance rating of record of at least "Fully Successful", or equivalent;

(2) Employee must have completed their one-year probationary period;

(3) Telework training must be completed prior to telework participation; and

(4) Employee must have completed one-hundred and twenty (120) days in current position and have demonstrated the ability to perform the duties of the position independently. Taking into account the employee's performance and the needs of Agency, the supervisor will have final approval of the employee's telework schedule as he/she deems appropriate.

(e) Rules governing participation in the Agency's telework program are as follows:

(1) Bargaining unit employees should expect to report to the official worksite and duty station a minimum of four (4) days per week (for employees on a compressed work schedule, the employee's regular day(s) off will count as a day away from the official worksite for the purpose of this requirement). The actual number of days approved for telework is subject to management discretion.

(2) The employee must have defined work that can be measured or otherwise evaluated in terms of timeliness, quality, and/or quantity. All subject to management discretion.

(3) With the exception of during authorized breaks, employees must be available and accessible via the approved technology applications and tools, including via phone and e-mail, to all routine contacts (such as, supervisors, FNCS employees, state and federal contacts, and customers) and at all times while teleworking.

(4) Failure to meet the terms of the Telework Agreement, a decline in performance, or any instance of abuse or misconduct, may result in termination of the employee's telework agreement.

(5) Employees working at an alternate work site may not use duty time to provide dependent care or for any purpose other than their official duties.

(6) Employees are subject to the same laws, rules and regulations while on duty at the alternate site as at the official duty station.

(7) When a new telework request conflicts with one or more other approved requests to the extent that to grant approval would create a workload problem or inadequate office coverage, the request will not be approved.

(8) If more than one employee submits a new telework request on the same day to be effective for the same pay period that will create inadequate office coverage or workload conflicts, the first priority will be given based upon employee seniority as determined by service computation date.

(9) Unless otherwise document, telework agreements remain in effect until a change occurs. Except in emergency situations where the timeframe may be shortened, an employee's telework agreement may be changed formally by either management or the employee, with a minimum of two (2) weeks advance written notification.

(10) All telework arrangements will be governed by all applicable Agency policies, including computer security, access, use of government owned equipment and information. Employees will return all assigned equipment to the Agency when directed to do so by the Employer, or when discontinuing the Telework arrangement.

(11) Episodic Telework – Episodic or situational telework arrangements may be authorized for short periods of time. Such situations are not permanent and are not regular or recurring.

a) The employee must obtain prior supervisory approval, at least twenty-four (24) hours prior to the beginning of the episodic telework, unless an emergency situation such as inclement weather, prevents advance notice. Such episodic arrangements must be documented in writing.

b) Employees should ensure the information on the forms is current prior to each request. These arrangements will normally be for one (1) day or less but could last longer if the situation necessitates more time.

c) If an episodic (situational/reoccurring) telework arrangement lasts longer than one (1) pay period, the normal process for participation in telework should be

followed. If an episodic arrangement is going to last longer than two (2) consecutive pay periods or is requested more than twice in a two (2) month period, this is considered recurring and the employee will be required to follow the process for regular telework.

(12) Equipment – Subject to budget, availability, and other limitations, the Employer agrees to provide all equipment it deems necessary for approved telework requests. Employees may be required to submit such requests using the request form identified for this purpose. Employees who uses her/his own peripheral or computer equipment are responsible for the service and maintenance of such equipment.

(13) Alternative Work Site – Employees participating in the Agency's telework program must have a designated work area for performance of their duties at the alternate work site. The Employer retains the right to visit and inspect the premises at its discretion.

(14) Utility Expenses – Utility costs associated with working at an alternate work site will not be paid by the Agency.

(15) Miscellaneous Expenses – Costs associated with the copying of work-related materials, fax charges, express mail, etc., will not be reimbursed by the Employer unless written approval has been given in advance.

(16) Injuries – Injuries that arise in the performance of duty at the alternate work site may be subject to the Federal Employees' Compensation Act.

(17) Agency Files and Materials – No classified documents (hard copy or electronic) may be taken to an employee's home. Employees may take home other Agency files and materials only with advance supervisory approval. Employees are responsible for safeguarding all materials and information in accordance with law and Agency policy.

(18) Recall Procedures – Employees participating in telework programs, excluding those assigned to work exclusively at home or alternative work locations, must be accessible and available for recall to their official duty station as requested by the Employer. (Examples include: ensuring adequate office coverage, training, special meetings, new work requirements and emergencies (i.e. emergencies may include national emergencies or disasters; recall directed by the Department Secretary or Sub-Agency Administrator, or a bona fide team emergency, such as work production with an enhanced deadline).

a) In the event that the staff is recalled to ensure adequate office coverage, volunteers will be sought first, and then recalled on a rotational basis, starting with the most recent service computation date.

b) Employees recalled to the official on their telework day(s) are not entitled to an alternative telework day. However, requests for alternative telework day(s) may be submitted to the supervisor. Such requests will be addressed on an individual basis.

c) If an employee on telework is recalled backed to the office after his/her tour of duty has started, travel time to the office shall be considered duty time. In situations where the employee is given advance notice before the recall day, travel to and from the office shall not be considered duty time.

Section 7 – Adjustment to Work Schedule and Telework When on Travel Status

(a) When on a review or work activity that is expected to last five (5) days in one week (first or second week of a pay period) including travel time – all employees traveling together or independently must adjust their work scheduled to accommodate the facility availability of the State Agency. Required changes must be approved by the supervisor prior to the start of the review. The other week of that pay period may or may not need to be adjusted, depending on the employee's regular tour of duty. Employees must discuss their schedules with their supervisor before traveling.

(b) Generally, for reviews or work activity lasting four (4) days or fewer, including travel time, employees traveling together or independently should revert to a basic flexible 5/8 work schedule for that week. However, subject to management discretion and approval, employees may be able to maintain their pre-established tours of duty.

(c) Overtime should typically not be necessary. However, if the Employer determines, based on the needs of the Agency, that overtime will be needed, the written request to the employee to work overtime will be made by the Employer in accordance with Agency policy.

Section 8 – Records and Time & Attendance

(a) In accordance with law, employees must account for all hours scheduled using the Agency's Time and Attendance system.

(b) In the event of an office emergency or unforeseen circumstance (i.e. delayed opening, early dismissal or physical office closure), in which an employee is unable to enter her/his time in the system, timekeepers will use the most current Tour of Duty in the Agency's time and attendance system when inputting time.

ARTICLE 17

Overtime

Section 1 - General

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

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

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

Section 2 - Definitions

(a) Exempt employee – An employee who is not covered by the Fair Labor Standards Act (FLSA).

(b) Non-exempt employee – An employee who is covered by the FLSA.

(c) "Suffered or permitted work" – Any work performed by an employee for the benefit of the Agency, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed.

(d) Officially Ordered or Approved Overtime – Overtime work that was ordered or approved in advance by a supervisor with such authority, or was approved by the supervisor after emergency work was performed.

(e) Overtime Work for Exempt Employees – For exempt employees, overtime work is defined as follows:

(1) Employees who work more than their scheduled work hours in a day (e.g., 8, 9 or 10) or more than 80 hours in a pay period earn overtime compensation.

(2) Employees with a basic work schedule who work hours officially ordered or approved that are in excess of eight (8) hours in a day or forty (40) hours in an administrative workweek.

(3) Employees with a compressed work schedule who work hours officially ordered or approved that are in excess of the established compressed work schedule.

(4) Employees with a flexible work schedule who work hours officially ordered in advance that are in excess of eight (8) hours in a day or forty (40) hours in an administrative work week. Credit hours are excluded.

(f) Overtime work performed by nonexempt employees must be compensated. Employees on any work schedule who work hours in excess of their scheduled work hours in a day (e.g., 8, 9, 10) or more than 80 hours in a pay period earn overtime compensation that are officially ordered, approved or suffered and permitted.

(g) Overtime Work for Part-time Employees – Hours in excess of the established work schedule for the day (but more than at least eight (8) hours) or for the week (but more than at least forty (40) hours).

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

(a) Non-exempt employees are covered by both the FLSA and 5 USC for overtime purposes. Where the FLSA and 5 USC are inconsistent, non-exempt employees will be compensated for overtime by the law that provides the greater pay benefit.

(b) Employee's grade levels do not solely determine whether they are exempt or non-exempt. Generally, the majority of employees in non-supervisory and program specialist positions are covered by the FLSA overtime provisions.

(c) The Employer shall compensate an employee who is non-exempt for all overtime hours worked at a rate equal to 1.5 times the employee's regular hourly rate of pay. Upon the advance written request of an employee, the Employer may grant compensatory time off on an hour for hour basis in lieu of overtime pay. The Employer may not require a non-exempt employee be compensated for overtime work with compensatory time off, in lieu of granting overtime pay.

(d) Regular ("reoccurring") Overtime shall be scheduled in advance of the workweek (i.e., before Sunday of the week in which the overtime work will be performed).

(e) Irregular Overtime:

(1) Is scheduled on or after the Sunday of the week in which the overtime work is to be performed.

(2) All employees who are eligible to earn irregular overtime may be granted compensatory time in lieu of overtime pay.

(3) The Employer may not require that a non-exempt employee be compensated for overtime work under this subpart with an equivalent amount of compensatory time off from the employee's tour of duty.

Section 4 - Overtime or Compensatory Time for Exempt Employees
Exempt employees are not covered by the FLSA. Generally, employees occupying positions classified as supervisory and managerial are not covered by the overtime provisions of the FLSA.

Section 5 - Using Compensatory Time

(a) Requests for compensatory time must be requested and approved in advance using the Agency's time and attendance system.

(b) Compensatory time must be used within a twelve (12) months of the date it was earned (or, no later than the end of the leave year that follows the year in which the compensatory time was earned). Subject to management approval, compensatory time must be used before annual leave, provided this will not result in the forfeiture of annual leave. If compensatory time is not requested or taken within the established time limits, or by the time of the employee's separation or transfer, the employee must be paid for overtime at a rate that is equal to the rate that was in effect at the time the overtime work was performed.

Section 6: Compensatory Time Off for Travel

(a) "Compensable" Time Off

(1) Compensatory time off for travel may only be earned for time in a travel status when such time is not otherwise "compensable." Compensable refers to periods of time creditable as hours of work for the purpose of determining a specific pay entitlement. For example, certain travel time may be creditable as hours of work under the overtime pay provisions in 5 CFR 550.112(g) or 551.422.

(2) Compensatory time off for travel only may be earned by an "employee," as defined in 5 U.S.C. 5541(2), without regard to whether the employee is exempt from or covered by the overtime pay provisions of the Fair Labor Standards Act of 1938, as amended.

(b) Creditable Travel

(1) To be creditable under this provision, travel must be for work purposes and officially authorized by an authorized agency official or otherwise authorized under established agency policies.

(2) For the purpose of compensatory time off for travel, time in a travel status includes:

(i) Time spent traveling between the official duty station and a temporary duty station;

(ii) Time spent traveling between two temporary duty stations; and

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

(c) <u>Commuting Time</u>

(1) Travel outside of regular working hours between an employee's home and a temporary duty station or transportation terminal outside the limits of his or her official duty station is considered creditable travel time. However, the agency must deduct the employee's normal home-to-work/work-to-home commuting time from the creditable travel time.

(2) Travel outside of regular working hours between a worksite and a transportation terminal is creditable travel time, and no commuting time offset applies.

(3) Travel outside of regular working hours to or from a transportation terminal within the limits of the employee's official duty station is considered equivalent to commuting time and is not creditable travel time.

ARTICLE 18

Official Travel

Section 1 – Entitlement to Reimbursement for Travel

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

Section 2 - Return to Duty Station

Employees at a temporary duty station who are prevented from returning during normal duty hours may return that evening or the following day during the normal established workday.

Section 3 - Advance Notice of Travel

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

Section 4 - Emergency Travel: Cash Advances

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

Section 5 - Use of Private Vehicle

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

Section 6 - Extended Travel

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

Section 7 - Criteria for Overnight Travel and Per Diem

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

Section 8 - Government Credit Card

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

(1) is a new employee required to perform temporary duty travel en route to his/her first post of duty;

(2) is an intermittent or seasonal employee; does not expect to travel more than twice per year; has had his/her government credit card canceled for cause by the issuing bank; and/or

(3) has issues concerning credit (e.g., credit problems or issues, past or present).

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

Section 9 - Travel as Hours of Work under the FLSA

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

(a) travels during regular working hours;

(b) drives a vehicle or performs other work while traveling;

(c) travels as a passenger on a one-day assignment away from the official duty station; or

(d) travels as a passenger on an overnight assignment away from the official duty station during hours on non-workdays that correspond to the employee's regular working hours.

Section 10 - Travel as Hours of Work under 5 USC

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

(b) The employee travels during regular working hours; or

(c) The travel-

(1) involves the performance of actual work while traveling;

(2) is incidental to travel that involves the performance of work while traveling;

(3) is carried out under such arduous and unusual conditions that the travel is inseparable from work; or

(4) results from an event which could not be scheduled or controlled administratively.

Section 11 – Application of Travel as Hours of Work

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

Section 12 – Official Duty Station

The official duty station is defined as a fifty (50) mile radius from the employee's work site for determining entitlement to travel time reimbursement. Normal home to work travel time must be subtracted from that entitlement.

Section 13 – Alternative Mode of Travel

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

(a) Clearly visible and discernible; or

(b) Substantiated in writing by a competent medical authority. Requests for accommodation, will be handled in accordance with Departmental Manual DM 4300-002, "Reasonable Accommodation Procedures," as described in Article 28 of this agreement.

ARTICLE 19

Parking

Section 1 - Parking Expenses

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

Section 2 - Disabled Parking

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

Section 3 - Car Pools

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

Section 4 - Snow and Ice Removal

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

Section 5 – Lighting

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

ARTICLE 20

Performance Management

Section 1 - General

(a) The performance management program shall be in compliance with regulations and USDA policy. It is designed to assist in establishing a performance culture that fosters a high performing organization through effective management of individual and organizational performance. The provisions of this Article shall apply to all bargaining unit employees. The performance management program provides for:

(1) Establishing employee performance plans, including elements and performance standards;

(2) Communicating performance plans to employees at the beginning of an appraisal period;

(3) Evaluating each employee during the appraisal period on the employee's elements and standards;

(4) Recognizing and rewarding employees whose performance so warrants;

(5) Assisting employees in improving unacceptable performance; and

(6) Reassigning, reducing in grade, or removing employees who continue to have unacceptable performance, but only after an opportunity to demonstrate acceptable performance.

(b) The performance management program shall, to the maximum extent possible, provide a fair, accurate and objective evaluation of job performance and ensure that the employee's rating of record is based only on actual job performance during the designated appraisal period.

(c) Ongoing, two-way communication and feedback is encouraged. Employees will receive written performance ratings, normally at least annually, based on written performance standards and elements that are related to their official duties. The Employer may provide assistance to employees in meeting performance standards as needed, including providing training and developmental opportunities.

Section 2 - Definitions

(a) Critical Element. An expectation of such importance that unacceptable performance in the element would result in a determination that an employee's overall performance is unacceptable. 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. In the two-level summary rating pattern, all elements are critical.

(b) Performance Standard. The performance thresholds, requirements, and expectations an employee must meet for an element to be appraised at a specific level of performance. Performance standards are properly written as outcomes, rather than duties, and must include credible performance measures.

Section 3 - Performance Elements and Standards

(a) Employees will be provided with written elements and standards. The final authority for establishing elements and standards rests with the Employer. The Employer shall determine if performance standards should be comparable for subordinates with the same position, title, series, grade, and duties within a unit. Performance elements and standards will be based on work assignments and responsibilities of the employee's position. Each employee will have at least three (3) critical elements, but no more than seven (7). The rating official should strive to describe performance standards in words and phrases that denote objectively verifiable qualities of the work performed.

(b) The Employer will define performance required for the employee to meet the level required to maintain good standing for all elements of employee's performance plan.

(c) Employees must be involved in the development of performance elements and standards. Employees can propose substantive projects and/or outcomes above the normal expectations of their respective positions. However, the supervisor has the final authority to approve, disapprove, or alter the employee's performance element(s).

(d) After consideration of any employee input, performance elements and standards shall be communicated in writing and discussed with each employee prior to the beginning of the rating period, if possible, and whenever elements and/or standards change. The performance plan will be signed and dated by the rating official and the employee.

  (1) By signing, the employee signifies only receipt of the plan, not necessarily agreement. If an employee has an objection to the final elements or standards, he/she may note the objections in writing and attach them to the official performance plan.

  (2) Elements and standards should be reviewed quarterly, at a minimum, to ensure that they are still relevant to the work actually performed by the employee, and to monitor progress in demonstrating performance to meet the standards.

Section 4 - Quarterly Conversations

(a) Employees will receive quarterly conversations during the performance evaluation period at which time the rating official shall counsel the employee on his/her progress in meeting the standards.

(b) In addition, the rating official and the employee may meet on a more frequent basis, and are encouraged to have ongoing dialogue and feedback regarding performance, accomplishments, work unit goals, or training and development opportunities and needs.

Section 5 - Annual Performance Appraisal

(a) Absent extenuating circumstances, appraisals will completed and ratings of record issued to employees within thirty (30) days of the end of the rating period, although an appraisal may be conducted or delayed at any time the Employer determines it to be warranted, and consistent with law and regulations.

(b) Unless required by the Rating or Reviewing Official, employees may submit an accomplishment report to their respective Rating Official. An accomplishment report will detail personal performance, contributions, and accomplishments that align with the standards and measures of the element(s) in the performance plan and any additional performance, contributions and accomplishments that are not specific to the expectations documented in their performance plan.

(c) Rating officials will identify the rating for each element. If an employee's performance is not at the Fully Successful level for every element before the rating of record deadline, the rating of record for that performance year is Unacceptable. The appraisal will be signed and dated by the rating official and the reviewing official.

(d) Rating officials will complete a written narrative assessment of employee performance including accomplishments, and may also discuss how employees could strengthen their performance and relevant developmental needs.

(e) The employee should sign and date the appraisal; however, the employee's signature only signifies that the appraisal has been discussed, and not that the employee agrees with the rating. If an employee refuses to sign the appraisal, the rating official should note that on the appraisal document, and sign and date it. Whether or not the employee signs, the rating is official and a copy of the appraisal and any attachments will be provided to the employee.

Section 6 - Minimum Appraisal Period

An employee must be in his/her current job for at least ninety (90) calendar days in order to receive a rating. If the minimum time requirement is not met at the end of the rating period, a rating of record for the performance year cannot be produced. If an employee

worked for a supervisor who is different from the rating official for any part of the appraisal period, the rating official shall obtain input from the previous supervisor before issuing a final (or interim) rating. An employee detailed to a classified position for more than ninety (90) days shall be given the elements and standards for the detail position and receive an interim rating of their performance.

Section 7 - Unacceptable Performance: Demonstration Opportunity

(a) If at any time a supervisor determines that an employee's performance is unacceptable in one or more critical elements, the employee will be so notified. The rating official at his/her option may afford the employee one (1) informal opportunity to improve performance and provide appropriate guidance to the employee.

(b) When unacceptable performance persists in one (1) or more critical element(s), the Employer will develop a written Demonstration Opportunity (DO) Plan. A DO is not a developmental opportunity, or an opportunity to merely improve performance. It is an opportunity to demonstrate acceptable performance in the respective critical element at the FS level, as defined by the employee's immediate supervisor. The DO Plan shall contain the following information:

(1) The critical element(s) for which the employee's performance is unacceptable;

(2) A description of the performance standard(s) and expectations that must be attained in order to demonstrate acceptable performance;

(3) A statement that the employee has up to thirty (30) calendar days in which to improve performance to an acceptable level;

(4) A statement that the Employer will offer assistance to the employee in bringing his/her performance to an acceptable level; and

(5) A statement that unless the employee's performance in the critical element(s) improves, and is sustained at an acceptable level, the employee may be reduced in grade or removed from Federal service.

(c) During the DO period, the supervisor will monitor the employee's performance and may have periodic meetings with the employee as necessary to discuss work assignments and performance. The employee will be informed at least once a week during the DO if they are or are not meeting expectations. The employee may also request a meeting with the supervisor at any reasonable time. If the employee has not had a reasonable opportunity to demonstrate acceptable performance during the DO period, with the prior approval of the USDA Chief Human Capital Officer, the DO period of performance may be extended an additional thirty (30) days. Within seven (7) days of the conclusion of the DO, the rating official will send written notification of the performance to the employee.

(d) If the employee successfully completes the DO but, within one (1) year of completing the DO, his/her performance drops below an acceptable level of performance on the same critical element(s), the employee will not be provided with another opportunity to demonstrate satisfactory performance. If the employee consistently demonstrates acceptable performance during the one (1) year period after completing the DO, he/she will be provided an additional DO if his/her performance falls below an acceptable level in any critical element(s).

Section 8 - Notice of Proposed Action for Unacceptable Performance

If an employee's performance in one or more critical element(s) does not improve to an acceptable level by the end of the thirty (30) day DO period or is not sustained for one year, the Employer may propose a reduction-in-grade or removal action. An employee whose reduction in grade or removal is proposed is entitled to:

(a) The Employer will afford the employee a minimum of thirty (30) days of advance written notice of the proposed action that identifies both the specific instances of unacceptable performance on which the proposed action is based and the critical element(s) involved in each instance of unacceptable performance.

(b) The notice will inform the employee that they have the right to respond to the proposed action orally and/or in writing within eight (8) business days and that they have the right to representation, Union or other.

(c) The Employer will allow an employee who wishes to raise the issue of a medical condition as having contributed to his/her unacceptable performance to furnish medical documentation of the condition for the Employer's consideration. However, employees are strongly advised to bring such medical condition to the attention of the Employer at the earliest possible time.

Section 9 - Final Decision: Appeal and Grievance Rights

The Employer will issue a final decision as soon as practicable after the reply period ends. In arriving at its decision, the Employer will consider all available evidence, including the response of the employee and/or the employee's representative. The Employer will issue a written notice of its decision to the employee on or before the effective date of the action. The notice will specify the instances of unacceptable performance by the employee on which the action is based and inform the employee of the right to file a grievance under the Negotiated Grievance Procedure or to appeal to the Merit System Protection Board (MSPB), but that the employee may not do both.

Section 10 – Negotiations for Change in Performance Appraisal System

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

ARTICLE 21

Employee Recognition and Awards

Section 1 – Monetary and Time Off Awards

(a) All employees with a current rating of record of Fully Successful are eligible for achievement awards. These awards can be for individual or group contributions. Employees may receive more than one achievement award within one performance year.

(b) Under the two-level summary rating pattern, recognition for performance excellence and other contributions will be primarily non-rating-based awards. Employees who receive a rating of record of Fully Successful, and meet the additional criteria articulated below, are eligible for, but not entitled to, a Quality Step Increase (QSI).

   (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 10 of their grade level;

   (4) Have performed in the same grade and type of position for at least eighteen (18) months before the end of the appraisal cycle;

   (5) Have received a rating of record of at least Fully Successful for at least the three most recent performance years (or the two most recent performance years if the employee is new to the Federal government);

   (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 104 weeks.

(c) A QSI recommendation cannot be effected until the 104 week mandatory waiting period is completed, but as long as at least two performance years since the prior QSI, a subsequent QSI can simply be held until such time the 104 week requirement is met.

(d) Because a two-tier summary rating pattern does not differentiate among levels of successful performance, monetary awards and time-off awards are not authorized on the basis of ratings of record in that summary rating pattern. Instead, non-rating-based achievement awards will be utilized to recognize specific accomplishments that supported excellence in performance.

Section 2 – Other Types of Awards.

(a) Achievement Awards:

(1) Achievement awards are non-rating-based monetary awards that recognize specific accomplishments that are in the public interest and have exceeded normal job requirements. Achievement awards may be granted to groups of employees, and/or for a suggestion or invention.

(2) Eligibility.

(i.) All employees with a current rating of record of Fully Successful are eligible for achievement awards.

(ii.) These awards can be for individual or group contributions.

(iii.) Employees may receive more than one achievement award within one performance year.

(b) Time-Off Awards:

A Time-Off Award (TOA) is time off from duty, without loss of pay or charge to leave, granted to a Federal employee as a form of incentive or recognition. TOAs are granted in increments of no less than one (1) hour. Full-time employees may be awarded up to eighty (80) hours of time off during a leave year, but not more than forty (40) hours in one award. Part-time employees may be granted TOAs up to the average number of work hours in the employee’s biweekly scheduled tour of duty during a leave year. Employees may carry over up to 80 hours of TOAs at the end of each leave year.

(c) Suggestion and Invention Awards:

Suggestion and Invention awards are non-rating based monetary awards which may be given as a monetary and/or TOA and which recognize suggestions and inventions from employees or groups of employees that:

(i.) Further the mission of the Agency or other Federal government operations or interests;

(ii.) Save the Agency or sub-organization money;

(iii.) Promote internal communication or employee engagement;

(iv.) Achieve a significant reduction in paperwork;

(v.) Improve customer service; or

(vi.) Improve efficiency.

Section 3 - Award Information

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

ARTICLE 22

Employee Development and Training

Section 1 – General

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

Section 2 – Policy

The Employer will attempt to maintain a proactive and systematic training policy that establishes a connection with the Agency's mission, vision, and goals. Training and employee development opportunities should be made available on an equitable basis.

Section 3 – Orientation

The Employer will provide orientation training t to each newly appointed or transferred bargaining unit employees. Orientation topics may include, but are not limited to, employee rights and obligations, travel regulations, an overview of FNS programs, and/or the administrative structure of the Agency. Within thirty (30) days of his/her official start date, new employee(s) will be given a copy of the position description (PD) for the position for which he/she was hired. The Employer will inform each new bargaining unit employee of the right to join or refrain from joining the Union.

Section 4 - Employee Training Method

(a) Each fiscal year, the Employer will analyze training needs and priorities. The Employer may allocate funding when available to accomplish identified training priorities.

(b) Employees are encouraged to use all available resources such as FNS Headquarters and regional training resources.

Section 5 – Individual Development Plan (IDP)

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

ARTICLE 23

Position Classification

Section 1 - Purpose and Content of Position Descriptions

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

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

Section 2 - Classification

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

Section 3 - Union Access to Proposed Classification Standards

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

Section 4 - Union Input on Changes to Employee Position Descriptions

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

Section 5 – Classification Reviews and Appeals

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

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

ARTICLE 24

Merit Promotion and Internal Placement

Section 1 - General

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

Section 2 - Objectives of the Merit Promotion Process

The objectives of the merit promotion process are to:

(a) Bring highly qualified candidates to the attention of the Employer based on merit;

(b) Provide qualified employees an opportunity to receive fair consideration for higher level positions; and,

(c) Provide an incentive for employees to improve their performance and develop their knowledge, skills, and abilities.

Section 3 - Inclusion in the Merit Promotion Process

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

(a) Filling a bargaining unit position in the competitive service by promotion;

(b) Reassignment, reinstatement, transfer or change to a bargaining unit position with more promotion potential than a permanent position previously held in the competitive service;

(c) Transfer or reinstatement to a position at a higher grade than a permanent position previously held in the competitive service;

(d) Selection for a temporary or time-limited promotion to a higher graded position for more than 120 calendar days;

(e) Selection for a detail opportunity to a higher graded position or to a position with higher promotion potential for more than 120 calendar days; or,

(f) Selection for training where eligibility for promotion depends on completion of training by the employee.

Section 4 - Exclusion from the Merit Promotion Process

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

(a) Career ladder promotions, when the career ladder grades were initially documented (e.g., on the position description or a vacancy announcement) and the position was properly filled;

(b) Promotions resulting from an employee's position being reclassified at a higher grade because of additional duties and responsibilities, issuance of a new classification standard, or correction of a classification error;

(c) Reinstatement, transfer, promotion (including temporary or term), reassignment, detail, or change to a lower grade, to a position having no higher grade or promotional potential than a position previously held on a permanent basis in the competitive service, provided the employee was not removed from that position for cause;

(d) Temporary promotion of 120 calendar days or less;

(e) Selection for details of 120 calendar days or less to a higher graded position or to a position with higher promotion potential;

(f) Position changes permitted by reduction-in-force regulations;

(g) Promotions to a grade previously held on a permanent basis in the competitive service from which an employee was separated or demoted for other than performance or conduct reasons;

(h) Actions taken as a remedy for an EEO, MSPB, or negotiated grievance procedure settlement or decision, or for failure to receive proper consideration in a competitive promotion action; or,

(i) Selection for training, other than training under Section 3, number 6.

Section 5 - Temporary Promotions Made Permanent

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

Section 6 - Area of Consideration

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

Section 7 - Vacancy Announcements

When the Employer elects to utilize the merit promotion process as a source to fill a vacancy or for other actions described in Section 3, the Employer will post a vacancy announcement in accordance with merit promotion procedures. The announcement will be posted on USAJOBS and remain open for a minimum of ten (10) working days. Applications received or post-marked on or before the closing date and time as stated in the vacancy announcement and in the manner stated in the vacancy announcement will be accepted. At a minimum, the vacancy announcement will contain:

(a) Announcement number;

(b) Opening and closing dates (an open continuous announcement will be so indicated);

(c) Position title, series, and grade(s) and salary range, including identification of full performance range;

(d) Organizational location and duty station;

(e) Promotion and career ladder potential, if any;

(f) Area of consideration and whether applications will be accepted from outside area of consideration;

(g) When the area of consideration is government wide or All Sources, Veteran Employment Opportunities Act (VEOA) information, including documentation required for proof of eligibility;

(h) VRA, 30% Disabled Veterans , or other special appointment authority statement;

(i) Principle duties, including estimated potential for travel if any;

(j) Agency's intent to accept applications from groups eligible under non- competitive hiring authorities;

(k) Qualification standards for General Schedule positions or other qualification standards permitted by OPM, necessary for filling the position, and any selective placement factors;

(l) Evaluation criteria and method;

(m) Procedures for applying;

(n) Identification of probation periods for new employees and supervisors (if applicable)

(o) Bargaining unit status;

(p) Statement of Equal Employment Opportunity; and

(q) Number of positions expected to be filled if more than one.

Section 8 - Use of Office Equipment

Employees may use office computers, including the Internet and Email, fax machines, copy machines, telephones, and blank envelopes for preparing an application for promotion or other Federal government employment. Employees, however, may not use official work time for preparing the applications.

Section 9 - Selective Placement Factors and Basic Eligibility

The Employer will determine if selective placement factors are essential to the successful performance of a position. In such cases, they will constitute a part of the minimum eligibility requirements for the position and will be stated on the vacancy announcement. Applications that are received will be evaluated by the Human Resources Division or its service provider for basic eligibility requirements, time-in-grade restrictions and any selective placement factors.

Section 10 – Candidate Evaluation

In order to assure full consideration, the application must include all information and documentation specified in the vacancy announcement. This may include information such as awards, training, education, employment, and outside activities. For all vacancies covered by this Article, when available, the candidate's most recent appraisal will be used.

Section 11 - Selection Process

(a) The selecting official may select from among any source provided, or may choose not to fill the vacancy. If an insufficient number of candidates are referred, the selecting official may request that the area of consideration be extended and re-announce the vacancy.

(b) If one bargaining unit employee candidate is interviewed from a merit promotion certificate, all bargaining unit employee candidates must be interviewed. When an interview panel is used, panel members will remain consistent for all interviews absent extenuating circumstances such as travel or leave. When candidates cannot be easily

interviewed in person, e.g., not within the local commuting area, the interview may be accomplished by any other means deemed appropriate by the Agency. Selection criteria utilized by the selecting official should be uniformly applied to all candidates referred to the selecting official.

(c) The selecting official should make a decision to select or not to select as soon as possible but not later than fifteen (15) calendar days from the date of issuance of the certificate(s). The Selecting Official may request an extension of the certificate not to exceed an additional fifteen (15) days.

(d) The selecting official will comply with merit promotion principles when making a competitive promotion selection under this Article.

(e) Upon request, the Employer will inform an applicant of the status of his/her application.

(f) Upon request, the Employer will advise the Union of the name of the selected candidate for bargaining unit positions.

Section 12 - Effective Date of Promotion

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

Section 13 - Career Guidance

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

(a) Explanations of any part of the Merit Promotion Plan;

(b) Details of the evaluation techniques;

(c) The qualifications required for the position;

(d) If the employee was among the best qualified;

(e) The total points awarded on the assessment questionnaire in the automated staffing process; and

(f) Minimum number of total points which were needed to make the best qualified list.

Section 14 - Priority Consideration

(a) If the Employer or an arbitrator determines that an employee was improperly excluded from the best qualified list for a vacancy, he/she will receive priority consideration for the next appropriate vacancy for which he/she is qualified. An appropriate vacancy is one in the same commuting area, at the same grade level, and with equal promotional opportunity as the position for which the employee was denied proper consideration.

(b) Priority consideration means that the employee will be given bona fide consideration by the selecting official before any other candidates, except for others with priority rights, are referred for the position to be filled. Priority candidates are entitled only to priority consideration, not selection, and may receive priority referral one (1) time only. In the event two (2) or more employees receive priority consideration for the same promotion action, they may be referred together or separately. Unless regulations specify differently, the selecting official may consider them in any manner.

(c) Upon request, an employee with priority consideration will be provided written justification if not selected, unless another priority candidate was selected. The employee will not be considered in competition with other candidates nor compared to other candidates unless he/she subsequently submits an application for competition after an announcement is posted.

Section 15 - Release of Evaluative Material and Assessment Questionnaire to the Union

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

(a) The release of any information will only occur if fully in accordance with law, regulations and related case law.

(b) In order to safeguard the content of assessment questionnaires, in lieu of releasing this material, the Employer may arrange for it to be reviewed in the presence of an authorized official.

(c) All information may be sanitized to protect an individual's right to privacy.

Section 16- Impact of Investigation on Consideration for Promotion

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

Section 17 - Demotion Due to Inability to Perform at Required Level

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

Section 18 - Use of Annual/Sick Leave as Basis for Non-selection

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

Section 19- Release of Merit Promotion Information to the Union

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

(a) Announcement number;

(b) Date of Report;

(c) Number of vacancies;

(d) The series and grades of the employees referred;

(e) Whether or not the candidates were employees within the unit;

(f) Selection action;

(g) Date of selection action; and,

(h) Date the selected candidate is eligible for promotion.

Section 20 - Retention of Promotion and Selection Information

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

ARTICLE 25

Details, Temporary Promotions and Reassignments

Section 1 – General

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

Section 2 – Details

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

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

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

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

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

Section 3 - Temporary Promotions in Lieu of Detail

(a) A bargaining unit employee who is detailed to a higher graded position for more than thirty (30) consecutive calendar days will be temporarily promoted to that position and

paid accordingly, effective no later than the beginning of the first full pay period following the thirtieth (30th) day of the detail, provided the employee meets the appropriate qualification standards and time-in-grade requirements. The Employer may also elect to promote an employee at an earlier date in a detail or for a shorter detail when it determines this to be appropriate and justified.

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

(c) All prior service of that employee during the preceding twelve (12) months in a noncompetitive temporary promotion or detail to a higher graded position or position with higher promotion potential counts toward this 120 day limitation.

Section 4 – Reassignments

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

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

(c) If an involuntary reassignment of a bargaining unit employee becomes necessary for any reason, the Employer will give written notification of the reassignment and reasons to the employee and Union prior to the effective date. The employee will be allowed to have a union representative, at his/her option, at meetings with management officials concerning the action. The Employer will take into consideration the personal and family hardship that can result if a change in duty station is involved.

ARTICLE 26

Probationary Employees

Section 1 – General

(a) The purpose of a probationary period is to give an Agency the opportunity to determine the fitness of a new employee for continued employment, and the opportunity to terminate that employee without formal procedures if he/she fails to demonstrate fully acceptable conduct or performance.

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

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

Section 2 - Probationary Report

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

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

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

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

(a) When termination of a probationary employee is based in whole or in part on conditions arising prior to the appointment, the employee is entitled to the following:

(1) Advance written notice stating the reasons for the action;

(2) An opportunity to provide a written explanation of the events related to pre-employment issue(s) ; and

(3) A written response stating the reasons for the action, and delivered to the employee on or prior to the effective date.

(b) The decision shall inform the employee of the right to appeal to the Merit Systems Protection Board (MSPB), based on the reasons noted below, and the time limit for filing the appeal. These procedures will not cause the Employer to miss a deadline to terminate a probationary employee.

Section 5 -Appeal Rights

(a) A probationary employee may appeal a termination decision to the MSPB only when the employee alleges that the termination was based on partisan political reasons or marital status.

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

(c) Probationary employees terminated under the terms of this Article have the right to file a discrimination complaint with the EEOC in accordance with their regulations and timeframes. The employee may not utilize both the MSPB appeal procedure and the EEO complaint procedure.

ARTICLE 27

Part-time Employment

Section 1 - Definition

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

Section 2 – Requesting Part-time Employment

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

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

(1) employees seeking gradual transition into retirement;

(2) employees with disabilities or who require a reduced work week;

(3) parents who must balance family responsibilities with the need for additional income; or

(4) students who must finance their own education or vocational training.

Section 3 – Benefits

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

Section 4 – Holidays

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

Section 5 – Limitations

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

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

Section 6 – Request to Change to Full-time Schedule

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

Section 7 - Temporary Schedule Changes

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

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

ARTICLE 28

Equal Employment Opportunity

Section 1 - Supporting the EEO Program

The Parties, within their respective areas of responsibility, will fully support the Equal Employment Opportunity (EEO) program at all levels. The purpose of the federal EEO Program is to eliminate existing unlawful discrimination against federal employees and applicants, prevent future discrimination, address the effects of past discriminatory practices on workforce representation of women, minorities and people with disabilities, and strive for a federal workforce that reflects our nation's diversity. The EEO program provides equal opportunity in federal employment and prohibits discrimination in employment because of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability and genetic information. The law also protects you from retaliation if you oppose employment discrimination, file a complaint of discrimination, or participate in the EEO complaint process (even if the complaint is not yours).

Section 2 – Administering the EEO Program

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

Section 3 – Affirmative Employment Report and Plan

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

Section 4 – Representation

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

Section 5 – Reasonable Accommodation

(a) Requests for reasonable accommodation shall be processed in accordance with law, regulation and Agency policy. The Employer will consider all requests for reasonable accommodation. The requesting employee may be required to provide medical documentation of the condition.

(b) The Employer will decide requests for reasonable accommodations on a case-by-case basis.

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

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

ARTICLE 29

Reduction in Force

Section 1 – General

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

Section 2 - Notice to Union

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

   (1) the reason for the action;

   (2) the approximate number of employees who may be affected initially;

   (3) the types of positions anticipated to be affected initially; and

   (4) the anticipated effective date that action will be taken.

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

Section 3 – Notice to Employees

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

Section 4 – Use of Vacancies

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

Section 5 – Re-employment Priority List

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

ARTICLE 30

Disciplinary Actions

Section 1 - Definition

In accordance with regulations, disciplinary actions for purposes of this Article include formal written reprimands and suspensions of fourteen (14) calendar days or less, for such cause as will promote the efficiency of the service. Employee means an individual in the competitive service who is not serving a probationary period.

Section 2 - Informal Counseling

A disciplinary action may be preceded by counseling and assistance of an informal nature, which may include an oral or written caution.

Section 3 - Official Reprimands

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

Section 4 - Suspensions

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

(a) The employee will be given fifteen (15) calendar days advance written notice stating:

(1) The specific reason(s) for the proposed suspension;

(2) That the employee has ten (10) calendar days to respond orally and/or in writing;

(3) The official to whom the reply should be sent;

(4) That the employee has the right to review the material that is relied on to support the reason(s) for the action, subject to Privacy Act requirements; and,

(5) That the employee has the right to union or other representation.

(b) The employee may submit affidavits or other documentary evidence in support of the response.

(c) The Employer will reply in writing with the final decision and the specific reasons at the earliest practicable date after the receipt of the reply or the expiration of the reply period. This decision will be made by a higher level official than the proposing official. The action will not take effect prior to the final decision notice being provided or sent to the employee. The final decision notice will inform the employee of the effective date and the right to file a grievance using the Negotiated Grievance Procedure.

(d) The employee has the right to union representation throughout this process.

(e) Copies of relevant notices, replies (including summaries of oral replies), final decisions, and supporting documentation will be maintained by the Agency and will be made available to the employee and/or the union representative upon request, subject to Privacy Act requirements.

(f) By mutual agreement of the Parties, deadlines may be extended.

Section 5 - Grievance Rights

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

Section 6 - Non-Sustained Actions

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

ARTICLE 31

Adverse Actions

Section 1 – Definition

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

(b) It does not apply to:

(1) A suspension or removal under 5 USC 7532 (National Security);

(2) A reduction-in-force action under 5 USC 3502;

(3) The reduction in grade of a supervisor or manager who has not completed a probationary period under 5 USC 3321(a)(2) if the reduction is to the grade held immediately before becoming a supervisor or manager;

(4) A reduction in grade or removal under 5 USC 4303 (Unsatisfactory Performance);

(5) An action initiated under 5 USC 1215 or 5 USC 7521;

(6) An employee serving under an initial probationary period; or

(7) Any other statutory or regulatory exclusion not specifically mentioned above.

Section 2 - Informal Counseling

An adverse action may be preceded by counseling and assistance.

Section 3 – When Initiated

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

Section 4 - Notice of Proposed Action

(a) A bargaining unit employee against whom an adverse action is proposed will be given thirty (30) calendar days advance written notice, unless there is reasonable cause to believe the employee has committed a crime, a statute or regulation mandate a different time period or the time period is provided for under some other exception. The notice shall state in specific detail the reasons for the proposed action. The notice will also

state that the bargaining unit employee has the right to union or other representation, and will include the name of the official to whom a reply should be addressed, usually the deciding official or his/her designee. Material used by the Employer to support the reasons stated in the notice will be made available to the employee.

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

Section 5 - Right to Reply

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

Section 6 - Final Decision

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

Section 7 – Appeal/Grievance Rights

Adverse Actions may be grieved using the Negotiated Grievance Procedure (only if the action is other than removal) or appealed to the Merit Systems Protection Board (MSPB), but not both. Subject to MSPB approval, if the Union is not the employee’s designated representative, it may have one representative present during hearings before the MSPB, and at any other appropriate time. The Employer shall make employees available on behalf of either Party for interviews and affidavits, and as witnesses at hearings, when determined appropriate by MSPB.

Section 8 - Adverse Action Files

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

ARTICLE 32

Negotiated Grievance Procedure

Section 1 – Purpose

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

Section 2 - Exclusive Procedure

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

Section 3 – Definition

A grievance means any complaint by:

(a) An employee concerning any matter relating to the employment of the employee;

(b) The Union concerning any matter relating to the employment of an employee; or

(c) The Union or the Employer concerning:

  (1) The effect or interpretation, or a claim of breach of a collective bargaining agreement; or

  (2) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

Section 4 – Excluded from the NGP

Excluded from the NGP are matters concerning the following:

(a) The assignment of a final rating of record;

(b) A claimed violation related to prohibited political activities (5 USC 73, Subchapter III);

(c) Retirement, life insurance, or health insurance;

(d) A suspension or removal for national security reasons (5 USC 7532);

(e) Any examination, certification, or appointment;

(f) The removal of probationary employees;

(g) The classification of any position which does not result in the reduction in grade or pay of any employee;

(h) The exercise of the authority of the Employer to establish tours of duty or to revise tours of duty, unless specifically covered elsewhere in this Agreement, except that the employee may grieve inequitable application of this authority;

(i) The content of published Agency regulations and policies;

(j) Non-selection for promotion from a group of properly certified candidates, unless the employee alleges a violation under 5 USC 2302, prohibited personnel practices, or civil rights statutes;

(k) A preliminary warning notice;

(l) An action which terminates a temporary promotion;

(m) The substance of the critical elements and performance standards of an employee's position which have been established in accordance with law and regulations;

(n) The receipt of or failure to receive (1) a Quality Step Increase, cash award, the award of any form of incentive pay, including recruitment, retention, relocation payments or honorary award, unless the employee alleges a violation of 5 USC 2302, or (2) the adoption of or failure to adopt an employee suggestion;

(o) The return of an employee from an appointment as a supervisor or manager to a non-supervisory or non-managerial position for failure to satisfactorily complete the probationary period;

(p) Any decision to remove an employee from Federal service for misconduct or unacceptable performance; or

(q) Any matter properly being considered under another statutory appeal procedure (see Section 12).

Section 5 - Informal Resolution

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

Section 6 – Filing Grievances

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

(b) The written grievance shall contain the following information:

(1) Date of the grievance,

(2) The employee(s)/grievant(s) name and work telephone number; and, the name of the union representative, if applicable;

(3) Sufficient detail to identify the basis of the grievance, including reference to the Article(s) and Section(s) of the Agreement, and general reference to any practice, law, rule or regulation alleged to have been violated, misinterpreted or misapplied;

(4) The time, date, and place of the incident giving rise to the grievance;

(5) The remedy or relief requested;

(6) The name and signature of the grievant and/or designated union representative, if applicable; and

(7) Request for a meeting with the official, if desired.

(c) Supporting documentation or materials may be attached to the grievance.

Section 7 – Union Observer at Grievances

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

Section 8 - Steps for Filing Employee Grievances

(a) If requested by either Party, the Step 1 official shall meet with the employee and/or union representative concerning the grievance.

(b) **Step 1:** If a grievance cannot be resolved informally, the concerned employee and/or union representative shall first present the grievance, in writing, to the first-line supervisor or appropriate official authorized to settle the matter (the "Official"), with a copy provided simultaneously to the Labor and Employee Relations Branch Chief.

(1) Grievances must be presented within fifteen (15) working days from the date of occurrence or the date the employee or Union became aware of the problem. The employee and/or Union must identify the matter of concern and indicate that the grievance process is being initiated.

(2) The Official will provide a decision, in writing, to the employee and/or the union representative, if designated, within fifteen (15) working days after receipt of the grievance. The decision will include the name and title of the next higher-level to which the grievance may be directed (the Step 2 Official), if not resolved at this step.

(c) <u>Step 2:</u>

(1) If the grievance is not settled at Step 1, the employee and/or union representative may, within five (5) working days of receipt of the Step 1 decision, forward the Step 1 grievance, and any additional supporting documentation, to the Step 2 Official identified in the Step 1 grievance decision, with a copy provided simultaneously to the Labor and Employee Relations Branch Chief.

(2) If requested by either Party, the Step 2 Official shall meet with the employee and/or union representative concerning the grievance. The Step 2 Official will provide a decision, in writing, to the employee and/or union representative, if designated, within fifteen (15) working days after receipt of the grievance. The decision shall contain the name and title of the official to whom the grievance may be directed (the Step 3 Official), if not resolved at this step.

(d) <u>Step 3:</u>

(1) If the grievance is not settled at Step 2, the employee and/or the union representative may, within five (5) working days of receipt of the Step 2 decision, forward the Step 2 grievance, and any additional supporting documentation, to the Step 3 Official identified in the Step 2 grievance decision, with a copy provided simultaneously to the Labor and Employee Relations Branch Chief.

(2) If requested by either Party, the official shall meet with the employee and/or union representative concerning the grievance. The Step 3 Official will provide the employee and/or the union representative, if designated, a written decision within fifteen (15) working days after receipt of the grievance.

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

Section 9 - Union or Employer Grievances

(a) Grievances filed by the Employer against the Union will be filed with the AFGE Chapter President within fifteen (15) workdays after the matter, issue or incident out of which the grievance arose, or fifteen (15) workdays after the date the Employer knew, or should have known, of the matter, issue or incident giving rise to the grievance.

(b) Grievances filed by the Union against the Employer concerning the Union's institutional rights (not presented by or on behalf of an employee or group of employees), will be filed with the Labor and Employee Relations Branch Chief within fifteen (15) workdays after the date the Union knew, or should have known, of the matter, issue or incident giving rise to the grievance.

(c) Upon receipt of the grievance, either Party may request that a grievance meeting be held. If requested, the meeting shall be held within ten (10) workdays of the date of the request. The Union may have an equal number of representatives as management representatives. The responding Party will provide a written decision within twenty (20) workdays of the meeting, or, if no meeting is held, within twenty (20) workdays of the submission of the grievance. This decision issued will be a final decision and, as such, is subject to arbitration, at the election of the grieving Party.

Section 10 - Time Limits

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

Section 11 - Grievance/Appeal Options

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

Section 12 - Question of Grievability/Arbitrability

If either Party declares an issue non-grievable or non-arbitrable, the original grievance shall be amended to include this issue. The Parties will raise questions of grievability or

arbitrability no later than twenty (20) workdays before the scheduled hearing on the merits. Disputes concerning grievability or arbitrability shall be referred to arbitration as a threshold issue and shall be decided first.

ARTICLE 33

Arbitration

Section 1 - Invoking Arbitration

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

Section 2 – Requesting and Selecting Arbitrators

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

Section 3 - Designation of Arbitrator

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

Section 4 – Defining Issues for Arbitration

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

Section 5 - Cost of Arbitration

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

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

Section 6 – Evidence and Witnesses

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

Section 7 - Arbitrator's Award

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

Section 8 – Exception to Arbitrator's Award

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

Section 9 - Application of Award

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

Section 10 – Transcripts

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

ARTICLE 34

Alternative Dispute Resolution

Section 1 – General

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

Section 2 – Use of the ADR Procedures

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

(b) When ADR is used to address an EEO issue, it shall be consistent with 29 CFR and the applicable management directive with regard to timelines and other requirements or guidance on the use of ADR in the EEO Complaint Process.

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

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

Section 3 – Neutrals

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

Section 4 – Confidentiality

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

Section 5 – Settlement Agreements

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

Section 5 – Training

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

ARTICLE 35

Union Dues Deductions

Section 1 - Deduction Agreement

(a) The Employer will deduct such dues as are authorized from the pay of each bargaining unit member who voluntarily requests such deduction.

(b) The Union will inform members of the voluntary nature of these allotments.

Section 2 - Requesting Dues Deductions

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

Section 3 - Terminating Deductions

(a) The Union will inform all members of the conditions for termination of dues deductions, which will be in accordance with the then current law.

(b) The Union will promptly request termination of a member's dues deductions by submitting a signed form SF-1188 to HRD.

Section 4 – Employee Responsibilities

(a) The individual employee of the USDA who is a member of the AFGE and included within an exclusive unit shall obtain his/her SF-1187, REQUEST AND AUTHORIZATION FOR VOLUNTARY ALLOTMENT OF COMPENSATION FOR PAYMENT OF EMPLOYEE ORGANIZATION DUES, from AFGE and shall file it with the designated AFGE representative, who will forward it to the Personnel Office of the Agency.

(b) In those cases wherein management and the union disagree regarding the eligibility of an employee for dues withholding, both parties acknowledge that such representation disputes are the sole function of the FLRA and accordingly agree that the dues of such an employee shall be placed in an escrow account pending an appropriate Authority determination.

(c) The employee shall be instructed by AFGE to complete Part A and Part B. No other number must appear in the block provided as "identification number" except the employee's Social Security Number.

(d) Deductions will be made each pay period by the USDA and remittances will be made each pay period to the National Office of the AFGE.

(e) Remittances shall be accompanied by a computer tape, one for each pay period, by Locals, showing the names of the member employees from whose pay dues were withheld, the amount withheld, the code number of the Local to which each employee member belongs, the social security number, and will be summarized to show the number of members for whom dues were withheld, total amount withheld, and the amount due the Local.

(f) Each tape will also include the name of each employee member for that local who previously m ade an allotment for whom no deduction was made whether due to leave without pay or other cause. Such employee shall be designated with an appropriate explanatory term.

Section 5 – Employer Responsibilities

(a) It is agreed that Part A of SF-1187, including the insertion of code numbers of AFGE and the appropriate Local number, will be executed by the Financial Officer of the Local to which the employee member belongs; or by the National Secretary-Treasurer of AFGE, if the member is a member-at-large.

(b) The amount so certified shall be the amount of the regular dues (exclusive of initiation fees, assessments, 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.

(c) If there should be any change in the dues structure or amount, a blanket authorization listing each employee's name and social security number, and the amount of dues to be withheld will be submitted to the appropriate payroll office. The listing will be identified by labor organization and Local codes. Only one such change may normally be made in any period of twelve consecutive months for a given Local.

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

  (1) As of the beginning of the first full pay period following receipt of notice that exclusive recognition has been withdrawn;

  (2) At the end of the pay period during which an employee member is separated from the USDA; or

  (3) At the end of the pay period during which the payroll office receives notice from AFGE or a Local of AFGE that the employee member has ceased to be a member in good standing.

ARTICLE 36

Duration, Publication and Revision of Agreement

Section 1 – Effective Date

(a) Consistent with 5 U.S.C. § 7114, upon execution, this agreement will become effective thirty (30) calendar days from the date of the Agency Head review approval; or at the end of the thirty day period provided for Agency Head review, if USDA does not act.

(b) If upon Agency Head review, any provision(s) or Articles(s) is (are) determined to be inconsistent with law, rule, or regulation, either party may initiate bargaining to re-negotiate over those provisions.

Section 2 – Publication of Agreement

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

Section 3 – Initial Term of Agreement

This Agreement will remain in full force and effect for three (3) years from its effective date. If either Party wishes to renegotiate this Agreement, it must give written notice to the other, not more than one hundred twenty (120) nor less than sixty (60) days prior to the expiration date. All mandatory terms of the existing Agreement will remain in effect until a new Agreement has become effective.

Section 4 - Automatic Renewal

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

Section 5 - Larger Bargaining Unit

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

COLLECTIVE BARGAINING AGREEMENT SIGNATORIES

This agreement is executed between the Food and Nutrition Service and the American Federation of Government Employees, Local No. 2735 and is effective as December 9, 2020, the date it was approved by the Secretary of Agriculture or his/her designee.

FNS: **AFGE:**