TABLE OF CONTENTS

General Provisions

Preamble ……3
Article 1. Parties to the Agreement, Recognition, and Definition of Bargaining Unit……...4
Article 2. Employee Rights……..…5
Article 3. Union Rights and Responsibilities……...7
Article 4. Management Rights and Responsibilities……....8
Article 5. Dues Withholding……....9

Hours of Work and Pay Provisions

Article 6. Work Schedules/Tours of Duty……10
Article 7. Premium Pay and Compensatory Time…….20
Article 8. Leave…….....24

Personnel

Article 9. Position Descriptions……40
Article 10. Personnel Records…… 44
Article 11. Career Development and Training……45
Article 12. Employee Orientation……....53
Article 13. Travel and Per Diem……..54
Article 14. Telework……...….58
Article 15. Technology, Methods and Means of Performing Work……....63

Employment

Article 16. Career Ladder Promotions……...…..66
Article 17. Merit Promotion…….67
Article 18. Reassignments……....73
Article 19. Details…….……..75
Article 20. Part-time Employment……...78
Article 21. Probationary Employees……....80
Article 22. Reductions in Force (RIF) and Transfer of Function…….....82
Article 23. Furlough…….....90

Employee Relations

Article 24. Performance Appraisal……...…96
Article 25. Within Grade Increases (WGI)…….....102
Article 26. Unacceptable Performance……...……..103
Article 27. Employee Awards and Recognition……..……...107

Article 28. Prohibited Personnel Practices……..……...111
Article 29. Disciplinary and Adverse Actions……..….....115
Article 30. Notices to Employees……..121
Article 31. Waiver of Overpayment…….....122
Article 32. Retirement Counseling and Resignation…….....123
Article 33. Outside Employment…….....…124
Article 34. Employee Assistance Program (EAP)…….....125
Article 35. Health and Safety…….....127

Labor Relations

Article 36. Negotiating Reorganizations and Other Workplace Changes.....129
Article 37. Commercial Activities……136
Article 38. Equal Employment Opportunity…….....138
Article 39. Career Enhancement……....141
Article 40. Reports and Notifications……....148
Article 41. Grievance Procedures……..149
Article 42. Arbitration……....155
Article 43. Alternative Dispute Resolution (ADR) Under EEO…….....162
Article 44. Mid-Contract Negotiations……..165
Article 45. Precedence, Effect of Law and Regulation, and Severability……..168
Article 46. Duration and Termination……....169
Article 47. Official Time and Union Representatives……....170
Article 48. Facilities and Services…….....176

Other Contract Articles

Article 49. Child Day Care Facilities and Subsidy Program…….180
Article 50. Food Services…….....183
Article 51. Transit Benefits Subsidy Program…….....184
Article 52. Fitness/Health Facilities……..…186
Article 53. Smoking Policy……....187
Article 54. Business Cards……188

Appendices

Appendix 1. Weingarten Notice……..……189
Appendix 2. Dues Withholding Memorandum of Understanding…….....190
Appendix 3. Telework Memorandum of Understanding……..……....194
Appendix 4. Vacancy Announcement Memorandum of Understanding……..196
Appendix 5. De-minimis Workplace Changes Memorandum of Understanding…….197

PREAMBLE

A. The Parties agree to mutually establish and maintain a work environment that ensures the integrity of the Federal Service, promotes the most effective and efficient delivery of Agency programs and services, protects the interests of American taxpayers, promotes good workmanship and the principles of good management, protects human dignity, assures equal and fair treatment of employees, and to the extent practicable provides a work experience for all employees that is personally challenging, rewarding, and that provides equal opportunity for professional growth and success.

B. Employees and managers shall conduct themselves in a professional and business-like manner, characterized by mutual courtesy and consideration in their day-to-day working relationship.

C. The Parties, especially Union representatives and first-line supervisors, are encouraged to meet as necessary to informally discuss and attempt resolution of matters or problems of concern to either party, including, but not limited to, employees' concerns or dissatisfactions and problems of Agreement interpretation and administration.

D. It is the intent of the Parties to establish procedures to accommodate the Union's legitimate need to perform representational activities specified in this Agreement and as permitted by law. It is also the intention of the Parties to accommodate the Employer's legitimate interest in ensuring no unreasonable disruption of the Employer's ability to carry out its critical day to day operations and perform its overall mission.

E. The Parties agree that most grievances and complaints should be resolved in an orderly, prompt, and equitable manner that will maintain the self-respect of the employee and be consistent with the principles of good management and public interest.

F. The definitions of all terms in this agreement shall be consistent with definitions of identical terms at 5 U.S.C. 7103, or other relevant provision of law, as applicable, unless otherwise specified in this Agreement.

G. The Parties recognize Management’s right to assign work in accordance with Section 7106, Title 5, United States Code. Consistent with that right, the Parties acknowledge that this Agreement may contain work assignments to be performed by specific Agency officials referred to by position, e.g. supervisor, or specific organizational components, e.g. Human Resources Office. With the exception of Article 41, Grievance Procedures, such language is not intended to contractually bind the Agency to assign the stated work to those officials or organizations. Rather, it is intended to reflect the Agency’s decision to make those assignments in accordance with the reserved right to assign work. It is included in the Agreement as a matter of administrative convenience to promote full understanding of the processes and procedures contained herein.

ARTICLE 1: PARTIES TO THE AGREEMENT, RECOGNITION, AND DEFINITION OF BARGAINING UNIT

Section A. Parties to the Agreement: The parties to this Agreement are the U.S. Department of Agriculture, Foreign Agricultural Service, (FAS) Washington, D.C. metropolitan area, hereinafter known as the "Agency," "Employer," "FAS," or "Management"; and the American Federation of State, County and Municipal Employees (AFSCME) Local 3976, hereinafter known as the "Union."

Section B. Unit of Recognition: The unit of recognition covered by this Agreement is that unit certified by the Federal Labor Relations Authority (FLRA) in Case No. WA-RP-11-0057, and any subsequent unit certification issued by the FLRA during the term of this Agreement. The Employer recognizes the American Federation of State, County and Municipal Employees, Local 3976, as the exclusive representative of all employees (hereinafter sometimes referred to as "employees" or "bargaining unit employees") in the bargaining unit as defined below.

Section C. Bargaining Unit Coverage: Subject to the provisions of Section B, unless otherwise explicitly stated in this Agreement, or as required by applicable law, rule, or regulation, this Agreement covers all professional and non-professional employees employed by the USDA, Foreign Agricultural Service in the Washington, D.C. metropolitan area including professional and nonprofessional schedule B employees with re-employment rights and Schedule B employees without re-employment rights employed by the Foreign Agricultural Service. This Agreement excludes all management officials, supervisors, and employees described in Title 5, United States Code (U.S.C.), Section 7112 (b)(2),(3),(4),(6) and (7), employees working in any non-Foreign Agricultural Service agency through a Participating Agency Service Agreement (PASA) and all Foreign Service employees.

ARTICLE 2: EMPLOYEE RIGHTS

A. Each 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 employee shall be protected in the exercise of such right. Except as otherwise provided, such right includes the right:

1. To act for AFSCME in the capacity of a representative and the right, in that capacity, to present the views of AFSCME to heads of agencies and other officials of the Executive Branch of the Government, the Congress, or other appropriate authorities; and,

2. To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees.

B. An employee has the right to be represented by the Union at any meeting with FAS Management or anyone acting as an agent of FAS Management when the employee has a complaint concerning conditions of employment.

C. Employees will be provided annual notification during the month of September, of the right to have Union representation at any Management-initiated investigative meeting that may result in disciplinary action. A copy of the annual Weingarten Notice is found at Appendix 1.

D. Each employee has the right to be represented by the Union at any Management-initiated investigative meeting that may result in disciplinary action, or that the employee believes may result in disciplinary action, and shall be given the opportunity to obtain such representation, upon request.

E. Management is encouraged to notify each employee of his or her right to Union representation prior to, and no later than, the onset of any Management-initiated investigative meeting that may result in disciplinary action. Management is required to notify each employee at least 24 hours in advance of any Management-initiated investigative meeting unless there is an immediate need or otherwise agreed to by both Parties.

F. An employee may be represented by a representative of the employee's own choosing, in any employment-related appeal action not under the negotiated grievance procedure. The employee may exercise grievance or appellate rights established by law, rule, or regulation. When exercising these rights and the rights under the negotiated Agreement, the employee shall be granted a reasonable amount of official time for initiating, reviewing, preparing, presenting, and participating in the grievance process, in accordance with Article 47, Official Time and Union Representatives.

G. In accordance with the Whistleblower Protection Act, employees covered by this Agreement may, without fear of penalty or reprisal, engage in the disclosure of information not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs, which the employee reasonably believes evidences a violation of law, rule, or regulation; or evidences mismanagement, a waste of funds, an abuse of authority, or a danger to health or safety, in accordance with applicable laws and regulations.

H. Each employee has the right to file a complaint or grievance, act as a witness, and exercise any appeal or other right granted by law, rule, regulation or this Agreement without fear of restraint, coercion, discrimination, or reprisal.

I. Employees shall have the right to conduct their private lives as they see fit, and to engage in outside activities and employment of their own choosing, in accordance with applicable law and government-wide regulations.

J. Copies of the rules, regulations, and policies under which employees are obligated to work will be available at each office having primary responsibility for the program to which the regulations apply. For example, regulations governing the delivery of the personnel program to employees will be available in the servicing personnel office.

K. Employee counseling or cautions on conduct or unacceptable performance, or verbal warnings will be conducted in a setting that protects the employee's confidentiality.

L. Subject to the requirements of the Privacy Act, an employee may, upon request, review all official records about himself/herself. The employee shall be given copies of the records upon request. Records maintained on an employee that are not maintained on a permanent basis will be removed from official records in accordance with the Government's retention schedule unless otherwise specified in this Agreement. The removed records will be destroyed.

M. Employees have the right to use a reasonable amount of official time to meet with their Union representative for the purposes and under the procedures established in Article 47, Official Time and Union Representatives, of this Agreement.

N. Each employee has the right to choose whether to participate in Federally-sanctioned charitable and/or investment activities including, but not limited to, CFC, Savings Bond drives, and the like, freely, without coercion, and without fear of reprisal. Each employee also has the right to have his or her choices made and held in confidence.

ARTICLE 3: UNION RIGHTS AND RESPONSIBILITIES

A. The Union is the exclusive representative of the employees in the bargaining unit and is entitled to act for and negotiate collective bargaining agreements covering these employees. The Union is responsible for representing the interests of all employees in the bargaining unit without discrimination and without regard to labor organization membership.

B. For the purpose of administration of this Agreement, the Employer agrees to recognize representatives of AFSCME Council 26, AFSCME International and/or AFSCME designated or recognized private counsel. For any single issue, the Union will designate a single point of contact.

C. The Union has the right to represent an employee or group of employees at any formal discussion between one or more representatives of the Agency and one or more employees in the bargaining unit or their representatives concerning any personnel policy or practice or other condition of employment; or any examination of an employee in the unit by a representative of the Agency 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 Union representation. The Union has exclusive right to represent employees under the negotiated grievance procedure in this Agreement. An employee or group of employees may present a grievance or complaint without representation by the Union, provided that the Union is a party to all formal discussions and grievance proceedings. For written grievances, the Union will be given all grievance-related written documents as expeditiously as possible, but no later than five (5) work days after they are received or signed by the employer. The Union will be given copies of all decisions as expeditiously as possible but no later than five (5) work days after the Employer signs the decisions. Either Party may request an extension of these deadlines for mitigating circumstances.

D. Reasonable Notice: The Union will be given reasonable notice of, and provided reasonable time to be present at, formal discussions concerning any grievance, personnel policy or practice, or other condition of employment.

E. Restraint: Union officials and representatives performing duties in consonance with this Agreement and the Federal Labor Management Relations Act (FLMRA) will not be subject to restraint, coercion, reprisal, or discrimination as the result of performing such duties.

ARTICLE 4: MANAGEMENT RIGHTS AND RESPONSIBILITIES

In accordance with 5 U.S.C. 7106, the Employer retains the right:

A. To determine the mission, budget, organization, number of employees, and internal security practices of the Agency;

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

C. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which the Employer's operations shall be conducted;

D. With respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion or from any other appropriate source;

E. To take whatever actions may be necessary to carry out the Agency's mission during emergencies; and

F. To designate a single point of contact for any single issue.

ARTICLE 5: DUES WITHHOLDING

Members of the bargaining unit are authorized to effect voluntary allotment for the payment of dues to the Union subject to the provisions outlined in the Memorandum of Understanding between AFSCME Council 26 and the U.S. Department of Agriculture dated May 3, 1993. The full text of this Memorandum of Understanding is printed in Appendix 2 of this Agreement.

ARTICLE 6: WORK SCHEDULES/TOURS OF DUTY

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

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

1. Alternative Work Schedule – refers to both flexible and compressed work schedules.

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

3. Biweekly Pay Period – the 2-week period for which an employee is scheduled to perform work.

4. 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 an alternative work schedule must be present for work. Core hours are between 9:30 a.m. and 3:30 p.m.

5. Credit Hours – those hours within a flexible work schedule that an employee voluntarily elects to work in excess of his or her basic work requirements so as to vary the length of a workweek or workday. Credit hours may be worked and earned between 6:00 a.m. and 7:30 p.m., Monday through Friday, up to two (2) hours per day.

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

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

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

7. Flexible Work Schedule – means a work schedule that:

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

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

8. Maxiflex Schedule – a type of flexible work schedule that contains core hours on fewer than ten (10) workdays in the biweekly pay period and in which a full-time employee has a basic 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 work day or the number of hours each week consistent with the procedures in this Article. See Section F.

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

10. Temporary Schedule Change – a temporary work schedule change, as used in this Article, means two (2) pay periods or less, except as noted in Section F.6 of this Article.

11. Permanent Schedule Change – a permanent work schedule change, as used in this Article, means a period of time that exceeds two (2) pay periods.

12. Flexilunch – employees on a Gliding Schedule or Maxiflex schedule may, with advance supervisory approval, expand their lunch break within the lunch band on any given day, provided arrival and/or departure times are adjusted by an equivalent amount on that day.

13. Lunch Band – the period of time between 11:00 a.m. and 2:00 p.m. when an employee may take his or her lunch break. An employee may not be required to work more than six (6) hours without a lunch break.

14. Overtime Hours – for employees on a standard or flexible work schedule, work in excess of eight (8) hours in a day or forty (40) hours in a week, or outside of a Maxiflex schedule of (80) eighty hours in a pay period, if ordered and approved in advance, but does not include credit hours. For employees on a compressed work schedule, overtime are any hours in excess of those specified for full-time employees. For part-time employees on compressed schedules, overtime hours are those hours in excess of their compressed work schedule for a day (must be over 8) or, for a week (must be over 40).

15. Standard work schedule – a standard work schedule is Monday through Friday, eight (8) hours a day, with a 30 to 60 minute meal period scheduled to occur between 11:00 a.m. and 2:00 p.m., and a preset starting time occurring between 7:00 a.m. and 9:30 a.m.

16. Tour of Duty – under an alternative work schedule means the limits established within which an employee must complete his or her basic work requirement.

Section C. Work Schedule Options

1. Each employee must have in place a work schedule approved by the immediate supervisor. Supervisors must consider employee work schedule requests that are made in accordance with Section G. below. In cases where an alternate work schedule is not approved, the employee will work a standard work schedule as defined in the Article. In establishing the standard work schedule, the supervisor must consider and approve the requested starting times and meal period unless otherwise necessitated by Agency needs. Employees on a standard work schedule are not eligible to glide, earn credit hours, or flex their lunch period.

2. The following tables summarize alternative work scheduling options available to FAS in the Washington, D.C. metropolitan area as approved by OPM. Within these parameters, work schedules are to be established by supervisors to meet the needs of the Agency, with full consideration given to accommodate employee requests:

a. Available Compressed Work Schedule Options

	5-4/9 Option	4-10 Option
Tour	Eight (8), nine- (9)-hour days and one (1), eight- (8)-hour day per pay period	Four (4), ten- (10)-hour days per week as scheduled
Start time (Arrival and departure time cannot vary)	9-hour day: 6:00 to 9:30 a.m. 8-hour day: 7:00 to 9:30 a.m.	6:00 to 9:00 a.m.
Nonwork day	One (1) day per pay period as established	One (1) day per week as established
Glide	Ineligible	Ineligible
Credit hours	Ineligible	Ineligible
Flexilunch	Ineligible	Ineligible
Holiday Pay	Eight (8) hours on short day Nine (9) hours on long day	Ten (10) hours

b. Available Flexible Work Schedule Options

	Maxiflex	Gliding Schedule
Tour	As scheduled up to ten- (10-) hour days	Eight- (8-) hour work day
Nonwork day	One (1) or more as established	Ineligible
Start time	6:00 to 9:30 a.m.	7:00 to 9:30 a.m.
Glide	Eligible	Eligible
Credit hours	Eligible up to 2 hours per day (Not before 6:00 a.m. or after 7:30 p.m.)	Eligible up to 2 hours per day (Not before 6:00 a.m. or after 7:30 p.m.)
Flexilunch	Eligible	Eligible
Holiday Pay	Eight (8) hours	Eight (8) hours

3. Employees will record their time worked using current recording practices. Should the Agency wish to change such practices it will meet, consult, and bargain with the Union pursuant to Article 36 of this Agreement.

Section D. Compressed Work Schedule

1. An employee may request to work a compressed work schedule. The employee will submit a proposed schedule with his or her request.

2. The basic work requirement for an employee on a compressed work schedule is eighty (80) hours per pay period in fewer than ten (10) days. Employees on a compressed work schedule may request to work one of the following schedule options:

   a. 5-4/9 Compressed Plan - an employee works eight (8) 9-hour days and one (1) 8-hour day for a total of eighty (80) hours a pay period.

   b. Four-Day Workweek (4-10 Plan) - an employee must work four (4) ten- (10-) hours a days, forty (40) hours a week, and eighty (80) hours a pay period.

3. Core hours for employees on a compressed work schedule are between 9:30 a.m. and 3:30 p.m. each day worked. Employees on a compressed work schedule must be on duty during core hours, except for scheduled and approved use of leave or during the employee's 30-minute unpaid lunch period.

4. Compressed work schedule tours of duty may begin at 6:00 a.m. and must end by 7:30 p.m. The one (1) 8-hour day cannot begin before 7:00 a.m.

Section E. Gliding Schedule Work Schedule

1. An employee may request to work a Gliding Schedule work schedule. Employees will submit a proposed schedule with their request.

2. Employees on a Gliding Schedule work schedule must work an 8-hour day Monday through Friday. They may propose to vary the arrival time of their work day between 7:00 a.m. and 9:30 a.m. on a daily basis.

3. Core hours for employees on a Gliding Schedule work schedule are between 9:30 a.m. and 3:30 p.m. each day. Employees on a Gliding Schedule work schedule must be on duty during those hours except for scheduled and approved use of leave or credit hours or during the employee's 30-minute unpaid lunch period.

4. Employees on a Gliding Schedule work schedule may earn and use credit hours between 6:00 a.m. and 7:30 p.m. on Monday through Friday. See Section I below for more information on credit hours.

Section F. Maxiflex Work Schedule

1. An employee may request to work a Maxiflex work schedule.

2. The basic work requirement for an employee on Maxiflex is eighty (80) hours per pay period. Employees on Maxiflex may work up to ten (10) hours a day Monday through Friday in meeting their basic work requirement. They may vary the arrival time of their work day between 6:00 a.m. and 9:30 a.m., and the departure time between 3:30 p.m. and 7:30 p.m. on a daily basis. While employees may vary their arrival and departure times from their established work schedule within these flexible time bands, they are required to inform their supervisor in advance if they plan to vary arrival or departure time more than 30 minutes. This advance notification requirement does not apply to unforeseen situations beyond the employee's control, wherein the employee must notify the supervisor as soon as possible. Based on compelling work-related needs, the supervisor may direct the employee to report or remain on duty during their established work schedule on any given day.

3. Core hours for employees on a Maxiflex work schedule are between 9:30 a.m. and 3:30 p.m. each day worked. Employees on a Maxiflex work schedule must be on duty during those hours except for scheduled and approved use of leave or credit hours or during the employee's 30-minute unpaid lunch period.

4. Employees on a Maxiflex work schedule may earn and use credit hours between 6:00 a.m. and 7:30 p.m. on Monday through Friday. See Section I below for more information on credit hours.

5. Employees on a Maxiflex work schedule will fill out a projected work schedule and submit it to their supervisor not later than the close of business on the Monday prior to the pay period it will go into effect. Once approved, the employee's submitted work schedule will remain in effect and no further work schedule submission is necessary unless the employee requests a subsequent work schedule change. Consistent with Section H, below, supervisors will approve the employee's requested schedule and any amendments to it unless doing so would adversely affect unit productivity, level of service to the public or other stakeholders, or cost of operations as determined by the supervisor.

6. Employees on a Maxiflex work schedule may request a temporary schedule change for any pay period in which a Federal holiday, or in lieu of holiday as defined in Section K falls on a day that, in the absence of the Federal holiday, would have been otherwise scheduled as a 9- or 10-hour workday, so that only eight (8) hours are scheduled on the holiday or in lieu of holiday.

Section G. Work Schedule Changes

1. Employees must submit a written work schedule request to their supervisors using an approved FAS Work Schedule Request Form or other supervisory approved procedure. Employees may request a temporary or permanent change in their current work schedule at any time by making a written request to their supervisor no later than the Monday prior to the pay period it will go into effect. After an initial work schedule is established, an employee-initiated request to change between a Standard, Gliding, Maxiflex, 5-4/9, and 4-10 work schedule may be made only once during a 12-month period. This will not preclude supervisory approval of additional employee-requested changes, when such changes would not impede the Agency's day-to-day business operations or negatively impact upon the Agency's mission-critical activities (e.g. preparing for or attending U.S. Trade Representative meetings, teleconferences with overseas posts etc.).

2. Except in cases of emergency or of compelling need, a Supervisor may, after giving at least one pay period advance notice to an affected employee~~s~~, make a temporary or permanent change to an employee's work schedule (including scheduled days off).

3. Should the Agency need to make work schedule changes for two or more employees in the same unit predicated on a management-initiated change**,** it will meet, consult, and bargain with the Union in accordance with the provisions of Article 36 of this Agreement.

4. Any approved work schedule option or work schedule option change will become effective at the beginning of the pay period after approval or as agreed between the

supervisor and the employee. Retroactive changes to work schedule options will not be approved.

5. A supervisor or manager will approve or disapprove a work schedule option request within five (5) work days of actual receipt. It is the employee's responsibility to ensure the supervisor's actual receipt of the request. If the work schedule option requested is disapproved, the reasons for such disapproval must be provided in writing to the employee.

Section H. Work Schedule Request Conflicts

1. If two or more employees' work schedule requests conflict so that to approve both/all the requests would result in inadequate office coverage during the work day, or undue delays or interruptions to Agency business operations, or the failure, delay, or interruption in completing a critical mission of the Agency, the supervisor should meet with the affected employees and return the form to each employee with the request that the employees reach agreement among themselves, if possible.

2. If the employees are unable to reach agreement by 12:00 noon on the Thursday before the pay period in which the employees desire the requested schedules to be effective, the supervisor, by close of business on Thursday, will approve or disapprove the work schedules by giving priority to the employee with seniority based on the service computation date for leave.

Section I. Credit Hours

1. Credit hours may be worked and used only by employees covered by a Gliding Schedule or Maxiflex work schedule between the hours of 6:00 a.m. and 7:30 p.m., Monday through Friday. Credit hours may not be earned for working during the lunch period. Use of credit hours (or other earned leave) may be requested to extend a lunch period.

2. Employees on a Maxiflex or Gliding Schedule work schedule will be permitted to earn credit hours subject to the following limitations:

    a. The earning of credit hours is conditional upon the availability of appropriate work and work priorities as determined by the employee's supervisor. Prior supervisory approval is not required for earning credit hours provided the employee performs appropriate work and complies with priorities established by the supervisor. Working credit hours is at the employee's discretion.

    b. Employees may earn up to two (2) credit hours on any workday and accrue up to twenty-four (24) credit hours in any biweekly pay period. Credit hours may not be earned on a non-work day. Credit hours can be earned and used in fifteen (15) minute increments.

3. Credit hours must be worked within an employee's tour of duty. The tour of duty for employees on Gliding Schedule or Maxiflex is Monday through Friday of each week. Employees on standard or compressed schedules are not eligible for credit hours.

4. For a full-time employee, the number of credit hours that may be carried over from a biweekly pay period to a succeeding biweekly pay period will not exceed twenty-four (24) credit hours. For a part-time employee, the number of credit hours that may be carried over from a biweekly pay period to a succeeding biweekly pay period will not exceed one-fourth of the part-time employee's biweekly work requirement.

5. An employee's right to use earned credit hours is subject to supervisory approval. The same procedures used to request using annual leave will be used to request the use of credit hours. Credit hours must be earned before they are used.

6. When an employee is no longer subject to a flexible work schedule, the employee must be paid for accumulated credit hours at his or her current rate of pay. An employee may not be compensated for excess or unused credit hours that cannot be carried forward into the next pay period.

7. An employee may not be paid overtime pay, Sunday premium pay, or holiday premium pay for credit hours.

Section J. Overtime under Alternative Work Schedules

1. This section is to be read in conjunction with Article 7. For employees on a Maxiflex work schedule, overtime hours are all hours of work in excess of eight (8) hours in a day, or forty (40) hours in a week, or outside of a Maxiflex schedule if ordered and approved in advance, but does not include credit hours. Employees on flexible alternative work schedules may not earn overtime pay as a result of suffered or permitted hours under the Fair Labor Standards Act as hours of work.

2. Management may order an employee who is covered by a flexible alternative work schedule to work hours that are in excess of the number of hours that the employee planned to work on a specific day. If the hours ordered to be worked are not in excess of eight (8) hours in a day or forty (40) hours in a week at the time they are performed, the employee may elect to:

    a. Take time off from work on a subsequent workday for a period of time equal to the number of extra hours of work ordered;

    b. Complete his or her basic work requirement as scheduled and count the extra hours of work ordered as credit hours; or,

c. Complete his or her basic work requirement as scheduled and, to the extent allowed by law and regulation, be compensated for the extra hours of work ordered.

Section K. Holiday Pay

1. This section is to be read in conjunction with Article 7. When a Federal holiday falls on an employee's scheduled workday, the employee is entitled to holiday leave according to the following:

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

   b. For employees on a Maxiflex or Gliding Schedule work schedule, the employee is entitled to eight (8) hours holiday leave.

2. When a holiday falls on a full-time employees' non-workday, the employee may, with supervisory approval and consistent with the need to maintain adequate office coverage and provide services to our customers, take their in lieu of holiday on the work day immediately prior to or after the holiday consistent with Federal laws and regulations.

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

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

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

Section L. Night Pay

1. An employee is entitled to night pay for regularly scheduled night work performed between the hours of 6:00 p.m. and 6:00 a.m. Employees on a flexible work schedule who voluntarily schedule to work after 6:00 p.m. and prior to 6:00 a.m. are not normally entitled to night pay.

2. The supervisor must authorize night pay for any regularly scheduled overtime worked between 6:00 p.m. and 6:00 a.m.

Section M. Sick and Annual Leave under Flexible Work Schedules

1. Paid time off during an employee's basic work requirement must be charged to the appropriate leave category, credit hours, compensatory time off, or to excused absence if warranted.

2. An employee may apply no more sick or annual leave to a given day than he or she is scheduled to work on that day.

Section N. Excused Absences under Flexible Work Schedules

1. The supervisor may grant excused absence with pay to employees covered by a flexible work schedule under the same circumstances as excused absence would be granted to employees covered by other work schedules.

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

Section O. Reasonable Accommodation: By mutual consent of the supervisor, employee, and the Disability Employment Program Manager, core hours and/or tour of duty restrictions may be waived for a disabled employee requiring a permanent schedule change to enable the Agency to provide ongoing reasonable accommodation for a disability. A full-time employee must still meet the 40-hour weekly or 80-hour biweekly basic work requirement, as applicable.

ARTICLE 7: PREMIUM PAY AND COMPENSATORY TIME

Section A. General

1. Overtime/compensatory time will be earned in accordance with the applicable law and/or regulation that applies to the employee.

2. For employees with an established tour of duty for each day during the pay period, work in excess of 8 hours per day or 40 hours in a week is considered overtime, if ordered and approved in advance. For employees on a flexible work schedule, work in excess of eight (8) hours in a day or eighty (80) hours biweekly is considered overtime, if ordered and approved in advance.

3. Overtime and compensatory time will be earned, and compensatory time used, in increments of fifteen (15) minutes, subject to the same approval procedures that apply to annual leave in Article 8, Leave.

4. Overtime shall be paid at the overtime rate, except when compensatory time is requested and approved in lieu of overtime payment.

5. Call back overtime shall be compensated at a minimum of two (2) hours payable in overtime or compensatory time for both Title 5 U.S.C. and Fair Labor Standards Act (FLSA) employees.

6. Subject to law, including Comptroller General/OPM decisions, the Agency shall reimburse employees for parking and/or transportation expenses that are in addition to costs normally incurred to commute to and from work and are incurred as a direct result of overtime work. An employee shall be reimbursed for transportation expenses incurred to commute to and from work for call back overtime when the employee is dependent on public transportation for such travel. This is applicable when the overtime would require travel during hours of infrequently scheduled public transportation or darkness, or other relevant conditions, including safety factors.

7. The Agency will make every reasonable effort to ensure the safety and security of employees during overtime assignments.

8. The Agency determines the need for, approves and assigns all overtime work, and determines the required qualifications of employees to perform it.

9. The assignment or denial of overtime work will not be made as a reward or penalty to an employee, but solely in accordance with the terms of this Agreement.

Section B. Procedure for Assignment of Overtime

1. The supervisor will give an employee as much advance notice as possible in making overtime assignments, but the parties acknowledge that emergencies, operational exigencies, and unanticipated workload requirements may result in the supervisor's inability to give advance notice. However, employees will be allowed reasonable time under the circumstances to make arrangements necessary to minimize personal hardship.

2. Assignment of Overtime

    a. Whenever possible, overtime will be assigned by seeking qualified volunteers within the work unit which would normally be functionally responsible for the task at hand.

    b. If more than enough qualified volunteers apply, the volunteer with the greatest seniority as determined by current continuous service in the Agency is entitled to work the overtime.

    c. In the event of a tie, then the volunteer with the greatest seniority in Federal service using service computation date for leave is entitled to work the overtime.

    d. In the absence of sufficient qualified volunteers within the work unit, inverse seniority (among qualified employees within the work unit) as determined by Federal service computation date for leave shall apply.

3. Fully qualified employees in training or on details may be considered for overtime in their regular work unit if they are reasonably available as to time, workload, and location.

4. The availability of other equally qualified employees in the work unit will be considered if an employee has a claimed hardship in a particular instance. If the overtime must be worked and the bargaining unit employee being ordered to work the overtime claims hardship, the supervisor shall assign the overtime work to the next least senior qualified bargaining unit employee in the work unit. If all employees in the work unit claim hardship, the supervisor shall assign the overtime work to the least senior qualified employee regardless of claimed hardship.

Section C. Compensatory Time

1. Compensatory time is in lieu of irregular or occasional overtime work. All rules and procedures established in this Article that govern the assignment and accrual of overtime are applicable to compensatory time, except as noted herein.

2. FLSA "nonexempt" employees may be allowed to earn compensatory time rather than overtime provided that the employee requests in writing (hard copy or e-mail), at the time overtime is assigned, that compensatory time be granted in lieu of overtime payment. Compensatory time for FLSA nonexempt employees is granted at the discretion of the

Agency; however, the Agency may not require that the employee earn compensatory time in lieu of overtime payment.

3. Title 5 “FLSA exempt" employees may be allowed to earn compensatory time rather than overtime provided that the employee requests in writing (hard copy or e-mail), at the time overtime is assigned, that compensatory time be granted in lieu of overtime payment. Compensatory time for FLSA exempt employees is granted at the discretion of the Agency. Compensatory time in lieu of overtime payment may be made mandatory at the discretion of the Agency for FLSA exempt (Title 5) employees whose basic rate of pay (including locality pay and special pay rates) exceeds the established rate of a GS-10/10.

4. Whether an employee may earn or work compensatory time shall not depend upon the employee's leave balance or the amount of compensatory time already accrued, but consistent with the provisions of this Article and the needs of the Agency.

5. Compensatory time not used by the end of the following year in which it was earned or by the time of separation will be payable at the overtime rate in effect at the time the compensatory time was earned.

6. Compensatory time will be used before annual leave unless the forfeiture of annual leave will occur.

Section D. Holiday Premium Pay

1. When the supervisor requires the services of employees on a designated Federal holiday, the supervisor will fill the needs of the work unit using the procedures established in Section B. of this Article.

2. To minimize the effect of assigning employees to work on designated Federal holidays, the supervisor will make every reasonable effort to provide a minimum of seven (7) calendar days notice to affected employees.

3. Employees who are duty stationed in the Washington, DC metropolitan area who are working outside of the Washington, DC metropolitan area on Inauguration Day are not excused from work on that day. Employees at work sites that do not observe a Federal holiday are expected to observe local customs and protocols regarding their work status on that holiday.

Section E: Overtime While on Official Travel Status

1. Overtime will be awarded for time expended on official travel status for employees not exempt from coverage under the FLSA during normal duty hours on non-duty days and during non-duty hours on duty days in accordance 5 C.F.R. 550.112(g).

2. It is the intention of this Agreement to afford employees on official travel status the flexibility and support necessary to accomplish the Agency's mission and objectives while being appropriately compensated in accordance with this Agreement and Federal law. Recognizing that official travel sometimes involves overtime, the following procedures shall apply to assure required accountability.

3. Employees will establish trip itineraries including general hours of work in advance of initiating official travel taking into consideration meeting agendas when attending conferences, seminars and other functions with scheduled events. Known overtime needs arising from trip planning shall be approved/denied by the employees' immediate supervisor prior to the onset of official travel. The supervisor will notify the employee of their decision prior to departure. When planning international travel, itinerary arrangements including the possibility of overtime work will be coordinated with the appropriate Head of Post and the supervisor. Meetings scheduled before or after the normal Post tour of duty will be considered overtime and appropriate approvals granted.

4. Recognizing that there may be circumstances when overtime requirements are not known in advance of official travel and timely contact with the immediate supervisor to seek approval is not possible, the employee will obtain advance written approval for overtime from an appropriate management official, including the FAS Head of Post. Before official travel begins, if it appears likely that an employee might need to work overtime but the local situation would likely prohibit requesting advance approval, the supervisor may grant advance approval for overtime up to two (2) hours per workday and four (4) hours per non-workday. The overtime work must be carefully documented and annotated by the employee.

5. Requests for overtime should be limited to work situations. Non-work events include, but are not limited to, attendance at optional events such as dinners, receptions, personal tours of overseas locations, etc. Only those hours that are deemed to be essential to the successful completion of the work assignment will receive overtime approval.

6. Upon return to their official duty station, employees shall annotate appropriate T&A's (including those submitted while on travel status) per standard T&A submission procedures along with their travel itinerary including any approved overtime adjustments. The T&A's shall be processed in a timely manner.

ARTICLE 8: LEAVE

Section A. General Rules

1. Employees will earn annual and sick leave in accordance with applicable laws and regulations.

2. Denial of leave requests will not be used in lieu of disciplinary or adverse actions.

3. Leave will be charged in fifteen (15) minute increments.

4. It is the employee's responsibility to ensure requests are submitted to, and received by, the approving official and, when practicable, approved prior to taking leave. Approving officials will timely consider requests for leave and ensure a response is promptly transmitted to the employee.

5. If the needs of the Agency do not permit the approval of leave requested, the supervisor will state the reason for the denial when disapproving the request. On these rare occasions, the employee and the supervisor will work together in an attempt to schedule leave at an agreed upon time.

6. It is the intention of the Parties to respect the privacy of employees in dealing with purely personal matters. However, where appropriate, a supervisor may request sufficient information concerning the circumstances and the duration of the absence, if known, to permit the supervisor to evaluate the appropriateness of approving or disapproving leave. When it appears that an absence will extend beyond the original date of anticipated return to duty, the employee shall promptly notify the supervisor and request approval for the new anticipated date of return.

7. When leave scheduling conflicts arise and the employees are unable to reach agreement among themselves, the supervisor will make the final determination by giving consideration to circumstances such as, but not limited to, the nature of the leave requested, the date of request, and seniority based on service computation date for leave.

8. When unscheduled leave is necessary, the employee shall be guided by the following:

Step	Action
(1)	Employee determines necessity for unscheduled leave (e.g., unanticipated illness, personal emergency, etc.).
(2)	(a) Employee notifies first-level supervisor to request leave. (b) If the first-level supervisor is unavailable, the second level supervisor shall be contacted. (c) If the second level supervisor is unavailable, the employee shall leave a message for the supervisor with a co-worker, including a telephone number at which the employee may be reached, if necessary, by the supervisor. (d) As a last resort, the employee may provide notification via electronic mail or voice mail, recognizing it is the employee's responsibility to timely verify the receipt of the voice or electronic message.
(3)	Employee submits an electronic leave request and/or any other documentation required under this Article to the supervisor as soon as is reasonably possible under the applicable circumstances.

9. Substitution of leave without pay (LWOP), compensatory time, credit hours, or sick leave for annual leave must be made within the first pay period in which the employee returns to duty, or, if medical documentation is required, by the close of the following pay period after the illness occurs. Employees may change previously authorized annual leave to compensatory time or credit hours. Employees may change previously authorized annual leave to LWOP or sick leave, if sick, subject to approval by the supervisor. An approved absence which would otherwise be chargeable to sick leave may be charged to annual leave, compensatory time, credit hours, or LWOP when requested by the employee. However, substitution of annual leave, credit hours, or LWOP for earned sick leave previously granted and charged may be permitted under rules for amending leave records, but annual leave cannot be substituted for sick leave already granted in order to avoid forfeiture of annual leave at the end of the leave year.

10. Employees may request sick leave, annual leave, or LWOP to attend and participate in a substance abuse treatment program. The supervisor shall grant sick leave, annual leave, or LWOP to the requesting employee in accordance with procedures in this Article. The utmost confidentiality should be exercised in these instances.

11. Employees in a use-or-lose annual leave situation (i.e., there is a possibility that some annual leave hours will be lost at the end of the leave year if adequate plans are not made to schedule and take that leave) must request use of that leave no later than the end of pay period 23. If, after receiving approval for use-or-lose leave, an exigency of public

business occurs that prevents use of such leave prior to the end of the leave year, the employee may request to have his/her forfeited annual leave restored during the next leave year without permanently increasing the employee's annual leave ceiling. Any restored annual leave must be used during the new leave year or the leave year that follows.

12. Employees may be excused without loss of leave or pay for a reasonable period of time before and upon return from local area Government training including conferences, conventions or other special events. However, where practicable, an employee should request a temporary work schedule change to better coincide with the training times. A supervisor may also make a temporary change to an employee's work schedule, after giving timely notice to the employee. The term "reasonable period of time" shall be determined by the employee and their immediate supervisor, but shall not exceed 2 hours of the workday before and upon return from training.

Section B. Advanced Annual Leave

1. A permanent employee who expects to remain in service through the leave year may request advancement of annual leave in an amount not to exceed that which the employee will accrue for the remainder of the leave year.

2. An employee who wishes to request advancement of annual leave shall complete an electronic leave request and provide a written explanation of the reason for the request.

Section C. Sick Leave

1. Sick leave may be granted for absences required by personal illness, injury, medical, dental or psychological appointments and/or treatment/therapy, adoption of a child, or certain circumstances involving contagious diseases in accordance with applicable laws and/or regulations.

2. Sick leave may be granted for Family Care purposes as set forth in Section F, Family and Medical Leave, and Section G, Sick Leave for Family Care (SLFC) (below).

3. When an employee knows in advance that sick leave will be required for a reason set forth in Paragraphs 1 or 2 (above), the employee will request sick leave at the time the necessity for the leave is determined. In evaluating requests for sick leave, in those circumstances in which the employee has substantial control over the need, the supervisor and employee will work together to schedule leave at an agreed upon time.

4. Advanced Sick Leave

   a. The supervisor may approve requests for advanced sick leave after considering the following factors:

(1) Leave is properly applied for in accordance with this Article.

(2) Repayment can reasonably be expected through leave accruals taking into account the employee's leave record, the employee's length of service, and the nature of the incapacitation.

(3) Accommodations can be made within the work unit to cover the work unit's critical functions. This factor may only be considered in situations in which the employee has substantial control over the circumstances and can reschedule the requested leave, such as elective surgery.

(4) The employee has a serious illness or injury.

(5) Medical documentation, if requested by the supervisor.

(6) Any other relevant factors.

b. As a maximum, a permanent employee may be advanced up to 240 hours of sick leave for personal medical situations. Advanced sick leave may not exceed 240 hours at any one time.

c. There is no limit on the number of times an employee may request advanced sick leave. The supervisor will consider each request for advanced sick leave on its individual merits and in accordance with the criteria described above.

5. Health Unit Visits

a. Employees may leave the work site to attend an on-site health unit. Except in cases of emergency, the employee shall obtain approval of the supervisor prior to leaving the work site.

b. The employee may remain in the Health Unit as long as permitted by the Health Unit. If the employee is unable to return to work after two (2) hours, the employee will request appropriate leave for the remainder of his/her tour of duty. This provision applies only to employees who are ill while in duty status.

c. Employees who are injured on the job will not be charged sick leave but shall be granted administrative leave to visit the Health Unit at the time or on the day of the on-the-job injury, in accordance with applicable worker's compensation procedures.

6. Abuse of Sick Leave

a. When a supervisor has reasonable grounds to suspect an employee of sick leave abuse, the supervisor shall notify the employee of the suspected sick leave abuse and counsel the employee.

b. The supervisor may notify the employee in writing that, for a stated period not to exceed six (6) months for the first offense, the employee will be on sick leave restriction, and all requests for sick leave will not be approved during the stated period unless supported by medical certification.

c. Employees on leave restriction will be required to furnish medical certification. This certification must be provided within three (3) business days upon return to duty.

Section D. Medical Certification

1. "Medical certification" means a written statement signed by a registered practicing physician or other licensed medical practitioner certifying incapacitation, and the period of incapacitation while receiving professional treatment. For sick leave requested because of exposure to a contagious disease, the medical certification should indicate the name of the disease and indicate that the disease is contagious, and the period of confinement and/or quarantine, if quarantine is required by ordinance or statute. However, if a medical practitioner certifies incapacity other than contagious disease, the employee need not disclose the details of an illness in his/her medical certificate. Medical certification must be submitted to the supervisor by the close of the following pay period after the employee's return to duty.

2. The employee may be required to provide medical certification:

   a. For an unscheduled absence in excess of three (3) consecutive workdays.

   b. For any use of sick leave if the employee is officially on sick leave restriction.

   c. For a chronic condition which does not necessarily require medical treatment although absence from work may be necessary. If the employee has previously furnished a medical certificate of the chronic condition, the employee may not be required to furnish a medical certificate on a continuing basis. The supervisor may require reasonable updates to the medical certificate.

   d. To consider an employee's request for leave for medical reasons, including treatment and convalescence related to childbirth, and care for a spouse, son, daughter, parent, or legal ward with a serious health condition.

   e. To consider an employee's request for special consideration such as reassignment or other reasonable accommodation, and there is a question as to the medical need for such accommodation.

f. To consider an employee's request for advanced sick leave under Paragraph 2 (d) (above).

g. To support an employee's request for "family leave" under Section F, Family and Medical Leave, or Section G, Sick Leave for Family Care (below), or to support an application to become a leave recipient in the Leave Transfer and/or the Leave Bank Programs.

3. The supervisor may also request medical certification from a licensed physician stating that the employee can return to work and noting any applicable limitations.

4. Employees cannot be denied or removed from consideration for promotion, training, or other opportunities as a result of approved use of sick leave.

Section E. Administrative Leave

1. Administrative leave is an excused absence from duty administratively authorized without loss of pay and without charge to other types of leave. The Agency will grant administrative leave in accordance with applicable guidelines and this Agreement.

2. For inclement weather or other emergency situations, the Agency will follow the OPM issued Washington, D.C. Area Emergency Dismissal or Closure Procedures developed in consultation with the Metropolitan Washington Council of Governments. The procedures are updated annually and can be viewed or printed from the OPM website: http://www.opm.gov/.

3. Blood Donation

a. Upon advance request by the employee to the supervisor, an employee donating blood without compensation will be granted administrative leave of up to four (4) hours for travel and rest and recuperation at the donation site unless to do so would interfere with work operations. The actual time needed for the donation process is in addition to the 4 hours. The employee is not permitted to go home after the donation unless they feel sick and request leave (sick, annual, credit, compensatory, or LWOP).

b. An employee who is not accepted for donating blood is only entitled to time necessary to travel to and from the donation site and the time needed to make the determination.

c. Appropriate documentation from the donation site may be required by the supervisor.

4. Employees will be granted administrative leave for bone marrow and/or organ donations in accordance with applicable law and regulation.

5. Employees with limited sick leave availability will be granted up to four (4) hours administrative leave each year for health screenings such as mammography, blood pressure and cholesterol checks. Limited available sick leave is understood to be 80 hours or less at the time the request is made.

6. Voting: Employees may be excused from reporting to work for up to three (3) hours after the polls open or for leaving work up to three (3) hours before the polls close in their voting jurisdiction, whichever requires the lesser amount of time excused from duty. Exceptions to the 3-hour limits shall be considered for those commuting long distances, for heavy voter turnout, or other factors such as work schedules or day care limitations that would impair the ability to vote.

7. Employees may be excused for up to four (4) hours per calendar year to participate in USDA-sanctioned health care screenings.

8. Supervisors will permit employees who are breastfeeding to express/pump milk for their child and permit a reasonable and flexible time period to conduct this activity. Reasonable time will be permitted to go to and return from an adequate on-site location. No adverse action or recourse will be based on an employee's desire to breastfeed.

Section F. Family and Medical Leave (FML)

1. The Agreement between AFSCME Local 3976 and the Foreign Agricultural Service dated May 24, 1995, is superseded.

2. Leave Entitlement

    a. Permanent full- and part-time employees serving on a temporary appointment with a time limitation of greater than one (1) year are eligible for family and medical leave provided they have completed at least twelve (12) months of Federal service (not required to be twelve (12) consecutive months).

    b. Upon request, an eligible employee is entitled to a total of twelve (12) work weeks or 480 hours of unpaid leave during a 12-month period for the purposes of:

        i. The birth of a son or daughter of the employee and the care of such son or daughter;

        ii. The placement of a son or daughter with the employee for adoption or foster care;

iii. Care of a spouse, son, daughter, parent, or legal ward who has a serious health condition; or,

iv. A serious health condition of the employee that makes the employee unable to perform the essential functions of the employee's job.

c. For the purposes of Paragraphs b (1) and (2) above:

i. The family and medical leave may begin on, before, or after the actual date of birth or placement of the child, and must be for a continuous period of time, unless the employee and supervisor agree otherwise; and,

ii. Entitlement for use of family and medical leave shall expire no later than twelve (12) months after the date of birth or placement of the child.

d. For the purposes of Paragraphs b (3) and (4) above:

Family and medical leave may be taken continuously, intermittently, or as part of a reduced work schedule; and,

Entitlement for use of family and medical leave shall expire twelve (12) months from the date the employee first takes leave for a family or medical need.

e. Effective January 28, 2008, employees may be granted "military family leave" to care for a seriously injured or ill service member who is a current member of the Armed Forces or who is a veteran of the Armed Forces. The serious illness or injury must have been incurred in the line of duty while on active duty in the Armed Forces. (See National Defense Authorization Act [NDAA] for Fiscal Year 2008 [Pub. L. 110-181, 1-28-08.])

1) Up to 26 weeks of unpaid military family leave during a single 12-month period to care for the covered service member. A portion of which may include up to 30 days (240 hours) of advanced sick leave.

2) A combined total of 26 weeks of military family leave and regular FMLA leave during a single 12-month period. For example, if on January 1, 2008, the employee wants to take 6 weeks of regular FMLA for the birth of a child and military family leave to care of a service member, the 6 weeks of regular FMLA is subtracted from the combined 26 week entitlement, leaving the employee with 20 weeks of military family leave to use during 2008 to care for the service member.

3) This leave is unpaid leave for which an employee may substitute any accumulated annual or sick leave. Normal leave year limitations on the use of sick leave to care for a family member do not apply. An employee may substitute annual or sick leave for any part of the 26-week period of unpaid FMLA leave to care for a covered service member.

f. Leave under Paragraph b (above) will be made available for a full-time or part-time employee in direct proportion to the number of hours in the employee's regularly scheduled administrative workweek.

3. Consistent with law and regulation, an employee may substitute the following paid leave for any or all of the unpaid leave taken for FMLA purposes:

a. Accrued or advanced annual leave;

b. Accrued or advanced sick leave;

c. Donated leave made available through the Voluntary Leave Transfer or Leave Bank programs; and/or,

d. Accumulated compensatory time or credit hours.

4. Supervisors may not require an employee to use accrued paid leave for LWOP. An employee cannot retroactively substitute paid leave for LWOP already taken during a period when family and medical leave was used.

5. Requests and Approvals: When the need for leave is foreseeable, an employee shall request family and medical leave in writing (electronic leave request) under the provisions of this Section at least thirty (30) days in advance to allow the supervisor time to prepare for any staffing adjustments necessary to compensate for the employee's anticipated absence. However, the Parties recognize that circumstances beyond the employee's control may arise and adjustments in the requested leave may be necessary.

6. Medical Certification

a. The supervisor may require administratively acceptable medical certification as defined in Section D 1 (above) of this Article when an employee invokes his/her right to family and medical leave for purposes under Paragraphs 2 (b) (3) and (4) (above).

b. The supervisor may require a copy of the legal documents when an employee invokes his/her right to family and medical leave for adoption or foster care.

c. The supervisor may require, at the Agency's expense and by a health care provider designated or approved by the Agency, a second medical opinion to verify the validity of the certification provided by the employee. If the second opinion differs from the original certification, the supervisor may require, at the Agency's expense, certification from a third health care provider selected jointly by the Agency and employee.

7. Protection of Employment and Benefits Upon Return to Duty

a. An eligible employee who takes leave for family and medical purposes shall be entitled to return to the same or equivalent position, with equivalent benefits, pay, status, and other terms and conditions of employment, unless termination of employment is otherwise required by reduction-in-force, for cause, or for similar reasons unrelated to the use of leave under the FMLA.

b. The Agency understands that there may be a transitional period upon returning to the workforce and supervisors will work with employees to arrive at an appropriate work schedule during this transitional period.

c. An employee who invokes his/her right to LWOP under the FMLA may elect to continue health benefits coverage provided the employee pays his/her share of the cost. Employees may pay their share of the cost on a current basis or may pay upon return to work.

Section G. Use of Sick Leave for Family Care (SLFC)

1. Sick leave may be granted for family care purposes:

a. In cases in which an employee is required to provide care for a family member who is incapacitated by a medical or mental condition or attend to a family member receiving medical, dental or optical examination or treatment.

b. To make arrangements necessitated by the death of a family member or to attend the funeral of a family member.

c. To provide care for a family member with a serious health condition.

2. Approval of sick leave for family care must comply with the requirements and conditions specified in the summary table below:

Entitlement	Amount and purpose	Individuals for whom leave may be taken
Sick Leave for General Family Care and Bereavement (5 CFR 630.401(a)(3)(i) and (4))	13 days (104) hours) to: • Provide care for a family member who is incapacitated by a medical or mental condition, including pregnancy or childbirth; • Attend to a family member receiving medical, dental, or optical examination; or • Make arrangements necessitated by the death of a family member or attend the funeral of a family member.	May be taken for a family member. "Family member" means the following relatives of the employee: 1. Spouse, and parents thereof; 2. Sons and daughters, and spouses thereof; 3. Parents, and spouses thereof; 4. Brothers and sisters, and spouses thereof; 5. Grandparents and grandchildren, and spouses thereof; 6. Domestic partner and parents thereof; 7. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship (5 CFR 630.201(b))
Sick Leave for Serious Health condition of Family Member (5 CFR630.401 (a)(3)(ii)).	12 weeks (480) hours to care for a family member with a serious health condition (illness, injury, surgery, impairment) that involves, but is not limited to, heart attacks, heart conditions, cancers, back conditions requiring therapy and/or surgery, kidney dialysis, physical therapy, strokes, severe nervous disorders, injuries caused by serious accidents on or off the job, clinical depression, recovery from major surgery, final stages of a terminal illness, Alzheimer's disease, and includes incapacitation due to pregnancy, childbirth, miscarriages, complications or illness related to pregnancy.	

3. Hours and limitations for authorized use of sick leave for family care for part-time employees are subject to OPM established limitations.

Section H. Leave Without Pay: The Agency will grant LWOP in the following cases:

1. Disabled veterans who are entitled to LWOP for medical treatment under Executive Order 5396, when the veteran presents an official statement, from a registered practicing physician or other health care professional certifying that medical treatment is required. The disabled veteran must give advance notice of the period during which absence for treatment will occur.

2. Reservists and National Guardsmen who are entitled to a leave of absence for required military training under Title 38 U.S.C. Section 2024(d). LWOP will be approved if the employee has exhausted or is not entitled to military leave.

3. Employees receiving injury compensation under Title 5 U.S.C. Chapter 81 unless permanently disabled.

4. Employees meeting requirements for LWOP under the provisions of the FMLA.

5. Family Related LWOP

    a. Approving officials may, upon request by the employee and in accordance with the Presidential memorandum dated April 11, 1997, grant up to 24 hours of LWOP per calendar year for the activities listed below. (These 24 hours are separate from, and should not be confused with, FML entitlements.) Where paid leave is appropriate and not contrary to regulation, employees should be permitted its use prior to unpaid leave. Employees may also use earned credit hours and/or compensatory time.

    b. School and early childhood educational activities: allows employees (including those who do not have children) to support a child's educational development and advancement by attending parent-teacher conferences, meeting with the child-care providers, interviewing for a new school or child-care facility, or participating in volunteer activities such as tutoring, coaching, etc. School is defined as an elementary or secondary school, Head Start Program, or a child-care facility.

    c. Routine family medical purposes: allows parents to accompany children to routine medical or dental appointments, such as annual check-ups or vaccinations.

    d. Elderly relatives health or care needs: allows employees to accompany elderly relatives to routine medical or dental appointments or other professional services related to their care, such as making arrangements for housing, meals, phones, banking services, and other similar activities.

6. Special Considerations

    a. Union Activity

(1) Upon request of the appropriate Union officer or staff, the Agency will consider granting LWOP for them to engage in Union activity or to work in Union sponsored programs at the national or district level. The Agency agrees to render a timely determination, and if disapproved, provide its reasons.

(2) An employee returning from LWOP from engaging in Union activity will be placed in the same position that he/she previously held, if available. If that position is not available, the employee may be placed in another position, but he/she will not suffer any loss of grade or pay, or change in series.

b. Employees whose application for disability retirement is pending.

c. Employees receiving workers compensation benefits, unless it is known that they are permanently disabled. In these cases, supervisors should contact the SPO.

7. Other Requests for LWOP

a. LWOP for purposes other than those identified in Section G 1 may be requested and approved in accordance with appropriate regulations. An employee may not demand LWOP as a matter of right, except in those cases defined in Sections H 1 and Section F of this Article, but all requests shall be considered objectively and with both the employee's and Agency's interest in mind.

b. The immediate supervisor may approve an employee's request, with justification, for LWOP for up to four (4) weeks.

c. Extended LWOP:

(1) The immediate Program Area Manager (Deputy Administrator) may approve an employee's request, with justification, for extended LWOP (defined as LWOP in excess of four (4) work weeks) up to one (1) year.

(2) Prior to consideration of extended LWOP, the Agency shall make a reasonable effort to facilitate employment opportunities for FAS Civil Service spouses of FAS Foreign Service Officers stationed overseas. It is anticipated that after one year the LWOP will be terminated. Employees may be placed on the Agency target ceiling, but only in exceptional circumstances. Such placements require the approval of the Executive Advisory Group (EAG).

8. Retroactive Substitutions of Paid Leave for LWOP

a. LWOP may be retroactively changed to paid leave if:

(1) Due to an administrative error or misunderstanding the employee was not aware that he/she had a leave balance or that leave could have been used; or,

(2) The employee is accepted into the Voluntary Leave Transfer Program and/or the Voluntary Leave Bank and donated leave is available.

9. Paid leave cannot be substituted for LWOP granted under FMLA.

Section I. Military Leave

1. Effective December 21, 2000, any full-time permanent employee (working 80 hours per pay period) who is a member of the National Guard or other reserve unit of the Armed Forces shall be entitled to accrue 120 hours (or fifteen (15) days times eight (8) hours) of military leave in a fiscal year for active duty or inactive or active duty training. Military leave will be prorated for part-time employees based on the number of hours in their regularly scheduled biweekly pay period.

2. Charges for military leave will be in one (1) hour increments and military leave will not be charged for military service on non-duty days (typically weekends and holidays). An employee may be charged military leave only for hours during which the employee would otherwise have worked and received pay. Employees requesting military leave for inactive duty training (generally two (2), four (4), or six (6) hours in length) will be charged only the amount of military leave necessary to cover the period of training and necessary travel. Hours in the civilian workday not chargeable to military leave must be worked or charged to another leave category, as appropriate.

3. Employees who are entitled to regular military leave but who do not use the entire 120 hours may carry over the unused portion from one fiscal year to the next fiscal year for a maximum cumulative total not to exceed 240 hours.

4. Approval of the military leave shall be granted based on a copy of the military orders directing the employee to duty or training.

Section J. Court Leave

1. Court leave shall be approved according to 5 U.S.C. 6322.

2. Court leave is an authorized absence, without charge to leave or loss of pay, for jury service or witness service under certain conditions. All leave-earning employees are eligible for court leave.

3. Court leave is authorized for an employee summonsed or subpoenaed to serves as a witness on behalf of any party in a judicial proceeding to which the United States, the

District of Columbia, a State, a U.S. territory or possession, or a local government is a party to the proceedings. The employee may be summonsed or subpoenaed in an official capacity as a Federal employee or unofficial capacity as a U.S. citizen. The employee must request use of his/her own accrued leave or LWOP when the summons or subpoena does not name the United States, the District of Columbia, a State, a U.S. territory or possession, or a local government as a party to the proceedings.

4. The employee must provide a copy of the subpoena or summons to the supervisor immediately upon receipt. Court leave must be requested on an electronic leave request with a copy of the subpoena or court summons submitted with the request. If jury service or witness service lasts for more than 2 workdays, present to the supervisor evidence of court attendance, e.g., a jury duty certificate or written statement signed by an officer of the court.

5. An employee attending jury service or witness service is expected to return to duty once dismissed by the courts unless the return would be at the end of his/her scheduled workday. Employees who do not return to work shall request use of annual leave, credit hours, compensatory time, or LWOP for the balance of the workday.

6. In every instance, the employee may fulfill the citizenship responsibilities of jury duty. The Agency may petition the court to excuse the employee if jury duty will substantially interfere with the Agency's work.

Section K. Religious Observances

1. In accordance with law and government-wide rules and regulations, employees wishing to attend or participate in the observance of a religious holiday will be permitted to be absent from work using annual leave, credit hours, compensatory time, or LWOP so long as the employee requests such leave at least three (3) work days in advance and their absence will not cause an undue workload problem.

2. For the purpose stated in this Section, an employee may work compensatory time either before or after the grant of compensatory time off. A grant of advanced compensatory time off for these purposes shall be repaid by an equal amount of compensatory work within the earlier of six (6) pay periods of its use or the end of the leave year.

3. An employee's request for compensatory time off for religious observances must contain the date(s) and time(s) when the employee intends to be absent and a projected work schedule that accounts for the time necessary to pay back the granting of advanced compensatory time.

4. Failure to work the required amount of time to repay advanced compensatory time off will result in a charge to annual leave, if the employee so elects, or LWOP.

Section L. Leave Transfer Program: The Agency agrees to continue its Voluntary Leave Transfer Program in accordance with law and regulation.

Section M. Leave Bank: The Agency agrees to participate in the FFAS Voluntary Leave Bank Program in accordance with law and regulation.

ARTICLE 9: POSITION DESCRIPTIONS

Section A. Position Descriptions

1. Position descriptions shall be current and accurately reflect the principal duties, responsibilities, and supervisory relationships of the position as assigned by the Agency.

2. Availability of Position Descriptions:

   a. Upon request, the Servicing Personnel Office (SPO) shall furnish each employee with a copy of the employee's current position description and the career ladder position description for the next higher grade, if any, for the position.

   b. Newly promoted employees shall be furnished a current, accurate copy of the position description by the SPO within thirty (30) calendar days of entry on duty in the new position.

   c. When there is a significant change in an employee's responsibilities or grade controlling duties for a period to exceed thirty (30) calendar days, the employee shall be provided an accurate and updated position description within fifteen (15) work days from the date the position description is signed and dated by the SPO unless it is mutually agreed that additional time is needed.

   d. Employees newly hired to the Agency shall be furnished a current, accurate copy of the position description by the SPO normally during in-processing.

3. Whenever a bargaining unit position description is amended, the SPO shall provide the Union a copy of the amended position description within thirty (30) calendar days of the SPO's signature date.

4. In accordance with law and regulation, employees may grieve reductions in grade, pay, or loss of promotion potential that result from a classification decision following procedures in Article 41: Grievance Procedures, of this Agreement.

5. Duties which are withdrawn from an employee's position description shall no longer be a principal duty or responsibility of the employee, nor assumed in a category for arbitrarily assigned duties such as "other duties as assigned" unless they relate to tasks of an incidental, infrequent, or emergency nature which are impractical to include in the position description. The supervisor may assign or change duties and responsibilities necessary to accomplish work appropriate to the employee's position.

6. Supervisors will request appropriate guidance from the SPO when there is a need to create or revise a position description. Upon receipt of a new or revised position description from a supervisor, the SPO will normally initiate a review within thirty (30) calendar days and work with the supervisor on a continuous basis to complete the action.

Section B. Classification Standards

1. Positions will be classified in accordance with the appropriate classification and job grading standard.

2. The SPO is available to provide information to employees regarding their concerns about the titles and series of their position. Employees who believe their positions should be reclassified may ask the SPO for an explanation as to why it would or would not be appropriate to do so under the relevant classification standards. If the employee chooses, they may file a classification appeal. The Agency agrees that work will not be reassigned for the purpose of avoiding reclassification during a classification appeal.

3. OPM classification standards are available at the OPM website: www.opm.gov.

Section C. Notification to the Union: The Agency agrees to inform the Union as soon as possible when changes will be made in the grade controlling duties and responsibilities of positions held by employees due to reorganization or when changes in position classification standards result in classification changes.

Section D. Grade Determining/Controlling Duties: The Agency will assure that duties assigned to the employee that are grade determining/ controlling will be included in the position description.

Section E. Desk Audits/Classification Reviews

1. An employee or supervisor may request a desk audit from the SPO. If the employee requests the desk audit, it will normally be submitted through their supervisor. When initiated by an employee, submission of the request through the supervisor is understood to be for informational purposes only. The supervisor may not take action to delay transmission or deny the request. This does not preclude supervisory participation in any phase of the audit.

2. From the date an employee files a request for a desk audit with the SPO, the SPO normally shall accomplish the audit or review process within ninety (90) calendar days of the request, and shall thereafter take prompt action to upgrade or downgrade the position, or redistribute the grade controlling duties of the position, as appropriate.

3. The classifier will compare the work described by the employee and the supervisor to the appropriate classification standard to ensure that the employee's position is accurately classified and the employee is properly compensated for the work he or she is assigned.

4. Upon completion of the process, the employee and the supervisor are notified of the desk audit results and any corrective action that may be necessary.

Section F. Classification Appeals

1. Employees or supervisors may file an appeal concerning a classification decision.

2. An employee may appeal the series or grade of the position to which the employee to which the employee is currently and officially assigned.

3. An appeal by an employee shall be in writing stating the reasons why the employee believes his/her position is erroneously classified.

4. The employee may choose to file at any level but an appeal made initially at a higher level will waive the employee's right to appeal to the lower level. The options for filing a classification appeal are as follows:

    a. If the appeal is filed with the Director, HRD, then the appeal may receive the maximum number of reviews and the decision serves as the final Agency determination.

    b. If the appeal is filed with the Director, Office of Human Resources Management (OHRM), USDA, then the appeal may be filed with OPM and the decision serves as the final USDA determination.

    c. If the appeal is filed with OPM then the decision is final and there is no further right of appeal.

    d. If the appeal is filed at the OHRM or OPM level, a copy of the appeal will be provided to the Director, HRD.

5. An appeal decision that reverses a classification action that resulted in a downgrading or loss of compensation may entitle an employee to retroactive benefits if the classification appeal is filed with the SPO, OHRM, or OPM within fifteen (15) calendar days after the effective date of the personnel action.

6. Subsequent appeals of lower level appellate decisions (Paragraphs 4 a and b, above) must be filed within fifteen (15) calendar days after the lower level decision.

7. Time limits may be extended if the employee can show that there was no notification of time limits or there were extenuating circumstances.

8. A guide to the appeal process providing information on how to file an appeal can be found in the FFAS Handbook, 2-PM Position Classification, which is available on the FAS Directives webpage (http://hr.ffas.usda.gov/policies/handbooks.htm).

ARTICLE 10: PERSONNEL RECORDS

Section A. Official Personnel Records: The official personnel records of FAS employees are contained in Official Personnel Folders (OPFs) maintained by the Servicing Personnel Office (SPO). The SPO also maintains a copy of employee performance appraisals for the most recent three years in separate folders established for that purpose. Records of disciplinary and adverse action proposals including the documentation, upon which such proposals are based, are maintained by the SPO. If the proposed adverse action is sustained, a copy of the final decision memo is retained in the Employee and Labor Relations files, while the SF-50 documenting the action is filed in the OPF. Letters of reprimand are also filed in the OPF for no longer than two (2) years; however, the employer may remove the reprimand from the OPF at any time consistent with Article 29, Disciplinary and Adverse Actions. Employees may have access to all of these records under the conditions set forth in Article 2, Employee Rights.

Section B. Supervisory Files

1. Supervisors of bargaining unit employees may maintain worksite files on such matters as emergency locator information, time and attendance records, training, award, and promotion histories, and other matters pertinent to the performance of their personnel management responsibilities. In most instances, such files will contain only information that is accessible to the employee through the records maintained by the SPO. To the extent that the supervisor maintains records containing information that does not duplicate material contained in the official files maintained by the SPO, such records, other than reports of an ongoing criminal investigation, shall be disclosed upon request to the employee who is the subject of the information or to his/her designated representative. Personal notes that a supervisor may keep as a memory jogger are not considered records and are not releasable to employees, unless relied upon by the supervisor in taking a formal disciplinary or adverse action or unless relevant to legal proceedings such as EEO complaints or grievances.

2. No record, information, or document in the supervisor's or personnel offices's worksite file will be made available to any unauthorized persons to inspect, review, copy or photocopy. Such information will be made available to authorized persons only for official use, as specified by OPM, other applicable laws, and this agreement.

3. The Employer will disclose to the employee all information, including worksite personnel files, used as a basis for disciplinary or adverse action at the time of the proposed action.

Section C. Form and Disposition of Records

1. All provisions of this Article apply to electronic as well as paper files.

2. All personnel files maintained by the Employer, including the OPF maintained by the SPO, shall be disposed of in accordance with the General Records Schedule, other applicable laws, and this agreement.

Section D. Index of Systems of Records: The Employer shall provide to the Union and to employees, upon request an index of the system of records it maintains.

Section E. Employee Records

1. The OPF prescribed by the Office of Personnel Management (OPM) is the official repository of records providing the basic source of factual data about the employee's employment history. The OPF may be used by the Servicing Personnel Office (SPO) as permitted by applicable law, rule, or regulation for any legitimate official purpose, including but not limited to, screening qualifications, determining status, computing length of service, and providing information for statistical purposes.

2. The OPF may be reviewed by, or be used to furnish information to OPM and the Employer's officers and employees who have a need for the OPF or information contained therein, in the performance of their duties. Except for disclosure made in accordance with the previous sentence and to persons and entities engaged in law enforcement activities, the Employer will maintain a record of all other individuals who have reviewed the OPF.

3. Any employee, or designated representative who is authorized in writing by the employee, shall be granted access during scheduled business hours, to review and receive a copy under appropriate supervision, of any documents contained in the OPF in accordance with applicable law, rule and regulation. Normally, the Employer will make the copies, but if this would result in significant time delay, the employee may make the copies under appropriate supervision.

4. Any information, including documentary information, that is unfavorable, derogatory or which reflects adversely upon an employee's character or government service shall be maintained in the OPF only in accordance with applicable law, regulation and this Collective Bargaining Agreement. Employees may review and/or seek to amend any such information in accordance with 5 C.F.R. Part 297, Subpart C, entitled Amendment of Records or this Collective Bargaining Agreement.

ARTICLE 11: CAREER DEVELOPMENT AND TRAINING

Section A. General

1. The provisions of this Article are intended to create and foster a work environment conducive to the career development and training of bargaining unit employees. The Parties agree to support and encourage employees in developing their knowledge, skills, and abilities, and in contributing to the more effective utilization of available human and material resources in service to the Agency.

2. The Parties will encourage employees to take advantage of educational opportunities and training that enhance work efficiency and provide needed skills for advancement based on Agency priorities and availability of training funds.

3. The Agency agrees to maintain information and furnish guidance about suitable and available education, training, and career development resources, including specialized career development programs.

4. Employees should receive fair and equitable treatment in all aspects of the Agency's career development and training program, consistent with affirmative action and other broad staff development goals and be subject to the following:

    a. The Government Employee Training Act (5 U.S.C. 4101-4118) and regulations issued pursuant thereto;

    b. The Equal Employment Opportunity Act (5 U.S.C. 2000-e), as amended;

    c. Affirmative actions as reflected in the Agency's current MD-715 Report;

    d. Available resources allocated for training purposes; and

    e. Other applicable statutory or regulatory provisions.

5. The Agency agrees to assist employees in planning and completing a plan of career development and training.

6. The Agency agrees to notify employees directly of selection or non-selection for Agency-controlled training or educational opportunities for which they applied or were nominated within fifteen (15) work days of the closing date, or two (2) work days prior to the beginning of the training, whichever is sooner. It is understood by the Parties that for some classes or other opportunities which require paneling or recommendation by the Executive Advisory Group, this will not always be possible. In cases of non-selection, the employees may request in writing and receive a written explanation for the denial.

7. Where an institution of higher learning requires verification of on-the-job experience, the Agency shall verify that the employee does work for the Agency, the position description, series, job title, years worked for the Agency, and training history for the immediately prior five (5) year period. The Agency shall verify this information within ten (10) work days of the employee's written request. The Agency's response shall be in the form (e.g., a letter, memorandum, telephone call, and electronic mail) requested by the employee. The Agency agrees to fax the response if requested to do so by the employee.

8. The Agency shall make payment for all authorized expenses in connection with approved training. Authorized training expenses include tuition, registration fees, books, transportation and parking for day-time courses only. However, items such as dictionaries and miscellaneous reference materials will not be covered unless approved in advance by the Servicing Personnel Office (SPO). School supplies such as pencils, notebooks and backpacks, student fees related to college or university courses, and late fees will not be reimbursed.

Section B. Definitions

1. Job Related Training: Activities undertaken to increase the knowledge, competency, ability and skills of employees, which are related to their current duties and responsibilities.

2. Career Development Training: Activities undertaken to increase the knowledge, competency, ability, and skill of employees in the performance of those duties, which support the Agency mission and performance goals. These include potential duties in a different job or occupation at the same or higher level than the one currently held.

3. Career Pathing/Career Guides: A listing or description of knowledge, skills, abilities, (KSAs) and/or competencies developed and/or adopted by the Agency for mission critical occupations, and in the case of other occupations, adapted from applicable existing career pathing resources. These listings will be stratified by grade levels or grade level groupings, and contain key developmental activities, KSAs and/or competencies deemed necessary for successful performance.

Section C. Training

1. The goals of the agency's training program are to facilitate improvement in job performance by employees within their current positions and established career ladders, and to support the long-term development of its employees. This will be achieved by the Agency allocating its available developmental opportunities and resources in a manner that both enhances the ability of FAS to meet its mission more effectively in the short and long term, and the ability for employees to improve their job-related skills.

2. The following approaches to employee training will be utilized, as appropriate:

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

b. training, detail and rotational assignments in complementary positions;

c. enrollment of employees in part-time educational programs at local educational institutions, distance learning, and/or in online courses; and

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

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

4. Employees shall receive training and/or orientation appropriate for any job in which they are placed or to which they are reassigned under Article 18, Reassignments.

5. When training is requested primarily to prepare employees for advancement, or if the requested training would fulfill specific qualification requirements for a position with known promotion potential, selection for such training will be made under competitive promotion procedures, including those contained in Article 17, Merit Promotion.

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

7. Job-related training shall be provided on an equitable basis among work unit employees who require such training.

8. The Agency agrees to play an active role in nominating members of the bargaining unit for various specialized career development programs.

9. When membership in a professional organization is not a trainer-determined or vendor-determined prerequisite for attendance at a training session, the Agency shall not consider membership as the sole factor in determining which employees will receive the training.

Section D. Training Requests and Documentation

1. Training requests, documentation of completed training, and Individual Development

Plans (IDP) will be processed and maintained through an Agency administered employee development system (e.g., USDA AgLearn). The system will allow employees access to their training records.

2. The agency will process approved training requests and related documents received within prescribed time limits to ensure employees are registered and notified in adequate time to prepare for their participation (e.g., make travel arrangements, obtain pre-class materials, etc.).

3. Normally, approved training will occur on official time, subject to restrictions contained in Government-wide regulations and any voluntary agreements made between the Agency and employee, such as when the employee agrees to attend training events during non-duty hours on his/her own time in exchange for the Agency paying tuition/registration fees.

4. Employees will be notified of any agency-wide training requirements (e.g., Civil Rights, Ethics, etc.) and be provided a reasonable amount of official time to complete those requirements in a timely manner.

5. The Agency will assist employees with resolving technical problems experienced while using the system.

Section E. New Processes and Training: As a specific exception to provisions contained in Article 36 (Reorganizations and Other Workplace Changes), Section C, whenever the Agency makes workplace changes involving the introduction of new equipment and/or new processes that will have an impact on conditions of employment on employees, it agrees:

1. To meet, consult, and bargain, if requested, with the Union when employees will be expected to acquire new skills as necessary as a result of the introduction of new equipment and/or new processes which affect or impact the working conditions of the involved employees.

2. To notify the Union as soon as practicable of proposed installation of any new equipment, machinery, or processes which would result in changes in work assignments or require additional training of members of the bargaining unit, and to bargain, as necessary over procedures and arrangements to mitigate any adverse affects on employees associated with implementing those said changes.

3. Upon request by either Party, to meet and discuss, in good faith, the possibility of instituting programs to train or retrain employees in new skills so as to assure an adequate supply of available employees trained in these new skills. Written requests for such a meeting shall identify the purpose thereof.

4. To include the Union in the planning process for training courses or on-the-job training related to automated processes in order to effectively enable affected employees to

perform their job duties as well as provide for requisite staff development. The Agency will inform the Union of planned changes and schedule the training through the Information Resource Management coordinating process or other appropriate means.

Section F. Career Development Counseling

1. Employees shall be given reasonable opportunity and reasonable time necessary to discuss their career development with their supervisors and/or the SPO staff.

2. An employee may request a meeting with the appropriate Agency representative for the purpose of career counseling.

3. An employee's request for a lateral reassignment to a different job or a change to a lower-grade job shall not be considered a factor in any adverse action under Article 29, Disciplinary and Adverse Actions, concerning that employee.

Section G. Individual Development Plan (IDP)

1. The IDP is a tool by which employees and supervisors identify desired training and will to the extent possible, be followed and used as a basis to justify requested training, recognizing the approval of requested training is contingent on Agency priorities and the availability of training funds.

2. Supervisors and their employees shall discuss the employee's training needs using-an Agency-prescribed career guide to identify short-term (i.e., needs for current position) and long-term (i.e., needs for career advancement) training needs. The results of this assessment, when compared to an employee's current skills, will provide the framework for the IDP. Training needs for both the duties the employee currently performs or will be performing, as well as opportunities for career development will be considered, with priority given to the former. The employee shall have the opportunity to explain why particular job-related and career development training was requested and the most appropriate timing for the proposed training.

3. If at any stage of the IDP review process requested training and/or opportunity for career development is not approved, the employee shall be advised.

3. The IDP may be revisited at any time should the supervisor's assessment of the employee's training needs change, additional training be required, and/or the employee seeks training, including nomination/participation in specialized career development programs. When the employee seeks training, such requests will be considered as expeditiously as possible.

Section H. Tuition Assistance: An eligible employee (career or career-conditional employee who has completed one (1) year of current, continuous federal service) who initiates a request for tuition assistance and obtains prior approval from the Agency will have tuition costs (tuition is

defined as the cost of the course per credit hour) paid at educational institutions during their non-work hours, provided that:

1. The course will enable the employee to increase his or her ability in presently assigned duties or duties the employee will be performing (i.e., the course is job- or Agency mission-related). If the latter, the course will be reviewed on a case by case basis by the Agency;

2. For courses of eighty (80) or more classroom hours, the employee must agree in writing to stay with the Agency three (3) times the actual length of the course. Failure to complete this required service will result in the employee being required to repay costs incurred by the Agency. This requirement may be waived at the Agency's discretion;

3. An employee who fails to complete a course or receives a grade of less than C, shall reimburse the Agency unless a waiver is granted by the Agency;

4. The employee completes an Agency- provided course evaluation, if requested;

5. If a college course, the employee is required to provide a copy of the official final grade report;

6. Funds are available to pay for such training without deferring or canceling commitments of higher priority.

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

Section J. Foreign Language

1. General

   The Agency recognizes that, as a Foreign Affairs Agency, the Agency benefits from having a staff professionally conversant in a variety of foreign languages. The Agency supports the development of foreign language proficiency by all employees, with an emphasis on the preparation of employees for assignments in which language skills are necessary to carry out the mission of the Agency and subject to availability of funds.

2. Training

   a. Supervisors should encourage individuals to develop language skills within the parameters of Section J 1 above.

b. All individuals are encouraged to undertake language study through AgLearn or other Agency-based learning systems and the Rosetta Stone or similar vendor licenses purchased by the Agency.

c. Language materials for self-study (including computer based programs) will be provided to individuals by the Office of the Chief Operating Officer based on the availability of Rosetta Stone or similar licenses upon request. However, such materials remain the property of the Government and must be returned to the Office of the Chief Operating Officer.

d. Authorized expenses for language training will be in accordance with Section A.8 of this Article.

Section K. Agency-wide Employee Development Initiatives

1. The Agency agrees that in the event it undertakes any employee development program policy initiatives likely to result in program changes affecting represented employees (e.g., development of career pathing/career guides for Mission Critical Occupations, skills inventory, etc.), the Union will be notified in accordance with Article 36 (Reorganization and Other Workplace Changes) and the Agency will engage the Union in pre-decisional involvement (PDI) activities as provided for in that Article.

2. In addition, should the Agency decide to develop any significant career development initiative (e.g., establishment of an automated skills inventory), it will form a joint task force, to engage in PDI and develop recommendations. Unless otherwise agreed to by the Parties, any task force will be comprised of at two Union-nominated representatives, approved by the Agency. Prior to establishing the number of Union representatives, the Agency and Union will discuss the scope of issues likely to arise, and will determine the number of representatives to ensure adequate coverage of interests and needed expertise.

ARTICLE 12: EMPLOYEE ORIENTATION

Section A. Notice of New Employees: The Employer agrees to provide the Union with a biweekly report that lists accessions, promotions, reassignments, and terminations of bargaining unit employees. This report uses data from the National Finance Center that is usually not made available to the Employer until ten (10) days after the close of each pay period (See Article 40, Reports and Notifications, Section A2).

Section B. Copies of Negotiated Agreement: In all cases, the Employer shall provide to each employee newly assigned to a bargaining unit position a copy of the negotiated Agreement during the initial personnel processing or when the new employee reports for duty.

Section C. Official Time for Orientation for New Employees

1. The Union's representative for this section only is defined as the Union President or the Union's designee.

2. When the Employer holds an orientation session for a new employee, a Union representative shall be entitled to make a (15) fifteen minute presentation during which time the Union representative shall be entitled to distribute to each new bargaining unit employee an introductory letter and a package of materials prepared by the Union.

3. The Union representative shall be granted official time in accordance with Article 47, Official Time and Union Representatives.

4. The Employer agrees to provide notice to the Union President of all orientation sessions at least two (2) working days in advance to ensure a Union representative's attendance at the orientation session.

ARTICLE 13: TRAVEL AND PER DIEM

Section A. Travel

1. All travel must be approved in advance.

2. Employees are required to make airline reservations using GovTrip. Employees should contact the program area Federal Agency Travel Arranger if they experience any problems.

3. The Agency will take all legal actions and remedies available to guarantee employee health and safety during official travel, especially concerning the use of common carrier conveyances. The Agency agrees to give employee health and safety appropriate consideration when scheduling and/or contracting for official travel with common carrier services, consistent with the Federal Travel Regulations (FTR) and the Agriculture Travel Regulations (ATR).

4. Whenever possible, official travel will be scheduled during the employees' normal work day. In those cases where this cannot be accomplished, the affected employee(s) will be compensated for travel time in keeping with applicable pay laws, government-wide regulations, and this Agreement. See Article 7: Premium Pay and Compensatory Time, and any other applicable guidance, for additional information regarding overtime/compensatory time issues while in travel status.

5. Upon appropriate application, an employee may be advanced sufficient funds to cover anticipated out-of-pocket expenses in accordance with established FTR, ATR and the FAS Travel Directives. Travel advance balances will be maintained in accordance with existing requirements.

6. A government credit card will be provided to employees through USDA policy and procedure, if an employee is expected to travel more than once a year. The credit card may be used only for expenses incurred in connection with official travel. Failure to comply with the terms and conditions of the card, or to make timely payments on the amount due, can subject a cardholder to disciplinary action.

7. Travel vouchers shall be prepared and processed in accordance with the FTR and ATR and normally submitted within five (5) work days after returning from the trip. This calendar will not start until the first work day that the employee returns to the office including scheduled days off, approved leave or unscheduled sick leave.

8. Travelers who submit a proper travel voucher to their approving official and are not paid within 30 calendar days after the approving official receives the proper voucher, will be paid a late fee using the prevailing Prompt Payment Act interest rate.

9. The Agency will attempt to minimize extended travel (more than two weeks).

10. Once submitted by the employee, travel vouchers will be processed in a timely manner. The Agency may not withhold such reimbursement of properly documented expenses either for disciplinary reasons or to induce employees to produce reports or other work.

11. The Parties agree that the supervisor and the traveler are ultimately responsible for the accuracy of all travel documents.

12. Decisions on use of contract carriers will be made by the approving official in accordance with applicable travel regulations and FAS Travel Directives.

13. Training materials in GovTrip are available on-line or classes are provided by USDA for travel clerks and supervisors. Subject to funding availability, additional update training will be offered on an as-needed basis.

Section B. Per Diem

1. Employees will be reimbursed in accordance with applicable travel laws and regulations (including Comptroller General decisions) for reasonable expenses incurred by them in the discharge of their official duties.

2. Pursuant to the FTR, employees are expected to exercise care in incurring expenses. Employees should recognize that excess cost incurred from indirect travel routes or planned en route delays, and unusual services or expenses will only be reimbursed if authorized in advance on approved travel authorizations in accordance with established regulations and procedures. If unanticipated expenses are incurred en route, employees may be responsible for paying excess costs absent an acceptable demonstration of mitigating circumstances.

3. An employee assigned to training or temporary duty outside their regular duty station, who elect to return home during non-workdays, will be reimbursed for travel not to exceed the amount reimbursable for the per diem had the employee remained away from home as otherwise required by training or the duty assignment. If this occurs, the employee shall not receive per diem for the non-workdays.

Section C. Travel Regulations: Employees will be given access to applicable travel regulations.

Section D. Vehicles

1. The Agency agrees to refrain from encouraging use of privately-owned vehicles (POV) for official travel.

2. In the event the use of a POV is authorized, mileage for such use shall be compensated at the prevailing rate published in the Federal Register.

3. When an employee is authorized to use a POV for official business and that vehicle sustains damage, the employee may file a claim in accordance with 31 C.F.R. 4.1.

Section E. Illness: In accordance with FTR and Comptroller General Decisions, an employee that becomes ill while in official travel status is generally entitled to per diem for a period not to exceed fourteen (14) calendar days. The period of illness is chargeable to the employee's leave. The supervisor will be notified as soon as possible when an employee becomes ill while in official travel status.

Section F. Use of Frequent Traveler Benefits

1. Employees may participate in frequent traveler programs.

2. Employees are allowed to retain for personal use promotional items received incident to official travel, including frequent flyer miles. Use of such items must be in accordance with applicable rules and regulations.

3. Employees are responsible for establishing their own frequent travel promotional benefits account. Any associated costs must be paid by the employee and are not reimbursable.

4. For additional details on frequent traveler benefits refer to the FTR and ATR FAS Travel Directives.

Section G. Premium Class Travel

1. It is the policy of the Government that employees shall travel by coach class or equivalent accommodations. However, employees may upgrade their transportation class of service at their own expense. In addition, employees may use any frequent traveler benefits earned to upgrade their transportation class to premium service.

2. The regulations and policies governing upgrades to premium airline accommodations can be found in the FTR, ATRE and FAS travel Directives.

3. Procedures for requesting an exception for a medical condition:

    a. Employees with medical conditions needing travel accommodations, including premium class upgrades, should contact the SPO Disability Employment Program Manager (DEPM) who will engage in the accommodation process per the ATR and FFAS Reasonable Accommodation Handbook, 31PM.

    b. In those situations cited in paragraph 3a, above, where travel is to begin within thirty (30) days or a temporary medical condition exists, e.g., pregnancy, broken bone, etc., employees shall submit their request for premium class travel upgrade consideration using the Request for Premium-Class Travel form provided on the FASTNET. Medical certification in a sealed envelope shall be attached to the

form to be opened only by the International Travel Section office. In processing such requests, the agency is not making any determination as to whether or not the individual is a qualified individual with a disability as defined by the Rehabilitation Act of 1973 as amended (as paraphrased from 31PM, paragraph 52). The employee shall endeavor to submit the Request for Premium Class Travel within one working day of booking airline reservation(s) to the first level approving official. Management shall endeavor to expedite the processing of this form.

c. In those cases where the trip is authorized, Management is responsible for ensuring that adequate funding is available for accommodations as required by the Rehabilitation Act, unless it poses an undue hardship on the Agency.

ARTICLE 14: TELEWORK

Section A. General

1. Consistent with USDA policy, directives, and the terms of this agreement, FAS fully supports and promotes the broadest possible use of telework by eligible employees. The purpose of telework is fundamentally to facilitate the successful completion of the duties, responsibilities and other authorized activities of an employee's official position from an alternative worksite other than the location from which the employee would otherwise work. Telework should also facilitate the accomplishment of the Agency's mission by contributing to the recruitment of top talent, retention of current employees, and reduction in the costs of office space, absenteeism, and workers compensation, while enabling employees to better manage work and personal or family responsibilities.

2. Participating employees and the Agency are bound by applicable statutory and regulatory requirements, this Agreement, and applicable telework agreements.

3. A joint Telework Working Group (TWG) shall be formed within two (2) months of the effective date of this Article. The TWG shall be composed of not less than two (2) and not more than four (4) members from each Party and shall continue to monitor the progress of the Program, identify program issues, and make recommendations regarding program improvements.

Section B. Types of Telework: Per the Telework Enhancement Act of 2010, there are two basic categories that the department and OPM require for telework. These are Core telework (i.e., regularly scheduled 1 day per bi-weekly pay period up to full-time) and Ad Hoc (i.e., situational, as needed and may not be recurring) telework.

Section C. Position and Employee Eligibility

1. Except as provided for below in this Section and consistent with the terms of this agreement and applicable USDA policy, all bargaining unit positions and employees who encumber them are presumed suitable and eligible for telework.

2. Eligible employees must have an existing or expected minimum performance rating of "Fully Successful" or higher in order to participate in telework.

3. Union officials on 100% official time are eligible for telework.

4. Positions shall be identified as ineligible for telework on the basis of the specific criteria set forth below:

    a. Position duties require physical presence on a daily basis and do not include any portable work that can be accomplished during any portion of a duty day from an

alternative location.

b. Position duties require access to and/or use of specialized equipment on a daily basis located only at the traditional worksite and do not include any portable work that can be accomplished during any portion of a duty day from an alternative location.

c. Position duties require access to the handling of classified materials on a daily basis and do not include any portable work that can be accomplished during any portion of a duty day from an alternative location.

5. Employees are ineligible for telework based on suitability requirements for conduct resulting from official, formal, disciplinary action as set forth by the Telework Enhancement Act of 2010 for the following:

a. Violations of subpart G of the Standards for Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or performing official Federal Government duties; or

b. Being absent without permission (AWOL) for more than 5 days in any calendar year.

6. Employees may be identified by the Agency as ineligible for telework (or category of telework) in the event that:

a. telework will contribute to, or has resulted in, diminished individual or organizational performance based on articulated reasons,

b. if the employee has received less than fully successful performance rating in the past 12 months, or

c. if the employee has been placed in an Opportunity to Improve (OTI) period which requires the employee's physical presence on a daily or more frequent basis than that contained in his/her current telework agreement.

7. In cases where diminished performance is attributable to telework, the Agency will develop a plan to mitigate the telework-related performance barriers for the affected employees within a reasonable period of time. If successful and the employee is otherwise eligible to telework, the employee's telework eligibility will be granted or restored within 12 months.

8. Employees may be deemed by the Agency to be ineligible for telework on a temporary basis because of documented misconduct that the Agency has determined warrants the need for onsite supervision, including situations that result in the employee being placed

on leave restriction. An employee's eligibility status will be reviewed and discussed on at least an annual basis to determine whether their eligibility for telework should be restored.

Section D. Telework Participation

1. Participation in telework is voluntary except for employees who are designated by the Agency as "emergency personnel" or "mission critical."

2. All FAS employees who are eligible for telework must complete a telework agreement form if they wish to participate in the program. The Agreement must be approved by the Agency, and the employee must comply with its provisions, including requisite telework training requirements, to retain eligibility. If required by Agency regulations, eligible employees who do not wish to participate must officially communicate their intent to voluntarily opt-out of participation.

3. Telework may be approved up to and including a permanent, full-time telework agreement.

4. All telework eligible employees may participate in flexible or compressed work schedules, or other flexible work arrangements in combination with core and ad-hoc telework consistent with terms of their telework agreements.

5. By mutual agreement between the supervisor and eligible employee, core teleworkers shall be permitted to swap or change their telework scheduled days in order to facilitate work accomplishment and shall be authorized to participate in Ad Hoc telework.

6. Telework agreements must be renewed annually, but may be modified at any time in response to the supervisor's or employee's request. The telework agreement may be changed or terminated by either management or by the employee with a minimum of two weeks advance written notification, except in emergency situations and for documented misconduct. Involuntary termination and/or modification of a telework agreement must be based on ineligibility requirements set forth in this Article.

7. Management reserves the right to require employees in the local commuting area to return to the official duty location on scheduled telework days based on operational requirements. Except in cases of emergency, unknown, or unanticipated needs on the part of the requesting official, employees shall normally be given no less than 3 working days' notice.

8. Employee performance for teleworkers will be evaluated fairly and equitably using elements and standards developed under the same Agency's performance management program that covers workers at traditional office/duty locations. Telework will not be counted as a factor to adversely affect employees with regard to work assignments,

periodic appraisal of job performance, awards, recognition, training and developmental opportunities, promotions and retention incentives.

Section E. Unscheduled and Emergency Telework

1. Unscheduled and Emergency Telework are important components of the Agency's ability to continue operations in emergency situations. The Agency will adhere to the instructions for emergency situations as stated in the Washington, DC, Area Dismissal and Closure Procedures. The Agency will follow operating status guidance for unscheduled telework issued by the Office of Personnel Management (OPM) and USDA authorized officials.

2. All eligible employees with telework agreements in place may choose to participate in "Unscheduled Telework" as defined by OPM and USDA in Section E.1 provided that there is suitable work to perform at the telework location and/or the employee has accessible network connectivity consistent with any Agency capacity protocols. In cases of personal emergency, employees may choose to telework if approved by the Agency.

3. When federal offices are closed to the public due to an emergency, two types of telework employees may be required to work:

    a. Any teleworking employee whose regularly scheduled telework day occurs on the day of closure; or

    b. Any emergency essential or mission critical teleworker, as indicated on the Telework Agreement form.

4. If circumstances occur on a day of closure that prevent the teleworker from working their regularly scheduled telework day, paid or unpaid leave may be granted by the Agency in accordance with the policy for Pay and Leave.

5. If the remote work site is affected by an emergency that prevents the employee from working but the official duty location is not, the employee may be required to report to the official duty location or request leave. The employee may be granted an excused absence depending on the circumstances.

Section F. Miscellaneous Procedures/Policies

1. Eligible employees are normally expected to procure and provide internet service at their own expense. The Agency will provide authorized teleworkers, to the extent possible and budget permitting, with the appropriate hardware, software, and ancillary items (e.g., RSA tokens) needed to connect to the FAS network or other networks needed to perform their work duties. Such equipment will be for official use only and the Agency retains ownership.

2. Employees approved for telework must comply with all training, security, and disclosure provisions, including password protection and data encryption, so that the Privacy Act and other security standards are not compromised.

3. The Agency will follow Office of Personnel Management and Department guidelines for determining the official duty station for employees approved for telework.

4. Rules and practices concerning work schedules, overtime, pay, leave, core hours and other personnel issues shall be applied equitably to telework and non-telework employees and shall be applied in a manner consistent with the terms of this Article and Agreement.

5. The Parties agree that supervisors who manage employees working at remote sites must have reasonable assurance that the employees are working when scheduled. Therefore, supervisors may make telephone calls and, with 1 day's notice, visits during the employee's scheduled work time, unless the Agency reasonably suspects the employee is engaged in work-related misconduct. In such cases, unannounced visits are permissible, with any investigative activities conducted in accordance with applicable case law, employee relations regulations, and provisions of this Agreement.

6. Employees approved for telework are covered by the Federal Employees Compensation Act (FECA) and may qualify for payment if injured in the course of performing official duties at the alternative work site. The FECA, 5 USC Chapter 81, provides compensation benefits to federal employees for work-related injuries or illnesses and to their surviving dependents if a work-related injury results in the employee's death. FECA is administered by the Department of Labor, Office of Workers' Compensation Programs (OWCP).

7. With regard to the use of telework as a means of reasonable accommodation for qualified disabled employees, and subject to the restrictions listed in Section C above, the Agency will adhere to current EEO guidelines and policies; as well as to the Americans with Disabilities (ADA) Amendments Act of 2008, and any of its subsequent amendments.

8. Employees may file a grievance or complaint regarding any alleged violation concerning matters covered by this Article. Such grievances or complaints shall be filed pursuant to Articles 28 (Prohibited Personnel Practices), 38 (Equal Employment Opportunity) and/or Article 41 (Grievance Procedures).

9. Absent mutual agreement by the Parties, matters covered by this Article shall not be subject to change for the life of this Agreement, unless otherwise mandated by changes in applicable law, Federal rule or regulation, or by direction of Executive Order or the Office of Personnel Management.

ARTICLE 15: TECHNOLOGY, METHODS AND MEANS OF PERFORMING WORK

Section A. General: Proposed changes in technology, methods, and means of performing work initiated by either the Agency or the Union will require appropriate advance notice, pre-decisional involvement of bargaining unit employees, and bargaining in accordance with applicable law, Executive Order, and Article 44, Mid-Contract Negotiations, of this Agreement.

Section B. Personal Use of Government Technology: It is the policy of this Agency to protect USDA and FAS resources from accidental or deliberate unauthorized access, use, modification, or disclosure by employing adequate security measures through cost-effective technical and management controls. Additional details regarding the Agency's policy on accessing and using the Internet and email systems are contained in FSA Notice IRM-306 and USDA DR 3300-1.

1. Government office equipment for which limited personal use is authorized includes, but is not limited to:

    a. Personal computers and related peripheral equipment and software

    b. Library resources

    c. Telephones

    d. Facsimile machines

    e. Photocopiers

    f. Office supplies

    g. Internet connectivity and access to Internet services

    h. E-mail.

2. Limited personal use may be authorized if it is determined that:

    a. The employee's performance of official duties is not adversely affected;

b. The use is of reasonable duration and frequency and, whenever possible, made during the employee's personal time;

c. The use serves a legitimate public interest;

d. The use does not reflect adversely on USDA or the Agency (such as uses involving pornography, playing games, conducting private business, chain letters, etc.); and,

e. The use does not overburden the equipment and there is no significant additional cost to the Agency or USDA.

3. Misuse or inappropriate personal use includes, but is not limited to:

a. Any personal use that could cause congestion, delay, or disruption of service to any Government system or equipment;

b. Creating, copying, transmitting, or retransmitting chain letters or other unauthorized mass mailings regardless of the subject matter;

c. Activities that are illegal, inappropriate, or offensive to fellow employees or the public;

d. Use for commercial purposes or in support of other outside employment or business activity;

e. Any type of personal solicitation;

f. Modifying Government office equipment for nongovernmental purposes including loading personal software or making configuration changes unless approved by the Agency.

Section C. Changes in Technology

1. When replacing or acquiring additional computer equipment, the Agency will provide for anticipated Telework needs.

a. Equipment for Telework employees should be adequate to permit the employee to perform the required duties while working at the alternative work site.

b. The Agency will ensure that software acquired in order for employees (Telework and others) to connect to the Agency LAN does not reduce employee efficiency.

2. Subject to the availability of funds, the Agency will provide at least one (1) color inkjet printer per Division if requested by the Director.

ARTICLE 16: CAREER LADDER PROMOTIONS

Section A. Basic Eligibility Requirements: An employee in a career ladder generally should be promoted no earlier than the first full pay period after all of the following requirements are met:

1. The employee becomes minimally eligible to be promoted after one (1) year in grade or whatever lesser period satisfies basic eligibility requirements;

2. The employee demonstrates the potential for satisfactory performance at the next higher level. In this regard, the supervisor must make this determination prior to the date the employee is minimally eligible to be promoted;

3. The employee's current performance appraisal record must have an overall summary rating of Fully Successful; and

4. All other requirements of law and regulation are met.

Section B. Supervisor Certification

1. Supervisors shall review the work of each employee in a career ladder position who will be eligible for a career ladder promotion prior to the employee's eligibility date. Employees who do not meet the requirements for promotion in accordance with Section A of this Article will be provided written notice to this effect by the supervisor no less than thirty (30) calendar days prior to the eligibility date. The written notice will explain in what performance element area and how the employee's performance is lacking and advise as to what the employee must do to meet the requirements for promotion. If delays are for reasons other than performance, these will be explained in the advance notice.

2. Once an employee's performance improves to the requisite level as described in Section A of this Article, the supervisor will recommend the employee for promotion.

3. If advance notice requirements are not met, the promotion will be made retroactive to the date the employee met the basic eligibility requirements as stated in Section A 1, 3, and 4 above.

ARTICLE 17: MERIT PROMOTION

Section A. General Provisions

1. The principle of merit promotion is to ensure that employees are given full and fair consideration for advancement and to ensure selection from among the best-qualified candidates. The Agency recognizes the value of promoting from within the Agency.

2. Positions in the Bargaining Unit will be filled on the basis of merit and in accordance with applicable law, rule, regulations and this Agreement.

3. Supervisors must notify temporarily absent subordinate employees about announced vacancies. Employees who wish to be considered for vacancies but who will be temporarily absent from the workplace should be given fax numbers for the Servicing Personnel Office (SPO), or other necessary numbers, so that they can make appropriate arrangements to submit their applications.

4. Both Parties agree to jointly explore means of submitting applications electronically.

Section B. Vacancy Announcements

1. Announcements for bargaining unit positions shall be open for at least ten (10) work days.

2. Announcements will be posted electronically by the opening date.

3. All vacancy announcements will contain the following information:

    a. Announcement number and issue date;

    b. Area of consideration;

    c. Title, series, grade, and number of positions;

    d. Geographic location of position;

    e. Closing date for acceptance of applications;

    f. Summary of the duties of the position;

    g. Qualification requirements, including any selective placement factors;

h. Knowledge, skills, and abilities to be used in the evaluation process, if any;

i. Known promotion potential, if any;

j. Instructions for applying;

k. Whether reimbursement for relocation expenses is authorized in the event selection is made of a candidate from outside the commuting area;

l. A statement that the principles of equal employment opportunity will be adhered to in all phases of the promotion process; and

m. Name and phone number of contact person for any information concerning the vacancy announcement, including a copy of the position description;

n. The following statements:

(1) Use of U.S. Government postage-paid envelopes to submit applications are unauthorized.

(2) Use of U.S. Government envelopes used for transmitting personnel and other official administrative personal documents (blue envelopes marked Personal - Attention/For Official Use Only) is unauthorized.

(3) Use of the USDA mail system including inter-office messenger is unauthorized.

(4) Use of U.S. Government inter-office messenger mail envelopes, GSA Optional Form 65-B, is authorized.

(5) Submission by FAX from overseas is authorized.

4. Supervisors are encouraged to notify the Union prior to announcing vacancies outside the Agency (i.e., USDA-wide, Government-wide, or all sources).

Section C. Qualification Standards

1. Qualification requirements and selective placement factors for vacant positions will be job related.

2. Candidates will be rated basically eligible for a position if they meet the minimum qualification requirements for a General Schedule position described in the OPM Operating Manual for Qualifications Standards for General Schedule Positions based on the application, Knowledge, Skills and Abilities (KSA's), and performance appraisal (or

Wage Grade Qualifications Standards, as appropriate) as supplemented by valid job-related selective placement factors, if any.

3. Selective placement factors may be used in determining basic qualifications if they are essential (not merely desirable) to successful performance in the position being filled. The inclusion of such factors must be supported by the position description.

Section D. Evaluation and Ranking Criteria: The best qualified candidates will be identified through an impartial evaluation of eligible candidates based upon uniformly applied job-related evaluation criteria. The following factors will provide a framework for determining the appropriate criteria for each position.

1. Experience. Experience is to be evaluated in terms of the position to be filled. Length of experience may be used only to the extent to which it can be shown to be a valid job-related factor for the position being filled. Experience (including leadership, supervisory and managerial) gained through employment in other public and private positions will be given credit as described in OPM Qualification Standards for General Schedule positions.

2. Training and Education. Pertinent training, self-development, and outside activities determined to indicate effective performance in the position to be filled will be considered to the extent that they are clearly job-related, or clearly provide evidence of learning ability where this is a requirement for successful performance on the job.

3. Performance Appraisal. All Federal applicants must submit a copy of their latest performance appraisal form which would usually have been completed within the last year.

4. Awards and Recognition. An employee's achievements that earned him/her special recognition will be considered in terms of the requirements of the job to be filled.

Section E. Evaluation and Ranking Procedures

1. Initial Review of Applications. Before beginning the evaluation and ranking procedures, the SPO will first review all applications to ensure that each applicant/application:

   a. Is within the area of consideration;

   b. Meets minimum qualifications, including selective placement factors, if applicable;

   c. Meets time-in-grade requirements, if applicable; and

   d. Has submitted all required documents.

2. Rating and Ranking

a. If there are eleven (11) or more qualified competitive applicants,

(1) Evaluation for positions will be made by a Merit Promotion panel consisting of subject matter experts. A personnel specialist from the SPO will serve as a facilitator.

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

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

b. In cases of ten (10) or fewer qualified competitive applicants, a single evaluator may rank all applications.

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

Section F. Selection

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

   a. Career Transition Assistance Program (CTAP) applicants who are well qualified;

   b. Former Department employees who are on the Department's priority reemployment or repromotion list; and

   c. Best qualified applicants from all other sources.

2. The selecting official is not required to fill a vacancy by selection of one of the best qualified candidates listed on the promotion certificate. He or she may:

   a. Request extension of the area of consideration;

   b. Request additional recruitment efforts; and/or

   c. Fill the job by some other type of placement action.

3. All competitive bargaining unit applicants referred to the selecting official will be interviewed. Telephone interviews are acceptable for those applicants not in the commuting area or not able to participate in a face-to-face interview due to unusual circumstances.

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

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

Section G. Merit Promotion Records: In accordance with 5 C.F.R. 335, and ensuring that individuals' rights to privacy are protected, the SPO shall keep a copy of the following documents in each merit promotion file for a period of two (2) years, or after formal personnel management evaluation review by OPM, whichever comes first, if the time limit for grievance has lapsed before the anniversary date:

1. Vacancy announcements;

2. Position description;

3. Copies of all applicants application package;

4. Copies of performance appraisals;

5. Rating criteria;

6. Ratings for each qualified applicant;

7. Ranking and cutoff for best qualified; and

8. Referral list(s) (competitive or non-competitive certificate).

Section H. Employee Requests for Information: Candidates for positions filled competitively under this Article are entitled, upon written request, to the following information furnished by SPO personnel in writing, within fifteen (15) working days:

1. Basic eligibility determination;

2. Basic qualification determination;

3. Individual rating scores on KSA elements;

4. Best qualified rating score and individual ranking; and

5. Name of individual selected.

Section I. Resolution of Disputes: A grievance may be filed when it is believed that a violation of relevant Merit Promotion law, rule, regulation, or the provisions of this Agreement has occurred.

Section J. Noncompetitive Promotion

1. When the SPO determines that there has been an accretion of duties and responsibilities that warrants an increase in grade, the employee and supervisor will be notified.

2. The Agency will either promote the employee without competition or eliminate or redistribute the grade controlling duties by the end of the pay period. If the duties are redistributed, the supervisor will do so in a manner such that it will not create another misclassification.

ARTICLE 18: REASSIGNMENTS

Section A. Definition: A reassignment means a change of an employee, from one position to another within FAS without promotion or demotion, while serving continuously within FAS.

Section B. General

1. The parties understand reassignments of FAS employees may be initiated by employees or the Employer for reasons such as:

    a. To accomplish the mission and/or maintain the integrity of the Agency;

    b. To improve economy or efficiency;

    c. To assure the better utilization of employee skills or abilities;

    d. To make the best use of current staff and other resources;

    e. To provide employees with opportunities to broaden their qualifications, skills, abilities, and experience in areas of work performed by the Employer;

    f. To resolve work-related problems;

    g. To resolve employee hardship and reasonable accommodation concerns;

    h. To fulfill an employee request; and/or

    i. To allow training of an employee.

2. Although the Employer will make a good faith effort to honor an employee's request for reassignment, it is understood that the Employer may not be able to fulfill all employee requested reassignments.

3. The Union will receive five (5) work days advance notice of any reassignment actions involving bargaining unit employees.

4. Reassignments made will be consistent with Career Transition Assistance Program (CTAP) regulations.

Section C. Procedures - Employee Requests

1. Employees may request a reassignment, in writing, to their immediate supervisor. Employees may request a Union representative to assist in the reassignment(s).

2. The Employer will respond, in writing, within sixty (60) calendar days of receiving an employee's request. The immediate supervisor will coordinate his/her response with the program area manager. If the request is disapproved, the Employer's written response must provide the reasons for the disapproval.

3. When a reassignment involves a change in duty station to or from outside the Washington, DC area, the Employer agrees to give the employee a reasonable amount of time to accomplish the change in duty station in an orderly manner.

Section D. Employer-Initiated Actions

1. The employer may initiate a reassignment based on need.

2. The Employer will notify the affected employee(s), in writing, of the specifics in advance of the reassignment(s) consistent with Section B of this Article.

ARTICLE 19: DETAILS

Section A. General

1. Definition: For the purposes of this Article, the term detail means the temporary assignment by the Agency of an employee to new duties, unclassified duties, or to another position.

2. The Parties will encourage employees to take advantage of detail opportunities that enhance work efficiency and provide needed skills for advancement based on Agency priorities and availability of training funds.

3. Details of thirty (30) days or longer to agencies or organizations outside of FAS will be announced in the FAS Bulletin in accordance with the provisions of the settlement in EEO Class Complaint 890216 and this Agreement unless legally inconsistent.

Section B. Details to a Position at the Same or Lower Grade Level

1. Length of Detail. The detail of an employee to a position at the same or lower grade level will generally not exceed one hundred twenty (120) calendar days. This provision may not be circumvented by resorting to a series of details of less than one hundred twenty (120) calendar days.

2. Documentation

   a. Details for more than thirty (30) calendar days within the Agency shall be documented by a position description if available or a memorandum containing a brief description of duties (e-mail acceptable) to the employee and signed by the detail supervisor.

   b. Normally, specifics of details expected to last more than thirty (30) calendar days will be submitted to the Union prior to implementation.

3. Impact on Merit Promotion Procedures. Merit promotion procedures do not apply when a detail is to a position at the same or lower grade level.

4. For employees detailed for one hundred twenty (120) days or less, supervisors are encouraged to provide a write-up of not more than one page on the employee's performance under the detail, if requested by the employee.

5. Employees detailed to positions with different elements and standards expected to exceed one hundred twenty (120) days will be issued a performance plan no later than thirty (30) days of entering the new position or starting the detail.

Section C. Details to a Higher-Graded Position

1. Length of Non-Competitive Detail. An employee may not be non-competitively detailed to a higher graded position for more than one hundred twenty (120) calendar days or in accordance with prevailing CTAP regulations. A detail to a higher graded position expected to last for more than thirty (30) days requires a temporary promotion if basic eligibility criteria for promotion are met. This provision may not be circumvented by rotating an employee in and out of a detail position.

2. Documentation. Details under this section will be documented by:

   a. an SF-50 for a temporary promotion; and

   b. an SF-52 for a detail of more than thirty (30) calendar days.

3. Normally, specifics of a detail expected to last more than thirty (30) calendar days will be submitted to the Union prior to implementation.

4. Details will not be used to circumvent competitive procedures or be used to give an unfair competitive advantage to the employee detailed to a higher-graded position. For non-competitive details, the supervisor shall endeavor to rotate the detail opportunity(ies) among equally qualified work unit employees, when possible.

5. For employees detailed for one hundred twenty (120) days or less, supervisors are encouraged to provide a write-up of not more than one page on the employee's performance under the detail, if requested by the employee.

6. Employees detailed to positions with different elements and standards expected to exceed one hundred twenty (120) days will be issued a performance plan no later than thirty (30) days of entering the new position or starting the detail.

Section D. Return to Original Assignment: Upon return to his/her original position, the employee will be given reasonable time to become acquainted with any changes which have occurred during his/her absence.

Section E. Training and Developmental Assignments: Work assignments/details made as part of recognized training or professional development programs will not be covered by the requirements of this Article to the extent that they conflict with program guidelines or requirements or interfere with the achievement of the training or professional development program objectives.

Section F. Other Details: Nothing in this Article shall preclude the Union from suggesting the use of details to address grievance resolutions and/or personnel conflicts. In those cases where

the employee chooses not to use a Union representative to address grievance resolutions and/or personnel conflicts, the Union shall be informed prior to implementation.

ARTICLE 20: PART-TIME EMPLOYMENT

Section A. Purpose: The Employer recognizes the benefit of permanent and temporary part-time and/or job-share employment to both the Agency and employees in those situations where mission accomplishment permits such arrangements. Such arrangements allow the Agency to attract and retain the skills of individuals who have training and experience but who may require or prefer shorter hours.

Section B. Part-Time Career Employment: In consultation with the Union, the Employer will maintain the availability of part-time career employment, including job-sharing, that will:

1. Provide for the review of positions which may be filled on a part-time career employment basis;

2. Establish criteria to be used in connection with establishing or converting positions to part-time;

3. Establish annual goals for establishing or converting positions to part-time career employment; and

4. Annually review and evaluate its part-time career employment program, as described in the Federal Employees Part-Time Career Employment Act of 1978.

Section C. Employee Information: The Employer will provide to the employee information concerning the impact of the conversion from full-time to part-time, or part-time to full-time employment in the areas of retirement, leave, reduction-in-force, time-in-grade, health and life insurance, promotion, and step increases.

Section D. Consideration

1. Employee requests for changes in part-time or full-time employment must be made in writing to the Employer.

2. The Employer shall give fair consideration within a reasonable time frame to a bargaining unit employee's written request to convert to part-time, job-sharing, or full-time work, and approve/disapprove in writing. If the request is disapproved, the Employer's written response must provide the reasons for disapproval.

Section E. Policies Governing Part-Time Employment, including Job-Sharing: The Employer will follow OPM regulations and guidelines regarding part-time and job-share employment.

Section F. Part-Time Schedule

1. Part-time employees may work between sixteen (16) and thirty-two (32) hours per week according to regulations. A job-share team may not work more than the equivalent of one (1) full time equivalent (FTE) position without the approval of management.

2. Employees may request in writing to initiate or change their non-pay day(s) off in accordance with Article 6, Work Schedules/Tours of Duty, procedures of this Agreement.

ARTICLE 21: PROBATIONARY EMPLOYEES

Section A. Definitions: A probationary bargaining unit employee is a bargaining unit employee who has been given a career or career-conditional appointment and who is serving his/her first year of federal service and who meets the further requirements described in 5 C.F.R., Part 315. The Parties recognize that there are circumstances that may require an employee to serve more than one probationary period.

Section B. Procedures

1. The Agency agrees to advise a probationary bargaining unit employee of his/her performance progress at any time but no later than the required mid-term progress review.

2. The Agency may discharge a probationary employee at any time during their probationary period if they fail to demonstrate fully their qualifications for continued employment. Supervisors of probationary employees experiencing performance and/or conduct problems are encouraged to meet with those employees and discuss those issues. The supervisor and the employee are encouraged to document areas needing improvement and to share such documents with each other. The Union encourages employees in this situation to contact a union representative.

3. As a means of addressing the areas needing improvement, at management's option, the employee may be reassigned within the Agency.

4. When the Agency decides to terminate a bargaining unit employee serving a probationary period because his/her work performance or conduct during this period fails to demonstrate his/her fitness or qualifications for continued employment, the Agency shall terminate the probationary bargaining unit employee by notifying in writing him/her as to why he/she is being separated and the effective date of the action.

5. The Agency agrees that it will give two (2) weeks advanced notice of termination to an affected probationary bargaining unit employee if consistent with the interests of the Service, i.e. the Agency's operation and mission accomplishment. If less than two (2) weeks probationary time remains, a lesser advanced notice may be given.

6. The Agency will allow a probationary bargaining unit employee the opportunity to resign his/her position in lieu of termination unless the needs of the Service, time or the availability of the probationary bargaining unit employee dictate otherwise.

7. To the extent permitted by applicable law, rule, and regulation, probationary employees shall have the right to appeal their termination to the Merit Systems Protection Board, or, if the employee believes that their termination is based on discrimination, the employee may file an EEO complaint.

Section C. Consultation: Any probationary bargaining unit employee may consult with the Union regarding their unacceptable performance or termination.

Section D. Grievability: Nothing in this Article shall afford the probationary bargaining unit employee the opportunity to grieve a termination, unless there is a change in law during the term of this Agreement.

ARTICLE 22: REDUCTION-IN-FORCE (RIF) AND TRANSFER OF FUNCTION

Section A: Except as otherwise provided for in this Article, a Reduction-in-Force (RIF), transfer of function, or furlough of more than thirty (30) calendar days, shall be administered pursuant to 5 CFR 351 and all other applicable laws, rules, regulations, and this Agreement.

Section B: All provisions of this Article shall be based on non-discriminatory criteria.

Section C. Reduction in Force (RIF)

1. Prior to the decision to institute a RIF that may result from a reorganization or other change, the Agency shall fulfill its obligations pursuant to Article 36 (Negotiating Reorganizations and Other Workplace Changes) of this Agreement. This provision in no way negates the Agency's right to implement a RIF, nor does it constitute a waiver of the Union's right to bargain to the full extent of the law over matters not otherwise covered by this Agreement.

2. Before instituting a RIF the Agency shall, where it determines such actions to be feasible, consider taking steps to avoid and/or mitigate the scope of the RIF by addressing budget cutbacks and/or other changes. These steps include attrition, hiring freezes, employee reassignments, furloughs, reductions in non-mission critical travel or training, or reductions in contracts let to consultants and contractors, as well as any and all other non-mission critical expenses. To this effect, the Agency shall impose a hiring freeze for those positions in the same occupation series, grade levels, and competitive levels as those positions being subject to a RIF beginning no later than when the Agency obtains RIF authority until when the RIF ends.

3. The Union shall be given the earliest possible preliminary notification in writing once the Agency has decided to implement a RIF. To the maximum extent possible, this notification shall be at least seventy-five (75) calendar days before the anticipated effective date for the RIF. The notification shall contain the anticipated effective date of the RIF, the names, title, series, grade of employees likely to be affected; efforts the Agency has taken to avoid a RIF; expected outcomes of the RIF; and a copy of the Agency's request to the Department to seek RIF authority.

4. Unless a shorter notice period has been approved by the Director of OPM, the Agency shall provide affected employees specific RIF notices at least sixty (60) full days prior to the effective date of the RIF, which shall include the following information, as applicable:

    a. the specific functions to be transferred and identification of employees assigned to this function;

    b. the specific actions being proposed or taken;

c. the reason for the RIF;

d. the effective date that the action will occur;

e. the affected employee's competitive area and level;

f. the affected employee's appointment status;

g. the affected employee's service computation date;

h. the place where the employee may inspect the records and regulations pertinent to his or her placement or non-placement, including his or her retention register;

i. why any employee at the same competitive level in the area affected by the RIF with less retention preference is being retained,

j. why any employee occupying a position at a lower grade in the same promotion plan as the affected employee is being retained;

k. salary and grade retention rights, as applicable;

l. the time frame in which an employee must accept or decline a placement offer;

m. if applicable, the employee's rights, entitlements, and responsibilities with respect to available programs such as the Career Transition Assistance Plan (CTAP), Reemployment Priority List (RPL), Career Development Centers, and other programs which may be available;

n. where and how to apply for unemployment insurance;

o. reemployment rights, as applicable;

p. information regarding continued health and life insurance benefits after RIF separation; and

q. time limits for the filing of appeals and complaints and where such appeals and complaints should be addressed.

The Agency shall also make copies of OPM regulation 5 CFR 351 and information on Workforce Restructuring and Reduction in Force (RIF) on OPM's website available to employees in each affected program area within FAS. Employees may access OPM's website on Workforce Restructuring and RIF at http://www.opm.gov/policy-data-oversight/workforce-restructuring/reductions-in-force.

5. The Agency shall inform the Union, in writing, no less than seven (7) calendar days prior to the presentation of the specific RIF notice(s) to affected employee(s). The Union's notice shall include:

   a. the reasons for the upcoming RIF;

   b. the numbers and types of positions being impacted by the RIF;

   c. the names of all bargaining unit members being affected;

   d. the approximate date of the RIF;

   e. the date, time and location of the presentation of the notices to the employees, as well as an invitation to the Union to participate in any meetings with affected employees concerning the RIF; and

   f. as available, copies of the notices being distributed to employees. The Union shall receive copies no later than the date of their distribution to employees.

   Should the Union need further information regarding the RIF it may request such information pursuant to 5 USC 7114.

6. No RIF shall provide an advantage to an employee which he or she did not otherwise have prior to that RIF's implementation. Nor shall the Agency institute a RIF in lieu of a disciplinary measure or as a performance-based adverse action against any employee or group of employees. Nor shall a RIF be instituted for the purpose of circumventing merit promotion procedures.

7. The Agency shall minimize the displacement of employees potentially adversely affected by a prospective RIF through the reassignment of such employees to vacant positions for which they might qualify, provided that there is a need, as determined by the Agency, to fill such vacancies, and further provided that such reassignment(s) are consistent with applicable law, rule, and regulation. Such reassignment shall be to a vacant position at the same grade or pay. Employees reassigned under this section shall be provided with such additional training as is deemed necessary by the Agency to successfully perform the requirements of the new job.

8. The Union shall be provided with a list of appropriate OPM position qualification standards should the Agency make exceptions to those standards in order to place affected employees in available vacant positions.

9. Determining the procedures by which an agency is required to implement a RIF as well as which employees may be subject to a RIF action is contained in OPM regulations (5 CFR 351) and the OPM website at http://www.opm.gov/policy-data-oversight/workforce-restructuring/reductions-in-force. As a way to familiarize and provide employees

immediate access to the key RIF-related terms and features, the following glossary is provided with the understanding that the cited OPM regulations are the authoritative source for RIF information:

a. Competitive Area. The geographical and organizational boundary within which employees compete for job retention during a RIF. A competitive area may consist of all or part of an agency.

b. Competitive Level. Within each competitive area, the Agency shall group interchangeable positions into competitive levels. Each competitive level shall include positions with the same grade, series, qualifications, duties, and working conditions. Positions with different types of work schedules (e.g., full-time, part-time, intermittent, seasonal, or on-call) are placed in different competitive levels.

c. Retention registers. Separate retention registers are established for each competitive level. Within each competitive level, employees are ranked in terms of their retention standings. An employee's retention standing is based on these four retention factors: *tenure, Veteran's preference, length of service*, and *performance*, as described below:

(1) Tenure. There are three tenure groups: 1) career employees not serving on probation; 2) career employees who are serving a probationary period and career-conditional employees; and 3) employees serving on term and similar non-status appointments.

(2) Veteran's preference. There are three groups for Veteran's preference: 1) veterans with a compensable service-connected disability of 30% or more; 2) veterans not included in group 1 above; and 3) nonveterans. According to regulation, there are additional factors for determining Veteran's preference.

(3) Length of service. Length of service is based on service computation date.

(4) Performance. Performance ratings for the previous four years determine receive extra service credit in determining retention standing. Extra service credit for performance is assigned by averaging the value of the last three annual ratings (rounded up to the next whole number, in the case of a fraction). The standard values are:

(a) 20 years for an "Outstanding" rating;
(b) 16 years for an "Exceeds Fully Successful" rating; and
(c) 12 years for a "Fully Successful" rating.

The extra years of performance credit are added to the service computation date to form the adjusted service computation date, which is used in determining RIF retention standing.

10. Employees receiving a RIF notice have the right to review all retention lists pertaining to all positions for which they are qualified. This includes the retention register for their competitive level and those for other positions for which they are qualified, down to and including those in the same equivalent grade as the position offered by the Agency. If separation occurs, this includes all positions at or below the level of their current positions. Affected bargaining unit employees shall have the right to have a Union representative present when reviewing such lists or records. Such review shall be subject to the Agency's lawful authority to withhold identifying information under the Privacy Act. If information is withheld because of privacy issues, the Agency shall supply a description or list of the withheld information. For examples of sample retention lists, see the OPM website at http://www.opm.gov/policy-data-oversight/workforce-restructuring/reductions-in-force.

11. Release from the Competitive Level: The Agency shall release employees from the retention register in the inverse order of their retention standing.

12. Should the Agency, pursuant to 5 CFR 351, decide to depart from this the normal order of release from their competitive level in order to retain an employee with special skills, it shall notify any employees reached for release because of such decision. The notification shall give the reasons for the procedural exception.

13. Employees released from a Competitive Level may have rights to other positions by exercising assignment rights that are commonly referred to as *bumping* and *retreating,* as defined in OPM RIF regulations and found on the previously linked OPM website:

    a. Bumping: displacing an employee in the same competitive area but on a different competitive level who is in a lower tenure group, or in a lower subgroup within your tenure group.

    b. Retreating: displacing an employee in the same competitive area but on a different competitive level and in the same tenure group and subgroup who has less service.

14. Grade and Pay Retention: Employees assigned to positions at a lower representative rate than the position from which they have been released are entitled to two (2) years of grade retention and subsequent pay retention in accordance with 5 CFR 536.

15. To determine employees' potential qualifications to bump or retreat into another position, before the Agency issues RIF notices it may ask employees to submit a qualifications update by a designated freeze date.

16. An employee shall be given ten (10) workdays to accept any placement offer made in accordance with his or her rights as provided for under the regulations or by this Article. Absent circumstances that would cause the Agency to extend the time frame, the employee's failure to respond within the above time frame shall be considered a rejection of the offer. Acceptance of a position offer made in accordance with 5 CFR 351 and this Article shall conclude the Agency's obligation to the affected employee as far as his or her RIF placement is concerned. Refusal of any placement made in accordance with the terms of this Article or under 5 CFR 351 shall result in separation of the affected employee.

17. Consistent with Federal Acquisition law and regulations, when employees are displaced as a result of a decision to contract out the work they perform, the Agency shall include in its solicitation a clause requiring the prospective contractor to offer the right of first refusal for employment openings under the contract to qualified downgraded and/or separated employees. Affected employees shall not be required to exercise their right of first refusal until such time as the Agency has fully met its obligations, as provided for in this Article and in applicable OPM RIF regulations, regarding the employee's placement. Employees declining to exercise such right shall in no way diminish rights he or she might otherwise have under the provisions of this Article and this Agreement.

18. The Agency shall explain to adversely affected employees their early retirement rights and options and provide retirement counseling to employees requesting it. Bargaining unit employees have the right to outplacement services described in 5 CFR 351 and current regulations.

19. Pursuant to the terms of Departmental Regulation 4030-330-001, employees subject to separation by a RIF shall be eligible for placement in the Career Transition Assistance Plan (CTAP) and/or placement on the USDA Reemployment Priority List (RPL). Once separated, such employees may also be eligible for placement assistance through the Interagency Placement Assistance Plan (ICTAP).

20. In accordance with USDA regulations, the Agency shall inform eligible employees of their right to register on the USDA Reemployment Priority List (RPL) for reemployment consideration. Subject to the placement provisions contained in OPM and USDA RPL regulations, career employees shall be eligible for rehire for two (2) years after placement on the RPL. Career conditional employees shall be eligible for one year.

21. The Agency shall provide resume-writing software and access to the Internet in each program area or over the local area network. To the extent that such activities do not excessively interfere with ongoing Agency work, affected employees shall be allowed reasonable use of its equipment to seek outplacement opportunities. Such equipment shall include but not be limited to: computers, phones, fax machines, printers, and copiers. To the maximum extent possible, employees shall also be allowed a reasonable amount of administrative leave for such purposes.

22. The Agency shall also grant affected employees a reasonable amount of administrative leave to attend, visit, or participate in the following local activities, such as: job fairs; job interviews; seminars, counseling services and appointments with outplacement consultants; agency-provided career transition services; meetings with unemployment officials; and other job search activities (including access to any available electronic-job-posting bulletin boards). The Agency shall make facilities and office spaces available for such activities.

23. In order to allow separated employees the opportunity to apply for unemployment compensation, the Agency shall make every reasonable effort to ensure that separated employees receive a copy of the Separation-RIF SF-50, or equivalent form, prior to the employee's effective separation date. It shall also ensure that D.C., Maryland, and Virginia unemployment compensation forms are available.

24. Eligible employees who have been involuntarily separated from the Agency as a result of a RIF shall be granted severance pay in accordance with 5 CFR 550.

Section D. Transfer of Functions

1. A transfer of function is the transfer of the performance of a continuing function from one competitive area to one or more other competitive areas, except when the function being transferred is virtually identical to functions already being performed in the gaining competitive area(s); or the competitive area in which the function has been performed is being moved to another local commuting area.

2. The Agency agrees to discuss impending actions with employees prior to the initiation of any transfer of functions in accordance with its obligations set forth in Article 36 (Reorganizations and Other Workplace Changes). This provision in no way waives or conditions the Union's right to negotiate to the full extent of the law over matters concerning proposed transfers of function insofar as such matters are not addressed by provisions of this Agreement.

3. An employee occupying a position that has been identified for transfer has no right to transfer with a function, unless the alternative is separation or downgrading in the competitive area losing the function.

4. The Agency shall notify the affected employees and the Union of the upcoming transfer of function. To the extent possible, such notice shall be at least sixty (60) full days before the anticipated transfer is implemented. For transfer of functions not resulting in RIFs, notices shall include information agreed to by the Parties resulting from agreements reached from labor-management activities effected under Article 36 (Reorganizations and Other Workplace Changes) of this Agreement. In situations where RIFs are conducted in conjunction with a transfer of function, notices shall contain the information specified in Section C of this Article.

5. Prior to implementing a transfer of function wherein the affected employees will be moved into a different local commuting area, the Agency shall solicit interest from those employees who wish to be considered for the relocation with the TOF. This list of volunteers shall be used to determine whether the TOF can be accomplished using volunteers. When the number of volunteers exceeds the number of positions needed in the new competitive area, preference shall be given to employees with highest retention standing based on their service computation date.

6. If a RIF is conducted in association with a TOF, it shall be done in accordance with USDA and Federal regulations, and provisions of this Article and Agreement.

Section E. RIF Appeals

1. Any employee who has been separated or demoted under RIF, and believes that the provisions of this Article, or of applicable law, rules, or regulations have not been correctly applied, may file an appeal with the Merit Systems Protection Board (MSPB). However, an employee who has accepted an offer of another position at the same grade and same representative rate may not appeal to MSPB in accordance with applicable Federal regulations.

2. Along with the RIF notice, provided for in Section C of this Article, adversely affected employees shall be provided with copies of the MSPB appeal form. At that time they shall be advised, in writing, that they:

    a. have thirty (30) calendar days after the effective date of the action to file an appeal;

    b. may have access to the applicable MSPB regulations regarding the processing of appeals;

    c. may file the appeal in person or by mail and where such appeal should be filed; and

    d. are responsible for ensuring that the appeal is timely filed at the appropriate MSPB field office.

3. Bargaining unit employees may not use the negotiated grievance procedure to appeal a RIF action.

4. An employee may not file an appeal before the effective date of the RIF action.

ARTICLE 23: FURLOUGH

Section A. General

1. The Agency recognizes that the Union, in agreeing to the following, does not waive any of its or its bargaining unit members' rights under law, rule, regulation or this Agreement.

2. Furloughs, whether they are emergency or nonemergency furloughs, will be implemented in accordance with applicable Statutes, regulations, and this Agreement.

3. Except as otherwise provided for in this Article and in Article 22 (Reduction-in-Force and Transfer of Function), furloughs of more than thirty (30) consecutive calendar days or twenty-two (22) consecutive work days, shall be administered pursuant to 5 CFR 351 and all other applicable laws, rules, regulations, and this Agreement.

4. Except as otherwise provided for in this Article, furloughs of thirty (30) consecutive calendar days or less, or twenty-two (22) consecutive work days or less, shall be administered pursuant to 5 CFR 752 and all other applicable laws, rules, regulations, and this Agreement.

5. Nonemergency furloughs will be implemented if their necessity cannot be reasonably abated through other means, such as: hiring freezes; reduction in non-mission critical training, travel or contracting out.

6. The Agency shall not institute any furlough in lieu of disciplinary measure or performance-based adverse action against any employee or group of employees.

7. Except in cases of emergency furloughs, the Agency will: provide the Union with any draft furlough notice prior to its distribution to employees; consider any comments the Union might make concerning the draft; and if requested, meet with the Union to discuss the draft notice prior to its distribution.

Section B. Furlough Notices

1. Except in cases of emergency, affected employees and the Union shall be given no less than sixty (60) full days notice of any anticipated furlough.

2. Employees will be provided written notice of furlough in the time frame provided for above. This notification may be provided by email to each affected employee. The furlough notice will contain all of the information required by Statute or regulation, and will include the following:

   a. a general statement of the reason for the furlough;

   b. for non-emergency furloughs, the maximum number of furlough days;

c. for emergency furloughs, where the number of furlough days becomes known after implementation, the Agency will notify affected employees as expeditiously as possible after such information is known;

d. when some but not all employees at the same competitive level within the same competitive area are being furloughed, the notice of proposed furlough must also state the basis for selecting a particular employee, or group of employees, as well as the reasons for such (furloughs); and

e. the employee's appeal or grievance rights and the time limits for filing.

3. Along with a copy of the final furlough notice distributed to employees, the Union will be furnished with a list of all employees who will be excepted from the furlough (including those identified to work on Agency shutdown procedures, if applicable) and those being furloughed, on or before the date when the furlough notices are issued to employees. Such list will also identify the number of employees to be furloughed by program area, geographical location, position title, series, grade and service computation date, as well as their retention standing or leave service computation date pursuant to C.5 of this Article.

4. Should an emergency furlough be deemed necessary, all affected employees will be given as much advance notice as is possible. Should advance notice not be possible due to an emergency shutdown, affected employees will provided with written or electronic notification as soon as possible, but in no case more than two (2) calendar days following implementation of such furlough.

Section C. Furlough procedures

1. When not all employees in the same competitive area are being furloughed, the Agency will ask employees to volunteer to be placed in leave without pay (LWOP) status. Such request will be distributed to employees along with the original furlough notice. However, the Agency reserves the right not to accept a voluntary request for LWOP from an employee for mission related reasons.

2. In non-emergency furloughs, if there are insufficient volunteers to mitigate the need for furlough, employees will be selected for furlough on the basis of their leave service computation date with the employee having the least amount of service being the first furloughed.

3. In non-emergency furloughs, when there are more than enough volunteers to obviate the need for the furlough, employees will be placed in LWOP status on the basis of their leave service computation date with the employee having the most amount of service being given the first right of being furloughed.

4. The savings from voluntary LWOP taken under Sections C.2 and C.3 will be used to reduce the number of employees subject to furlough or the number of hours of furlough for all employees being furloughed.

5. When some but not all employees at the same competitive level in the same competitive area are being furloughed for more than 30 days, employees will be selected for furlough on the basis of reverse retention standing. For furloughs of 30 days or less, employees will be selected in order of reverse seniority as determined by their leave service computation date. However, in either furlough type, the order of release may be excepted by the Agency when needed to retain an employee of lower retention standing or service computation date (as applicable) to perform duties that cannot be taken over within 90 days without undue disruption to perform essential Agency functions. In such situations, the Agency will notify the Union before the action is taken and, in the case of furloughs over 30 days, to notify each higher-standing employee reached for release from the same competitive level along with the reasons for the exception.

6. To the extent that it is possible to do so, employees shall be given the option of choosing whether their furlough days shall run consecutively or discontinuously.

7. During the furlough, employees will be furloughed on their regularly scheduled days.

8. When some but not all employees at the same competitive level in the same competitive area are being recalled from the furlough, they shall be recalled in order of their retention standing, beginning with the highest standing employee. This recall order shall be used for all furloughs except for those 30 days or less, and in those situations, only when necessitated by needed skills unique to individual employees deemed essential to perform specific Agency functions. If an out-of-order recall is made, the Union will be consulted before the action is taken.

9. Employees who are required to report to duty during the furlough will be compensated in accordance with applicable law, rule, regulation, and this Agreement.

10. Performance requirements and expectations shall be adjusted to take into account the effect of the furlough period on employee performance.

11. Barring any conflict of interest issues, affected employees may accept outside employment during their furlough days.

12. To the extent the Agency has information available on contact points for unemployment compensation and other benefits to which employees being placed on furlough may be entitled, it will be provided to those employees.

13. To the extent possible, for the length of the furlough, Union officers and Council 26 and International staff shall be allowed access to their Union office and equipment in order to

meet and fulfill their obligations under the terms of this Agreement and 5 USC Chapter 71.

14. To the extent permitted by law and regulation, employees placed on emergency furlough because of a lapse in appropriations will be retroactively paid and otherwise compensated once appropriations are approved. Absence without leave or loss of pay equal to the time lost shall be retroactively granted barring statutory prohibition, including actions that would be in violation of the Anti-Deficiency Act, 31 U.S.C., or direction by higher authority.

Section D. Hours of Duty

1. During continuous furloughs, employees will be furloughed for the same number of hours and days during the furlough period that corresponds to their basic work requirement and established work schedule, regardless of whether they are full time or part time.

2. During non-continuous furloughs, furlough days for full time employees will be based on eight (8) hours each day and forty (40) hours per week. Part-time employees will be furloughed in the same proportion as full-time employees. For example, a part-time employee who works twenty (20) hours a week will be furloughed for fifty (50) percent of the number of hours that a full-time employee is furloughed.

Section E. Absence and leave

1. A furloughed employee will not receive annual and sick leave accruals during any pay period in which he/she accumulates 80 hours of LWOP.

2. Employees may not use any type of paid leave on scheduled furlough days.

3. Furlough days will not be counted against scheduled leave absences taken under Family Medical Leave absences and entitlements.

4. If an employee is unable to use their scheduled and approved "use or lose" annual leave due to furlough, and if they are unable to reschedule it, such annual leave will be carried over into the next leave year, when permitted by Federal regulation.

5. Employees in continuation of pay (COP) status will remain in COP status in accordance with Department of Labor regulations during a period of furlough.

6. When an emergency furlough is required, employees on approved annual or sick leave on the effective date of the furlough will have their leave canceled and will be permitted to remain absent from work for the duration of the furlough. Upon the expiration of the furlough, employees who were on approved annual leave that did not extend beyond the end of the furlough will be required to report back to duty. Employees who have had

their annual leave canceled due to the furlough will be given every opportunity to reschedule that leave. Employees who were on approved sick leave on the effective date of the furlough will report back to work upon the furlough's expiration, unless their medical status precludes them from doing so. If an employee's medical status precluded him or her from reporting back to work at such time, the employee must request sick leave in accordance with applicable procedures and this Agreement.

Section F. Time-in-grade, Within-grade increases, and probationary periods

1. Furlough days shall be counted toward an employee's time-in-grade.

2. Within-grade increases will not be delayed due to furlough, unless the employee's non-pay status during the furlough exceeds the step-related thresholds and is not covered by the exceptions contained in 5 CFR 531.406.

3. Aggregate non-pay status not to exceed twenty-two (22) work days will count toward the completion of an employee's probationary period.

Section G. Retirement benefits: For purposes of determining the length of service for retirement benefits, credit is allowed for periods in LWOP or furlough for periods that do not exceed six months in aggregate in any calendar year.

Section H. Health and life insurance

1. Health insurance benefits will continue for up to 365 days in non-pay status. The non-pay status must be continuous or broken by periods of less than four (4) consecutive months in a pay status. During such period the Government shall continue to pay the Agency's share of the health insurance premium. The Government is also responsible for advancing from salary the employee share as well. The employee shall elect whether to pay his/her share of the health insurance premium for the Agency on a current basis, or whether to have the premiums accumulate and be withheld from his/her pay upon return to duty. Upon the employee's return to duty, the repayment of the employee's indebtedness may be prorated at the election of the employee, through reasonable arrangements that are consistent with Departmental regulations.

2. Life insurance shall continue for up to 365 days in non-pay status at no cost to the employee.

Section I. Expedited furlough grievances and appeals

1. This section applies only to institutional grievances and appeals regarding furloughs of 30 consecutive calendar days or less, or furloughs of 22 consecutive work days or less.

2. Either Party may submit an institutional grievance over the interpretation of this Agreement, or its general application, to the Agency Administrator or to the Union President, or their designees.

3. The grievance will be in writing and submitted within five (5) work days of either Party's becoming aware of the issues giving rise to the grievance.

4. Within five (5) work days of receipt of the grievance, representatives of the Parties will meet to attempt to mutually settle the grievance.

5. If a settlement cannot be reached, the Parties will request a listing of not less than three (3), nor more than five (5) arbitrators from the Federal Mediation Conciliation Service.

    a. Within two (2) work days of receipt of the list of arbitrators, representatives of the Parties will meet and select an arbitrator by alternately striking names. The loser of a coin toss will strike first.

    b. The arbitrator's authority will be limited to interpreting this Agreement and determining remedies for breach of this Agreement. The arbitrator is not empowered to fashion a remedy that decides the appeal of any individual employee.

    c. An expedited arbitration procedure will be used. The arbitration hearing will be scheduled for the earliest date available on the calendar of the arbitrator selected. The arbitrator shall be asked to issue a bench ruling, followed by a short written confirmation of his/her award.

    d. The arbitrator's fee will be paid by the losing Party. In the event of a split decision by the arbitrator, the arbitrator's fees shall be paid by the Parties in a proportion determined by the arbitrator.

6. This grievance procedure does not cover individual employee appeals of furlough actions.

ARTICLE 24: PERFORMANCE APPRAISAL

Section A. General

1. Both Parties agree that the Agency will strive for excellence in Agency performance in order to fulfill its commitment to providing the highest quality public service.

2. The purpose of the performance management system is to involve employees in a communication process in order to improve individual and organizational performance, program effectiveness, and accountability by focusing on results, quality of service, and customer satisfaction, and by aligning standards and elements with organizational goals and strategic plans.

3. The performance management system encompasses the following:

    a. Continuous communication between employees and their supervisors when planning, evaluating, appraising and recognizing performance;

    b. Transparency and fairness;

    c. Employee development; and

    d. Recognition of team contributions.

4. Performance appraisal is a continuous process. It is an integral part of a sound employee/supervisor relationship involving communication between employee and supervisor concerning requirements or job expectations, performance necessary to achieve them, and progress in terms of meeting stated objectives. Communication shall include on-going feedback between customers, employees, and supervisors about the level and quality of performance. Performance appraisal is a joint process designed to increase constructive communication between the supervisor and the employee, and to improve the employee's performance.

5. Performance work plans including elements and standards shall be based on the requirements of the position described in the current position description (See Article 9, Position descriptions, Section 1, paragraph 1.) and organizational goals and objectives.

Section B. Definitions

1. Appraisal - the act or process of reviewing and evaluating the performance of an employee against the performance work plan.
2. Appraisal period - The period of time during which an employee’s performance will be reviewed and a rating of record will be prepared. The appraisal period for all employees is October 1 through September 30 of the following year.

3. Critical performance element - a component of an employee's position that is of such importance that unacceptable performance on the element would result in a determination that the employee's overall performance is at the unacceptable level.

4. Opportunity to Improve (OTI) - a written notice informing an employee of performance deficiencies and of the action(s) to be taken by the employee to improve performance during a specified period of time.

5. Performance Standard - the written expression of the performance, threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, expressions of quality, quantity, cost-efficiency, timeliness and manner of performance.

6. Performance work plan - the written document that identifies the critical performance elements and standards against which the employee will be rated.

7. Progress review - a joint discussion between the rating official and the employee regarding the employee's progress toward achieving the performance standards. This review is not a rating. The content of the progress review is not grievable.

8. Rating Official - an employee's first line supervisor or other person designated with responsibility for establishing performance work plans, conducting progress reviews, and issuing final ratings of record.

9. Rating of record - the final summary rating normally issued at the end of the appraisal period which becomes a part of the employee's performance file maintained in the SPO.

Section C. Performance Work Plans/Standards

1. Pursuant to 5 U.S.C. 4302, performance work plans/standards must, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the position in question.

2. In developing performance work plans, supervisors will encourage the input of employees who occupy such positions before implementing such performance work plans. An employee shall be provided five workdays to submit oral or written comments after receiving his/her performance plan from his/her first-line supervisor. During the five (5) workday period, an employee may meet for a reasonable amount of time with Union representatives, on official time, to discuss his/her plan. The first-line supervisor agrees to consider the comments of the employee before finalizing the performance plan. The first-line supervisor and employee will discuss the plan in an attempt to avoid misunderstandings about the expected performance. The employee and rating official shall sign and date the performance work plan indicating that it has been discussed and the employee has had the opportunity to obtain a clear understanding of the expected performance.

3. Performance work plans shall be established and communicated to the employee in writing normally within thirty (30) calendar days after the beginning of the appraisal period, or normally within thirty (30) days of appointment, reassignment, promotion, or detail for more than the minimum appraisal period.

4. A performance work plan must contain performance elements and standards as determined by management and prescribed by the agency's performance management system.

5. If an employee disagrees with his/her performance plan, the employee may request his/her second-line supervisor review the plan. The employee must request such review within ten (10) workdays after the first-line supervisor initially provides him/her with his/her performance plan. The request must be in writing and must state why the employee believes the review is justified. Within five (5) workdays of receipt of the employee's request, the second-line supervisor or designee shall: (1) notify the employee that the original plan will stand; or (2) provide the employee with a modified plan.

6. Performance standards:

    a. Are expressed measures (quantity, quality, timeliness, etc.) that the supervisor expects to be achieved for each performance element.

    b. Shall be defined for all performance elements at the fully successful or equivalent level.

    c. Will be written in a common format.

    d. Must be performance-related, not conduct-related, nor personality-related.

    e. Shall be stated at the level of performance expected for the grade held by the employee, and shall be based on factors within the control of the employee.

7. An employee may request that standards or elements be reconsidered in light of comments or if the duties of the position have significantly changed.

8. The substance of elements and performance standards cannot be grieved. Inequitable application of such standards or elements may be grieved.

Section D. Progress Reviews

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

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

3. A progress review must be scheduled by the supervisor or employee and conducted whenever the employee reaches the approximate midpoint between the date the employee's performance work plan was issued and the end of the appraisal period unless the length of this period is less than ninety (90) days. Additional progress reviews are encouraged.

4. Progress reviews will summarize the employee's performance in each element of the performance work plan. Corrective actions may be identified, as appropriate.

5. The employee and the rating official will initial and date the appropriate blocks to indicate the discussions were held. A copy of any written comments will be provided to the employee and it, along with the employee's mid-year review, will be placed in the employee's personnel file.

Section E. Ratings of Record

1. Supervisors will prepare a narrative overall assessment of the employee's capabilities, as indicated by his/her performance during the appraisal period, of not more than one page. Likewise, employees are strongly encouraged to submit a statement of accomplishments of not more than one page. Both the supervisory assessment and the employee statement of accomplishments, if completed, will be included with the appraisal package.

2. All employees must be issued a rating of record annually. Employees who have not served under established elements and standards for at least ninety (90) calendar days during the appraisal period must have the timeframe extended to meet this requirement. Once the minimum appraisal period has been completed, a rating of record must be issued.

    a. Employees who serve under established elements and standards for less than thirty (30) calendar days during the appraisal period (due to a movement, i.e., reassignment, promotion, within the Agency) will receive a rating of record based on their previous position.

    b. Employees who serve under established elements and standards for less than thirty (30) calendar days during the appraisal period (i.e., new hire to the Agency) will not receive a rating of record until the end of the following appraisal period.

3. Performance discussions and feedback comments should be prepared at the time of each position and/or supervisory change provided the employee has served under a performance work plan for at least ninety (90) calendar days. This feedback must be provided to the gaining or permanent supervisor to be considered at the time the final rating of record is issued.

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

b. Supervisory Change - Each individual who supervised the employee for ninety (90) calendar days or more during the appraisal period should discuss the performance with the employee, prepare feedback comments, and forward them to the current supervisor.

c. Position and Supervisory Change - When an employee who has occupied a position for at least ninety (90) calendar days leaves that position, the supervisor should prepare feedback comments on the employee's performance and forward them to the new supervisor.

d. Position Change Without a Supervisory Change - When an employee changes positions, but retains the same supervisor, the supervisor should prepare written comments on the employee's performance. This information must be considered in the employee's rating of record.

4. Annual ratings will be documented in a common format.

5. Official time spent performing Union representational functions will not be considered when evaluating an employee's performance.

6. The supervisor will schedule a meeting with the employee for the purpose of discussing the annual rating.

7. When a performance rating is presented to an employee, the discussion will include the basis for the rating. The employee will be asked to sign the original rating form. The employee's signature indicates receipt of the rating; it does not represent agreement with the rating. If the employee refuses to sign the rating of record, the rating official should note this in the appropriate block and indicate the date the rating was issued. If the employee believes his/her appraisal is inaccurate, his/her reasons for such disagreement will be provided within five (5) workdays to his/her supervisor and will be included as part of the performance appraisal of record.

8. Ratings of record may be grieved under the provisions of Article 41, Grievance Procedures, of this Agreement.

ARTICLE 25: WITHIN-GRADE INCREASES (WGI)

A. Employees shall be granted WGI's when the current level of performance and most recent rating of record are "Fully Successful" or its equivalent. The WGI will be effective the first pay period following completion of the required waiting period.

B. When a supervisor concludes that an employee's work is not at the "Fully Successful" or its equivalent level, the supervisor will notify the employee in writing, as soon as possible but at least fifteen (15) calendar days in advance of the scheduled effective date, that the WGI will be denied. The notification will state the element(s) and standard(s) where the employee has failed to perform at the "Fully Successful" or its equivalent level, including examples of performance that did not meet expectations, and information as to what areas of competencies need to be improved to bring the performance to the "Fully Successful" or its equivalent level. The notice will also advise the employee of his/her reconsideration rights. A denial of a WGI after a mid-year progress review, which did not identify areas needing improvement, should stipulate how performance declined in the second-half of the performance cycle.

C. An employee may request reconsideration of a negative level of competence determination by filing, not more than fifteen (15) calendar days after the scheduled effective date of the WGI, a written response setting forth the reasons the Agency should reconsider the determination. Requests for reconsideration shall be filed with the employee's second level supervisor.

D. Neither the substantive nor procedural aspects of WGI denials may be grieved until a reconsideration decision is due or issued, whichever is earlier. A reconsideration decision is due twenty (20) calendar days from the date of the second level supervisor's receipt of the employee's written request.

E. Upon a review that finds an employee to have been eligible for a WGI, the WGI will be made retroactive with pay to the original effective date.

ARTICLE 26: UNACCEPTABLE PERFORMANCE

Section A. Scope and Definitions

1. For purposes of this Article, acceptable performance is equivalent to the "Fully Successful" or its equivalent level of performance.

2. An action based on unacceptable performance is defined as the reassignment, reduction in grade or removal of an employee whose performance is unacceptable in one or more critical elements of the employee's position.

3. This section applies only to employees who have completed their probationary or trial period. It does not apply to employees serving on a temporary appointment.

4. A reassignment related to unacceptable performance will follow the procedures in Article 18 (Reassignments), Section D.

Section B. Procedural Requirements

1. Because performance evaluation is a continuous process, the following procedures, consistent with 5 C.F.R. 432, shall be followed at any time during the year when a supervisor concludes that a bargaining unit employee's performance on any critical element is unacceptable and would be rated at the "Unacceptable" level.

2. There must be a discussion between the supervisor and the bargaining unit employee for the purpose of:

    a. Advising the employee of specific shortcomings between observed performance in the performance element(s) under scrutiny and the performance standard(s) associated with that particular element(s);

    b. Providing the employee with a full opportunity to explain the observed deficiencies; and,

    c. Advising the employee of opportunities to attend counseling and training.

3. After the discussion, the supervisor should determine what action is best suited to the particular circumstances. Unacceptable performance may lead to reassignment**,** reduction in grade or removal.

4. Opportunity to Improve (OTI):

    a. Prior to initiating an action to involuntarily reassign**,** remove or downgrade an employee, the employee must be given a written notice of unacceptable performance in one or more critical elements and an OTI period of at least ninety

(90) calendar days to bring performance to the acceptable level.

b. This notice will include:

(1) Specific information as to how the supervisor will assist the employee in that effort;

(2) Specific information as to what the employee must do to bring performance to an acceptable level during that period;

(3) A statement that an employee will not necessarily be reassigned during an OTI and that he/she should not expect a reassignment at the conclusion of the OTI; and,

(4) A statement that every effort will be made to re-evaluate the employee's performance regularly, preferably on a bi-weekly basis, but at least monthly.

c. During the ninety (90) calendar day OTI period, the employee will be given the opportunity to work on those portions of the job that are unacceptable, but not to the exclusion of other work assignments. The supervisor will ensure that the employee receives adequate work time in order to improve the performance in the area(s) that has been declared unacceptable**.**

d. Normally within fourteen (14) calendar days after the end of the OTI period, the supervisor will notify the employee in writing whether the employee's performance has reached an acceptable level or whether the performance remains unacceptable.

e. If the determination is that the employee's performance remains unacceptable**,** the Agency may reassign, remove or demote the employee upon written notice. If the bargaining unit employee has been given a reasonable opportunity to demonstrate acceptable performance on one or more critical elements during an OTI period and performance continues to be rated as unacceptable, the employee is not entitled to a second OTI within the rating year.

5. Notice of Proposed Adverse Action: An employee whose reduction in grade or removal is proposed is entitled to (30) calendar day's advance written notice, which informs the employee:

a. Of the nature of the proposed action:

b. Of the critical element(s) of the employee's position involved in each instance of unacceptable performance;

c. Of the specific instance(s) which demonstrate(s) unacceptable performance by the employee on which the proposed action is based;

d. The time to reply and to whom;

e. The right to be represented by the Union or other representative; and,

f. The right to make an oral and/or written reply and to receive a written decision with appeal rights stated.

6. Employee Response

a. The employee will be given the opportunity to respond orally and/or in writing prior to a decision. Any request for an oral reply must be submitted within seven (7) calendar days. Written replies must be submitted and oral replies made within fifteen (15) calendar days of receipt of the notice of proposed action.

b. If the employee elects to make an oral reply, the Agency may make a written report of the oral reply and will provide a copy to the employee.

7. Decision Letter

a. The deciding official will be an official occupying a higher position (if one exists) than the official proposing the action.

b. The deciding official shall prepare a decision letter, which shall include all of the following:

(1) A determination of the final action;

(2) Findings with response to each instance of unacceptable performance listed in the letter proposing the action;

(3) Findings with response to each dispute, if any, raised by the employee's reply;

(4) The effective date of the action. The effective date must be no earlier than thirty (30) calendar days after the date on which the employee received the proposed notice of adverse action;

(5) Written concurrence of the action by an official occupying a higher position (if one exists) than the official proposing the action;

(6) Notice to the employee that he or she has the option to appeal the action to the Merit Systems Protection Board (MSPB) or through the negotiated grievance procedure, but not both; and,

(7) Notice to the employee that he or she will be deemed to have exercised his/her option to raise the matter under one procedure or the other at the time the employee timely files a written grievance or files a notice of appeal under the applicable MSPB procedure.

8. If the employee is the subject of an action based on unacceptable performance related to a disability, and the employee is eligible and files for disability retirement, and the Agency recommends approval, the Agency may delay the action to allow a determination to be made concerning the disability retirement.

9. Time Extensions: Except for the advance notice period in section B 5, any of the time limits set forth in this Article may be extended or waived by mutual agreement of the parties.

ARTICLE 27: EMPLOYEE AWARDS AND RECOGNITION

Section A.

1. The Parties agree that a motivational incentive awards system is a necessary and useful mechanism through which employees' accomplishments shall be recognized and to provide an incentive for higher achievement. Employees and managers are strongly encouraged to take an active part in the system by objectively recognizing and rewarding high caliber performance or contributions that exceed expectations. In this spirit and budget permitting, the Agency shall set aside a set amount of money each year known as the total Agency-Wide Administered Monetary Awards Pool (here-in-after referred to as the MAP) for the FAS Awards System at an amount appropriate to encourage employees to achieve exemplary performance. In setting the MAP and designated portions thereof, the Parties recognize the Agency's obligation to comply with any applicable Departmental and/or Government-wide regulations and direction pertaining to the budgeting and funding of awards programs.

2. The amount of total funding available for performance awards for FAS Civil Service employees, including AFSCME bargaining unit employees, will be established annually as part of the MAP.

3. The amount set aside for Civil Service-employee performance awards will be based on the number of agency Civil Service-employees as a percent of total Civil Service and Foreign Service employees.

4. The total amount for Civil Service performance awards will be determined no later than the end of the fiscal year.

5. The amount of funding allocated to Extra Effort and Spot cash awards will be a designated portion of the MAP established annually not to exceed 30% of the MAP, and distributed to the Program Areas and any other relevant Agency work units. The amount of funding allocated to Performance Awards will be no less than 70% of the MAP. The Program Area/unit's allocation will be made considering the total number of employees assigned to those Program areas and work units.

6. Nothing in this Article shall in any way be construed as a waiver of the Union's rights to negotiate to the full extent of the law over changes in the Agency Awards System.

7. Incentive awards are granted in the form of monetary and non-monetary recognition based upon the criteria and in accordance with direction contained in this agreement and USDA and Government-wide regulations pertaining to employee awards and recognition. Notification of the amount of awards funds to be allocated at the program area/unit level will be made to the Union as soon as possible after the start of the fiscal year. Designated award funds will be available for use during the course of the year at the program area\unit level to recognize individual and team accomplishments as merited, through the

utilization of spot cash, extra effort, and time off awards. The Agency Awards System consists of the following categories of awards:

a. Agency-wide Administered Awards

(1) Monetary: Quality Step Increase (QSI), Performance Awards and

(2) Non-Monetary: Honorary and Career Service Awards.

b. Program Area Level Administered Awards

(1) Monetary: Time Off Award, Extra Effort, and Spot Cash Award; and

(2) Non-Monetary: Certificates.

9. Nothing shall preclude the Agency from establishing a supplemental awards fund at the Administrator's level to recognize individuals, units and teams who demonstrate extraordinary performance accomplishments during an awards cycle. In such occurrences, the Union will be notified of any Agency program established to award such funds prior to its implementation. The Union reserves its rights to negotiate over impact and implementation of any resultant changes.

Section B. Procedures

1. Performance Awards

a. Subject to budget and available performance award program funding, individual performance awards shall be given to bargaining unit employees who receive a Superior or Outstanding rating of record.

b. QSI recognition may be awarded by the Agency to an eligible employee who has received a rating of record of "Outstanding." Employees who receive a QSI are not eligible for a performance award for the same appraisal period and vice-versa.

c. The amount set aside for performance awards will be distributed to the employees in accordance with the following:

(1) Each awardee with an "Outstanding" rating will be paid a lump sum equivalent to a percent of the Step 5 salary for the grade of his/her position, with the percentage established annually, and be two (2) times the amount awarded to employees who receive a "Superior" rating.

(2) Each awardee with a "Superior" rating will be paid a lump sum equivalent to a percent of the Step 5 salary for the grade of his/her position, with the percentage established annually.

(3) Awardees in positions in grades below GS-11 will receive the same lump sum amount as that paid to GS-11 employees for "Superior" and "Outstanding" ratings.

d. The Agency will endeavor to process the performance awards for employees prior to December 10 of each year.

e. These awards will be administered in accordance with federal and Departmental regulations and guidelines, and this Agreement.

2. Other Monetary Awards.

Program areas and work units will utilize their allocated budgets for Spot cash and Extra Effort awards to recognize team performance and individual acts or contributions that exceed expectations, which may include performance accomplishments for individual elements leading to an "exceeds" rating for employees with a summary rating of "fully successful." Agency managers are strongly encouraged to fully utilize their awards allocation.

3. Program Area Level Administered Non-Monetary Awards

Agency managers are encouraged to issue time off awards as well as certificates of accomplishment or appreciation to honor employees for their efforts throughout the year in accordance with Departmental regulations.

Section C. Representation and Review

1. The Agency will provide the Union an annual Award Report for the previous fiscal year no later than the end of pay period 26 of each calendar year. The Report will list the number of agency employees who received awards identified by grade, series, bargaining unit status, and the type of award (i.e. QSI, individual cash awards, group cash awards, and time off awards). In addition, by the same date, the Agency will provide a report summarizing the Agency's annual performance ratings for the previous appraisal period showing summary ratings by bargaining unit status.

2. The Agency will establish a joint awards committee for the first full appraisal period following the effective date of this Agreement consisting of at least two (2) AFSCME representatives for such purposes as assessing the program's effectiveness and/or addressing specific program issues under terms of this Agreement and developing recommendations for program improvement. Based on the committee's assessment after the completion of the first full appraisal period, either Party may request Sections B and C of this Article be reopened and renegotiated. Thereafter, if an awards committee(s) is established by the Agency, it agrees to include at least one AFSCME representative on the committee(s).

Section D. Fairness

The awards system shall be administered in a manner that is fair, equitable, and non-discriminatory, and which does not favor one group over another, such as by organization, by personnel system (e.g., Foreign Service/Civil Service), by grade, by job series, or by prohibited or discriminatory categorization, as defined in Article 28 (Prohibited Personnel Practices) and Article 38 (Equal Employment Opportunity) of this Agreement.

ARTICLE 28: PROHIBITED PERSONNEL PRACTICES

Section A. Purpose

1. For the purpose of this Article, and in accordance with the Civil Service Reform Act of 1978 (5 U.S.C. Section 2302), prohibited personnel practice means any action described in Section B 1 below.

2. For the purpose of this Article with respect to an employee in, or applicant for, a covered position in the agency, personnel action means:

    a. An appointment;

    b. A promotion;

    c. An action under the Civil Service Reform Act of 1978 (5 U.S.C. Chapter 75) or other disciplinary or corrective action;

    d. A detail, transfer, or reassignment;

    e. A reinstatement;

    f. A restoration;

    g. Reemployment;

    h. A performance evaluation under Chapter 43 of the Civil Service Reform Act of 1978 (5 U.S.C. Chapter 43);

    i. A decision concerning pay, benefits, or awards; or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subsection; and

    j. A decision to order psychiatric testing or examination; and

    k. Any other significant change in duties, responsibilities, or working conditions; with respect to an employee in, or applicant for, a covered position in an agency, and in the case of an alleged prohibited personnel practice described in subsection (b)(8), an employee or applicant for employment in a Government corporation as defined in section 9101 of title 31.

Section B. Practices

1. Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority:

   a. Discriminate for or against any employee for employment:

      (1) On the basis of race, color, religion, sex, or national origin, as prohibited under Title 7, Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);

      (2) On the basis of age as prohibited under Section 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

      (3) On the basis of sex, as prohibited under Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206[d]);

      (4) On the basis of handicapping condition, as prohibited under Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or

      (5) On the basis of marital status or political affiliations, as prohibited under any law, rule, or regulation.

   b. Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of:

      (1) An evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

      (2) An evaluation of the character, loyalty, or suitability of such individual.

   c. Coerce the political activity of any person (including the providing of any political contribution or service) or take any action against any employee as a reprisal for the refusal of any person to engage in such political activity;

   d. Deceive or willfully obstruct any person with respect to such person's right to compete for employment;

   e. Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

   f. Grant any preference or advantage not authorized by law, rule, or regulation to any employee (including defining the scope or manner of competition or the

requirement for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

g. Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in 5 U.S.C. 2302, Section 3110[a][3]) of such employee if such position is in the Agency in which such employee is serving as a public official (as defined in 5 U.S.C. 2302, Section 3110[a][2]) or over which such employee exercises jurisdiction or control as such an official;

h. Take or fail to take, or threaten to take or threaten to fail to take, a personnel action with respect to any employee or applicant for employment as reprisal for:

(1) Disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences:

(a) A violation of any law, rule, or regulation, or

(b) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law, if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(2) Any disclosure to the Special Counsel for the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences:

(a) A violation of any law, rule or regulations, or

(b) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

i. Take or fail to take, or threaten to take or threaten to fail to take, any personnel action against any employee or applicant for employment as reprisal (1) for the exercise of any appeal or grievance rights granted by any law, rule, or regulation; (2) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subsection (1) of this provision; (3) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or (4) for refusing to obey an order that would require the individual to violate a law;

j. Discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency, from taking into account in determining suitability or fitness, any conviction of the employee or applicant for any crime under the laws of any state, the District of Columbia, or the United States; or

k. Take or fail to take, or threaten to take or threaten to fail to take, any other personnel action if the such action, inaction, or threat violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in 5 U.S.C. 2301.

Section C. Withholding of Information: Nothing in Section B above shall be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress.

Section D. Equal Employment Opportunity: Nothing in Section B shall be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee in the civil service under:

1. Title 7, Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

2. Section 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631-633a), prohibiting discrimination on the basis of age;

3. Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206[d]), prohibiting discrimination on the basis of sex;

4. Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

5. The provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

Section E. Prohibited Personnel Practice: An employee affected by a prohibited personnel practice may raise the matter under a statutory procedure or the negotiated grievance procedure (Article 41, Grievance Procedures), but not both, unless permitted by law.

ARTICLE 29: DISCIPLINARY AND ADVERSE ACTIONS

Section A. Definitions

For the purposes of this Agreement, the following definitions are used:

1. A suspension is defined as the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

2. A disciplinary action is defined as a letter of official reprimand or a suspension of fourteen (14) calendar days or less.

3. A reprimand is defined as a written document describing the inappropriate conduct or other deficiency (e.g., failure to obtain prior approval for outside employment) giving rise to the reprimand, and provides official notice that a failure to correct the inappropriate conduct or deficiency, or future misconduct, may result in more severe action.

4. An adverse action is defined as a suspension of more than fourteen (14) calendar days, involuntary reduction in grade or pay, or removal.

Section B. General Provisions

1. Employees will not be disciplined for exercising their rights or on the basis of the protections afforded them under 5 U.S.C. 2302 (Prohibited Personnel Practices) and 42 U.S.C. Chapter 21, Subchapter VI (Civil Rights - Equal Employment Opportunities), which are referenced and addressed in Article 28 (Prohibited Personnel Practices) and Article 38 (Equal Employment Opportunity) of this Agreement.

2. No bargaining unit employee will be disciplined and/or subject to adverse actions except for such cause as will promote the efficiency of the Service. The Employer agrees that any disciplinary and/or adverse action will be taken in accordance with applicable law, rule, government-wide regulations and this Agreement. In those instances where timely action is not taken and employees have engaged in inappropriate behavior that does not warrant discipline or adverse action, supervisors shall discuss and/or counsel and/or warn that those unacceptable behavioral actions could, if continued, constitute grounds for future disciplinary and/or adverse actions. Before deciding on a particular penalty, the employer will consider the applicable Douglas Factors (Douglas v. VA, 5 MSPR 280, 305-06 (1981)), and agency regulations, including the USDA penalty guide.

3. Unless otherwise stated within this Article, disciplinary/adverse actions will be administered as timely as possible.

4. In any disciplinary action or adverse action, the employee will be furnished with a copy of the material relied upon by the Employer to take the action at the time of the notice of the proposal of such action.

5. Employees may grieve those items in Section A in accordance with the terms of Article 41, Grievance Procedures, of this Agreement.

6. Copies: See Article 30 - Notices to Employees, for information on copies to be provided.

7. The Agency will comply with employee rights associated with investigative meetings as found in Article 2 (Employee Rights), Sections D and E, of this Agreement.

Section C. Reprimand: Reprimands shall be maintained in the employee's Official Personnel Folder (OPF) for a period of up to two (2) years. This time period will be stated in the letter of reprimand. The period of retention may subsequently be reduced when the employee's supervisor determines that circumstances warrant a shorter period. Such determination may be made in response to an employee's request to remove the reprimand from the employee's OPF. Such reprimands which have been overturned as a result of grievance or other authority shall be immediately removed from the OPF.

Section D. Suspensions of 14 Days or Less

1. Cause:

   a. The Employer may suspend an employee for fourteen (14) calendar days or less for such cause as will promote the efficiency of the Service, including discourteous conduct to the public confirmed by the immediate supervisor's report or any other discourteous conduct.

   b. To clarify the alleged misconduct(s) and, if necessary, help correct employee behavior, the supervisor will discuss the pattern of conduct in a timely fashion with the employee, consistent with Section B2 of this Article and Article 2, Employee Rights, Section E.

   c. The Employer may not suspend an employee on the basis of any reason prohibited by 5 U.S.C. 2302 (Prohibited Personnel Practices).

2. Procedures: When the Employer proposes to suspend an employee for fourteen (14) calendar days or less, the following procedures will apply:

   a. A notice of proposed suspension of fourteen (14) calendar days or less will be provided to the employee at least fourteen (14) calendar days prior to the effective date of the action. The proposed notice will inform the employee of:

      (1) The proposed action;

      (2) The specific reason(s) for the proposed action;

(3) The opportunity to review the evidence that is relied upon to support the charges;

(4) The time to reply and to whom to furnish affidavits and other documentary evidence in support of the reply;

(5) The right to be represented by the Union or by another representative of the employee's choice (per Article 2 - Employee Rights, Section F);

(6) The right to make an oral and/or written reply within seven (7) calendar days from the receipt of the proposed action; and

(7) The right to a reasonable amount of official time as specified in Section F (Employee Replies) of this Article.

b. The Agency will issue a final decision after receipt of the written and/or oral reply, or the termination of the fourteen (14) calendar day notice period. In arriving at its decision, the Agency will consider: only those reasons specified in the notice of proposed action and any reply made by the employee and/or the employee's representative. The decision letter will state which reason(s) and specification(s) are sustained and will address factual disputes, if any, raised in the employee's reply by stating the reasons why each factual dispute was rejected.

Section E. Suspensions of More Than 14 Days, Reductions in Grade, and Removals

1. Notice of Proposed Adverse Action: Unless otherwise provided by law (e.g. the crime provision of 5 U. S. C. 7513 (b)), an employee who receives a proposal for an adverse action is entitled to at least thirty (30) calendar days advance written notice which informs the employee of:

a. The proposed action;

b. The specific reason(s) for the proposed action;

c. The opportunity to review the evidence that is relied upon to support the charges;

d. The right to be represented by the Union or by another representative of the employee's choice (per Article 2 - Employee Rights, Section F);

e. The right to make an oral and/or written reply within fourteen (14) calendar days from the receipt of the proposed action;

f. To whom to reply and submit any documentary evidence in support of such reply; and

g. The right to a reasonable amount of official time as specified in Section F (Employee Replies) of this Article.

2. Action by the Deciding Official

a. After carefully considering the proposed letter, evidence of record, and the employee's response, if any, including any mitigating factors, the deciding official shall decide whether:

(1) To institute the proposed action; or

(2) To propose alternative discipline (if not a decision to remove); or

(3) To institute a lesser action; or

(4) To withdraw the proposed action.

b. Normally, the Agency will issue a final decision within thirty (30) calendar days after receipt of the written and/or oral reply, or after the time limit for reply has expired, whichever comes last. The final decision letter will state which reasons and specifications are sustained and will address factual disputes raised in the employee's reply. The decision letter will also advise the employee of his or her right to grieve or appeal the Agency's decision. Such notice shall be delivered to the employee on or before the date of the decision.

c. In arriving at his or her decision, the deciding official will consider: only those reasons specified in the notice of proposed action and any reply made by the employee and/or the employee's representative.

d. If the decision is not to remove the employee, the Employer may defer the effective date of the action(s) for up to fourteen (14) calendar days at the request of the employee.

e. Normally, the deciding official must be a higher-ranking official in the Agency than the official proposing the action if one exists in FAS.

3. If discipline is imposed, the decision letter will inform the employee of his/her option to appeal the action to the Merit Systems Protection Board (MSPB), the Office of Special Counsel (OSC), or grieve through the Negotiated Grievance Procedure, but no more than one, and will inform the employee that he/she will be deemed to have exercised his/her option to raise the matter under only one procedure at the time the employee timely files a written grievance or files a notice of appeal under the applicable statutory appeals procedure.

Section F. Employee Replies

1. In all matters where disciplinary action is being proposed, an employee may exercise his or her right to reply either orally and/or in writing and to furnish affidavits and other documentary evidence in support of his or her reply. Such replies will be made on official time if the employee is otherwise in an active duty status.

2. If the proposed suspension is covered by Section D of this Article, the Agency will provide the employee who is in an active duty status a reasonable amount of official time to: (1) review all material relevant to his or her case; and (2) consult with his or her Union representative with regard to his or her case.

3. If the proposed action being taken is covered by Section E of this Article, the Agency must give the employee who is in an active duty status a reasonable amount of official time to: (1) review all material relevant to his or her case; (2) prepare his or her oral and/or written reply; (3) consult with his or her Union representative with regard to his or her case; and (4) if applicable, secure any pertinent affidavits. Should the employee wish the Agency to consider any medical condition which may have contributed to his or her situation, the Agency must allow the employee a reasonable amount of time to retrieve such information.

Section G. Disability Retirement: In those cases where the employee has applied for disability retirement prior to the decision to remove him or her, the Agency, upon request by the employee or his or her representative, may consider either placing that employee in LWOP status or delaying his or her removal, pending a decision on the employee's disability retirement application.

Section H. Alternative Discipline

1. Whenever the Agency offers the opportunity for an employee to enter into an alternative disciplinary agreement (including last chance agreements), the subject employee has the right to consult with and have a Union representative present at any meeting or discussion with an Agency representative concerning a proposed agreement.

2. Alternative discipline processes and agreements will comply with Departmental regulations, and be voluntary on the part of the employee. An employee who is being provided the option to enter into an alternative discipline agreement shall be given a reasonable amount of official time to: (1) review all material relevant to his or her case, including documents cited in Sections D and E of this Article, as applicable; and (2) consult with his or her Union representative with regard to the case and proposed agreement.

Section I. Time Limit Extensions: subject to applicable law and regulations, any of the time limits set forth in this Article may be extended by mutual agreement of the parties.

ARTICLE 30: NOTICES TO EMPLOYEES

When the Employer presents written notice to an employee concerning a personnel action in which the employee has appeal rights in accordance with applicable law, rule, regulation, and this agreement, the Employer will provide the employee with an original and one copy of the notice. The copy shall include the following statement: "This copy may, at your option, be furnished to AFSCME Local 3976."

ARTICLE 31: WAIVER OF OVERPAYMENT

Section A. Processing Requests

1. When an employee receives an overpayment of pay and allowances, he/she may request a waiver of overpayment in accordance with applicable law, rule, and regulation.

2. The Employer will process all requests for waiver of overpayment as expeditiously as practicable.

3. To the extent possible, if an employee has applied for a waiver of overpayment, no overpayment will be collected until the employee's application for waiver of overpayment has been decided.

4. If a requested overpayment is denied, the employee will be notified of the reason(s) for the denial in writing.

Section B. Repayment

1. When an employee is not granted a waiver of overpayment, the employee will be permitted to make repayment in accordance with applicable law, rule, and regulation.

2. If an employee terminates employment with the Employer prior to the liquidation of any overpayment described in this Article, the Employer retains the right to satisfy any outstanding balance from any funds due to the employee.

ARTICLE 32: RETIREMENT COUNSELING AND RESIGNATION

Section A. Retirement Counseling

1. An employee may have a reasonable amount of time without charge to leave to visit Agency retirement counselors.

2. Employees within five (5) years of retirement eligibility may be granted up to five (5) days of administrative leave to attend Agency-sponsored retirement programs. The grant of up to five (5) days of administrative leave to attend retirement counseling may be used only once by an employee.

3. The Employer agrees to make available an annual training program on retirement issues which any interested employee within five (5) years of retirement eligibility may attend. In the absence of such a program, employees within five (5) years of retirement eligibility may be afforded the opportunity to attend other similar OPM-sponsored training or events.

4. Normally, employees will be provided a statement setting forth their estimated annuity from the National Finance Center each year. Employee's eligible to retire and anticipating retirement may have their annual estimate updated by an Agency retirement counselor upon request.

5. The Employer agrees to make a good faith effort to ensure information/seminars are provided for all bargaining unit employees whenever significant changes to retirement legislation or regulations occur.

Section B. Resignation: An employee may withdraw a resignation at any time prior to its effective date provided:

1. The withdrawal is communicated in writing (e-mail acceptable) to the Employer; and

2. The Employer has not made a commitment to any specific person to fill the position.

ARTICLE 33: OUTSIDE EMPLOYMENT

Section A. Introduction: Employees may engage in outside employment during non-duty hours that do not involve conduct prohibited by statute or Federal Regulation.

Section B. Prior Approval

1. In accordance with 5 C.F.R. 2635.803, USDA has determined that all USDA employees who file either a Public Financial Disclosure Report (SF-278) or a Confidential Financial Disclosure Report (OGE 450) or an alternative form of reporting approved by the Office of Government Ethics, must seek approval before engaging in any outside employment. Financial disclosure report filers occupy high level positions or otherwise hold positions that have a direct and substantial effect on the interests on non-Federal entities. Accordingly, prior approval of these employees' outside employment is warranted.

2. All employees required to file OGE 450 shall obtain prior approval for outside employment. All requests for such outside employment must be in writing (e-mail acceptable) and submitted not less than ten (10) work days in advance of the proposed start work date. The Agency ethics officer in the Servicing Personnel Office (SPO) is designated as the official to receive such requests and will approve the request or notify the employee that approval is delayed with reasons prior to the proposed start date.

3. Employees not required to file OGE 450 are encouraged but not required to request prior approval for outside employment. Even though prior approval is not required, outside employment of all employees must comply with all applicable laws and regulations.

Section C. Employer Consideration and Approval

1. The Agency agrees not to disapprove requests for outside employment or activity without giving employees the opportunity to explain the requested employment or activity, and, if necessary, to answer questions the Agency has concerning the propriety of the requested employment or activity. The Agency ethics officer may require this to be done orally, in writing, or both depending on the case.

2. The Agency agrees that all requests for outside employment or activities shall be considered using the criteria established in 5 C.F.R. 2635, by the Office of Government Ethics, and the USDA Standards of Conduct and negotiated written notices and Personnel Manuals (PM) provided by the Agency and in effect at the time the request is submitted.

3. The Agency agrees to provide to affected employees a written explanation for denials of requests for outside employment or activity.

4. Information developed or received in evaluating these requests will be held in confidence by all Agency employees.

ARTICLE 34: EMPLOYEE ASSISTANCE PROGRAM (EAP)

Section A. Objective: The Employer and the Union support the objective of assisting employees whose job performance is adversely affected by problems including, but not limited to, alcoholism, drug abuse, duress, financial or legal concerns, marriage or family concerns, or other personal problems. Given this common objective, the Employer agrees to continue to support the Departmental Employee Assistance Program (EAP).

Section B. Union Cooperation: The Union agrees to cooperate fully with the Employer in an attempt to rehabilitate affected employees who accept assistance made available under the provisions of the EAP.

Section C. Confidentiality: Employee participation in the EAP will be strictly confidential. The Employer may request an employee to sign release forms. However, this does not obligate the employee to do so.

Section D. Annual Notification to Employees: The Employer will continue to issue an annual notice to employees explaining the EAP and the services it provides.

Section E. Program Participation

1. The parties recognize that the EAP is designed to deal with problems at an early stage when the situation may more likely be correctable. If an employee participates in the EAP, the responsible supervisory official will give consideration to this fact in determining any appropriate disciplinary and/or adverse action, if applicable.

2. The Employer will not take any action against an employee for seeking assistance through the EAP. Participation in the EAP will not prevent the Employer from proposing and taking conduct and performance-based actions.

3. EAP services will be made available to those employees who request and need them. The Employer agrees to assist employees by providing information and encouragement to use counseling services as needed. Should counseling appointments require absence from the workplace; employees will make the appropriate advance arrangements with their supervisors.

4. When the Employer determines that a conduct or performance problem exists which may be drug or alcohol related and refers the employee to EAP, the Employer may take appropriate disciplinary or adverse action, consistent with fairness and the obligation to provide reasonable accommodation.

Section F. Leave During Duty Hours: With supervisory approval, employees may be allowed up to one hour (or more as necessitated by travel time) of excused absence for each counseling session during the assessment/referral phase of rehabilitation. Thereafter, absences during duty hours for rehabilitation or treatment must be charged to the appropriate leave category in

accordance with law and leave regulations. Supervisors have the right to verify the employee's attendance with an EAP counselor.

Section G. New Hire Orientation: Newly hired employees will receive appropriate EAP information and materials during orientation.

ARTICLE 35: HEALTH AND SAFETY

Section A. General

1. Consistent with applicable law, Executive Order 12196, Occupational, Safety, Health Administration requirements, as well as other applicable health and safety codes, the Agency will support the maintenance of safe and healthful working conditions for all employees. If an appropriate authority determines there is a significant health or safety problem and the Department does not take timely action on the problem, the Agency, to the extent of its authority, will provide an appropriate remedy to address the needs of employees. Both Parties will cooperate to that end and will encourage employees to work in a safe manner.

2. Pursuant to applicable law and regulation, no employee shall be subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthful working condition, or other participation in Agency occupational safety and health program activities, or because of the exercise by such employee on their behalf or another's of any right afforded by Section 19 of the Occupational Safety and Health Act (29 U.S.C. Chapter 15, Section 668), Executive Order 12196, or 29 C.F.R. 1960. These rights include, among others, the right of an employee to decline to perform their assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting.

Section B. Agency Action

1. The Agency will work with all persons, entities, or organizations which own and/or control work space to which bargaining unit employees are assigned to ensure that healthy and safe working conditions are maintained and to ensure compliance with applicable laws, rules, and regulations, and this Agreement. The Agency will provide feedback to employees and the Union regarding the results of any action taken.

2. The Agency agrees:

   a. To provide information concerning Federal Employee Health Benefits (FEHB) and Life Insurance Programs, pre-retirement planning, retirement benefits information, the USDA's TARGET center, and the Employee Assistance Program (EAP);

   b. To make information available to employees on health benefits open season activities and maintain copies of offered health plans for review upon request;

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

d. To provide information available through the Department about ergonomic hazards and how to prevent ergonomic related injuries;

e. To grant periodic relief to employees using video display terminals (VDTs) for extended periods during the course of a day, by interspersing other work tasks requiring less visual concentration;

f. To provide, to the extent possible, safety devices, such as anti-glare screens and wrist props, which will promote greater safety and comfort for VDT operators;

g. To follow the Americans With Disabilities Act and GSA regulations in providing facilities appropriate and adequate to accommodate the needs of disabled employees;

h. To inform the Union of any decision to introduce new office equipment into the work place so that the Union may, thereafter, request bargaining concerning any appropriate arrangements required because of the new equipment;

i. To obtain and provide to the Union copies of applicable regulations;

j. To make available for review by the Union all safety reports generated by or available to the Agency that are required by law, regulation, and/or this Agreement; and

k. To assure the provision of safe, potable, drinking water to all unit employees within ready access of working areas. Ready access is defined as a distance no more than the location of the nearest gender appropriate restroom.

Section C. Union Action: The Union will encourage all bargaining unit employees to work safely with due consideration for the safety, health and comfort of all fellow employees. To avoid preventable unhealthy or unsafe working conditions, the Union will encourage respect and care by bargaining unit employees for the Agency's facilities and equipment and their own work environment.

Section D: Employee Reports of Unsafe or Unhealthy Working Conditions

1. Each bargaining unit employee is encouraged to report any unsafe or unhealthy working conditions to his or her immediate supervisor as soon as any such conditions come to his or her attention.

2. The Agency will:

   a. Investigate the reported condition as soon as is practicable, and may refer the situation to:

(1) The appropriate FSA or USDA office;

(2) GSA;

(3) The OSHA of the Department of Labor;

(4) The Public Health Service (PHS) Health Unit, or

(5) Other appropriate official(s) for further investigation.

b. To the extent possible, the Union will be given an opportunity to accompany any inspector who responds on such a complaint during the inspector's physical inspection of the workplace unless it would be hazardous to accompany the inspector. The Union representative will be granted official time for this purpose.

3. The Agency will ensure a timely response to an employee report of hazardous conditions. No employee will be unreasonably required to continue working in a situation determined to pose the threat of imminent danger or significant health hazard as determined by the appropriate authorities.

4. If an employee is assigned duties which he/she reasonably believes could possibly endanger his/her health or well-being, the employee will immediately notify his/her immediate or second-line supervisor of the situation.

a. If the supervisor cannot solve the problem and agrees with the employee, the supervisor will, under normal circumstances, delay the assignment and refer the matter through the proper channels for appropriate action, unless the delay would unduly interfere with the Agency's operation.

b. When the supervisor does not agree with the employee's concerns, the employee has the right to consult the Union and the right to file a report in accordance with the applicable agency or departmental regulations.

Section E. Occupational Injury or Illness: Employees who become injured or occupationally ill in the performance of duties shall report the injury or illness to their supervisor immediately. The supervisor will refer the employee to the Human Resources Division, the Health Unit, or other medical service as appropriate and as permitted by applicable law, rule or regulation. The supervisor shall also advise the employee to contact the Servicing Personnel Office (SPO) to obtain information on benefits under the Federal Employees' Compensation Act (5 U.S.C. 8101-8193). The Agency and employee shall cooperate in promptly processing all paperwork in connection with compensation claims.

Section F. Occupant Emergency Plan: Each building in which bargaining unit employees are stationed within the United States will have an Occupant Emergency Plan. The Agency will issue an annual reminder of the Occupant Emergency Program Plan.

Section G. First-Aid

1. The Agency will provide first-aid kits at Agency building locations for use when Health Unit facilities are not available.

2. The Agency may provide for training to interested employees for cardiopulmonary resuscitation (CPR) during duty or non-duty hours. If during duty hours, official time will be given to those approved in advance for participation.

Section H. Health Unit

1. The Agency currently participates in the Federal Employee Occupational Health program administered by the Public Health Service, U.S. Department of Health and Human Services. Both Parties will work cooperatively to ensure that the Department maintains a health unit at the site where the majority of Agency employees are located.

2. In the event an employee becomes incapacitated on the job, the Agency will notify Health Unit personnel who may call for emergency transportation if deemed appropriate.

Section I. Pre-Tax Health Insurance Deduction Benefit: The Agency will provide a pre-tax health insurance premium conversion plan for those employees participating in the FEHB program in accordance with applicable laws and Federal Regulations.

ARTICLE 36: NEGOTIATING REORGANIZATIONS AND OTHER WORKPLACE CHANGES

Section A. Introduction: These procedures are intended to increase communication between management and employees, reduce potential employee/management friction and improve employee morale while recognizing Management's and Unions' rights. Additionally, the reorganization**,** relocation and workplace changes procedures of this Article should permit issues to be resolved at the lowest possible level, and in a more expeditious way than traditional bargaining. All timeframes in this Article may be extended by mutual agreement of the Parties.

Section B. Definitions: For purposes of this Article:

1. *Reorganization* is defined as the planned elimination, addition, or redistribution of functions or duties of an organization or sub-unit (i.e. division or branch) therein.

2. *Functions* are clearly identifiable segments of the organization's (or its organization's sub-unit's) mission, regardless of how it is performed, and excludes an individual job or task.

3. *Workplace Changes* are defined as greater than de minimis changes in conditions of employment that include, among other things, reorganizations or other changes that will or will likely impact workplace policies, procedures, and/or general working conditions of the organization or an entire organizational sub-unit.

4. *Pre-decisional Involvement* is the process by which Agency and Union officials engage in consultations from their respective perspectives on planned or anticipated workplace changes prior to the Agency making decisions on such matters. These consultations are initiated early, when planned or anticipated workplace changes are being formulated and may potentially occur.

5. *Interest Based Bargaining* is defined as a bargaining technique in which the Parties start with the mutual identification of issue(s) and their respective interests rather than proposals; agree on criteria of acceptability that will be used to evaluate alternatives; generate alternatives intended to resolve the issue(s) and meet their interests; and then apply the agreed-upon acceptability criteria to the alternatives in order to reach agreement by consensus.

6. *Emergency* is defined as an unforeseen or unexpected situation or condition that requires the Agency's immediate action in order to

meet its mission and/or critical program performance goals, and/or to protect the safety and well being of its employees, customers, and/or property from serious danger or loss.

Section C. Pre-decisional Involvement

1. Open Communications: In order to initiate pre-decisional involvement (PDI), the Agency will contact the Union at such time when it determines that workplace changes that include among other things, reorganizations and changes to general working conditions affecting the entire organization or subunit(s) are deemed likely to occur. After the initial contact and at the Union's request, a meeting(s) will be conducted to brief the Union on the situation and discuss how best to obtain its input during the PDI process, including the option of meeting directly with affected employees. Normally, the Union will be given at least three (3) workdays notice of the meeting. During the meeting, the Union will be provided with relevant background materials and information in order to facilitate understanding and discussion. In situations where the Union learns of possible workplace changes and has not been contacted by the Agency, it may contact a designated Agency management official to discuss the matter, determine whether a workplace change is being contemplated, and if so, discuss how best to obtain Union input during the PDI process.

2. Pre-decisional Process

   a. The Agency and Union will attempt to reach agreement by consensus on how best to engage in PDI on any workplace change, given the facts and circumstances pertaining to the change (e.g. time constraints, confidentiality issues, available resources). A reasonable amount of time will be spent on such attempts**.** PDI may involve the establishment of joint work or study groups, employee informational meetings, involvement by subject matter experts, and/or use of the Agency's labor-management forum or committee. Upon agreement, the Parties will engage in PDI, with the Agency giving full consideration to whatever input is provided prior to developing its final workplace change proposal.

   b. Absent a PDI agreement as described in Section 2a, the Agency will provide the Union with relevant and available background information on the planned or anticipated workplace change, a reasonable amount of time to offer their

input (for reorganizations, at least ten (10) workdays will be provided).

3. Union Notification

   a. Upon due consideration of any employee and Union input, management shall present a formal proposal of workplace changes to the Union. This will include a background statement, which will include as appropriate and available: bargaining unit employees affected, old and proposed organizational charts (including grade and job series changes), before and after physical location of employees (including current and proposed floor and seating plans, before and after square footage, and equipment placement), target dates for the anticipated implementation, Management's point of contact, and any other necessary documents.

   b. Upon receipt of the information specified in Section 3.a above, the Union shall have ten (10) work days to gather bargaining unit employee input, request additional relevant and available information, and/or respond to management per Section 4. Pursuant to 5 USC 7114, Management shall respond to Union requests for relevant and available additional information.

4. Union Response. Within fifteen (15) workdays after receipt of the proposal, the Union will respond, in writing, to management with one of the following options:

   a. Proceed with proposed change: The Union agrees with the proposal as presented.

   b. Interest Based Bargaining: The Union identifies one or more issues contained in the proposal that will need to be resolved before agreement can be reached, and proposes to use Interest Based Bargaining (IBB) to address them rather than proceed with traditional negotiations. If the Parties mutually agree to use IBB, the procedures and ground rules contained in Section E will be used.

   c. Traditional Negotiations: The Union requests to bargain over the proposed changes pursuant to Section D below, using traditional negotiations.

Section D. Traditional Negotiation Procedures and Ground Rules

1. The Union shall notify Management in writing of its request to bargain within fifteen (15) work days of receipt of the Management plan proposal. Included with its request, the Union may request to meet with Management to discuss the proposal. The request should contain any known questions or topics the Union would like addressed. The Parties will meet or otherwise discuss the questions and/or topics raised by the Union in its request and/or at the meeting within five (5) workdays after receipt of the request.

2. Within five (5) work days of receipt of the Union's request to negotiate, Management will supply the Union with the names of its Chief Negotiator and number of negotiating team members. Within five (5) working days of its receipt of such list the Union will furnish Management with the names of its Chief Negotiator and bargaining team members, along with the names and phone numbers of their supervisors. Management shall then inform the bargaining teams' supervisors of the Union's team member's upcoming participation in bargaining.

3. Negotiations will commence no later than twenty (20) work days from Management's receipt of the Union's notice and request to bargain as provided for in Section D.1. The time and place for such negotiations will be subject to mutual consent of the Parties. Whenever possible, negotiations will take place at a USDA facility in the Washington D.C. metropolitan area. Logistical costs associated with the negotiations, including authorized travel expenses of agency employees, will be paid by the Agency.

4. The Union will furnish Management with written proposals no later than three (3) work days prior to the start of negotiations, and present its proposals at the first negotiation session. Unless mutually agreed, no new proposals shall be introduced by either Party after the initial submission of proposals. However, this restriction does not bar the Union from introducing new bargaining proposals, if there is a pending response to an outstanding information request regarding matters related to negotiations or a change in the Agency's proposed change after the commencement of negotiations.

5. Official time will be provided to Union bargaining team members for attending and participating in all bargaining, caucus, and break-out sessions. A reasonable amount of time shall also be granted to Union bargaining team members for purposes of preparation for bargaining.

6. Negotiations shall take place during core duty hours, unless otherwise agreed to by the Parties.

7. Unless the Union team has reasonable access to previously furnished Agency facilities, Management will provide the Union with a private conference room of sufficient size along with a table and a sufficient number of chairs to accommodate the Union's bargaining team. To facilitate bargaining, the Union's team will be furnished and/or provided reasonable access to a fully operable and accessible computer (with Internet and Intranet access), printer, photocopier, telephone, and electronic file storage media such as thumb drives.

8. The Parties will negotiate in good faith for up to ten (10) full work days during core hours within a thirty (30) calendar day period, intensively, if needed. One full work day of negotiations may take place on one day or over two different calendar days. Should agreement not be reached after ten (10) full work days of negotiations, the Parties may either agree to extend such time frame or seek assistance from the Federal Mediation and Conciliation Service (FMCS) as provided for in Section F below. The negotiating schedule will be arranged by mutual consent of the Parties.

9. Should any portions of the agreement remain unresolved due to a bargaining impasse or negotiability appeal, the Parties may agree to sever such portions and implement the remaining agreed upon portions.

Section E. Interest Based Bargaining (IBB) Procedures and Ground Rules

1. If IBB is mutually accepted by the Parties to bargain the proposed changes, teams will be selected by their respective parties, not to exceed the number of members on the agency's labor-management forum or four (4) members per team, whichever is greater. The names of team members will be exchanged at least three (3) work days prior to the meeting to develop issues and interests.

2. The negotiation teams will meet within ten (10) work days of the date the Parties agree to use IBB to identify issues along with their corresponding interests. If issues and interests cannot be identified to the satisfaction of either Party at that meeting, negotiations will revert to the traditional negotiation method, with the Union required to submit its written proposals and exchange the names of negotiation team members (not to exceed four members including Chief Negotiator) within ten (10) work days after the meeting. The Parties will begin Traditional Negotiations within fifteen (15) work days

after the same meeting using applicable Traditional Negotiation Procedures and Ground Rules in Section D not otherwise addressed in this Section.

3. Unless the Parties mutually agree to self-facilitate, a facilitator with the knowledge of IBB, will be used to assist the Parties use the IBB process to resolve issues.

4. Negotiation to resolve issues will take place during regular duty hours and begin within five (5) work days following the development of issues and interests, unless otherwise mutually agreed by the Parties. Whenever possible, IBB will take place at a USDA facility in the Washington, D.C. metropolitan area. Logistical costs associated with the negotiations, including authorized travel expenses of agency employees, will be paid by the Agency.

5. Unless the Union team has reasonable access to previously furnished Agency facilities, management will provide the Union with a private conference room of sufficient size along with a table and a sufficient number of chairs to accommodate the Union's bargaining team. To facilitate bargaining, the Union team will be furnished and/or provided reasonable access to a fully operable and accessible computer (with Internet and Intranet access), printer, photocopier, telephone, and electronic file storage media such as thumb drives.

6. Unless mutually agreed, no new issues shall be considered from either Party.

7. The Parties will negotiate in good faith for up to ten (10) full work days during core hours within a thirty (30) calendar day period, intensively, if needed. One full work day of negotiations may take place on one day or over two different calendar days. Should agreement not be reached after ten (10) work days of negotiations, the Parties will develop proposals that reflect their best offer and seek mediation assistance from the Federal Mediation and Conciliation Service (FMCS) to resolve any remaining issue(s) in accordance with Section E of this Article. A request for assistance from the FMCS does not preclude the Parties from attempting to resolve pending issues prior to mediation.

8. Should any portions of the agreement remain unresolved due to a bargaining impasse or negotiability appeal, the Parties may agree to sever such portions and implement the remaining agreed upon portions.

Section F. Post-negotiation procedures

1. In the event that either Party believes there to be an impasse in negotiations, the FMCS shall be immediately requested to provide services and assistance to resolve any disputes pursuant to 5 U.S.C. 7119; except that the requesting Party will provide written or verbal notice to the other Party and afford it the opportunity of jointly seeking such assistance. Should the Parties so agree, bargaining may continue while mediation sessions are being scheduled.

2. Should mediation be unsuccessful, either Party will request, or the Parties will jointly request, the assistance of the Federal Service Impasses Panel (FSIP). Should the FSIP direct the Parties to utilize interest arbitration to settle the outstanding issues, the arbitrator's fee and expenses shall be borne by the losing Party, except that the arbitrator may, where s/he deems the circumstances so warrant, assess the parties a different percentage of his/her fee and expenses.

Section G. Implementation Bar:

1. Except in cases of emergency as defined in Section B of this Article and as it appears in 5 USC 7106(a)(2)(D), should the Parties opt for negotiations under the procedures of Section C above, the Agency may implement the proposed workplace changes only:

   a. upon the conclusion of an agreement between the Parties which has been reduced to writing and signed by the Parties; or

   b. upon an award by the Federal Services Impasses Panel, or by an arbitrator.

2. However, the Agency may implement the proposed workplace changes at its own peril. If so, the Union maintains its right to grieve or file an unfair labor practice charge.

Section H. Negotiability Issues: After the initial submission and presentation of Union proposals, and ensuing commencement of negotiations, the Parties will not pursue the involvement of the Federal Labor Relations Authority (FLRA) in any negotiability disputes until they have attempted to settle such disputes informally. Should any negotiability disputes remain after such discussions, and upon request by the Union, Management may provide the Union with a formal allegation of non-negotiability. Such allegation shall be tendered in writing to the Union. The Union may then file a negotiability appeal with the FLRA pursuant to 5 USC 7117. The pendency of any negotiating proceeding will not preclude the Parties from continuing attempts to resolve the negotiability dispute.

ARTICLE 37: COMMERCIAL ACTIVITIES

Section A. General

1. The Agency and the Union agree to cooperate and communicate to the maximum extent practicable concerning Commercial Activities issues.

2. The Agency agrees to notify the Union regarding any planned review of a function for contracting out that could affect bargaining unit positions, as required or allowed by law, rule or regulation including the Federal Activities Inventory Reform Act (FAIR) (PL 105-270), the Federal Acquisition Regulation (48 C.F.R. Section 7.3 et seq.), OMB Circular A-76 and this Agreement.

3. A Union representative may be invited to participate on any committee, group or task force organized to conduct a cost study, as long as Union participation is consistent with procurement and conflict of interest requirements.

4. The Union shall have the opportunity to review and make comments on the Agency's annual OMB Circular A-76 Inventory. Management is not required to delay submission of the report to OMB or Congress for this to take place. Union review and comments can be obtained post-submission when necessary to ensure timely submission.

Section B. Joint Participation

1. At the earliest possible stage of development after the Agency determines to contract out, the Union will have the opportunity to provide input into the development of supporting documents and proposals, including the development of performance standards, performance work statements, management plans/efficiency studies, the milestone chart governing the conduct of the Commercial Activities study, the development of in-house and contract cost estimates, and any other detailed supporting data used in the development of the above documents.

2. The Agency shall notify the Union in writing when a contracting study is underway.

3. The Agency agrees to provide the Union a copy of any Statement of Work to be performed by a contractor that will affect working conditions or may adversely impact work performed or that could be performed by existing bargaining unit employees. The Union will be given ten (10) business days to provide comments before proposals are solicited from potential contractors.

4. The Agency will provide the Union with advance notice of any planned walk through held for potential contractors in order to facilitate the Union's opportunity to observe each such walk through.

Section C. Information

1. The Agency will provide to the Union in a timely manner copies of pertinent information relative to contracting out, to the extent permissible by law, rule and regulation.

2. The Agency will notify the Union and affected bargaining unit employees of an impending cost comparison and employees will be kept informed of major milestones in the process for the purpose of providing timely information concerning Commercial Activities studies. Such notification to the union shall include the names of all directly affected employees.

Section D. Bargaining: When the Agency determines that bargaining unit work will be contracted out, the Union shall be provided the opportunity to bargain concerning matters set forth in, and consistent with, 5 U.S.C. Chapter 71. The Union shall have ten (10) business days from the time of notification of the result of the solicitation to request such negotiation.

Section E. Appeals

1. Actual A-76 decisions are not grievable under this Agreement, but can be pursued under the appeal process contained in OMB Circular A-76. The Agency recognizes the right of first refusal required by OMB Circular A-76 and its Supplement. Declining to exercise the right of first refusal due to displacement by contracting out shall not be deemed to be a waiver of any appeal grievance rights by a bargaining unit employee under applicable law, regulation and this Agreement.

2. The Agency agrees that, to minimize adverse effects on bargaining unit positions and employees affected by a contracting out decision, the procedures as outlined in Article 22 (Reductions in Force (RIF) and Transfer of Function) will be followed.

3. The Agency recognizes that, in a standard competition, a majority of directly affected employees may appoint an agent to contest certain actions as set out in Attachment A, Section F of Circular A-76. The appointed agent may be the Union.

Section F. Performance Monitoring: Should the Commercial Activities study result in a decision to convert to a contract, the Union is encouraged to bring known contract discrepancies to the attention of the appropriate Administrator or designee.

ARTICLE 38: EQUAL EMPLOYMENT OPPORTUNITY

Section A. General

1. The Employer affirms its commitment to the policy of providing equal employment opportunities to all employees and of prohibiting discrimination because of race, color, religion, sex (including gender identity and expression), national origin, disability, genetic information, pregnancy, age, marital status, status as a parent, sexual orientation, lawful political affiliation, and reprisal for previous Equal Employment Opportunity (EEO) activity. The Employer will remain vigilant in seeking to identify and eliminate any internal policy, practice or procedure which has the purpose or effect of impermissibly denying equal employment opportunities or equal access to FAS programs or services. The Employer will also cooperate and work to resolve any discrimination inquiries or complaints. The Parties agree that equal employment opportunity shall be administered in accordance with Title 7 of the Civil Rights Act of 1964 (42 U.S.C. chapter 21, Subchapter VI), 29 C.F.R. Part 1614, Title 5 U.S.C., Executive Order, and other applicable rules and regulations.

2. As early as practicable each year, the Employer shall provide the Union with a copy of the FAS EEO Program Status Report (MD 715 Report) which will provide a comprehensive overview of the Agency's EEO Programs and workforce profiles as required in EEOC Management Directive 715. The Union reserves its right to file information requests pursuant to 5 USC 7114 regarding summary statistical data, according to job series, grade level, sex, age, and disability.

3. The Employer agrees to discuss any questions raised by the Union in connection with the data provided in the MD 715 Report and shall provide the opportunity for the Union to make recommendations on EEO priorities for the coming year. The employer will provide information requested by the Union consistent with law and regulation, including confidentiality obligations. Copies of the report will be provided to bargaining unit employees upon request, first by providing electronic access, and, if necessary, by hard copy.

4. The Union agrees to cooperate with the Employer in assuring equal employment opportunity and equal access to FAS programs and services. The Union may, when it deems appropriate and can be mutually scheduled, meet with, advise, and present proposed solutions to the appropriate officials within the Agency related to any problems or potential problems it perceives in the area of equal employment opportunity and equal access to FAS programs and services.

Section B. Employee Rights

1. In accordance with applicable law, Federal regulations, and this Agreement, any employee who believes that he or she has been discriminated against on the grounds set forth in Section A of this Article, may file either a grievance under the provisions of this Agreement (Article 41, Grievance Procedures), or a complaint under an appropriate formal complaint or appeals procedure, but may not file under more than one procedure. However, an employee's participation in the EEO pre-complaint (i.e. informal) process as provided for in Article 43 (Alternative Dispute Resolution (ADR) under EEO) of this Agreement, does not bar that employee from filing a grievance under the negotiated grievance procedure (Article 41, Grievance Procedures) once the pre-complaint EEO process has been concluded, provided that the filing of the subject grievance is done within the timeframes prescribed in this Agreement. If the timeframe for filing a grievance would have expired but for the employee's participation in the EEO pre-complaint process, the employee's deadline for filing a grievance is five (5) work-days after being notified that the EEO pre-complaint process has ended.

2. Any employee who wishes to file or has filed a grievance or complaint shall be free from coercion, interference, and reprisal, and shall be entitled to expeditious processing of the grievance or EEO complaint process within time limits prescribed by regulations or this Agreement.

3. In the case of alleged discrimination on any basis prohibited by law, rule, regulation, or policy described and cited in Sections A 1 and A 5 of this Article or in Article 28 (Prohibited Personnel Practices) of this Agreement, an employee has the right to seek redress through either the negotiated grievance procedure (Article 41, Grievance Procedures) or procedures established by the Office of Special Counsel and the Merit Systems Protection Board in accordance with applicable Federal regulations.

4. In accordance with employee rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA), veterans who believe their rights have been violated, may initiate a complaint with the U.S. Department of Labor, Veterans Employment and Training Service or the Office of Special Counsel.

Section C. Representation: Whether the employee chooses to file under EEO complaint process or under the negotiated grievance procedure (Article 41, Grievance Procedures), employees have a right to be represented or to be unrepresented.

1. For complaints filed under EEO procedures, the complainant shall have the right to be accompanied, represented, and advised by a representative of the complainant's choice.

2. For complaints filed under the negotiated grievance procedure (Article 41, Grievance Procedures), the representative is a Union representative or a Union-designated representative. If the employee elects to process the grievance without Union representation, the Union shall have the right to be present at any meeting between the

Employer and the employee concerning the grievance, to ensure fair treatment and procedural adherence to the terms of Article 41, Grievance procedures.

Section D. Settlement: Prior to implementing terms of any settlement agreement that may affect conditions of employment of bargaining unit employees, the Agency will provide the Union with prior notice and fulfill its collective bargaining obligations.

Section E. EEO Information

1. EEO complaint procedures will be posted electronically and will be available to all bargaining unit employees. The Union will also be given a copy of the complaint procedures.

2. The Employer shall electronically post and maintain the names, phone numbers, and work locations of EEO staff and counselors.

3. In all vacancy announcements for positions within the Agency, the Employer will provide this non-discrimination statement consistent with the USDA Civil Rights policy:

   "USDA-FAS is an Equal Opportunity Employer and prohibits discrimination or reprisal in all its programs and activities on the basis of race, color, religion, national origin, age, sex (including gender identity and expression), sexual orientation, disability, marital or familial status, political beliefs, parental status, receipt of public assistance, or protected genetic information."

Section F. Obligations: Where the development and implementation of the Employer's Equal Employment Opportunity plans and programs involve changes to conditions of employment, the Employer will fulfill its bargaining obligations with the Union under 5 U.S.C, Chapter 71, Labor-Management Relations and this Agreement.

ARTICLE 39: CAREER ENHANCEMENT

Section A. General

1. The Equal Employment Opportunity Act of 1972 requires federal agencies to establish training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential.

2. The Agency will, consistent with this agreement and to the extent allowed by ceiling and budgetary constraints, utilize the career enhancement program (CEP) for the purpose of developing and implementing specific career opportunities for employees who are in wage grade or one-grade increment job series and employees in two-grade increment job series with a full performance level no greater than GS-10.

3. The CEP in FAS may be used to provide opportunities for career advancement to employees who are underutilized or under skilled.

4. The target positions for the CEP within FAS may include those that have a positive educational requirement.

Section B. Definitions

1. Career enhancement - a systematic management effort that focuses Federal personnel policy and practice on the development and implementation of specific career opportunities for lower level employees who are in positions or occupational series that do not enable them to realize their full work potential.

2. Career enhancement trainee position - a position in a technical or administrative career area to which a career enhancement program participant will be assigned when selected for the program. In this position, the trainee will receive on-the-job and/or formal training necessary to achieve the skills, knowledge, and technical ability to successfully perform in the target position. The duration of the position normally may be as short as six (6) months but may be longer depending on the relative entry and target positions.

3. Target position - the specific position (series and grade) in which the program participant will be placed upon successful completion of the CEP.

4. Individual development plan (IDP) - an approved document that has been jointly prepared by the supervisor, program participant, and other appropriate officials that outlines all necessary on-the-job and formal training required to be completed before the program participant can progress to the next trainee or target position.

5. Under skilled employee - employee who does not meet the OPM Operating Manual for Qualification Standards for General Schedule Positions for the entry grade level but who shows potential, with appropriate experience and/or training, to succeed in the field.

6. Underutilized employee - employee who meets the Qualification Standards Handbook requirements for the entry grade level but whose current position does not fully use his/her experience and/or knowledge.

Section C. Goals: The goals of the CEP are to:

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

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

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

4. Obtain a more effective utilization of the capabilities of underutilized and under skilled employees.

5. Motivate underutilized and under skilled employees and create a climate conducive to an increase in productivity.

6. Prepare the trainee to function effectively in the target position and to utilize the skills of the employee while he or she is functioning in the trainee position.

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

Section D. Program Procedures

1. As part of the annual budget cycle, supervisors and managers, through their respective Deputy Administrators, will identify positions likely to be available within their area of responsibility for filling by CEP participants not later than December 31. The results of these surveys will be provided to the Union by the Office of the Administrator. The Union may request to bargain within thirty (30) calendar days of receipt of each survey.

2. Announcing and Filling Career Enhancement Positions:

    a. Career enhancement positions may be announced at any time during the year. The announcement will be consistent with Government-wide requirements and Departmental policy and this Agreement.

        (1) The trainee position will be announced in accordance with Career Transition Assistance Program (CTAP) regulations. If any position from

the trainee position through the target position is filled through CTAP, the career enhancement position will not be filled.

(2) The announcement will include:

(a) All information required in Article 17, Merit Promotion, Section B 3, and

(b) The entry and full performance level positions;

(c) The evaluation process and criteria that will be used to rate and rank the candidates for the position;

(d) A written essay to be administered by the Servicing Personnel Office (SPO) will be required.

(3) Normally only one announcement will be used to solicit candidates for a career enhancement position. That announcement will be advertised for FAS employees and USDA CTAP eligibles by the SPO unless broader coverage is legally required.

(4) Evaluation methods for selecting candidates will conform to the following:

(a) A rating panel composed of:

i. Two (2) subject matter experts and

ii. One (1) EEO/CR specialist or representative.

(b) A personnel specialist shall serve as the facilitator on all panels.

(c) The panel will rate and evaluate:

i The required Knowledge, Skills and Abilities (KSA's);

ii The current appraisal;

iii Awards received;

iv An essay administered by the SPO;

v An interview by the panel;

vi The applicant's potential to perform;

vii Any previous self-development efforts on the part of the applicant; and,

viii Any outside activities, including volunteer work.

(d) FAS agrees to give consideration to qualified applicants in the following priority:

i. CTAP respondents who are well qualified.

ii. Former Department employees who are on the Department's priority reemployment or re-promotion priority list.

iii. Current FAS employees who are best qualified.

(e) If there are CTAP or reemployment or re-promotion priority candidates, a clearly delineated referral and selection register will be provided to the selecting official showing potential selectee's along with instructions on the order of consideration that must be afforded all candidates on the list.

b. Placement of Selectee's in Career Enhancement Positions

(1) An individual selected for a career enhancement position must have an approved IDP in place within thirty (30) calendar days of assuming the position. The IDP will be negotiated and signed by the employee and the supervisor.

(2) Selectees, who are under-skilled, may enter the CEP only through lateral reassignment or by accepting a change to a lower grade into the trainee position. Selectees, who are underutilized, may enter the trainee position through promotion, change to lower grade, or lateral reassignment as appropriate.

3. Participation in the Career Enhancement Program

a. Assisting the selected candidate: The supervisor, with appropriate assistance from the SPO, will ensure that an employee selected for a career enhancement position will be provided such assistance as would normally be necessary to assure success in the position. That assistance will include, but is not necessarily limited to, the following:

(1) Assessing the current knowledge, skills, and abilities of the candidate as they relate to the career enhancement position and the target position;

(2) Developing a comprehensive IDP for the selectee that outlines the training required and establishes the benchmarks against which progress in meeting program requirements can be met; and

(3) Progress reviews and reports will be made at least every three months. These reviews must involve the supervisor and the program participant and may include appropriate representatives from the SPO. The program participant will receive a copy of the written report submitted to the SPO.

b. Pay Retention

(1) An employee accepting a change to lower grade to enter the CEP will be eligible for pay retention in accordance with applicable regulations.

(2) An employee who leaves the CEP before successfully completing the program forfeits eligibility for pay retention. In this case the employee's pay will be set by using the highest previous rate rule.

c. Termination of CEP Participation

(1) An employee participating in the CEP may voluntarily withdraw from the program at any time.

(2) Management may terminate an employee's participation in the CEP for the following reasons:

(a) Lack of progress of the employee based on periodic reviews;

(b) Lack of funding or ceiling spaces for the program; or

(c) Reduction in force.

(3) If an employee's participation in the CEP is terminated for a reason other than reduction in force, the employee is entitled to be placed in a position commensurate with his/her knowledge, skills, and abilities at a grade equal to the one in which the employee entered the program. If the employee accepted a change to a lower grade to enter the program, and a position at a grade no higher than, and with no greater promotion potential than, the one held by the employee immediately prior to entry into the program and for which the employee is qualified is vacant management may non-competitively place the employee in that position.

d. Program Completion

(1) Upon satisfactory completion of the training program and successful performance on the job, the employee will be placed in the target position.

(2) The employee will be placed in the target position at the beginning of the pay period after all legal requirements for placement in the position have been satisfied.

Section E. Developing the Pool of Program Applicants

1. Upon request of an employee in response to an announcement of a CEP position, the SPO will provide the employee with an assessment of his/her eligibility to participate in the CEP.

2. The counseling services provided through the SPO may be utilized by employees interested in assessing their eligibility and potential for participation in the CEP. Employees desiring to make use of the available counseling services will be given a reasonable amount of time, including travel time, without charge to leave to do so.

3. Employees desiring to make use of available counseling services should make an appointment with a counselor and should cooperate with the counselor by providing information requested by the counselor in advance of the meeting, if possible. The counselor may ask the employee to:

   a. Provide personal background information;

   b. Discuss their immediate- and long-range interests and goals; and

   c. Provide a work history.

4. The Counselors will assist the employees by making an objective assessment of their potential capabilities and realistic employment goals in the Agency. Counselors will work in conjunction with other SPO specialists as required.

Section F. Information Provided

1. Applicants for participation in the CEP will, upon their request, be provided with the information that is available to employees in the merit selection process. (See Article 17, Merit Promotion, of this Agreement).

2. The Union will be provided on a timely basis with the following information:

a. Annually, the positions that are likely to be available as career enhancement positions in accordance with Section D 1, above;

b. Copies of CEP reports made to the Agency and/or to the Office of Personnel Management, Congress, or other appropriate Government entity;

c. Copies of CEP vacancy announcements three (3) work days in advance of announcement; and

d. Copies of CEP entry and target position descriptions.

3. The Agency will not provide the Union with copies of individual employee progress reports.

ARTICLE 40: REPORTS AND NOTIFICATIONS

Section A. Reports: The following reports will automatically be provided, electronically whenever possible, to the Union:

1. The updated Agency Staffing Pattern on a monthly basis.

2. The Bargaining Unit Listing, by name, position title, series and grade on a semiannual basis as of April 30 and October 31. A key to codes used in the report will be provided with each report.

3. The Union Activity Report showing the amount of official time for representational activities by bargaining unit. The report will be provided biweekly.

4. The Civil Rights Complaints Quarterly Report listing the number of EEO complaints received by the Agency and the basis of the complaint.

5. As early as practicable each year, the Agency shall provide the Union with a copy of the Affirmative Employment Plan (AEP) which will include summary statistical data in accordance with Article 38, Section A 2.

6. An annual Day Care Report containing the number of employees receiving Day Care support by grade and level of support, as of October 1.

7. An annual Leave Bank Report including the number of employees participating, the number of employees receiving assistance, and the number of hours disbursed.

8. An annual Career Enhancement Report listing bargaining unit employees currently in Career Enhancement Program (CEP) positions and the positions identified by Deputy Administrators available for CEP consideration.

9. An annual Telework Report listing the number of employees on Telework, the average number of days per pay period spent at their alternate worksite, and the location of the alternate worksite. Where an employee's home address serves as their alternate work site, the specific home address will not be provided.

Section B. Notifications: The Agency will provide the following notifications annually, unless otherwise stated, to the bargaining unit electronically whenever possible.

1. The annual "Weingarten" notice each September.

2. Services provided employees through the Employee Assistance Program (EAP).

ARTICLE 41: GRIEVANCE PROCEDURES

Section A. Common Purpose: The purpose of this Article is to provide a mutually acceptable method for the prompt resolution of grievances filed by the Parties. The Parties agree that most grievances should be resolved in an orderly, prompt, and equitable manner that will maintain the self-respect of the employee and be consistent with the principles of good management and the public interest. The Parties, especially Union representatives and first-line supervisors, are encouraged to meet as necessary to informally discuss and attempt resolution of matters or problems of concern to either Party, including, but not limited to, employees' concerns or dissatisfactions and problems of Agreement interpretation and administration. Most grievances arise from misunderstandings or disputes which can be resolved promptly and satisfactorily on an informal basis. In order to resolve grievances at the lowest level, the Parties agree to have open discussions between the participants on the issue.

Section B. Definitions: Grievance means any written and signed complaint:

1. By any employee concerning any matter relating to the employment of the employee;

2. By any labor organization concerning any matter relating to the employment of any employee; or,

3. By any employee labor organization or agency concerning:

    a. The effect or interpretation, or a claim of breach, of a collective bargaining agreement; or,

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

Section C. Scope of Procedures

1. The procedures set forth shall be the procedures available to bargaining unit employees and to the Parties to this Agreement for resolution of grievances covered under the terms of this Agreement.

2. Exclusions: The following matters are not grievable under these procedures and are specifically excluded from the coverage of this Article:

    a. Any claimed violation of 5 U.S.C. Chapter 73, subchapter III, relating to prohibited political activities (Hatch Act);

    b. Retirement, life insurance, or health insurance;

    c. A suspension or removal under 5 U.S.C. 7532 (national security reasons);

d. Any examination, certification, or appointment administered by the Office of Personnel Management;

e. The classification of any position which does not result in the reduction in grade or pay of an employee, or loss of promotion potential;

f. Reduction-in-force or furloughs of more than thirty (30) calendar days;

g. Non-selection for promotion from a group of properly ranked and certified candidates, or failure to receive a non-competitive promotion. Note: This, however, is grievable if the action or lack of action was based on alleged discriminatory or other prohibited practices in the ranking and certification process, or based on procedural violations;

h. Termination of a probationary employee during the probationary period;

i. A preliminary warning notice of an action which, if effected, would be covered under this procedure or under a statutory appeals procedure**;**

j. The substance of performance elements and standards.

Section D. Application: A grievance may be filed by an employee or a group of employees, by the Union, or by the Agency. Only the Union, or a representative designated by the Union, may represent bargaining unit employees in such grievances. However, any bargaining unit employee or group of bargaining unit employees may personally present a grievance and have it resolved without representation by the Union provided that the Union will be given an opportunity to be present at all formal discussions in the grievance process and receive copies of all documents. Any resolution must be consistent with the terms of this Agreement. The Parties agree to keep the number of participants at the meetings to a minimum.

Section E. Employee Procedure

1. Step 1 Grievance:

a. The grievant must file a written and signed grievance with the immediate supervisor within thirty-five (35) work days of the act or occurrence or after the grievant knew or should reasonably have known of the act or occurrence giving rise to the grievance.

b. The grievant and/or the assigned Union representative will meet with the grievant's immediate supervisor and an agency representative (if one is designated) in an attempt to resolve the grievance. Unless otherwise mutually agreed by the Union and Agency, each Party will inform the other Party of who will attend at least three (3) work day**s** prior to the meeting. The requirement for this meeting may be waived by mutual consent of the Parties.

c. The supervisor shall provide the grievant and the Union with a written resolution within twenty (20) work days of the date of receipt of the written grievance. Included with such resolution shall be a statement indicating the grievant's right to submit a grievance under Step 2, as well as the name and title of the reviewing official designated to hear Step 2 of the grievance procedure.

d. If the Administrator is the Step 1 official, then Steps 2 and 3 are waived.

2. Step 2 Grievance

a. If the grievant is dissatisfied with the resolution given in Step 1, the grievant may submit the grievance, including a copy of the Step 1 response received or a statement that no Step 1 response was received, in writing within ten (10) work days of receipt of the Step 1 response or within ten (10) work days of the date the response was due, whichever is shorter, to the next level supervisor. The grievance will specify the relief requested.

b. The grievant and/or the assigned Union representative will meet with the Step 2 Management official and an Agency representative (if one is designated) to resolve, discuss, or clarify facts and issues that may impact the decision. Unless otherwise mutually agreed by the Union and Agency, each Party will inform the other Party of who will attend at least three (3) work days prior to the meeting. The requirement for this meeting may be waived by mutual consent of the Parties.

c. The reviewing official shall provide the grievant and the Union with a written decision within fifteen (15) work days of the receipt of the Step 2 grievance. Included within such decision shall be a statement indicating the grievant's right to submit a grievance under Step 3, as well as the name and title of the deciding official designated to hear Step 3 of the grievance procedure.

d. If the Administrator is the Step 2 official, then Step 3 is waived.

3. Step 3 Grievance

a. If the grievant is dissatisfied with the decision given in Step 2, the grievant may submit the grievance, including a copy of the Step 1 and/or Step 2 responses received or a statement that no Step 2 response was received, in writing within ten (10) work days after receipt of the decision of the Step 2 grievance or within ten (10) work days of the date the response was due, whichever is shorter, to the Deciding Official designated by the Agency. The grievance will specify the relief requested.

b. A meeting may be held to attempt to resolve the grievance at the mutual agreement of the Parties.

c. The Deciding Official shall render a written decision within fifteen (15) work days of receipt of the Step 3 grievance. This decision shall be the final Agency decision on the grievance. Included within the decision shall be a statement indicating that if the grievance is not resolved, the Union may refer the matter to arbitration in accordance with Article 42, Arbitration.

4. Grievances filed in response to a written decision letter notifying the employee of an action under 5 U.S.C. 7512 (Adverse Actions) or 5 U.S.C. 4303 (Unacceptable Performance) must be filed as a Step 3 grievance in writing within thirty (30) work days of receiving the decision letter.

5. If in any step of the grievance procedure it is determined that the Agency's official does not have the authority to resolve the grievance, the grievant will be informed and the grievance will be forwarded to the proper official. This will fulfill the grievant's obligation to meet the timetable set up in the grievance procedure, but it will not be considered as one of the steps.

Section F. Use of Alternative Dispute Resolution (ADR) Mechanisms

1. At any point in the grievance process, mediation or other ADR mechanism may be proposed to the other party. If ADR is offered, managers and supervisors are expected to participate in ADR when requested to do so, absent compelling reasons. The time limits outlined in this Article shall be automatically extended by time spent in ADR, beginning on the date when the ADR program official is contacted to initiate the ADR process by the grievant and/or Union representative, or Agency official. The ADR process may be terminated at any time by the Union, grievant, Agency official, or the third party providing ADR services (e.g. mediator).

2. The Agency will maintain current ADR program information posted on its internal employee website (e.g. Sharepoint), including ADR procedures and contact information. The Union will be notified whenever the ADR program information is updated.

Section G. Procedures for Consideration of Agency Grievances: A grievance by the Agency shall be submitted in writing by the Agency to the Union President within twenty-five (25) work days of the event giving rise to the grievance. At the request of either Party, the Parties will meet or otherwise communicate within ten (10) work days after receipt of the grievance to discuss the grievance and seek possible resolution options. The Union will respond in writing to the grievance within twenty (20) work days after the meeting, (or upon receipt of the grievance if no meeting takes place.) The decision shall specify that it is the Union's final decision on the grievance. Should the Agency find the decision unacceptable, it may invoke arbitration in accordance with provisions contained in Article 42 (Arbitration) of this Agreement.

Section H. Procedures for Consideration of Union Grievances: In the case of a Union grievance, as defined in Section B. 3 of this Article, the Union President (or designated representative) shall submit the grievance within twenty-five (25) work days from the date the Union knew, or should have reasonably known, of the condition or occurrence prompting the grievance. Such grievance shall be submitted in writing along with any supporting documents or arguments to the Administrator (or designated representative). At the request of either Party, the Parties will meet or otherwise communicate within ten (10) work days after receipt of the grievance to discuss the grievance and seek possible resolution options. The Administrator (or designated representative) shall render a written decision on the matter within twenty (20) work days after the meeting, (or upon receipt of the grievance if no meeting takes place.) The decision shall be forwarded to the Union President. Should the Union find the decision unacceptable, it may invoke arbitration in accordance with provisions contained in Article 42 (Arbitration) of this Agreement.

Section I. Time Limits

1. Subject to the exceptions listed in Part (3) of this Section, the Parties agree to respond to a grievance within the time frames allowed, and time limits in this Article may be extended by mutual consent of the Parties.

2. Failure by the grievant to meet the time limits provided for in this Article, or to request and receive an extension of time, shall automatically cancel the grievance, unless mitigating circumstances prevail. If the responding official fails to meet time limits, the grievant may advance the grievance to the next step of the process (e.g., from Step 1 to Step 2)**.** In the case of a pending Step 3 decision, the Union may invoke arbitration under procedures established in Article 42, Arbitration, of this Agreement.

3. Time limits shall be extended in either of these two cases:

    a. In cases of mitigating circumstances. Mitigating circumstances refer to situations beyond the reasonable control of the Parties, such as, but not limited to, extended military leave, extended detail or temporary duty travel, medical condition, office closures, emergency leave, absence of the employee's representative, or natural disaster.

    b. Absent mitigating circumstances, if either Party is unable to file or respond within the timeframes, a one-time automatic extension of five (5) workdays will be granted if the other Party is notified in advance of the deadline and provided the reason for the delay.

Section J. Requests for Information: When an information request pursuant to 5 U.S.C. 7114(b)(4) is filed, the time limits will be extended equal to the amount of time reasonably required to provide the information.

Section K. Computation of Time: In computing periods of time for purposes of this Article, the day of the act or event from which the designated period of time begins to run shall not be

included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, legal holiday, a day other than a legal holiday when the Agency's office is closed, or a day on which a liberal leave policy is in effect due to inclement weather. In this event, the period runs until the end of the next day which is not one of the aforementioned days.

Section L. Notice: The acting party is responsible for ensuring timely delivery of filings and replies. Copies will be provided to the employee, the designated Union representative, and the applicable Agency representative. Copies of initial grievance filings will be provided to the SPO Labor Relations Office by the filing party.

Article 42: ARBITRATION

Section A. Right to Arbitration

1. If the decision on a grievance processed under the negotiated grievance procedure is not acceptable, the issue may be submitted to arbitration. The request to refer an issue to arbitration must be in writing and submitted to the other Party within fifteen (15) work days following receipt of the decision by the aggrieved Party and must include a copy of the invoking party's request for a list of arbitrators. Failure to serve such notice will result in termination of the grievance.

2. Service

    a. When hand delivered, proof of service (attachment XX – SEE BELOW) must accompany the invocation of arbitration.

    b. When mailed, the invocation of arbitration must arrive in an envelope with a postmark or similarly dated label from the U.S. Postal Service or other commercial carrier. The postmark will be used to determine the date of invocation.

3. The party invoking arbitration may opt to postpone the arbitration hearing date if that Party has filed an Unfair Labor Practice charge alleging information relevant to the case has been withheld until the Federal Labor Relations Authority (FLRA) has rendered its decision.

Section B. Submission of the Issue: The Parties agree that a joint submission of the issue(s) is the most desirable and will work diligently to arrive at one. Where there is more than one grievance involving the same issue, the Parties will strive to mutually agree on combining the cases for a single arbitration decision. If the Parties fail to agree on a joint submission of the issue(s) for arbitration, including any grievability or arbitrability issues, each Party shall submit a separate statement to the arbitrator who shall determine the issue(s) to be heard. In framing the issues to be heard, the arbitrator shall not add issues that were not raised by either party in their submissions, absent good cause shown.

Section C. Selecting the Arbitrator

1. Unless otherwise mutually agreed, when arbitration is invoked, the Parties shall meet within ten (10) work days and attempt to select an arbitrator. If no agreement is reached, the invoking Party will submit a request within five (5) work days to the Federal Mediation-and Conciliation Service (FMCS) for a list of seven (7) impartial arbitrators.

2. Within ten (10) work days after receipt of such list or as otherwise agreed, the Employer and the Union representative shall meet to select an arbitrator, unless an extension of time is mutually agreed upon. If the Parties cannot agree on an arbitrator from the list, each

Party shall strike one name in turn from the list. The determination of which Party shall strike first from the list will be determined by the flip of a coin with the loser striking first. After each Party has struck three names from the list, the remaining person shall serve as the arbitrator. Once selected, the arbitrator shall be jointly contacted by the Parties within five (5) working days to confirm their selection and respond to any initial questions the arbitrator might have regarding the case. The Parties' responses to such questions shall be taken as informational rather than dispositive in nature.

3. If either Party refuses to participate in the selection process, the other Party will make a selection of an arbitrator from the list and notify the arbitrator as well as the non-participating Party.

Section D. Pre-Hearing Matters

1. The Parties shall communicate in advance of the arbitration hearing in an attempt to agree on a joint submission of the issue(s) for arbitration. If the Parties fail to agree on a joint submission, each Party will prepare a statement of what it believes the issue(s) to be. The arbitrator will have the final authority to determine the issue(s) to be decided.

2. By mutual agreement, the Parties will arrange for a prehearing conference, with or without the arbitrator, to discuss possible settlement of the pending case and other issues related to the hearing, including any pending questions of grievability or arbitrability. Tentative witness lists may be reviewed at the prehearing conference but may be amended pursuant to Section D 3 below. The prehearing conference will occur at least ten (10) work days prior to the hearing.

3. The Union and the Agency shall exchange finalized witness lists by electronic mail at least five (5) work days prior to the hearing, except for witnesses who would be expected to incur travel expenses. The names of witnesses expected to incur travel expenses will normally be exchanged at least ten (10) work days prior to the hearing. Questions arising over the necessity of any witnesses shall be raised within three (3) work days after the exchange, and if not mutually resolved by the Parties, will be raised by either Party to the arbitrator. The arbitrator will then have the authority to resolve the matter at least two (2) work days prior to the hearing.

4. The Union shall have full authority to settle, withdraw or otherwise dispose of any grievance brought on behalf of the union and/or on the behalf of employees. An agreement by the Parties to settle, withdraw, or otherwise dispose of a grievance appealed to arbitration shall be binding upon the grievant(s).

5. The arbitration hearing will be held, if possible, on the Employer's premises and during the regular day shift hours. The grievant and any employee called as a witness will be excused from duty to the extent necessary to participate in the official proceedings with pay. The Agency will authorize reasonable travel expenses for necessary witnesses in accordance with established Agency travel policies and procedures.

Section E. Fees and Expenses

1. The arbitrator's fees and expenses shall be borne by the losing Party, except that in any decision not clearly favoring one Party's position over the other, the arbitrator shall specify the portion of the costs that will be borne by each of the Parties.

2. If a clarification of an arbitrator's decision is necessary, the requesting party will pay for the additional arbitration fees and expenses. The arbitrator will be requested to complete the clarification within twenty (20) work days. If jointly requested, the costs will be shared equally.

3. An employee who is found to have been affected by an unjustified or unwarranted personnel action, which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee, is entitled, on correction of the personnel action, to receive back pay and reasonable attorney fees related to the personnel action to the extent determined by the arbitrator.

4. In the event either Party requests the cancellation or postponement of a scheduled arbitration proceeding which causes an arbitrator to impose a cancellation or postponement fee, the Party requesting such cancellation or postponement shall bear the full cost of the cancellation/postponement fee. In the event the Parties agree to settle or postpone the arbitration during the period of time in which the arbitrator will charge a cancellation/postponement fee, the Parties will equally bear the cost of the fee, unless the parties agree otherwise.

Section F. Authority

1. The arbitrator's authority is limited to the adjudication of issues which were submitted by the Parties or as determined by the arbitrator in accordance with Section B of this Article. The arbitrator shall not have authority to add to, subtract from, or modify any of the terms of this Agreement, or any supplement thereto. The arbitrator shall apply all applicable law and his/her decision must be consistent with all appropriate precedential decisions.

2. In advance of the hearing, the arbitrator is empowered to enforce a reasonable request by the Union or the Agency for information in the possession of either of the Parties or their witnesses.

3. An arbitrator may engage in the mediation of the dispute only with the mutual agreement of the Parties and when such agreement is in advance of any such mediation effort. Mediation, if scheduled, shall be no more than two days in duration, unless otherwise mutually agreed by the Parties. If mediation does not produce a resolution of the entire dispute, the arbitrator shall begin the hearing as scheduled. Refusal by a Party to participate in or agree to a mediated resolution may not be considered by the arbitrator in rendering an award.

Section G. Grievability/Arbitrability Determinations: The arbitrator shall have the authority to make all grievability and/or arbitrability determinations. Each Party will submit their respective arguments in writing to the arbitrator at least twenty (20) work days prior to the scheduled hearing. The arbitrator may request supplemental information from either Party. A decision will be rendered prior to the hearing on the merits of the case. Normally, such decisions will be rendered at a date prior to the hearing.

Section H. Arbitration Process

1. Formal hearings: A submission to arbitration hearing should be used when a formal hearing is necessary to develop and establish the facts relevant to the issue. In this case, a formal hearing is convened and conducted by the arbitrator.

2. The arbitrator will be requested to render the decision and remedy to the Parties as quickly as possible, but in any event, no later than twenty (20) work days after the conclusion of any of the processes described above unless the Parties otherwise agree.

3. The arbitrator's decision shall be final and binding and his/her decision and remedy shall be implemented without delay unless appeals or exceptions are filed in a timely manner as defined in applicable law, rules, or regulation. If appeals or exceptions have been filed, the decision becomes final when such proceedings are completed and decisions issued.

4. The Parties may mutually agree to expedited arbitration instead of a formal hearing. If the Parties do not agree on the process to be utilized, a formal hearing shall be held pursuant to this Section above.

5. The arbitrator shall bear in mind that expedited arbitration should normally last no more than one (1) day. To such effect, the arbitrator shall have full authority to limit the Parties in the presentation of evidence or witnesses.

6. Expedited Procedures

   Upon mutual agreement by the Parties, one of the following expedited arbitration procedures may be utilized:

   a. a stipulation of facts to the arbitrator can be used when both Parties agree to the facts at issue and a hearing would serve no purpose. In this case, data, documentation, etc. are jointly submitted to the arbitrator with a request for a decision based upon the facts presented; or

   b. an arbitrator inquiry may be used to expedite the resolution of the instant grievance. In this case, the arbitrator would make such inquiries as he/she deemed necessary, prepare a brief summary of the facts, and render an on-the-spot

decision with a summary option; except that the Parties may mutually agree to eliminate the summary opinion; or

c. the Parties will submit to mini-arbitration proceedings. In this case, an oral hearing will be held. The arbitrator will prepare a brief summary of the facts and render a decision with a summary opinion. The Parties may mutually agree to eliminate the summary opinion.

d. In the case of any of the expedited procedures provided for in this Section above, no hearing transcript will be allowed and no post hearing briefs will be permitted.

e. The Arbitrator may render a written award, but not later than ten (10) days after the date of the hearing.

7. Transcripts: The cost of the transcript requested by one Party for its exclusive use and not shared shall be borne by the requesting Party. If the non-requesting Party subsequently requests a copy of the transcript, the total cost of the original request plus the cost of the copy will be borne equally by the Parties. If it is mutually agreed to request a transcript, the cost will be borne equally.

8. Exceptions and Appeals: Either Party may seek judicial review of the arbitrator's decision on matters which could have been appealed to the Merit Systems Protection Board (MSPB), and can file exceptions to all other decisions in accordance with FLRA regulations.

Section I. Arbitration Hearing

1. The arbitration hearing shall be closed to anyone other than the participants in the arbitration hearing, unless the Parties otherwise agree in writing.

2. Arbitration hearings will be held at a mutually agreed upon date no later than sixty (60) work days after an arbitrator is selected. The Parties may mutually agree to request an extension of the time limit from the arbitrator.

3. The Parties to the arbitration are entitled to be heard, to present evidence material, and to cross-examine witnesses appearing at the hearing.

4. The hearing shall be conducted expeditiously and in an informal manner.

5. The arbitrator may receive any oral or documentary evidence, except that irrelevant, immaterial, unduly repetitious, or privileged evidence may be excluded by the arbitrator.

6. Testimony and/or affidavits in connection with bargaining history may not be used in the mediation process or during an arbitration hearing unless one of the Parties has notified

the other in writing at least two (2) work days prior to mediation and/or the hearing of its intent to use such testimony and/or affidavits.

7. No interested person shall make or knowingly cause to be made to the arbitrator an ex parte communication unless agreed upon by the Parties.

8. Either Party may submit a post-hearing brief. The Arbitrator will determine the date that the briefs are due.

Section J. Award: Any award may not include assessment of expenses against either Party other than as permitted by law or as specifically provided for in this Agreement. In rendering a decision, an arbitrator must demonstrate such an award is consistent with 5 U.S.C. §5596 (The Back Pay Act of 1966, as amended) or other independent statutory authority.

Attachment xx:
Proof of Service Form

Directions: A copy of this form shall be appropriately filled out and attached when proof of service or statement of delivery or mailing is required. Use Part 1 and Part 3 for delivery by mail. Use Part 2 and Part 3 for personal delivery.

Part 1: Delivery by U.S. Mail or other commercial carrier: Proof of Service by Mail
I declare that I am over the age of eighteen years and not a party to this action.
My address is _____
_____
_____
_____

On _____,
(date)
I served the attached _____ by placing
(name of document)
a true copy enclosed in a sealed envelope with postage fully prepaid in the U.S. Mail or other commercial carrier, addressed as follows:
_____
_____
_____

Part 2: Personal Delivery:
I declare that on _____, I personally delivered the attached
(date)

_____ to _____
(name of document) (name of recipient)

at _____.
(location)

Part 3: I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on _____at _____
(date) (city)

_____ _____
(type or print name) (signature)

ARTICLE 43: ALTERNATIVE DISPUTE RESOLUTION (ADR) UNDER EEO

Section A. General

1. ADR includes an array of techniques used to achieve consensual resolution of disputes, generally with the assistance of a neutral third party (neutral).

2. Some ADR techniques are mediation, facilitation, neutral evaluation, conciliation, arbitration, and fact finding.

3. The use of ADR can benefit the Agency, its customers and employees. These benefits include:

    a. achieving effective and mutually satisfactory resolutions of disputes;

    b. decreasing time, cost, and other resources expended in resolving disputes;

    c. fostering a culture of respect and trust between the Agency and its customers and employees; and,

    d. increasing customer satisfaction and employee morale.

Section B: Policy

1. In accordance with Departmental and agency regulations, the agency will provide training and orientation of ADR methods to employees as deemed necessary.

2. The Agency will support the participation of trained Union stewards in government-wide mediation services.

3. The use of ADR will not adversely affect the rights of individuals to seek resolution of their issues through established complaint, grievance and appeal procedures.

4. ADR may not be appropriate, and need not be offered, for every dispute.

5. All mediators, and other ADR neutrals, shall meet standards established by USDA.

6. No Agency employee shall commit, authorize, or condone any act of retaliation against any Agency employee because of his or her pursuit of, or participation in, an ADR process.

Section C: Workplace Disputes

1. If the Agency offers ADR during the pre-complaint or the informal stage of the EEO process, the employee may choose between participating in the ADR program or the traditional EEO counseling activities. Once the employee elects to participate in the ADR program, all EEO counseling activities will end.

2. ADR shall be available to all employees for the early resolution of workplace disputes and during the period before the filing of an informal EEO complaint when appropriate.

3. Consistent with EEO regulations, ADR will be offered to employees within both the informal (pre-complaint) and formal stages of the EEO complaint system when appropriate.

4. Both Parties strongly encourage all employees to use mediation or other ADR processes to resolve workplace conflict at the earliest stage possible.

5. Whenever the use of ADR offers a reasonable opportunity for resolving a conflict and an employee requests their participation, management officials will comply with agency ADR policy in determining their participation.

6. The Agency, with input from the Office of Civil Rights/FAS, will determine when a matter is appropriate for ADR.

Section D: ADR Process

1. When an employee requests ADR in connection with an informal EEO complaint, the pre-complaint processing period shall be ninety (90) calendar days.

2. If the dispute is not resolved within ninety (90) calendar days, the employee will be advised of the right to file a formal EEO complaint.

3. If the employee enters into ADR after a formal EEO complaint is filed, the time period for processing the complaint may be extended by written mutual consent for not more than ninety (90) calendar days.

4. If the dispute is not resolved by ADR, the complaint must be processed within the agreed upon extended time period.

5. The Union may participate in ADR or mediation of any dispute in connection with an EEO complaint:

    a. When requested by an employee; and

    b. When the dispute involves other bargaining unit employees.

6. Any agreement reached through ADR will be signed by all Parties and is binding, to the extent permissible by law, regulation or this Agreement, on all Parties.

7. Failure to abide by an agreement reached through ADR is a basis for filing a grievance.

8. Agreements reached through ADR should be in accordance with provisions of this Agreement.

Section E: FAS Conflict Resolution Program

1. Procedures set forth in the FAS Conflict Resolution Program signed by both Parties on October 29, 1998 will be adhered to unless those procedures conflict with this Article.

2. The ADR program outlined in this Article and the FAS Conflict Resolution Program is intended to supplement, not replace, existing formal procedures within the EEO process.

ARTICLE 44: MID-CONTRACT NEGOTIATIONS

Section A. Definition: Mid-contract negotiation means reopening articles within this Agreement for the purpose of renegotiation.

Section B. Agreements Under This Article

1. Any agreements reached under the provisions of this Article shall be deemed to be supplemental to this Agreement and will expire when this Agreement expires.

2. Should a provision of any agreement negotiated pursuant to this Article be rendered invalid by appropriate authority, either party may reopen the specifically affected sections as well as issues clearly bargained away as part of this Agreement.

3. Notwithstanding this Article, nothing shall affect the authority of the Agency to take whatever actions may be necessary to carry out its mission during emergencies.

Section C. Mandated Changes

1. Disposition of Future statutes or Judicial decisions

    a. Such actions may require the Parties to change this Agreement. If either Party desires to negotiate the impact and implementation of the change, it shall provide written notification to request bargaining to the other Party. Such notice shall be followed by submission of a specific formal proposal for negotiations or a request to use interest based bargaining techniques within five (5) work days of the request to bargain.

    b. The receiving Party shall respond within ten (10) work days of receipt of the notice. Failure to timely respond will allow the other party to file an unfair labor practice charge for failure to negotiate in good faith.

    c. Neither party will be permitted to propose changes unrelated to the change specifically required by statute or judicial decision.

2. The Agency shall meet its obligations to bargain in good faith, and to delay implementation of the planned change until it has met its negotiation obligations in accordance with law, regulation and terms of this Agreement.

Section D. Scope of Mid-term Bargaining

1. Mid-term bargaining may be initiated by either Party during the period beginning eighteen (18) months after the effective date and six (6) months prior to the anniversary date of this Agreement by informing the other party, in writing, of intent to amend, supplement, or renegotiate a specified Article(s) in the Agreement.

2. Each party may request to amend, supplement, or renegotiate up to five (5) Articles contained in this Agreement. By mutual consent, more than five (5) Articles may be reopened by a Party.

3. Requests for mid-term bargaining will normally be accompanied by written proposals. If a Party elects to use an interest based approach to bargaining, a request for mid-term bargaining using this approach and stating the issues of concern will meet this notice requirement.

4. Requests for bargaining over procedures, substance or appropriate arrangements related to changes in working conditions covered in 5 U.S.C. 7106 will follow the process found in Article 36, Reorganizations and Other Workplace Changes.

Section E. Ground Rules

1. Negotiations shall take place during regular duty hours and begin as soon as practicable but not later than sixty (60) calendar days after receipt of a proposal by either Party unless otherwise mutually agreed by the Parties.

2. The Agency will provide mutually acceptable facilities for negotiations.

3. The Union will be authorized the same number of Union representatives on official time as the Agency has representatives at the negotiating table.

4. It is the intent of the Parties to consolidate issues for bargaining to the greatest extent possible.

5. Unless mutually agreed, no new proposals shall be submitted by either Party after the first day of negotiations.

6. All agreements are tentative until full agreement is reached.

7. Agreements reached will be written and signed by both Parties and are subject to Union ratification and Agency Head review before they become effective.

Section F. Impasse Procedures

1. If agreement cannot be reached on the matters under negotiation, the following procedures shall apply:

2. Declarations of Impasse

   a. Neither party may declare an impasse until all Articles and Sections are agreed to or declared non-negotiable by the Agency or declared at an impasse by either

Party. The Parties agree that each will use their best good-faith efforts to avoid impasse in negotiations.

b. If the Agency declares a provision to be outside the duty to bargain (i.e. non-negotiable), it will furnish the exclusive representative a written allegation concerning the duty to bargain in accordance with FLRA regulations.

3. Impasse

a. In the event either Party believes there to be an impasse in negotiations, the Federal Mediation and Conciliation Service (FMCS) shall be immediately requested to provide services and assistance to resolve the dispute pursuant to 5 U.S.C. 7119.

b. If mediation services of the FMCS do not result in resolution of the issue, either Party may invoke the services of the Federal Service Impasses Panel (FSIP) pursuant to 5 U.S.C. 7119. Prior to taking such action, however, the Party seeking to invoke the services of the FSIP will provide notice to the opposing party of its intention to take such action.

ARTICLE 45: PRECEDENCE, EFFECT OF LAW AND REGULATION, AND SEVERABILITY

Section A. Previous Agreements and Past Practices: This Agreement supersedes all previous agreements and past practices in conflict with this Agreement.

Section B. Mandated Changes: The provisions in Article 44, Mid-Contract Negotiations, Section B1 and 2 shall be applicable to this Section.

Section C. Severability: Should any part, term, condition or provision of this collective bargaining agreement be declared or determined by any court, head of the agency, or arbitrator to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and said illegal or invalid part, term or provision shall be deemed not to be a part of this agreement. If a finding of illegality or invalidity is made the Union may request a briefing or request to negotiate with the Employer within ten (10) workdays of receipt of the proposed change. If the Union requests a briefing, one will be held within ten (10) workdays of the request. If a request to negotiate is submitted under this section, the procedures under Article 44, Mid-Contract Negotiations, Section E shall apply.

Section D. Effect of Agreement: For the duration of this Agreement, it will have the full force and effect of regulations within the bargaining unit.

ARTICLE 46: DURATION AND TERMINATION

Section A. Effective Date

1. This Agreement will be submitted for Agency Head review when the Union certifies that it has been ratified by its bargaining unit.

2. This Agreement shall become effective on the date approved by the Agency Head or on the date on which the thirty (30) day time limit for Agency Head review expires, whichever is earlier.

Section B. Duration

1. This Agreement shall remain in effect for four (4) years from its effective date. Thereafter, it shall automatically renew in increments of one (1) year beginning on the day after the anniversary date, unless either Party serves the other with written notice of a desire to renegotiate or modify this Agreement in whole or in part in which case this Agreement shall stay in effect until negotiations are completed and the revised Agreement takes effect. Such notice shall be provided to the other Party not more than one hundred twenty (120) calendar days nor less than sixty (60) calendar days prior to the expiration date of this Agreement.

2. Upon receipt by either Party of notice, both parties shall meet within ninety (90) calendar days of receipt of a proposal to begin negotiations. When either Party notifies the other that it wishes to modify this Agreement, this Agreement will be extended until the effective date of the modified agreement. The provisions of any article in this Agreement may only be reopened pursuant to Article 44, Mid-Contract Negotiations, or where affected by changes of law or Executive Order.

ARTICLE 47: OFFICIAL TIME AND UNION REPRESENTATIVES

Section A. Definitions

1. Official Time: The time expended by the Agency's bargaining unit employees when in a duty status, without charge to leave of any kind, and approved by the Agency in accordance with 5 U.S.C. 7131(d) for the purposes set forth in Sections C 2, E, and J below.

2. Reasonable Time: The time necessary to accomplish a labor relation task, for which official time is requested, including a reasonable amount of time to travel to and from the task location.

3. Preparation Time: Reasonable time spent by the Union representative(s), witnesses, or the individual party(s) preparing for the activities described in Section E.

4. Participation Time: The time spent as a Union representative(s), as a witness, or as an individual party(s) to the actions or activities described in Section E.

5. Days: The days the Agency is open. Days do not include weekends, official holidays, or other days that the Agency is officially closed.

Section B. Permitted Use of Official Time: Union representatives shall request official time from their supervisor and shall be granted the use of reasonable and necessary official time, for purposes defined in Section E, unless the Union representative's absence will significantly interfere with the completion of the Agency's critical day to day operations or the performance of its overall mission.

Section C. Designation of Union Officials for Use of Official Time

1. The Union shall have the right to designate fifteen (15) representatives. These representatives shall include the President, Vice-president, Chief Steward, Treasurer, Secretary, and ten (10) shop stewards. If the Treasurer and/or the Secretary opt not to be shop stewards a maximum of two (2) additional shop stewards may be appointed. These representatives shall be granted official time for representational purposes covered in Section E.

2. In addition to the representatives described in Section C 1, above, the Secretary and Treasurer of the Union shall be allowed up to twenty-four (24) hours of official time each per calendar year to prepare financial and membership reports required by the U.S. Government, including reports to the U.S. Department of Labor and Internal Revenue Service and maintain the records required by those reports.

3. This section shall not limit the use of time for bargaining unit employees appointed by the Union to partnership councils and related bodies.

Section D. List of Stewards and Officers: The Union shall keep current its list of officers and stewards by program area. Any changes to the list will be submitted in writing to the servicing labor relations specialist, normally within three (3) days before the individual will be recognized by the Agency as having authority to represent the Union and be granted official time for representational duties. In exceptional circumstances, such as when a new steward replaces an old steward and is immediately confronted with a situation requiring union representation, the Union may notify the Agency's designated representative orally, but must submit a written confirmation within three (3) days after that oral notification. The Union reserves the right to assign stewards to any case or program area.

Section E. Purposes of Official Time: For the purposes of this Article, official time for representational purposes or representational activities is covered by 5 U.S.C. Section 7131 and shall include the following:

1. Any formal discussion between one or more representatives of the Agency and one or more employees in the unit or their representatives concerning any grievance, personnel policy or practices or other general conditions of employment.

2. Any examination of an employee in the unit by a representative of the Agency in connection with an investigation if:

    a. the employee reasonably believes the examination may result in disciplinary action against the employee, and

    b. the employee requests representation.

3. Any meeting between a Union representative(s) and one or more representatives of the Agency that is initiated by either the Agency representative or the Union representative in order to informally resolve problems of concern to either party.

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

5. The participation in proceedings initiated by the Union or by the Agency in connection with statutory or regulatory appeal procedures involving the Union or any member of the bargaining unit.

6. Preparation for, investigation of, and representation in, the above activities, as well as negotiations.

7. Each of the Union representatives as designated in Section C, above, shall be granted up to sixty-four (64) hours of official time to attend union sponsored labor-management training in their first twelve (12) months of union service; in subsequent years, each representative shall be granted up to thirty-two (32) hours. The Agency will consider

additional requests for official time to attend union sponsored labor-management training on a case-by-case basis. Hours not used for union sponsored training are not transferable and will not be accumulated and carried forward from year-to-year.

8. Preparation and participation in any other grievance or arbitration procedures negotiated between the parties.

9. To act for the Union in a representational capacity before Congress on matters related to conditions of employment for bargaining unit employees. This will be limited to no more than three (3) Union representatives.

10. It is understood that meetings of the FAS Partnership Council and its working groups are considered Agency work, and accordingly, members who serve on this body and/or related bodies (e.g., the USDA Partnership Council and/or its task groups) will be provided time for the meetings, as well as related preparation and follow through (see Partnership Council Agreement).

Section F. Limitations on the Use of Official Time

1. Official time will not be permitted for internal Union business (including the solicitation of Union membership, elections of labor organization officials, and collection of dues) pursuant to 5 U.S.C. 7131(b).

2. Official time will not be permitted when the use of official time will significantly interfere with the completion of the Agency's critical day-to-day operations or the performance of its overall mission. The union is committed to minimize disruptions caused by steward case load to the Agency's on-going work in small work units; the Agency recognizes that unusual circumstances may arise which will require flexibility in conducting the Agency's work.

Section G. Amount of Official Time for Representational Activities: The Union representative's supervisor will approve official time for the purposes set forth in this Article in amounts that are reasonable and necessary to accomplish the purpose for which official time is requested, unless the Union representative's absence will significantly interfere with the completion of the Agency's critical day-to-day operations or the performance of its overall mission.

Section H. Procedures for Requesting Use of Official Time: The following procedures shall be followed for requesting the use of official time for the purposes set forth in Section E, above.

1. The Union representative shall request official time from her/his supervisor at the earliest reasonable opportunity. The request for official time shall be for finite periods, based upon the representative's good faith estimate of the time required to perform the particular function. For incoming and reasonable duration outgoing telephone calls, no prior approval is required. In situations where the life, limb, or property of an employee is threatened, a representative may leave the work area without approval.

2. Requests for the use of official time shall be made to the Union representative's immediate supervisor, or in the absence of the immediate supervisor, to the next higher level of supervision.

3. In the event the Union representative requires additional time due to unforeseen circumstances, after approval has been given, the representative shall request an extension of that time, by telephone or other appropriate means. The request shall be made to the approving official, or, in that person's absence, to the next higher level of supervision. The extended time shall be granted unless the Union representative's absence will significantly interfere with the completion of the Agency's critical day-to-day operations or performance of its overall mission.

4. The Parties understand that unforeseen needs may arise precluding advance approval, such as telephone calls or visits to the Union representative's work site. It is understood that the five (5) officers who are designated to use official time under Section C 1 may have additional demands placed upon them in the context of unscheduled activities. The Union representatives will make a reasonable effort to ensure that employees use proper procedures for obtaining approval for use of official time to engage in representational activities, as outlined in this Article.

5. The Union representative's immediate supervisor will be informed when the Union representative leaves the work site on representational activities. After completing the representational activity, the union representative's immediate supervisor will be informed of the representative's return. It is the Union representative's responsibility to document his/her time used for representational activities on his/her time sheet upon return to the office.

6. Requests for official time for purposes other than those enumerated in Section E and C 2 will be considered by management and responded to in a timely manner. Such requests should be made by the steward or appropriate Union officer to the servicing labor relations specialist.

Section I. Availability of Official Time in Case of Disapproval

1. In the event that a Union representative's request for official time is disapproved, in whole or in part, the supervisor will notify the Union representative as much in advance as possible, so that the Union may select an alternative representative. The supervisor will state the reason for the denial.

2. In the event that a Union representative's request for official time is approved but the scheduling of the representational activity is delayed, any window under the control of the Agency for the filing of grievances or appeals will be extended for a time equal to the delay time.

3. In the event of disapproval or delay, the Agency will make every attempt to reschedule the representational activity or modify the representational deadline.

Section J. Employees' Right to Official Time

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

2. In the event that an employee's request for the use of official time is denied, the supervisor will, if possible, agree to an alternate time. Further, if a request for official time is denied, the Agency will make every effort to reschedule representational events and/or modify representation deadlines to enable the employee to adequately prepare and respond to the event or action that gives rise to the request for official time.

Section K. Record Keeping

1. Official time used is to be recorded on the Union officer's or steward's biweekly time sheet using the following codes:

    35 Regular time - Basic, Renegotiation, or Open Negotiations
    36 Regular time - Mid-term Negotiations
    37 Regular time - Ongoing Labor-Management Relations
    38 Regular time - Grievances and Appeals

2. Official time for handling telephone calls will be summarized daily and placed on the biweekly time sheet using code 37.

Section L. 100 Percent Official Time for Designated Union Official

1. Due to the expected volume of work by a senior Union official (e.g., FAS - AFSCME contract administration and other representational duties) one designated Union official will be on 100% official time. The Union will designate the official each year on or about March 31. The designated Union official will serve in that capacity for a one-year term barring unforeseen circumstances.

2. Time and attendance and other required service support for the designated Union official shall be handled by his/her FAS Program Area.

3. In the event of a reduction in force (RIF), the designated Union official shall enjoy the same rights as other FAS employees, and his/her position of record shall be viewed with neutrality in any RIF planning.

4. Time spent by the designated Union official on 100% official time counts as time-in-grade for within grade and career ladder promotion purposes.

5. The designated Union official is free to apply for any vacancy and will be fairly considered for any promotional opportunity within the Agency. His/her performance on Union work on 100% official time shall be viewed with neutrality by the selecting official(s).

6. If the designated Union official moves to another Union position, his/her official time usage will be in accordance with the general agreement of the Parties.

7. Upon completion of term or termination of the need for 100% official time, and after a discussion with the individual regarding available vacant positions, the designated Union official will be placed in a vacant position.

8. The Agency reserves the right to revisit the issue of 100% official time for a designated Union official annually. If the Agency opts to do so, it will so notify the Union between February 1 and February 15. The Parties will attempt to resolve this issue by March 15.

Section M. Disputes: Any dispute over the use of official time will be resolved through the grievance procedure set forth in Article 41, Grievance Procedures, of this Agreement.

ARTICLE 48: FACILITIES AND SERVICES

Section A. Union Facilities and Services

1. The Agency shall provide an enclosed, secure office with furniture and equipment:

   a. The office shall be in the building housing the most bargaining unit employees.

      (1) The union office is currently located in Room 0420 of the South Building.

      (2) It is the intent of the Agency to allow the Union to retain the office currently occupied in room 0420 South Building throughout the life of this Agreement. Should the Union be required to vacate Room 0420 due to reasons outside the Agency's control, the Agency will provide the Union with reasonable advance notice and negotiate in good faith to acquire comparable office space to the extent possible.

   b. Keys: One (1) for each officer and steward for the exclusive use of the Union.

   c. Telephones:

      (1) The Agency will provide one additional telephone jack or line in close proximity to the conference table located in room 0420.

      (2) Both telephone lines will be available on all telephones in the suite.

      (3) The office shall be listed in the Agency telephone directory by Union name, room number, and telephone numbers.

      (4) The existing telephone line for the fax machine will be maintained.

   d. The Union may upgrade their furniture by obtaining surplus or refurbished furniture provided no additional cost is incurred by the Agency. In the event the Union is required to vacate room 0420, it is understood that the Agency has no obligation to allocate alternative office space to the Union which will accommodate all furnishings acquired.

   e. Other services: The Office of the Administrator will designate an office responsible for providing service support (i.e., AD-700's and similar requests) for the Union.

2. The Agency will assure that the Department provides the Union with mail delivery services through an established mail drop site at the Union's office.

3. The Agency will endeavor to provide a secure attic storage locker.

Section B. Union Access to Bulletin Boards and Literature Distribution

1. Bulletin Boards:

   a. The bulletin boards provided by the Agency will be for the exclusive use by the Union.

   b. The Union is responsible for the content of its posted material. The Parties agree to discuss any objections they may have to material posted on bulletin boards.

2. The Agency agrees that the Union has the right to use the Agency's mail distribution system to mail documents or correspondence to the Agency or to bargaining unit employees that are related to the Union's representational functions.

3. The Union agrees that, prior to the bulk distribution of its literature; the Union is responsible for preparing, collating, and apportioning such literature.

4. The Agency will provide access to a sub-directory in the shared drive of the FAS LAN for the exclusive use of the Union. The Agency will allow Union officers, other Executive Board members, and stewards' unencumbered access to this sub-directory.

5. The Agency will allow unencumbered use of electronic mail (currently Outlook) for communication with the Agency, the Agency's servicing agencies (e.g., the Servicing Personnel Office (SPO) and other offices within the Deputy Administrator for Management Program Area (DAM)/FSA), the Union's own bargaining unit employees, and any other appropriate entities on representational matters.

6. The Agency will provide a LAN e-mail account for the Union with the Log-on ID [AFSCMEFAS].

Section C. Distribution of Union Literature: The Union may distribute its literature desk to desk before or after work or during the lunch period of the employee distributing the literature, subject to the Agency's security needs and in accordance with the terms of Article 47, Official Time and Union Representatives.

Section D. Use of Space for Union Meetings: The Union may request rooms to hold meetings on the Agency's premises at any time for official representational obligations in accordance with the terms of Article 47, Official Time and Union Representatives. For meetings of a non-representational nature (e.g., membership drives) the Union may request the use of rooms to hold meetings during the lunch period window (11:00 AM-2:00 PM) and outside normal duty hours subject to the official needs of the Agency. The Agency shall incur no additional costs for providing rooms for Union meetings of a non-representational nature.

Section E. Meetings With Non-FAS Union Representatives: Union representatives not employed by the Agency may meet with local Union representatives and/or bargaining unit

employees to discuss appropriate matters and may participate in meetings relating to representational matters between the Union and the Agency. They shall be admitted to Agency premises for these purposes.

Section F. Identification Cards: Upon request, the Agency shall issue daily passes or I.D. cards, if approved by the Department, to Union-identified representatives in order to carry out their responsibilities under this Agreement.

Section G. Provision of Display Furniture and Equipment: Upon request, the Agency shall provide the Union with available tables and easels for display in public spaces. These Articles will be provided only if they are consistent with Department regulations and the Agency does not incur a cost.

Section H. Union Bargaining Room: The Agency recognizes the value in retaining the Union conference room in the South Building as a readily available facility for Union-management related bargaining and other Union meetings. Therefore, the Agency agrees to work cooperatively with the Union to retain this facility principally for Union-management functions for the duration of this agreement.

Section I. Domestic Office Space

1. The Federal policy used to establish the recommended amount of office space for an organization is one hundred thirty-five (135) square feet per employee regardless of grade or position. The one hundred thirty-five (135) square feet is a gross figure and must include internal aisles, filing and equipment areas, small conference rooms and managers' offices.

2. The FAS policy is to allocate a private office for the positions with the following titles (not based on grade or class):

    a. Administrator and Associate Administrators

    b. Confidential Assistants

    c. Deputy Administrators and Assistant Deputy Administrators

    d. Area Officers

    e. Division Directors or Heads of Staffs

    f. Division Deputy Directors and/or Branch Chiefs

3. Supervisory positions not included in the above listed positions will only be allocated a private office if space is available after providing the maximum amount of working space to the organization’s staff.

4. No other employees regardless of grade or class are entitled to a private office. However, assigning non-supervisory employees private offices when their duties require a high degree of privacy (dealing with market sensitive classified materials or sensitive personnel issues) or other compelling reasons will be negotiated with the Union. Such negotiations will consider factors such as the impact of such a proposal on other members of the staff.

Section J: Office Size Guidelines: The following provides a general guideline to be considered when allocating space by position. These specifications were approved by OMB and GAO as reasonable space for employees to conduct work.

OFFICE FOR	RANGE IN SQ. FT.
Administrator	300 - 400
Associate Administrators	250 - 300
Confidential Assistants	150 - 200
Deputy Administrators	250 - 300
Assistant Deputy Administrators	200 - 250
Area Officers	150 - 200
Division Directors or Heads of Staffs	150 - 200
Division Deputy Directors or Branch Chiefs	150 - 200
Other Private Offices, as warranted	100 - 120
Employee Workstation	75 - 100

Section K. Space Allocation Distribution: In practice, the above space allocation will be determined by distributing the actual space assigned for a sub-working group (by Division level or staff) among positions. Allocated space for each category of employee is likely to differ from the above size ranges. In this situation, differences between allocated space and the above listed size ranges shall be proportionally similar across the categories of employees, unless physical (facility) and/or cost make this impractical.

ARTICLE 49: CHILD DAY CARE FACILITIES AND SUBSIDY PROGRAM

Section A. General

1. Both Parties agree that healthful and adequate child/day care facilities are conducive to a family-friendly work environment and are in the best interest of the Agency.

2. Subject to the provisions of this Article, should the Agency be compelled because of budgetary constraints to change the terms of this Article or to limit the scope of the FAS Child Care Assistance Program, it shall, in accordance with Article 36 of this Agreement, notify the Union of its intent to implement such changes, and negotiate with the Union to the full extent of the law over such changes.

3. The Agency agrees to continue to support the Department's efforts to provide employees with affordable and accessible child/day care facilities. If the Department terminates its day care facility**,** the Agency will notify the Union as soon as that information becomes known. If requested by the Union, the Parties will meet to discuss issues related to bargaining unit employees who may be impacted by the closure, and address any issues in accordance with Article 36 of this Agreement, including negotiations, to the extent permitted by law and government-wide regulations.

4. The Agency agrees that, prior to relocating a division, office, or other portion of the Agency to a location away from the South Building (headquarters complex), a survey of employees will be conducted jointly by both Parties to determine the need for and the availability of child/day care facilities at the proposed location. The results of the survey will be presented to the Department for its use in developing a child/day care plan for the new location. If the Department does not act upon the survey results, the Parties agree to jointly present their concerns to the Department.

5. The Agency will maintain its current child care subsidy program information posted on its internal employee website (e.g. Sharepoint), including application and contact information. The Union will be notified whenever child care subsidy program information is updated.

Section B. Notice to Employees

The Agency will designate a point of contact for employees interested in obtaining information on child and elder care resources (including the Agency's Child Care Assistance program) available from the Agency, Department, and Office of Personnel Management's (OPM). A semi-annual notice will be sent to all employees regarding the availability of this information. This information will be posted on SharePoint, and also distributed at the new employee orientation program.

Section C. Notification of Changes: The Agency agrees to notify the Union of changes or requests for changes in contracts for on-site day care facilities.

Section D. Child Care Assistance Program: Public Law 107-67, Sec. 630 allows Federal agencies to use appropriated funds normally available for salaries to assist lower income employees with their child care costs.

1. In keeping with FAS' commitment to foster a quality work place for all its employees, FAS will provide a child care subsidy to eligible FAS families to assist them in their efforts to obtain quality, licensed day care for dependent children through the age of 13 and disabled children through the age of 18. This program is for all full-time and part-time permanent FAS and non-bargaining unit employees.

2. Eligibility: To be qualified for a subsidy, FAS and its employees must use licensed child care, be a permanent employee, and have a Total Family Income (TFI) that does not exceed $71,000 per annum. Program parameters are listed below:

Subsidy Levels for AFSCME Bargaining Unit Employees

Total Family Income	Percentage of Annual Child Care Cost paid by FAS	Monthly subsidy not to exceed
Less than $43,000	65%	$765
$43,001-$57,000	45%	$460
$57,001-$71,000	25%	$305

*Total Family Income (TFI) refers to the Adjusted Gross Income (AGI) on applicable Internal Revenue Service (IRS) tax return forms (e.g. Form 1040).

a. An employee shall be eligible for the program immediately upon joining the Agency, providing the employee is qualified based on the TFI and meets other eligibility criteria.

b. An employee who is deemed ineligible and/or whose claim for benefits is denied will be provided contact information and may appeal that decision to the Agency designated reviewing official in accordance with the provisions of Department's Child Care Tuition Assistance Regulations. If not resolved, the employee may initiate a grievance in accordance with Article 41 of this Agreement**.** Time spent on the appeal process does not count against the deadline for filing a grievance.

3. Funding Availability:

a. The Agency agrees to continue providing funding to all eligible employees.

b. The FAS Child Care Assistance Program is contingent on the availability of Agency funds, with an annual program funding cap established not to exceed the salary equivalent of a GS-13 Step 5 in the DC-MD-VA locality area.

(1) Subject to Section A2 of this Article, at any time it is determined that the Agency will implement a furlough or reduction-in-force because of budget limitations, funding for this subsidy program may be ended or curtailed. Notice will be provided to the Union, and the Parties will engage in collective bargaining as appropriate.

(2) Subject to Section A2 of this Article, the Agency will notify the Union and participating employees as soon as it becomes known that the annual funding cap may be exceeded. Before the cap is reached, the Agency may authorize additional funds to avert a cessation of subsidy payments. Eligible participants will continue to receive the agreed upon subsidies until the cap is reached and any additional funds authorized are exhausted. Any negotiations that may be underway at that time will continue.

4. Program Administration:

a. The FAS Child Care Assistance Program including relevant provisions of this Article will be on the FAS SharePoint and FAS News and Events.

b. The Parties agree that the Agency will fairly and equitably administer provisions of this Article and the FAS Child Care Assistance Program in accordance with applicable law, regulations, and procedures, and this Agreement, for the benefit of persons eligible to participate in the program.

c. The Agency intends this benefit to be part of a Child Care Assistance Program, such that beneficiaries who meet the tax law requirements will be able to exempt all or a portion of the subsidy from tax liability and will establish the program under guidelines to achieve that objective. An employee's tax liability for assistance received under this program will be determined by the applicable tax code. The employee is responsible for determining his/her tax situation.

d. To encourage full participation by eligible employees, the Agency and the Union shall actively promote the Program.

e. At the beginning of the first pay period of every year, the total family income amounts and monthly subsidy will be adjusted by the same cost of living salary increase applied to salary Table DCB (Locality Pay Area of Washington-Baltimore-Northern Virginia). Amounts will be rounded up to the nearest dollar and the subsidy tables revised accordingly.

f. The Agency and the Union will monitor the Program and meet as necessary to resolve any issues.

ARTICLE 50: FOOD SERVICES

A. The Employer and the Union agree that accessibility to affordable and adequate food service facilities is a concern for FAS employees and is a component in the existence of a friendly workplace.

B. The Employer agrees to continue to support FAS employees' ready access and utilization of food service centers located at the South Building or any work site FAS employees may occupy.

C. The Union reserves the right to bargain to the fullest extent permitted by law and executive order over food service facilities if bargaining unit members' access to food service facilities changes.

ARTICLE 51: TRANSIT BENEFITS SUBSIDY PROGRAM

A. In the interest of relieving Washington D.C. metropolitan area traffic congestion, reducing air pollution, and conserving energy, the Agency will implement a Transit Benefits Subsidy Program.

B. The Transit Benefits Subsidy Program policies and procedures will be documented and managed through the Employer Notice publications. This method of managing the program will allow for changes and adjustments, as agreed to by both Parties, when issues or problems are identified. This does not prevent the Union from requesting formal negotiations if agreement on changes cannot be reached.

C. The Agency will provide transit benefits up to the maximum allowed or the actual commute cost, whichever is less, for eligible employees. However, the Parties recognize that continuation of transit benefits at the maximum level is dependent on the availability of funds. Should the Agency believe a change to the program is warranted, the Agency will provide the Union with a written statement describing the proposed changes.

D. Neither public transportation subsidies, pre-tax transit and parking benefits, nor any other media to which they are converted can be transferred from the recipient to any other individual. Moreover, benefits may only be used for eligible commuting to and from work; not for personal trips or trips between office locations. Inappropriate conversion or use will result in the employee's removal from the program and may result in disciplinary action and/or criminal prosecution, as appropriate.

E. One or more Agency employee(s) will be designated to serve as the Agency or Program Area Transit Coordinator(s).

F. Employees receiving Metrochecks are responsible for informing their Transit Coordinator any time their commuting patterns change, resulting in a change in either eligibility for the transit benefit itself or eligibility for the overall amount of the benefit.

G. Participating employees must pick up their Metrochecks during the designated times announced or another mutually agreed upon time by the Transit Coordinator and the employee. The Parties agree that if an employee loses his/her Metrocheck(s), it will not be replaced. The employee must wait until the following announcement of availability to obtain new Metrocheck(s).

H. Employees are not eligible to receive Metrochecks retroactively.

I. Participating employees that separate from the Agency must return all unused Metrocheck(s) to the Transit Coordinator prior to final departure.

J. The application form and a copy of the program rules will be provided to eligible employees interested in participating in the program by the Agency Transit Coordinator.

K. The Agency reserves the right to terminate the program upon the announcement of reduction in force and/or furlough actions that may be necessitated by budget or ceiling constraints or other constraints beyond its control.

ARTICLE 52: FITNESS/HEALTH FACILITIES

A. The Employer and the Union agree that accessibility to affordable and adequate fitness/health facilities is a concern for FAS employees and is a component in the existence of a friendly workplace.

B. The Employer agrees to continue to support FAS employees' ready access and utilization of fitness/health centers located at the South Building or any work site where the majority of FAS employees are located.

C. The Union reserves the right to bargain to the fullest extent permitted by law and executive order, over fitness and health facilities if bargaining unit members' access to fitness and health facilities changes.

ARTICLE 53: SMOKING POLICY

A. The Employer and the Union agree to the following parameters and procedures regarding smoking policies as clarified in the Departmental Regulation (DR) Number 4400-6 dated December 16, 1996, for the duration of this Agreement. DR # 4400-6 is located at www.usda.gov/ocio/directives/DR.

B. The Employer agrees that no bargaining unit employee shall be discriminated against based on his/her smoking status.

C. The Employer will allow up to two (2) hours per pay period on duty time for employees to voluntarily attend the smoking cessation program of their choice. This opportunity will be made available on a one (1) time basis for each employee. Employees who attend smoking cessation programs during work hours will notify their direct supervisor in advance with the following information: the purveyor of the program, the schedule of classes, and the total hours to be spent in the classes.

ARTICLE 54: BUSINESS CARDS

A. The Agency may, to the extent permitted by law, including decisions of the Comptroller General, purchase business cards with appropriated funds for its employees.

B. Employees authorized to receive Agency purchased business cards are those employees who as a key part of their duties, maintain regular contact with:

1. The general public,

2. Public and private partner organizations, and/or

3. Foreign, State, local or Federal Government entities.

4. Are determined by their Division Director to meet the above criteria and have obtained written supervisory approval.

C. Employees may print their own business cards using Agency computer equipment and materials or order from the mandatory outside Agency supplier. Required cardstock may be ordered at Agency expense.

D. The Agency will provide appropriate software for designing and generating business cards. Software may not be purchased by individual offices for this purpose.

E. Agency purchased and computer-generated business cards must conform to the USDA Office of Communications Visual Management Guide, Business Cards/Use and Specifications.

Appendix 1
Weingarten Notice

Office of Human Resources Management
United States Department of Agriculture
Annual Weingarten Notice

The Federal Service Labor-Management Relations Statute (FSLMRS), 5 U.S.C. Chapter 71, Section 7114(a)(2)(B) provides employees represented by a labor organization the right to request a Union representative in conjunction with investigations conducted by agency representatives under certain conditions. This memorandum fulfills the USDA's obligation under the FSLMRS to annually remind employees of their rights and the conditions when those rights may be exercised.

As a bargaining unit employee represented by a labor organization, you have the right to request representation from the labor organization (i.e. Union) at any investigative examination/interview where you reasonably believe the examination may result in disciplinary action being taken against you. You may make this request at any time prior to or during the interview. If requested, the agency may opt to: suspend questioning and grant your request then resume the interview; discontinue the interview; or offer you the choice to proceed with the interview without a Union representative, or to forego the interview.

Sources of additional information concerning your rights to representation are Union officials within the labor organization having exclusive recognition for employees in your work unit, the collective bargaining agreement for your bargaining unit, or the Federal Labor Relations Authority (FLRA) at http://www.flra.gov/.

Appendix 2
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. DEPARTMENT OF AGRICULTURE
AND
THE AMERICAN FEDERATION OF STATE COUNTY
AND MUNICIPAL EMPLOYEES, COUNCIL 26

The parties to this memorandum, the American Federation of State County and Municipal Employees, Council 26, hereinafter referred to as AFSCME, and the U.S. Department of Agriculture, hereinafter referred to as USDA, enter into this agreement for the purpose of establishing a mutually beneficial dues withholding agreement.

1. This Memorandum of Understanding is subject to and governed by 5 U.S.C. 7115, by regulations issued by the Office of Personnel Management (5 C.F.R. 550.301. 550.311, 550.312, 550.321 and 550.322), and will be modified as necessary by any future amendments to said rules, regulations and law. Reference is also made to DPM 550, Subchapter 3 for procedural guidance.

2. The USDA will permit any employee of the USDA who is a member of AFSCME and included within a bargaining unit for which AFSCME has exclusive recognition to make a voluntary allotment for the payment of dues to AFSCME. Such deductions shall begin after certification of AFSCME by the Federal Labor Relations Authority, and upon request by the appropriate union official and shall be at no cost to AFSCME. This Memorandum of Understanding shall be made a part of every future local or Council 26 agreement and shall be the only authorized method for obtaining dues withholding.

3. The employee shall obtain a SF-1187, "Request for Payroll Deductions for Labor Organization Dues," from AFSCME and shall file the completed SF-1187 with the designated AFSCME representative. The employee shall be instructed by AFSCME to complete the top portion and Part B of the form. No number shall appear in block 2 of the form except the employee's Social Security number.

4. The President or other authorized official of the Local Union or the Council will certify on each SF-1187 that the employee is a member in good standing of AFSCME; insert the amount to be withheld, and the appropriate Local number; and submit the completed SF-1187 to the Servicing Personnel Office (SPO) of the USDA Agency involved. The SPO shall certify the employee's eligibility for dues withholding, insert the AFSCME code (47) and, process the form through the Payroll/Personnel Processing System. An employee's initial dues deduction will become effective the first full pay period after the receipt by the SPO of the employee's certified SF-1187, provided it is received three working days before the beginning of the pay period. For SF-1187's received after this cut-off, an attempt shall be made to begin dues withholding effective the first full pay period after receipt. However, if this is not possible, dues withholding will become

effective the following pay period. The SPO will promptly forward a copy of the SF-1187 to the AFSCME designated official. When the SPO determines that a SF-1187 cannot be processed, the SPO shall promptly return the form to the Union, annotated with the reason for its return. In most cases, the annotation will be one word, such as "confidential" or "supervisor." Dues deduction will not be made for an employee who does not receive compensation sufficient to cover the total amount of the allotment.

5. Deductions will be made each pay period and remittances will be made on the Department's pay day to the payee designated by the Union. A grace period of seven days will be permitted in unusual circumstances. The NFC shall also promptly forward to AFSCME, a listing of dues withheld. The listing shall be segregated by Local and shall show the name of each member employee from whose pay dues were withheld, the employee's Social Security number, the amount withheld, the code of the employing agency, and the number of the Local to which each employee belongs. The listing will be in alphabetical order of the employee's last name. Each Local listings shall be summarized to show the number of members for whom dues were withheld, total amount withheld, and amount due to the Local. Each list will also include the name of each employee member for that Local who previously made an allotment for whom no deduction was made that pay period, whether due to leave without pay or other cause. Such employees shall be designated with an appropriate explanatory term.

6. In lieu of the listings provided for in Section 5 of this Memorandum of Understanding, USDA agrees to provide the National Office of the AFSCME a computer tape in a format to be agreed upon at such time as AFSCME has the facilities to process tapes. USDA will be given two (2) months notice to implement this change.

7. The amount of dues certified on the SF-1187 by the authorized Union official (see Section 4) shall be the amount of regular dues, exclusive of initiation fees, assessment, back dues, fines, and similar charges and fees. One standard amount for all employees or different amounts of dues for different employees may be specified. If there should be a change in the dues structure or amount, the authorized Union official shall notify the appropriate SPO. If the change is the same for all members of the Local, a blanket authorization may be used which includes only the Local number and the new amount of dues to be withheld. If the change involves a varying dues structure, then a revised rate schedule will be provided to the SPO. The SPO shall add the AFSCME code (47) and promptly forward the certification to the NFC. The change shall be effected at the beginning of the first full pay period after the certification is received by NFC which shall be no later than 30 days after the Union provides written notification to the SPO of the change in dues. Only one such change may be made in any 6-month period for a given Local.

8. An employee may voluntarily revoke an allotment for the payment of dues by completing a SF-1188, "Cancellation of Payroll Deductions for Labor Organization Dues" or by memorandum in duplicate, and submitting it to the appropriate SPO. If the employee uses a written request, it must contain all the information required by the SF-1188. The

SPO shall process the revocation effective as of the first full pay period after September 1 of each year provided that the revocation was received by the SPO on or before August 29 of each year, and provided the employee has had AFSCME dues withheld for more than 1 year and certifies to that fact. The SPO shall verify the information and forward to the designated Union official a copy of each revocation received as appropriate notification of the revocation.

9. The USDA will terminate an allotment:

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

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

   c. at the end of the pay period during which the SPO received a notice from the AFSCME or a Local of AFSCME that an employee member has ceased to be a member in good standing;

   d. annually during the first full pay period after September 1, after receipt of the employee member's written revocation of allotment (SF-1188 or memorandum in duplicate), provided that the revocation is received by the SPO on or before August 29 of each year, and provided the employee verifies that he/she has had AFSCME dues withheld for more than one year.

   e. The SPO and the employee members have a mutual responsibility to assure timely revocation of an employee's allotment for AFSCME dues when the employee is promoted or assigned to a position not included in a bargaining unit represented by AFSCME. If the dues allotments continue and the employee fails to notify his/her SPO, the retroactive recovery of dues withheld from AFSCME shall not be made, nor shall a refund be made to the employee.

10. The parties to this agreement recognize that problems may occur in the administration of this agreement and the dues withholding program. The parties agree to exchange names, addresses, and telephone numbers of responsible officials and/or technicians of AFSCME and USDA to facilitate resolution of problems. These individuals shall cooperate fully in an effort to resolve any issue relating to dues withholding under the terms of this Memorandum of Understanding. This does not constitute a waiver of any legal, regulatory, or contractual right. Grievances or other appeals concerning this Memorandum of Understanding will be filed with or against the parties at the level of recognition.

11. This Memorandum of Understanding shall remain in effect for as long as AFSCME holds exclusive recognition in USDA, except that either party may propose amendments annually, before the anniversary date of the signing of this agreement.

12. The initial dues for the Foreign Agricultural Service, (Case No. WA-RO-40047) will be withheld no later than 6 weeks from the date that this Memorandum of Understanding is signed. For any other unit certified in USDA, initial dues will be withheld in accordance with Section 2.

Agreed to, signed a Washington, D.C. on May 3, 1993.

Director of Personnel
Department of Agriculture

Executive Director
American Federation of State County
And Municipal Employees, Council 26

Appendix 3

MEMORANDUM OF UNDERSTANDING
BETWEEN
FOREIGN AGRICULTURAL SERVICE
AND
AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES
LOCAL 3976

The Department of Agriculture, Foreign Agriculture Service ("Agency") and the American Federation of State, County, and Municipal Employees, Local 3976, AFL-CIO ("Union") enter into this Memorandum of Understanding (MOU) and agree to interpret the language in Article 14 Telework, Section E. Unscheduled and Emergency Telework, Subsection 3 of the Collective Bargaining Agreement (CBA), February 2013 concerning mission essential work, as follows:

1. When federal offices are closed to the public due to an emergency an employee may be required to telework if:
   - the employee is "telework-ready" which is demonstrated by having an approved telework agreement (core/adhoc/situational), by having the necessary experience and by being equipped to telework; and
   - the employee is assigned a mission essential project or task that must continue during an office closure. In requesting the employee telework, the supervisor will articulate the component of the work project that is mission essential.

2. When possible, the supervisor will notify the employee of his/her requirement to work prior to the employee's departure on the day before the closure. If the employee is notified after departure and unable to perform the assigned tasks, the employee will be granted administrative leave consistent with OPM guidance and Department Regulations. Supervisors may specify in their request that the employee works only for the time that is required to complete the mission essential assignment.

3. When it is not possible for the employee to work during an office closure due to power outage at telework site, loss of internet connectivity, dependent care when there are no other options, or lack of access to specialized equipment required to perform duties, the employee will be granted administrative leave for the full day or portion of the day they are not able to work.

   The intent of this MOU is to apply Article 14 Section E.3 consistently with Sections E.1 and E.2, wherein the Parties agreed to use guidance and direction from the Department and the Office of Personnel Management (OPM), pertaining to telework use during emergencies, as they pertain to the use of telework during office closures, with further reference to 5 CFR 550.406. This interpretation would also be consistent

with guidance from the Department supporting OPM's statement that agencies should develop new telework policies (if not in place) to include a third category of teleworkers -those who are telework-ready but are neither scheduled to work on the day of an OPM closure announcement or required to work on that day according to their written telework agreement.

This MOU establishes no precedent for any other agreement, practice, or procedure. It becomes effective upon being signed by both Parties.

For the Agency:

_____/s/_____
Associate COO Foreign
Agricultural Service
Date: January 9, 2017

For the Union:

_____/s/_____
President AFSCME Local 3976
Date: January 9, 2017

Appendix 4

MEMORANDUM OF UNDERSTANDING
BETWEEN
FOREIGN AGRICULTURAL SERVICE
AND
AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES
LOCAL 3976

Article 17 – Merit Promotion, proposal language:

- Section B. Vacancy Announcements

  Announcements for bargaining unit positions shall be open for at least five (5) work days.

For the Agency:

_____/s/_____
Associate COO Foreign
Agricultural Service
Date: December 7, 2016

For the Union:

_____/s/_____
President AFSCME Local 3976
Date: December 7, 2016

Appendix 5

MEMORANDUM OF UNDERSTANDING
BETWEEN
FOREIGN AGRICULTURAL SERVICE
AND
AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES
LOCAL 3976

MEMORANDUM OF UNDERSTANDING

The Department of Agriculture, Foreign Agricultural Service ("Agency") and the American Federation of State, County, and Municipal Employees, Local 3976, AFL-CIO ("Union") enter into this Memorandum of Understanding (MOU) and agree to interpret the language in Article 36 Negotiating Reorganizations and Other Workplace Changes, Section (B)(3). Workplace Changes in the Collective Bargaining Agreement (CBA), February 2013 as being defined as de minimis, as follows:

> Changes that are de minimis refer to minor changes in the workplace, including, but not limited to, the assignment of employees to vacant workstations.
>
> The Agency will notify the Union of de minimis changes, and the union may respond at any time with bargaining unit concerns.

This MOU establishes no precedent for any other agreement, practice, or procedure. It becomes effective upon being signed by both Parties.

For the Agency:

_____/s/_____
Associate COO Foreign
Agricultural Service
Date: January 9, 2017

For the Union:

_____/s/_____
President AFSCME Local 3976
Date: January 9, 2017