



United States Department of Agriculture

Departmental
Management


Office of the
Assistant Secretary
for Administration

Office of Human
Resources
Management

1400 Independence
Avenue, SW
Washington, DC
20250

July 24, 2019

TO: Jennifer K.M. Nicholson, Acting Director
Office of Hearing and Appeals

FROM: Daniel M. Kline, Branch Chief 
Labor Relations Division
Office of Human Resources Management

SUBJECT: Review of the Collective Bargaining Agreement between the Office of
Hearing and Appeals (OHA) and the American Federation of State,
County and Municipal Employees (AFSCME) Council 20, Local 3020

On July 9, 2019, this office transmitted to the parties an Agency Head Review memorandum disapproving the Collective Bargaining Agreement (CBA) submitted to our office on June 17, 2019. Specific language contained within the CBA was found not in conformance with applicable law, rule and regulation. On July 23, 2019, this office received renegotiated provisions from the Parties adopting the Department's recommended changes.

On behalf of the Secretary of Agriculture and in accordance with 5 U.S.C. § 7114(c) (2), the Department has conducted an Agency Head Review of the subject CBA executed on July 23, 2019. After review of the renegotiated provisions, the Department finds them to be consistent with current applicable law, rule and regulation. Therefore, the CBA shall have the effective date of this memorandum.

Enclosure

cc: Mary Pletcher, OHRM
Duane A. Sinclair, OHA
Angela R. Parham, OHA
Lisa L. Cunningham, OHA
Ryan M. Eagleson, AFSCME
Peter Inman, AFSCME

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PREAMBLE

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 services, protects the interest 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.

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.

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

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

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 will be consistent with the principles of good management and public interest.

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

1.1 PARTIES TO THE AGREEMENT

The parties to this Agreement are the U.S. Department of Agriculture (USDA), Office of Hearings and Appeals (OHA) (hereinafter referred to as the “Employer,” “Agency,” or “Management”) and the American Federation of State, County, and Municipal Employees (AFSCME) Council 20, AFL-CIO, Local 3020, (hereinafter referred to as the “Union.”)

1.2 UNIT OF RECOGNITION

The unit of recognition covered by this Agreement is the unit certified by the Federal Labor Relations Authority (FLRA) in Case Number WA-RP-18-0036. The Employer recognizes AFSCME Council 20, AFL-CIO, as the exclusive representative of all employees (hereinafter referred to as “employees” or “bargaining unit employees”) in the bargaining unit as defined below.

1.3 DEFINITION OF A BARGAINING UNIT (See Appendix A)

INCLUDED: All professional and nonprofessional employees nationwide, employed by the USDA Office of Hearings and Appeals;

EXCLUDED: All management officials, supervisors, and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6) and (7).

1.4 DEFINITION OF DAYS

Days in this Agreement are defined as calendar days unless otherwise noted.

ARTICLE 2 - ADMINISTRATION OF AGREEMENT

In the administration of all matters covered by this Agreement, the parties will be governed by this Agreement; Government-wide rules and regulations; Federal law; Executive Orders; court orders; and existing Agency and Departmental rules, regulations, directives, and policies that do not conflict with this Agreement.

All past practices and previously negotiated Agreements between AFSCME Local 3020 and the Agency shall no longer be recognized.

ARTICLE 3 - EMPLOYEE RIGHTS

3.1 Each employee shall have the right to form, join, or assist any labor organization, or to refrain from 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:

A. 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, Congress, or other appropriate authorities; and

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

3.2 The Agency shall adhere to the provisions of 5 U.S.C. § 2302 (Prohibited Personnel Practices) with respect to personnel actions it might take; discrimination; coercion; preferential treatment; nepotism; retaliation for whistleblowing or the exercise of grievance, EEO complaint, or appeal rights; the violation of veteran preference rights; or other actions that would violate merit system principles.

3.3 The Agency shall provide to employees annual notification of the right to have Union representation at any investigatory interview that the employee may reasonably believe will result in disciplinary action. A copy of the annual “Weingarten Notice” is found at Appendix B.

3.4 An employee has the right to be represented by the Union at formal discussions between one (1) or more representatives of the Employer and one (1) or more employees in the Unit or their representatives concerning any grievance or any personnel policy or practice or other general condition of employment.

3.5 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. Prior to such meeting, Management will notify the employee of the employee’s right to Union representation. Should the employee request representation, Management shall either: (1) grant the request and delay the meeting until representation is available; (2) discontinue the interview; or (3) offer the employee the choice to continue the interview without representation or have no interview at all.

3.6 An employee may be represented by a representative of the employee’s own choosing in any employee-related appeal action, grievance, or EEO complaint

proceeding. The employee may exercise grievance, EEO complaint, or appellate rights established by this Agreement, law, rule, or regulation. Should an employee choose not to be represented by the Union, the Union reserves all rights afforded to it under the terms of Article 19 (Negotiated Grievance Procedure).

3.7 Employees covered by this Agreement may, without fear of penalty or reprisal, engage in the disclosure of information that 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 public health or safety, in accordance with applicable laws and regulations.

3.8 Each employee has the right to file an EEO complaint or grievance, act as a witness in their or any other employee's EEO complaint or grievance and exercise any appeal or other rights granted by law, rule, regulation or this Agreement without fear of restraint, coercion, discrimination, or reprisal.

3.9 Rules, regulations, and policies under which employees are obligated to work will be made available via electronic accessible media and, as applicable, will be made available in hard copy at each office having primary responsibility for the program or duties to which the regulations apply.

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

3.11 As provided for by Article 30 (Official Time), employees have the right to use official time.

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

3.13 Barring violation of USDA's Employment Responsibilities and Conduct Directive and in accordance with Article 6 (Conflict of Interest) of this Agreement, employees shall have the right to conduct their private lives as they see fit and to engage in outside activities and employment of the employee's own choosing.

3.14 Should an employee wish to meet with the Union, the employee will request permission from the employee's supervisor. Such a request will normally be granted if no substantial workload disruption would result. If the request is denied, the supervisor and employee will work toward finding an agreeable time for

the meeting. If postponement of the meeting directly affects an employee's ability to meet a filing deadline on a grievance or other action, the deadline shall be extended to the extent of the delay.

3.15 Each employee shall be granted a reasonable amount of release time as specified to prepare for the following:

(a) for the preparation of a grievance or EEO complaint, and for the preparation of an appeal;

(b) for discussions regarding such matters;

(c) for an appeal regarding a performance rating, denial of a within-grade increase, or classification appeal.

3.16 Aside from meeting with Union officials or other representatives, as provided for above, employees shall have the right to contact (by telephone, facsimile, email, or in-person if on site) the following officials or offices during their working hours:

(a) Human Resource Services;

(b) Equal Employment Opportunity counselors;

(c) A supervisor or Management official of a higher rank than the employee's immediate supervisor;

(d) Health Services; or

(e) the Office of the General Counsel.

3.17 The Agency will not require any employee to disclose, nor will the Agency disclose the employee's race; color; national origin; age; sex (including sexual orientation and gender identity); physical or mental disability; political or union affiliation; religion; marital or family status; or genetic information; except as required by law, rule, or regulation.

3.18 All employees shall be treated fairly and equitably.

ARTICLE 4 - UNION RIGHTS

4.1 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 Union membership, in accordance with the Federal Labor Management Relations Act (FLMRA), and applicable case law, and this Agreement.

4.2 For the purpose of administration of this Agreement, the Employer agrees to recognize representatives of AFSCME Council 20, Local 3020, and/or AFSCME authorized private counsel.

4.3 The Union has the right to represent an employee or group of employees in formal discussions between one (1) or more representatives of the Agency and one (1) or more employees in the bargaining unit concerning any grievance, or any personnel policy or practice, or other general conditions of employment. The Union will be given reasonable notice of, and an opportunity to, attend such formal discussions.

4.4 The Agency will provide the Union an opportunity to be present at the examination of an employee in the bargaining unit by a representative of the Agency in connection with an investigation if: (A) the employee reasonably believes that the examination may result in disciplinary action against the employee, and (B) the employee requests Union representation.

4.5 Except as otherwise provided for in Article 19 (Negotiated Grievance Procedure), the Union has exclusive right to represent employees under Article 19 procedures. Pursuant to such procedures, an employee or group of employees may present a grievance or complaint without representation by the Union.

4.6 Union officials and representatives performing duties in consonance with this Agreement and under the FLMRA will not be subject to restraint, coercion, or reprisal, or discrimination as the result of performing such duties.

4.7 INFORMATION REQUESTS

A. GENERAL: The parties agree that information requests will be limited to that material normally maintained by the Agency in the regular course of business which is reasonably available, necessary and relevant to the Union's collective bargaining or representational responsibilities. If a dispute arises over access to information in connection with a grievance, after the Union has filed a request under 5 U.S.C. § 7114(b)(4) with the labor relations staff, it will be joined to the

grievance. Information that constitutes guidance, advice, counsel, or training for the Agency is not releasable nor are pre-deliberative documents. The standard that will be used when determining necessity will be the articulated “particularized need” for the data. The Union will explain why it seeks the information, how it will be used and what it will be used for, so that the Agency can make an informed judgment on the necessity for the Union’s collective bargaining or representational responsibilities. All information requests will be filed with the labor relations staff.

B. PARTICULARIZED NEED: The Federal Labor Relations Authority’s analytical approach in dealing with the Union’s requests for information is based upon Title 5 of the United States Code, Section 7114(b)(4), as well as upon applicable case law. Under this approach, the Agency is bound to furnish the Union, or its authorized representative, upon request, and to the extent not prohibited by law, data: (1) which is normally maintained by the Agency in the regular course of business; (2) which is reasonably available and necessary for full and proper discussion of the subjects within the scope of collective bargaining; and (3) which does not constitute guidance, advice, counsel, or training provided to management officials; while in response, the Agency must assert any countervailing interests.

C. PRE-DELIBERATIVE DOCUMENTS: Internal Agency communications that are pre-decisional and do not constitute final decisions or published Agency policy. These documents may include, but are not limited to:

- (1) option papers on negotiations and disciplinary actions;
- (2) information on the strategy the Agency should take on a particular grievance or unfair labor practice;
- (3) case analyses or summaries of investigations conducted by the Agency; and
- (4) lower-level supervisors’ recommendations and concurrence with proposed action.

ARTICLE 5 - MANAGEMENT RIGHTS

Basic Rights:

A. Subject to subsection (b) of 5 U.S.C. § 7106, nothing in this article shall affect the authority of any management official of the Agency—

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

(2) in accordance with applicable laws—

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

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

(c) with respect to filling positions, to make selections for appointment from-

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(d) to take whatever actions may be necessary to carry out the Agency's mission during emergencies.

B. Nothing in this section shall preclude the Agency and the Union from negotiating—

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

(2) procedures which management officials of the Agency will observe in exercising any authority under this section; or

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

ARTICLE 6 - CONFLICT OF INTEREST

6.1 POLICY

In accordance with 5 C.F.R. §§ 2635.101, 8301.101, and 8301.102, each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws, and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal government, each employee shall respect and adhere to the principles of ethical conduct set forth in applicable laws, regulations, and executive orders. The Agency will continue to ensure that all employees are trained on conflict of interest matters for which employees are to be knowledgeable and accountable. Employees will have access to the Standards of Ethical Conduct of the Executive Branch at the employee's duty station and it will be made available via electronic accessible media or upon request may be distributed in hard copy format at the discretion of the Agency.

6.2 CONFLICT OF INTEREST

In accordance with the Standards of Ethical Conduct for Employees of the Executive Branch, employees who find themselves in an actual conflict, a potential conflict, or in a situation that could give the appearance of a conflict of interest shall immediately make known to the employee's supervisor the nature of the situation. The employee shall state any suggestions as to how the situation may be remedied. Employees who fail to make such situations known within ten (10) days may be subject to disciplinary action. In accordance with 5 C.F.R. § 2635.101(b)(14), whether particular circumstances create an appearance that the law or applicable standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts. Employees shall disclose fraud, waste, abuse, and corruption to appropriate authorities.

6.3 OUTSIDE EMPLOYMENT

An employee shall not engage in outside employment or other outside activity that conflicts with the employee's official duties. An activity conflicts with an employee's official duties if it is prohibited by Statute or by a Departmental or OHA supplemental regulation; or, if under the standards set forth in a government-wide regulation, it would require the employee's disqualification from matters so central or critical to perform the duties of the employee's position would be materially impaired. Employees are responsible for adhering to established relevant laws, regulations, and Agency guidelines for outside employment or other activities, whether paid or unpaid, including filing the most recent form OE-101, "Request for Approval of Outside Activity."

6.4 REPORTS OF MISCONDUCT

Employees who have reason to believe that misconduct has been committed shall report it promptly to the employee's supervisors. If the circumstances of the case are such that the employee feels the employee's report should not be routed through the employee's supervisor, it shall be reported to the next higher or appropriate level of supervision. Employees disclosing information to the employee's supervisor or to the employee's next higher level of supervision that they reasonably believe evidences: (1) any violation of law, rule, or regulation; or (2) gross mismanagement or a gross waste of funds; or (3) an abuse of authority; or (4) which represents a substantial or specific danger to public health or safety, shall be protected by the provisions of 5 U.S.C. § 2302(b)(8) and the Whistleblower Protection Act. Employees disclosing such information to the Special Counsel or to the Inspector General or designee shall be likewise protected.

6.5 ETHICS OFFICIAL

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

ARTICLE 7 - USE OF OFFICIAL FACILITIES AND SERVICES

7.1 GENERAL

The Agency agrees to allow Union officials reasonable access to telephones, video and teleconferencing capability, printing and copying equipment, file cabinets, fax service, e-mail, computer equipment, and the internal mail system, so long as such use does not result in additional costs to the Agency and is not prohibited by applicable law. Such use will be for official business only and not internal Union business as defined by 5 U.S.C. § 7131(b).

7.2 BULLETIN BOARDS

A. The Agency will provide an adequate amount of space on office bulletin boards throughout the Headquarters site and Regional Offices.

B. The Union is the sole authority for the content of all material posted on Union bulletin boards. The Agency will not be held liable for any of the Union's actions regarding the content of the material on such bulletin boards.

C. Material that does not violate any law or contain libelous material or personal attacks may be posted on Union bulletin boards.

7.3 DISTRIBUTION OF UNION LITERATURE

A. The Agency agrees that the Union has the right to use the internal mail system, including electronic mail, to transmit documents or correspondence to the Agency or to bargaining unit employees, so long as not prohibited by applicable law.

B. The Union agrees that, prior to the bulk distribution of its literature, the Union is responsible for preparing, collating, and apportioning such literature.

C. With the exception of the provisions in Article 7.3(D), the Union shall be allowed to distribute its literature.

D. The Union may use communication systems, including electronic mail, to distribute information to bargaining unit employees subject to the provisions of this article. This use may be done provided that such document preparation, distribution, and reading is done on non-duty time.

7.4 UNION MEETING TIMES AND LOCATION

Upon prior approval from the Agency, the Union shall be allowed to reserve rooms to hold meetings on the Agency's premises during the lunch period and outside duty hours. However, on a case by case basis, meeting space or teleconferencing may be requested and approved for representational purposes during duty hours. Any use hereunder shall not result in additional costs to the Agency and shall be discontinued if prohibited by applicable law.

7.5 PARTICIPATION BY 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 between the Union and the Agency.

7.6 USE OF TELEPHONE CONFERENCING

Because many of OHA's employees are located in single person offices and home offices nationwide, the Agency agrees that the Union has the right to conduct Union meetings by telephone or video conference using the Agency's established conferencing systems, provided that such use shall not result in additional costs to the Agency and shall be discontinued if prohibited by applicable law.

ARTICLE 8 - PERSONNEL RECORDS AND eOPF

8.1 This article deals with in-house official files (including supervisory files but excluding supervisory notes as defined in OPM's "Addressing and Resolving Poor Performance", as well as each employee's Electronic Personnel Folder (eOPF).

8.2 The eOPF is a system developed as a management solution to handle official personnel files, which allows employees to have access to their own eOPF. The eOPF contains documents, such as human resources documents, beneficiary forms, direct deposit, Thrift Savings Plan information, emergency contacts, and other information. The Human Resources Management Specialist provides instructions on how employees obtain access to their eOPF.

8.3 There is no permission required for an employee to gain access to the employee's own eOPF. The functionality of the eOPF permits employees to review or print copies. Employees may designate a representative in writing to review, photocopy, or receive an electronic copy, if available, of their eOPF. In the circumstances when an employee cannot access eOPF, the employee may request documents from the employee's eOPF by contacting the OHA's HRM Specialist.

8.4 The review or photocopying of all official in-house files (including supervisory files) shall take place only in the presence of the Agency official or an employee's designee having custody of the file.

8.5 Pursuant to Article 2 (Administration of Agreement), an employee may request removal of expired information or correction of information in the eOPF or official in-house files.

8.6 In general, employees will be made aware of information placed in any official Agency record. The eOPF system should generate an automated email to all employees when a new document is placed in their eOPF.

8.7 Within thirty (30) days, employees will be provided a copy of any information placed in their supervisory or other in-house file(s), or their eOPF.

ARTICLE 9 - POSITION DESCRIPTION

9.1 POLICY AND PURPOSE

The purpose of a position description is to describe the principal duties and responsibilities of the position for pay and classification purposes. Employees will normally be provided with description of duties for their position prior to the effective date of employment. Position descriptions also contain any special qualifications and/or requirements of the position.

9.2 ACCURACY OF POSITION DESCRIPTION

The Agency will update position descriptions periodically to ensure accuracy. Employees who believe their position description is inaccurate may meet and discuss this matter with their supervisor for clarification. When differences concerning the accuracy of a position description cannot be resolved between the supervisor and the employee, the employee may grieve the matter under Article 19 (Negotiated Grievance Procedure) or file a complaint under Article 27 (Employee Equal Opportunity). An employee will be informed of changes made to the employee's position description and will be provided a copy.

9.3 OTHER DUTIES AS ASSIGNED

The phrase "other duties as assigned" normally relates to tasks of an incidental nature, or that are infrequent, or constitute an emergency, for which it is impractical to include in the official position description.

9.4 ADJUDICATOR POSITIONS

The working title for Hearing Officers at OHA's National Appeals Division shall be "Administrative Judge" for all adjudicative duties, including conducting hearings and issuing determinations, excluding the Equal Access to Justice Act.

OHA will incorporate a new performance requirement into the performance plans of all GS-0905 employees that requires them to refrain from performing legal services delegated to General Counsel and/or representing themselves to any agency or instrumentality of the U.S. Government as attorneys representing the United States or USDA, other than for their authorized purpose of resolving appeals before OHA.

9.5 NOTIFICATION TO THE UNION

Where a change of duties is reflected in an existing position description, the Agency shall revise the position description accordingly. When the position description has been reclassified and approved, the employee and the Union will receive a copy of that changed position description. Employees may grieve, or file a complaint, regarding any reduction in grade, pay, or loss of promotion potential resulting from a reclassification decision.

ARTICLE 10 - WORK SCHEDULES AND HOURS OF WORK

10.1 GENERAL

A. Employees may request authorization to work one of the four schedules established (Standard Work Schedule, Compressed Work Schedule (CWS), Maxiflex, and Flexitour) in this article.

B. New hires must complete a minimum of ninety (90) days in their position before working a CWS and/or a Maxiflex schedule.

10.2 DEFINITIONS

A. OPERATING HOURS

The operating hours are the specific hours of the Agency in which employees may begin or end the workday. Those hours are from 5:30 a.m. until 6:30 p.m. daily. These times are subject to change by the Agency should the workload require it, and in abnormal, unusual, or unforeseen circumstances.

B. CORE HOURS

Core hours are the hours in a workday when all full-time employees must be present for duty. The core hours are from 9:30 a.m. until 2:30 p.m.

C. REGULAR WORKDAY

For employees on a fixed schedule (Compressed Work Schedule 5/4/9 or 4/10): 5:30 a.m. to 6:30 p.m.

(1) For employees on a flexible work schedule (Maxiflex or Flexitour Schedule): 5:30 a.m. to 6:30 p.m.

(2) Employees shall begin work each day no earlier than 5:30 a.m. but no later than 9:30 a.m. Employees must have completed their tour of duty no later than 6:30 p.m., as applicable. Any time worked before 5:30 a.m. or after 6:30 p.m., as applicable, must be approved overtime or compensatory time.

D. PERMANENT SCHEDULE CHANGE

A permanent work schedule change, as used in this article, means a time period that exceeds two (2) pay periods.

10.3 ESTABLISHED WORK SCHEDULES

A. STANDARD WORK SCHEDULE

In the absence of any other approved work schedule, the standard work schedule will be 8:00 a.m. to 4:30 p.m. daily.

B. ALTERNATIVE WORK SCHEDULES (AWS)

These schedules provide a family-friendly work environment, and employees may use such schedules to improve productivity and the quality of life that encourages job orientation instead of time orientation. The Agency can improve productivity through reduced tardiness, short-term absences, achievement of quieter hours at the beginning and end of the workdays, reduced commuting times, and enhanced employee morale. Employees can improve their quality of life through control over their personal working situations. It also provides a greater opportunity for employees to participate in the wellness program activities as well as community, family, and leisure activities. The employees have workday flexibility for childcare arrangements and emergency short-term absences that may be necessary when caring for sick children.

Employees working alternative work schedules may participate in an approved telework program.

(1) COMPRESSED WORK SCHEDULE (CWS)

Employee works a fixed schedule which is established by the employee and approved by the supervisor. Employees must work an eighty (80) hour pay period of fewer than ten (10) workdays per pay period (Monday-Friday).

Workdays must begin no later than 9:30 a.m. and must end no later than 6:30 p.m. Starting and ending times once established are fixed and do not change. Employees shall establish a schedule according to one of the following:

(a) 5/4/9: Employee establishes a schedule to work eight (8) nine (9) hour days, one eight (8) hour day, and designates one (1) fixed compressed day off.

(b) 4/10: Employee establishes a schedule to work eight (8) ten (10) hour days and designates two (2) fixed compressed days off.

(2) MAXIFLEX

Employee must work an eighty (80) hour pay period of ten (10) or fewer workdays per pay period (Monday-Friday). Workdays must be six (6) to ten

(10) hours in length and must include all core hours on days scheduled to work. Employee requests to establish a schedule according to Section 10.4 below and may request to change the schedule as often as each pay period, choosing the time they will arrive each day no earlier than 5:30 a.m. and no later than 9:30 a.m.

(a) Glide time. Once a schedule is approved for all employees (other than Administrative Judges), they must account for hours in the schedule except that arrival time may be flexed earlier or later up to thirty (30) minutes on any given day, provided departure time is flexed an equivalent amount on that day. Actual arrival time under this thirty (30) minute glide may only occur from 5:30 a.m. to 9:30 a.m. and actual departure time must occur between 2:30 p.m. and 6:30 p.m.

Once a schedule is approved for Administrative Judges, they must account for hours in the schedule except that arrival time may be flexed earlier or later up to two (2) hours on any given day, provided departure time is flexed an equivalent amount on that day. Actual arrival time under this two (2) hour glide may only occur from 5:30 a.m. to 9:30 a.m., and actual departure-time must occur between 2:30 p.m. and 6:30 p.m.

(b) Extended glide time. Additionally, employees on a Maxiflex approved schedule may flex their arrival or departure time up to two (2) hours one day per pay period subject to prior supervisory approval and provided an equivalent amount of time is flexed later in the same pay period. Actual arrival time under this two (2) hour glide may only occur from 5:30 a.m. to 9:30 a.m. and actual departure-time must occur between 2:30 p.m. and 6:30 p.m. With supervisory approval, glide times may deviate from the core hours, and at the supervisor's discretion, the supervisor may approve more than one two (2) hour glide per pay period. Note: this will not be feasible for employees working a ten (10) hour four-day-a-week schedule because ten (10) hours is the maximum hours in a work day.

Full-time employees working under Maxiflex who do not work eighty (80) hours in a pay period must charge their leave or use previously earned credit hours, as appropriate, in order to make up the eighty (80) hour requirement.

To facilitate OHA's customer service requirements and to increase flexibility of available work hours, employees are encouraged to avail themselves of a schedule that directly supports accomplishing OHA's unique and critical mission objectives. The supervisor shall consider these factors in reviewing Maxiflex schedule requests.

(3) FLEXITOUR SCHEDULE (ALTERNATIVE EIGHT-HOUR SCHEDULE)

This is a fixed schedule that does not vary from day-to-day. The arrival and departure times are according to a set, written schedule requested by the employee and approved by the supervisor in advance. The schedule includes ten (10) workdays in each pay period.

Each workday is eight hours in length excluding the scheduled lunch period. This schedule differs from the normal eight (8) hour tour in that the scheduled arrival and departure times need not coincide with the basic eight (8) hour workday.

10.4 PROCEDURES FOR REQUESTING WORK SCHEDULES

A. Employees who want to establish or make a change to an alternative work schedule shall request their preferred work schedule from the available options listed in 10.3 of this Article by submitting the appropriate form to their supervisor(s) no later than close of business on the first Tuesday of the pay period preceding the pay period for which they wish the schedule to be effective. Employees may request AWS by emailing or faxing the appropriate form.

B. Supervisors shall approve or disapprove the requested schedule no later than close of business Tuesday before the pay period for which the employee wishes the schedule to be effective. It is the employee's responsibility to ensure the supervisor's actual, timely receipt of the request. If a work schedule request is disapproved, the specific reasons for such disapproval must be provided in writing to the employee on the work schedule form or an attachment. Supervisors may approve or deny such requests and transmit their decision by email or facsimile.

C. Supervisors and employees are responsible for customer service and supervisors may deny an employee's specific request for an alternative work schedule if:

(1) the employee would be unable to complete the requirements of the position;

(2) the office would have inadequate coverage during established Agency business hours;

(3) the work unit's business operations would be unduly delayed or interrupted; or

(4) a critical mission of the Agency would not be accomplished or would be unduly delayed or interrupted.

10.5 SCHEDULE REQUEST CONFLICTS

A. To resolve conflicts in schedules:

(1) The parties encourage informal resolution within the employees' work unit.

(2) Department (USDA) seniority shall be used to determine priority.

B. In case of a tie, the service computation date (SCD), as shown on the SF-50, Notice of Personnel Action, shall be used to determine the order of priority in choosing the schedules and days off when informal resolution is unsuccessful.

(1) Requests for changes in work schedules will not be used to alter existing work schedules of employees who are not seeking a change in their work schedules.

(2) A new employee coming into the work unit cannot force a change in the existing employee work schedules.

(3) Employees are encouraged to consider days off other than Monday and Friday.

(4) Once an employee has selected a compressed day off, that employee may not use seniority to bump another employee from their established compressed day.

10.6 TEMPORARY WORK-RELATED SCHEDULE CHANGES

A. A supervisor may, after giving timely notice to affected employees, make a temporary change to an employee's work schedule (including scheduled days off) for any work-related exigency including, but not limited to, ensure required attendance at meetings, training, travel; to alleviate inadequate office coverage during the established work day; to provide required services to internal or external

customers; to compensate for temporary staffing shortages or changes; or to fulfill special needs of the Agency.

B. An employee may request a temporary change to the work schedule (including scheduled days off) for any work-related exigency including, but not limited to, ensuring required attendance at meetings, training, and travel; providing required services to internal or external customers; or fulfilling special needs of the Agency. Such request for change must be submitted on the appropriate form and approved by the supervisor in advance.

C. Timely notice, as used in this paragraph, is defined to mean as soon as is practicable after the supervisor has determined a change in the work schedule is required for the current or any subsequent work day for any of the reasons noted in 10.6(A) above or similar requirements. It is understood by the parties that the amount of notice practicable in each instance will vary according to the circumstances. Supervisors shall consider the impact of affected employees making corresponding changes in their personal affairs to accommodate the Employer.

D. For supervisory initiated changes according to 10.6(A), an employee who is required to work on their scheduled day(s) off will, if possible, be permitted to schedule alternative day(s) off during the pay period. If this is not possible, the employee will be paid overtime or permitted to accrue compensatory time for future use.

10.7 PERMANENT WORK-RELATED WORK SCHEDULE CHANGES

A. Supervisors and employees are responsible for customer service. Subject to 10.7(B) below, a supervisor may direct a permanent work schedule or change for an employee, work unit, or part of a work unit when:

- (1)** an employee would be unable to complete the requirements of the position;
- (2)** the office would have inadequate coverage during established Agency business hours;
- (3)** the work unit's business operations would be unduly delayed or interrupted; or
- (4)** a critical mission of the Agency would not be accomplished or would be unduly delayed or interrupted.

B. For Agency directed changes to approved work schedules as defined in this Article, with the exception of changes to Maxiflex approved hours of work, and except for abnormal, unusual, or unforeseen circumstances, the supervisor will provide the employee and Union at least seven (7) days' notice prior to the change.

10.8 CREDIT HOURS

A. Employees who work a Maxiflex or Flexitour schedule may earn credit hours by working beyond their normal tour of duty. An employee may carry over a maximum of twenty-four (24) credit hours at the end of any pay period. There is no time limit for using credit hours. However, should an employee leave OHA, the hours will be paid in a lump sum at the employee's current regular hourly rate of pay.

B. If an employee wishes to earn credit hours, the employee must receive prior supervisory approval through the submission of a premium pay request in the electronic time and attendance system. Administrative Judges are authorized to earn up to four (4) credit hours per pay period without prior supervisory approval. However, Administrative Judges must complete a premium pay request in the electronic time and attendance system no later than the second Wednesday of the pay period for any of these four (4) credit hours accrued or to be accrued during the pay period.

C. An employee may not earn credit hours on the same day that the employee uses credit hours or leave. An employee must earn credit hours within regular operating hours (5:30 a.m. to 6:30 p.m.) and only on days the employee is scheduled to work per the employee's tour of duty. Credit hours will be earned in fifteen (15) minute increments.

D. An employee may use credit hours in fifteen (15) minute increments just like annual leave by submitting a leave request (for use of credit hours) in the electronic time and attendance system.

E. Part-time employees also may earn credit hours by working beyond their normal tour of duty. The maximum carryover for part-time employees is one fourth of the hours in their normal pay period. For example, a part-time employee who works thirty-two (32) hours per week (sixty-four (64) hours per pay period) may carry over a maximum of sixteen (16) credit hours rather than the twenty-four (24) maximum for a full-time employee's carryover.

F. Employees may use credit hours in lieu of sick leave, but employees on formal leave restriction, which requires documentation for use of sick leave, must submit proper documentation.

G. Requests to use credit hours have the same priority as annual leave. In the event of conflicts over a day off, it does not matter whether annual leave or credit hours have been requested.

H. For approval purposes, credit hours are treated just like annual leave.

I. Employees cannot be forced to use credit hours. Employees cannot be forced to earn credit hours. Employees approved to work overtime may elect to earn credit hours consistent with this article.

J. Credit hours will not be earned for travel.

10.9 HOLIDAYS

A. When a Federal holiday falls on an employee's scheduled workday, the employee is entitled to holiday leave according to the following:

(1) 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; or

(2) For employees on Maxiflex, Flexitour, and Standard Work Schedules, are only entitled to eight (8) hours holiday leave.

B. When a Federal holiday occurs on a full-time employee's scheduled day off or compressed day off, the employee is entitled to holiday leave for the workday immediately preceding the holiday as their in lieu of holiday with the following exceptions:

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

(2) If the Head of the Agency determines that a different in lieu of holiday is necessary to prevent an adverse Agency impact, the Agency Head may designate a different in lieu of holiday for full-time employees under compressed work schedules.

(3) An employee is not entitled to another day off as an in lieu of holiday if a Federal office or facility is closed on a holiday because of a weather emergency or when employees are furloughed or on a holiday.

10.10 SPECIAL SITUATIONS

To facilitate completion of certain educational and/or training programs and/or complete unusual work or developmental assignments or details that will improve an employee's value to the Agency, or to address other special mission-related situations, an employee may request their work schedule be changed for a temporary period so as to accommodate these special circumstances. The Agency agrees to consider such changes and to work with the employee to work out an agreeable schedule, if possible, that will allow the employee to pursue these types of opportunities while ensuring completion of the required functions of the work unit. Each request will be evaluated on its own merits on a case-by-case basis. As used in this section, a temporary period is understood by the parties to generally be one hundred eighty (180) days or fewer.

10.11 COMPENSATORY TIME

A. Employees who are covered under the Fair Labor Standards Act (FLSA) may elect compensatory time in lieu of payment for overtime. FLSA Exempt employees who are authorized overtime may request to take compensatory time in lieu of payment for overtime in accordance with 5 C.F.R. § 550.114(c). Employees working a flexible schedule may earn compensatory time for an equal amount to overtime work, whether or not overtime work is irregular or occasional, as contrasted to employees working other than a flexible work schedule who can only earn compensatory time for irregular or occasional overtime work.

B. FLSA non-exempt employees who do not use compensatory time earned within the time limits provided shall be paid overtime for the unused hours at the pay rate in effect when the overtime was earned in accordance with government regulations.

10.12 OVERTIME

A. Time spent performing official business in excess of established daily work hours, weekly tour of duty hours, or eighty (80) hours per biweekly pay period shall be considered overtime when officially ordered or approved for employees exempt from the FLSA. An employee covered under the FLSA shall be considered to be in an overtime status when performing work prior to or after the established hours of work or during the prescribed lunch period for the benefit of the Agency, whether requested or not, and the Agency knows or has reason to believe it is being performed, and has not placed the employee on notice that such work in excess of the employee's work schedule is not authorized. All employees shall be compensated for overtime work, either by compensatory leave or overtime pay, according to this Agreement and applicable laws and regulations.

B. Overtime assignments will be distributed and rotated equitably among qualified employees according to qualifications needed for the work to be done, as determined by the Agency. Supervisors shall not assign overtime work to employees as a reward or penalty. In the assignment of overtime, the Agency agrees to provide the employee(s) with advance notice, if possible. Any employee designated to work overtime on days outside the employee's basic work week will be given two (2) days' notice, except in an emergency or other situation that was not reasonably foreseen. When overtime is to be performed on a Sunday or holiday, two (2) days advance notice will normally be given to the employee(s) affected whenever possible, and compensation will be according to applicable laws, regulations and the provisions of this Agreement.

C. A rotation will be established whereby each and every employee within a section or organizational unit where the work is to be performed will be given the opportunity to participate in overtime work assignments on an equal basis insofar as operational needs allow. The rotation of overtime will be limited to employees within the section or organizational unit who possess the needed training or skills, as determined by the Agency. Among such employees, the rotation will be based on seniority, as defined by Section 10.5. If sufficient employees from within the unit where the work is being performed are not available to perform the work, the supervisor may assign qualified staff members to work overtime regardless of their organizational unit. Records of employee overtime work shall be maintained by the Agency and provided to the Union upon request.

D. Employees who are called back to work for a period of overtime unconnected to their regularly scheduled tour of duty or who are called in on Saturday, Sunday, or holidays are entitled to a minimum of two (2) hours overtime pay.

E. Employees will normally be scheduled to perform functions on overtime commensurate with the grade-level of the employee.

F. Overtime shall be distributed to bargaining unit employees whose performance is at least fully successful.

G. The Union acknowledges that the Agency retains the right to require employees to work overtime. The Agency will consider personal hardship requests when assigning overtime.

10.13 DEALING WITH ABUSERS

Employees who abuse AWS will not be permitted to remain on AWS. The following procedure will be followed in cases where AWS is abused:

A. FORMAL WARNING

When it becomes apparent that an employee is abusing AWS, the supervisor will counsel the employee and issue a letter providing written notice that another instance of abuse will result in suspension of that employee's AWS. The formal warning period will cover twelve (12) months from the date of the letter. If there is no abuse within that twelve (12) month period, this warning period will expire.

B. SUSPENSION

If an abuse occurs during the twelve (12) month formal warning period, the employee will be suspended from AWS. If suspended, the employee will not be eligible for AWS for a period of one (1) year from the date of suspension. At the end of the one (1) year suspension, the employee may be reconsidered for eligibility for AWS.

10.14 BREAKS

Employees shall receive two (2) daily rest breaks of fifteen (15) minutes duration, one (1) to be taken in the morning and one (1) to be taken in the afternoon, or one break for each four (4) hours worked. Break time shall not be accumulated (banked) for future use or used to extend the lunch period or shorten the workday.

10.15 EXCUSED ABSENCE FOR PERSONAL FITNESS

A. Title 5 United States Code Section 7901 (5 U.S.C. § 7901), and Title 5 Code of Federal Regulations, Part 792 (5 C.F.R. Part 792) provide authority to establish physical fitness programs. OHA is committed to fostering a physically and mentally healthy workplace through preventative measures that encourage healthy lifestyles. Accordingly, OHA will have a health and wellness program (Wellness Program). The objective of this program is to improve individual employee fitness (through weight loss, improvements in flexibility, muscle tone, aerobic capacity, or stress reduction, as may be appropriate for the individual employee) and encourage personal health maintenance and mental focus for increased job performance through promoting an opportunity for a physical exercise and/or wellness regimen or activity.

B. OHA will permit its employees to participate in approved exercise activities with supervisory approval. Participation in any program is voluntary. The employee and the employee's supervisor must agree to the time schedules and coordination with work activities. The employee's supervisor will determine if the employee's workload permits participation in a Wellness Program and may deny an individual request to participate in a requested activity if the activity would interfere with a specific work assignment. OHA expects that supervisors will allow

time for employees to participate in scheduled Wellness Program activities and that normal workload would not prevent employee participation. Agency and supervisor decisions relating to health and fitness program may not be grieved by the employee or Union.

C. OHA supervisors may authorize up to one and a half (1.5) hours per employee per week, to participate in wellness activities under an approved Wellness Program, if workload permits; provided, that the time is used in increments of fifteen (15) minutes to thirty (30) minutes per day. The individual supervisor is responsible for determining whether a particular employee, or group of employees, may be excused to participate in Wellness Program activities based on workload.

D. The employee and supervisor must fill out the Wellness Program Agreement (Appendix D). The Wellness Program Agreement is an agreement between the employee and supervisor regarding the employee's participation in the program. Each employee and supervisor must sign (or re-sign) an agreement every two years.

E. Any employee who is subject to any disciplinary action(s) or performance improvement programs will be suspended from participation in this Wellness Program until such issues are corrected and resolved.

F. Wellness Program Agreements must specify the activity/activities that are being performed and the specific hours between 5:30 a.m. and 6:30 p.m. in which they will be performed. Employees and supervisors must agree to any deviations.

G. Unless specified otherwise, Wellness Program activities should be performed during or adjacent to lunch, or immediately preceding or immediately following an employee's already established work schedule.

H. It is the employee's responsibility to ensure that the employee is exercising during the period for which the employee is claiming for Wellness Program activities.

I. Failure of an employee to fulfill the requirements of the employee's Wellness Program Agreement, or to follow the requirements of the agreement, may result in the termination of the employee's authorization to participate in the Wellness Program.

J. Employees are responsible for all costs associated with their participation in the Wellness Program.

L. If requested by the employee, OHA will provide employees with periodic workstation evaluations and office equipment, such as standing desks, to promote healthy work environments.

M. If required by the Agency, all employees will participate in an annual training session offered by the Agency on health, wellness, and/or exercise safety, which may be conducted by any provider the Agency arranges.

ARTICLE 11 - MERIT PROMOTION

11.1 PURPOSE AND POLICY

The parties agree that the purpose and intent of the provisions contained herein are to ensure that merit promotion principles are applied in a consistent manner with equity to all employees and without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex, national origin, disabling condition, or age, and shall be based solely on job-related criteria. This article applies to bargaining unit positions in the Agency. The actions covered by merit promotions are stated in Departmental Regulations.

11.2 NOTIFICATION

A. If an employee is determined not to be basically qualified for the position, the employee may request an explanation from the human resources staff. If requested, the human resources staff will provide a verbal explanation to the employee.

B. If an employee does not make the best qualified list for a position, the employee may request an explanation from the human resources staff. If requested, the human resources staff will provide a verbal explanation to the employee.

C. If an employee is on the best qualified list but is not selected for the position, the employee may request, and the selecting official will provide, verbal feedback on the interview and application.

11.3 PROMOTION PANELS

A. When vacancy announcements result in ten (10) or fewer well-qualified applicants, all basically qualified applicants will be certified to the selecting official.

B. When vacancy announcements result in a referral list of more than ten (10) applicants, a panel will be convened to rate the applicants. The panel will be conducted as outlined in Departmental Regulations.

11.4 DETAILS WITH TEMPORARY PROMOTIONS

Employees assigned to higher grade positions for more than seventy-five (75) consecutive days will be temporarily promoted and receive the higher rate of pay effective on the first day of the detail, unless the employee is not qualified, funding is not available, or in the case of an externally imposed freeze. Management will make every reasonable effort to assign qualified employees for such positions.

11.5 PRIORITY CONSIDERATION

A. Priority consideration will be given to competitive candidates who were adversely affected due to a procedural, regulatory, or program violation. Such employees are entitled to priority considerations when reconstruction of a promotion action shows that (i.e., wrong qualification determination, failure to consider, improper rating, failure to follow competitive procedure, etc.) the employee would have appeared on the best qualified referral certificate.

B. If, due to an administrative/procedural error, or as the result of the grievance procedure, an applicant fails to receive proper consideration for a merit promotion vacancy announcement, the following procedures will occur:

(1) If the affected certificate(s) is still active and a selection has not been made, the selecting official is notified immediately, and the certificate is amended to include the applicant;

(2) If the affected certificate(s) has expired and no selection was made, the individual is not entitled to receive priority consideration for that vacancy;
or

(3) If a selection has already been made from the affected certificate(s), the individual must receive priority consideration for the next appropriate vacancy announcement open anywhere at the Agency (at the same series, grade, and promotion potential and geographic location) of the position previously applied for under competitive procedures for one year. The individual eligible for priority consideration must be considered by the selecting official(s) before other applicants are ranked or referred for selection.

(4) If an individual is referred as a priority consideration, as long as no selections are made for the position to which referred, the individual continues to be eligible for priority consideration for that merit promotion vacancy. Documentation of consideration by the selecting official and reasons for any non-selection must be maintained as part of the vacancy case file.

C. Employees downgraded through no fault of the employee's own (i.e., RIF procedure) are entitled to noncompetitive priority consideration and placement for a period of two (2) years from the effective date of the employee's downgrade.

D. When a position is offered and declined, the applicant is no longer eligible for priority consideration. The offer and declination must be formally made, in writing.

ARTICLE 12 - REASSIGNMENTS AND DETAILS

12.1 POLICY AND PURPOSE

Pursuant to Article 2 (Administration of Agreement), the parties agree that Management has the authority to detail and reassign employees, as needed, to meet the needs of the Agency, in accordance with Title 5, Section 335, of the Code of Federal Regulations, as well as with this Agreement and all other applicable laws, regulations, and USDA Departmental policies and regulations. The parties recognize that personal circumstances may change, and bargaining unit employees may prefer work in other locations. Details are intended for meeting temporary needs of the Agency when necessary services cannot be obtained by other desirable or practicable means. The parties agree that details and reassignments shall be assigned on an equitable basis.

12.2 DEFINITIONS

A. REASSIGNMENT. The movement of an employee changes from one position or geographical location to another position or location within OHA (including from one mission area to another) without promotion or demotion or change to lower grade.

B. DETAIL. The temporary assignment of an employee to a different or the same position or to unclassified duties for a specified time period, with the employee retaining the employee's position of record (same pay and status) and returning to the employee's regular duties at the end of the temporary assignment.

C. TRANSFER. The change of an employee, without a break in service of one (1) full workday, from a position in one agency to a position in another agency.

D. VOLUNTARY REASSIGNMENT. An employee requests a reassignment for personal reasons. Qualified Administrative Judges and Appeal Officers may also request Voluntary Reassignments in accordance with Section 12.6 below. An employee is not eligible for voluntary reassignment during the first year of full-time employment with OHA.

E. JOB SWAP. Qualified Administrative Judges and Appeal Officers in different duty stations arranging to exchange jobs. An employee is not eligible to job swap during the first year of full-time employment with the Agency. Job swaps must be approved by the Director, or designee, before they are effective.

12.3 PROCEDURES

A. The Agency agrees to give an employee who is going to be reassigned or detailed no fewer than ten (10) days' notice before effecting the reassignment or detail. The Agency will provide a minimum of thirty (30) days' advance notice to employees for directed reassignments outside of the commuting area.

B. The employee may request reconsideration of a reassignment or detail based on undue hardship.

C. Merit promotion procedures do not apply when a detail is to a position of the same grade and promotion potential.

D. The procedures in this article shall apply, except when the Agency must make a detail or assignment to respond to an unusual, sudden, and unforeseen situation of an urgent nature.

12.4 DETAILS

A. The Agency retains the authority to detail employees. This authority shall be exercised in accordance with this Agreement and applicable laws, rules, regulations.

B. Details or reassignments shall not be used to grant any preference or advantage not authorized by law, rule, or regulation to OHA employees (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person or persons for promotion opportunities.

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

12.5 RECORD OF DETAIL

Details over thirty (30) consecutive days will be documented by a SF-52, Request for Official Personnel Action. Should the requirements of the Agency necessitate detailing an employee to a lower graded position, this will not adversely affect the employee's salary, classification, or job standing.

12.6 ADMINISTRATIVE JUDGE AND APPEALS OFFICER VOLUNTARY REASSIGNMENT

A. Policy

The parties agree that a voluntary reassignment process is in the interests of both the employees and the organization as a way to identify and fill vacant Administrative Judge positions in a timely and cost-effective process. The parties recognize that the Agency may need to reassign employees to duty stations outside of the commuting area when there is a critical need for resources in another area or during work reduction situations. The parties further recognize that personal circumstances may change, and bargaining unit employees may prefer to work in other duty stations. Therefore, policy and procedures are established for a voluntary placement program (Subsection (B)(2) below) into Administrative Judge positions. This program allows qualified Administrative Judges and Appeal Officers to request voluntary placement in a different duty station.

B. Voluntary Placement of Administrative Judges and Appeals Officers

(1) Administrative Judges and Appeal Officer positions are permanent jobs with assigned duty stations. The Agency expects employees to remain in the duty station when they accept a position for at least one (1) year, unless involuntarily relocated due to a localized work reduction. The Voluntary Placement Program applies to qualified Administrative Judges and Appeal Officers and allows for:

(a) Voluntary placement of Administrative Judges and Appeal Officers to an Administrative Judge position for which they are qualified and trained under the provisions of this article. This includes voluntary reassignments.

(b) Relocation based on the voluntary placement procedures are a benefit afforded to the employee and are therefore at the expense of the employee.

(2) The Agency may solicit requests for voluntary reassignments prior to advertising a vacancy, concurrent to recruitment, or at some other time, as needs of the Agency require. The Agency may fill vacancies through voluntary reassignments or through alternative recruitment strategies available to the Agency. Alternative personnel recruitment strategies include, but are not limited to, how a position is advertised, who the position is open to, and from what geographic areas potential candidates may apply. Alternatively, nothing in this article precludes an employee from seeking relocation through normal personnel or Agency recruitment process.

(3) Exceptions

- (a)** Involuntary reassignments in localized work reductions.
- (b)** Other circumstances where reassignment is determined to be in the best interest of the Agency.

(4) Eligibility

- (a)** Administrative Judges and Appeal Officers, unless prohibited by restrictions in item (5) of this section, are eligible to apply for voluntary reassignment to an Administrative Judge duty station. Before approval and the reassignment is effectuated, the Agency personnel services center must review the applicant's qualifications to determine eligibility. Usually, this will require the submission of a résumé or other relevant documents.
- (b)** Employees must have attained at least a fully successful rating in the last appraisal to be eligible. Employees with formal disciplinary action pending, under leave restriction, under a demonstration opportunity plan, or other similar actions may apply for voluntary placement but will not be selected for placement until the situation is resolved.

(5) Restrictions

- (a)** Employees are not eligible for voluntary placement until they have completed the probationary period and have served one (1) year in the employee's current position. Employees may submit a request for voluntary placement no more than sixty (60) days before becoming eligible.
- (b)** Employees accepting reassignment under the voluntary placement program or those selected for promotion under merit promotion procedures are not eligible for another placement until one (1) year after the effective date of the previous personnel action. Employees may submit a request no more than sixty (60) days before becoming eligible.

(6) Submitting Requests for Voluntary Placement

- A.** The Agency informs the employees of intent to fill an Administrative Judge vacancy in a location and provides a thirty (30) day window for

current Administrative Judges and Appeal Officers to formally express an interest in the position. The solicitation will also provide a desired reporting date. At a minimum, the Agency will provide a ninety (90) day report date.

B. The Eligible Employee

(1) There is no required form for submission. The employee may submit the request electronically, but the request must contain the following: (a) the Service Computation date for Federal Service; (b) an acknowledgment that the relocation is in the best interest of the employee and that expenses will not be paid by the Agency; and (c) a statement that acknowledges the reporting date set by the Agency.

(2) The employee must submit the request to the Agency's Human Resources Servicing Officer.

(3) Employees may rescind or change the application or duty station preferences at any time by notifying the OHA Human Resource Management Specialist.

(7) Order of Merit List

If the Agency chooses to reassign a current employee pursuant to this article, the Agency shall choose the employee from the top of the reassignment request list. If otherwise eligible, the rank order of the list shall be determined by employee service computation date. If selected, an employee who moves to another duty station must remain in that position for one (1) year before submitting a new request for voluntary placement.

ARTICLE 13 - REDUCTION-IN-FORCE (RIF)

13.1 All provisions of the article shall be applied fairly, equitably, and in a nondiscriminatory manner.

13.2 When it is anticipated that a RIF will involve bargaining unit employees, the Union President and potentially affected employees will be given the earliest possible preliminary notification in writing. To the maximum extent possible, this notification will be at least ninety (90) days before the anticipated start date and will include the following information:

A. The actions to be taken because of the RIF.

B. The reason for the RIF.

C. The employee's competitive area, subgroup, service date, and three (3) most recent ratings of record received during the last four (4) years.

D. The anticipated effective date that the RIF will occur.

E. The place where the employee may inspect the regulations and pertinent records regarding the RIF.

F. The reasons for retaining a lower-standing employee in the same competitive level as that of the employee.

G. Information on re-employment rights.

H. The employee's right, as applicable, to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

I. If not filing an appeal, the employee's right to file either a grievance or a complaint under the terms of this Agreement.

J. Notice to the employee that the Agency must, upon the employee's request, provide the employee with a copy of OPM's retention regulations.

13.3 The Agency will attempt to minimize any actions that may adversely impact employees during a RIF by using, to the extent feasible, attrition to accomplish reductions. Before implementation, the Agency will consider the following: taking steps to address budget cutbacks by reducing Agency costs; or reassigning employees who are potentially adversely affected by the proposed RIF to vacant positions

for which they are qualified, provided that there is a need to fill such positions, and that the reassignment would be voluntary.

13.4 The Agency will not provide any advantage to any employee that the employee did not otherwise have prior to the RIF's implementation. Nor shall the Agency institute a RIF in lieu of a disciplinary measure or a performance-based adverse action against an employee or group of employees. Nor shall a RIF be instituted for the purpose of circumventing merit promotion procedures.

13.5 Any career or career-conditional employee who is separated because of a RIF will be placed on the re-employment priority list for all competitive positions in the commuting area for which the employee is qualified and available according to applicable rules and regulations. It is understood that acceptance of a temporary appointment will not alter the employee's right to be offered permanent employment.

13.6 Employees receiving a RIF notice have the right to review 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 or equivalent grade as the position offered by the Agency. If separation occurs, this includes all positions at or below the grade-level of their current positions. Bargaining unit employees involved shall have the right to seek assistance from the Union when reviewing such lists or records.

13.7 The procedures by which an employee's retention standing and placement will be determined shall be executed in accordance with 5 C.F.R. Part 351, Subpart E. An employee's retention standing shall be determined on the basis of the employee's tenure of employment, veteran preference, length of service, and performance in descending order.

13.8 Pursuant to 5 C.F.R. Part 351, Subpart F, the Agency shall release employees from their competitive level in the inverse order of their retention standing. However, employees so released shall retain all bumping and retreat rights as provided for in Subpart G of the same regulation.

13.9 In accordance with 5 C.F.R. § 351.604, the Agency:

A. May furlough a competing employee only when it intends within one (1) year to recall the employee to duty in the position from which they were furloughed.

B. May not separate a competing employee while an employee with a lower retention standing in the same competitive level is on furlough.

C. May not furlough a competing employee for more than one (1) year.

Once the Agency recalls employees to duty in the competitive level from which they had been furloughed, it shall recall them in order of their retention standing, beginning with the highest standing employee.

13.10 Employees assigned to a lower graded or lower paying position because of a RIF shall be entitled to two (2) years of grade and pay retention in accordance with 5 C.F.R. Part 536.

13.11 Pursuant to the terms of Departmental Regulation 4030-330-002 and 5 C.F.R. Part 330, employees subject to separation by a RIF shall be eligible for placement in the Career Transition Assistant 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 Career Transition Assistance Program (ICTAP).

13.12 The Agency shall inform eligible employees of their right to register on the RPL for reemployment consideration. Subject to the provisions of OPM and the RPL, career and career-conditional employees shall be eligible for rehire for two (2) years after placement on the RPL.

13.13 The Agency shall provide résumé-writing software and access to the internet to affected employees. To the extent that such activities do not excessively interfere with ongoing Agency work, employees shall be allowed reasonable time and use of Agency equipment to seek job opportunities. Such equipment shall include, but is not limited to: computers, phones, fax machines, printers, and copiers.

13.14 The Agency shall also grant affected employees a reasonable amount of time to attend, visit, or participate in the following local activities: job fairs, job interviews, seminars, counseling services, and appointments with outplacement consultants. As well, employees may visit agency provided career transition services. Where reasonable, the Agency shall make facilities and office space available for such activities.

13.15 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 provide electronic links to unemployment information for the separated employees.

13.16 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 C.F.R. Part 550.

13.17 An employee adversely affected by a RIF may grieve or file a complaint under the terms of Articles 19 (Negotiated Grievance Procedure) or Article 27 (Equal Employment Opportunity), if they believe that any law, rule, regulation or, portion of this Agreement has not been properly applied or adhered to.

ARTICLE 14 – FURLOUGHS

14.1 EMPLOYER’S RIGHTS AND OBLIGATIONS

The Agency retains its statutory right to determine when a furlough will be conducted and what positions will be affected by such action. When conducting furloughs, the Agency will adhere to the terms of this Agreement, as well as all requirements mandated by applicable law, rule, Government-wide regulations, and Departmental Regulation or guidance that does not conflict with this Agreement.

14.2 GENERAL PRINCIPLES

A. Should the Agency become aware of the necessity to conduct a furlough, it shall consider appropriate means to minimize the adverse impact on employees such as reassignment, attrition of the workforce, freezes on recruitment for targeted positions, reductions in training and/or travel, and/or reductions in contracting out.

B. Furloughs shall not be used to punish or disadvantage any employee.

C. The Agency shall not institute any furlough in lieu of disciplinary measures or performance-based adverse actions against any employee or group of employees. Nor shall a furlough be instituted for purposes of circumventing merit promotion principles.

D. The Agency may only furlough an employee when it intends to recall the employee to duty within one (1) year of the furlough’s effective date.

E. The Agency may not furlough an employee for more than one (1) year.

14.3 FORMAL DISCUSSIONS

Pursuant to 5 U.S.C. § 7114(a)(2)(A) and Articles 3 (Employee Rights) and 4 (Union Rights), the Union shall be given the opportunity to be present at any formal discussion between one (1) or more representative(s) of the Agency and one (1) or more bargaining unit employee(s) concerning furloughs.

14.4 NOTICES TO THE UNION AND EMPLOYEES

A. Except in cases of emergency furloughs, the Agency will provide the Union with any draft furlough notice prior to its distribution to employees. The draft notice shall be given to the Union no fewer than fourteen (14) days prior to when the Agency’s furlough notice is distributed to the employees. The Agency will also

solicit and consider comments the Union might make concerning the draft. Should the Union request a meeting to discuss the draft notice, the Agency will meet with the Union prior to, but in no case less than seven (7) days before, distributing the notice to the bargaining unit.

B. Except in cases of emergency furloughs or furloughs of thirty (30) days or less, the Agency will provide affected employees with notice at least sixty (60) days in advance of the furlough. Such notice must include the following:

- (1) the action the Agency intends to take;
- (2) the reason for the furlough;
- (3) the effective date of the furlough;
- (4) for non-emergency furloughs, the maximum length of the furlough;
- (5) grievance, complaint, and appeal rights, as applicable, along with the time limits for filing such actions; and
- (6) the place where the employee and the employee's representative may inspect pertinent regulations and records which are releasable under applicable law.

C. If, due to a lapse in appropriations, the furlough is an Emergency Furlough, all employees will be given as much advance notice as possible. Such notice will state that the number of furlough days may not be known in advance. If the number of furlough days becomes known after the onset of the furlough, the Agency will communicate this information to furloughed employees.

D. When some but not all employees within the same competitive area are being furloughed, the notice must also state the reason for selecting a particular employee, or group of employees, for furlough.

E. Except for Emergency Furloughs, 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 and a list of those employees being furloughed. The Union will be furnished with the lists on or before the date that the furlough notices are being issued to employees. Such list will also identify the number of employees being furloughed by program area, geographical location, position title, series grade, and service computation date, as well as the employees' retention standings.

14.5 GENERAL FURLOUGH PROCEDURES

A. In the event of a furlough (excluding Emergency Furloughs), the Agency shall establish competitive levels, competitive areas, and retention registers.

B. When some but not all employees at the same competitive level are being furloughed, employees will be selected for furlough in the inverse order of their retention standing, as defined in Section 8 of Article 13 (Reduction In Force) of this Agreement and 5 C.F.R. Part 351, Subpart F. If a tie in retention standing arises between two (2) or more employees, it shall be broken via coin toss.

C. When some but not all employees at the same competitive level and area are being recalled from furlough, they shall be recalled in order of their retention standing, as defined in Section 9 of Article 13 (Reduction In Force) of this Agreement and 5 C.F.R. Part 351, Subpart F. If a tie in retention standing arises between two (2) or more employees, it shall be broken via coin toss.

D. During the furlough, employees will be furloughed on their regularly scheduled workdays.

E. Employees required to report for duty during the furlough will be compensated in accordance with applicable law, rule, and regulation.

F. To the greatest extent possible, the Agency shall provide affected employees with information regarding contact points for unemployment compensation as well as other benefits listed below to which furloughed employees may be entitled.

G. Performance requirements and expectations shall be adjusted to take into account the effect of the furlough period on employees' performance.

H. In accordance with Section 3 of Article 6 (Conflict of Interest), employees may accept outside employment during their furlough days in accordance with applicable regulations.

I. To the extent it is possible, the Agency may permit employees to request the days on which they will be furloughed, subject to operational requirements.

14.6 PROCEDURES FOR FURLOUGHS OF MORE THAN THIRTY (30) DAYS

A. Furloughs for more than thirty (30) days shall be administered pursuant to 5 C.F.R. Part 351.

B. Prior to initiating any furlough of more than thirty (30) days, the Agency will ask employees to volunteer to be placed on leave without pay (LWOP) status. Such request for volunteers will be distributed to employees along with the initial furlough notice. Volunteers will be placed in LWOP status in order of their retention standing. The savings accrued from voluntary LWOP shall be used to reduce the number of employees subject to furlough. However, the Agency reserves the right to deny such placement for mission critical reasons.

C. To the extent that it is possible to do so, employees shall be given the option of whether the employee's furlough days shall run consecutively or discontinuously.

14.7 PROCEDURES FOR FURLOUGHS OF THIRTY (30) DAYS OR LESS

A. In accordance with 5 C.F.R. Part 752, furloughs of thirty (30) days or fewer (including emergency furloughs due to lapsed appropriations) are treated as adverse actions and as such bound to the terms and procedures found in Article 18 (Disciplinary and Adverse Actions).

B. Under this section, an employee is normally entitled to at least thirty (30) days' advance written notice. The notice must state the specific reasons for the proposed furlough and inform the employee of the employee's right to review any pertinent regulations and records, with or without the presence of their representative. However, such notice is not required in situations due to unforeseen circumstances, such as sudden equipment break downs, acts of God, or emergencies requiring the immediate curtailment of Agency activities.

C. If the length of an emergency furlough is not pre-determined, employees will be notified of the recall from furlough as soon as practicable. In such instances, employees are expected to report to work the next regularly scheduled work day after notification. Should the employee not be able to report to work, they will request leave as soon as is practicable. Management will consider any mitigating factors when granting or denying such leave requests.

14.8 RETROACTIVE PAY

To the extent permitted by law and regulation, employees placed on emergency furlough due to a lapse in appropriations will be retroactively paid and otherwise compensated once funds have been appropriated. Absence without leave or loss of pay equal to the time lost shall be paid barring statutory prohibition (e.g., actions that would be a violation of the Anti-Deficiency Act, Title 31 U.S.C.), or direction by higher authority.

14.9 HOURS OF DUTY

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.

14.10 ABSENCE AND LEAVE

A. A furloughed employee will not receive annual and sick leave accruals during any pay period in which they accumulate eighty (80) hours of LWOP.

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

C. Furlough days shall not be counted against scheduled paid leave absences taken under Family Medical Leave.

D. If an employee is unable to use the employee's scheduled "use or lose" annual leave due to furlough, and if they are unable to reschedule it during the rest of the year, the leave will be carried over into the next leave year, when permitted by regulation.

E. In accordance with Department of Labor regulations, employees in continuation of pay (COP) status will remain in such status for the length of the furlough.

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

14.11 TIME-IN-GRADE, WITHIN-GRADE INCREASES, AND PROBATIONARY PERIODS

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

B. Within-grade increases shall 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 C.F.R. § 531.406.

C. Aggregate non-pay furlough status not to exceed thirty (30) days will count toward the completion of an employee's probationary period.

14.12 RETIREMENT BENEFITS

For purposes of determining length of service for retirement benefits, credit is allowed for periods of LWOP or furlough for periods that do not exceed six (6) months in aggregate during any calendar year.

14.13 HEALTH INSURANCE (FEHB)

Enrollment continues for up to three hundred sixty-five (365) days with no interruption in coverage. During such period the Government shall continue to pay the Agency's share of the employee's health insurance premium. The Government is also responsible for advancing from salary the employee's share as well. The employee shall elect whether to pay the employee's share of the premium on a current basis, or whether to have the premiums accumulate and be withheld from pay when the employee returns to duty. Upon the employee's return to duty, the repayment of the employee's indebtedness may be prorated at the employee's election. Such repayment can be staggered through reasonable accommodations that are consistent with regulation.

14.14 LIFE INSURANCE (FEGLI)

Coverage continues at no cost to the employee or Agency for up to twelve (12) months of furlough duration. The regular biweekly premium will be deducted automatically when funding resumes and the employee receives pay.

ARTICLE 15 - PERFORMANCE APPRAISAL SYSTEM

15.1 STATEMENT OF POLICY

Performance evaluations shall be administered in accordance with applicable laws, regulations, and internal guidelines, pursuant to Article 2 (Administration of Agreement) of this Agreement. The Agency and the Union recognize and endorse the concept that performance management is a continuous, systematic process by which managers and supervisors integrate the planning, directing, and executing of organizational work with the personal performance appraisal, pay, awards, promotion, and other systems. Individual employee work elements and standards are documented and communicated in writing.

15.2 PERFORMANCE ELEMENTS AND STANDARDS

Performance standards shall be fair, objective, reasonable, and related to the employee's official position. Performance standards describe the expectations or requirements established by Management for critical and noncritical elements.

15.3 PERFORMANCE PLANS

A. All elements and standards will be in writing on the performance plan. The supervisor and employee will review the elements and standards. The performance plan will normally be issued within thirty (30) days after the beginning of an appraisal period or a change in tasks that results in changing the performance standards. Periodic reviews and discussions should be held to evaluate performance.

B. The minimum of a quarterly review is required. The mid-year review will be given not later than thirty (30) days after the mid-point of the appraisal cycle. The employee may submit a written response to the mid-year review, which the supervisor will maintain as part of the mid-year review record. The employee may use that written submission as part of an informal or formal response to the end of the year appraisal.

C. When a work assignment changes significantly, whether or not the work assignment change requires a personnel action, the affected performance plans shall be reviewed to determine whether revision or reestablishment is necessary. Employees will be informed and participate as provided in this Agreement when any revisions are made to the employee's performance plan. Employees who believe that revisions to the employee's performance plan are warranted due to substantial changes in work assignments may propose such changes to the employee's immediate supervisor/rating official for consideration.

D. Employees shall be apprised of the employee's performance under established performance elements and standards at the conclusion of the rating cycle.

15.4 EMPLOYEE PARTICIPATION IN ESTABLISHING PERFORMANCE PLANS:

The Employer will ensure consistency, objectivity, and applicability in development of performance elements and standards, and the subsequent appraisal of performance against established performance standards. Final authority to approve elements and standards rests with the Agency. Joint participation may be accomplished by means including, but not limited to, the following:

- A.** Employee and supervisor discuss and develop performance plan together,
- B.** Employee comments on draft performance plan prepared by the supervisor, or
- C.** Employees who occupy similar positions prepare performance plan(s) with supervisor's approval for consideration.

15.5 EMPLOYEES RESOURCE FOR EXPLANATION OF PERFORMANCE PLAN

When an employee is unclear about what is required to attain a rating of fully successful or equivalent, or what is required to improve the employee's performance, the employee may request clarification from the supervisor. A summary of the guidance given will be documented, with a copy to the employee.

15.6 DOCUMENTATION OF ACCOMPLISHMENTS

At the end of the appraisal period, the employee's accomplishments will be documented in the form of a performance appraisal.

ARTICLE 16 - AWARDS

16.1 PURPOSE AND POLICY

A. The Agency and the Union agree and recognize that an award program is a necessary and useful mechanism through which employee accomplishments may be recognized. The award program will be administered in accordance with law, governing regulations, and Agency guidelines.

B. Incentive awards encourage creativity, promote initiative, and improve morale, resulting in improved organizational efficiency and customer service. Public recognition of award recipients for the employee's special contributions, community involvement, and suggestions, is an effective means to achieve this objective.

16.2 TYPES OF AWARDS

A. INCENTIVE AWARDS: These are granted in the form of monetary and non-monetary recognition based upon the tangible or intangible benefits realized by the government. The incentive awards program consists of the following categories of awards:

(1) SPECIAL ACT AWARDS. Recognition granted for recurring and non-recurring accomplishments, such as suggestions, superior accomplishments, productivity gains, or other efforts that contribute to efficiency, economy, or other improvement of operations.

(2) SPOT AWARDS. Monetary recognition that serves to immediately reward an employee's contributions.

(3) TIME-OFF AWARDS. Excused absences, awarded in hourly increments, granted to employees, without charge to leave or loss of pay. Time-off awards may be granted to an employee for up to eighty (80) hours per year. Individual awards may not exceed forty (40) hours. The scheduling of the time-off awards will be coordinated between the employee and the supervisor.

(4) HONORARY AWARDS. A form of non-monetary recognition that includes certificates, letters, citations, medals, plaques, or other items that have an award or honor connotation.

(5) INFORMAL RECOGNITION. These non-monetary awards are usually in the form of items that symbolize the employee/Employer

relationship and are suitable to wear, display, or use in the work environment.

(6) EXTERNAL AWARDS. The Employer encourages recognition of employees whose contributions through organizations external to the Agency benefit the government and the community. Employees who perform community service activities as a volunteer may be recognized for the employee's contributions through appropriate recognition.

B. Incentive Awards may be individual or group awards, as appropriate, based on the circumstances.

C. PERFORMANCE AWARDS: Awards based on the individual performance rating of record and are awarded as performance awards (monetary) or Quality Step Increases (QSIs). The purpose of QSIs is to recognize outstanding performance by granting faster than normal step increases. To be considered for a QSI, an employee's current rating of record must be outstanding, and the employee must not have received a quality step increase within the preceding fifty-two (52) consecutive calendar weeks. Where an employee is rated outstanding, a rating official shall consider that employee for a performance award up to and including a QSI.

16.3 REVIEW COMMITTEE

A. The parties will establish an incentive awards review committee, consisting of two (2) members. The Agency and the Union will each select one (1) representative.

B. This committee is established to perform post-reviews of the incentive awards issued by the Agency.

C. The committee will meet on an *ad hoc* basis upon mutual agreement of the Agency and the Union. The committee will perform the following activities:

- (1) Review written justifications for awards;
- (2) Review awards distribution;
- (3) Submit findings, and recommendations to the OHA Director; and,

(4) Maintain confidentiality and share information only with the OHA Director.

D. The committee has no veto power and serves only in an advisory capacity.

ARTICLE 17 - ACTIONS BASED ON UNACCEPTABLE PERFORMANCE

17.1 SCOPE AND DEFINITION

A. An action based on unacceptable performance is defined as the reduction in grade or removal, which, for the purpose of this article, is Management's response to an employee's failure to meet established performance standards in one or more critical elements of the employee's position at the fully-successful level (FS) as defined in the performance plan.

B. Conduct and performance management problems may coincide, but they are distinct issues. Misconduct is treated in Article 18 (Disciplinary and Adverse Actions) of this Agreement.

C. This article applies only to bargaining unit employees who have completed their probationary or trial period.

D. As an alternative to a reduction in grade or removal based on unacceptable performance, the parties may mutually agree to reassign an employee to another position in lieu of removal or demotion.

E. The provisions of this article shall be applied fairly, equitably, and in a non-discriminatory manner.

17.2 PROCEDURAL REQUIREMENTS

A. The procedural requirements prescribed by 5 U.S.C. § 4303, 5 C.F.R. Part 432, this Agreement, as well as any Agency regulations or policies not in conflict with the above, apply in processing unacceptable performance actions.

B. At any time during the performance appraisal cycle that an employee's performance is determined to be unacceptable in one or more critical elements, the Agency supervisor shall notify the employee of the critical element(s) for which the performance is unacceptable and inform the employee, in writing, of the critical element(s) for which performance is unacceptable and inform the employee, in writing, of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance in the employee's position. The Agency supervisor should also inform the employee that unless the employee's performance in the critical element(s) improves to and sustains an acceptable level, the employee may be reduced in grade or removed.

C. Employees will be given a written notice in accordance with Section 17.5 of this article for performance-based actions.

17.3 DEMONSTRATION OPPORTUNITY (DO)

A. The DO is not a developmental opportunity or an opportunity to merely improve performance. It is an opportunity to demonstrate acceptable performance, i.e., performance at the FS level in the respective critical element(s).

B. A DO requires a DO Plan, which must provide clear notice of the performance the employee is required to demonstrate in the critical element(s) and standards for which the employee's performance does not currently meet FS level.

(1) The performance expectations must be achievable within the duration of the DO Plan;

(2) The expectations in the DO Plan must be commensurate with the duties and responsibilities of the employee's position and grade level, as reflected in the employee's position description and performance plan;

(3) The expectations must allow for a margin of error during the DO; an absolute standard is not permitted unless a single failure could result in loss of life, injury, breach of national security, or great monetary loss;

(4) The DO Plan must describe how the expectations will be measured and/or assessed; and

(5) The DO Plan must describe any assistance the agency will provide the employee to bring the performance up to the FS level.

(6) The DO Plan will define a thirty (30) day calendar period to demonstrate performance at the FS level. But the Rating Official may extend the DO period. The length of the DO should be determined by the following considerations:

(a) The complexity of the work;

(b) The duration of the segment of work that would provide adequate evidence that performance is demonstrated, or not, at the FS level; and

(c) Whether the employee has demonstrated acceptable performance, as defined at the FS level of the current performance plan, at a previous time.

(d) The rating official, or alternate as identified in the DO Plan, must closely monitor the employee's performance during the DO, and inform the employee at least once each week during the DO that the employee is or is not meeting performance expectations.

(e) If, during the DO, the rating official concludes that additional time is required to assess whether the employee is demonstrating performance at the FS level, the DO may be extended for no more than thirty (30) days with the prior approval of the USDA Chief Human Capital Officer. If the DO is extended, the rating official must notify the employee, in writing, of the extension.

(f) At the conclusion of the DO, the rating official must determine, without delay, whether the employee has demonstrated acceptable performance as defined in the DO Plan and must notify the employee in writing of the determination within seven (7) days. If the employee has failed to demonstrate acceptable performance, the rating official must initiate steps to take performance-based action no later than seven (7) days from the end of the DO.

17.4 PERFORMANCE-BASED ACTIONS

A. Once an employee has been afforded a reasonable opportunity to demonstrate acceptable performance, as provided for in Section 17.3 above, the Agency may propose a reduction in grade or removal action if the employee's performance, during or following the opportunity to demonstrate acceptable performance, is unacceptable in one (1) or more of the critical elements for which the employee was afforded an opportunity to demonstrate acceptable performance.

B. If an employee has performed acceptably for one (1) year from the beginning of an opportunity to demonstrate acceptable performance in the critical element(s) for which the employee was afforded such opportunity, and the employee's performance again becomes unacceptable, the Agency shall afford the employee an additional opportunity to demonstrate acceptable performance, before determining whether to propose a reduction in grade or removal.

C. A proposed action may only be based on instances of unacceptable performance which may occur within a one (1) year period ending on the date of the notice of proposed action.

17.5 WRITTEN NOTICE

A. In all cases of proposed action based on unacceptable performance, the employee will be given written notice of the specific instances of unacceptable performance on which the proposed action is based thirty (30) days in advance of the proposed action.

B. The advance written notice proposing either to remove or downgrade an employee for unacceptable performance shall include:

(1) specific instances of unacceptable performance by the employee on which the proposed action is based;

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

(3) the employee's right to be represented by a Union representative or another representative of the employee's own choosing;

(4) the employee's right to answer orally and/or in writing, and to arrange for the employee's travel to make an oral reply to an appropriate Agency official to hear the employee's oral reply; and

(5) the employee's right to review the material relied upon to support the specific reasons why the action is being taken.

17.6 OPPORTUNITY TO ANSWER

A. The employee will be given the opportunity to respond orally and/or in writing prior to a decision having been made. A request for an oral reply must be submitted within seven (7) days of receipt of the written notice of proposed action. Written replies must be submitted within fifteen (15) days of receipt of such notice.

B. The Agency shall allow the employee to be represented by an attorney or other representative. The Agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest, or whose release from the representative's official position would give rise to unreasonable costs to the Government, or whose work assignment precludes the representative's release from the representative's official duties.

17.7 TIME EXTENSIONS

A. Any of the time limits set forth in this article may be extended or waived by mutual agreement of the parties.

B. Pursuant to 5 C.F.R. § 432.105, the Agency may extend the advance notice period for a period not to exceed thirty (30) more days under regulations by the head of the Agency. The Agency may extend this notice period without prior OPM approval for the following reasons:

(1) to obtain or evaluate medical information when the employee has raised a medical issue in the employee's reply;

(2) to arrange for the employee's travel to make an oral reply to an appropriate Agency official, or the travel of an Agency official to hear the employee's oral reply;

(3) to consider the employee's answer if an extension to the reply period has been granted, for reasons of illness or incapacitation;

(4) to consider reasonable accommodation of the employee's handicapping condition;

(5) to consider positions to which the employee might be reassigned, or reduced in grade; or

(6) to comply with a stay ordered by a member of the Merit Systems Protection Board under 5 U.S.C. § 1208(b).

C. The Agency may, at its discretion, delay the action based on unacceptable performance in order to allow a disability retirement determination to be made.

17.8 CONSIDERATION OF MEDICAL CONDITIONS

The Agency shall allow an employee who wishes to raise a medical condition that may have contributed to the employee's unacceptable performance to furnish medical documentation of the condition for the Agency's consideration. Whenever possible, the employee should supply such documentation during the initial DO period. If the employee offers such documentation after the Agency has proposed a reduction in grade or removal, the employee shall supply this information at the reply stage. In considering documentation pertaining to the employee's medical claim, the Agency may require that the employee take a medical examination or offer such examination. If the employee might qualify for disability retirement,

the Agency shall provide them with information on how to apply for disability retirement. However, an application for disability retirement shall not preclude or delay any other appropriate Agency decision or personnel action.

17.9 FINAL WRITTEN DECISION

A. The Agency shall make its final decision within thirty (30) days after the expiration of the advance notice period.

B. Unless proposed by the head of the Agency, such written decision shall be concurred in by an employee who is in a higher position than the person who proposed the action.

C. In arriving at its decision, the Agency shall consider any answer of the employee and/or the employee's representative furnished in response to the Agency's proposal.

D. A decision to reduce in grade or remove an employee for unacceptable performance may be based only on those instances of unacceptable performance that occurred during the one (1) year period ending on the date of issuance of the advance notice of proposed action.

E. The Agency shall issue its final written notice of its decision to the employee at or before the time when the action will become effective. Such notice shall specify the instances of unacceptable performance by the employee upon which the action is based, and shall inform the employee of any applicable appeal, complaint and/or grievance rights. The letter will also indicate the effective date of the action.

17.10 REDRESS

A. An employee may grieve the Agency's decision through the terms provided for in Article 19 (Negotiated Grievance Procedure) of this Agreement; or file an appeal regarding such decision with the Merit Systems Protection Board; or seek redress at the Office of Special Counsel, but must elect only one (1) of those options.

B. With respect to allegations of discrimination, an employee may file a discrimination grievance under the terms of Article 19 (Negotiated Grievance Procedure) or file a formal complaint under the terms of Article 27 (Equal Employment Opportunity) but must elect only one (1) option.

17.11 AGENCY RECORDS

A. When the action is effected. The Agency shall preserve all relevant documentation concerning a reduction in grade or removal that is based on unacceptable performance and make it available for review by the affected employee, or the employee's representative. At a minimum, the Agency's records shall consist of a copy of the notice of proposed action, the reply of the employee when it is in writing, a summary thereof when the employee makes an oral reply, the written notice of decision and the reasons therefore, and any supporting material, including documentation regarding the opportunity afforded the employee to demonstrate acceptable performance.

B. When the action is not effected. As provided for in 5 U.S.C. § 4303(d), if, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for one (1) year from the date of the advanced written notice provided in accordance with 5 C.F.R. § 432.105, any entry or other notation of the unacceptable performance for which the action was proposed, shall be removed from any Agency record relating to the employee.

ARTICLE 18 - DISCIPLINARY AND ADVERSE ACTIONS

18.1 GENERAL

A. The parties agree that the objective of this article is to correct and improve employee conduct and/or performance so as to promote the efficiency of the Agency. All disciplinary and adverse actions will be consistent with the terms of this Agreement, applicable law, government-wide regulations, as well as any Agency regulation or policy not in conflict with the above.

B. The Agency may not take any disciplinary or adverse action against an employee on the basis of any reason prohibited by 5 U.S.C. § 2302 (Prohibited Personnel Practices).

C. Early communication between the employee involved and the supervisor to achieve resolution is encouraged. If either party believes that resolution would be aided if the Union were involved in these early discussions, they are encouraged to contact the applicable Union representative.

D. The parties recognize that employee misconduct may be serious enough to warrant the proposal of an adverse action even for a first offense.

E. The provisions of this article shall be applied fairly, equitably, and in a non-discriminatory manner.

F. Actions taken during the probationary period are not covered under this article.

18.2 DEFINITIONS

Disciplinary action - Refers to a letter of official reprimand or a suspension for fourteen (14) days or fewer as outlined in Subchapter I, Chapter 75, 5 U.S.C.; and 5 C.F.R. Part 752, Subpart B.

Adverse action - Refers to a removal, suspension for more than fourteen (14) days, reduction in grade, reduction in pay, or furlough of thirty (30) days or fewer as outlined in Subchapter II, Chapter 75, 5 U.S.C.; and 5 C.F.R. Part 752, Subpart D.

18.3 OTHER PROVISIONS

A. The employee will be responsible for providing copies of documents from Management to the employee's representative.

B. Letters of reprimand will be maintained in the employee's official personnel file for a period not to exceed one (1) year. Oral admonishments confirmed in writing will be removed after three (3) months.

C. Management has the right to take any action necessary to protect the health and safety of the work force.

D. Disciplinary and adverse actions shall be administered in as timely a manner as possible.

E. In any disciplinary or adverse action, the affected employee will be furnished with a copy of all the material relied upon by the Agency to take such action. The information will be supplied before and concurrently with the notice of proposed action.

F. All evidence and materials used as the basis to support any disciplinary or adverse action against the employee shall be shown and provided to the employee within a reasonable amount time, not to exceed thirty (30) days after the date of the incident is recorded.

18.4 DISCIPLINARY ACTIONS

A. A notice of proposed suspension of fourteen (14) days or fewer will be provided no fewer than fifteen (15) days prior to taking the proposed action. The notice shall include:

(1) the proposed action;

(2) the specific reason(s) for the proposed action;

(3) a notice that the employee has the right to material evidence that is being relied upon to support the reasons for the proposed action;

(4) who any reply or request regarding the proposed action should be made to;

(5) the right, pursuant to 5 C.F.R. § 752.203(d), to be represented by the Union or by another representative of the employee's choosing;

(6) the right to make an oral and/or written reply within seven (7) days from receipt of the proposed action; and

(7) the right to release time as specified in Section 15 of Article 3 (Employee Rights) of this Agreement for purposes of preparing a reply and consulting with the employee's representative.

B. In arriving at the 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 must specify in writing the reason(s) for the decision and advise the employee of any grievance, complaint, or applicable appeal rights.

18.5 ADVERSE ACTIONS

A. Adverse Actions covered are: (1) removals; (2) suspensions for more than fourteen (14) days; (3) reductions in grade; and (4) furloughs of thirty (30) days or fewer.

B. Unless otherwise provided by law (e.g., the crime provision of 5 U.S.C. § 7513 (b)), an employee who receives a written proposal for adverse action is entitled to at least thirty (30) days' advance written notice. Such notice will include notice of the following:

(1) the proposed action;

(2) the specific reason(s) for the proposed action;

(3) the employee's right to be represented by a personal representative of the employee's own choosing, unless it can be shown that the employee's choice of representative would cause a conflict of interest, or that the release of such representative from the employee's duties would adversely affect the Agency's operations;

(4) the opportunity for the employee or the employee's representative to review the evidence that has been relied upon to support the charges;

(5) who any reply or request regarding the proposed action should be made to;

(6) the employee's right to make an oral and/or written reply within a reasonable amount of time, but not fewer than seven (7) days from receipt of the proposed action;

(7) that if the employee wishes the Agency to consider any medical condition that might contribute to a conduct problem, the employee must be

given a reasonable amount of time to furnish medical documentation (as defined in 5 C.F.R. § 339.104) of the condition. Whenever possible, the employee will supply such documentation within the time limits allowed for an answer; and

(8) the right to release time as specified in Section 15 of Article 3 (Employee Rights) of this Agreement for purposes of preparing a reply and consulting with the employee's representative.

C. In cases of furloughs, when some but not all employees in a given competitive level are being furloughed, the notice of proposed action must state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough.

18.6 EMPLOYEE REPLIES

A. In all matters where a disciplinary action is being proposed, an employee may exercise the employee's right to reply either orally and/or in writing within seven (7) days of receipt of the proposed action and may furnish affidavits or other documentary evidence in support of the employee's reply. Such replies will be made on release time if the employee is otherwise in an active duty status.

B. In all matters where an adverse action is being proposed, an employee may exercise the employee's right to reply either orally and/or in writing within seven (7) days of receipt of the proposed action.

C. If the proposed action is a disciplinary action, the Agency will provide the employee a reasonable amount of release time to: (1) review all material relevant to the employee's case; and (2) consult with and be represented by the employee's Union or other representative with regard to the employee's case.

D. If the proposed action is an adverse action, the Agency will provide the employee a reasonable amount of release time to: (1) review all material relevant to the employee's case; (2) prepare the employee's oral and/or written reply; (3) consult with and be represented by the employee's Union or other representative with regard to the employee's case; and (4) as applicable, secure any pertinent affidavits or documents.

E. Should the employee wish the Agency to consider any medical condition(s) that may have contributed to the employee's situation, the Agency will allow the employee a reasonable amount of time to retrieve such information. Whenever possible, the employee will supply such documentation within the time limits allowed for an answer.

18.7 FINAL WRITTEN NOTICE

A. In arriving at a decision, the deciding official will consider and address only those factors specified in the notice of proposed action, as well as factors raised in the employee's or representative's reply, as well as any medical documentation reviewed under terms of this article.

B. The final written notice will specify whether the deciding official:

- (1) has decided to uphold the proposed action;
- (2) to take lesser action; or
- (3) to withdraw the proposed action.

C. The final written notice must specify the reasons for the deciding official's decision and will also advise the employee of the employee's right to grieve, appeal, or file a complaint regarding the decision. Such notice shall be delivered to the employee on or before the effective date of the action.

D. If the decision is not to remove the employee, the Agency may, at the request of the employee, defer the effective date of the action for up to fourteen (14) days.

18.8 DISABILITY RETIREMENT

In those cases where the employee has applied for disability retirement prior to the decision to remove the employee, the Agency, upon request by the employee or the employee's representative, may consider either placing the employee on Leave With Out Pay or delaying the employee's removal, pending a decision on the employee's disability retirement application.

18.9 ALTERNATIVE DISCIPLINE

A. Whenever the Agency offers an employee the opportunity to enter into an alternative disciplinary agreement (including last chance agreements), the employee has the right to consult with and have a Union or other representative present at any meeting or discussion with an Agency representative concerning the proposed agreement.

B. The employee's entry into and participation in such talks will be made on a voluntary basis. An employee who has agreed to enter into such talks shall be given a reasonable amount of time to: (1) review all material relevant to the

employee's case, including documents cited in the proposal, reply, and decision stages of the case; and (2) consult with the employee's Union or other representative with regard to the case and proposed agreement.

18.10 REDRESS

A. An employee may grieve the Agency's decision in accordance with Article 19 (Negotiated Grievance Procedure) of this Agreement, or file an appeal regarding such action with the Merit Systems Protection Board, or seek redress at the Office of Special Counsel, but must elect only one (1) of those options.

B. With respect to allegations of discrimination, an employee may file a discrimination grievance under the terms of Article 19 or file a formal complaint under the terms of Article 27 (Equal Employment Opportunity), but must elect only one (1) option.

18.11 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.

18.12 AGENCY RECORDS

The Agency must maintain copies of, and will furnish to the Merit Systems Protection Board and to the employee upon the employee's request, the following documents:

A. the notice of the proposed action;

B. the employee's written reply, if any;

C. a summary of the employee's oral reply, if any;

D. the notice of the decision; and

E. any order effecting the action, together with any supporting material.

ARTICLE 19 - NEGOTIATED GRIEVANCE PROCEDURE

19.1 POLICY AND PURPOSE

A. The purpose of this article is to provide a fair, simple, and expeditious means of processing grievances.

B. The Agency and the Union agree that every effort will be made to settle grievances at the lowest possible level. Employees are encouraged to resolve concerns between themselves and the employee's immediate supervisor without resorting to the grievance procedure. The filing of a grievance should not be construed as reflecting unfavorably on an employee's good standing, performance, loyalty, or desirability to the organization. Employees dissatisfied with the orders properly grounded in supervisory authority must follow the order first and then grieve the matter if they believe relief should be granted. If an employee has a reasonable belief that a supervisory order creates an imminent health and safety risk the employee may pursue resolution through the next level supervisor. However, this does not absolve the employee of the employee's responsibility to timely follow supervisory orders. Employees are reminded that timeframes continue to run throughout the time the employee is attempting to informally resolve the complaint.

19.2 DEFINITIONS

A. DENIAL. An action by either the Employer or the Union at any step of the grievance process advising the other party that the remedy sought will not be granted.

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

C. PERSONAL RELIEF. A specific remedy directly benefiting the grievant(s). A request for disciplinary action against another employee is not a request for personal relief. Failure to request personal relief in a grievance may be grounds for rejecting the grievance.

D. REJECTION. An action by either the Employer or the Union at any step of the grievance process advising the other party that the negotiated grievance procedure is not the appropriate forum to seek redress because it is outside the scope of this article. A rejection must state the specific provision in this article that is the cause for rejection. A rejection causes the grievance to be terminated.

19.3 REPRESENTATION

A. An employee covered by this Agreement may present a grievance directly to the Agency with or without Union representation. In such cases, the Union will be given notice and the opportunity to be present at the meeting(s).

B. Should the Union not be present during the grievance procedure, it will be furnished with a copy of the written grievance decision issued at any step in the process. A copy of such decision will be furnished to the Union at the same time as it is to the employee by the official responsible for making the decision. In cases where the Union is not the grievant's designated representative, it shall be given the chance to state its position, in writing, regarding the decision once issued.

19.4 GRIEVANCE PROCEDURE

A. The procedures in this article shall be the exclusive procedures available to the parties for resolution of grievances covered under the terms of this Agreement except as expressly limited by the following:

(1) Only incidents that occur while the employee is a bargaining unit employee may be pursued under this procedure.

(2) An aggrieved employee affected by discrimination or adverse action taken pursuant to 5 U.S.C. §§ 4303 or 7512 (except as excluded from the negotiated grievance procedure in Section 19.5) may at the employee's option, raise the matter under a statutory appellate procedure or this negotiated procedure, but not both. For the purpose of this section and pursuant to 5 U.S.C. § 7121, an employee shall be deemed to have exercised the employee's option when the employee files a timely notice of appeal under the appellate procedures, files a formal complaint under the EEO process, or files a timely grievance in writing under the negotiated procedure.

(3) An employee who alleges a prohibited personnel practice under 5 U.S.C. § 2302(b)(1), which also falls under the scope of this article, may raise the matter under a statutory procedure or this article, but not both.

B. The time limits delineated in this article may be modified by mutual written agreement of the parties. When the due date falls on a non-workday, the next workday will become the due date.

C. Notwithstanding subsection B immediately above, upon notification of the absence of the grievant, the employee's representative, or the deciding Agency official, such absence shall constitute an extension of the time limits set forth herein. Such extension shall equal the amount of days the grievant, representative, and/or Agency official have been absent provided that such extension shall not exceed fourteen (14) days. Should an information request be filed, a grievance decision will be delayed until such time as labor relations has responded, in writing, to the request.

19.5 REJECTION OF GRIEVANCE

A. Grievances must cite the basis of the violation, describe the nature of the violation, and state the remedy sought, or they risk rejection.

B. If a disagreement exists concerning timeliness that cannot be resolved at the various steps of the grievance procedure, the matter can be joined to the grievance as a threshold issue. The arbitrator may then decide to issue a decision on the threshold issue of timeliness and not address the merits of the grievance or conduct a hearing on the merits and timeliness jointly, then issue a final decision according to the provisions of Article 20 (Arbitration).

C. Grievances that are rejected as being outside the scope of this article (e.g., specifically excluded) are terminated when the grievant receives a written rejection.

D. The parties agree to raise any questions of grievability as early as possible in the grievance procedure.

19.6 EXCLUSIONS

The following exclusions are non-grievable unless the matters violate the terms of this Agreement, applicable laws, rules, or Government-wide regulations.

(1) The content of published Agency regulation and policy.

(2) Non-selection for promotion from a list of best qualified candidates. However, if such action is alleged to have been taken for discriminatory reasons prohibited by statute, the issue may be grieved under this procedure.

(3) Oral or written counseling, warnings, notice of proposed actions. However, disputes regarding a proposed action may be incorporated into a grievance after the final decision is issued.

(4) A progress review, a counseling session, or Demonstration Opportunity. However, if such action is alleged to have been taken for discriminatory reasons prohibited by statute, that issue may be grieved under this procedure. While the issuance of a Demonstration Opportunity is not grievable, the failure of the Demonstration Opportunity to meet contractual requirements regarding content (as specified in Article 17, Section 17.3) may be grieved.

(5) An action that terminates a temporary or term promotion and returns the employee to the position from which the employee was temporarily promoted or to a different position (not lower in grade) where the employee is informed in advance that the promotion is only temporary.

(6) The substance of the elements and performance standards of an employee's position.

(7) The decision to adopt or not to adopt an employee suggestion.

(8) Granting of awards, except as to the procedures provided in Article 16 (Awards).

(9) Action taken according to the terms of a formal agreement voluntarily entered into by an employee, which assigns the employee from one location to another.

(10) The termination of a probationary employee.

(11) A salary offset determination or garnishment that is reviewable under separate procedures or law.

(12) Any claimed violation relating to prohibited political activities.

(13) Any claimed violation concerning retirement, life insurance, or health insurance.

(14) Any employment examination, certification, or appointment.

(15) The classification of any position which does not result in the reduction in grade or pay of an employee.

(16) Any claimed violation concerning Veterans' Preference.

(17) Any claimed violation regarding non-bargaining-unit positions.

19.7 FILING A GRIEVANCE

A. STEP 1

(1) Grievances must be in writing and accompanied by Grievance Form LR-103 (Appendix C) and signed by the grievant. At each step of the grievance process, the grievant shall complete Form LR-103 that may include other documents to support the complaint. The grievant shall submit the Form LR-103 and other necessary information to the grievant's immediate supervisor.

(2) The grievance must be filed with the grievant's immediate supervisor by close of business on or before thirty (30) days of the incident that gave rise to the grievance; or on or before thirty (30) days from the time that the grievant learned, or should reasonably have learned of the matter, out of which the grievance arose. In EEO incidents, the grievant will have fifteen (15) days after the date of the EEO counselor's Notice to File Letter to file a grievance or a complaint under Article 27 (EEO). Grievances must cite the basis of the violation, describe the nature of the violation, and state the remedy sought.

(3) Service of grievances and the decision thereof, including arbitration notices, shall be accomplished either by personal delivery, U.S. Mail, facsimile, email, or by other recognized delivery service(s) (e.g., U.P.S.).

(4) The grievance filing date shall be the post marked date, shipping date, fax confirmation date, e-mail time stamp, or date personally delivered.

(5) The Agency will have thirty (30) days to attempt to resolve the grievant's complaint, which may or may not include a meeting. Either party (that is, the grievant, their representative, the grievant's first level supervisor, the manager, or the manager against whom the complaint is filed) may request to meet with the other party at the earliest possible stage. The decision to accept or deny a request to meet is non-grievable or arbitrable. Should the parties mutually decide to meet, each of the parties may have a representative present. The grievant will be apprised of the grievant's immediate supervisor's decision by letter on or before thirty (30) days after receipt of the grievance. If the grievant is dissatisfied with the response to the grievant's first-step grievance, the grievant does not receive a written

response, or the written response is untimely, the grievant has the right to elevate the grievance to the next step (Step 2) within fourteen (14) days after the date that Management's reply was due.

B. STEP 2

(1) The Step 2 grievance shall be filed with the next higher-level supervisor or designee. As in Step 1 above, a meeting of the parties at this step is optional, at the consent of both parties.

(2) The grievant must complete and submit Form LR-103 (Appendix C) to the Step 2 supervisor, or designee, with an explanation about why the grievant appealed the Step 1 decision. The Step 2 deciding official will render a decision in writing within fourteen (14) days after receiving the Step 2 grievance. If the grievant is not satisfied with the Employer's written response, or the grievant does not receive a written response, or the written response is untimely, the grievant has the right to elevate the grievance to the next step level supervisor within fourteen (14) days after the date that management's reply was due.

C. STEP 3

(1) The Step 3 grievance shall be filed with the next higher-level supervisor (above the Step 2 supervisor) or designee.

(2) The grievant must complete and submit Form LR-103 (Appendix C) to the Step 3 supervisor or designee with a copy to the labor relations staff. The Step 3 grievance must include an explanation about why the grievant grieved the Step 2 decision. The grievant will receive a written decision within fourteen (14) days after receipt of the grievance. The grievant will be apprised of the decision by letter, with copies being sent to the labor relations staff and the Union. The letter will contain the reasons for the decision.

D. ARBITRATION

Step 3 is the final step in the negotiated grievance process. If the grievant is not satisfied with the Employer's written decision issued at Step 3, the grievant does not receive a written response, or the written response is untimely, the Union may invoke binding arbitration pursuant to Article 20 (Arbitration) of this Agreement.

19.8 UNION GRIEVANCES

A grievance or a consolidated grievance involving a common issue of law or fact initiated by the Union that expresses the Union's disagreement with the Agency's interpretation or application of this Agreement. It will be filed directly with the labor relations staff. If requested by either party, a meeting will be held by the parties to resolve their differences informally. If the informal discussion fails, the Agency will provide a written decision within thirty (30) days of its receipt of the grievance. If the grievance is not resolved to the Union's satisfaction, the Union may invoke arbitration pursuant to Article 20 (Arbitration).

19.9 AGENCY GRIEVANCES

A grievance initiated by the Agency against the Union will be filed in writing within thirty (30) days from the date the Agency knew or should have known of the subject upon which the grievance is based. If requested by either party, a meeting will be held by the parties to resolve their differences informally. If the informal discussion fails, the Union will provide a written decision within thirty (30) days of its receipt of the grievance.

ARTICLE 20 - ARBITRATION

20.1 Arbitration may only be invoked by the Agency or the Union. Any unresolved grievance or issue processed under Article 19 (Negotiated Grievance Procedure) of this Agreement shall upon written request be submitted to binding arbitration. The request for arbitration must be made within thirty (30) days after receipt of the final level written decision in the grievance process.

20.2 Within seven (7) days from the date of the request for arbitration, the party invoking arbitration will request from the Federal Mediation and Conciliation Service (FMCS) a list of seven (7) impartial persons qualified to act as arbitrators.

20.3 The parties shall confer within seven (7) days after receiving the list of names from the FMCS and select one of the listed arbitrators. The first strike shall be determined by the flip of a coin. If they cannot mutually agree upon a selection, the parties will alternately strike one name from the list until the list contains only one name. This person shall be the duly selected arbitrator. If for any reason either party refuses to participate in the selection of the arbitrator, the other party chooses the arbitrator.

20.4 If the parties fail to agree on a joint submission of the issue for arbitration, each shall submit a separate submission, and the arbitrator shall determine the issue or issues to be heard.

20.5 The parties agree that only necessary, relevant, and material witnesses shall be allowed to participate in the arbitration hearing. The arbitrator will resolve disputes or questions over relevance of witnesses. All Agency employees in duty status authorized to participate in the arbitration hearing shall be in official travel status only in accordance with applicable travel regulations, and on official time.

20.6 The parties shall exchange witness lists, with names, work addresses, and telephone numbers of known witnesses, representatives, and observers no later than five (5) days in advance of the hearing.

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

20.8 Either party may request a verbatim transcript of the hearing. The party requesting the transcript will pay the costs and it becomes the property of that party. If both parties request a transcript, the costs will be shared equally.

20.9 The arbitrator shall determine the procedures to use to conduct the arbitration. All parties shall be entitled to call and cross-examine witnesses and shall be entitled to a hearing before the arbitrator.

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

20.11 The arbitrator shall have no authority to add to, subtract from, alter, amend, or modify any provision of this Agreement.

20.12 Where the parties mutually agree to bifurcate issues of arbitrability from issues on the merit, issues concerning the arbitrability of a grievance presented for arbitration under the terms of this Agreement may be resolved by the arbitrator on written motion in advance of the arbitration hearing. At the request of either party, a hearing on arbitrability may be held in advance of a hearing on the merits of the case. An arbitrability decision shall be rendered within twenty-four (24) hours after the conclusion of the hearing or receipt of the written motion.

20.13 Where a decision is rendered on the merits, the arbitrator will be requested to render the decision as quickly as possible, but in any event not later than thirty (30) days after the conclusion of the hearing, unless the parties mutually agree to extend this time limit. The arbitrator shall submit all findings in writing, and this report shall decide all issues raised by any party.

20.14 The arbitrator's findings and award shall be binding upon all parties. However, either party may file exceptions to an award with the Federal Labor Relations Authority (FLRA) or the appropriate court under regulations prescribed by the Civil Service Reform Act or the FLRA.

ARTICLE 21 – MEDIATION

21.1 Mediation is recognized as an informal, yet effective, process for resolving conflict. It is the intent of the parties that the use of this process will enhance the work environment. Mediation may only be used by mutual agreement of the parties. Mediation will be administered in accordance with the USDA Conflict Prevention and Resolution Center guidelines. Agreements entered into by the parties under this article will not establish precedent or determine significant questions of governmental policy, or serve as the agency fulfilling its requirement found under 5 U.S.C. § 572(b).

21.2 Mediation will not be used for:

A. Grievable or appealable adverse actions
as follows:

- (1)** Suspensions greater than fourteen (14) days;
- (2)** Demotions;
- (3)** Removal Actions;
- (4)** Reduction-In-Force and Furloughs.

B. Other issues that would normally be excluded from the administrative grievance procedure.

ARTICLE 22 – LEAVE

22.1 The Agency will adhere to all applicable Government-wide rules and regulations, this article, and Departmental Regulations not in conflict with the aforementioned. Employees shall be entitled to accrue and use leave in accordance with Government-wide rules and regulations and this Agreement.

22.2 Employees should request sick leave and annual leave in advance, when possible. When advance notice is not possible, an employee must notify the employee's supervisor, or their designee, on the first day of absence. This will normally be no later than forty-five (45) minutes after the beginning of the scheduled tour of duty. When an employee cannot contact the employee's supervisor/designee, the employee may leave a phone number at which the employee can be reached.

22.3 Failure to give prompt notice may result in the absence being charged as Absent Without Leave (AWOL). This will not preclude a later change in leave status for sufficiently justified reasons.

22.4 Supervisors may require all approved and denied leave to be documented through the electronic time and attendance system.

22.5 Sick leave will be granted to employees when they:

A. are incapacitated for performance of the employee's duties because of physical or mental illness, injury, pregnancy, or childbirth;

B. may have been exposed to a contagious disease;

C. receive medical, dental, or optical examination or treatment;

D. provide for a family member:

(1) who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment;

(2) with a serious health condition; or

(3) who would jeopardize the health of others due to a communicable disease;

E. would themselves jeopardize the health of others due to a communicable disease;

F. make arrangements necessitated by the death of a family member, or attends the funeral of a family member; or

G. must be absent from duty for purposes relating to the employee's adoption of a child as provided for in 5 C.F.R. § 630.401.

22.6 In instances of denial, employees will be advised in writing of the reasons and conditions used to support that denial. When an employee's request for sick leave is denied, the employee may request substitution of annual leave or leave without pay, unless the Agency takes disciplinary action against the employee. An employee's right to substitute a request for annual leave or leave without pay for a denied sick leave request shall not be waived as a result of a grievance emanating from such denial.

22.7 A period of absence on sick leave in excess of five (5) consecutive workdays must ordinarily be supported by an administratively acceptable medical certification. However, if the circumstances surrounding the employee's absence indicate that the services of a physician were not available or required, the employee's written statement may be accepted in lieu of a medical certificate. When an employee's absences indicate a possible abuse of sick leave, the submission of medical certification may be required to support any leave absence regardless of its duration. If there is evidence that an employee abuses sick leave, that employee may be placed on restricted sick leave.

22.8 Advance sick leave, advance annual leave, and leave without pay will be requested and approved in compliance with 5 C.F.R. Part 630 and this article.

22.9 The amount of advance annual leave that may be granted is limited to the amount of annual leave an employee would accrue during the remainder of the employee's leave year. The amount of advanced sick leave an employee may receive, at the Agency's discretion, is up to a maximum of two hundred forty (240) hours.

22.10 Leave without pay (LWOP) is an approved leave status that may be requested by employees to cover periods of absence in lieu of, or in the absence of, accrued annual leave or sick leave. LWOP is not a right that accrues to an employee and is administered in accordance with Agency and Government-wide regulations.

22.11 There is no limitation to the amount of sick leave that can be accumulated.

22.12 Sick leave of up to one hundred four (104) hours for family care, bereavement purposes, and for the health condition of a family member may be approved

at the employee's request pursuant to 5 C.F.R. § 630.401(a)(3)(i), (a)(3)(iii), and (a)(4).

22.13 Up to a maximum of four hundred eighty (480) hours of sick leave may be approved to care for a family member with a serious health condition; provided however, if an employee has already used any of the one hundred four (104) hours of sick leave described in subsection 22.12 above, then such hours used shall be deducted from the four hundred eighty (480) hours available for the remainder of the leave year to care for a family member with a serious health condition pursuant to 5 C.F.R. § 630.401(d). Additionally, the Agency may require administratively acceptable medical certification to support the serious health condition of the family member requiring care.

22.14 For purposes of the use of sick leave, the definition of family members includes:

A. spouse and parents thereof;

B. sons and daughters and spouses thereof;

C. parents and spouses thereof;

D. brothers and sisters, and spouses thereof;

E. grandparents and grandchildren and spouses thereof;

F. domestic partner and parents thereof, including domestic partners of any individuals listed in paragraphs B through E above; and

G. any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

22.15 FAMILY AND MEDICAL LEAVE

A. Family and Medical Leave (FMLA), as distinct from Sick Leave, shall be governed by the terms of this article and 5 C.F.R. Part 630, Subpart L. As such it is unpaid leave (LWOP).

B. The Family and Medical Leave (FMLA) Act of 1993 entitles certain Federal employees up to twelve (12) weeks of FMLA leave during any twelve (12) month period.

C. Employee Requests for FMLA

(1) In most cases, employees must invoke FMLA when requesting FMLA leave. However, if the employee, or the employee's representative, is physically or mentally incapable of invoking the employee's FMLA rights during the entire period of the employee's absence, the employee may retroactively invoke FMLA within two (2) days of the employee's return to work.

(2) When FMLA leave is foreseeable based on birth, adoption, or planned medical care, employees must give thirty (30) days' notice.

(3) When FMLA leave is not foreseeable and the employee cannot provide thirty (30) days' notice, the employee must provide notice within a reasonable time frame given the circumstances.

D. Medical Certification

(1) Should the Agency require medical certification from an employee, or the employee's designee, the employee must provide it within fifteen (15) days of the request. The certification must be signed by the health care provider responsible for diagnosis.

(2) If it is not practicable for the employee, or designee, to meet that time frame, the employee will have up to fifteen (15) additional days to submit the medical certification.

(3) Should the Agency have questions regarding such certification the Agency may not contact the health care provider directly. However, with the employee's authorization, a recognized health care provider representing the Agency may contact the employee's health care provider.

(4) If the employee fails to provide the requested medical certification after the leave has commenced, the Agency may charge the employee as absent without leave or allow the employee to request that the provisional leave be charged as leave without pay or charged to the employee's annual or sick leave account.

E. Approval or Disapproval

(1) The supervisor must conditionally approve or disapprove and refer the certification to the National Finance Center (NFC), or request additional medical information from the employee, within fifteen (15) days after the employee's submission of a completed FMLA request. In instances where

the employee has taken leave prior to NFC's final approval, the employee will be made whole by retroactively converting the used leave to FMLA leave.

(2) Approvals or disapprovals shall be in writing. If the request is denied, the supervisor will state the reasons why the request has been denied.

F. FMLA Entitlements

(1) Under FMLA, employees are entitled to a total of up to twelve (12) work weeks of unpaid leave during any twelve (12) month pay period for the following purposes:

(a) the birth of a son or daughter (as defined in 29 U.S.C. § 2611(12)) of the employee and the care of such son or daughter;

(b) the placement of a son or daughter with the employee for adoption or foster care;

(c) the care of the spouse, son or daughter, or parent of the employee who has a serious health condition;

(d) a serious health condition of the employee which makes the employee unable to perform the essential functions of the employee's position; and

(e) any qualifying exigency arising out of the fact that the spouse, or a child, or parent of the employee is on covered active duty.

G. Use of FMLA leave can be used in addition to paid leave that is available to the employee.

H. As provided for in Subpart L, the employee may use the twelve (12) weeks of FMLA leave intermittently.

I. Substitution of Paid Leave for LWOP

(1) An employee may elect to substitute already accrued annual and/or sick leave for LWOP.

(2) Advanced annual or sick leave shall be approved or disapproved under the same terms and conditions that apply to any other employee requesting annual or sick leave.

(3) Leave made available to an employee under the Voluntary Leave Transfer Program or the Voluntary Leave Bank Program that is consistent with Subparts I and J of Part 630 of 5 C.F. R. shall be approved.

(4) The Agency may not deny an employee's right to substitute paid leave accrued under this subsection. The Agency may not require an employee to substitute paid leave under this subsection for any of the LWOP taken by that employee.

J. Additional FMLA Benefits and Protection

(1) Upon return from FMLA leave, an employee must be returned to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

(2) An employee who takes FMLA leave is entitled to maintain health benefits coverage. An employee on unpaid FMLA leave may pay the employee share of the premium on a current basis or make other arrangements to pay the appropriate employee contributions consistent with 5 C.F.R. §§ 890.502 and 630.1211.

22.16 OBSERVANCE OF RELIGIOUS HOLIDAYS

A. To the extent that such modifications in work schedules do not interfere with the accomplishment of the Agency's mission, an employee whose personal beliefs require that the employee abstain from work at certain times of the workday or workweek must be permitted to work alternative work hours so that the employee can meet the employee's religious obligations. The hours worked in lieu of the employee's normal work schedule do not create any entitlement to premium pay (including overtime).

B. Employees must submit a written request in advance. They must specify that the employee's request is being made for religious purposes and should provide acceptable documentation of the need to abstain from work.

C. When deciding whether an employee's request should be approved, a supervisor should not make any judgment about the employee's religious beliefs or the employee's religious affiliation. A supervisor may disapprove the employee's request only when it would interfere with the Agency's mission.

D. If the request is approved, a supervisor may determine whether the alternative work hours will be scheduled before or after the religious observance. If an employee is absent when the employee is scheduled to perform work to make up for

the planned absence, the employee must take paid leave, request leave without pay, or be charged absent without leave.

22.17 ADMINISTRATIVE LEAVE

The Agency may grant administrative leave for activities that are in the Government's interest and in accordance with Agency guidelines.

22.18 MILITARY LEAVE

A. This section applies to any full-time or part-time employee with a permanent appointment of more than one (1) year who is entitled to time off for certain types of active or inactive duty in the National Guard or Armed Forces Reserve components. Military leave is pro-rated for part-time employees based on the number of hours the employee is regularly scheduled to work per pay period.

B. Regular Military Leave. Pursuant to 5 U.S.C. § 6323(a), full-time employees who are eligible can accrue fifteen (15) workdays of military leave at the beginning of each fiscal year for active duty. Any unused workdays of up to fifteen (15) workdays are carried forward to the next fiscal year. Employees may accrue no more than thirty (30) workdays during any given fiscal year.

While on regular military leave, an employee is entitled to full civilian pay and benefits, including any premium pay the employees would have received on military leave, as well as military pay earned while on military duty.

C. Emergency Military Leave. Pursuant to 5 U.S.C. § 6323(b), eligible employees are entitled to military leave not to exceed an additional twenty-two (22) workdays each calendar year when called to duty as a Reservist or National Guard member ordered by the President or a State governor for law enforcement or protection of life and property purposes. The twenty-two (22) workdays military leave cannot be carried over from one (1) calendar year to the next.

While on emergency military leave, an employee continues to receive civilian pay, which must be offset by the amount of military pay received. The employee may elect to take annual leave in lieu of the military leave in order to retain both civilian and military pay.

D. Employees who are members of the District of Columbia National Guard are entitled to unlimited leave as authorized by Title 1, Section 613.3, District Code.

E. Military leave taken under this section must be requested in advance. Along with the request, the employee should submit a copy of the employee's official orders.

22.19 MILITARY FAMILY CARE (FMLA)

Employee family members are entitled to twenty-six (26) administrative employee work weeks in a single twelve (12) month period to care for a military service member covered by Section 22.18 above. Other than the twenty-six (26) week entitlement, the procedures of this provision are the same as the standard FMLA procedures. Under this provision an employee may substitute annual or sick leave for any part of the twenty-six (26) week period of unpaid FMLA leave to care for a covered service member.

22.20 MILITARY FUNERALS

A. An employee who is a veteran of war, or of a campaign or expedition for which a campaign badge has been authorized, or a member of an honor or ceremonial group of an organization of those veterans, may be excused for up to four (4) hours in one (1) day, without loss of pay or charge to leave, to act as an active pallbearer, a member of a firing squad, or a guard of honor in a funeral ceremony for a member of the Armed Forces whose remains have been returned from abroad.

B. Employees may be excused from duty for not more than three (3) workdays, without loss of pay or charge to leave, to make arrangements for, or to attend, the funeral of an immediate relative who died as a result of military service in a combat zone.

22.21 COURT LEAVE

An employee is entitled to paid court leave for service as a juror in a judicial proceeding. An employee summoned as a witness in a judicial proceeding in which the Federal, State, or local government is a party is entitled to court leave. An employee who is summoned as a witness in an official capacity on behalf of the Federal Government is on official duty, not court leave.

An employee is responsible for informing the employee's supervisor if the employee is excused from jury or witness for one (1) day or more or for a substantial part of a day. Employees must reimburse the Agency with fees paid for the employee's service as a juror or witness. However, monies paid to jurors or witnesses which are in the nature of "expenses" (e.g., transportation) do not have to be reimbursed to the Agency.

22.22 ABSENCE FOR VOTING

A. Where polls are not open at least three (3) hours before or three (3) hours after an employee's normal work schedule, the employee's supervisor may grant a limited amount of excused absence that will permit the employee to report to work up to three (3) hours after the polls open or leave work up to three (3) hours before the polls close, whichever requires the lesser amount of time off.

B. If an employee's voting place is beyond normal commuting distance and voting by absentee ballot is not permitted, the Agency may grant excused absence (not to exceed one (1) day) to allow the employee to make the trip to the voting poll to cast a ballot. If more than one (1) day is needed, the employee may request annual leave or leave without pay for the additional period of absence.

C. Agencies may grant excused absences for early voting only when: (1) the employee will be unable to vote on the day of the election because of activities directly related to the Agency's mission (such as travel) and cannot vote by and absentee ballot; or (2) early voting hours are the same as, or exceed, voting hours on the day of election, in which case the above provisions of subsections (A) and (B) apply.

22.23 BLOOD DONATION

A. Subject to workload requirements and supervisory approval, when an employee wants to donate blood without receiving any payment for the donation the employee may request up to four (4) hours of administrative leave twice a year. Additional time may be granted on an individual basis.

B. Requests for administrative leave to donate blood shall be made at least two (2) days in advance of the scheduled donation.

22.24 BONE MARROW OR ORGAN DONOR LEAVE

Upon advance request by an employee, the employee may use up to seven (7) days of administrative leave each calendar year to serve as a bone-marrow donor; and up to thirty (30) days of administrative leave each calendar year to serve as organ donor.

22.25 DONATED LEAVE

The Federal Employees Leave Sharing Act of 1988, Pub. L. 103-103, enables qualifying Federal employees to use transferred (or donated) annual leave from other Federal employees to cover LWOP absences and advanced leave indebtedness resulting from personal and family medical emergencies.

ARTICLE 23 - TELEWORK PROGRAM

23.1 GENERAL

A. The Agency supports a flexible workplace policy for employees who desire to work off-site for part of the pay period and whose work is appropriate to such an arrangement and where such an arrangement will benefit the government. Telework has the ability to produce tangible savings and other benefits, but its use must be balanced to ensure there are no negative impacts on the ability of the Agency to achieve its mission and provide high quality customer service. It is the Agency's policy to provide Management with the option to allow eligible employees to work at an alternative workplace as described in this article.

B. Telework is incorporated into the Agency's continuity of operations plan (COOP) to ensure mission essential functions continue to be performed during a wide range of emergencies, including localized acts of nature, accidents, and technological or attack-related emergencies. To that end, employees who are approved to telework and sign a Telework Agreement are generally expected to be prepared to telework in order to perform and maintain Federal functions through emergency situations.

C. For the purpose of this article, "telework" means employees working from an alternative approved workplace for part of the workweek (and excludes work performed while on official travel status, performed while commuting and mobile work). Administrative Judges that have established full time home offices as their official duty stations are excluded from consideration for telework under this article.

23.2 QUALIFICATIONS

A. After a minimum of one hundred eighty (180) days of fully successful performance, and subject to subsections B through G and Section 23.3 below, an employee may request consideration for telework.

B. The employee has demonstrated motivation, independence, and dependability in accomplishing work assignments.

C. The employee can accomplish the employee's duties with less frequent face-to-face contact with others, and the employee's absence does not burden others.

D. The employee has good time-management skills.

E. The employee has clearly defined performance standards that support working offsite.

F. The employee is willing to sign and abide by a written Telework Agreement, which requires participation in training and evaluation sessions.

G. The employee has satisfied adequate home workstation requirements, including the availability of equipment and provisions for protecting the confidentiality of data.

23.3 IDENTIFYING POTENTIAL POSITIONS

A. The appropriateness and amount of telework suitable for eligible employees is ultimately a determination reserved for supervisors and managers. Decisions as to frequency of telework participation is determined by the nature of the position, duties and responsibilities, supervisory relationship, and mission criteria. However, the following guidelines will be used to identify appropriate work assignments for telework:

(1) The work must be portable. In other words, it must be able to be performed in a setting other than the official duty station.

(2) The work must be able to be completed away from the official duty station without adversely affecting the workload of other employees, office coverage, customer service, or other mission of the work unit.

B. The types of work suitable for telework depend on specific job function. However, jobs that require the following types of skills may be considered good candidates for telework:

(1) Requires writing such as data analysis, reviewing voluminous documents, or writing decisions or reports.

(2) Requires telephone-intensive tasks such as setting up conferences, obtaining information, or following up on participants in training sessions.

(3) Includes computer-oriented tasks such as programming, data entry, or word processing.

C. Positions may be identified as ineligible for telework based on:

(1) Duties requiring physical presence on a daily basis; or

(2) Duties requiring access to specialized equipment on a daily basis located at the traditional worksite.

D. Employees may be identified as ineligible for telework based on the following:

(1) Performance. An employee is ineligible for telework if the employee is placed on a Demonstration Opportunity Plan (DO) or has received a less than fully successful performance rating within the past twelve (12) months. The employee may remain ineligible for up to twelve (12) months from the date of the documented performance rating or start of the DO, at the discretion of the employee's supervisor.

(2) Conduct. An employee is ineligible for telework due to conduct issues resulting in official, formal disciplinary action, as filed in the employee's Official Personnel Folder (OPF) as a matter of personnel record, and may remain ineligible for up to twelve (12) months from the date that the discipline was effectuated.

(3) An employee is permanently ineligible for telework if they have been formally disciplined for any of the following:

(a) Violations of the *Standards for Ethical Conduct for Employees of the Executive Branch* for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties; or

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

E. Employees whose positions are identified as eligible for telework but wish to opt out may do so by executing the Department's standard Telework Agreement that includes an opt-out provision.

23.4 SUPERVISOR AND EMPLOYEE AGREEMENT

A. Before beginning off-site work, employees and supervisors must understand the employee's responsibilities and the details of the program.

B. The primary concern of supervisors is assuring the work of the unit is accomplished. The overall interests of the office must take precedence over working off-site. One person's off-site work should not adversely affect the performance of other employees or put a burden on staff remaining in the office. Not only should an equitable distribution of workload be maintained, but also methods should be

instituted to ensure that office employees do not have to handle the telework employee's work.

C. Management approval will be at the first line supervisor's level with second line supervisory concurrence.

D. Employee participation in the telework program is contingent upon available financial resources.

23.5 ADMINISTRATIVE POLICIES

A. DEPENDENT CARE. Telework is not a substitute for day care. Telework employees may not have a dependent in the home during work hours unless an in-home care provider is present. Older children and others who can tend to themselves before or after school may be in the home during duty hours, as long as care is not required by the employee and their presence does not disrupt the employee's ability to telework effectively.

B. DURATION. Telework Agreements can be for any period of time up to and including one (1) year. The agreement should be re-signed if the agreement is extended past twelve (12) months.

C. EMPLOYEE WITHDRAWAL FROM TELEWORK. An employee's involvement in the telework program is voluntary and may be discontinued by the employee at any time with appropriate notice. Such notice must be sufficient to allow necessary workplace adjustments to be made.

D. EQUIPMENT. The telework employee's worksite will be provided with necessary computer equipment to complete the employee's work assignments. Employees wishing to use the employee's own computers may do so, providing the security of government information can be assured. Management will provide necessary supplies and materials. The government will issue phone cards, or other equivalent tools, to pay for long-distance telephone calls needed to perform assigned work. Management will not pay any additional utility expenses associated with at-home work.

E. FOCUS GROUPS, SURVEYS, TRAINING, AND EVALUATIONS. The parties will promptly complete and submit surveys, evaluation materials, and performance ratings that summarize telework impact on the office, employee, the supervisor, and other organizational elements. Additionally, both parties agree to attend periodic focus group meetings and training sessions to discuss issues.

F. TELEWORK AGREEMENT. The Telework Agreement consists of the Department's AD-3018, USDA Telework Agreement, and is the written document signed by the telework employee and the employee's supervisor, outlining details of the telework program, and the responsibilities of the employee and supervisor, as well as the Agency's policy statement(s).

G. GRIEVANCES. Grievances or complaints will be handled according to Article 19 (Negotiated Grievance Procedure) or Article 27 (Equal Employment Opportunity) of this Agreement.

H. UNSCHEDULED AND EMERGENCY TELEWORK. OPM or USDA authorized officials may announce emergency operating status or an office or building closure that permits unscheduled telework. If emergency operating status is declared due to weather conditions, eligible employees who are telework ready may telework without supervisory approval but must notify the supervisor or otherwise take unscheduled appropriate leave. Employees who have telework agreements in which they agree to telework in instances of closure due to weather must telework in accordance with the terms of the employee's agreement. For early departure status announcements, telework-ready employees who reported for duty at the employee's worksite may continue the balance of the employee's work day in accordance with this paragraph or OPM regulations. During an early departure authorization, telework eligible employees may use a combination of telework, flextime (if applicable), or other approved leave to complete the employee's workday. Time spent commuting from the traditional worksite to the alternative worksite for telework is not considered duty time. For late arrival status announcements, employees who have a regularly scheduled telework day will be expected to telework beginning at the employee's regularly scheduled time. If employees on regularly scheduled telework or with situational/unscheduled telework agreements that require telework cannot work at the alternative worksite due to weather conditions (e.g., loss of power, flooding), they must take annual or other appropriate leave. If the Agency or staff office determines that anticipated weather conditions may impact operations, it may notify telework-ready employees of office operating procedures to be followed. If the emergency operating status is due to an emergency closure of a building or office, or evacuation of the local area, the same rules specified above shall apply unless the Agency or staff office activates its COOP. If circumstances occur on a day where an otherwise telework-ready employee was required or expected to telework that prevent the employee from teleworking, then paid leave, unpaid leave, or a combination thereof, may be granted by the supervisor in accordance with the Agency's pay and leave policy.

If the COOP is activated, eligible employees who are telework ready shall resume their regular schedules on a full-time telework basis until the office or building is again available or an agency or staff office relocation site is established. Employees

may request their supervisors permit a modification to the employee's regular schedule to accommodate the changed circumstances.

For employees who are not telework ready, who are unable to telework due to unavailability of the employee's regular alternative work site, or are ineligible for telework, the Agency or staff office shall grant priority to placement in an agency relocation conventional worksite or appropriate leave.

I. HOME INSPECTIONS. The telework employee's work site must meet acceptable standards for the safety of the employee and the security of data and any Government loaned equipment. A self-certification safety inspection form may be used to meet this requirement.

J. INTERMITTENT TELEWORK. Intermittent or *ad hoc* telework describes a work schedule that does not follow a regular weekly schedule. It can include any of the following situations:

(1) Situational Telework - Telework with prior supervisory approval used to maintain productivity during short-term situations,

(2) Unscheduled Telework - Telework that is authorized in response to specific duty status announcements issued by OPM or other authorized Departmental or Agency officials for use during periods of inclement weather or other emergency situations.

K. REGULAR TELEWORK. Regular telework describes a telework schedule that generally includes one (1) day or more a week at the telework site on a recurring basis and is part of an approved work schedule.

L. OFFICIAL DUTY STATION. The telework employee's official duty station is the location of the office to which the employee is assigned. Entitlement to locality-based comparability payment, special salary rates, travel allowances, and relocation expenses is based on the official duty station.

M. POSITION DESCRIPTIONS AND PERFORMANCE STANDARDS. Established position descriptions will apply to telework employees. Performance standards for telework employees will be results-oriented and will describe the quantity and quality of expected work products and the method of evaluation. Generally, the same performance standards will apply to both telework employees and on-site employees who perform the same tasks.

N. REMOVAL OF EMPLOYEE FROM TELEWORK. The supervisor may remove an employee from the program if performance declines or the program no

longer benefits the organization's needs. Normally, the employee will not be removed from telework for a single minor infraction of the Telework Agreement. The supervisor and employee will make a bona-fide effort to work out specific problems before any decision is made to remove the employee from the telework program. Decisions to remove the employee from the program shall be memorialized in writing and shall contain the reasons for such action. Employees shall be provided with such notice no fewer than two (2) pay periods before such action is taken.

O. TIME & ATTENDANCE. Supervisors will continue to certify time and attendance for telework employees. Employees are required to maintain time and attendance logs for periods covered at the alternate site. Failure to submit time and attendance logs by close of business of the last Friday of each pay period is a breach of the Telework Agreement.

P. SAFETY & WORKERS' COMPENSATION ACT. The Agency encourages teleworkers to adopt a proactive approach to ensuring safe alternative worksites and safe work habits. Maintaining a safe home office or other alternative worksite is the teleworker's responsibility. To ensure a safe environment, the employee should be aware of the safety considerations, including those found on the telework.gov website. While teleworking and conducting official duties from an alternative worksite, Agency employees are covered, as appropriate, by the following for incidents connected with Agency employment duties: (a) Federal Tort Claims Act (FTCA), 28 U.S.C. § 171; and (b) Federal Employees' Compensation Act (FECA), 5 U.S.C. § 81. The Government is not liable for damages to the employee's personal or real property while the employee is working at the approved alternative worksite, except to the extent the Government is liable under the FTCA. The employee is covered by FECA when injured or suffering from work-related illnesses while conducting official Government business. If an injury occurs, the employee must notify the supervisor immediately, provide details of the incident or injury, and complete Department of Labor Form CA-1, Federal Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation.

Q. REASONABLE ACCOMMODATION AND MEDICAL TELEWORK. Employees seeking telework arrangements or a change in duty station as a reasonable accommodation are required to follow Departmental and Agency or staff office procedures for reasonable accommodation. It is not a requirement to document or track telework agreements approved for either reasonable accommodations or medical reasons. However, written documentation in another format may be required as part of each Departmental and Agency or staff office's reasonable accommodation procedures.

R. WORK SCHEDULE, OVERTIME PAY, LEAVE, AND OTHER PERSONNEL ISSUES. Rules concerning work schedules, overtime, pay, leave,

core hours, and other personnel issues apply to telework employees as they do to on-site employees.

(1) The Telework Work Agreement documents the initial work schedule and will be updated to reflect changes in work schedules. In addition to regularly scheduled on-site days, employees are responsible for attending meetings or other on-site events and may be called into the office for mission related purposes even on scheduled telework days; reasonable notice, generally not less than twenty-four (24) hours, of such events will be given to employees who are not scheduled to be in the office on those days. Emergency situations may require a shorter timeframe.

(2) Subject to the provisions below, the employee will work at the official duty station a minimum of four (4) days per workweek. When telework is used to address space availability restrictions or ensure mission functions continue to be performed during a wide range of emergencies, including localized acts of nature, accidents, and technological or attack-related emergencies, the OHA Director, Regional Director, or other staff office head may approve telework exceeding two (2) days a pay period on a case-by-case basis. The Agency also recognizes that the unique nature of certain positions in OHA require intensive analysis, voluminous document review, and extensive writing that for some individuals is best performed in isolation and does not require frequent face to face contact with others or customer interaction or service; for such positions, an employee who has sustained a consistently outstanding performance over the course of the previous two (2) years, continues to meet the conditions in 23.2 and 23.3 above, and remains on the same trajectory may request a work schedule that includes a minimum of three (3) days per workweek at the official duty station instead of four (4) days by submitting a written request to the employee's supervisor. The request must explain the justification for requesting the arrangement and propose the requested work schedule. The employee does not have a right to such requested work schedule and if approved, the employee understands and agrees that the supervisor may reduce the number of permitted telework days if the employee's performance declines provided that the supervisor shall provide the employee two (2) pay periods' prior notice of such reduction. The Agency will respond to an employee's schedule change request in writing within thirty (30) days of receipt. Any management decision regarding the frequency an employee may telework is non-grievable or arbitrable.

(3) Employees adversely impacted by the changes in the employee's telework schedules made under this section will be given no fewer than two (2) pay periods' notice before the implementation of any such changes.

S. ZONING. It is the employee's responsibility to determine, and comply with, any local zoning restrictions. The employee is responsible for any costs of working at home that arise from local zoning requirements.

ARTICLE 24 - ADMINISTRATIVE JUDGE PEER AND SUPERVISOR REVIEWS

24.1. The parties agree that the purpose of this article is to ensure that OHA delivers excellent and timely customer service and the highest quality determinations. Peer and supervisor reviewers should evaluate draft determinations in the context of producing the best product possible. Similarly, in deciding what input to include or exclude, Administrative Judges should evaluate input in the context of producing the best product possible, but the use of the input from reviewers in the determination is at the sole discretion of the Administrative Judge.

24.2. An Administrative Judge may submit a draft appeal determination to another Administrative Judge “peer” reviewer for pre-issuance review, or to more reviewers at the discretion of the Administrative Judge. The Administrative Judges will select their peer reviewers.

24.3. Prior to issuance of a determination, an Administrative Judge will submit a draft determination to the Administrative Judge’s reviewing supervisor with a copy to the regional office electronic mailbox or other recipient as directed by the Regional Director. The draft determination will be submitted for review no later than four (4) business days before the final decision is due. If the decision is due on an Administrative Judge’s compressed day off, the decision due date will be the business day prior. Business days do not include holidays.

24.4. The reviewing supervisor will return the draft no later than close of business the day prior to the day the decision is due. If the supervisor does not return the draft within such time period, the Administrative Judge may issue the determination without supervisory review.

24.5. The supervisor review will address the following criteria: issue, organization, style, logic/analysis, and mechanical errors.

24.6. An Administrative Judge may elect to forward any supervisory review to the Planning, Training, and Quality Control division.

ARTICLE 25 - TRAVEL AND EXPENSES

25.1 GENERAL POLICY

The Agency and Union agree that travel shall be administered and completed in accordance with this Agreement and all applicable laws, regulations, and USDA Departmental Regulations (DRs) 2300-005 and 2300-001.

A. Travel means officially authorized travel, i.e, travel for work purposes and approved by an authorized agency official. Excluded from this definition is the time spent traveling for Union activities.

B. Local travel is defined as: a round trip of three hundred (300) miles or less from the employee's official duty station and total time in travel status of fewer than twelve (12) hours. The General Services Administration (GSA) Federal Travel Regulations (FTR) defines the official duty station as the employee's permanent work assignment location.

C. Employees must receive advanced approval for all travel. Administrative Judges under open or blanket travel authorizations, however, do not need preapproval for local travel.

D. The employee will usually schedule official travel during the normal workday. In those cases where such schedule will not allow the Agency to meet its objectives, the affected employee(s) who must travel outside a workday will receive compensation for travel time in keeping with the applicable pay laws and government-wide regulations.

E. Employees expected to travel more than once each year shall receive a government credit card. Employees may use the credit card only for expenses incurred with official travel. Failure to comply with the terms and conditions of the card, or to pay on time, can subject a cardholder to disciplinary action.

F. Employees with known illnesses, or recovering from illnesses that would preclude international travel or other travel outside the forty-eight (48) contiguous states, may provide administratively acceptable medical evidence such as medical certification or letter from a care provider. The letter from the care provider must document the specific limit on travel for consideration of a supervisor or manager. On confirmation by a suitable medical authority, employees will not travel outside the forty-eight (48) contiguous states (which includes the District of Columbia). The Agency retains the right to require employees to provide recertification of the employee's health status and the limit on travel.

25.2 TEMPORARY DUTY TRAVEL (TDY)

Employees must use the official electronic travel system for trips that are not considered local travel or in which they seek to use common carriers.

25.3 BLANKET OR OPEN TRAVEL AUTHORIZATIONS

Administrative Judges are the only positions within OHA where electronic travel system blanket or open travel authorizations apply. All other OHA employees must have travel authorizations issued “outside” the blanket or open authorization.

25.4 LOCAL TRAVEL EXPENSES

Employees may only use an Optional Form (OF) 1164, “Claim for Reimbursement for Expenditures on Official Business,” to report and seek reimbursement for local travel. Except for the use of a rental car, a cost comparison is not required for local travel.

25.5 ACTUAL SUBSISTENCE EXPENSES

Sometimes government rates are not available to travelers; in those instances, the traveler must exceed allowable rates. Before traveling, employees must receive approval to exceed government rates and to use actual subsistence expenses. Headquarters employees must receive such approval from an authorized Headquarters official. Administrative Judges and Regional Office staff must receive approval from their respective Regional Directors. Employees must include such approvals with the employee’s electronic travel authorization submission.

25.6 VEHICLES

A. The use of rental cars requires written approval from an approving official prior to travel. Approved cost comparison forms and email responses satisfy the written approval requirement. Employees must include such approvals with the employee’s electronic travel authorization or travel voucher submission.

B. OHA Headquarters employees must receive advance approval from an authorized OHA Headquarters official to reserve or pay for larger than “compact class” rental vehicles. Administrative Judges and Regional Office staff must receive advance approval from their respective Regional Directors to reserve or pay for larger than “compact class” rental cars. Employees will use the electronic travel system for this approval (except for Administrative Judges traveling under and blanket or open travel authorization). For Administrative Judges in this situation,

email responses to and from their respective Regional Director satisfy the written approval requirement. Administrative Judges must include such approvals with their electronic travel authorization submission.

C. The Agency does not require employees to use the employee's privately-owned vehicles (POVs) for official business. The Agency authorizes the use of an employee's POV as identified in the Federal Travel Regulations at § 301-10.300, instead of a special conveyance (rental vehicle).

D. Round trip travel of more than three hundred (300) miles requires cost comparisons to identify the method most advantageous to the government. Such travel requires an authorization and voucher through the official travel system.

E. Any travel cost comparisons involving rental vehicles must include "lost work time" as identified in the FTR at § 301-10.4. The comparison must also include those instances where the service provider picks up and drops off the employee (which equals lost work time).

ARTICLE 26 - ADMINISTRATIVE JUDGE OFFICIAL DUTY STATION

26.1 GENERAL

This article has been developed to recognize the unique position and occasional challenges Administrative Judges have in meeting the Agency's statutory mission requirements while operating single-person offices. The Agency understands the mobility and flexibility Administrative Judges must have to provide excellent customer service in the adjudication of cases in a specific state or states. The Agency also fully supports the Administrative Judges' desire and need for work-life balance. To that end, the Agency fully supports the concept of Administrative Judges establishing residence-based offices. In addition to providing Administrative Judges mobility and flexibility and the opportunity for a heightened work-life balance, residence-based offices reduce the Federal office space footprint and are more efficient and cost effective.

26.2 OFFICIAL DUTY STATION (ODS)

For Administrative Judges working in residence-based offices, their ODS for pay and travel purposes will be their residence address. For Administrative Judges working in leased offices, their ODS for pay and travel purposes will be the leased office address.

26.3 ODS LOCATIONS

A. It is the Agency's prerogative to determine ODS locations.

B. Administrative Judges' ODS locations are typically within U.S. Census Bureau Metropolitan Areas, which include metropolitan statistical areas (MSAs), consolidated metropolitan statistical areas (CMSAs), primary metropolitan statistical areas (PMSAs), Core Based Statistical Area (CESA), and New England City and Town Areas (NECTA), as appropriate.

C. For a newly-hired Administrative Judge, the Agency will establish the ODS location in the vacancy announcement. The Agency and Administrative Judge may negotiate the specific ODS location if the vacancy announcement encompasses multi-duty station locations.

D. Administrative Judges have flexibility to choose the location of their home office, as long as it is in an area included within the OMB locality pay area corresponding to the Administrative Judge's ODS location assigned by Management. For Administrative Judges assigned to an ODS location where there is no corresponding OMB locality pay area (i.e., in the "rest of U.S."), the Administrative

Judge's home office must be within one hundred fifty (150) miles by road of the ODS location. If the Administrative Judge works from home, the Administrative Judge's home office will be the Administrative Judge's ODS. Administrative Judges will provide notice to the Agency before relocating their residence-based offices within their assigned ODS locations, and management will facilitate the move of equipment, services, and other matters.

E. Section 12.7 of this Agreement will govern situations where Administrative Judges wish to relocate their ODS location to a different state or outside of the area described in subsection (D) immediately above.

F. Administrative Judges working in a leased or residence-based office, on the effective date of this Agreement, that does not fall within an ODS location defined by paragraph 26.3(B) may maintain their current ODS.

G. Because of the mutual benefits associated with Administrative Judges establishing residence-based offices, leased office space will be the exception and only considered when Administrative Judges can demonstrate a compelling reason to establish a leased office instead of a residence-based office. A compelling reason includes but is not limited to any hardship, such as financial, familial, or legal hardships, or any other reason or need acceptable to Management.

H. Administrative Judges occupying leased space on the effective date of this Agreement may remain in leased office space in their current ODS location until they leave OHA or elect a residence-based office.

26.4 EQUIPMENT, FURNITURE, SAFETY, AND SECURITY

A. The Agency will ensure that Administrative Judges have appropriate and necessary furniture, equipment, and services by providing or reimbursing the cost of items like laptop computers, desk, filing cabinet, printers/scanners, monitors, email, faxing service, phones and service, internet service, mailbox or centralized mailing service, recording equipment, as well as other incidentals such as paper, printer ink, pens, mailing supplies, software programs, and any other items mutually determined necessary for the Administrative Judge to perform effectively, efficiently, and securely.

B. When requested, Administrative Judges must work with their supervisor to self-certify that their ODS and Government owned equipment and furniture are safe and secure. Administrative Judges must also provide an inventory of such equipment to their respective Regional Office. Management will provide the Administrative Judges a self-certification and inventory form for Administrative Judges to review, correct, and execute.

C. Administrative Judges' ODS must meet acceptable standards for the safety of the employee and the security of data and any Government equipment. Employees may be required to engage in safety and security training from time to time, at Management's direction.

ARTICLE 27 - EQUAL EMPLOYMENT OPPORTUNITY

27.1 PURPOSE AND POLICY

A. The parties agree that Equal Employment Opportunity (EEO) will be administered in accordance with 29 C.F.R. Part 1614, this Agreement, and other applicable laws, rules, and regulations. Discrimination against any employee on the basis of race, color, national origin, age, sex (including sexual orientation and gender identity), physical or mental disability, political beliefs or Union membership, religion, marital or family status, or genetic information is prohibited. Toward this end, the Agency will administer an EEO program in accordance with this Agreement, and applicable laws and regulations.

B. Sexual harassment is also a form of discrimination that undermines the integrity of the employment relationship and adversely affects employee opportunities. The Agency agrees to ensure that all employees be allowed to work in an environment free from unsolicited and unwelcome sexual overtones.

C. The Agency will cooperate and work to resolve any discrimination inquiries or complaints. The Agency also agrees to provide reasonable accommodation according to the terms of this Agreement, and applicable laws and regulations.

27.2 EEO COMPLAINT COUNSELING

A. The Employer will provide employees access to Equal Employment Opportunity counselors. The Employer shall make available the names and phone numbers of EEO counselors.

B. Any employee who believes that the employee has been discriminated against on the grounds set forth in Section 27.1 may file either a grievance under the provisions of Article 19 (Negotiated Grievance Procedure), or a complaint under the discrimination complaint procedure, but not both. If the employee seeks informal EEO counseling, the employee must notify the Agency within five (5) business days of meeting the EEO Counselor (unless the employee elects to remain anonymous during the informal EEO counseling process). The employee will not be considered to have elected their remedy until the informal EEO counseling process has been concluded. However, once the counseling process, provided for in subsection 27.2(A) above, has been concluded as evidenced by the Right to File Letter, the employee must either file a grievance or complaint should they choose to seek redress by the required time periods as delineated by Article 19 (Negotiated Grievance Procedure) or the EEO discrimination complaint procedures, as applicable.

C. The EEO discrimination complaint procedures will be made available to all bargaining unit employees via email. Such notice shall be provided to all employees on an annual basis.

D. Whether an employee chooses to file under the discrimination complaint procedure or under the negotiated grievance procedure, the employee has a right to representation. For complaints filed under EEO procedures or the Article 19 (Negotiated Grievance Procedure), the employee shall have the right to be accompanied, represented, and advised by a representative of the employee's choice. 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 Agency and the employee concerning the grievance, as well as all other rights specified in Article 19 (Negotiated Grievance Procedure).

27.3 REASONABLE ACCOMMODATION

In accordance with the Americans with Disabilities Act, this Agreement, and applicable laws and regulations, the parties agree to the following with regard to employees in need of reasonable accommodation:

A. The Agency is required to provide reasonable accommodation for qualified employees with known physical or mental disabilities. However, exceptions to such obligation may apply when an accommodation would cause undue hardship to the Agency, or pose a threat to the health or safety of the employee requesting the accommodation or to other employees in the workplace.

B. For purposes of reasonable accommodation, "qualified employees" are employees who meet the skill, experience, education, and other job-related requirements of the position occupied or the position requested by the employee, who, with or without reasonable accommodation, can perform the essential functions of that position.

C. Accommodations shall be reasonable and practicable in nature and shall involve adjustments to the employee's job or work environment which enable them to perform that job's essential functions safely and satisfactorily. Accommodations may include, but are not limited to:

- (1) making existing facilities used by the employee readily accessible to and usable by the employee;
- (2) restructuring their job;
- (3) modifying the employee's work schedule;

- (4) acquiring or modifying equipment;
- (5) providing qualified readers or interpreters;
- (6) reassignment to a vacant position for which the employee is qualified. If the employee is reassigned, the employee will be provided with any training that is normally provided for employees in that position; or
- (7) the assignment of limited or light duty assignment(s) within the scope of the employee's position description.

D. The employee may request reasonable accommodation orally or in writing.

E. The employee requesting accommodation should provide whatever medical evidence is necessary to substantiate the need for such accommodation.

F. The Agency will promptly consider the employee's request for reasonable accommodation and supply the employee with written confirmation that the request has been received.

G. The general timeframe for responding to employee requests shall be within thirty (30) days of receipt, provided that the Agency has received all the necessary information. However, the parties recognize that extenuating circumstances may require expediting the accommodation. In such instances, every effort will be made to process the employee's request immediately. If, due to extenuating circumstances, the Agency cannot expedite such action, the employee will be informed of the projected time frame for such accommodation, as well as the details regarding any interim accommodation measures being taken.

H. If the request for reasonable accommodation is denied, the Agency will provide the employee with a written explanation of the reason or reasons for the denial.

I. Any information regarding the employee's situation provided under this section shall be kept confidential and disseminated only to such officials having a direct need for it.

27.4 RELIGIOUS OBSERVANCES AND PRACTICES

The Agency shall make reasonable effort to accommodate an employee's religious observances and practices, so long as such accommodation would not cause an undue hardship on its ability to conduct its operations.

ARTICLE 28 - HEALTH AND SAFETY

28.1 POLICY STATEMENT

A. The Agency and the Union agree that the good health and safety of all employees is essential to the performance of the Agency's mission and is a matter of highest priority. Accordingly, the Agency and the Union agree to work cooperatively to ensure that a healthy and safe working environment is maintained.

B. The Agency will, to the extent of its authority and consistent with the applicable requirements of 29 C.F.R. Part 1960, as well as other applicable health and safety codes, provide and maintain safe and healthy working conditions for all employees. The Agency will also provide places of employment that are free from recognized hazards that cause or are likely to cause death or serious physical harm. The Union will cooperate to that end and will encourage all employees to work in a safe manner.

28.2 AGENCY RESPONSIBILITIES

A. The Agency will work with all persons, entities, or organizations regarding General Services Administration owned or leased workspaces to which bargaining unit employees are assigned to ensure working conditions are healthy and safe, and are in compliance with applicable laws, rules, and regulations. The Agency will also take appropriate action to ensure that any reported hazardous or unsafe working conditions are examined and, if necessary, corrected in a timely manner. The Agency will ensure a response to an employee report of a condition posing imminent danger in the workplace within twenty-four (24) hours after receiving the employee's report.

B. The Agency agrees to the following in accordance with applicable law and government-wide regulations:

(1) to provide information concerning Federal Employee Health Benefits, Life Insurance Programs, pre-retirement planning, retirement benefits information, and occupational health services;

(2) to make reasonable efforts to provide clean on-site restrooms in which normal supplies shall be available at all times and in which all equipment is in working order;

(3) to provide and maintain on-site fire and disaster plans and equipment on each floor, including smoke detection devices and exit signs that are visible during power failure;

(4) to work with the on-site building manager, the Department, GSA, and private lessors, to have safe electrical equipment and adequate ventilation in all work areas;

(5) to provide for a regular extermination program for purposes of pest control. Spraying for extermination of pests will be accomplished during non-duty hours or employees will be given the opportunity to work an appropriate distance from the employee's work site during such extermination. All employees will be given the opportunity to work away from the site of spraying for a period of twelve (12) hours following such spraying. In addition, employees will be given the opportunity to work away from the site of painting or other activity adversely affecting air quality for a period of twelve (12) hours following such activity;

(6) to follow GSA regulations in providing on-site facilities appropriate and adequate to accommodate the needs of qualified persons with disabilities.

28.3 UNION RESPONSIBILITIES

A. The Union agrees that it will take appropriate action to encourage all bargaining unit employees to work safely and 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 the employee's own work environment.

B. Each bargaining unit employee has a duty and is encouraged to report any unsafe or unhealthy working condition(s) to the employee's immediate supervisor as soon as any such condition(s) come to the employee's attention.

28.4 EMPLOYEE REPORTS OF UNSAFE OR UNHEALTHY WORKING CONDITIONS

A. Any employee who believes that an unsafe or unhealthy condition exists shall have the right and is encouraged to report the unsafe or unhealthy working condition to the employee's immediate supervisor. The Agency will assess each report of hazardous conditions and respond in a timely fashion.

B. The Agency will investigate the reported condition as soon as is practicable and may refer the situation to (a) the appropriate OHA or USDA office, (b) GSA, (c) the Occupational Safety and Health Administration (OSHA) of the Department of Labor, (d) the Public Health Service (PHS) Health Unit, or (e) other appropriate

officials for further investigation. The Union will be given an opportunity to accompany any inspector who responds to such a complaint during the inspector's physical inspection of the work place. The Union representative will be granted official time for this purpose.

C. If an employee is assigned duties that the employee reasonably believes could possibly endanger the employee's health or well-being, the employee will immediately notify the employee's immediate or second-line supervisor of the situation. If the supervisor cannot solve the problem and agrees with the employee, the assignment may be delayed, and the matter may be referred for appropriate action. Where the supervisor does not agree with the employee's concerns, the employee has the right to contact the Union.

D. If the Agency determines that a hazardous condition exists that affects employees, the Agency shall advise the Union and the involved employees as soon as possible. Upon request, the Agency will meet with the Union and to the extent required by law, rule, regulation and/or Executive Order, negotiate with the Union regarding the matter.

E. The Agency will take measures to ensure prompt abatement of unsafe or unhealthy working conditions found to exist by the Agency in conjunction with the Department, GSA, OSHA, PHS and/or other appropriate officials. When this cannot be accomplished, the Agency agrees to develop an abatement plan setting forth a timetable for abatement and a summary of interim steps to protect employees. When the hazard cannot be abated without the assistance of GSA or another Federal lessor agency, the Agency agrees to work with the lessor agency to seek abatement.

F. The Agency will inform the Union of on-site toxic chemicals that will adversely affect the health or safety of employees, such as paint or pesticides, as soon as it is aware that such chemicals will be used. This notice will be given no later than one (1) full workday before the chemicals are to be used. This notice will also include any warning statements given to the Agency by the organization using the chemicals, or that it otherwise has in its possession.

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

28.5 OCCUPATIONAL INJURY OR ILLNESS

When an employee sustains a job-related injury or occupational illness, the employee will report the injury or illness to employee's supervisor as soon as practicable. Employees are encouraged to seek medical assistance where necessary. The employee will be advised to contact the human resources staff to obtain information on benefits under the Federal Employees Compensation Act.

28.6 EMPLOYEE ASSISTANCE PROGRAM

A. The Agency presently maintains an Employee Assistance Program (EAP), which provides services such as counseling, information and other sources for employees troubled by alcoholism, substance abuse, emotional illness, marital/family problems, or financial problems. The Agency will make employees and supervisors aware of the program at least annually.

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

C. The EAP offers referral services to outside, local alcohol treatment programs, family counseling, and substance abuse treatment programs.

D. Employees undergoing a prescribed program of treatment for problems recognized under this article will be granted the appropriate leave to the extent necessary to complete such program on the same basis as any other illness when absence from work is necessary.

E. Employees with substance abuse or alcohol problems are encouraged to voluntarily request assistance through EAP and participate in a prescribed program of treatment. When the Agency determines that a conduct or performance problem exists that may be substance abuse or alcohol related and refers the employee to EAP, the Agency may take appropriate disciplinary or adverse action, consistent with the obligation to provide reasonable accommodation where required by law.

F. The Agency agrees to continue participating in the EAP in accordance with Departmental rules and regulations. Employees' participation in the EAP will be treated with the utmost confidentiality.

28.7 OCCUPANT EMERGENCY PLAN

In accordance with GSA regulations, the Agency shall maintain an Occupant Emergency Plan that will designate floor monitors, area monitors, stairwell monitors, elevator monitors, monitors to assist persons with disabilities, and restroom monitors for each floor, and describes the duties and responsibilities of these persons during an emergency. A copy will be given to the Union upon request. The Agency will establish such programs, if they are not already in existence, in all Federally leased/owned or privately leased buildings in which bargaining unit employees work, within one hundred twenty (120) days of the effective date of this Agreement. Copies of the plan will also be provided to the Union upon request.

28.8 JOINT HEALTH AND SAFETY COMMITTEE

A joint Health and Safety Committee comprised of Agency and Union personnel may be established by mutual agreement to study and make recommendations to the Agency concerning issues related to the parties' mutual efforts to ensure the good health and safety of all employees. This committee will consist of up to two (2) members from the Agency and two (2) members from the Union.

ARTICLE 29 - CONTRACTING OUT

29.1 NOTIFICATION TO UNION

This article refers to work currently being performed by bargaining unit employees. The Agency will provide advance notice to the Union prior to implementing a decision to contract out that results in a Reduction-in-Force (RIF) or that otherwise impacts bargaining unit employees' job opportunities or other changes in conditions of employment, e.g., reassignment of duties or relocation. In such cases, the Agency will meet its bargaining obligations pursuant to the Union's request to bargain. The parties shall then follow the procedures provided for in Article 31 (Impact and Implementation) of this Agreement.

29.2 COMPLIANCE

The Agency agrees to comply with all controlling laws, regulations, and other applicable guidelines not in conflict with this Agreement, relating to contracting out work performed by bargaining unit employees. The Agency agrees to follow the requirements of Article 13 (Reduction in Force) where a RIF results from a decision to contract out.

29.3 REQUESTS FOR PROPOSALS

The Agency will notify the Union, in writing, no fewer than thirty (30) days prior to the issuance of any Requests for Proposals (RFP) for any staffing contract that would directly affect the Agency's personnel policies, practices, or employees' conditions of employment in a greater than minimal way. Should the Union request a briefing, the parties will meet for such briefing within ten (10) days of the Union's request.

29.4 ACCESS TO REGULATIONS

The Agency agrees to provide the Union access to all laws, rules, and regulations relevant to contracting out that are readily available.

29.5 RIGHT OF FIRST REFUSAL

When employees are to be displaced as a result of a decision to contract out the employee's work, the Agency will include in its solicitation a clause requiring the contractor to offer the right of first refusal for employment openings under contract to qualified downgraded or separated employees. Affected employees will not be required to exercise their right of first refusal until such time as the Agency has met its obligations, as provided for in Article 13 (Reduction in Force) of this

Agreement, regarding such employees' placement. Declining first refusal rights shall in no way diminish the rights the employee might otherwise have under the provisions of this article and Agreement.

29.6 PLACEMENT ASSISTANCE

The Agency agrees to assist in locating suitable employment for bargaining unit employees who are displaced as a result of contracting out including:

- A.** giving priority consideration for suitable vacant positions that the Agency intends to fill;
- B.** paying reasonable costs for training, subject to availability of funds, when these will contribute directly to placement; and
- C.** providing available research resources to employees for use in conducting job searches during the period of continued employment with the Agency.

ARTICLE 30 - OFFICIAL TIME

30.1 DEFINITION

A. “Official time” means time expended by the Agency’s bargaining unit employees as Union representatives during normal working hours, without charge to annual leave, and granted by the Agency according to 5 U.S.C. §§ 7103(a)(12) and 7131(a) & (d) for the purposes set forth in Sections 30.3 and 30.4 below.

B. Requests for official time for purposes other than those enumerated in Sections 30.3 and 30.4 will be considered by the Agency and responded to in a timely manner. Such requests should be made by an appropriate Union official to the Human Resources staff (HR Staff). If HR Staff agrees that the request constitutes an appropriate use of official time, individual representatives may schedule its usage with their supervisors according to the provisions of Section 30.6 below.

30.2 USE OF OFFICIAL TIME

A. Permitted Use of Official Time

Union representatives shall request official time from the Agency for representational purposes, as further described in Section 30.3, and shall be granted the use of reasonable official time for such purposes provided such use does not exceed the seventy-five (75) hour time bank established in Section 30.3(F) below or will interfere with the completion of key work assignments of the work unit.

B. Designation of Union Official for Use of Official Time

The Union shall have the right to designate six (6) representatives and alternates, one of whom will be the Chief Steward. These representatives may be granted official time for representational purposes covered in Section 30.3 of this article. The representatives and their alternates will provide geographic representation for the work area to which they are assigned. However, this will not preclude the Union from assigning a representative to matters outside the representative’s normal area under special circumstances when mutually agreed by the parties. Such circumstances could include a steward’s unavailability due to leave, travel, or training; the need for a steward’s special expertise; the regularly assigned steward has the grievance or problem; or the need for on-the-job training for a new steward. The Agency agrees to give serious consideration to such circumstances when deciding whether to agree to assign a steward to a matter outside of the steward’s geographic area and will not unreasonably withhold agreement. The regular assignment of representatives and alternates designated at each location will be determined by the Union. In the case where the Union cannot find a

representative for a specific location, a temporary representative may be assigned at the Union's election. Officers, including the Chief Steward, will not be restricted by geographic location.

C. List of Stewards and Officers

The Union agrees to provide the Agency with a list of officers, representatives, and their alternates designated to use official time within their assigned location. This list may be updated and modified from time to time. Normally, any changes to the list will be submitted in writing to the Agency's representative three (3) working 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 existing steward and is immediately confronted with a situation requiring Union representation, the Union may notify the Agency's designated representative orally, but must send a written confirmation within three (3) working days after the oral notification.

30.3 PURPOSES OF OFFICIAL TIME FOR REPRESENTATIONAL DUTIES

The Agency shall grant reasonable amount of official time for representational purposes or representational activities as provided for by 5 U.S.C. § 7131(d) and shall include the following:

A. Any formal discussion between one (1) or more representatives of the Agency and one (1) or more employees in the bargaining unit or the employee's representatives concerning any grievance, personnel policy, practice, or other general condition of employment;

B. Any examination of an employee in the bargaining 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 representation.

C. Any meeting between a Union representative(s) and one (1) or more representatives of the Agency that is initiated by either the Agency representative or the Union representative.

D. Assisting employees in preparing and presenting Equal Employment Opportunity Commission (EEOC) complaints, grievances, arbitration, and adverse actions, as well as appeals to the Merit Systems Protection Board, the Office of Special Counsel, or under the relevant departmental regulations and this Agreement.

E. The Agency agrees to grant up to forty (40) hours of official time each year on a calendar year basis to employees who are Union officers for the purpose of attending Union-sponsored labor relations training that furthers the interest of the Federal Government by improving the labor management relationship. Written requests for official time to attend Union-sponsored labor relations training will identify the names and location of each representative proposed to attend the training and the number of hours requested for each representative. Such requests will be submitted to the HR Staff at least ten (10) days in advance of the training. Management reserves the right to approve or deny training requests. The Union will be responsible for all costs associated with attendance at the training.

F. The total amount of official time used by all members of the Union, except the President, shall not exceed seventy-five (75) hours each year on a calendar basis; provided, however, that such seventy-five (75) hour time bank does not include time spent by Union members participating in bargaining or attending proceedings before the Federal Labor Relations Authority, the Federal Mediation and Conciliation Service, or the Federal Service Impasse Panel. Despite such exclusion from the seventy-five (75) hour time bank, Union members shall track and record such time as official time, using the appropriate codes indicating that such time was spent conducting negotiations (e.g., Transaction Code 35 for term negotiations and Transaction Code 36 for mid-term negotiations) or for attending proceedings before the above-mentioned authorities (Transaction Code 38).

G. Time spent preparing and participating in Section 30.4 activities below shall not be charged against the seventy-five (75) hour time bank provided for in subsection (F) above.

30.4 OFFICIAL TIME FOR COLLECTIVE BARGAINING

Union representatives shall be granted official time for purposes of collective bargaining (term or midterm) negotiations, up to and including the completion of bargaining mediation and impasse proceedings. The number of Union representatives awarded official time for such purposes, and the amount of official time granted to prepare for such activities, shall be specified in future ground rules agreed to by the parties.

30.5 PROHIBITED USE OF OFFICIAL TIME

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

- A. The attendance at meetings for internal Union business;
- B. The solicitation of membership;
- C. The collection of dues;
- D. The election of Union officials;
- E. The preparation and distribution of flyers, bulletins, emails, or other promotional materials relating to internal Union business.
- F. The discussion of internal Union business by telephone, email, in person, or otherwise.

Providing employees with information and updates concerning conditions of employment is not prohibited.

30.6 PROCEDURES FOR REQUESTING USE OF OFFICIAL TIME

A. The following procedures shall be followed for requesting the use of official time for the purposes set forth in Sections 30.3 and 30.4.

(1) Except as otherwise permitted in Subsection (6) below, all requests for the use of official time shall be for reasonable finite periods of time and must be made in advance and recorded in Web T&A, using the Request for Leave function.

(2) Requests for the use of official time shall be made by the Union representative by requesting "Other Paid Absence" with the appropriate code for the relevant representative activity, negotiations, or other official time activity and submitting it to employee's immediate supervisor or the second level supervisor if the immediate supervisor is absent or unavailable. If Web T&A does not include a separate code for representative activity, negotiations, or other official time activity, the requestor shall include a notation in the "remarks" field indicating on which activity such time is spent.

(3) Supervisory approval of the period of official time must be obtained prior to the use of such official time and recorded in Web T&A, unless otherwise permitted for specific bargaining events as reflected in the respective ground rules executed by parties.

(4) In the event the representative entitled to the use of official time requires additional time due to unforeseen circumstances, the representative shall request an extension of time by telephone or other appropriate means. The request shall be made to the approving supervisor, or in that supervisor's absence, to the acting supervisor of the representative's unit, section, or division.

(5) Upon the completion of the granted official time, the Union representative shall promptly return to work and notify the supervisor who approved the official time.

(6) It is understood by the parties that unforeseen needs may arise precluding advance approval, such as unexpected telephone calls to a Union representative. On such occasions, the Union representative will notify the supervisor as soon as possible and promptly complete a leave request in Web T&A. Additionally, the Union President may use up to four (4) hours of official time per pay period, but no more than six (6) hours per month, for the purposes described in this Article without prior supervisory approval so long as the employee promptly submits a leave request in Web T&A and accurately records the use of all official time.

B. In the event that a request for the use of official time by a Union representative is disapproved in whole or in part, the decision-making official shall notify the representative as much in advance as possible, so that the Union may select an alternate representative and so that the selected alternate will have sufficient time to prepare, if necessary. If after making a good-faith effort, the Union is unable to designate an alternate representative, the Agency will make a reasonable effort to reschedule events or modify deadlines that are under the Agency's control.

ARTICLE 31 - IMPACT AND IMPLEMENTATION

31.1 IMPACT AND IMPLEMENTATION(I&I) BARGAINING

Pursuant to 5 U.S.C. § 7106 and the terms of this Agreement, when the Agency wishes to implement changes in personnel policies, practices, and working conditions (except for *de minimis* changes or changes covered by this Agreement), the Agency will provide the Union advanced notice of the proposed changes in conditions of employment. Even where the decision to change conditions of employment of unit employees is protected by management's rights, there is a duty to notify the Union and, upon request, bargain on procedures that Management will follow in implementing its protected decision, as well as on procedures and appropriate arrangements for employees expected to be adversely affected by the decision. Such bargaining is commonly referred to as "impact and implementation," or "I&I" bargaining.

31.2 STEPS FOR I&I BARGAINING

The parties recognize and agree that the Agency is the party charged with carrying out the Agency mission and therefore may propose changes in conditions of employment to meet the changing needs of the Agency and the customers OHA serves. However, the Union may also propose changes under this article, provided such proposed changes are in response to Agency initiated changes or are in response to changes in law, government-wide regulation, or court decision.

A. Changes involving working conditions shall be governed by the following:

(1) A proposed change, affecting the conditions of employment of any employee, will be submitted in writing by one party to the other. The notice will include the following:

(a) a description of the change or proposed change;

(b) an explanation of how the change will/would be implemented;
and

(c) the anticipated date of implementation or proposed implementation.

(2) The other party will respond to the notice of proposed change within ten (10) workdays of receipt of the notice. The response may include a request for information, briefing, and/or negotiation.

(3) The initiating party will respond to the request for information or briefing, or both, within ten (10) workdays of receipt of the request.

(4) Requests for negotiation will be made within ten (10) workdays of receipt of information requested or completion of the briefing. The moving party's proposals will be provided to the other party within ten (10) workdays after receipt of the request to bargain, and bargaining will commence no sooner than ten (10) days after the initial proposal.

(5) The parties may mutually agree to extend the time limits described above.

(6) With regard to the proposed change, the parties shall bargain over all matters that are negotiable consistent with law and this Agreement.

31.3. NEGOTIABILITY PROCEDURES

A. Either party declaring any proposal or proposals non-negotiable will first provide to the other party an informal statement of non-negotiability and the reasons why the party believes the proposal(s) to be non-negotiable. In the event that the parties remain unable to informally resolve remaining disputes, at the Union's request, the Agency will formally allege, in writing, the non-negotiability of the disputed proposal or proposals. The time period for the Union's submission of its petition for review shall be triggered only after such formal allegation has been tendered in response to the Union's request. Once the Union has been served with the Agency's formal allegation of non-negotiability, the Union will have fifteen (15) days to file its petition for review with the Federal Labor Relations Authority.

B. Any proposals subject to a non-negotiability dispute will be severed from the remaining proposals being negotiated, unless the proposal(s) under dispute and the remaining proposals are interdependent. Should the parties reach agreement on those proposals not subject to dispute, the agreed upon proposals shall be implemented independently of any ongoing negotiability proceedings.

31.4 IMPASSE PROCEDURES

A. The parties agree that each will use their best good-faith efforts to avoid impasse in negotiations. However, should the parties be unable to reach agreement within forty (40) workdays of the first bargaining session either party may, pursuant to 5 U.S.C. § 7119, request the services of the Federal Mediation and Conciliation Service. Before doing so, the requesting party will notify the other party of such request and afford it the opportunity of making the request jointly.

B. Notwithstanding subsection (A) above, the parties may mutually agree to extend the above-cited time frames.

C. If mediation services of the Federal Mediation and Conciliation Service do not result in resolution of the issue, either party may invoke the services of the Federal Service Impasses Panel, pursuant to 5 U.S.C. § 7119. Prior to taking such action, however, the party seeking to invoke the services of the Federal Service Impasses Panel will provide notice to the opposing party of its intention to take such action and afford it the opportunity of making the request jointly.

ARTICLE 32 - MIDTERM REOPENER NEGOTIATIONS

32.1 During the life of this Agreement, either party may elect to re-open this Agreement for negotiations at its mid-point and, in the event of a contract renewal without negotiation (i.e., rollover), as set forth in Article 36 (Duration, Term Negotiations, and Distribution), may elect to re-open this Agreement at the mid-point of the roll-over period(s).

32.2 At least thirty (30) but not more than sixty (60) days prior to the midpoint of this Agreement (i.e., eighteen (18) months after its effective date) and any subsequent rollover periods, the moving party will serve the other party with written notice citing the existing or new article(s) it is opting to re-negotiate or negotiate. The receiving party will then have thirty (30) days to respond with its own list of articles that it wishes to re-open or propose for negotiations. The parties will move forward with negotiations under the following guidelines:

A. Each party may re-open a maximum of five (5) current articles and propose up to two (2) new articles.

B. Article(s) in excess of five (5) current or two (2) new articles may be re-opened at the midpoint if the parties mutually agree.

C. Pursuant to the terms of this article, the parties will not be restricted from negotiating changes of any applicable law or Government-wide rule or regulation or Departmental rule, regulation, policy and directive, issued after the effective date of this Agreement.

D. Any changes in the Collective Bargaining Agreement that are mandated by changes in applicable law or Government-wide rule or regulations will be re-opened during such periods and subject to impact and implementation bargaining. Articles, or portions thereof, opened under this provision will not be counted against the reopener limits provided for in Subsections A and B above.

E. Within fifteen (15) days of receipt of the lists of articles to be negotiated, the parties will meet to establish ground rules to commence negotiations.

F. The mid-term bargaining teams will be comprised of three (3) members from each party unless otherwise mutually agreed.

G. Changes that are negotiated or agreed to pursuant to this section will be reduced to writing, signed by both parties, and incorporated into this Agreement.

H. In the event agreement is not reached on any article(s), or portions thereof, under negotiation, the current provisions of the disputed article(s), or portions thereof, will remain in full force and effect until a satisfactory resolution of the dispute is attained or a remedy imposed by the Federal Services Impasse Panel.

I. Official time will be authorized according to Article 30 (Official Time) of this Agreement.

J. The parties will primarily conduct negotiations by exchanging written proposals and bargaining sessions and related meetings will most generally occur via telephone and/or video conference. If the parties mutually agree that in-person negotiations are necessary, the Agency will secure and provide adequate facilities. In addition, subject to applicable law, the Agency will pay the cost of travel and lodging, plus per diem, for all members of the Union's Bargaining Team who are Agency employees and who have a duty station that is not the site of the negotiations.

ARTICLE 33 - DUES WITHHOLDING

33.1 The Parties agree to establishing a mutually beneficial dues withholding agreement.

33.2 This Article 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, .311, .312, .321, and .322), and will be modified as necessary by any future amendments to said rules, regulations, and law.

33.3 The Agency will permit any employee who is included within the bargaining unit the Union represents to make a voluntary allotment for the payment of dues to the Union. Such deduction shall begin upon request by the appropriate Union official and shall be at no cost to the Union.

33.4 The bargaining unit employee shall obtain SF-1187, "Request for Payroll Deductions for Labor Organization Dues" (Appendix E) from the Union and shall file the completed SF-1187 with the designated Union representative. The employee shall be instructed by the Union to complete the top portion and Part B of the form. No number shall appear in block 2 of the form except the last four digits of the employee's Social Security Number.

33.5 The President or other authorized official of the Union will certify on each SF-1187 that the employee is a member in good standing of the Union, insert the amount to be withheld, identify the Union's local number (3020), and submit the completed SF-1187 to the appropriate Agency human resources official. The Agency shall certify the employee's eligibility for dues withholding, insert the Union code (47), and process the form through the payroll/personnel processing system.

33.6 An employee's initial dues deduction will become effective the first full pay period after the receipt by the Agency human resources official of the employee's certified SF-1187, provided it is received at least three (3) working days before the beginning of the pay period. For SF-1187s received after this cutoff, 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 Agency human resources official will promptly forward the service request receipt or other appropriate confirmation to the Union designated official and affected employee. When the Agency determines that an SF-1187 cannot be processed, the Agency human resources official 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.

33.7 Deductions will be made each pay period and remittances will be made on the Agency's pay day to the payee designated by the Union. A grace period of seven (7) days will be permitted in unusual circumstances. The Agency will ensure that the National Finance Center (NFC) promptly forward to AFSCME a listing of dues withheld for the Union, which may be transmitted in a mutually-agreeable electronic format. The listing shall be specific to the Union 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. The listing shall be summarized to show the number of members for whom dues were withheld, total amount withheld, and amount due to the Union. The list will also include the name of each employee member for the Union 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.

33.8 The amount of dues certified on the SF-1187 by the authorized Union official (see section 33.4 above) shall be the amount of regular dues, exclusive of initiation fees, assessment, back dues, fines, and similar charges and fees. One standard amount for all employees or different amounts of dues for different employees may be specified. If there should be a change in the dues structure or amount, the authorized Union official shall notify the appropriate Agency human resources official. 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 Agency human resources official. The Agency human resources official shall add the AFSCME code (47) and promptly forward the new certification to the NFC. The change shall be effective the beginning of the first full pay period after the certification is received by NFC which shall be no later than thirty (30) days after the Union provides written notification to the Agency human resources official of the change in dues. Only one such change may be made in any six (6) month period.

33.9 An employee may voluntarily revoke an allotment for the payment of dues by completing an SF-1188, "Cancellation of Payroll Deductions for Labor Organization Dues" or by memorandum in duplicate and submitting it to the Agency human resources official. An employee may submit a SF-1188 Form, in duplicate, for the revocation of an allotment within thirty (30) days of the anniversary date when the bargaining unit employee joined the Union. If the employee uses a

written request, it must contain all the information required by the SF-1188. The request will be processed within two (2) full pay periods after receipt of a properly completed form. Following verification of the information, a copy of each revocation received will be forwarded to the designated Union official as appropriate notification of the revocation.

33.10 The Agency 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 a position not included in the bargaining unit;
- (c) at the end of the pay period which the human resources office received a noticed from the AFSCME or the Union that an employee member has ceased to be a member in good standing;
- (d) within two (2) full pay periods after receipt of a properly completed Form SF-1188 consistent with the requirements of section 33.9 above and provided the revocation is received by the human resources office within thirty (30) days of the anniversary date when the bargaining unit employee joined the Union.

33.11 The parties recognize that problems may occur in the administration of this agreement regarding the dues withholding program. The parties agree to exchange names, addresses, and telephone numbers of responsible officials and/or technicians of the Union and Agency 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 Article. This does not constitute a waiver of any legal, regulatory, or contractual right. Grievances or other appeals concerning this Article will be filed with or against the parties at the level of recognition.

ARTICLE 34 - PROFESSIONAL DEVELOPMENT AND TRAINING

34.1 POLICY

A. Professional Development and Training is defined as training that enhances the performance of duties that support the Agency mission. The parties recognize that on-going employee development and training is essential to ensure that the Agency has an effective, efficient, and high-quality workforce. The Agency shall provide training and education subject to the availability of funds and as further provided in OHA's Training Policy dated 06 November 2018 (Appendix F), which is hereby incorporated into this Agreement.

B. The intent of Agency sponsored training is to equip employees with the knowledge and skills to meet changes in OHA policy, mission, technology, structure, and/or equipment. The parties agree to support and encourage employees in developing the employee's abilities and in contributing to the more effective utilization of available human and material resources in service to the Agency.

C. Training opportunities shall be given fairly and equitably as more fully set forth in OHA's Training Policy dated 06 November 2018 (Appendix F).

D. The Planning, Training, and Quality Control (PTQC) Office will maintain information and furnish guidance about sources of available education, training, and career development resources (such as institutes of higher education, conferences, continuing legal education, the National Judicial College, web-based training, etc.).

E. Each employee is responsible for applying effort, time, and initiative in increasing the employee's potential through career development and training. The parties will encourage employees to take advantage of educational opportunities and training that enhance work efficiency and provide needed skills for advancement.

F. At least annually, the employee and the supervisor shall meet to discuss training and career development. At this meeting, the employee and the supervisor shall discuss the employee's development needs and appropriate training courses. Typically, this meeting will occur during the employee's annual performance evaluation. However, at any time an employee may request a conference with the supervisor to discuss training and career development.

G. Retirement planning training, including mid-career training, will not be restricted to employees within five (5) years of their anticipated retirement.

34.2 TRAINING ADMINISTRATION AND PROCESSES

A. The parties agree to follow OHA Training Policy dated 06 November 2018 (Appendix F) for the request, approval, funding, and attendance of training. The Agency will provide an opportunity for Union advice/consent, notice/comment for updating training policy.

B. Upon the request of either party, the parties agree 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.

C. Upon proper notice to the Union, the parties agree to meet, consult, and bargain to the extent required or permitted by law or Executive Order:

(1) When new skills requiring employee training are necessary as a result of the introduction of new equipment and/or new processes that affect or impact the employment of the involved employees.

(2) When the Agency proposes to install new equipment, machinery, or processes that would result in changes in work assignments or require additional training.

(3) Concerning the establishment of training courses or on-the-job training to effectively enable affected employees to perform the employee's job duties, as well as provide for requisite staff development.

ARTICLE 35 - IMPROVING CUSTOMER SERVICE THROUGH MODERNIZATION AND TECHNOLOGY

35.1 GENERAL

The parties acknowledge that a continuous emphasis on modernization and improvements in technology can streamline OHA business processes, improve case management for NAD, OJO, and OALJ proceedings, and enhance services for OHA external and internal customers. The parties agree to participate in the analysis of capabilities, priorities, and feasible modernization solutions that can have the greatest impact on OHA services. Management agrees to ensure that Union participation and feedback is integrated into initiatives, or, when appropriate, task forces to design, initiate, implement, and monitor and control new technology efforts.

35.2 FUTURE MODERNIZATION AREAS OF EMPHASIS

The parties agree that the following areas of modernization provide a good first start basis for improving services.

A. External Customers

(1) Encouraging OHA customers (NAD appellants, OALJ / OJO petitioners and respondents) to file appeals electronically (eFile). Eliminating any barriers to eFile, such as issues that include the signing of appeals, electronic signatures, and electronic notifications to alert participants about case activities.

(2) Providing the capability for OHA customers to submit electronic documents and case file and other information electronically and securely through USDA-accredited systems that integrate this information with current OHA case management systems with minimal administrative modification.

(3) Providing alternative formats for published OHA determinations and decisions on the OHA website that are easily searched and retrieved by customers and reflect OHA's legal professionalism.

B. Internal Customers

(1) Exploring the feasibility of standardizing administrative support for Administrative Judges, Administrative Law Judges, and the Office of Judicial Officer throughout the appeals management process.

(2) Exploring the feasibility of a standardized central process of mailing for NAD Administrative Judges and increasing the use of electronic files or unofficial electronic case records to streamline the internal appeals process and reduce paperwork burden.

(3) The parties agree that another priority consideration for internal customer service will include ways to increase regional Administrative Judge support by processing dispositive notices and exploring the feasibility of decreasing the Administrative Judge's burden of maintaining records, such as Volume I records.

35.3 OFFICIAL AND UNOFFICIAL ELECTRONIC RECORDS

A. The parties agree to establish a task force to develop a plan to phase in the modernization of systems and procedures to adhere to future government requirements in the areas of records. The goal of the plan will be to reduce paperwork and increase the use of electronic tools (e.g., eFile, electronic signatures, secure and accredited file transfer protocols) in its business and appeals management process. This plan will consider the potential impact of adopting an electronic record as the official case file for OALJ and NAD

B. The parties agree that new electronic systems and/ or records management will require a workforce that is skilled in the use of electronic tools, records, and data management. The plan will analyze the necessary employee training and skills acquisition needed to support the modernization effort and, if applicable, identify new positions that are best-suited to perform work in this area.

ARTICLE 36 – DURATION, TERM NEGOTIATIONS, AND DISTRIBUTION

36.1 Effective Date and Agency Head Review

A. This Agreement shall take effect no later than thirty (30) days after the signature by both parties unless disapproved by the Secretary of Agriculture pursuant to the provisions of 5 U.S.C. § 7114(c)(2).

B. This Agreement will be submitted for Agency Head review once executed by the parties.

C. This Agreement shall become effective on the date it has been approved by the Agency Head. Pursuant to 5 U.S.C. § 7114(c)(3), if the Agency Head does not approve or disapprove the Agreement within the thirty (30) day period, the Agreement shall take effect immediately and shall be binding on the parties.

36.2 This Agreement shall remain in effect for three (3) years from its effective date.

36.3 Renegotiation and Renewal: The Agency or the Union may request to renegotiate the Agreement by submitting notice in writing at least sixty (60) days, but not more than one hundred five (105) days, prior to the expiration date. In the event the parties renegotiate the Agreement, the current terms will remain in effect until superseded by a new agreement. In the event that neither party submits a notice to renegotiate, the Agreement will be renewed automatically for periods of one (1) year, except for provisions that may be in conflict with applicable law, or Government-wide rule or regulation.

36.4 For term negotiations, as distinct from midterm negotiations dealt with in Article 32 (Mid-Term Reopener Negotiations), the parties will not be limited as to how many articles (including new articles) may be opened or proposed.

36.5 At a minimum, the following ground rules will apply to the negotiations:

A. The parties will begin negotiations no later than thirty (30) days prior to the expiration date of this Agreement.

B. The parties shall meet within fifteen (15) days to negotiate additional ground rules, as necessary.

36.6 Disapproval by the Secretary of Agriculture. If the Secretary of Agriculture disapproves any negotiated language, the Union may petition the Federal Labor Relations Authority (FLRA) to challenge the decision within fifteen (15)

days of receipt of the Agency's written decision. During the fifteen (15) day filing period, either party may request that a briefing be held, as soon as possible, to discuss the Agency's finding(s). Otherwise unaffected portions of the Agreement shall take effect upon execution of this Agreement.

36.7 Nothing in this article precludes the parties from continuing negotiations over the disputed provisions or from asking for the assistance of the FLRA's Collaboration and Dispute Resolution Office while awaiting the FLRA's decision.

36.8 Publication. Within thirty (30) days after the effective date of this Agreement, the Agency will publish the Agreement on the employee page of the Agency website and will provide the web address to all employees. The Agency will pay for the cost of fifty (50) copies and make them available to the Union upon request. Each party is independently responsible for the cost of printing any additional copies of this Agreement.

APPENDIX A



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

U.S. DEPARTMENT OF AGRICULTURE
OFFICE OF HEARINGS AND APPEALS
(Agency)

and

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, COUNCIL 26, AFL-
CIO
(Labor Organization/Petitioner)

and

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, DISTRICT
COUNCIL 20, AFL-CIO
(Labor Organization)

Corrected Copy

CASE NO. WA-RP-18-0036

AMENDED CERTIFICATION OF REPRESENTATIVE

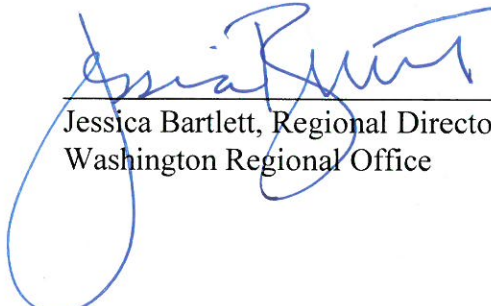
Pursuant to the Rules and Regulations of the Federal Labor Relations Authority, a petition was filed seeking to reflect a change in designation of the exclusive representative from American Federation of State, County and Municipal Employees, Council 26, AFL-CIO to the American Federation of State, County and Municipal Employees, District Council 20, AFL-CIO.

On March 19, 2018, the Regional Director, Washington Region, Federal Labor Relations Authority, issued a Decision and Order finding that the certification issued in Case No. WA-RP-17-0047 may be amended to change the designation of the exclusive representative from the American Federation of State, County and Municipal Employees, Council 26, AFL-CIO to the American Federation of State, County and Municipal Employees, District Council 20, AFL-CIO.

Pursuant to authority vested in the undersigned, **IT IS HEREBY CERTIFIED** that the American Federation of State, County and Municipal Employees, District Council 20, AFL-CIO, is the exclusive representative of the following unit:

Included: All professional and nonprofessional employees nationwide, employed by the USDA Office of Hearings and Appeals.

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



Jessica Bartlett, Regional Director
Washington Regional Office

Dated: April 5, 2018

CERTIFICATE OF SERVICE

I certify that I have served the parties listed below a copy of the Corrected Amended Certification in Case No. WA-RP-18-0036 in the manner indicated below:

FIRST CLASS MAIL

Margaret A. McCann, Assoc. General Counsel
AFSCME, AFL-CIO
1101 17th Street, NW, Suite 900
Washington, DC 20036-5687

Lisa L. Cunningham
HR/LR Management Specialist
USDA Office of Hearings and Appeals
3101 Park Center Drive
Alexandria, VA 22302

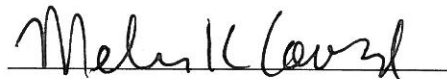
E-MAIL

Office of Personnel Management
PLR@opm.gov

HAND DELIVERY

Office of the General Counsel
Federal Labor Relations Authority
1400 K Street, N.W., Second Floor
Washington, DC 20424-0001

DATED THIS 5th Day of April, 2018, at the Washington Regional Office of the Federal Labor Relations Authority, Office of the General Counsel.



APPENDIX B

**UNITED STATES DEPARTMENT OF
AGRICULTURE OFFICE OF HUMAN
RESOURCES MANAGEMENT
WASHINGTON, D.C. 20250
Annual Weingarten Notice
MEMORANDUM TO ALL USDA
OFFICES**

**(For Posting or Distribution to Bargaining Unit
Employees)**

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 www.flra.gov.

APPENDIX C

AGENCY USE ONLY
GRIEVANCE
NUMBER _____

GRIEVANCE FORM LR-103

THIS GRIEVANCE IS FILED UNDER THE PROVISIONS OF THE
COLLECTIIVE BARGAINING AGREEMENT

Grievant's Name – LAST		FIRST	Contact Telephone #
Address to Which Grievance Response Must be Mailed.			
Position Title, Series, Grade, and Duty Station		Regional Office	Check Grievance Step
Date of Alleged Violation	Management Officials' Name Against Whom Grievance Made		Step 1 ___ Step 2 ___ Step 3 ___

GRIEVANCE DESCRIPTION – Exact terms of the grievance (including dates), applicable law(s), rule(s), regulation(s), Collective Bargaining Agreement Article(s) allegedly violated, reason for dissatisfaction, names and addresses of witnesses, and supporting documents and evidence. (Continue on Reverse)

EFFORTS TO RESOLVE (after step 1)– written description of verbal and written supervisory decisions and why those decisions were not acceptable

PERSONAL RELIEF DESIRED

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

APPENDIX D

**OHA Personal Fitness
Program Agreement**

Office: _____

Employee name: _____

Goal/Objective: (Check all that apply)

- | | | | |
|--------------------------------|--------------------------|--------------------------------|--------------------------|
| Reduce Body Fat | <input type="checkbox"/> | Reduce Blood Pressure | <input type="checkbox"/> |
| Increase Strength | <input type="checkbox"/> | Improve Balance/Coordination | <input type="checkbox"/> |
| Improve Flexibility | <input type="checkbox"/> | Lower Triglyceride/Cholesterol | <input type="checkbox"/> |
| Improve Cardiovascular Fitness | <input type="checkbox"/> | Maintain Fitness | <input type="checkbox"/> |

Type of Fitness Activities: _____

Location of Fitness Activities: **Name of Facility:**

Days/Times of Fitness Activities: _____

I agree to do some type of aerobic or physical activity on a regular basis to improve and maintain my mental and physical well-being, while participating in the OHA's Personal Fitness Program, I agree to follow all health and safety guidelines established for my chosen activities, including warm-up and cool-down periods and the use of personal protective gear when appropriate.

Employee's Signature _____ Date _____



Supervisor's Approval

Supervisor's Name _____

Signature _____ Date _____

Distribution: Original to Regional Safety and Wellness Program Coordinator, copies to the supervisor and employee.



Appendix E

Standard Form 1187
Revised March 1989
U.S. Office of Personnel Management

REQUEST FOR PAYROLL DEDUCTIONS FOR LABOR ORGANIZATION DUES

Privacy Act Statement

Section 5525 of Title 5 United States Code (Allotments and Assignments of Pay) permits Federal agencies to collect this information. This completed form is used to request that labor organization dues be deducted from your pay and to notify your labor organization of the deduction. Completing this form is voluntary, but it may not be processed if all requested information is not provided.

This record may be disclosed outside your agency to: 1) the Department of the Treasury to make proper financial adjustments; 2) a Congressional office if you make an inquiry to that office related to this record; 3) a court or an appropriate Government agency if the Government is party to a legal suit; 4) an appropriate law enforcement agency if we become aware of a legal violation;

5) an organization which is a designated collection agent of a particular labor organization; and 6) other Federal agencies for management, statistical and other official functions (without your personal identification).

Executive Order 9397 allows Federal agencies to use the social security number (SSN) as an individual identifier to avoid confusion caused by employees with the same or similar names. Supplying your SSN is voluntary, but failure to provide it, when it is used as the employee identification number, may mean that payroll deductions cannot be processed.

Your agency shall provide an additional statement if it uses the information furnished on this form for purposes other than those mentioned above.

1. Name of Employee (<i>Print or Type-Last, First, Middle</i>)	2. Employee Identification Number (<i>SSN or Other</i>)	3. Timekeeper Number
4. Home Address (<i>Street Number, City, State and ZIP Code</i>)	5. Name of Agency (<i>Include Bureau, Division, Branch or Other Designation</i>)	

Section A-For Use By Labor Organization

Name of Labor Organization (*Include Local, Branch, Lodge or Other Appropriate Identification*)

I hereby certify that the regular dues of this organization for the above named member are currently established at \$ _____ per	(biweekly pay period) (calendar month). (<i>Strike out whichever period is not appropriate, based on arrangement with the employee's agency.</i>)
--	---

Signature and Title of Authorized Official	Date (<i>Month, Day, Year</i>)
--	----------------------------------

Section B-Authorization By Employee

I hereby authorize the above named agency to deduct from my pay each pay period, or the first full pay period of each month, the amount certified above as the regular dues of the (Name of Labor Organization):

_____ and to remit such amount to that labor organization in accordance with its arrangements with my employing agency. I further authorize any change in the amount to be deducted which is certified by the above named labor organization as a uniform change in its dues structure.

I understand that this authorization, if for a biweekly deduction, will become effective the pay period following its receipt in the payroll office

of my employing agency. I further understand that Standard Form 1188, Cancellation of Payroll Deductions for Labor Organization Dues, is available from my employing agency, and that I may cancel this authorization by filing Standard Form 1188 or other written cancellation request with the payroll office of my employing agency. Such cancellation will not be effective, however, until the first full pay period which begins on or after the next established cancellation date of the calendar year after the cancellation is received in the payroll office.

Contributions or gifts (including dues) to the labor organization shown at left are not tax deductible as charitable contributions. However, they may be tax deductible under other provisions of the Internal Revenue Code.

Signature of Employee	Date (<i>Month, Day, Year</i>)
-----------------------	----------------------------------

FOR COMPLETION BY AGENCY ONLY- The above named employee and labor organization meet the requirements for dues withholding. (Mark the appropriate box. If "YES", send this form to payroll. If "NO", return this form to the labor organization.)	YES	NO

1-Agency Copy

2-Labor Organization Copy

3-Employee Copy

APPENDIX F

OFFICE OF HEARINGS AND APPEALS (OHA) TRAINING POLICY 06 November 2018

1. PURPOSE.

a. This policy supplements applicable USDA directives, regulations, and applicable law to implement procedures and assign responsibilities for the development and training of the Office of Hearings and Appeals (OHA) workforce.

2. AUTHORITIES.

- a. [The Government Employees Training Act](#),
- b. [Title 5, Code of Federal Regulations \(CFR\), Part 410, Training](#);
- c. [Title 5, CFR, Part 412, Executive, Management, and Supervisory Development](#);
- d. [DR4040-410](#) Creating Individual Development Plans (IDP) (02/07/11)
- e. [DR 5013-6 USDA Use of the Purchase Card and Related Alternative Payment Methods](#)
- f. [DR4040-412-002](#) Training and Development for Supervisors (07/25/14)
- g. [DR4740-001](#) USDA Mentoring Program (02/01/12)
- h. [DR4740-002](#) USDA Cross Training Program (09/26/13)

3. DEFINITIONS.

Authorizing official. Delegated official with the authority to formally grant approval for training requests and commit organization funds at an acceptable level of risk.

Certification. Recognition given to individuals who have met predetermined qualifications set by an organization of Government, industry, or a profession.

Continued Service Agreements. An agreement an employee signs to continue to work for OHA for a pre-established length of time in exchange for Government sponsored training or education. The service obligation begins when the training is completed.

Development. The process of preparing employees for current or future mission-related duties, responsibilities, and/or career progression.

Diploma mill. Nontraditional schools that are not accredited by accrediting institutions recognized by the U.S. Department of Education and that may award degrees or certificates with little or no coursework completed by the student.

Government Purchase Card. A payment and procurement tool used for supply and service procurements valued at or below the micro-purchase threshold.

IDP. The individual development plan assists the employee and supervisor in assessing and planning the employee's development at least annually. It provides an opportunity to determine, discuss, and mutually understand the employee's career goals and interests and how they relate to the command's goals. It can be modified as necessary. IDPs will be added and maintained in AgLearn.

Licensing. The process by which an organization of (Federal, State, or local) Government grants permission to an individual to engage in a given occupation upon finding that the applicant has attained the minimal competency required to engage in that occupation.

Training. Formal or informal learning experiences aimed at acquiring skills, knowledge, and abilities to improve or maintain current employee performance of official duties, tasks, and responsibilities.

Training Officer. Employee assigned to assist and coordinate the training efforts for a particular group (activity, department, division, etc.).

Vendor. Any Government or non-Government source that provides a training service.

4. POLICY.

It is OHA policy to:

- a. Invest in employee development and training activities that improve individual and organizational performance and enable OHA to achieve its mission and goals.
- b. Equip employees with the knowledge and skills to meet changes in OHA policy, mission, technology, structure, and/or equipment.
- c. Ensure no training is scheduled, nor funds committed, until an event is both authorized and approved by the appropriate OHA Training official(s).

5. DETERMINING TRAINING NEEDS.

- a. A systematic and continuing review of current and foreseeable organizational training needs provides a realistic foundation to plan, prioritize, program, budget, direct, and evaluate a viable training program.

- (1) Supervisors and managers, collaborating with employees, will assess OHA current and anticipated training needs, which include consideration of organizational, occupational, and individual training requirements. This assessment will be reflected in the development of Individual Development Plans (IDP)s.
- (2) OHA will participate when USDA conducts an annual department IDP open season. A departmental IDP open season streamlines administrative processes, improves efficiency, and provides consistency for USDA employees. (See [DR4040-410](#) Creating Individual Development Plans)

6. SUPERVISORS AND MANAGERS.

Supervisors and Managers will:

- a. Be familiar with workforce development and training policies and requirements.
- b. Develop an understanding and appreciation among employees of the significance of continual growth in job competence and professional advancement.
- c. Ensure managers and supervisors complete mandatory training requirements in accordance with Departmental Regulation 4040-412-002 Training and Development for Supervisors. (See [DR4040-412-002](#)).
- d. Evaluate employee requests for training, based upon the effectiveness of training and development efforts, as they pertain to increased job competency, professional growth, return on investment, budgetary limits, and the efficiency of operations.
- e. Provide recommendations and feedback to employees about training and development.

7. EMPLOYEES.

OHA employees at all levels will:

- a. Assist in defining mission-oriented training needs in relation to current and future job requirements, and maintain responsibility for self-development. (See [5 CFR 410.303](#))
 - b. Apply the knowledge, skills, and abilities acquired through training to the work situation and share the knowledge with other employees.
8. OHA Training Officer. The OHA Training Officer (TO) serves as the designated liaison between OHA and USDA and other external entities for administration and coordination of OHA training. In general, the TO is responsible for OHA knowledge management and makes recommendations for annual OHA training priorities across the agency and integrates training needs into strategic planning. The TO administrative responsibilities include preparing or consolidating training data; maintaining records and generating

reports on OHA training; and coordinating training actions. Further, the TO will serve as the OHA AgLearn Administrator. In implementing OHA training policy, the TO will undertake the follow:

- a. Communicate and coordinate training schedules and training information between OHA management and assigned employees.
- b. Provide supervisors and employees with timely training information, instructions, and assistance with resources and nominations of training.
- c. Monitor and assist with compliance of mandatory training requirements for employees.
- d. Coordinate OHA responses to periodic training assessments and surveys.
- e. Provide training and assistance to supervisors and employees on using AgLearn, developing IDPs, and creating training requests.

9. REQUEST FOR TRAINING AND APPROVAL PROCEDURES.

a. An employee requests to attend courses, seminars, meetings, or conferences on an SF-182, "Request, Authorization, Agreement, Certification of Training," through AgLearn. Approvals in AgLearn trigger an electronic notification for the next level of approval. The OHA AgLearn approval chain is—

- (1) Supervisor
- (2) TO
- (3) OHA Director of Management
- (4) OHA Financial Manager

b. All disapprovals must contain a written reason for the disapproval in the Denial Reason Box in AgLearn.

c. OHA employees in the approval chain will apply the following criteria for approving or disapproving training. Applicable criteria will be addressed in making recommendations for training or for documenting disapprovals in the SF-182 process:

- (1) OHA's mission and work; the extent to which the training is a requirement of the employee's position or an OHA requirement. An example of an OHA requirement would be that OHA needs employees with Contractor Officer Representative (COR) training certification at various levels to monitor contracts.

- (2) Nexus: The extent to which the content of the training will directly enhance the employee's knowledge, skills, or performance in the present position. Content can come from a course description, syllabus, or conference agenda.
- (3) Employee's potential for advancement or career development needs.
- (4) Ability of the employee to instruct others in learned skills after completion of the training.
- (5) Self-development: The employee's own interest in and efforts to improve his or her work, knowledge, or skills.
- (6) Effect that attending the training would have on the employee's workload.
- (7) Availability of funds.
- (8) Degree to which the employee meets the stated criteria for attending training.
- (9) Prior training opportunities afforded to the employee; this includes whether the training was provided at a recent or perspective OHA national or regional conference.

d. Employees may not be assigned to training or permitted to enroll in a course, regardless of course length, before formal approval by the authorizing official, certification by the OHA TO, and certification of funding by the OHA Financial Manager. Such approval is documented by electric signature on the SF-182 or electronically authenticated through AgLearn.

e. Requests for approvals after employees have enrolled or begun the training may be disapproved. Employees who enroll in training courses without written prior approval, as indicated above, may be personally responsible for the total training cost.

10. PAYMENT FOR TRAINING. All OHA managers will coordinate funding for training needs with the OHA Financial Manager. Some training providers will invoice OHA after completion of the training. In cases where the vendor requires advance payment, the training may be purchased using a government credit card or an alternative advance payment procedure. Cardholders may use the Government Purchase Card to pay for Government or non-Government provided training, regularly scheduled courses, or instructional services that are available to the general public and priced the same for everyone. (See [DR 5013-6 USDA Use of the Purchase Card and Related Alternative Payment Methods](#). The SF-182, or its electronic equivalent, remains the authorized and required document to purchase training not subject to contracting procedures.
11. IDENTIFYING TRAINING SOURCES. OHA may use a full range of options to meet mission-related organizational and employee development needs. (See [5 CFR 410.203](#)) OHA is committed to providing every employee with developmental opportunities for

career enhancement and personal, professional satisfaction. (See USDA Mentoring Program [DR4740-001](#) and USDA Cross Training Program [DR4740-002](#)) OHA managers and supervisors will consider the most effective, fiscally responsible, delivery method. AgLearn courses are OHA's first choice for addressing training needs prior to utilizing external training sources.

a. AgLearn services provide USDA agencies and staff offices with a consolidated, cost-effective, enterprise-wide learning service for employees, business partners, and other groups. AgLearn provides USDA agencies and staff offices and their customers with one-stop access to training products and services at reduced overall costs. OHA supervisors and employees must follow the guidance provided below. (See Department Regulation USDA eLearning Services, Courseware and Content [DR 3620-001](#))

- (1) If AgLearn training is not available in an area of skills or discipline, or if further training is necessary after completing online courses, employees can request alternative training on an SF-182.
- (2) OHA employees will complete the Aspiring Leader Program and Team Leader Program in AgLearn before external leadership development courses will be approved.

b. Meetings and conferences. Attendance at conferences and travel associated with conferences are often significant expenses.

- (1) OHA employees and supervisors must ensure that attendance at a conference is a necessary and cost-effective way to achieve a mission objective. Attendance at conferences such as the National Association of Administration Law Judges (NAALJ) or the National Association of Hearing Officers (NAHO) may be approved if the conference agenda meets the criteria established in 9c. In those cases, the conference agenda may be provided to support a request for attendance. Conferences in the local area of the attendee's duty location that incur *de minimus* travel costs are a factor in supporting approval for attendance.
- (2) OHA will conduct national and regional conferences as budget permits pursuant to <https://www.ocio.usda.gov/document/departamental-regulation-2300-005>. Typically, OHA will ensure, to the greatest extent possible, that Continuing Learning Education is coordinated with the training provider at a national or regional conference to support OHA legal staff qualification standards for the bar or other entities.

12. MANDATORY TRAINING.

All employees, managers, and supervisors will ensure that the following mandatory training is completed.

- a. IT Security Awareness (5 CFR 930.301)
- b. No Fear Act Section (111 of Title I)
- c. Ethics Awareness (5 CFR 2638.705)
- d. Other training required by law, policy, or directive

13. ADMINISTRATION PROCEDURES

a. Approval Authority.

(1) The authorization of training requests is a responsibility that must not be taken lightly. Illegal or inappropriate training actions outlined in this policy and other OPM documents may result in the termination of authority and/or disciplinary action.

b. Training prohibitions.

(1) No OHA employee will be authorized to attend post-secondary courses at an institution that is identified as (or under suspicion of being) a diploma mill. Appropriated funds will not be expended on diploma mill training or education. Credentials from diploma mills cannot be used for any purpose in OHA or the Federal sector.

(2) No OHA employee will accept a contribution, award, or payment incident to training or attendance at meetings.

c. Equal Employment Opportunity. Employees will be selected for training without regard to race, color, religion, national origin, sex, (including pregnancy and gender identity), sexual orientation, national origin, age (40 and over), disability, genetic information, or retaliation against any person because that person opposed an unlawful policy and/or practice.

d. Training Attendance and Completion.

(1) Employees, supervisors, and managers must ensure successful training attendance. Managers and supervisors must ensure employees are available to attend scheduled training. Duties and activities should be scheduled around the employee's attendance.

(2) If an employee cannot attend training, the employee should notify the TO and supervisor as soon as possible. Cancellations should occur only in emergency or unforeseen mission-essential situations.

(3) There is consideration for employees with disabilities. When arranging training events, a coordinated effort between the TO, supervisors, and employees is required to ensure that persons with disabilities have reasonable accommodations. This will ensure selected training facilities are accessible to employees with disabilities and do not discriminate in the admission or treatment of students.

(a) Employees should check block 11 of the SF-182 indicating the need for accommodations.

(b) OHA will budget for expenses to make training accessible to employees with disabilities, to include providing interpreters for hearing-impaired employees, readers for visually impaired, and/or other suitable adaptive devices.

(4) An employee assigned to training during normal business hours is considered on duty for the period of the training and no charge is made to leave. When the employee pays for the training, no charge is made to leave if the training is authorized to meet a performance improvement need. Employees may pay for their own training. Training law allows OHA and employees to share the costs of authorized training. For additional guidance for computing time in training, (See [5 USC § 410.310](#))

(a) With few exceptions no funds may be used for the payment of premium pay to an employee engaged in training. Generally, employees may receive neither overtime pay nor compensatory time for time spent in training. A comprehensive overview of employee pay and entitlements related to training, with legal citations, is available on [the OPM Web site](#).

(b) OHA shall permit an employee to use official duty time to attend training that is approved but not funded by the Organization if OHA determines that the training relates to the employee's assigned duties or would enhance its mission and the employee's performance. In these cases, the use of administrative leave is not necessary.

(5) Upon completion of external training, employees should provide valid proof of completion to their supervisor and/or TO. If training was requested using the SF-182 in the AgLearn, employees must complete the verification process within AgLearn. Employees should verify that the AgLearn learning history accurately reflects training accomplishments and should contact their supervisor and TO regarding any discrepancies.

(6) If the failure to complete training is for reasons beyond the employee's control, no action will be taken to collect training expenses.

(7) If the failure is due to the employee's negligence or willful misconduct, the employee's approving official may discipline and/or request reimbursement for

expenses incurred other than salary costs. If a Continued Service Agreements (CSA) has been signed, the requirements will be enforced.

(8) When an employee does not satisfactorily complete a training opportunity, the supervisor will inform the TO. In these cases, the supervisor will assess with the employee the reason for not completing the training and reevaluate whether to reschedule the employee for the training.

e. Training for Others.

(1) Contractors are selected for their expertise in a subject area. Consequently, contractors will only be trained in enabling skills they are not required to bring to the job. Contractors may be trained in rules, practices, procedures, and/or systems that are unique to USDA and OHA and essential to the performance of the contractor's assigned duties, such as OHA computer procedures. These courses are traditionally offered in AgLearn. Training of contractors, and any resources and/or licensing fees, will be identified by Contracting Officer's Representative (COR), OHA Financial Officer, and TO for the respective contract.

f. Continued Service Agreements. A CSA will be signed for training lasting longer than one (1) week. The CSA must be in writing before attending training. ([See 5 U.S. Code § 4108](#))

g. Professional licenses, certifications, and memberships.

(1) OHA employees will be reimbursed for annual fees incurred in maintaining a professional credential or professional membership if having the credential or membership is a requirement in connection with their official duties and is a condition of employment with OHA. ([See 5 U.S.C. § 5757](#)) The most relevant example for OHA is an employee's bar membership to maintain the 0905 personnel qualification standard. The employee must submit an SF-1034 or SF-1164 to his or her supervisor for review and approval for reimbursement. Once the Director and first line supervisor approve the license/certification, the OHA Financial Officer will reimburse the employee.

(2) Individual membership in professional organizations is not a training expense, except to the extent that the fee is a necessary cost of the training. For example, a conference fee may include an individual membership that would not be reduced by severing the cost of the membership. Thus, the employee may accept the membership as an incidental byproduct of the conference. For additional guidance on individual memberships fees ([See 5 U.S. Code § 5946](#)).

(3) Payment of annual dues for membership in a professional organization is a personal expense and not reimbursable to the employee, even if the Government would benefit from the employee's development as a result of the membership.

h. Academic Degree. OHA may authorize training for an employee to obtain an academic degree under conditions prescribed at [5 U.S.C. 4107\(a\)](#) and [5 C.F.R § 410.308](#))

i. Tuition Assistance.

(1) OHA will evaluate requests for reimbursement for academic courses that fulfill the requirements for a college degree with the same criteria managers evaluate all other training requests. Consistent with the provisions of 5 U.S.C. §4107, OHA does not pay for, or reimburse, employees for the cost of academic degree coursework, unless such coursework contributes significantly to:

- (a) Meeting an identified agency training need;
- (b) Resolving an identified agency staffing problem; or
- (c) Accomplishing goals in the agency's strategic plan.


(2) OHA does not reimburse employees for prior student loans or college tuition on an ad-hoc basis.

(3) Although employees appointed under the Pathways Internship Program are eligible for tuition assistance, OHA does not provide this assistance.

IN WITNESS OF, the parties agree to the terms of this Collective Bargaining Agreement between the USDA/Office of Hearings and Appeals and AFSCME, Council 20, AFL-CIO, Local 3020.

 May 16, 2019

Pete Inman
Chief Negotiator
AFSCME, Council 20

 May 16, 2019

Duane Sinclair
Chief Negotiator
OHA/National Appeals Division

IN WITNESS WHEREOF, the parties hereto have executed this Collective Bargaining Agreement between U.S. Department of Agriculture, Office of Hearings and Appeals, and the American Federation of State, County, and Municipal Employees, Council 20, AFL-CIO, Local 3020, as of the 17th day of June, 2019.



For the Union:
Ryan Eagleson, President Local 3020



For the Agency:
Jennifer K.M. Nicholson, Acting Director OHA

On Behalf of the Union Bargaining Team:

Peter Inman, AFSCME Council 20
Jennifer Guerrieri, Local 3020
William Talty, Local 3020
Ryan Eagleson, Local 3020

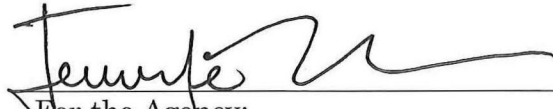
On Behalf of the Agency Bargaining Team:

Steve Placek, OHA (ret.)
Duane Sinclair, OHA
Joli Liebrock, OHA
Angela Parham, OHA
Michael Buchanan, OHA
Lisa Cunningham, OHA

IN WITNESS WHEREOF, the parties hereto have executed this Collective Bargaining Agreement between U.S. Department of Agriculture, Office of Hearings and Appeals, and the American Federation of State, County, and Municipal Employees, Council 20, AFL-CIO, Local 3020, as of the 23rd day of July, 2019.



For the Union:
Ryan Eagleson, President Local 3020



For the Agency:
Jennifer K.M. Nicholson, Acting Director OHA

On Behalf of the Union Bargaining Team:

Peter Inman, AFSCME Council 20
Jennifer Guerrieri, Local 3020
William Talty, Local 3020
Ryan Eagleson, Local 3020

On Behalf of the Agency Bargaining Team:

Steve Placek, OHA (ret.)
Duane Sinclair, OHA
Joli Liebrock, OHA
Angela Parham, OHA
Michael Buchanan, OHA
Lisa Cunningham, OHA

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Agency Head Review was served on this day, July 24, 2019, to the following parties regarding the OHA and the AFSCME Local 3020 CBA:

Jennifer K.M. Nicholson, Acting Director

OHA

Jennifer.Nicholson@usda.gov

via E-mail

Duane A. Sinclair, Eastern Regional Director, OHA

Duane.Sinclair@usda.gov

via E-mail

Angela R. Parham, Acting Assistant Director for Administration, OHA

Angela.Parham@usda.gov

via E-mail

Lisa L. Cunningham, Human Resources Management Specialist, OHA

Lisa.Cunningham@usda.gov

via E-mail

Ryan M. Eagleson, President Local 3020, AFSCME

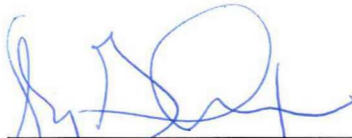
Ryan.Eagleson@usda.gov

via E-mail

Peter Inman, Chief Negotiator, Council 20, ASFCME

PeterInman30@gmail.com

via E-mail



Myron Greenhow, Labor Relations Specialist
Employee and Labor Relations Division, OHRM
Jamie L. Whitten Building, Room 318-W
1400 Independence Avenue, SW, Mail Stop 9611
Washington, DC 20250
Phone: (202) 720-2809