

Date: March 21, 2025

## **Collective Bargaining Agreement**



**American Federation of Federal Employees (AFGE)**

**Local 3147**

**&**

**Beltsville Agricultural Research Center (BARC)**

**United States National Arboretum (USNA)**

**United States Department of Agriculture**

## TABLE OF CONTENTS

<b><u>ARTICLE</u></b>	<b><u>TITLE</u></b>
	<b>Preamble</b>
<b>1</b>	<b>Recognition and Coverage</b>
<b>2</b>	<b>Governing Laws and Regulations</b>
<b>3</b>	<b>Management Rights and Responsibilities</b>
<b>4</b>	<b>Employee Rights</b>
<b>5</b>	<b>Union Representation and Responsibilities</b>
<b>6</b>	<b>Labor Management Partnership</b>
<b>7</b>	<b>Administrative Processes</b>
<b>8</b>	<b>Matters Appropriate for Negotiation</b>
<b>9</b>	<b>Mid-Term Bargaining</b>
<b>10</b>	<b>Official Time and Duty Time</b>
<b>11</b>	<b>Equal Employment Opportunity (EEO)</b>
<b>12</b>	<b>Reasonable Accommodation</b>
<b>13</b>	<b>Employee Assistance Program (EAP)</b>
<b>14</b>	<b>Merit Promotion</b>
<b>15</b>	<b>Performance Management</b>
<b>16</b>	<b>Training</b>
<b>17</b>	<b>Safety and Health</b>
<b>18</b>	<b>Personal Protective Equipment (PPE)</b>
<b>19</b>	<b>Uniforms</b>

<b>20</b>	<b>Emergency Preparedness</b>
<b>21</b>	<b>Workplace Violence Prevention and Anti-harassment</b>
<b>22</b>	<b>Drug Testing Program</b>
<b>23</b>	<b>Space</b>
<b>24</b>	<b>Break Rooms and Break Areas</b>
<b>25</b>	<b>Union Use of Facilities and Services</b>
<b>26</b>	<b>Employee Awards and Recognition</b>
<b>27</b>	<b>Position Description (PD's)</b>
<b>28</b>	<b>Hours of Work and Overtime</b>
<b>29</b>	<b>Leave</b>
<b>30</b>	<b>Holidays</b>
<b>31</b>	<b>Hazard or Environmental Differential Pay</b>
<b>32</b>	<b>Discipline and Adverse Action</b>
<b>33</b>	<b>Negotiated Grievance Procedures</b>
<b>34</b>	<b>Arbitration</b>
<b>35</b>	<b>Reduction in Force (RIF), Reorganization, Transfer of Functions</b>
<b>36</b>	<b>Contracting Out</b>
<b>37</b>	<b>Concerted Activity</b>
<b>38</b>	<b>Information, Publicity and Distribution</b>
<b>39</b>	<b>Dues Allotments Process</b>
<b>40</b>	<b>Charities and Civic Organizations</b>
<b>41</b>	<b>Authorship</b>
<b>42</b>	<b>Duration</b>



## **PREAMBLE**

In accordance with 5 U.S.C., Chapter 71, the Beltsville Agricultural Research Center (BARC) and the US National Arboretum (USNA) in the Northeast Area (NEA) of the Agricultural Research Service (ARS), United States Department of Agriculture (USDA) and the American Federation of Government Employees (AFGE) Local 3147 (Union) agree that the wellbeing of employees and efficient administration of the Government are benefited by the statutory protection of the right of employees to organize, bargain collectively, and participate through a labor organization of their choosing, in the formulation and implementation of personnel policies and practices affecting the conditions of their employment.

## **ARTICLE 1**

### **RECOGNITION COVERAGE**

#### **SECTION 1 - General**

This Agreement is made and entered into by and between BARC and the USNA in the NEA of the USDA, Research, Education, and Economics (REE), ARS, hereinafter referred to as "Management" or "Agency", and the AFGE Local 3147, hereinafter referred to as the "Union" and collectively known as the "Parties".

#### **SECTION 2 - Definition of the Union**

The Union includes all Bargaining Unit Employees (BUE) who are either Wage Grade (WG) or General Schedule (GS) employees of BARC or USNA, excluding confidential employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, professionals, and supervisors.

#### **SECTION 3 - AFGE Exclusive Recognition**

As the sole and exclusive representative, the Union is entitled to act for, speak for, and to negotiate agreements covering all employees in the BU. By law the Union is responsible for representing the interests of all employees in the BU without discrimination and without regard to labor organization membership.

Due to the Union's exclusive recognition, the Agency will not deal directly with

BUE on matters such as working conditions, personnel policy or practices, or by engaging in formal discussions without Union notification. This does not include work assignments or performance discussions.

*[References include, but are not limited to: 5 U.S.C. § 7114 (a)]*

#### **SECTION 4 - Changes in the Bargaining Unit**

Contraction or expansion of the unit may only be accomplished in accordance with existing statutory protocols identified in 5 U.S.C. Chapter 71.

The Agency will provide the Union President, or approved Union designee, with written notice concerning the establishment, abolishment, or change in the status of BU positions. Upon request by the Union, the Parties will schedule a meeting within 30 calendar days to discuss and attempt to resolve the issue(s). If the matter remains unresolved, either Party may file a Clarification of Unit Petition with the Federal Labor Relations Authority (FLRA) in order for a determination to be made, and the position will remain in the BU while the petition is being resolved. The FLRA will be the final decision for whether the removal or inclusion of any position from or into the BU is appropriate.

**ARTICLE 2**  
**GOVERNING LAWS AND REGULATIONS**

**SECTION 1 - General**

In the administration of all matters covered by this Agreement, officials and employees shall be governed by applicable Federal statutes. They will also be governed by government-wide regulations in existence at the time this Agreement is approved.

Where any Department and/or Agency regulation conflicts with this Agreement and/or supplemental Memoranda of Understanding (MOUs), this Agreement shall govern.

**ARTICLE 3**  
**MANAGEMENT RIGHTS AND RESPONSIBILITIES**

**SECTION 1 - General**

The Union recognizes the rights of the Agency and agrees to demonstrate an affirmative willingness to deal with the appropriate management representatives on matters involving the administration of this Agreement.

**SECTION 2 - Rights and Obligations of the Employer**

- A. This article shall be administered in accordance with 5 U.S.C. Chapter 71, and the terms of this Agreement. Management officials of the Agency retain the following rights outlined in 5 U.S.C. § 7106, Management Rights:
1. determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and
  2. in accordance with applicable laws;
    - a. hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or to 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 the Agency operations shall be conducted;
    - c. with respect to filling positions, to make selections for appointments from:
      - i. among properly ranked and certified candidates for promotion; and
      - ii. any other appropriate source; and
    - d. take whatever actions may be necessary to carry out the Agency's mission during emergencies.
- B. Nothing in this section shall preclude any Agency and any labor organization from negotiating:
1. at the election of the Agency to negotiate on the numbers, types, 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 appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials



### **SECTION 3 - Responsibilities**

- A. In summary, Management officials and supervisors retain the ability to meet with employees without the presence of a union representative concerning any matter not covered by 5 U.S.C. 7106.
- B. The Labor Relations Officer (LRO) or his/her designee will be the point of contact for labor relations matters.
- C. Management will provide appropriate devices, tools, and training for government applications.

## **ARTICLE 4**

### **EMPLOYEE RIGHTS**

#### **SECTION 1 - General**

- A. In an atmosphere of mutual respect, all employees shall be treated fairly and equitably, without discrimination, harassment, or retaliation. Employees will also be afforded proper regard for and protection of their privacy and constitutional rights. It is therefore agreed that management will seek to establish working conditions that will enhance and improve employee morale and efficiency. Employees, individually and collectively, have the right to expect, and to pursue, conditions of employment which promote and sustain human dignity and self-respect.
- B. Instructions, feedback, work assignments, and general interactions will be communicated in a reasonable, respectful, and constructive manner. Such communication will be provided in an atmosphere that will avoid public embarrassment or ridicule. If an employee is to be served with a warrant or subpoena, it will be done in private without the knowledge of other employees to the extent it is within management's control.
- C. No disciplinary or adverse action will be taken against an employee upon an ill-founded basis such as unsubstantiated rumors or gossip.
- D. No employee will be subjected to intimidation, coercion, harassment, or unreasonable working conditions as reprisal nor be used as an example to threaten other employees. An employee who exercises any statutory or contractual right shall not be subjected to reprisal or retaliation and shall be treated fairly and equitably.

#### **SECTION 2 - Rights to Union Membership**

Each employee shall have the right to form and join a union, to act as a designated Union representative, and to assist the Union, freely, without fear of penalty or reprisal. Each employee shall be protected in the exercise of such rights. This right shall extend to participation in all union activities including service as officers and stewards. Except as otherwise provided, such employee rights include the right to:

- act for the Union in the capacity of a representative and the right in that capacity to present the views of the Union to heads of agencies and other officials of the Executive Branch of Government, Congress, or other appropriate authorities, and
- engage in collective bargaining with respect to conditions of employment through representatives chosen by employees.

*[References include, but are not limited to: 5 U.S.C. § 7102]*

Employees may be represented by an attorney or other representative (other than the Union) of the employee's own choosing.

[References include: 5 U.S.C. 7114 (5) (a)]

### **SECTION 3 - Employee Rights During Investigations**

Weingarten Rights state that during an investigatory interview, the following rules must be adhered to:

#### **Rule 1**

The employee must make a clear request for Union representation before or during the interview. The employee cannot be punished for making this request.

#### **Rule 2**

After the employee makes the request, the employer must choose from among three options:

- Grant the request and delay questioning until the union representative arrives and (prior to the interview continuing) the representative has a chance to consult privately with the employee;
- Deny the request and end the interview immediately; or
- Give the employee a clear choice between having the interview without representation or ending the interview.

#### **Rule 3**

If the employer denies the request for union representation, and continues to ask questions, it commits an [unfair labor practice](#) and the employee has a right to refuse to answer. The employer may not discipline the employee for such a refusal.

[References include, but are limited to: [NLRB v. J. Weingarten, Inc. 420 U.S. 251](#)]

### **SECTION 4 - Rights to Union Representation**

Management recognizes an employee's right to assistance and representation by the Union, and the right to meet and confer with Union representatives in private during the employee's duty time, consistent with Article 3, Union Representation and Responsibilities. If the employee and the Union representative cannot be released immediately, the employee will be released for a period of time that the supervisor, employee, and Union representative agree upon. If such release is not made, appropriate relief from time frames will be afforded. The Management agrees to annually inform all employees of the right to Union representation under 5 U.S.C., 7114 (a) (2) (B) by appropriate means. Managers and supervisors will not request information regarding the specific content of the meeting or discussions between Union Representatives and BUE. Information in meetings with Union Representatives are confidential.

### **SECTION 5 - Use of Recording Devices**

When a recording is made with mutual consent, the employee will be given the opportunity to review the transcript for accuracy and will be provided with a copy of the recording and transcript if one is made.

### **SECTION 6 - First Amendment Rights**

Employees have the right to present their views to Congress, the Executive Branch, or other authorities and to otherwise exercise their First Amendment rights without fear of penalty or reprisal, except where such exercise is prohibited or limited by law, for example the Hatch Act.

### **SECTION 7 - Access to Documentation**

- A. Employees have a right to be made aware of and receive copies of any information specific to them, personally maintained under their name and/or social security number. Management agrees that the official record of the employee is the electronic Official Personnel File (eOPF). Employees may access their eOPF while on duty time. Management will ensure that appropriate government-issued devices are readily available and easily accessible for employees of the BU. Because information the employees may access could be considered Personally Identifiable Information (PII), government-issued devices will be located in areas with limited or minimal exposure to other personnel, when feasible as determined by management.
- B. Employees have a right to access information pertaining to conditions of employment such as laws, rules, and regulations published by the Office of Personnel Management (OPM), the USDA, and other government sites during scheduled work time and on government- owned devices. These publications or policies are available for employees to review on the employer's and other government Agency websites.
- C. At the request of the employee, paper copies will be made available. Exceptions may be made as agency policies permit.

### **SECTION 8 - Personal Rights**

Employees have the right to engage in outside activities and employment of their own choosing and otherwise conduct their private lives as they see fit, adhering to all Federal and State laws, rules, and regulations. Outside activities should not impact job performance. The following are examples of situations where employees should exercise caution to avoid any legal troubles.

Contact ARS Office of Ethics, if you are:

- Seeking outside employment;
- Offered payment in any form, compensation, or gifts;
- Engaging in fundraising; or
- Engaging in political activity (for example, Hatch Act)

Prohibited Activities on government devices, property and time include but are not limited to:

- Criminal Activities;
- Gambling; or
- Pornography

*[References include, but are not limited to: 5 C.F.R. § 2635, 5 C.F.R. § 735, and 5 C.F.R. § 8301]*

## **SECTION 9 - Whistle-Blower Protection**

The Whistleblower Protection Act protects employees against retaliation due to the disclosure of information or evidence of:

- Violation of law, rule, or regulation,
- Gross mismanagement,
- Gross waste of funds,
- Abuse of authority,
- Substantial and specific danger to public health or safety; and/or
- Censorship related to scientific research

The Whistleblower Protection Act does not protect employees when the information disclosed is prohibited by law or Executive Order.

For additional information on the application and protection of the Whistleblower Protection Act, BUE should contact their Union Representative for assistance.

*[References include, but are not limited to: 5 U.S.C. § 1213, 5 U.S.C. § 2302 (b)(8)]*

## **SECTION 10 - Unlawful Orders**

An employee has the right to refuse orders that would require the employee to violate an applicable law or compliance would pose an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures. Employees will promptly bring their specific concerns to the supervisor or appropriate management official. Management will consider the employee's concern and will promptly notify the employee whether the order is lawful or unlawful. An employee will not normally be subject to disciplinary or adverse action for refusing to obey an unlawful order or one that would pose an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures.

### **SECTION 11 - Improper Orders**

If an employee believes they have been given an improper order, they may promptly bring their concerns to management. The management official will promptly advise the employee whether the order is proper or improper. A refusal to obey an improper order as determined by management, will not subject the employee to disciplinary or adverse action.

### **SECTION 12 - Conflicting Orders**

When employees receive conflicting orders, the employee will bring the conflict to the attention of the first line supervisor or their designee. The employee will be given a clarified written order. The employee will not normally be subject to disciplinary or adverse action for following the clarified order.

## **ARTICLE 5**

## **UNION REPRESENTATION AND RESPONSIBILITIES**

### **SECTION 1 - Exclusive Representative**

In accordance with 5 U.S.C. 7114 (a) (1), "A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for and negotiate collective bargaining agreements covering all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership."

### **SECTION 2 - Union Representation**

In all matters relating to personnel policies, practices, and other conditions of employment, the Parties will have due regard for the obligations imposed by 5 U.S.C., Chapter 71, this Agreement, and the concept of a cooperative working relationship.

Each party shall recognize and meet with the designated representative(s) of the other Party at mutually agreeable times, dates, and places that are reasonable and convenient.

### **SECTION 3 - Official Time**

Union representatives will receive Official Time for the performance of representational duties in accordance with Article 10 Official Time and Duty Time.

### **SECTION 4 - Notification of Changes in Conditions of Employment**

Management shall provide reasonable advance notice (minimum of 14 calendar days) to the appropriate Union President, or approved Union designee prior to changing Conditions of Employment for BUE. (See Article 8 Matters Appropriate for Negotiation). All notifications shall be in writing to the appropriate Union official with sufficient information to the Union for the purpose of exercising its full rights to bargain.

### **SECTION 5 - Investigatory Examinations (Weingarten Rights)**

- A. As provided in 5 U.S.C., 7114 (a) (2) (B) and Article 33: Disciplinary and Adverse Actions, the Union has the right to be represented at any examination of an employee in the BU by a representative of the Agency in connection with an investigation if:
  - a. any formal discussion between one or more representatives of the Agency and one or more employees in the unit or their representatives concerning any grievance, or any personnel policy or practice or other general condition of employment; or

- b. any examination of an employee in the unit by a representative of the Agency in connection with an investigation if:
    - i. the employee reasonably believes that the examination may result in disciplinary action against the employee; and
    - ii. the employee requests representation.
- B. The Agency supports and will follow statutory and contractual prohibitions against restraint, coercion, discrimination, or interference with any Union representative or employee in the exercise of their rights.
- C. The Union will determine which representative will be assigned to an investigatory examination.
- D. Once the employee requests representation, no further questioning will take place until the representative arrives. If the Union representative, or a designee, is not available due to work schedules or other representational business, the examination will be postponed and rescheduled by mutual agreement.
- E. The Union representative may be informed of the subject of the meeting. The Union will have an opportunity to meet with the employee prior to the examination.

#### **SECTION 6 - Union Representation at Meetings**

In accordance with 5 USC 7114(a)(2)(A), Representation Rights and Duties, an officially designated union representative will be allowed to attend any meeting between employee(s) and management concerning any grievance or any protected personnel policy or practices or other general conditions of employment.

#### **SECTION 7 - Information**

If the Union makes a request under 5 USC 7114(b)(4), the Agency agrees to provide the Union with the requested information that is normally maintained, reasonably available, and necessary for the Union to effectively fulfill its representational functions and responsibilities. This information will be provided to the Union within a reasonable time and at no cost to the Union.

#### **SECTION 8 - Union Employee Communication**

The Agency will not alter or censor the content of any direct communications between the Union and employees. However, Agency facilities may not be used for posting or distribution of libelous or defamatory material directed at Agency or Union officials or programs.

#### **SECTION 9 - Surveys and Questionnaires**



- A. The Agency will not communicate directly with BUEs through verbal or written surveys and questionnaires regarding conditions of employment without prior notification to the Union and bargaining where appropriate. Nothing in this section precludes the Union from the right to bargain over conditions of employment under the 5 USC Chapter 71.
- B. Participation in surveys will be voluntary, unless the parties agree to require participation.
- C. The results of surveys conducted by either Party regarding conditions of employment will be shared. If a third party conducts a survey and the results are distributed to the Agency, the results will be shared with the Union.

#### **SECTION 10 - Union Representatives**

The Union will designate its own representatives. The Union agrees to provide management and the Labor Relations Officer or designee a complete list of names, email addresses, physical work address with cubicle/office location, and work telephone numbers of its Union Officials on an annual basis and/or when a change in Union Officials occurs. For changes in Union representation, the Union will provide notification to a designated management official in a timely manner, normally within ten (10) calendar days.

#### **SECTION 11 - Utilization of Facilities**

The Union will be given access to conference rooms and auditoriums for union meetings and membership drives, before or after duty hours or during lunch periods. Meetings must occur within designated building access hours. The Union may conduct virtual meetings using available Agency virtual methods and devices before or after duty hours or during lunch periods. It is understood that any BUEs attending a meeting outside of duty hours are not entitled to compensation by the Agency. The Union will follow the same reservation process and procedures as all other users.

#### **SECTION 12 - Training for Union Officials**

- A. Workload permitting, Union representatives will be allowed official time during each year of this agreement to attend training of mutual interest for the Parties and the Agency, subject to management approval. The total amount of representation-related training granted in any calendar year to all Union representatives will be a total allotment of 160 hours. Requests for official time will be in writing and will be accompanied by a copy of the agenda for the training. Such requests will be presented to the supervisor at least thirty (30) calendar days prior to the beginning of the training. Exceptions to the request deadline will be made if a valid reason is presented.
- B. In the event that the 160 allotted hours are exhausted, up to twenty-four (24) additional hours of official time may be granted for up to two (2) newly appointed union representatives during their first year in office to attend these programs subject to management approval.

- C. The total number of training hours may be extended by mutual agreement. The request from the Union needs to be addressed to the LRO or his/her designee. The LRO or designee will approve/disapprove the use of official time for the specified training and notify the approving supervisor in a timely manner.

### **SECTION 13 - Other Committees**

The Union may appoint at least one (1) BUE to represent the Union on each current or newly established Agency committee that may affect working conditions. Union representatives on these committees will adhere to 5 CFR 7106 and not participate in discussions that determine the mission, budget, organization, number of employees, and internal security practices. Union appointed BUEs and Union officers who serve on committees will be on duty time. Examples include, but are not limited to, Safety Committee, Project Sync, Focus Groups, etc.

### **SECTION 14 - Union Rights in Formal Discussions**

At the start of any formal discussion, the Management representative will normally ask Union representatives who may be present to introduce themselves. Union representatives will be allowed to participate in a meaningful way (i.e., asking relevant questions and providing brief statements during the meetings outlining the Union's position concerning the issues). Representatives from all sides will respect each other, the process, and any relevant statutes.

### **SECTION 15 – Bargaining Unit Employee List**

A current list of all BUE's and Bargaining Unit Positions (BUP) within BARC and USNA will be provided to the Union at least once each quarter. Union Representatives may request BUE/BUP lists monthly.

BUE/BUP Lists should include:

- Full name of the BUE (First, Last)
- Position/Title
- Position# (vacant and filled)
- Management Unit (MU)
- Pay Plan
- Series
- Grade
- BUS Code
- Official Duty Station
- Deductions/Dues Allotments collected by the Agency

## **SECTION 16 - Regular Meetings**

Union Representatives are allowed to meet with BUEs, as a collective, at least once each month to provide updates, guidance, and assistance. These in-person/virtual meetings will normally be conducted during the lunchtime hour (and/or non-duty time) and at any suitable and available locations in or around the Beltsville/USNA area. Supervisors and Managers are encouraged to allow employees reasonable flexibilities in their work schedule and duties so that BUEs may attend.

## **ARTICLE 6**

### **LABOR MANAGEMENT PARTNERSHIP**

#### **SECTION 1 - Purpose**

The desire and intent of this Article are to describe and encourage an effective labor-management partnership. The Agency and the Union are committed to working together at all levels to:

- improve service to the American people,
- ensure a quality work environment for employees,
- foster a cooperative and constructive working relationship between employees and management,
- establish an atmosphere of mutual respect and trust, and
- improve the morale of the employees.

#### **SECTION 2 - Scope**

Union and Management may discuss any topic, including but not limited to:

- Interpretation and application of this Agreement,
- Interpretation and applicability of rules, regulations, and policies,
- Matters involving personnel policies, practices, and working conditions,
- Numbers, positions, and grades of employees,
- Methods, means, technology, and infrastructure necessary for work,
- Correction of conditions causing grievances and misunderstandings,
- Encouragement of good human relations in employer-employee relationships,
- Promotion of job-related education and training, and
- Strengthening of workplace morale.

#### **SECTION 3 - Labor-Management Committee**

A. The Agency and Union recognize that open communication between management and employees can enhance the quality of service, improve morale, and avoid misunderstandings. To these ends, the Parties agree to form a labor-management committee that will meet to discuss issues of mutual interest.

- B. Additional members of either Party may attend meetings by mutual agreement when their areas of responsibility are to be discussed.
- C. Meetings shall be held monthly or whenever the Committee members mutually deem necessary.
- D. Any member of the Committee may introduce issues for discussion. Each member will attempt to notify the other members in advance of the issues the member wishes to be discussed.

**ARTICLE 7**  
**ADMINISTRATIVE PROCESSES**

**SECTION 1 - New Employee Orientation**

An effective new employee orientation (or onboarding) program is an important component in ensuring that all employees receive information regarding procedures for BARC/USNA, their rights, benefits, roles, and responsibilities as employees of USDA.

The Parties agree that New Employee Orientation (NEO) sessions are conducted on an as-needed basis as determined by the Agency.

The Union will be afforded an opportunity to meet with the new BUE(s) who are covered by this Agreement. Management will provide adequate advance notice to the Union when new employees covered under this Agreement (BUEs) are scheduled for NEO. Once Agency topics have been covered during the NEO, the Union will have the right to discuss the benefits of being a Union member and its internal structure. The Union will have a total of twenty (20) minutes during each NEO to address the new BUE(s). The Union will be provided Official Time to make the presentation.

The Union will be provided with the employee's name, position, title, grade and series, management unit and supervisor.

*[References include, but are not limited to: 5 USC § 7114]*

**SECTION 2 - Unfair Labor Practices (ULP)**

The Parties agree that a charging party may serve Unfair Labor Practice notifications (ULPs) via email. ULPs are generally served to the charged party prior to submission to the FLRA.

## **ARTICLE 8**

### **MATTERS APPROPRIATE FOR NEGOTIATIONS**

#### **SECTION 1 - General**

A negotiation is a process used to define and resolve issues in a way that both parties find acceptable. Negotiations are a long-standing method for creating a workplace where employees and managers understand and maintain their rights and responsibilities, while furthering the Agency's mission.

#### **SECTION 2 - Introduction**

Management will follow the procedures of this section prior to implementing any proposed changes to established personnel policies and practices and other matters affecting the working conditions of employees in the unit, including established past practices that are not listed in the Agreement.

Nothing in this Article waives the rights of either Party under the Statute.

*[References include, but are not limited to 5 U.S.C. Chapter 71]*

#### **SECTION 3 - Non-negotiable Items**

If Management declares an item non-negotiable (cannot be changed by discussion), the Union may request a written declaration explaining the reason why it is not a topic for negotiation. If the Union disagrees with Management's written explanation of why an item cannot be negotiated, the Union may submit a negotiability petition to the FLRA in accordance with 5 U.S.C. Chapter 7117.

#### **SECTION 4 - Procedures for Negotiating During the Term of the Agreement**

- A. Management may propose changes in Conditions of Employment during the life of the Agreement that are not already covered specifically by the Agreement. Management will provide the Union President, or approved Union designee, with reasonable advance written notice of any change affecting Conditions of Employment not less than fourteen (14) calendar days prior to the proposed implementation, except in emergency situations. The notice will, at a minimum, contain the following information:
- a. A list of the impacted employees,
  - b. A description of the change(s) to be implemented,
  - c. An explanation of why the proposed change(s) is necessary (if known), and
  - d. The proposed implementation date(s).

- B. The Union shall acknowledge written receipt of Management's notification. The Labor Relations Officer (LRO), or their designee, will be the point of contact for these matters.
- C. Management is obligated to bargain in good faith on Conditions of Employment and Changes in Working Conditions to the extent of the law. Management may implement proposed changes in Conditions of Employment if the Union provides a written response within fourteen (14) calendar days. A written response could take the form of a request to Demand to Bargain, a request for Impact and Implementation (I&I), or a request to be briefed on the proposed change(s).

*[References include, but are not limited to: 5 U.S.C. 71 (b)(2)]*

- D. Extensions may be granted by mutual agreement provided there is no adverse impact on Management for granting the delay.
- E. If the Demand to Bargain is submitted, the Parties will normally meet face-to-face or may also meet through virtual platform(s) by mutual agreement. The Parties agree to negotiate in good faith through appropriate representatives for the purpose of collective bargaining as required by law and this Agreement.
- F. The Parties will schedule a meeting to begin negotiations as soon as possible, normally no later than fourteen (14) calendar days after the Union submits a Demand to Bargain. Implementation shall be postponed to allow for the completion of bargaining, up to and including negotiability disputes and/or impasse proceedings, unless required by law.
- G. Changes will not normally be implemented until all bargaining obligations are met. If emergency circumstances occur, Management will notify the Union of the situation as soon as practical, and the Parties may agree to post-implementation bargaining on changes in working conditions. In the case of an emergency, Management will notify the Union President or designee prior to meeting with employees and will meet bargaining obligations. Under rare and extraordinary circumstances, delayed notification and post-implementation bargaining may be necessary.

## **SECTION 5 - Impasse**

If an agreement cannot be reached on the matters under the stated negotiation process above, the following procedures apply:

Neither Party may declare an impasse until all issues are reviewed, agreed to, or declared at an impasse by either Party. The Parties agree that each will use their best good-faith efforts to avoid impasses in negotiations. Negotiation issues will not be referred for Impasse individually unless and until ALL issues have been fully vetted and bargained.



In the event either Party declares an impasse in negotiations, the Federal Mediation and Conciliation Service (FMCS) shall be immediately requested to provide services and assistance to resolve the dispute pursuant to 5 U.S.C. 7119.

If mediation with FMCS does not result in a resolution, the FMCS Commissioner may refer the issue(s) to the Federal Service Impasses Panel (FSIP) pursuant to 5 U.S.C. 7119. Prior to taking such action, however, the Party seeking to invoke the services of the FSIP will provide notice to the opposing Party of its intention to take such action.

## **ARTICLE 9**

### **MID-TERM BARGAINING AND NEGOTIATIONS**

Either party may request to open the Agreement for the purposes of conducting Mid-Term Bargaining on matters within the scope of bargaining. Such requests will be no sooner than 30 months from the date of the Agency Head Approval (AHA), or binding date, of this Agreement and no later than sixty (60) days after such date. Upon receipt of the written notice, negotiations will proceed in accordance with this Agreement. The Parties agree these Ground Rules are essential only for Term and Mid-Term Bargaining.

A representative from the Federal Mediation and Conciliation Service (FMCS) can be requested to attend any negotiation meeting by either party. Upon AHA, or binding date, of the Ground Rules, the initiating party will submit their proposals within fourteen (14) calendar days to the receiving party. The receiving party will send counter proposals within thirty (30) calendar days after the date initial proposals were received. Bargaining will commence within twenty-one (21) calendar days, or as mutually agreed, after proposals are exchanged.

Proposals and Counter proposals by either party can include the introduction of new articles or content not contained in the Collective Bargaining Agreement (CBA) between AFGE Local 3147 and USDA BARC/USNA. Articles impacted by the proposals submitted during Mid-Term Bargaining may be opened by either party for the purpose of clarifying information. This re-opening should be focused on preventing conflicting or confusing information between the existing CBA and agreements reached during Mid-Term Bargaining. The Parties must submit all agreements (term, supplemental, letters, Memoranda of Understanding/Agreement), however designated, to the USDA Labor Relations Officer for Agency Head review. Any unwritten agreements may be terminated at any time without notice.

## **ARTICLE 10**

### **OFFICIAL TIME AND DUTY TIME**

#### **SECTION 1 - General**

The Parties recognize that good communication is vital to positive and constructive relationships between the Union and Management. These communications should facilitate and encourage the amicable settlement of disputes between employees and Management involving Conditions of Employment and should contribute to the effective and efficient conduct of public business. The Parties further recognize that the BARC/USNA bargaining unit is large, complex, and requires Union coordination of its representational activities at several levels.

For the purposes of this Article, Agency Representative shall mean an employee and/or Labor Relations Specialist.

In accordance with 5 U.S.C. § 7131, Union representatives shall be allowed a reasonable amount of Official Time, if otherwise in a duty status, to carry out appropriate representational purposes under the Statute. This time will be without charge to leave and requests for Official Time will be submitted to their supervisor of record, normally before Official Time is used.

In accordance with 5 U.S.C. § 7131 (d), an employee acting as a Union Representative shall be granted a reasonable amount of Official Time if otherwise in a duty status. This time will be without charge to leave and requests for Official Time will be submitted to their supervisor of record, normally before official time is used

The number of Union Representatives using Official Time under this Section is subject to the following:

- A. The number of Union representatives on Official Time shall not exceed the number of Agency representatives attending in person and virtually for the below matters.
  - a. Discussing grievances and appeals, complaints or matters affecting general working conditions with employees
  - b. Preparing (including making inquiries) and presenting grievances, appeals, or complaints
- B. Prior to holding a meeting over any of these matters, the Agency will advise the Union over the number of Agency representatives that will attend.
- C. Where there is no Agency representative attending, the Union will be entitled to one (1) Union representative on official time to attend these matters.

#### **SECTION 2 - Meetings with Union Representatives**

With prior supervisory approval and subject to workload needs, BUE's will be granted reasonable duty time to confer with designated Union representatives concerning employment concerns, personnel practices, working conditions, or grievances.

### **SECTION 3 - Official Time for Statutory Appeal Procedures**

Official Time will be granted for one (1) Union representative at a time to appear before the FLRA, the Merit Systems Protection Board, the Federal Services Impasses Panel, or the Federal Equal Employment Opportunity Commission, if designated by the employee as the Union representative.

### **SECTION 4 - Internal Union Business**

As provided by 5 USC 7131 (b), "Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a non-duty status (e.g. before or after tour of duty, lunchtime etc.)."

### **SECTION 5 - Official Time to Observe**

A Union representative acting as an observer under the provision of 5 U.S.C. § 7114(a) (2) will be on Official Time if otherwise in a duty status.

### **SECTION 6 - Performance Evaluation**

The use of Official Time, in accordance with this Agreement and the regulations, will not adversely affect an employee's performance evaluation.

### **SECTION 7 - Allegations of Abuse**

Alleged abuses of Official Time shall be brought to the attention of an appropriate Agency official in a timely manner by supervisors and/or Management officials. The Agency official or their designee (normally, the Labor Relations Officer), will then discuss the matter with the Local President. The Agency may discuss the alleged abuse with AFGE District representatives if the Local President is unable to resolve the issue.

## **ARTICLE 11**

### **EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

#### **SECTION 1 - General**

There are various laws and regulations that govern Federal-sector Equal Employment Opportunity (EEO) and Civil Rights. The Parties agree to cooperate in providing equal opportunities to all employees and preventing discrimination against any employee based on:

- Race, color, religion,
- Sex (including gender identity, sexual orientation, genetic information, and pregnancy)
- National origin, age (40 or older)
- Disability
- Marital status, parental status, equal pay/compensation,
- Income derived from a public assistance program, and
- Political affiliation, Labor organization affiliation or non-affiliation.

Collectively, these laws also protect employees from retaliation if they verbalize opposition to any employment discrimination, file a complaint of discrimination, or participate in the EEO complaint process (as a complainant or witness).

Employees are prohibited from simultaneously pursuing an EEO complaint and grievance on the same incident or issue.

*[References include, but are not limited to: 29 C.F.R. § 1614, 29 U.S.C. § 206(d), 42 U.S.C. § 2000e, 29 U.S.C. § 621, 42 U.S.C. § 2000ff, 29 U.S.C. 621, and DR 4300-010]*

#### **SECTION 2 - Access to EEO Resources**

The Agency will maintain bulletin boards in occupied buildings and provide links containing EEO regulations and resources that can be easily viewed and accessed by employees. Bulletin boards and electronic postings should provide information on EEO resources, counseling, contacts, and the complaint process.

The Agency will be held accountable for enforcing civil rights notifications and electronic postings to create awareness of civil rights. Currently, The Office of the Assistant Secretary for Civil Rights (OASCR) handles all EEO complaints for USDA. They can be contacted directly.

The Agency will provide access to appropriate EEO training opportunities. Supervisors are strongly encouraged to invite participation in and approve employee's requests to attend EEO activities and programs.

*[References include, but are not limited to: DR-4300-001, p. 2]*

### **SECTION 3 - EEO Committees**

An EEO committee may be established by the Agency. To the extent possible, the committee shall be composed of a broad representation of management and non-management employees. The committee will meet by mutual agreement. The Union may participate in EEO-related committees.

### **SECTION 4 - Union Representation**

Employees have the right to Union representation, upon request by the employee, during all stages of the EEO process.

*[References include, but are not limited to: 5 U.S.C. § 7121 (d), DR 4300-006, "Civil Rights Policy for the Department"]*

## ARTICLE 12

### REASONABLE ACCOMMODATION FOR EMPLOYEES WITH DISABILITIES

#### Communication Disabilities

##### **SECTION 1 - General Policy**

Reasonable Accommodation (RA) programs are governed by Federal laws, regulations, rules, policies and this Agreement. A reasonable accommodation is a modification or adjustment to a job or the work environment that enables a qualified person with a disability to perform the duties of their position. If an employee's condition is expected to improve, an RA agreement may indicate the RA will be reevaluated.

*[References include, but are not limited to: DR 4300-008, Executive Order 13164, Section 501 of the Rehabilitation Act of 1973, as amended]*

##### **SECTION 2 - Process**

- A. The Agency will offer reasonable accommodations to the known physical or mental limitations of qualified individuals with disabilities/impairments regardless of the type of appointment, unless the Agency can demonstrate that the accommodation would impose an undue hardship on the operation of the Agency. For the purpose of providing a Reasonable Accommodation, a person is considered to have a disability when they have a physical or mental impairment that substantially limits one or more major life activities permanently or temporarily, and when they have a record of such an impairment. Employees may request reasonable accommodations at any time throughout their employment experience.
- B. BUEs that are unable to participate in the interactive process may consult with any representative of their choosing, including a Union representative. The employee or applicant ordinarily makes RA requests, but a request may be made by a third party (e.g., a family member, medical doctor, or other representative, including a Union representative) on behalf of the employee or applicant.
- C. When an employee with a disability decides to request an accommodation, requests may be made to the employee's supervisor, manager, Mission Area, agency, or staff office Reasonable Accommodation Coordinator (RAC), HR servicing office, or the HR Specialist or contact identified in the vacancy announcement. A request does not have to include any special words, such as "RA," "disability," or "Rehabilitation Act", and can be made verbally or in writing. A supervisor, manager, HR Specialist, or RAC should ask the person whether they are requesting an RA or Personal Assistance Services (PAS) if the nature of the initial communication is unclear. At the time of this Agreement, the email for contacting the Program Manager is: [REEaccommodations@usda.gov](mailto:REEaccommodations@usda.gov)
- D. Employees seeking reasonable accommodations need not disclose personal or medical information to supervisors, because supervisors do not evaluate medical documentation. If the employee provides the supervisor with their medical documentation, the supervisor will not retain any files and contact the RAC for guidance on how to proceed. Employees seeking

reasonable accommodations must provide specific and descriptive documentation to the Program Manager as requested. The Program Manager can provide the supervisor with information on the employee's limitations to facilitate the interactive and decision-making process.

- E. The employee will receive written confirmation of receipt of the RA request within five (5) business days. The supervisor or designee must approve or deny requests for RAs, in writing, within 30 business days of the initial request, absent extenuating circumstances, such as a delay in returning requested medical information or an unscheduled office closure.
- F. If the supervisor or designee denies the request, the denial must be in writing and explain in plain language the specific reasons for the denial. When the denial includes an alternate accommodation offered by the Agency, the denial notice should explain both the reasons for the denial of the requested accommodation and the reasons that the supervisor believes that the alternate accommodation will be effective.

The written denial must also specify:

- a. If a person is denied an RA, they may request reconsideration. After receiving a request for reconsideration, the second line supervisor or designee will render a decision and notify the requester in writing within 14 business days of receiving the request for consideration.
  - b. The employee's right to file an Equal Employment Opportunity (EEO) complaint OR grievance through the negotiated grievance process (but not both), and
  - c. Instructions on how to file an EEO complaint (contact information, time frames, etc.)
- G. The Parties understand a reasonable accommodation involves an interactive process to assist in identifying the necessary adjustments requested and to determine the appropriate accommodation. The Parties agree the interactive process does not constitute a formal meeting requiring advance notice to the Union. The Parties recognize a reasonable accommodation will be determined on a case-by-case basis, taking into consideration the employee's existing limitations in relation to their essential job functions.

*[References include, but are not limited to: DR 4300-008]*

### **SECTION 3 - Categories**

There are three categories of Reasonable Accommodation:

1. A change to the job application process that allows a qualified applicant with a disability to apply and be considered for the position; or
2. A change to the work environment, or to the way a job is customarily performed, that helps a qualified employee with a disability to perform the essential functions of that position; or



3. A change or adjustment that helps an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated employees without disabilities/impairments.

The Agency is not required to provide personal use items needed in accomplishing daily activities as a Reasonable Accommodation (e.g., prosthetic limbs, wheelchairs, eyeglasses, hearing aids, or similar devices).

#### **SECTION 4 - Examples**

Examples of common Reasonable Accommodations include, but are not limited to the following:

Job restructuring - Job restructuring generally means modifying the job to shift or redistribute non-essential job functions that an employee is unable to perform. The employee will then assume other non-essential functions in accordance with classification guidelines. Job restructuring may also involve changing when or how a task is performed. Job restructuring does not include removing, shifting or reassigning essential job functions.

Assistance devices - An employee may be provided an assistance device, if the Agency determines the use of the equipment is necessary to perform official duties. Employees may contact the USDA Target Center for a more complete catalog of the assistive technology, ergonomics, and particular accommodation devices, at <https://www.targetcenter.dm.usda.gov>.

Leave - Unpaid leave may be an appropriate Reasonable Accommodation when an individual expects to return to work after receiving treatment for a disability, recovering from an illness, or taking some other action in connection with his/her disability.

Sick leave can be appropriately used by a disabled individual.

Travel - A Reasonable Accommodation may be provided to employees with disabilities/impairments on a case-by-case basis to ensure equal access to government travel. To provide employees with disabilities/impairments equal opportunity to travel on official business, certain additional travel expenses necessarily incurred to accommodate the employee's disability may be reimbursed under the Federal Travel Regulations.

Telework/Remote Work - Telework/Remote Work may be considered a Reasonable Accommodation on a case-by-case basis when the arrangement would not interfere with the essential functions of the employee's position. The employee must demonstrate how limitations from their disability prevent them from performing their essential job functions at their duty station and how the essential job functions can be performed from their home or another offsite location.

Modified work schedule - A modified work schedule may be considered a Reasonable Accommodation in certain circumstances when there is a direct correlation to the employee's limitations. It may include a number of modifications, such as altering arrival/departure times, providing periodic breaks during the day, or allowing a part time schedule.

Reassignment - Should an employee with a qualified disability become unable to perform the essential functions of their job, after fully exhausting a Reasonable Accommodation, the Agency may seek to reassign the employee if and when a funded vacant position is available.

*[References include, but are not limited to: DR 4300-008]*

## **SECTION 5 - Approved Accommodations**

Once a Reasonable Accommodation has been established, new or updated medical information will only be requested in limited circumstances where the employee:

- a. Requests a new RA;
- b. Is observed by the supervisor or manager having difficulties in performing essential job functions;
- c. Has a change in their disabling condition or functional limitations;
- d. Has a change to their essential job duties that are not addressed by the medical information previously provided; or
- e. Can no longer perform their essential job duties

A Reasonable Accommodation may be reevaluated by the Agency whenever relevant circumstances change, such as;

1. Responsibilities or essential job functions change;
2. Staffing levels change;
3. The employee's medical condition improves or declines; or
4. The Reasonable Accommodation is no longer effective

## **ARTICLE 13**

### **EMPLOYEE ASSISTANCE PROGRAM (EAP)**

**IF YOU ARE EXPERIENCING A CRISIS SITUATION, PLEASE CALL 911 (or the appropriate authorities) promptly!**

#### **SECTION 1 - General**

The Employee Assistance Program (EAP) is a worksite-based program designed to assist in the identification and resolution of work-related and non-work-related productivity problems associated with employees impaired by personal concerns including, but not limited to, health, marital, family, financial, alcohol, drug, legal, emotional, or other personal concerns which may adversely affect employee job performance.

*[References include, but are not limited to: DR 4430-792-1]*

#### **SECTION 2 - Program Purpose**

The purpose of the EAP is to serve as a resource for all Federal Employees and their family members (in accordance with the provisions of the EAP) by providing:

- Assessments, counseling, and referrals (addiction, marital/family issues, physical, emotional, etc.)
- Financial and legal services (debt management, budgeting, savings/investment strategies, identity theft, etc.)
- Critical incident response
- Management consultation and counseling
- Educational presentations, orientations, and outreach

Employees are encouraged to utilize the many resources available through the EAP. Early intervention may be useful in helping the employee return to full productivity.

Family members are:

- Spouse – legally married spouse of an EAP member
- Children – dependents of the EAP Member
- Domestic partner – partner who resides in the home of an EAP member
- Household members – any legal dependent regardless of home address or significant other living in the employee's household
- Student – dependent children of the EAP member who attend school but do not reside with the eligible EAP member

EAP members are employees covered under an Agency EAP

*[References include, but are not limited to: DR 4430-792-1]*

### **SECTION 3 - Contact**

Employees may contact EAP at any time.

If you need assistance, please contact:

1-800-222-0364 (voice)

1-888-262-7848 (TTY)

[www.FOH4YOU.com](http://www.FOH4YOU.com)

Should the contact information for EAP change, the Agency will provide updated information for EAP assistance.

### **SECTION 4 - Record of Participation**

The Agency will assure that no employee will have job security or promotion opportunities jeopardized by a request for counseling or referral assistance. The Agency will ensure that the confidentiality of medical records of employees concerning treatment for problems related to alcohol, drugs, emotional concerns, or other personal issues will be preserved in accordance with current laws and OPM regulations or successors.

### **SECTION 5 - Voluntary Participation and Employee Responsibility**

Employees may voluntarily participate in EAP or their supervisor may refer them for counseling on personal, alcohol, and/or drug problems that adversely affect work performance or conduct.

The existence and functions of counseling and referral programs, including EAP, will be publicized to employees. No employee will be required to participate or be penalized for merely declining referral to counseling services or for participating in the services provided.

### **SECTION 6 - Confidentiality**

Employee counseling sessions are completely confidential, in accordance with State and Federal laws. Information shared during sessions with EAP counselors and resources are not reported back to supervisors and/or managers.

All confidential information and records concerning employee counseling and treatment will be maintained in accordance with applicable laws, rules, and regulations. Some of these include:

- 5 U.S.C. § 552(a) - The Privacy Act of 1974
- 42 C.F.R., Part 2 – Confidentiality of Alcohol and Drug Abuse Patient Records

- The Health Insurance Portability and Accountability Act (HIPAA)

Without an employee's specific written consent, the supervisor may not obtain information about the nature of the employee's voluntary involvement with a counseling program.

NOTE: Disclosure without consent is only permissible in a few specific instances, such as:

- To medical personnel in a medical emergency,
- In response to a court order,
- To comply with Executive Order 12564, "Drug Free Federal Workplace",
- Cases of suspected child abuse or neglect

### **SECTION 7 - EAP Counseling**

Employees who fail to attend voluntary EAP appointments when the employee has been excused from work, may be subject to disciplinary action.

Employees who fail to improve their conduct or performance after a mandated referral (such as a Last Chance Agreement) to the EAP, may have a conduct or performance-based action initiated against them.

*[References include, but are not limited to: DR 4430-792-1]*

### **SECTION 8 – Excused Absence(s)**

For each new event, a supervisor and/or manager shall grant up to one (1) hour of Administrative Leave, or more as appropriate, for the first counseling session (referral phase, this includes travel time to/from an in- person session). Unless it is an emergency, pre-approval of Administrative Leave must be obtained prior to contacting EAP. The supervisor does not need to know the details or reasons for reaching out for EAP services. Thereafter, the employee may use leave (sick, annual, leave without pay, etc.) to attend additional sessions during duty time.

Supervisors will release employees for EAP visits as soon as practicable and as soon as work requirements allow. The Parties will encourage employees, who have identified situations where EAP may be of assistance, to make appointments with the EAP professionals.

The number of excused absences for EAP counseling services will be consistent with the current Agency regulation and/or successors. If short-term counseling is determined to be clinically appropriate, the EAP counselor or local affiliate (if applicable) will also provide this service at no cost up to the maximum allowed by their contract with USDA. The number of excused absences for these counseling sessions shall also be aligned with the maximum stated in the contract between the USDA and the counseling service provider.

REE-EAP allows up to six (6) no cost counseling sessions per topic/event.

**SECTION 9 - Leave Associated with non-EAP treatment**

It is the policy of the Agency to grant leave (sick, annual, or LWOP) for the purpose of treatment or rehabilitation for employees referred by EAP to outside specialists as would be granted for employees with any other health issues.

## **ARTICLE 14**

### **MERIT PROMOTION**

#### **SECTION 1 - General**

Merit Promotion is a system used to consider current and former Federal employees for positions on the basis of personal merit. Positions are usually filled through competition with applicants being evaluated and ranked for positions based on their experience, education, skills, and performance record.

Positions advertised as Merit Promotion allow current Federal employees to apply for jobs without having to compete with the general public.

The Parties agree that Merit System Principles will be applied in a consistent manner, with equity to all employees, and without regard to political, religious, or labor organization affiliation or no affiliation, genetic information (including family medical history), marital status, race, color, sex (including pregnancy and gender identity), national origin, disabling condition, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), or sexual orientation, status as a parent, or any other non-merit-based factor, unless specifically designated by statute as a factor that must be taken into consideration when awarding such benefits, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available, and shall be based solely on job-related criteria.

*[References include, but are not limited to: USAjobs.com]*

#### **SECTION 2 - Actions Covered by Competitive Procedures**

In accordance with 5 C.F.R. § 335.103, competitive procedures will apply to the following types of personnel actions subject to the exceptions explained in Section 3:

1. Promotions,
2. Temporary promotions for more than one hundred twenty (120) calendar days,
3. Details over one hundred twenty (120) calendar days to higher graded positions or to positions with known promotion potential,
4. Selection for training which is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for a promotion as specified in 5 CFR § 410.302.
5. Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in competitive service. Exceptions are actions permitted by reduction-in-force regulations,

6. Transfer to a higher-grade position or with more promotion potential than a position previously held on a permanent basis in the competitive service,
7. Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than previously held on a permanent position basis in competitive service, if the individual did not wait one year or more after separating from Federal employment before applying for reinstatement or did not receive a rating of record for his or her most recent career or career-conditional position of at least Fully Successful (or equivalent).

### **SECTION 3 - Actions Not Covered by Competitive Procedures**

In accordance with 5 C.F.R. § 335.104 and 5 CFR § 335.103, competitive procedures will not apply to the following personnel actions which are exceptions to Section 2 above:

1. Career Ladder Promotions: Career ladder promotions are permitted when an employee is appointed or assigned to any grade level below the established full performance level of the position (i.e., the position has a documented career ladder and promotion potential). These promotions may be made non-competitively for any employee who entered the career ladder by:
  - a. Competitive procedures;
  - b. Competitive appointment from a certificate of eligibles (through OPM or delegated examining authority);
  - c. Non-competitive appointments under special authority; such as conversion of Pathways Program or similar program(s), appointment of former ACTION Volunteers or Peace Corps volunteers, conversion of a Veterans Recruitment Authority (VRA) appointee and Presidential Management Fellows.
2. Promotion Based on Reclassification when:
  - a. No significant change occurs in the duties or responsibilities of the position and the position is upgraded due to issuance of a new classification standard, or the correction of a classification error; or
  - b. The position is upgraded due to accretion of additional duties and responsibilities and the following provisions are met:
    - i. The duties of the former position are absorbed into the new position
    - ii. The new position has no promotion potential;
    - iii. The additional duties and responsibilities assigned or accrued by the incumbent do not adversely affect or impact other positions in the organizational unit;
    - iv. The new position is not a reclassification from non-supervisory to supervisory status; and



- v. The accretion is supported by a written analysis of the position which may involve a position review including written; face-to-face, and/or telephonic reviews with the employee and/or the employee's supervisor, or other fact gathering method.
- 3. Permanent Promotion (to a position held under a temporary promotion) when:
  - a. The assignment was originally made under competitive procedures;
  - b. It was known to all competitors at the time of original appointment that the assignment may lead to a permanent position.
- 4. Temporary Promotion:
  - a. of an employee for less than one hundred twenty (120) calendar days;
  - b. promotion for more than one hundred twenty (120) calendar days to a grade level previously held on a permanent basis, unless the employee was demoted for reason related to performance or misconduct.
- 5. Placement as a Result of Priority Consideration: when the referral is a remedy for candidates not given proper consideration in a competitive promotion action.
- 6. Reduction in Force Placements: which result in an employee receiving a position with higher promotion potential will not occur unless an employee currently holds or previously held the higher grade on a permanent basis in the competitive service.
- 7. Promotion to a Grade Previously Held: on a permanent basis in the competitive service, from which the employee was separated or demoted for other than performance or conduct reasons and not at the employee's request.
- 8. Promotion, Reassignment, Demotion, Transfer, Reinstatement, or Detail to a Position Having Promotion Potential: no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an interchange agreement approved under 5 C.F.R. § 6.7 and did not lose because of performance or conduct reasons.
- 9. Promotion as a legal remedy as ordered and agreed upon in a legal or administrative proceeding.
- 10. Details: for one hundred twenty (120) calendar days or less to a higher graded position or to a position with known promotion potential.
- 11. Reinstatement in accordance with 5 CFR Part 315 to any position in the competitive service for which the individual is qualified at a higher grade level or with more promotion potential than a career or career-conditional position previously held by the individual, provided: The individual has been separated for at least one year before applying for reinstatement, and the individual must have received a rating of record for his or her most recent career or career-conditional position of at least Fully Successful (or equivalent).

#### **SECTION 4 - Temporary Promotions**

- A. Employees will not be detailed and/or temporarily promoted to higher graded positions or positions with known promotion potential for more than a cumulative total of one hundred twenty (120) calendar days during any twelve (12) month period without the use of competitive procedures.
- B. Temporary promotions for qualified and eligible employees will take effect the date requested on the SF-52, or as soon as possible thereafter. Employees must be doing the full scope and performance of the position and be eligible to meet OPM qualifications for temporary promotions. Short term "acting" positions are not considered for temporary promotions.
- C. Details to higher grades will not be interrupted for the purpose of avoiding temporary promotions.
- D. Temporary promotions for more than one hundred twenty (120) calendar days will be advertised and competed in accordance with OPM regulations.

#### **SECTION 5 - Priority Consideration**

An employee who would have been referred but was not given proper consideration due to a procedural violation or error in a previous competitive placement action, may be given priority consideration for the next vacancy that the Agency elects to fill, in the same series, grade(s), promotion potential, and location as the one for which consideration was lost. This means that the employee must be referred to the selecting official for consideration before using the competitive procedures. If selected on the basis of priority consideration, the employee is promoted or reassigned noncompetitively. If the employee refuses priority consideration, the employee forfeits his/her entitlement to the priority consideration.

The selecting official will exercise priority consideration for specific and identified eligible employee(s) prior to selection from a competitive certificate as directed. If applicable, an employee will receive written notification by the authorized Agency official indicating their eligibility of priority consideration. If the eligible employee is not selected, the employee will be given (in writing or by email) the reason for non-selection. Copies of the notice will also be provided to the Union and Human Resources Office.

#### **SECTION 6 - Involuntarily Demoted Employees**

- A. Employees who are involuntarily demoted in the Agency without personal cause due to the following events are entitled to consideration for re-promotion before using competitive procedures:
  - a. An error in the prior classification of a position;
  - b. A change in classification standards without a change in duties and responsibilities;

- c. A change in duties and responsibilities caused by a gradual erosion or by management action; or
  - d. The application of RIF procedures.
- B. Grade retention entitlement lasts for a period of two (2) years and applies to positions at the employee's former grade or at any intervening grades that are to be filled under competitive procedures. The right to this consideration does not apply to a position with promotion potential higher than that of the position held at the time of the change to the lower grade.

### **SECTION 7 - Scope of Competition**

Area of consideration for the vacancy will be determined by the Agency and will be broad enough to reach a high-quality applicant pool while meeting its obligations under the Agency's Outreach and Diversity objectives.

The Agency may consider the use of an area of consideration limited to the local commuting area prior to opening a separate case examining announcement open to all U.S. citizens.

### **SECTION 8 - Vacancy Announcements**

- A. Publication of vacancies will be made through the government wide electronic recruitment site, currently [www.usajobs.gov](http://www.usajobs.gov) (or its successor).
- B. Notification of amendments, cancellations, or other changes to the vacancy announcement will be accomplished through the government electronic recruitment site.
- C. Written notification to the Union will be made not less than five (5) business days prior to the release or posting of the announcement. The Union is allowed to use the USDA email system to notify BUEs of vacancies under the Merit Promotion authority once a vacancy is posted and/or officially announced.
- D. Announcements for BU vacancies will be posted for a minimum of five (5) business days prior to closing date. By mutual agreement the posting period can be adjusted.
- E. Vacancy announcements will include:
  - 1. Statement of nondiscrimination;
  - 2. Announcement number and posting and closing dates;
  - 3. Title(s) title(s), series and grade(s);
  - 4. Anticipated number of (i.e., multiple) vacancies to be filled;
  - 5. Area of Consideration;
  - 6. Type of test(s) to be used, if any;
  - 7. Description of promotion potential, if any;

8. When using an automated recruitment system, each factor/question used to determine the basic eligibility and/or best-qualified candidates will be included on each announcement;
9. Geographic and organizational location;
10. If relocation expenses will or will not be authorized;
11. Summary of the duties of the position;
12. Summary of eligibility and qualification requirements;
13. Permanent or temporary nature, and, if temporary, the duration and if the promotion may be made permanent;
14. Contact information of the Human Resources staff member relating to the announcement;
15. Special working conditions, such as tour of duty, travel requirements, expected overtime, physical requirements, background investigations, etc.;
16. The different levels at which the position may be filled if it is a multiple-level announcement;
17. Additional specific information relevant to the evaluation of the candidates, such as writing samples, portfolios, etc.

## **SECTION 9 - Open and Continuous Announcements**

Open continuous announcements may be used.

An employee may file at any time as outlined on the vacancy announcement for open continuous announcements.

## **SECTION 10 - Application Process**

- A. Employees will follow the requirements for filing an application as outlined in the vacancy announcement.
- B. The Parties agree to encourage employees to take the initiative to become familiar with the current electronic application process/technology identified at the link in Section 8 above and the associated tools available therein. This will help them set up their profiles, apply for vacancies and become aware of what they can expect once the application process is initiated.
- C. It is the employees' responsibility to be aware of open vacancy announcements, to meet application requirements, and adhere to the application process for each announcement.
- D. Employees may contact the local staff, e.g., Administrative Officer (AO), Program Support Assistant (PSA), etc., for assistance about the application process.

## **SECTION 11 - Interviewing**

If interviews are used, they must be job-related, reasonably consistent, and fair to all candidates. Also, if interviews are used, candidates will be interviewed if reasonably available, in person or by telephone or virtual where circumstances warrant.

## **SECTION 12 - Selection**

The selecting official has the right to select or not select any candidates referred. However, the selecting official will give consideration to the candidates' fitness and qualifications, without regard to political, religious, or labor organization affiliation or non affiliation, genetic information (including family medical history), marital status, race, color, sex (including pregnancy and gender identity), national origin, disabling condition, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), or sexual orientation, status as a parent, or any other non-merit-based factor, unless specifically designated by statute as a factor that must be taken into consideration when making a selection. The selection shall be based only on job-related criteria.

Upon request, documents relied upon for the selection process will be provided to the Union in accordance with 5 U.S.C. §7114 (b) (4). Requests must be made no later than thirty (30) calendar days from the date of notification of selection or non-selection.

## **SECTION 13 - Career-Ladder Promotions**

Except as provided below, employees within a career ladder will be promoted to the full performance level as soon as they have:

1. Met the time-in-grade requirements, AND
2. Successfully met the requirements of the current and the next higher grade in the areas in which they have been provided an opportunity and the work is available to perform.

Upon request, the supervisor will meet with the employee and will explain where the employee's performance is lacking and advise what the employee must do to qualify for the promotion. Supervisors will be encouraged to speak with employees throughout the performance rating cycle regarding career ladder promotion opportunities.

## **SECTION 14 - Compensation**

An employee's level of compensation upon promotion shall be set in accordance with applicable regulations.

## **SECTION 15 - Competitive Promotion Records for BU Positions**

In accordance with 5 C.F.R. § 335.103, a file sufficient to allow for reconstruction of the competitive action will be kept for two (2) years, unless there is a grievance or complaint

pending on the particular promotion action, in which case the file will be kept pending final decision of the grievance or complaint.

## **ARTICLE 15**

### **PERFORMANCE MANAGEMENT**

#### **SECTION 1 - General**

Performance plans will be written in a manner that is consistent with Departmental Regulation, its successor and this Agreement.

- A. The application of performance standards and the determination of acceptable levels of competence will be made in a fair, objective, job-related and measurable manner.
- B. It is the Agency's policy to operate a performance appraisal program in a manner which is consistent with applicable statutes, Department Regulations, Agency Policies and Procedures and this Agreement.
- C. When the employee is evaluated, Management will take into consideration any factors that may be beyond the control of the employee.
- D. A written performance plan will be provided to each employee covered by this Agreement at the beginning of each appraisal period (normally within thirty (30) calendar days).
- E. Employees shall be required to perform at a level of fully successful.
- F. Conduct and performance management problems may coincide, but they are distinct issues. A pending conduct consideration will have no bearing on conducting progress reviews and/or issuing a timely rating of record solely based on the employee's job performance.

#### **SECTION 2 - Policy**

- A. The official appraisal period, for which a performance plan must be prepared and monitored, and for which a summary performance rating (rating of record) will be issued, is normally October 1 through September 30 of each year.
- B. The performance rating prepared at the end of an appraisal period is for performance of assigned duties over the entirety of the specified appraisal period.
- C. The minimum performance appraisal period is ninety (90) days . If an employee is not on a performance plan for ninety (90) days, the employee cannot be rated.
- D. A written performance plan will be provided to each employee normally within thirty (30) days of the new performance period. The performance plan will contain all of the written critical performance elements and their performance standards.

- E. The performance plan must be communicated to the employee before the employee may be held accountable. The employee will be requested to sign and date the plan to acknowledge they have received their performance plan. The Performance Plan does not need to be signed by the employee in order for it to be implemented.
- F. Standards established for an employee's position shall be in writing and communicated to the employee when the employee enters a position or when a new standard is established, or when a change in the performance standard occurs within the employee's position. Evaluation of performance standards will be consistent with written procedures.
- G. Progress reviews by the supervisor also known as Quarterly Conversations will normally be conducted by the supervisor no less than one (1) time per quarter. The purpose of the conversations is to facilitate regular and ongoing communication between the supervisor and the employee that supports the attainment of organizational and individual goals and promptly identifies and addresses any performance concerns. Supervisors and employees are encouraged to communicate frequently during the appraisal period and discuss any performance concerns that may arise as soon as possible.
- H. Normally the immediate supervisor will be responsible for establishing the employee's performance plan, conducting the quarterly conversations, and preparing the final performance appraisal rating (rating of record).
- I. Normally the employee's second-level supervisor will review and approve the performance plan and the final performance appraisal rating (the rating of record). Reviewing Officials are reviewing narrative assessments and element ratings for accuracy, objectivity, completeness, and consistency with the plan's standards.
- J. When an employee changes positions and has served the minimum appraisal period of ninety (90) days in the new position, the rating official will prepare an interim rating. This interim rating will be considered and given appropriate weight when the next rating of record is done. An interim rating is not utilized if the employee is not in a position for less than 90 days.
- K. When an employee is reassigned, they will be given appropriate training when applicable. In the course of evaluating work performance, management will consider any changes of position, the need for learning new job skills and duties, and the nature and timing of training provided.

*[References include, but are not limited to: DR 4040-430, Employee Performance Management]*

### **SECTION 3 - Performance Standards**

- A. Standards describe results, outcomes, goals, and accomplishments, rather than lists of duties and responsibilities. They are the performance thresholds, requirements, and/or expectations an employee must meet for an element to be appraised at a specific level of performance.
- B. Measures are the defined indicators within the standards used to determine how well the employee produced or provided products or services. They are criteria that are observable



and/or demonstrable, and may gauge quality, quantity, timeliness, cost effectiveness, and/or manner of performance. Measures must be balanced and credible.

- C. Each element's standards must be defined at the Fully Successful level. Standards Cannot be made more or less rigorous based on a particular employee's perceived strengths or weaknesses, nor based on past performance.
- D. Absolute standards, which allow for no errors, are prohibited unless a single failure could result in loss of life, injury, breach of national security, or great monetary loss.
- E. Backwards standards, which describe unacceptable performance rather than describe what level of performance is expected, are prohibited.
- F. Standards and measures may be defined with milestones throughout the performance year to ensure continual progress is being made.
- G. Assigning generic standards to all employees, regardless of the type of work they do, is prohibited if the generic standards do not truly represent their work.

Generic standards covering similar positions with similar responsibilities must ensure that expectations reflect the respective employee's actual duties and responsibilities, and are clearly and specifically communicated.

#### **SECTION 4 - Employee Responsibilities**

All employees are responsible for:

1. Participating in discussions with their supervisor concerning the development of performance elements, standards and measures and participating in their quarterly conversations and performance appraisals;
2. Ensuring they familiarize themselves with their Position Description and performance plan,
3. Requesting clarification of expectations if necessary, and proactively requesting information from the supervisor in order to perform at a Fully Successful;
4. Taking responsibility to improve their own performance and support team endeavors;
5. Seeking performance feedback from their supervisor and, as appropriate, from internal and external customers;
6. Identifying work problems or other obstacles which may hinder the accomplishment of performance expectations, and working with the supervisor to resolve them;
7. Documenting their performance and being prepared to provide written specific examples of their accomplishments including feedback from internal and external customers during the performance appraisal discussion).

#### **SECTION 5 - Management Responsibilities**

1. Performance plans are not required to be uniform, but they must be fair and equitable throughout the Supervisors' respective management unit(s).
2. Establish meaningful and achievable performance expectations in a performance plan for each subordinate employee.
3. Performance elements must reflect the responsibilities and duties expected to be performed by the employee, consistent with their position description.
4. Performance elements must represent work assignments and responsibilities that are within the employee's control.
5. To the extent practicable, work is planned in advance so that expectations and goals can be met.
6. Engaging the employee in the process of establishing the employee's performance plan, which means seeking and including employee's ideas and opinions in the development of performance plans. Disagreement regarding the establishment of performance measures between the employee and supervisor will not impede the implementation of the Performance Plan. Final determination of the performance plan rests solely with Management.
7. Communicating performance expectations clearly, monitoring performance during the appraisal period and providing performance feedback and performance coaching to employees, providing development opportunities as applicable for the employee's current scope of position and career ladder promotion as applicable, and taking appropriate actions to address performance not meeting expectations.
8. Developing a culture of engagement and recognition for work done well. Recognizing and rewarding employees whose achievements so warrant.
9. Preparing performance appraisals in a timely manner and ensuring equity and consistency in performance appraisals
10. Providing training when applicable (e.g., technical and/or safety training on equipment, new technologies and changes in procedures).
11. Employees who are approved for telework or remote work should not be held to a higher or lower production standard than those who are not utilizing the flexibility.

## **SECTION 6 - Performance Appraisal**

Normally, a written final performance appraisal (Rating of Record) will be issued to each employee by the established Agency deadline which is typically October 30.

## **SECTION 7 - Unacceptable Performance**

The Parties recognize that there is an important duty to accomplish the mission of the Agency in an effective and efficient manner, and to encourage employees to perform to the best of their ability. They also recognize that the work performance of individuals varies on a daily basis.

Supervisors are responsible for monitoring their employees' work throughout the performance year. Supervisors are encouraged to act informally, when appropriate, at an early stage to correct any decline and avoid the need to take formal action.

The Parties agree that a current and accurate Position Description must be in place before performance problems can officially be addressed.

If at any time during the performance appraisal period an employee's performance is determined to be unacceptable in one or more critical elements, the supervisor or designee must:

1. Notify the employee of the performance element(s) for which performance is unacceptable,
2. Inform the employee of the performance requirement(s) or standard(s) that must be attained to demonstrate acceptable performance. The supervisor or designee must inform the employee that unless his/her performance in the critical element(s) improves to, and is sustained at, an acceptable level, the employee may be reassigned, reduced in grade or removed.

An element rating may not be lowered:

1. If the employee was on pre-approved leave, or other approved absence during the performance appraisal period, the goal could not be achieved solely because of the employee's absence.
2. Because of work that could not be completed due to an abbreviated performance year; and/or
3. For not meeting a specific standard due solely to factors outside the employee's control.

**Demonstration Opportunity (DO):** The goal of the Demonstration Opportunity period is a mutual desire to return the employee to fully successful performance as soon as possible. A DO should not be used as, or considered as, a punitive tool. For performance element(s) in which the employee's performance is unacceptable, the supervisor or designee must afford the employee a reasonable opportunity to demonstrate acceptable performance, normally 30 days commensurate with the duties and responsibilities of the employee's position and place the employee on a formal DO.

**Elements of a DO plan must:**

1. Clearly identify and describe the performance in which the employee is required to demonstrate for the element(s) that are not currently being performed at the Fully Successful level,
2. Identify and describe the goals of each failed Element that needs(s) to be met in order to obtain a Fully Successful rating,

3. Not describe the performance in a manner that defines what would have to be done to fail to demonstrate acceptable performance,
4. 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,
5. 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,
6. Describe how the performance will be measured and assessed, and
7. Must describe any assistance the Agency will provide to the employee in order to bring the employee's performance up to the Fully Successful level. This includes the weekly feedback meeting, normally conducted by the first line supervisor or designee where feedback is provided regarding the employees progress on the DO.

*[References include, but are not limited to: DR 4040-430]*

The length of the DO should be determined by:

- a. The complexity of the work
- b. The duration of the segment of work which would provide adequate evidence that performance at the Fully Successful level is or is not demonstrated (i.e. achievable within the duration of the DO), and
- c. Whether the employee has previously demonstrated acceptable performance, as defined at the Fully Successful level of the current performance plan.

Employees demonstrating an acceptable level of performance during their Demonstration Opportunity period, are required to maintain an acceptable level of performance for one (1) year from the beginning of the opportunity period

Employees failing to demonstrate an acceptable level of performance for a Critical Element during the opportunity period or for one (1) year from the beginning of the opportunity period, may be subject to reassignment, reduction in grade, or removal action. The Agency will allow an employee who wishes to raise a medical condition which may have contributed to his or her unacceptable performance to furnish medical documentation.

## **SECTION 8 - Details, Temporary Duty Assignments (TDY) and Temporary Promotions**

Performance plans must be provided for details and temporary promotions of ninety (90) days or more. Performance plans will be provided in writing to the employee normally within ten (10) calendar days of the start of the detail or temporary promotion.

The supervisor or designee responsible for the detail or temporary promotion should document the employee's accomplishments at the end of the TDY assignment or detail and forward the

documentation to the employee's supervisor of record or designee for appropriate consideration and if applicable, incorporation into the overall appraisal.

### **SECTION 9 - Individual Development Plan (IDP)**

As a part of the performance planning process, each employee is encouraged to discuss short- and long-term learning and developmental goals with the supervisor and develop a plan for achieving them. IDPs are not mandatory but can provide a common ground on which employees and supervisors can discuss elective training, education, and developmental activities in which employees may engage to improve their knowledge, skills and abilities, and job performance.

## **ARTICLE 16**

### **TRAINING**

#### **SECTION 1 - General**

The Parties acknowledge the importance of training and employee development to the mission of the Agency and to the morale and wellbeing of the employees. Therefore, the Agency will make all necessary training available in order for BUEs to perform their assigned duties.

Employees will receive all appropriate training necessary to perform their assigned duties.

- A. The Agency will provide employees with appropriate job-related training necessary to perform their duties in a safe, healthy, environmentally conscious, and efficient manner. The Agency will allow BUEs the opportunities and resources needed to complete all job-related training.
- B. The Agency will attempt to provide opportunities for employee development and advancement. Workload and funds permitting, support personnel will be encouraged to participate in work related technical conferences, training, workshops, and seminars.
- C. Employees who desire information regarding training opportunities should first consult with their supervisors. If additional assistance is required, the employee may seek it from the second line supervisor.
- D. A joint Labor-Management presentation will be offered to BUEs and supervisors. Logistics and scheduling will be determined by mutual agreement.
- E. Employees will not be reimbursed for unauthorized training.

#### **SECTION 2 - Individual Development Plans (IDPs)**

Individual Development Plans (IDPs) can be an effective tool for the development of USDA employees. As part of long-term career planning, employees, supervisors, and managers can use IDPs to outline training and more importantly, create activities that will lead to a more engaged, effective and skilled workforce.

IDPs are also an important part of succession planning by helping employees develop skills that may be needed for the Agency's mission in the future. The use of IDPs can also help close employee competency gaps.

Employees' professional development is an asset to the Agency's mission and should be an ongoing process to ensure employees are staying current in their fields and mission-critical competencies. Planning for continuous development must be anchored to the Agency's mission, goals, objectives, and needs, as well as be tied to the employee's work and career goals, including licensing and certification.

Unscheduled discussions concerning an employee's training needs and career development opportunities may be initiated by the employee or supervisor at any time separate from the process to develop an IDP.

The supervisor's approval of an IDP does not commit the Agency to obligate funds for training and/or courses contained within an IDP.

Due consideration should be given to allow employees the opportunity to attend requested training and career development opportunities contained in a BUE's IDP

### **SECTION 3 - Additional Training**

The following provisions shall apply to programs or training sessions which may not be directly related to the duties and responsibilities of the position, and which are conducted virtually or within the respective local commuting areas of the Official Duty Station or telework locations.

- A. Employees must obtain advance approval from their immediate supervisor to attend such training if the training occurs during scheduled hours of duty.
- B. Supervisors are strongly encouraged to give favorable consideration to such requests, subject to workload and budget.
- C. Programs or training sessions which are covered by this section concern career-related matters (e.g., retirement, EAP, etc.)
- D. Training may be provided by the Agency, other governmental agencies, and/or non-governmental entities.
- E. The Agency may provide training related to benefits, retirement, TSP, etc.
- F. The Agency must provide appropriate training, as determined by management, and support for all necessary programs, applications, and platforms (WebTA, ARIS, CATS, EPMA, etc.).

### **SECTION 4 - Travel costs associated with Training**

In accordance with current travel regulations, the Agency will pay all approved expenses, including travel, in connection with training required to perform the duties assigned, consistent with applicable laws, rules, and regulations.

### **SECTION 5 - Reassignments and New Assignments**

When employees are reassigned to new positions or assigned new duties in connection with their current positions, the Agency will provide the training necessary to enable employees to successfully perform required duties.

### **SECTION 6 - Scheduling Training**

When training requests are approved by Management, employees will be allowed to attend the training during regular duty hours, as appropriate. Employee absences from work, as required by

the training schedule, will be granted. Schedule adjustments will be made to accommodate an employee's training or educational program.

#### **SECTION 7 - Training Information**

The Agency shall inform employees about required training and deadlines. Employees may request extensions to complete required training if necessary.

#### **SECTION 8 - Notification**

Employees will be notified of approval or disapproval of training requests within seven (7) calendar days of the request and at least one (1) workday prior to the starting date of the training.

#### **SECTION 9 - Training Information**

The Agency shall inform employees about required training and deadlines. Employees may request extensions to complete required training if necessary.

#### **SECTION 10 - Notification**

Employees will be notified of approval or disapproval of training requests within seven (7) calendar days of the request and at least one (1) workday prior to the starting date of the training.

#### **SECTION 11 - Union Recommendations**

At any time, the Union may bring to the attention of the appropriate Management officials any training needs the Union deems necessary for the performance of the duties of employees. Management officials agree to give serious consideration to these recommendations.



## **ARTICLE 17**

### **SAFETY AND HEALTH**

#### **SECTION 1 - General**

The Parties recognize that providing for the safety and health of employees is critical for the Agency to meet its overall mission. The Agency is responsible for providing and maintaining workplace conditions that are free from recognized hazards, and are consistent with applicable laws, regulations [e.g. the Occupational, Safety, and Health Administration (OSHA)], policies and all other applicable safety requirements and codes. The Union will encourage all BUEs to perform their assigned duties in a safe manner, adhering to known and established laws and regulations. Bargaining obligations will be fulfilled as necessary based on changes to applicable safety laws, rules, and regulations.

BUEs will not be subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthful working condition or other participation in the Agency's Safety and Health Management Program.

*[References included, but are not limited to: 29 U.S.C. § 654, 29 U.S.C. § 668, DR 4410-004, General Duty Clause]*

#### **SECTION 2 - Protections**

The Agency will provide BUEs with information, whether requested or not, about all potentially hazardous materials with which they may come in contact. BUEs have the right to know what hazards are present in the workplace and how to protect themselves, as well as be provided with the means to do so. The Agency must adhere to the Federal Right To Know Law and provide employees with current and relevant information and resources.

Employees will not be subject to restraint, interference, coercion, discrimination, or reprisal for filing reports or complaints about unsafe and/or unhealthy working conditions, or for participating in Department or Agency-sponsored safety programs, courses, or activities.

BUEs have the right to decline to perform their assigned task because of a reasonable belief that under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting.

*[References include, but are not limited to: 29 C.F.R. § 1960 (Health Act)]*

BUEs must report, orally or in writing, unsafe or unhealthful working conditions, known to them, to their immediate supervisor and/or safety officer. All reports of unsafe or unhealthful working conditions will be investigated by the Agency. No employee will be unreasonably required to work in a situation, determined by an appropriate Agency official, that poses the threat of an imminent danger or significant health hazard.

The Agency will investigate the reported condition as soon as practical. Pending the nature of the hazard or safety condition and speed of response, the Union will be afforded an opportunity to be present during the inspection. The availability of the Union representative will not impede the inspection. The Union representative, if available, will be granted official time for this purpose.

The Agency will ensure a timely response to an employee report of hazardous conditions. The official, final report, if any, will be shared with the Union.

The Agency, as appropriate, shall promptly take corrective action to mitigate safety and health issues in the workplace. If an imminent danger exists that could reasonably be expected to cause death or serious physical harm, the Agency shall undertake immediate abatement action and withdraw all employees not necessary for abatement of the dangerous condition.

*[References include, but are not limited to: 29 C.F.R. § 1977.12]*

The Agency is responsible for acquiring and maintaining, for employee use, all necessary personal protective equipment (PPE), safety equipment, and other devices necessary to protect employees. Wherever possible, the Agency shall provide Automated External Defibrillators (AED) in occupied buildings.

*[References include, but are not limited to: 29 C.F.R. § 1960]*

The Agency will provide appropriate and adequately stocked first-aid kits in all buildings. The locations of the kits will be clearly marked and easily accessible to occupants of the building. Periodic assessments will be conducted to assess the specific needs of the worksite and stock the first aid kit appropriately.

Employees shall observe and practice all safe and healthful work procedures required for the tasks they are assigned, including knowledge of the hazards associated with the duties of their position (Job Hazard Analysis) and complying with Standard Operating Procedures for each task. Duties should be performed in a safe manner using appropriate personal protective equipment. Accidents and unsafe conditions must be reported to their supervisors.

The Agency will ensure a timely response to an employee report of hazardous conditions and will investigate the reported condition as soon as is practicable. To the extent possible, 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 workplace unless it would be hazardous to accompany the inspector. The Union representative will be granted official time for this purpose.

### **SECTION 3 - Union participation on the BARC and the USNA Safety Committee**

The Union will be afforded one (1) Union representative to serve on each safety committee established at BARC and USNA. The Union representative will be given Official Time to attend all meetings related to safety.

BUEs, as determined by management, may be afforded the opportunity to serve on all safety committees. They will serve on these committees on duty time.

#### **SECTION 4 - OSHA Notices and Regulations**

The Agency will maintain electronic postings (Axon + or employee accessible website) and physical postings of required OSHA notices informing employees of the protections and obligations provided for in the Occupational Safety and Health Act of 1970 (the Act). Such notice(s) shall be posted by the employer in each establishment in a conspicuous place(s) where notices to employees are customarily posted.

*[References include, but are not limited to: 29 C.F.R. § 1903.2]*

#### **SECTION 5 - OSHA Complaints**

BUEs and/or the Union have the right to file a complaint with OSHA or report a work-related injury or illness without fear of retaliation. The Union will be given an opportunity to participate, accompany and observe any inspections conducted by an OSHA inspector. Only one (1) Union representative will be granted Official Time for this purpose.

Employees must have safe and healthy working conditions in order to perform their duties. Upon request, the Union will receive, via the official Union email:

- All OSHA complaints received by BARC or USNA
- Final Agency responses to OSHA complaints

*[References include, but are not limited to: 29 C.F.R. § 659, 29 C.F.R. § 1960.30, Executive Order 12196, and DR 4410-004 (3)(e)]*

#### **SECTION 6 - Building Environment and Potable Water**

The Agency will adhere to all OSHA standards and regulations, and where none exist, applicable recommendations for building environments. The Agency will, to the extent practicable, maintain reasonable building controls and take appropriate action to allow employees to continue to work in a safe and healthful environment while corrective action is being taken.

Potable water will be provided in all employee occupied buildings. Employees will be notified when adequate potable running water is not available within an occupied building.

#### **SECTION 7 - Fire Watch**

The Agency must ensure, to the extent practicable, that all alarm systems are maintained in operating condition except when undergoing brief repairs or maintenance. Fire Watches are implemented when any parts of the Fire Alarm/Suppression systems are inoperable for four (4) hours or more in any 24-hour period.

Fire Watches, should they be necessary, will comply with all applicable laws, rules, regulations, and National Fire Protection Association (NFPA) Standards (when not in direct conflict with Federal laws).

BUEs will receive adequate and appropriate training and resources (per NFPA guidelines) prior to performing any duties related to fire watch.

*[References include, but are not limited to: 29 C.F.R. § 1910.165, OSHA General Duty Clause, Section 5]*

## **SECTION 8 - Ergonomics**

Employees may request an ergonomic review of their work area and duties at any time through the TARGET Center.

Once the ergonomic review has been completed, supervisors will review the report with the employee to determine the necessary outcomes. Ergonomic adjustments to the work area and/or equipment may be acquired if deemed necessary.

TARGET Center Website

<https://www.targetcenter.dm.usda.gov>

TARGET Center Email

[target-center@usda.gov](mailto:target-center@usda.gov)

TARGET Center Phone Number

(202) 720-2600

## **SECTION 9 - Training**

Appropriate safety and health training, which is current and relevant, is essential for employees to safely carry out the Agency's mission. Proper and ongoing safety and health related training for employees leads to fewer injuries and illnesses, improved morale, lower insurance premiums, and higher retention.

The Agency will adhere to the training requirements for workplace safety as outlined in 29 C.F.R. § 1910.

*[References include, but are not limited to: Training Requirements in OSHA Standards]*

## **SECTION 10 - Collateral Duty Safety Officer (CDSO)**

Collateral Duty Safety Officers (CDSO) are employees who assist in implementing aspects of the Agency's safety program and can serve as a point of resource and contact for management units.

CDSOs are not responsible for ensuring the safety and health of employees, rather their role is to provide information and assistance for employees in matters of safety and health in the workplace.

CDSOs must have appropriate training, knowledge, skills, abilities, and qualifications commensurate with the scope of their assigned CDSO responsibilities, as determined by the Agency, to perform the duties requested of them. CDSOs are not Safety and Health Specialists and should perform duties or responsibilities within the scope of their training and qualifications.

*[References include, but are not limited to: 29 C.F.R. § 1960.58, DR 4410-004, REE 160.0M]*

### **SECTION 11 - Medical Surveillance Program**

Medical surveillance is the systematic assessment of employees exposed or potentially exposed to occupational hazards, with the goal of reducing, and ultimately preventing, occupational illnesses and injury.

The Agency will provide, at no cost to employees, occupational medical screening and surveillance through a qualified medical surveillance provider (e.g. Federal Occupational Health [FOH] program). Participation by employees is optional and voluntary, unless specifically required by OSHA. Participating employees will be provided an occupational medical exam no less than once a year.

Any and all medical records will remain confidential. Only personnel authorized by law, rule, or regulation will have access to employee medical information and documentation.

*[References include, but are not limited to: 29 C.F.R. § 1910.120 (f), 29 C.F.R. § 1910.134, 29 C.F.R. § 1910.1030, 29 C.F.R. § 1910.95]*

### **SECTION 12 - Reporting Workplace Illnesses and injuries**

BUEs who become injured or occupationally ill in the performance of duties should report the injury or illness to their supervisor or designee as soon as possible. The supervisor or designee will provide the BUE with proper protocols, procedures, and points of contact so the BUE can obtain necessary medical assistance and/or treatment, and the incident can be documented appropriately. Supervisors must provide access to forms as required by law, rule, or regulation.

The Agency and the BUE shall work cooperatively to ensure that all paperwork in connection with compensation claims are processed promptly and accurately.

## **ARTICLE 18**

### **PERSONAL PROTECTIVE EQUIPMENT (PPE)**

#### **SECTION 1 - General**

Personal protective equipment, commonly referred to as "PPE", is equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. These injuries and illnesses may result from contact with chemical, radiological, physical, electrical, mechanical, or other workplace hazards. The Parties agree that the Agency will provide PPE as a requirement under the law.

Personal protective equipment may include items such as gloves, safety glasses and shoes, earplugs or muffs, hard hats, respirators, or coveralls, vests and full body suits. BUEs are required to use all applicable PPE supplied by the Agency.

*[References include, but are not limited to: 29 CFR 1910]*

The Agency and the Union agree that providing PPE is beneficial to BUEs and the mission of the Agency. The Parties agree that employees are responsible for wearing all items provided for by this article.

When hazard controls such as elimination or substitution, engineering controls and administrative controls are not feasible or do not provide sufficient protection from hazards as defined above, employers must provide PPE to their workers and ensure its proper use. Employees will receive appropriate instruction on how to properly use PPE and know:

- When it is necessary
- What kind is necessary
- How to properly put it on, adjust, wear and take it off
- The limitations of the equipment
- Proper care, maintenance, useful life, and disposal

#### **SECTION 2 - PPE Determination**

A Job Hazard Analysis (JHA) is a technique focused on the hazards of a job, the development of plans to do the job safely and the elimination or mitigation of hazards before conducting the job. The JHA plan is a living document and must be updated as needed to remain current.

Supervisors and employees should work together to develop, maintain, and update JHAs so that potential injuries and illnesses can be reduced or eliminated, and proper PPE use can be established. Supervisors and managers are ultimately responsible for the content of JHAs and ensuring that they are developed, accessible, relevant, and implemented.

*[References include, but are not limited to: OSHA 3071]*

### **SECTION 3 - Equipment**

PPE issued will provide protection to employees subjected to conditions for which an OSHA standard exists or is required by regulation. All PPE shall be certified or approved to provide protection from hazard at the approval level of safety. PPE should not be altered or modified by a BUE. Any issue with fit or function of PPE should be raised with the supervisor for appropriate action. BUEs are responsible for cleaning and maintaining or properly disposing of issued PPE. PPE shall be furnished and replaced, when necessary, by Management at no cost to the employee.

PPE is only required while the employee is actively working in a hazardous area or exposed to potential hazards.

### **SECTION 4 - Reasonable Accommodations for PPE**

BUE's with a medical condition that may impact their use of PPE may engage in the Reasonable Accommodations process.

## **ARTICLE 19**

### **UNIFORMS**

#### **SECTION 1 - GENERAL**

The Parties agree that maintaining an appropriately uniformed workforce can promote the mission of the Agency. Uniforms are defined as distinctive clothing worn by employees who perform the same or similar official duties. Uniforms serve multiple purposes, including increased security, safety, identification, and minimizing wear and tear on employees personal clothing. The Agency retains the right and responsibility to develop and administer procedures pertaining to uniform procurement, distribution, and maintenance.

#### **SECTION 2 - UNIFORM APPEARANCE**

BUEs required to wear a uniform will report for duty with clean and presentable uniforms so as not to erode public confidence in the professionalism of the workforce. No items shall be worn which have inappropriate sayings and/or illustrations that are discriminatory, harassing, or derogatory to employees, the Agency, or general public.

#### **SECTION 3 - UNIFORMS**

Management shall determine and supply designated personnel with the proper uniforms and has discretion as to how uniforms are provided. Uniforms will be body-type appropriate and allow proper range of motion as well as maintain safe working conditions. All uniforms, regardless of how they are provided, remain the property of the Federal government and must be returned upon separation or reassignment.

Supervisors will provide their employees with the appropriate procedures for obtaining, maintaining, and returning uniforms.

In general, uniforms may consist of long and short sleeve shirts, pants, and appropriate footwear.

Foul weather gear, rain suits and/or insulated snow suits and hats, etc. shall be supplied to appropriate BUEs as determined by management. During periods of excessive temperatures and other extreme conditions, as identified by management and established written protocols, uniform alternatives may be considered.

Employees requesting an exception or modification to the uniform due to medical reasons or disability may contact the Reasonable Accommodation office for guidance (see Article 12: Reasonable Accommodations)



## **ARTICLE 20**

### **EMERGENCY PREPAREDNESS**

#### **SECTION 1 - Notification and Communication**

The Parties agree to use established Agency and Location plans and procedures in regards to emergency situations. Due to the potential impact on BUEs, any changes to these Location plans and procedures that were not made by the Safety and Health committee, will be provided to the Union at least ten (10) calendar days prior to implementation for review and bargaining as appropriate. Either party may request an informal meeting on the proposed change(s) prior to the demand to bargain notice being submitted.

The Agency shall ensure that there is an emergency notification system that allows immediate notification of emergency situations.

BUEs will be provided with emergency phone numbers during New Employee Orientation and any emergency response related training information and links. Emergency numbers will be posted prominently throughout the facility.

Managers and supervisors must review emergency procedures with their employees on a regular basis so that the supervisor is aware of any potential challenges and the employee is able to more efficiently transition should an emergency occur.

BUEs shall have access to emergency preparedness plans that establish procedures for safeguarding lives in the event of incidents such as fire, earthquake, bomb threat, tornado, flood or other natural or man-made emergencies. At any time, BUEs may request specific information on emergency plans from applicable Agency personnel.

#### **SECTION 2 - Occurrence of an Emergency Situation**

If there is an emergency situation in a worksite, the primary concern is for the preservation of the safety and health of employees. BUEs, except for those who are designated to remediate the emergency situation, will not be required to enter an evacuated area until it is determined that there is no longer a danger to personnel.

The Agency may authorize BUEs to utilize alternative facilities on the premises or elsewhere. Employees who are telework ready may be asked to complete their tour of duty at an approved alternate work site. Administrative leave may be authorized and/or granted at senior Agency leadership discretion.

BUEs requesting leave during emergency situations should do so in accordance with Article 30: Leave. BUEs who are denied leave for emergency situations will be given written notice as described in Article 30: Leave. Determinations of relief from duty during emergency situations will be considered on a case-by-case basis.

## ARTICLE 21

### WORKPLACE VIOLENCE AND ANTI HARASSMENT

Workplace violence can be any act of violence, against persons or property, threats, intimidation, harassment, or other inappropriate, disruptive behavior that causes fear for personal safety at the work site. Workplace violence can affect or involve employees, visitors, contractors, and other non-Federal employees. Workplace violence is a serious safety concern and according to OSHA, one of the leading causes of job-related deaths.

Employees perceiving imminent physical danger should remove themselves from the threat and immediately call 911 for law enforcement assistance. Then call the Security Services Unit at 301-504-8000 to notify them of the onsite emergency.

Harassment (including bullying) may include any conduct that is offensive, hostile, abusive, demeaning, insulting, tormenting, threatening, or intimidating. Harassment may be verbal, non-verbal, written, or physical conduct.

*[References include, but are not limited: USDA Handbook on Workplace Violence Prevention and Response, DR 4200-003, and DR 4200-001]*

Workplace violence comes in many forms. These can include:

- Direct threats
- Intimidation
- Harassment
- Implications or suggestions of violence
- Stalking
- Bullying
- Possession, use, or threat of use of a dangerous weapon

Employees who feel there is an immediate threat of violence to people or property or a life-threatening emergency is witnessed or perceived, should safely remove themselves from the dangerous situation and follow any local safety protocols and/or utilize resources as outlined below.

Employees should reach out to any available resources and avenues if they feel they are experiencing workplace violence. Some of these resources include:

- Immediate supervisor
- NEA Security Services Unit

- o Beltsville Location - 301-504-8000
- o USNA Location - 202-655-7264 (if no response, call 301-504-8000)
- USDA Workplace Violence Prevention and Response Program
  - o [WorkPlaceViolencePrevention@usda.gov](mailto:WorkPlaceViolencePrevention@usda.gov)
  - o 1-877-987-3747 (24/7 Helpline)
  - o 202-603-5366
- Employee Assistance Program (EAP)
  - o 1-800-222-0364
  - o [www.FOH4You.com](http://www.FOH4You.com)
- Office of the Inspector General (OIG)
  - o 1-800-424-9121
  - o <https://usdaoig.oversight.gov/resources/hotline-information>
- Negotiated Grievance Process - as outlined in Article 34 of this Agreement
- Office of Outreach, Diversity, and Equal Opportunity (ODEO)
  - o Cooperative Resolution Program (Alternative Dispute Resolution - ADR)
    - [coopres@ars.usda.gov](mailto:coopres@ars.usda.gov)
    - 202-720-6161
  - o Equal Employment Opportunity (EEO) complaint
    - [ccd\\_informal@usda.gov](mailto:ccd_informal@usda.gov)
    - 202-720-6161

*References include, but are not limited to:*

- *5 USC § 2302 - Prohibited Personnel Practices*
- *DR 4200-001 - Workplace Violence Prevention and Response Program*
- *DR 4300-007 - Processing Equal Employment Opportunity (EEO) Complaints of Discrimination*
- *DR 4710-001 - Alternative Dispute Resolution*
- *DR 4070-735-001 - Employee Responsibilities and Conduct*
- *DR 4200-003 - Anti-harassment Program*

## **ARTICLE 22**

### **DRUG TESTING PROGRAM**

#### **SECTION 1 - General**

Drug testing for the Federal workforce is the process that analyzes urine and/or oral fluid samples for the presence of drugs or drug metabolites in accordance with methods and protocols established by the Department of Health and Human Services (HHS).

The Parties agree that drug testing for BUEs at BARC and USNA will be governed by and administered in compliance with Federal laws, regulations, rules, policies, and the Mandatory Guidelines for Federal Workplace Drug Testing issued by HHS, as well as this Agreement.

#### **SECTION 2 - Controlled Substances**

Illegal drugs are controlled substances that are not legally possessed or used under the supervision of a licensed health-care professional or other lawful authority.

The following drugs or categories of drugs constitute the basis of the USDA drug testing program, and will be tested for in each sample:

1. Marijuana,
2. Cocaine
3. Opiates (e.g., Codeine, Morphine & 6-Monoacetylmorphine
4. Amphetamines, and
5. Phencyclidine (PCP)

The Parties understand that Marijuana, and its metabolites, may be legal for medicinal and recreational use according to state laws, however at the time of full execution of this Agreement, Federal laws classify Marijuana and its metabolite, Tetrahydrocannabinol (THC), as controlled substances. Marijuana (including THC) are therefore subject to drug testing and reporting when levels are above the established cutoff concentrations. In addition, CBD products (even those noted as THC-free) may contain amounts of THC that could impact drug testing.

*[References include, but are not limited to: 20 U.S.C. § 1415(k)(7), The Controlled Substances Act - 21 C.F.R., 21 CFR § 802(6), 21 C.F.R. Chapter 13, DR 4430-792-2 Appendix D]*

#### **SECTION 3 - Random Testing**

Random Drug Testing is a system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs. Random drug testing may be one of two methods:

1. Uniform announced testing of employees occupying Testing Designated Positions (TDPs) in a specified area, organizational element, or position: or
2. A statistically random sampling of a percentage of such employees based on a neutral criterion (i.e. Social Security Number, etc.)

If there is a suspicion of illegal drug use by a BUE, the procedures for “Reasonable Suspicion Testing” should be followed.

Only BUEs who occupy testing-designated positions (TDP), as indicated in their current Position Description, are subject to random drug testing. TDPs are characterized by critical safety or security responsibilities as related to the mission of USDA. The job functions associated with these positions directly and immediately relate to public health and safety, the protection of life and property, law enforcement, or national security. For TDPs, job announcements will indicate they are subject to random drug testing and that it is a condition of employment. Acceptance of the position indicates acceptance by the employee to be randomly tested for drugs in accordance with applicable laws, rules, regulations, and policies. Final appointment and continued employment are contingent upon negative test results for illegal drug use.

*[References include, but are not limited to: DR 4430-792-2]*

#### **SECTION 4 - Reasonable Suspicion Testing**

When conducting reasonable suspicion, accident or unsafe practice testing, the Agency may test an employee for any drug identified in Schedule I or II of the Controlled Substances Act.

Reasonable suspicion testing may be required of any employee in a position,

- which is designated for random testing when there is a reasonable suspicion that the employee uses illegal drugs whether on or off duty.
- when there is a reasonable suspicion of on-duty use or on-duty impairment.
- required to obtain and maintain a Commercial Driver’s License (CDL) by the Department of Transportation (DOT TDPs). The decision to test must be based on direct observation of specific, contemporaneous articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations must be made by a supervisor who is trained in detecting the signs and symptoms of possible alcohol and/or drug use.

A mandatory referral for drug testing may be based upon, among other things:

1. Observable phenomena, such as direct observation of drug use or possession and/or the physical symptom(s) of being under the influence of a drug;
2. A pattern of abnormal conduct or erratic behavior;

3. Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;
4. Information provided either by reliable and credible sources or independently corroborated; or
5. Newly discovered evidence that the employee has tampered with a previous drug test.
6. Any other incident where drug use may be suspected including accidents at work.

Although reasonable suspicion testing does not require certainty, mere “hunches” are not sufficient to meet this standard.

*[References include, but are not limited to: DR 4430-792-2]*

Under no circumstances shall reasonable suspicion testing be used as a punitive measure.

Should reasonable suspicion of substance use be documented, the employee will be provided with a written copy of the allegations and supporting evidence prior to being referred for testing. Communication between supervisors and employees should be encouraged so that potential resolutions can be handled at the lowest possible level.

The employee will be provided with a written copy of the allegations and supporting evidence, this may be given prior to the referral being issued or at the same time.

*[References include, but not limited to: DR 4430-792-2]*

## **SECTION 5 - Safe Harbor**

Under Executive Order 12564, the USDA is required to initiate action to discipline any employee found to use illegal drugs in every circumstance. A fundamental purpose of the USDA’s Drug Free Workplace Plan is to assist employees who themselves are seeking treatment for drug use. For this reason, the USDA will not initiate disciplinary action against any employee who meets all three of the following conditions:

1. Voluntarily identifies themselves as a user of illegal drugs prior to being identified through other means;
2. Obtains counseling or rehabilitation through an EAP; and
3. Thereafter refrains from using illegal drugs.

An employee who admits to illegal drug use after being notified that they are scheduled for a drug test or just after a sample is collected, or who is found to use illegal drugs on the basis of other appropriate evidence (e.g. evidence obtained from a criminal conviction, reasonable suspicion and/or accident-unsafe practice) is not eligible for safe harbor.

In the course of counseling under the EAP, the employee’s progress will be monitored during and after the rehabilitation period, and the EAP Coordinator will provide feedback to supervisors in

accordance with 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records, as well as the Health Insurance Portability and Accountability Act (HIPAA) where applicable.

*[References include, but are not limited to: DR 4430-792-2, DR 4430-792-1]*

#### **SECTION 6 - Positive Test Results**

An employee testing positive for any of the drugs listed as Schedule I and II of the Controlled Substances Act is afforded an opportunity to justify the test result in accordance with applicable laws, regulations, and guidelines with the Medical Review Officer.

*[References include, but are not limited to: DR 4430-792-2]*

## **ARTICLE 23**

### **SPACE**

#### **SECTION 1 - General**

The parties recognize that occasions will arise when it is necessary to physically relocate employees from currently occupied space to temporary or permanent space. The following covers all such relocations and shall exclusively apply in these situations.

#### **SECTION 2 - Planned Relocations**

##### **A. Building Committee**

- a. If Management determines to form a committee, it will notify the Union that a committee is forming and that it intends to solicit employee involvement in the committee.
- b. The committee's purpose is designed to assist Management with what is needed for the relocation. The committee may or may not form a charter.
- c. Management will permit the Union one spot on the committee to act as an observer. If the Union has any input it would like to share with the committee, it may provide that information to the Labor Relations Officer or their designee. The Union representative will receive the same information as all other committee members. Management will grant official time for the Union representative to serve on the committee.
- d. The Union may nominate up to three impacted BUEs to serve on the committee. Management may select one of those employees, or it may determine to select another impacted employee and notify the Union of the employee that is selected. If the employee has a conflict with any of the committee meetings, Management will provide the employee the information that was discussed at the meeting(s). The impacted BUE will participate on the committee during duty time.
- e. The Committee Chair will make every effort not to schedule meetings during a time when employees may incur premium pay or earn credit hours.

##### **B. Notification**

- a. Management will notify the employees and the Union irrespective of forming a Building Committee at least 15 calendar days prior to a relocation.
- b. Management will share information it has pertaining to the relocation with the employees and the Union, which includes but is not limited to the start and duration of the relocation, the employees impacted by the relocation, building plans, and point(s)-of-contact for the relocation.



### C. Negotiations

If Management determines that the employee must stay in the reallocated space longer than the timeframe indicated in the initial notice, the Union may negotiate over the impact of the longer duration of the relocation.

### D. Employee and Supervisor Communication

The employee and supervisor should communicate over the relocation and any issues or concerns as needed. Employees may request telework while in a temporary location. It is within the supervisor's sole and exclusive discretion to consider these requests. Employees and supervisors may consult other articles within the CBA to address any issues or concerns.

## **SECTION 3 - Non-planned Relocations**

### A. Notification and Negotiations

- a. In the event of a non-planned relocation, such as an emergency, Management will provide the employees and Union notification as soon as possible. The notification will include the reason(s) for the relocation, the employees impacted by the relocation, the location status of the employees, the potential duration of the relocation, and the point(s)-of contact.
- b. Within seven calendar days from the notice, the Agency and Union will meet in person or virtually to share information and discuss the non-planned relocation. If the relocation is expected to last longer than 90 calendar days, the Union may invoke its right to negotiate over the impact of the relocation.

### B. Employee and Supervisor Communication

The employee and supervisor should communicate over the relocation and any issues or concerns as needed. Employees may request telework while in a temporary location. It is within the supervisor's sole and exclusive discretion to consider these requests. Employees and supervisors may consult other articles within the CBA to address any issues or concerns.

## **SECTION 4 - Safety and Habitability of Building**

- A. To the extent practicable, Management will ensure that buildings and temporary spaces which BUEs are relocated are safe and habitable, in accordance with applicable regulations and the Safety and Health article of this Agreement.
- B. BUEs are encouraged to report, orally and/or in writing, unsafe or unhealthful working conditions or building maintenance issues to their immediate supervisor, the safety officer, or submit a work order to address the issue at the temporary or new location. All reports of unsafe or unhealthful working conditions will be investigated by the Agency. If the issue is

not resolved, the Union may request a meeting with Management to discuss the issue. The parties will meet within 30 days from the request. This language does not waive the employees and/or Union's rights under the grievance procedure. The parties can mutually agree to pause the grievance time limits to hold this meeting.

- C. If any data exists surrounding the safety, habitability, or maintenance of a building where employees are relocated, Management will provide that data to the Union upon request without a requirement to establish a particularized need for the data.

### **SECTION 5 - Space Allocation Procedures**

Absent mission-related reasons or reasonable accommodations in accordance with the Reasonable Accommodation Article of this Agreement, for new space (i.e., the original floor plan is changed, or there is a relocation to a new location), employees will be able to select their preferred office space from Management designated spaces. The selection order will be determined by grade and seniority of the employees.

### **SECTION 6 - Impact on Employee Performance**

Employee evaluations will not be negatively impacted as a result of a relocation. Management will take into account extenuating circumstances related to the relocation that may impact an employee's ability to complete their assigned duties.

### **SECTION 7 - Miscellaneous**

- A. Prior to a relocation and as soon as possible in unplanned relocations, Management agrees to provide written protocols and/or instructions to employees to follow related to the relocation, which will include, but is not limited to the moving of government-owned and furnished equipment, furniture, or supplies.
- B. Upon request, Management will provide the Union the written protocols and/or instructions prior to providing them to employees, when possible, or when not possible, at the same time as they are provided to the employees. The parties agree that the protocols and/or instructions will not be negotiated.
- C. BUEs will not be required to use personal vehicles or resources in support of work-related duties or tasks. With supervisory approval, employees may voluntarily use their personal vehicle in or around the official duty station and request mileage reimbursement for work-related duties or tasks.

## **ARTICLE 24**

### **BREAK ROOMS/BREAK AREAS**

#### **SECTION 1 - General**

The Parties recognize that the health and well-being of employees are necessary to the successful accomplishment of the Agency's mission. Management will provide break rooms, and/or break areas for employee use.

#### **SECTION 2- Location**

Break rooms/areas shall be reasonably accessible to the employees' work areas, subject to compliance with OSHA, biological containment, and safety regulations.

#### **SECTION 3 – Break Room Specifications**

The Agency will provide adequate break rooms in buildings occupied by employees and other personnel, furnished with the following list of items:

- Sink with running, clean water, where possible
- Microwave
- Refrigerator
- Seating and tables to eat on
- Cleaning Supplies
- Storage areas, cabinets, or equivalent, where possible

If any of the above become inoperable or unavailable, management will provide replacements normally within 30 calendar days and provide employees with alternative options in the interim.

Nearby potable water will be provided.

Wherever possible, Wi-Fi/internet should be provided near breakroom areas.

Should the designated breakroom become unusable, an easily accessible alternate location will be provided within 30 calendar days.

#### **SECTION 4 - Changes to Break Room(s)**

Should the Agency need to change access and/or configuration of designated or existing break rooms/break areas or establish new break rooms, the Agency agrees to notify the Union and negotiate as required.

## **ARTICLE 25**

### **UNION USE OF FACILITIES AND SERVICES**

#### **SECTION 1 - Use of Official Facilities**

The Parties understand that existing space, technology, and equipment are being provided at no cost to the Union with an expectation that increased efficiencies will be realized for both the Agency, the Union, and BUEs. It is expected that the Union will utilize such equipment and technology to communicate with and receive notices from the Agency as provided elsewhere in this Agreement, as well as provide lawful representational functions.

- The Agency agrees to maintain the Union's current office and storage on the BARC campus so BUEs can be adequately and appropriately represented in a confidential and easily accessible manner. The office will be of sufficient size for one-on-one meetings and necessary storage of confidential materials. The office will have a locking door to protect confidential employee information.
- Upon request, the Agency will make additional space available to perform representational duties.
- Upon request, space for Union meetings will be made available to the Union during non-duty status periods (e.g. lunchtime, before/after work) that will not incur additional costs to the Agency. It is understood that all BUE's attending Union meetings are in a non-duty status.
- The Union agrees to exercise reasonable care in the use of such space and follow the same room reservation procedures as all other users. The Union will also have access to the same services routinely available at BARC/USNA (teleconference, video conference, video equipment, presentation equipment, etc.) as long as they do not incur additional costs to the Agency.

#### **SECTION 2 - Equipment and Technology**

The office space assigned to the Union will be equipped with adequate telecommunications and technology used by the Agency.

Office equipment used by BARC/USNA Management Units will be made available to the Union at no cost

As space becomes available, the Agency may provide the Union with a dedicated office space pursuant to Section 1 of this Article. At such time that spaces becomes available for an office, the Agency will provide the Union with the following:

- Government issued computer, with current Agency standard software for network accessibility, speed, hardware, and reliability,

- Access to and use of Copier/Scanner/Color printer,
- Access to and use of the Government email system for representational purposes,
- Access to shared platforms or sites when serving in a representational capacity on committees,
- At least one (1) four-drawer locking file cabinet (or comparable space) and office furniture.

### **SECTION 3 - USDA Mail/Email System**

The Union may use the BARC/USNA internal mail system and email systems for regular representational communications (e.g., grievances, correspondence or memos to the Agency). The Union may send messages to multiple persons at the same time through the USDA email system.

### **SECTION 4 - Membership Drives**

The Agency agrees to provide adequate facilities for membership drives. These facilities should be accessible to BUEs during non-duty times (e.g. breaks, lunch times, before/after work). The use and reservation of such facilities will follow BARC/USNA procedures. In addition, the Agency agrees that the Union may access areas where employees take their lunch breaks, for any representational functions and membership drives.

### **SECTION 5- Access to Agreement**

An electronic version of the Agreement will be made available on BARC/USNA internal websites.

## **ARTICLE 26**

### **EMPLOYEE AWARDS AND RECOGNITION**

#### **SECTION 1 - Purpose**

Recognition of employees through monetary and non-monetary awards reflects the Agency's efforts to promote continuous improvement and achievement in mission accomplishments. The intent of this program is to promote a positive work environment, reward employee achievement, and recognize employee contributions to the Agency's mission. USDA's Employee Awards and Recognition Program provides for the recognition of individual and group achievements, especially those that contribute to the core mission and goals of the Department or demonstrate exemplary performance. All award nominations and amounts of awards are subject to approval. The awards program will be administered in accordance with DR 4040-430-1, REE P&P 418.1 and the terms of this Agreement.

The granting of awards is at Management's discretion and not an employee entitlement.

#### **SECTION 2 - Forms of Awards and Recognition**

Supervisors should fairly and equitably recognize and reward exceptional performance and accomplishments by individuals and groups. Recognition can be given through Achievement Awards and/or Non-Monetary Awards and should be made as close to the time of achievements as possible. All employees whose current rating is Fully Successful are eligible for monetary and Time Off Awards (TOA), except that employees who were on leave restriction within the 52 weeks prior to the award effective date are not eligible for a TOA.

- A. Achievement Awards: Non-rating-based awards that recognize specific accomplishments that are in the public interest and have exceeded normal job requirements.
  - a. Monetary Award: A cash award granted to an employee as an individual or member of a group.
  - b. Time-Off Award: Time off granted to an employee or group of employees.
  - c. Combination of Monetary and Time-Off
- B. Non-Monetary Awards: Recognize contributions by an employee or that, taken alone, do not merit an achievement award. Examples include:
  - a. Honorary Awards: A formal recognition that is the highest level of non-monetary award.
  - b. Informal Awards
  - c. Unit Awards
  - d. Shoutouts to ARS (STARS) Awards: an informal peer recognition program.

- e. Other forms of non-monetary recognition, for example
  - i. Verbal Acknowledgement
  - ii. Certificates of Appreciation
  - iii. Thank You Note

Upon request, the Agency will provide the Union, on an annual basis, the following information regarding awards granted to employees covered by this Article. Such information will include:

- A. The award recipient's series and grade,
- B. Type of Award (monetary or non-monetary)

### **SECTION 3 - Documentation and approval**

- The nominating individual, if not the employee's direct supervisor, should consult with the employee's supervisor to start the Achievement Award process.
- Recognition should be received as close to the time of the achievement as possible.
- An award is considered approved when the Human Resources Officer (HRO) or designee signs off on the AD-287-2: Recommendation and Authorization of Monetary and Time Off Awards, or an Office of Human Resource Management (OHRM)-approved electronic alternative is utilized for approval.
- Supervisors or designee and/or Agency representatives will share award approvals with the recognized employee(s) after the AD-287-2 (or equivalent) has received final Agency approval (all required signatures).
- To the extent practicable, the Agency will ensure all documentation is completed and approved in a timely manner.
- An employee approved for an award prior to separation is entitled to receive the award(s).

## **ARTICLE 27**

### **POSITION DESCRIPTIONS (PDs)**

#### **SECTION 1 - General**

- A. A position description or "PD" is a statement of the major duties, responsibilities, and supervisory relationships of a position. In its simplest form, a PD indicates the work to be performed by the position. The purpose of a PD is to document the major duties and responsibilities of a position, not to spell out in detail every possible activity during the workday. Each Bargaining Unit position covered by this agreement must be accurately described in writing and classified to the proper occupational title, series, bargaining unit status code, and grade.
- B. All PDs must clearly and concisely state the major and significant duties, responsibilities, and supervisory relationships of the position. Additional requirements may be specified in PDs (e.g., fit for duty exams, licensures and certifications, mission critical designation, etc.).
- C. Supervisors will provide each employee with a copy of their classified Position Description and the associated AD-332 (Position Description Cover Sheet) within fifteen (15) calendar days of the employee's Entry On Duty (EOD date). Employees will also have access to a current, accurate copy of their PD electronically (e.g., eOPF, email) for the duration of their service to BARC/USNA).
- D. Major and significant duties will be kept current and accurate within the PD. Management-directed changes to a PD will be incorporated into the PD to assure that the position is correctly classified/graded to the proper title, series, and grade. The Union, when if otherwise representing an employee or group of employees, will be provided copies of, or access to, updated or current PDs upon request.
- E. The Agency has the right to assign work that is not in the PD; however, assigned work should be within the scope of education, and training of the employee. If assigned work is significant and occurs on a regular and recurring basis which may affect the classification of the position, the PD must be reviewed and revised, as appropriate.

#### **SECTION 2 - Collateral Duties**

In addition to duties in a PD, employees may be assigned Collateral Duties. Collateral duties are separate, yet official responsibilities that are assigned to an employee. Collateral duties must not constitute a primary (constituting less than 25% of the employee's work time) or grade controlling duty or an inherent responsibility of the position.

#### **SECTION 3 - Request for Reclassification**



- A. If an employee has reason to believe that there are continuing differences between the work assignments and the PD which affect the accuracy of the official PD, the employee should first discuss this with their supervisor. The supervisor or designee certifies the accuracy of the content of the PD and will be able to explain the assigned duties and responsibilities.
- B. If a supervisor is unable to resolve the issue to the employee's satisfaction the supervisor will provide the employee with the appropriate Human Resources Division contact information. The employee may discuss the matter with the Human Resource Division staff member who will explain the basis for the classification/job grading and explain any additional options that may be available for the employee. Should the employee contact and discuss the classification of their position with the Human Resource Staff and is still not satisfied with the outcome the employee may ask the supervisor to forward a request for a desk audit to the Agency.
- C. Upon request, the Union, when representing an employee or group of employees, will have access to the same information an employee(s) will have during informal classification discussion and desk audit. When representing an employee, the Union will be notified prior to the start of the desk audit. The desk audit will normally be completed in a timely manner from the date of the employee's request.
- D. If the employee still disagrees with the classification of the position, an appeal may be filed with the Department and/or OPM as appropriate.
- E. If ARS Human Resources Division establishes their own or has established classification and job grading appeal procedures, they will be made available to all employees and will align with policy and appeal rights contained in this DR and this Agreement.
- F. Mission Area, agency, and staff office classification and job grading appellate procedures will not interfere with the right of the employee to file an appeal directly to the Department or OPM, but not both at the same time.

*[References include, but are not limited to: DR 4020-511-001]*

- G. GS Employees. Employees in the GS pay system may file a classification appeal at any time with the Human Resource Staff, Department, or OPM. If the GS employee is dissatisfied with the Human Resource Staff or Department decision, they may file an appeal with OPM within fifteen (15) calendar days of receiving the decision.
- H. Federal Wage System Employees. Employees in the FWS pay system (WG, Wage Leader, or Wage Supervisor) will first file an appeal within their Mission Area. If an FWS employee is dissatisfied with the Mission Area decision, they may file a subsequent appeal with the Department or OPM within fifteen (15) calendar days of receiving the Human Resource Staff decision.
- I. No position(s) will be downgraded without a thorough review by HR. For a downgraded position, the employee's pay and grade will be maintained on an incumbent basis in accordance with law and regulations. Should the employee file an appeal with the Agency or OPM, their grade and pay will remain status quo until a final decision is made.
- J. An audit/review of a position may result in a change in classified duties (lower/higher grade level, increase/loss of pay). The employee and the Union, when representing an employee or

group of employees, will receive the written results of the reclassification no less than thirty (30) days prior to implementation of any changes. The notification must provide the employee with information about classification appeals in accordance with DR 4020-511-001 and OPM policy and specify time limits for doing so.

#### **SECTION 4 - Classification Standards**

The Agency will apply newly issued OPM classification and job grading standards within a reasonable period of time, or as prescribed by OPM. The Union will be provided with copies of new standards that are implemented at the local level. Current classification standards are available on the OPM website.

Upon request, the Agency will provide the Union with copies of any current and known Agency guidance provided by OPM in connection with any classification standards.

#### **SECTION 5 - Effective Date**

The effective date of a personnel action taken as a result of an appeal should be in accordance with the directions provided by the Agency or OPM decision, normally no later than the beginning of the fourth pay period following the date of the decision.

## **ARTICLE 28**

### **HOURS OF WORK AND OVERTIME**

#### **Purpose**

This article shall be administered in accordance with 5 U.S.C. Chapter 61, ARS Policy and Procedures (P&P) 402.1.v.3: Flexible Work Schedules, issue date August 16, 2024, and this Agreement. The purpose of this article is to prescribe the policies covering hours of work for all employees in accordance with applicable law and regulation.

#### **SECTION 1 - Definitions**

##### **Time and Attendance**

The process of tracking employee work hours and leave usage to accurately and appropriately compensate them. All employees must have access to the Official time and attendance system. Appropriate training and support, as determined by management, must be provided for all BUEs.

##### **Tour of Duty**

Under a Flexible Work Schedule (FWS), the hours of a workday and the days of a workweek that constitute an employee's regularly scheduled workweek (e.g., Monday-Friday, 8:00 a.m.-4:30 p.m.). The Tour of Duty defines the limits within which an employee must complete their basic work requirement, this does not include Overtime hours.

##### **FWS**

A work schedule established under 5 U.S.C. § 6122, that -

1. In the case of a full-time employee, has an eighty (80)-hour biweekly basic work requirement that allows an employee to determine his or her own schedule within the limits set by the Agency; and
2. In the case of a part-time employee who has a biweekly basic work requirement of less than eighty (80) hours that allows an employee to determine his or her own schedule within the limits set by the Agency. Possible FWS options include Maxiflex and Flexitour.

##### **Maxiflex**

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

For example:

- 5/4/9 schedule is a work schedule in which a full-time employee works eight, 9-hour days and one, 8-hour day for a total of eighty (80) hours in a biweekly pay period.
- 4-10 schedule is a work schedule in which a full-time employee must work 10 hours a day, forty (40) hours a week and eighty (80) hours a biweekly pay period.

### Flexitour

A type of FWS in which an employee is allowed to select starting and stopping times within the flexible hours. It consists of 8 hours a day, 40 hours per week, and 80 hours in a biweekly pay period. The flexible time surrounds the Core Hours. Employees must account for missed core hours, if permitted, with leave, credit hours, compensatory time off, or time off as an award. Employees may vary and schedule their arrival and departure times per day subject to management approval.

### Core hours

The time periods during the workday, workweek or pay period that are within the tour of duty which an employee covered by an FWS is required to be in a duty status.

### Flexible Time Bands

For GS employees, the hours during the workday, workweek, or pay period that are within the tour of duty during which employees may request the starting and ending times of their regular work schedule.

*[References include, but are not limited to: REE P&P 402.1.v.3]*

### Operational Hours

The times when Agency business should generally occur.

### Basic Work Requirement

The number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off award. For full-time employees, the basic work requirement is eighty (80) hours per biweekly pay period. A part-time employee's basic work requirement is the number of hours the employee is scheduled to work in a biweekly pay period.

### Credit hours

Those hours within a flexible schedule that an employee elects to work, with supervisory approval, in excess of his or her basic work requirement so as to vary the length of a workweek or workday.

### Overtime

Pay for hours of work officially ordered or approved in excess of eight (8) hours in a day or 40 hours in an administrative workweek.

### Compensatory Time

When chosen by the employee or directed by management consistent with applicable regulations, this is time off with pay in lieu of overtime pay for regularly scheduled or irregular or occasional overtime work.

### Prevailing Rate Employee

Also known as Federal WG Employees.

*[References include, but are not limited to: 5 U.S.C. § 5342]*

## **SECTION 2 - General Provisions**

Generally, operational hours for BARC will be 6:00a.m. to 6:00 p.m. local time, Monday-Friday. For the USNA, operational hours for the USNA are Monday-Friday, 8:00am to 5:00pm.

Core hours for BARC and USNA will be Monday-Friday, 9:30 a.m.–2:30 p.m. Eastern Time. Core hours will not prevent employees from telework, working an approved FWS, being in an approved leave status or affect lunch periods. Core hours only apply to employees covered under FWS.

Normally, start time (Time In) begins when each employee will be at their assigned task area (i.e. assigned desk, cubicle, designated reporting station, or supervisory approved temporary location) attired for work in clothing appropriate for the position and prepared to begin their duties. End time (Time Out) is when the employee leaves their assigned task area at the end of their workday.

Employees are expected to submit an accurate bi-weekly timesheet via the official time keeping system (i.e., WebTA or its successor) based on their approved master schedule. In and Out times may be required to be noted on the timesheet when the employee deviates from their master schedule or as required by their supervisor.

## **SECTION 3 - Master Schedule**

The purpose of a Master Schedule is to coordinate work efforts in order to meet mission goals and objectives and ensure proper pay practices are followed.

The Master Schedule meets the needs of the Agency and, to the extent practicable, is fair and equitable.

Employees should discuss their desired Master Schedule with their supervisor; however, Master Schedule approvals are at the discretion of the supervisor.

## **SECTION 4 - Notification of Schedule Changes**

Notice of management-directed changes in an employee's Master Schedule to meet programmatic needs will be provided to the employee. Normally, the employee will be notified

in writing of changes to their work schedule at least seven (7) calendar days in advance. In instances where a short-term deviation from the Master Schedule is needed for mission-related reasons, the employee will normally be given no less than 72 hours advance notice.

### **SECTION 5 - Meal Periods**

All employees are required to take a non-paid meal period of at least thirty (30) minutes, normally scheduled at or near the midpoint of a workday greater than seven (7) consecutive hours.

The meal period may not be the first or last thirty (30) minutes of a workday greater than seven (7) consecutive hours.

### **SECTION 6 - Breaks**

Normally, two (2) breaks of fifteen (15) minutes each will be provided for employee(s) working an eight (8) hour workday or longer. Break periods should not interfere with work (e.g. scheduled meetings, deadlines, etc.). Break periods will not be combined with a meal period without prior approval.

### **SECTION 7 - FWS**

- A. An employee may request the hours they desire to work under the FWS Program by submitting a written request to their first line supervisor or designee. All written requests will be subject to supervisory approval/disapproval within fifteen (15) calendar days of receipt of the request.
- B. There are various types of FWS arrangements that provide different degrees of flexibility. These include schedules which can vary the number of hours worked in a day or week and schedules in which the 80-hour biweekly requirement for a full-time employee can be worked in less than 10 days. Schedules are subject to supervisory approval based on operational need.
- C. For additional guidance refer to the following authorities:
  - 1. 5 U.S.C. §§ 6120 - 6121
  - 2. 5 U.S.C. §§ 6129 - 6133
  - 3. 5 C.F.R. Part 610
  - 4. REE P&P 402.1
- D. Flex Time - FWS changes require prior supervisory approval (e.g., a master schedule of 8:00 a.m. - 4:30 p.m., but the employee would like to flex their schedule to 6:00 a.m.- 2:30 p.m. on a given day).

- E. Glide Time - The setting of gliding time is delegated down the supervisory chain of command. The employee must still account for all hours scheduled for that day through hours worked or some type of paid leave or unpaid leave.

### **SECTION 8 - Establishing or changing work schedules under FWS**

Employees covered under FWS should express their desire to work a flexible schedule with their immediate supervisor or designee. Supervisors or designee should take into consideration the employee's request and provide feedback and potential alternatives.

The supervisor or designee may deny an employee's request for a flexible schedule under FWS if the employee's request conflicts with work requirements.

When a request from the employee is denied for a change in their work schedule under an FWS, the supervisor or designee:

1. Will notify the employee in writing of the basis for the denial,
2. May consider an alternate schedule for the employee.

### **SECTION 9 - Credit Hours**

Credit hours are hours that an employee elects to work, with the supervisor's or designee's approval, in excess of the employee's regularly scheduled workday. Such approval shall normally be required in advance before the credit hours are earned. It is ultimately the employee's responsibility to advise the supervisor or designee in advance if the need to work Credit time may be necessary or anticipated.

- A. Credit hours are earned in accordance with P&P 402.1.v.3.
- B. The employee must elect to perform work voluntarily.
- C. Eligible employees may earn credit hours, provided there is work available and may use credit hours in accordance with regulation and Agency directive(s).
- D. The approval or denial of credit hours will be subject to the same criteria as annual or sick leave. Credit hours must be earned before they may be used. Credit hours may be earned and used within the same pay period.
- E. The Parties recognize that the law requires employees to forfeit credit hours above the twenty- four (24) hours they are allowed to carry over from one (1) pay period to the next; therefore, to avoid forfeiture of credit hours, the employee and the supervisor or designee are strongly encouraged to work together when planning work schedules.
- F. If an employee separates from Federal employment, transfers to another agency, or is no longer eligible to work an FWS, the employee will be paid the balance of credit hours earned up to maximum allowable carry over limit.

## **SECTION 10 - General Overtime Provisions**

- A. Overtime will be in accordance with P&P 402.3v.5 and this Agreement.
- B. Unlike Credit Hours, which are at the election of the employee, overtime is compensation based on management directed work for the employee. Employees may choose Compensatory Time in lieu of Overtime pay, but they cannot be forced to take it. In accordance with regulations, employees will not be required to earn compensatory time in lieu of overtime pay.
- C. When an employee works overtime, such overtime will be paid in increments of 1/4 hour.
- D. Employees shall be paid differential and premium pay in addition to the overtime compensation in accordance with applicable regulations.
- E. Management shall notify employees at least two (2) workdays prior when planned overtime is required. To the extent practicable, management will give due consideration to the employee's personal circumstances. This provision shall not apply in emergency situations in which overtime may be required.
- F. At the request of the employee in writing, the supervisor or designee may grant compensatory time in lieu of overtime pay, whether such overtime hours are regularly scheduled or irregular or occasional in nature. If the employee does not request compensatory time in lieu of overtime pay, or if the employee's request for compensatory time in lieu of overtime pay is not granted, the employee shall be compensated for such overtime under the applicable statutory provisions.

Employees must use Compensatory Time off before using credit time, time off award hours, compensatory time for travel, restored annual leave, or annual leave. Supervisors and employees share responsibility in ensuring that Compensatory Time is utilized first, unless the employee stands to lose any other accumulated leave. Any FLSA non-exempt employee who is unable to use compensatory time within twenty-six (26) pay periods shall receive overtime pay instead. However, in accordance with OPM regulations and USDA policy, earned compensatory time off for travel will be forfeited if not used within 26 pay periods or if the employee separates from the USDA.

*[References include, but are not limited to: DR 4050-550-002]*

## **SECTION 11 - Call-Back**

A Call back is defined as irregular or occasional overtime work performed by an employee on a day when work was not originally scheduled, or completes a regular workday schedule and departs, or for which the employee is required to return to the office or other place of employment.

- Call backs will be carried out in accordance with P&P 402.3.v.5 and this Agreement.



- In accordance with 5 U.S.C. § 5543 (b) (1), employees who are called back will be granted at least two (2) hours of overtime.
- The overtime pay will be paid out in accordance with 5 U.S.C. § 5545 (c) (2).
- Management will make every attempt to minimize requests for irregular and unscheduled work

## **SECTION 12 - Employees in non-compensable ‘on-call’ status**

Employees whose Position Descriptions designate them to be on-call must be available for work and if needed, report to work and be fit for duty during the period of time when they are scheduled to be on-call. Employees will be paid at the overtime rate once they report for duty, however, time spent not actively working is non-compensable.

*[References include, but are not limited to: 29 C.F.R. § 785.17]*

## **ARTICLE 29**

### **LEAVE**

#### **SECTION 1 - General**

- A. This Article is in accordance with REE P&P 402.6.v.4 (Leave Administration). Employees will accrue and use sick and annual leave in accordance with applicable laws, rules, and regulations.
- B. Employees should make requests for leave as far in advance as practical to their immediate supervisor or their designee. Leave may be requested any time and will only be denied for valid operational needs.
- C. Management officials, or designees, are authorized to approve leave requests.
- D. Leave will be administered in a fair and equitable manner.
- E. Leave is requested and granted in 15-minute increments.
- F. Supervisors or designee may authorize employees to be excused from duty without the loss of pay or charge to leave in appropriate circumstances (e.g. blood donation, jury duty, etc.).
- G. Management is responsible for providing employees with instructions on requesting leave. Examples of methods to notify the supervisor may include but are not limited to: phone calls, emails, text messages, WebTA, etc.

#### **SECTION 2 - Leave Earnings**

Full-time and part-time employees earn leave during each full bi-weekly pay period while in a pay status or in a combination of a pay status and a non-pay status in accordance with the employee's current leave accrual category (rate).

*[References include but are not limited to: 5 C.F.R. § 630.202, REE P&P 402.6.v.2]*

A full-time employee in a non-pay status (LWOP, AWOL, Suspension, etc.) for more than eighty (80) hours of unpaid leave will not accrue annual or sick leave for that pay period.

*[References include but are not limited to: REE P&P 402.6.v.4, 5 C.F.R. § 630.208(a), OPM.gov]*

#### **SECTION 3 - Annual Leave**

Annual Leave is an entitlement which allows employees to be absent from duty for personal reasons and emergency purposes without a loss in pay. Scheduling and use of Annual Leave is subject to supervisory approval.

- A. Employees should submit leave requests as far in advance as possible. The supervisor or designee will reply to the request for leave in a timely fashion. The employee will be responsible for ensuring that leave is recorded in their time and attendance record. Management reserves the right to deny or cancel approved leave if there is a business or mission-related reason, and the employee is notified in a timely manner.
- B. If while on annual leave an employee becomes ill or injured, upon employee request, the annual leave will be changed to sick leave for the time of incapacitation, provided the employee has adequate sick leave to cover the absence.  
*[References include, but are not limited to: 5 USC § 630.406]*
- C. The proper Time and Attendance approving official for BUEs is their immediate supervisor or designee.
- D. Restoring forfeited annual leave will be addressed in accordance with P&P, 402.6.v.4 and 5 U.S.C. § 6304 (d) (e).

#### **SECTION 4 - Unscheduled Leave**

Unscheduled Leave is any absence from work that is not requested and approved in advance. If the employee needs Unscheduled Leave, they shall contact the immediate supervisor/designee before their start time but no later than one (1) hour after the employee's start time.

The employee will properly submit the request for the desired leave (annual, sick, comp, etc.) in the time and attendance system as soon as possible. Unscheduled leave is subject to approval or denial by the leave approving official or their designee.

#### **SECTION 5 - Absent Without Official Leave (AWOL)**

Absent without official leave (AWOL) is a non-pay status that covers an absence from duty which has not been approved, or for which a request for leave has been denied. AWOL is based on the supervisor's or designee's determination that no form of leave (annual, sick, LWOP, etc.) has been or should be approved for the absence based on existing evidence. AWOL can be converted to appropriate leave when a supervisor or designee receives and is satisfied with documentation justifying the absence. AWOL is not disciplinary in nature but may be the basis for disciplinary action.

#### **SECTION 6 - Sick Leave**

Sick Leave is an entitlement which permits employees to be absent from duty with no loss in pay.

- A. Employees are entitled to use sick leave in accordance with 5 CFR § 630.401, as amended.

- B. It is the responsibility of an employee who is incapacitated or unable to perform their assigned work duties to notify the immediate supervisor or their designee (or to have any responsible person make the notification for the employee) if not on the first day of absence from the work location, then as soon as possible.
- C. An employee who expects to be absent for more than one (1) day will inform the supervisor or their designee of the expected date of return to duty and will notify the supervisor or designee of any changes. In the case of extended illnesses, of more than three (3) consecutive workdays, daily reports may not be required.
- D. Employees may request temporary modification of their workstation or duties for periods as defined in the medical documentation (or medical certificate) provided by the employee (see Section 8 of this article).

## **SECTION 7 - Medical Documentation for Sick Leave**

Medical documentation, also known as a medical certificate, is a written statement signed by a registered practicing physician or other medical practitioner certifying to the incapacitation, examination, or treatment, or to the period of incapacitation while the patient was receiving professional treatment.

*[References include, but are not limited to: 5 C.F.R. § 630.201]*

Medical Documentation is required for Sick Leave requests of more than three (3) consecutive workdays. The Agency may consider an employee's self-certification as administratively acceptable evidence for their absence, regardless of the duration of the absence.

Medical Certification (different from Medical Documentation) pertains to proper documentation for invoking specific aspects of the Family Medical Leave Act (FMLA). Medical certifications may come from several types of Healthcare Providers. See additional information in Section XX of this article.

Employees are required to provide medical documentation of sick leave no later than fifteen (15) calendar days after the date the supervisor or their designee provides the employee with a written request for such documentation. If it is not practicable to provide the requested documentation in the 15 days requested, despite the Employee's diligent good faith efforts, the employee must provide such certification within a reasonable period, but no later than 30 calendar days from the Agency's initial request.

Sick leave may be retroactively denied, and another form of leave be requested by the employee for the time period in question (annual, comp, etc.) should documentation not be provided by the employee within thirty (30) calendar days of the initial written request.

*[References include, but are not limited to: REE P&P 402.6.v.4, Section 3.4.4, OPM.gov]*

Documents regarding employee absence for sick leave purposes are highly sensitive. The supervisor or designee will ensure that they are maintained in a secure and confidential manner.

Only those with a business need to know will be privy to such information. Medical release forms will be provided to employees as needed.

Where there is reason to believe that an employee is abusing the sick leave entitlement, the following will apply:

1. The employee shall be advised in writing of the possibility of future medical documentation requirements or other actions should the abuse continue. This does not preclude the supervisor or designee from discussing perceived abuse of sick leave.
2. If the abuse continues, the employee may be required to furnish medical documentation for each sick leave application.

### **SECTION 8 - Approved Health Care Providers**

"Health Care Provider" is defined as any of the following individuals:

1. A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this subpart;
2. Any health care provider recognized by the Federal Employees Health Benefits Program or who is licensed or certified under Federal or State law to provide the service in question;
3. A health care provider as defined in paragraph (2) of this definition who practices in a country other than the United States, who is authorized to practice in accordance with the laws of that country, and who is performing within the scope of their practice as defined under such law;
4. A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; or
5. A Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders who practices traditional healing methods as believed, expressed, and exercised in Indian religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, consistent with Public Law 95-341, August 11, 1978 (92 Stat. 469), as amended by Public Law 103-344, October 6, 1994 (108 Stat. 3125).

If the employee is unable to provide the requested medical certification before leave begins or the Agency questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the Agency shall grant provisional leave pending final written medical certification.

### **Medical Recertification**

The employee may be required to provide an updated certification during the leave period under FMLA:

1. If the medical condition(s) has changed, or

2. The leave is not consistent with the information provided on the medical documentation.

The Agency may require subsequent medical recertification in accordance with law, statute or government-wide regulation.

An employee eligible under the Agency's Family Medical Leave Program may request to participate in the Telework Program.

### **SECTION 9 - Sick Leave Restriction**

A Leave Restriction letter is a letter to the employee conveying there is evidence of a pattern of sick leave abuse. A Leave restriction may be put into place by the supervisor or their designee. The supervisor, or designee, shall partner with a representative from Personnel and Labor Solutions (PALS) Branch or its successor to ensure appropriateness of the leave restriction. Use of sick leave for valid reasons shall not be considered a pattern of abuse.

Written notification of leave restrictions should include:

- The associated policies/procedures and expectations regarding leave usage,
- Specific information about leave balances, dates when the employee did not follow the proper procedure (demonstrated pattern of leave abuse),
- Specific leave procedures the employee is required to follow going forward,
- The period of restriction, and
- Consequences of not following the policy and procedures

Examples of leave abuse include, but are not limited to using sick leave for:

- Extension of weekends
- Extension of leave
- Consistent call offs on specific days, i.e. Mondays and Fridays
- Extension of Holidays

During the course of the leave restriction, typically a ninety (90) calendar-day period, and upon serving at least 50% of the time on the restriction, the employee may once per calendar month, request the supervisor or designee reevaluate and consider holding in suspension (abeyance) the remainder of the time to be served on the leave restriction.

If the employee fails to maintain the desired improvement during the course of the original time period specified in the leave restriction letter, the supervisor or designee will continue the leave restriction letter with an adjusted end date. The updated leave restriction letter may be extended up to one hundred and twenty (120) calendar days. However, the supervisor or designee will have discretion to extend or reduce the restriction period based on the employee's adherence to

the procedures in the leave restriction letter. If the letter of leave restriction is extended, there will be no further review during the life of the letter.

Leave restriction documentation does not become part of the employee's eOPF.

### **SECTION 10 - Advanced Sick Leave**

The opportunities and limits for requesting advanced sick leave will be consistent with 5 CFR § 630.402, as amended.

Credit hours and annual leave may be used to liquidate advanced annual or advanced sick leave.

Requests for advanced sick leave will be considered in accordance with governing regulations. For requests of advanced sick leave totaling three (3) consecutive workdays, all of the following conditions must be met:

1. The employee is eligible to earn sick leave,
2. The employee's request does not exceed two hundred forty (240) hours, or for temporary employees only the amount to be earned during the period of temporary employment if appropriate,
3. There is reason to believe the employee will return to work after having used the leave, and
4. The employee has provided acceptable medical documentation of the need for advanced sick leave.

Advanced sick leave may be combined with annual leave when necessary to cover one continuous period of absence with supervisory approval.

### **SECTION 11 - Advance Annual Leave**

An employee with an appointment of ninety (90) days or longer, and who is not intermittent, may be advanced annual leave up to the amount the employee would accrue for the remainder of the leave year or the end of their appointment (whichever is less).

Advanced annual leave may not be granted under the following:

- A. A temporary employee beyond the date set for the expiration of the employee's temporary appointment.
- B. There is a likelihood that the employee will retire, be separated, or resign from the Agency before the date the employee will have earned the leave. Upon separation, employees must repay the balance of any remaining advanced annual and sick leave, unless resigning due to exceptions, as listed in regulation or:
  - a. Death;
  - b. Disability retirement;

- c. Entrance into military service with reemployment rights; or
- d. Resignation or separation because of disability which, according to medical certification, prevents the employee from returning to or continuing employment.

Denials of requests for advanced leave must be conveyed to the employee promptly and must contain a specific explanation of the reasons for the denial.

Employees are required to pay back outstanding advanced leave in accordance with current and subsequent regulations and Departmental and Agency policies.

### **SECTION 12 - Restored Annual Leave**

There are a number of reasons why an employee may have their leave restored (e.g. emergencies prohibit use of Use/Lose, etc.). An employee must schedule and use restored annual leave no later than the end of the leave year ending two years after:

- the date of restoration of the annual leave forfeited because of administrative error;
- the date fixed by the head of the agency or designee as the date of termination of the exigency of the public business; or
- the date the employee is determined to be recovered from illness or injury and able to return to duty.

*[References include, but are not limited to: REE P&P 402.6 ]*

### **SECTION 13 - Leave for Family Purposes**

The Family and Medical Leave Act (FMLA) provides employees with up to twelve (12) weeks of unpaid, job-protected leave per year. The Agency will adhere to all Government-wide regulations for FMLA. The employee will make an appropriate request for use of FMLA in accordance with Government wide regulation. Employees should provide notice of intent to take FMLA leave at least 30 days before taking it, or as soon as practicable.

Wherever applicable, an employee shall provide written medical certification to the Agency in a timely manner when requesting FMLA. Medical Certification for some uses of FMLA leave may be required and may be submitted in any format as long as it contains all the required information. Form WH 380 E (health condition of employee) or WH 380 F (health condition of a family member) may be used as medical certifications for FMLA. Medical certification will not include any medical records or information which would be covered under the Health Insurance Portability and Accountability Act (HIPAA).

The written Medical Certification shall include the relevant information from 5 CFR § 630.1208(b), as amended.



The Agency may not request additional information in accordance with applicable laws and regulations. Employees will not be required to provide medical certification for FMLA leave to bond with a healthy newborn or a child placed for adoption or foster care.

The Agency shall not require any personal or confidential information in the written medical certification other than what is required by law.

If the Agency doubts the validity of medical records, it can require a second and third (and final) opinion at the Agency's expense.

*[References include but are not limited to: 5 U.S.C. § 6383]*

When leave under FMLA is taken on an intermittent or reduced leave schedule, and the health care provider has specified on the medical certification a minimum duration of the period of incapacity, the Agency may not request recertification until that period has passed.

*[References include, but are not limited to: 5 C.F.R. § 630.1208]*

Under FMLA, BUEs are entitled to twelve (12) weeks of Leave Without Pay (LWOP) during any twelve (12) month period (26 weeks when caring for a covered servicemember) for the following reasons:

- Birth of a child and the care of such child;
- Placement of a child for adoption or foster care;
- The care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition;
- A serious health condition of the employee that makes the employee unable to perform any one or more of the essential functions of his or her position or
- Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

#### B. Other Family Leave

- a. The care of a family member of the employee with a serious health condition. Family member is defined as:
  - i. Spouse, and
  - ii. Child or children
  - iii. Parents of the employee
- b. A serious health condition of the employee that makes the employee unable to perform the functions of the position of such employee.

- c. Any qualifying exigency arising out of the fact the employee's spouse, child, children, or parent is a covered military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

Note: The employee may elect to substitute annual leave, sick leave, and paid parental leave, as appropriate, for unpaid family or medical leave for any part of the applicable period consistent with governing laws and regulations. Employees may also combine annual leave, sick leave, and paid parental leave, as appropriate, with unpaid family or medical leave for any period of approved leave. An employee may not retroactively substitute paid time off for unpaid family and medical leave.

Employees are not required to invoke FMLA to manage family and medical absences. For example, full-time employees could use 8 weeks of sick leave, annual leave, and LWOP for family and medical reasons and then invoke an additional 12 weeks of FMLA leave.

The Agency will adhere to all applicable laws and regulations pertaining to FMLA postings and notifications to employees.

*[References include, but are not limited to: 29 C.F.R. § 825.300]*

#### C. Sick Leave for Family Care and Bereavement

- a. Under 5 C.F.R. §630.401, employees are entitled to use sick leave to provide care for:
  - i. Spouse, and parents thereof;
  - ii. Children including adopted children, and spouses thereof;
  - iii. Parents, and spouses thereof;
  - iv. Brothers, sisters, and spouses thereof;
  - v. Grandparents and grandchildren, and spouses thereof;
  - vi. Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this definition; and,
  - vii. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- b. Employees are allowed to request sick leave for family care and bereavement in the following amounts:
  - i. 104 hours - General Medical condition (short term medical needs such as doctor's appointments);
  - ii. 480 hours - Serious health condition of a family member;

- iii. Two (2) administrative workweeks of paid leave during any 12-month period because of the death of a son or daughter of the employee.
- c. NOTE: An employee is only entitled to a total of 480 hours of sick leave each leave year for all family care purposes.
- d. Employees may request other leave in lieu of sick leave (annual, comp, credit hours, LWOP, etc.) for the care or bereavement of a family member.
- e. Documentation for sick leave used for family care and bereavement will be provided in accordance with Section 8 of this article.

#### **SECTION 14 - Protection of Employment and Benefits**

- A. Upon return from FMLA, the employee will be restored to the same position as occupied before the leave or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.
- B. When an employee requests leave under the Agency's Family Medical Leave Program, the Agency will provide guidance concerning the employee's rights and obligations under the program.
- C. Under FMLA, an employee who meets the criteria for leave and has complied with the requirements under this section may not be denied leave, consistent with all applicable rules governing annual leave, sick leave, or LWOP as appropriate.
- D. An employee enrolled in a health benefits plan, who is placed in a LWOP status may continue his or her health benefits enrollment while in the LWOP status but is responsible for making any necessary arrangements to pay their contributions into the Employees Health Benefits Fund. The Employer will continue to pay their portion of health and life insurance, if applicable, according to legal and regulatory requirements.

#### **SECTION 15 - Employee Absences for Court or Court-Related Services**

Except as otherwise modified by applicable law, government-wide regulations or other outside authority binding on the Agency, an employee summoned or subpoenaed in connection with a judicial proceeding by a court or other authority responsible for the conduct of that proceeding shall be authorized to attend the judicial proceeding without charge to leave or loss of employee salary in the following instances:

- 1. For jury duty.
- 2. To appear as a witness on behalf of the Federal, District of Columbia, state, or local government.
- 3. To appear as a witness on behalf of a private party in an official and job-related capacity or to produce official records.

4. "Expense money" may be retained by the employee; "fees for services rendered" must be submitted to the appropriate financial office.
5. It is agreed that days off and/or schedules will not be changed to avoid granting absence for court or court-related services.

An employee who is granted court leave and is excused or released by the court for any day or substantial portion of a day is expected to return to the employee's regular duties except when:

1. Only a small portion of the workday would be involved and thus no appreciable amount of service would be rendered.
2. The distance from the court to the place of duty is such that this would be an unreasonable requirement.
3. The regular tour of duty occurs at night.

#### **SECTION 16 - Leave Without Pay (LWOP)**

Leave Without Pay (LWOP) is a temporary non-pay status and absence from duty that, in most cases, is granted at the employee's request.

- A. LWOP may be requested and considered for approval in the same manner and for the same purposes as annual leave and sick leave.
- B. Employees may request LWOP for educational purposes.
- C. LWOP is granted at the discretion of management. Management does not have the discretion to deny leave in the following cases:
  - a. When a disabled veteran requests LWOP for medical treatment;
  - b. When requested by a reservist or National Guard member for military duties in accordance with appropriate military orders. Employees may request such leave after their military leave has been exhausted (38 U.S.C., Section 4316(d));
  - c. When requested by an employee who has suffered an incapacitating job-related injury or illness and is waiting adjudication of a claim for employee compensation by the Office of Workers' Compensation Program; or
  - d. When an employee makes a request under the Family and Medical Leave Act and meets the criteria for that program.

Upon return to duty after a period of LWOP, management will restore the employee to a similar position at the same grade and pay.

#### **SECTION 17 - Religious Compensatory Time**

- A. An employee whose personal religious beliefs require absence from work during certain periods of time may elect to engage in credit or compensatory time work to compensate for time lost for meeting those religious requirements.
- B. To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the Agency's mission, the Agency shall in each instance, afford the employee the opportunity to work compensatory time. The Agency shall in each instance grant compensatory time off to an employee requesting such time off for specific religious observances and when the employee's personal religious beliefs require that the employee abstain from work.
- C. For the purpose stated in paragraph B of this section, the employee may work such compensatory time before or after the granting of compensatory time off. Advanced compensatory time off should be repaid with the appropriate amount of compensatory overtime work within a reasonable amount of time, not to exceed the 13-pay-period regulatory limitation. Compensatory time shall be credited on an hour-for-hour basis or authorized fractions thereof. Appropriate records will be kept of compensatory time earned and used.
- D. If the employee is separated or transferred before using the time set aside for a religious observance any hours not used must be paid at the employee's rate of basic pay in effect when the extra hours of work were performed. Any religious compensatory time used and not repaid will be charged to the employee at the same rate.

#### **SECTION 18 - Military Leave**

- A. In accordance with law and regulations, full-time permanent and part-time permanent employees who are members of the National Guard or the Armed Forces Reserves are entitled to twenty (20) calendar days of regular military leave in a fiscal year for active duty or active duty for training.
- B. For part-time employees, military leave is prorated based on the number of hours in the employee's work week.
- C. Employees who do not use the entire twenty (20) calendar days can carry any unused military leave (not to exceed twenty (20) calendar days) over to the next fiscal year. Military leave may never exceed forty (40) calendar days in any one (1) calendar year.
- D. Regular military leave is charged in increments of one (1) hour. Non-workdays falling at the beginning or end of military leave are not included in the period of military leave.
- E. Management will take into consideration the schedules of employees who work off-tours and will, when possible, arrange schedules to allow such employees to have scheduled days off immediately preceding and following the required military leave.

#### **SECTION 19 - Disabled Veterans Leave**

A veteran with a service-connected disability rating of 30 percent or more from the Veterans Benefits Administration (VBA) of the Department of Veterans Affairs is entitled to up to 104 hours of disabled veteran leave for the purposes of undergoing medical treatment for such disability.

In order to be eligible for Disabled Veterans Leave, an employee must provide to the agency documentation from the VBA certifying that the employee has a qualifying service-connected disability.

By law, disabled veteran leave is available only to an eligible employee who is “hired” on or after November 5, 2016. An eligible employee will receive the appropriate amount of disabled veteran leave as of the employee’s “first day of employment”.

The first day of employment is the later of:

1. the date the employee is hired (in a qualifying employment); or
2. the effective date of the employee’s qualifying service-connected disability rating.

Employees that have a qualifying VBA disability rating in effect before they are hired, the 12-month eligibility period will begin on the date the employee is hired because the date of hire is the later date.

Employees who do not have a qualifying VBA disability rating at the time of hire can establish eligibility for disabled veteran leave at a later time. The later of the two dates (hiring or rating) will be the start date of the 12-month eligibility period.

Employees will have a single, continuous 12-month eligibility period, beginning on the “first day of employment” in which to use the leave or it will be forfeited with no opportunity to carry over the leave into subsequent years. An employee may not receive a lump-sum payment for any unused or forfeited leave under any circumstance.

*[References include, but are not limited to: Wounded Warriors Federal Leave Act of 2015, 5 C.F.R. § 630.1303]*

## **SECTION 20 - Voluntary Leave Transfer Program**

The Agency will continue to use the Leave Transfer Program as designated in the current Agency Directives and Policies and as authorized by 5 C.F.R. § 630, Subpart I.

## **SECTION 21 - Administrative Leave**

- A. Administrative leave is absence from assigned duties without charge to the employee’s leave or loss of pay. The Parties agree that excused absences may be granted for activities which are in the government’s interest. The employee will be required to have supervisory approval prior to leaving or being absent from the workplace.

- B. Employees will be granted up to four (4) hours of administrative leave to donate blood. Time spent donating blood and in necessary travel for such purposes shall also be administrative leave.
- C. When a donor is paid for donating blood by a blood collecting organization, the employee is required to take some type of leave (other than sick leave) for any period of absence resulting from the blood donation.
- D. Upon request and subject to certification by a physician, leave-approving officials shall approve administrative leave for employees who serve as living donors for bone marrow, organ, and tissue donation and transplantation. The use of administrative leave can cover time off for activities such as donor screening, the actual medical procedure, and recovery time. Leave-approving officials shall approve:
  - Up to seven (7) days of paid leave each calendar year, in addition to annual and sick leave, to serve as a living bone marrow donor,
  - Up to thirty (30) days of paid leave each year, in addition to annual and sick leave, to serve as an organ donor.
- E. Voting and Elections
  - a. Requesting the use of administrative leave for voting purposes is subject to the following:
    - i. employees must request administrative leave in advance and receive approval from their supervisors or designee prior to using it.
    - ii. the release of the employee is subject to a determination by the supervisor or designee whether the employee can be relieved of duty during the specific period of leave requested without impairing mission-essential operations.
    - iii. administrative leave for this purpose may not be used on a non-workday or during overtime work hours.
  - b. Employees may receive up to four (4) hours of Administrative Leave for:
    - i. Voting on established election days or early voting (per event), and
    - ii. Registering to vote or volunteering to register others
  - c. In addition to Administrative Leave received for voting, Poll workers may receive up to four (4) hours of Administrative Leave per leave year (pay period 1 - 26) for:
    - i. Serving as a non-partisan poll worker, and
    - ii. Participating in non-partisan observer activities at the Federal, State, Local, Tribal, and territorial levels (including training periods).

Employees who use Administrative Leave for this purpose during elections are not required to return compensation or fees received for performing this service to the Agency.

Elections may include, but are not limited to:

- Federal State, Local, Tribal, and territorial level elections
  - Elections that do not coincide with a Federal general election day
  - Federal special elections not held on the date of a Federal general election
- F. The Agency may grant weather and safety leave to employees only if they are prevented from safely traveling to or safely performing work at a location approved by the agency due to:
- a. An act of God - means an act of nature, including hurricanes, tornadoes, floods, wildfires, earthquakes, landslides, snowstorms, and avalanches,
  - b. A terrorist attack,
  - c. Another condition that prevents the employee or group of employees from safely traveling to or performing work at an approved location.

*[References include, but not limited: 5 CFR 630.1606, 5 U.S.C. § 6329(c)(b)]*

- G. The Parties agree that the above reasons for granting administrative leave are not all inclusive, DR 4060-630-002, Leave Administration, and that there may be other situations supporting a request for the granting of such leave. Such requests shall be considered based on the reasons presented at the time. The employer may require documentation as appropriate to support the reasons for and/or the duration of such administrative leave requests.



## **ARTICLE 30**

### **HOLIDAYS**

#### **SECTION 1 - General**

Legally declared Federal holidays are applicable to BUEs. Some employees may be required to work as part of their normal tour of duty. Other employees may be required to work on any given Federal holiday, as determined by the supervisor or designee. In these instances, it is encouraged that employees receive a reasonable amount of notification.

#### **SECTION 2 - Request for time off**

Employees who are scheduled to work on a federal holiday may request the day off. All such requests shall normally be made at least fourteen (14) calendar days in advance and are subject to supervisory or designee approval.

Under a FWS program, a holiday consists of eight (8) hours for full-time employees. Employees required to work on an established legal holiday, will be paid Holiday Worked and Holiday Pay.

#### **SECTION 3 - Official Federal Holidays**

**The current list of recognized Federal holidays include:**

HOLIDAY	DATE/DAY
New Year's Day	January 01
Presidential Inauguration - DMV Area	Every four years on January 20
Birthday of Martin Luther King, Jr	Third Monday in January
Washington's Birthday (President's Day)	Third Monday in February
Memorial Day	Last Monday in May
Juneteenth National Independence Day	June 19
Independence Day	July 04
Labor Day	First Monday in September
Columbus Day	Second Monday in October

Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

*[References include, but are not limited to: 5 U.S.C. § 6103, OPM.gov]*

## **ARTICLE 31**

### **HAZARD OR ENVIRONMENTAL DIFFERENTIAL PAY**

#### **SECTION 1 - Applicability**

Hazard pay is pay for performing hazardous duties or work involving physical hardship that are classified in the employee's Position Descriptions (PD). PDs are essential in determining how hazard pay is applied and authorized. BUEs performing hazardous duties listed in Appendix A (5 CFR § 550, Subpart I) must have these duties taken into account in the classification of their PD. This means the hazardous duty constitutes an element(s) already considered in establishing the position's grade. Hazard pay is encompassed in the employee's salary when the position has been properly classified.

Hazard pay differential is additional pay for the performance of hazardous duties, or duties involving physical hardship, by GS employees and is only applicable when:

- The specific hazard or physical hardship are different from those specified in the employee's Position Description, and
- The employee cannot control the hazard or physical hardship using the knowledge, skills, and abilities described in the Position Description.

Environmental Differentials only apply to Federal Wage System (FWS) employees who perform assigned duties involving exposure to identified hazards, physical hardship, or working conditions of an unusual nature as prescribed under Title 5, Appendix A to Subpart E of Part 532.

*[References include, but are not limited to: 5 C.F.R. § 550.904, 5 C.F.R. § 550.902]*

#### **SECTION 2 - Eligibility & Exclusions**

Permanent, temporary, term, and intermittent employees under the GS pay plans are entitled to hazard pay when the requirements have been met. Hazard pay entitlement is based upon the inability to mitigate the hazard. If there are safeguards, protocols, and equipment in place to greatly minimize the risk then hazard pay is not payable.

Full-time, part-time, and intermittent FWS employees (WG/WL/WS) are covered by Environmental Differential Pay and are not eligible for hazard pay. The environmental differential pay is at the rate specified for each category, when performing assigned duties involving exposure to identified hazards, physical hardship, or working conditions of an unusual nature, as prescribed under Appendix A to Subpart E of Part 532.

An employee cannot be paid Hazard Pay or Environmental Differential if,

- a duty or type of work is not listed in the appropriate Appendix (see above),
- they are not specifically assigned the duty,

- they are not given proper authorization to perform the duty (-ies),

*[References include but are not limited to: Appendix A to Subpart I of Part 550, 5 U.S.C. 5545, 5 U.S.C 5343, 5 C.F.R. § 532.511, 5 C.F.R. § 532.501, 5 C.F.R. Appendix A to Subpart E of Part 532]*

### **SECTION 3 - Hazard Pay**

- A. Management shall pay an appropriate hazard pay differential to a GS employee who performs a duty specified in Appendix A to Subpart I of 5 CFR 550 provided the physical hardship or duty has not been considered in the classification of the position (5 CFR 550.904).
- B. Management may approve payment of a differential even when the hazardous duty or physical hardship has been taken into account in the classification of the position when:
  - a. the actual circumstances of the specific hazard or physical hardship have changed from that taken into account and described in the position description; and
  - b. using the knowledge, skills, and abilities described in the position description, the employee cannot control the hazard or physical hardship; therefore, the risk is not reduced to a less than significant level.
- C. Each hazardous duty has a specific percentage rate that applies to that duty. An employee can receive hazard pay for performing more than one hazardous duty in a day, but the total hazard pay percentage rate for the day cannot exceed 25% (5 U.S.C. 5545(d)(2)).
- D. If an employee is performing duties for which hazard pay is authorized, they receive the hazard pay differential for all hours in pay status (24-hour period) during the calendar day in which the hazardous duty is performed.
  - a. 24-hour period is midnight to midnight (midnight is automatic cutoff time).
  - b. If employee works past midnight into the next day, they earn entitlement to hazard pay for 2 days only when exposed to the hazard before and after midnight.
- E. There is no minimum time requirement for exposure to earn entitlement to hazard pay. Any amount of actual exposure during a calendar day entitles the employee to hazard pay for all compensable hours that day.
- F. Hazard differential pay may be paid during hours of paid leave if hazardous duty is performed on a day which paid leave is taken. For example, if an employee performs a hazardous duty for 1 hour and then takes annual leave for the 7 hours remaining in their workday, the employee is paid hazard differential pay for the entire 8-hour workday (5 C.F.R. 550.905).
- G. An employee may receive hazard differential pay during overtime hours as they are in a pay status during those hours. However, the hazard differential pay is computed on the employee's hourly rate of basic pay, not their hourly overtime rate.

- H. Hazard differential pay may not be paid for periods of leave without pay. Hazard differential pay may only be paid while an employee is in a pay status.
- I. An employee may not be paid hazard pay for hours in which they receive annual premium pay for regularly scheduled standby duty, annual premium pay for administratively uncontrollable overtime (AUO) work, or availability pay for criminal investigators (5 C.F.R. 550.905).
- J. Hazard pay shall be discontinued when one or more of the conditions requisite for such payment ceases to exist:
  - a. Safety precautions have reduced the element of hazard to a less than significant level of risk, consistent with generally accepted standards that may be applicable, such as those published by the Occupational Safety and Health Administration, Department of Labor; or
  - b. Protective or mechanical devices have adequately alleviated physical discomfort or distress (5 C.F.R. 550.906).

#### **SECTION 4 - Environmental Differential**

- A. Management shall pay environmental differential to any FWS employee who is exposed to a hazard, physical hardship or unusually severe working condition listed in Appendix A to subpart E of 5 C.F.R. Part 532. Environmental differential is the only way in which exposure to these conditions may be compensated since they are not considered in the job grading process.
- B. Environmental differential is paid for either (1) actual exposure or (2) all hours in pay status, depending on the type of duty performed as listed in Appendix A to subpart E of 5 CFR Part 532.
  - a. If authorized on actual exposure,
    - i. employee receives differential for the amount of time they were actually exposed to the hazardous condition (minimum 1 hour), and
    - ii. for exposures greater than 1 hour, the pay is in 15-minute increments (see 5 C.F.R. § 532.11(b)(2)).
    - iii. if an employee receives environmental differential on an actual exposure basis during overtime hours, then they receive the differential only for the amount of time actually exposed (minimum 1 hour).
  - b. If authorized for all hours in pay status,
    - i. employee receives differential for all hours in pay status during the calendar day in which the hazardous duty is performed.

- ii. hours in pay status means all hours in which you worked or took leave during that 24- hour period.
  - iii. 24-hour period is midnight to midnight (midnight is automatic cutoff time). If employee works past midnight into the next day, they earn entitlement to environmental differential for 2 days only when exposed to the hazard before and after midnight.
  - iv. There is no minimum time requirement for exposure to earn entitlement to environmental differential for all hours in a pay status (see 5 CFR 532.511(c)).
  - v. If an employee performs a hazardous duty entitled to all hours in pay status on a day they also take leave, they receive environmental differential during the hours they took paid leave.
  - vi. If an employee receives an environmental differential for all hours in pay status and exposed on a day they work overtime, they receive the environmental differential during their overtime hours (calculated on base pay, not overtime pay).
- C. An FWS employee exposed to more than one condition at the same time is paid for the exposure which results in the highest differential but may not be paid more than one differential for the same hours of work.

## **SECTION 5 - Recording**

Regardless of Hazard pay or Environmental differential, the employee must record properly in WebTA, using the “Remarks” section on the time sheet for audit purposes.

For example, “4% environmental differential claimed on 6/28 for microorganisms, low degree hazard.”

## **ARTICLE 32**

### **DISCIPLINE AND ADVERSE ACTIONS**

#### **SECTION 1 - General**

Discipline is a managerial right and tool intended to correct employee misconduct and is not designed to be punitive in nature. The Parties agree the public interest requires upholding efficient operations through high standards of conduct and impartially enforcing laws, rules, and regulations. Emphasis should be placed on preventing situations that may result in disciplinary and adverse actions. To promote the efficiency of the service, the Agency will take the appropriate actions in accordance with applicable regulations and this Agreement.

The Parties agree to the concept of progressive discipline when deemed appropriate by management. Levels of discipline may be bypassed when the severe nature of the behavior /conduct makes a lesser form of discipline inappropriate.

Supervisors or designees are encouraged to use coaching and/or counseling sessions where appropriate prior to taking disciplinary action.

The Parties agree to promote the concept of alternative discipline in appropriate circumstances. Alternative discipline is an alternative to traditional penalties such as a reprimand, suspension, and/or removal.

#### **SECTION 2 - Definitions**

##### **Disciplinary Action**

A letter of an official reprimand, a suspension of fourteen (14) calendar days or less or alternative discipline.

##### **Adverse Action**

Adverse actions are defined as removals, suspensions of more than fourteen (14) calendar days, reduction in pay or grade or furloughs of thirty (30) calendar days or less.

##### **Letter of Reprimand (LOR)**

A letter of reprimand is generally the first step of the formal disciplinary process that an employee will face. This is a letter regarding the employee's misconduct that remains in their eOPF for a certain period of time, and it can act as a precursor to further disciplinary action.

##### **Suspension**

The placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

*[References include, but are not limited to: OPM website - Reference Materials, 5 C.F.R. § 752]*

### **SECTION 3 - Fairness and Timeliness**

Disciplinary actions must be consistent with applicable laws, government wide regulations in existence at the time of this agreement, and this agreement. If the Agency believes that misconduct has occurred, and at the discretion of the Agency, an investigation may be completed prior to any disciplinary action being taken. After completion of an investigation if one is conducted and, if it is determined that a disciplinary action is warranted, such action will be initiated in a timely manner after completion of the investigation (Refer to Section XX of this article). Discipline will be applied fairly and equitably and will not be used to harass employees. The proposing official will not act as the deciding official. The deciding official may be at a higher level of management than the proposing official.

### **SECTION 4 - Coaching and/or Counseling (Non-Disciplinary Tools)**

Prior to taking disciplinary action, supervisors or designees are encouraged to use any of the following as non-disciplinary means to correct the alleged misconduct:

1. Coaching and/or counseling sessions,
2. Letters of Caution,
3. Informational and instructional letters, and/or
4. A referral to the Employee Assistance Program (EAP)

These are not punitive nor are they disciplinary in nature. Rather, these are constructive instruments designed to correct behavior at the lowest possible level.

Such letters, notations, or records may be maintained by the supervisor or designee to consider or support an action taken against an employee for misconduct. Supervisory notes may be used to support an action taken against an employee for misconduct.

Coaching and/or counseling will be conducted privately and in such a manner as to avoid embarrassment to the employee. The purpose and intent of a coaching and counseling discussion should be clearly conveyed to the employee at the outset.

### **SECTION 5 - Alternative Discipline**

The Parties recognize the shared interest in correcting behavior promptly and avoiding unnecessary or lengthy litigation. The employee or the Union may request that alternative discipline be considered. However, the Agency retains the right to offer alternative discipline, including Last Chance Agreements (LCAs).

### **SECTION 6 - Reprimands**



Reprimands are effective upon the date of issuance to the employee. Employees will be given a copy of the official reprimand.

Once a BUE receives a Letter of Reprimand, they may grieve the action under the procedures set out in Article 34: Negotiated Grievance Procedure. Reprimands may remain in the employee's eOPF for up to two (2) years from the date of issuance. Employees may request removal of the Letter of Reprimand in their eOPF after one (1) year if there are no additional instances of similar misconduct by the employee from the date of issuance of the LOR. At the end of the retention period (1-2 years), the Reprimand will be permanently removed from the employee's eOPF. Once the Reprimand is removed from the employee's file, it can no longer be used to support future disciplinary actions.

BUE's have the right to be represented by the Union, or any other representative acting on behalf of the Union including attorneys or other representatives of the employee's choosing. If the employee elects Union representation in writing, any material used to initiate the LOR will be provided to the Union upon request.

### **SECTION 7 - Investigations and Disciplinary Actions**

Management may investigate an incident or situation to determine whether or not discipline is warranted. All applicable rights will be afforded to employees engaged in investigatory interviews in accordance with law, rule and regulation.

Investigations will be conducted fairly and impartially. The Parties will remind employees of their responsibilities to answer all questions asked during an investigative interview fully and with candor; however, the interview process will adhere to all applicable employee rights including, but not limited to, Weingarten Rights, Garrity Rights, and Kalkines Warnings if applicable.

BUE's are entitled to be represented by an attorney or other representative of their choosing, including any representative acting on behalf of the Union. If the employee elects Union representation, in writing, then the Union Representative, upon request, will be provided material relied upon.

### **SECTION 8 - Suspensions and Adverse Actions**

An employee for whom a suspension of fourteen (14) days or less or an adverse action is proposed is entitled to a thirty (30) calendar day written notice prior to the effective date of the action, except when the crime provision has been invoked.

An employee for whom a suspension or an adverse action is proposed is entitled to a response period of seven (7) calendar days. The employee may ask for an extension, if needed. Notices will state specific reasons for the proposed action.

Management agrees that the employee shall be given the opportunity to use a reasonable amount of duty time to review the evidence on which the notice is based, and which is being relied on to support the proposed action.

The employee and/or representative may respond orally and/or in writing as soon as practicable but no later than seven (7) calendar days from receipt of the proposed action notice. The response may include written statements of the persons having relevant information and/or other appropriate evidence. Extensions for replying to proposed adverse actions and suspensions may be granted. Requests for extensions shall be submitted to the designated Deciding Official in writing.

In responding to a proposed disciplinary action, the employee will be entitled to a single representative. This could be a Union representative, an attorney, or another representative of their choosing. The employee will be responsible to secure such representation and to notify the Deciding Official of their election to be represented in writing and the name of their representative.

The Deciding Official will issue the written Decision Letter which shall include the reason for the disciplinary action, a statement of findings, evidence relied upon in making the decision and conclusions as to each charge. The letter will also provide the employee's appeal rights and/or grievance rights. The Decision Letter will include the time period for filing a grievance, to whom it must be filed, and any relevant resources that may be helpful to the employee (i.e. EAP).

*[References include, but are limited to: 5 C.F.R. § 752]*

### **SECTION 9 - Administrative Reassignment**

Administrative reassignments or demotions may be used when deemed to be the best corrective action. Appropriate procedures must be followed, and appeal rights will be provided for decisions of reassignments or demotions made for reasons of misconduct.

### **SECTION 10 - Self Incrimination**

The right of employees not to incriminate themselves will apply in criminal investigations.

*[References include, but are not limited to: Garrity Rights, Kalkines Warnings]*

## **ARTICLE 33**

### **NEGOTIATED GRIEVANCE PROCEDURES**

#### **SECTION 1 - Purpose**

Parties agree that grievances in the workplace should be resolved promptly, equitably, and whenever possible, informally. The prompt settlement of disputes is desirable in the interest of sound labor management relations and efficient operations. Employees may discuss their concerns or complaints informally with their immediate supervisor or designee prior to filing a formal grievance, with or without Union representation or assistance. Nothing in this section requires the Union or employee to attempt to resolve the matter informally, and the Union, or employee may always file a formal grievance. Reasonable effort shall be made by the Agency and the union to settle grievances at the lowest level possible. If informal attempts to resolve disputes are unsuccessful or not pursued, the sole procedure for resolution of employee, Union, or employer grievances is outlined in this Article.

#### **SECTION 2 - Protection from Reprisal**

Employees and their representatives will be free from restraint, interference, coercion, discrimination, or reprisal, consistent with 5 U.S.C. Chapter 71, and this Agreement, in seeking resolution of grievances.

The Parties recognize that dissatisfaction and disagreements arise in the workplace. Thus, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's standing, performance, or loyalty to the organization.

#### **SECTION 3 - Coverage and Scope**

A Grievance means any complaint:

1. by a BUE concerning any matter relating to employment and/or the working conditions of the employee,
2. by the Union concerning any matter relating to the employment and/or the working conditions of the employee; or
3. by any employee(s), the Union or the Agency concerning:
  - a. the effect, interpretation, or claim of breach of a collective bargaining agreement; or
  - b. any claimed violation, misinterpretation or misapplication of any law, rule or regulation affecting conditions of employment.

*[References include, but are limited to: 5 U.S.C. § 7121]*

The following subjects are excluded from the Negotiated Grievance Procedures:

1. any claimed violation of 5 U.S.C. Chapter 73, subchapter III (relating to prohibited political activities);
2. retirement, life insurance, or health insurance;
3. a suspension or removal under 5 U.S.C. § 7532;
4. any examination, certification, or appointment;
5. the classification of any position which does not result in the reduction in grade or pay of an employee;
6. the assignment of ratings of record; or
7. the award of any form of incentive pay, including cash awards; quality step increases; or recruitment, retention, or relocation payments.

#### **SECTION 4 - Exclusivity**

This is the exclusive procedure available to BUEs, the Union, and/or the Agency for the resolution of grievances as outlined in this Agreement.

#### **SECTION 5 - Representation**

- A. A grievance may be filed by an employee or a group of employees, by the Union, or by the Employer. Employees may elect to represent themselves or have Union representation. Any BUE or group of BUE's may personally present a grievance and have it resolved without representation by the Union.
- B. The Union must be given an opportunity to be present at all formal discussions in the grievance process and receive copies of grievance responses. Any resolution must be consistent with the terms of this Agreement.
- C. When an employee elects to be represented by the Union, anyone whom the Union has designated in writing for a particular grievance is normally the representative of the Union for that grievance. Changes in the designation of the Union representative will normally be communicated to the Agency.
- D. In accordance with 5 U.S.C. Chapter 71, the Union has the right to be present during any proceeding under the negotiated grievance procedure. If the Union is not the designated representative, a copy of the grievance will be provided to the Union within seven (7) calendar days of the filing date. The Agency will provide the Union reasonable advance notice of any grievance meeting/discussion when the Union is not the designated

representative. A copy of each grievance decision will be provided to the Union in a timely manner, usually within seven (7) calendar days.

- E. If the grievant elects to have Union representation, any and all meetings and communication with regard to the grievance and any attempts at resolution shall be made through the designated Union representative. The BUE will be on Official Time.
- F. In situations where grievants and representatives are on different work schedules and/or locations, the Parties will make every reasonable effort to schedule all steps in the grievance process within the grievant's and representative's common work times; this may include adjusting either the grievant's or the representative's tour of duty.

#### **SECTION 6 - Resolution of Grievances and Employee Standing**

- A. In order to facilitate the resolution of grievances at the lowest level that can effect the requested changes, Management representatives, Union representatives, and BUE agree to have open and honest discussions with each other.
- B. Employees shall be authorized a reasonable amount of duty time (requested in advance and mutually agreeable with management), to prepare and participate in grievances, including individual or group grievances. Authorized reasonable time is normally up to two (2) hours of duty time, with additional time considered upon request in writing to the supervisor or designee.
- C. In cases of grievances involving multiple employees with common concerns (Group Grievance), the Union may select spokespersons from among the grievants who may serve as group representatives to promote efficient use of Government time and resources.
- D. Grievances can be initiated by one (1) or more employees. When two (2) or more employees have similar grievances (the dissatisfaction expressed, and the relief requested are the same), the Parties can, by mutual agreement, process the grievances concurrently.

#### **SECTION 7 - Grievability/Arbitrability Questions**

- The Parties agree to raise any questions of grievability or arbitrability contained in a grievance prior to the deadline for the management response in the final step of the grievance procedure. In the event either party should declare a grievance, or specific issues of a grievance, non-grievable or non-arbitrable, those issues that have merit will proceed through the negotiated process. Issues declared as non-grievable or non-arbitrable can be removed at any step of the grievance process or remain in the grievance and determined to be grievable/arbitrable by an arbitrator, if the Union so chooses to pursue this avenue. All disputes of grievability/arbitrability as a threshold matter, which remained in the grievance, shall be presented jointly with the merit issue(s) to the arbitrator within the related grievance.

## **SECTION 8 - Time Limit**

All time limits in this article may be extended by mutual agreement. Timeline extensions must be in writing through email. Per the timelines set in this article, deadlines must be on a business day (no weekends or Holidays).

## **SECTION 9 - Complaint or Grievance Options**

- A. In accordance with 5 U.S.C. § 7121, an employee may raise matters covered under Sections 4303 (Unacceptable Performance) and 7512 (Adverse Actions) under the appropriate statutory procedures or the negotiated grievance procedure. The employee shall be deemed to have exercised their option at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing, whichever event occurs first.
- B. Similarly, an employee affected by a prohibited personnel practice may raise the matter under the appropriate statutory procedure or the negotiated procedure but not both. An employee shall be deemed to have exercised their option at such time as they timely file a grievance in writing or file a formal complaint under the applicable statutory procedure, whichever event occurs first.
- C. Complaints of employment discrimination may be raised as a grievance or as a statutory equal opportunity complaint, but not both.

## **SECTION 10 - Procedures for Employee Grievances**

- A. The written grievance should normally contain a description of the matter(s) being grieved, including:
  - 1. The alleged violation(s) of the agreement, law, rule, regulation or conditions of employment in dispute;
  - 2. Statement of the circumstances giving rise to the grievance including the date, if applicable, of the alleged violation(s);
  - 3. The name of the management official(s) or others alleged to have committed the grievable action or subject matter;
  - 4. Name, official position title, and current contact information of the grievant(s), (e.g., phone number(s), email address, etc.);
  - 5. Name and current contact information of Union representative (if any); and
  - 6. The desired relief (remedy).
- B. All the time limits in this article may be extended by mutual consent. Grievance meetings under this procedure normally will be face-to-face, or upon mutual agreement by the Parties, via virtual methods.

- C. The grievant(s) and the Union representative(s) will meet with the designated management official and an Agency representative(s) (if one is designated). The Union and management may be permitted to have an equal number of representatives during meetings or discussions at all formal steps of the grievance procedure. If an Agency representative is designated, the Union will be apprised of who the representative will be. Normally, this notice will occur not less than three (3) calendar days in advance of the meeting.
- D. Grievances may be hand delivered or delivered through email. The recipient of the grievance shall sign and date the grievance if hand delivered or reply via email. If the grievance is delivered via email and an acknowledgement of receipt of the grievance has not been received within seven (7) calendar days, the Parties will assume the grievance has been delivered and received. Timelines will be preserved if the serving party is able to show the grievance was delivered via email.
- E. The grievance process is designed to be progressive in nature. The issues, if unresolved, should be escalated to the next organizational level for due consideration. Management officials designated to be grievance-deciding officials will have the authority to resolve the grievance. The Management official named in the written decision will not be the same person, or at the same organizational level, as any previous steps.

There will be times when a grievance may be more appropriately initiated (Step 1) at a higher supervisory level.
- F. During the grievance process, timelines may be extended or suspended, by mutual consent of the Parties, to allow the Parties to come to a consensus or resolution.
- G. All grievance decisions will be in writing and state the issue being grieved, facts and/or evidence considered in reaching the decision, a summary of the findings, and the reason(s) for the decision.
- H. Additional information and/or evidence can be introduced at any step in the grievance process to support the original claims. However new, unrelated claims should be filed as a separate grievance. New grievances are still subject to the negotiated timeframe for filing.
- I. Failure on the part of Management to meet any of the time requirements of the grievance procedure will advance the grievance to the next step or to Arbitration. If the grievant and/or the Union, after receiving a decision, fails to timely advance the grievance to the next step, the grievance shall be terminated. A grievant that misses the deadline for filing a grievance due to circumstances beyond their control may request a waiver in writing. Such requests will be determined on a case-by-case basis. The grievant may be required to provide a brief explanation in support of the request. If the request is granted, all applicable timelines will run from the date of the approval.
- J. If, in any step of the grievance procedure, it is determined that the Management official who received the grievance does not have the authority to resolve the grievance, the grievant will be informed, and the grievance will be forwarded to the proper official. This will fulfill the

grievant's obligation to meet the timetable set up in the grievance procedure; but it will not be considered as one of the steps.

## **SECTION 11 - Grievance Process**

### **Step 1:**

- A. The grievance will be presented in writing at a level above the immediate supervisory level within twenty (20) calendar days of the date that the employee or Union became aware, or should have reasonably known, of the grievable act or occurrence. Timelines will be suspended if the act or occurrence is of a continuing nature.
- B. The Step 1 management official or designee receiving the grievance will meet with the grievant and/or representative, at the request of any party, within twenty (20) calendar days of receipt of the grievance. The Step 1 official will provide the Step 1 written decision within twenty (20) calendar days from the date of the meeting, should one occur. If a meeting is not requested, the Step 1 official will provide the Step 1 written decision within twenty (20) calendar days of when the grievance was received.
- C. The Step 1 written decision will include:
  - a. The grievance being addressed (e.g., Step 1 Management Decision, etc.)
  - b. Reason(s) for granting or denying the requested remedy
  - c. Statement informing the grievant they have the right to pursue a Step 2 should their remedy be denied
  - d. Name and Title of the management official designated to receive the Step 2
  - e. Applicable resources, and their points of contact (POC), available for the employee (e.g., Employee Assistance Program, Reasonable Accommodation, etc.)

### **Step 2:**

- A. If the grievance is not satisfactorily resolved at Step 1, it may be presented to the Step 2 management official or designee named in the written decision letter within ten (10) calendar days of receipt of the response. The Step 2 management official receiving the grievance will meet with the grievant and/or representative, at the request of any party, within fourteen (14) calendar days of receipt of the grievance. The Step 2 official will provide the Step 2 decision within twenty (20) calendar days from the date of the meeting, if requested. If a meeting is not requested, the Step 2 official will provide the Step 2 decision within twenty (20) calendar days of when the Step 2 grievance was received.
- B. The Step 2 written decision will include:
  - a. The grievance being addressed (e.g., Step 2 Management Decision, etc.);
  - b. Reason(s) for granting or denying the requested remedy; and



- c. Statement informing the grievant that the Union has the right to invoke the matter to Arbitration.

If the grievance is not satisfactorily resolved in Step 2, the grievance may be referred to arbitration as provided in Article 35, Arbitration. Only the Union or management can refer a grievance to arbitration.

## **SECTION 12 - Employer/Union Grievance Procedure**

Union/Employer grievances over interpretation or application of this Agreement or interpretation, application or implementation of any law, rule or regulation affecting conditions of employment not concerning the employment of any specific employee or group of employees will be resolved through the following procedure:

- A. The Employer or Union may initiate a grievance by submitting it in writing to the Labor Relations Officer (LRO) or Union President, respectively, or either's designee, within twenty (20) calendar days after the incident occurs, or within twenty (20) calendar days after the Employer or Union first became aware of the incident.
- B. The Grievance must state:
  - a. The Articles and Sections of this Agreement alleged to have been violated;
  - b. Any law, rule, regulation, or agency policy that is alleged to have been violated;
  - c. A description of the grievant's position; and
  - d. the relief/remedy being sought.
- C. Any applicable documentation in support of the grievance can be included in the filing or presented at a later date.
- D. The Parties will then meet within twenty (20) calendar days of receipt of the grievance to discuss and attempt to resolve the matter. A written decision on the grievance will be issued by the responding party (Employer or Union) within twenty (20) calendar days of the meeting. If the responding party fails to issue a decision, the grieving party may invoke arbitration within twenty (20) calendar days after the meeting. The decision must be in writing. If the grievance is not settled, the grieving party may invoke arbitration within twenty (20) calendar days after receipt of the final decision.

## **SECTION 13 - Information Requests**

In accordance with the 5 U.S.C. § 7114, upon receipt of a written request, management will provide a written response within twenty (20) calendar days. The preferable method of delivery is email. All Information Requests will be submitted to the LRO or their designee.

Management will:

- Provide the information as requested,
- Provide a written explanation about why the Information Request, or sections of the request, cannot be fulfilled, or
- Request an extension to allow more time to gather and provide the data.

#### **SECTION 14 - Conflict Resolution Program**

The Conflict Resolution Program (CRP) processes, including mediation, may be used at any stage in a grievance upon mutual agreement of the Parties. If CRP/mediation is used, the grievance time limits are paused until the conclusion of the CRP process.

## **ARTICLE 34**

### **ARBITRATION**

#### **SECTION 1 - General**

Arbitration refers to a process which utilizes an Arbitrator to settle disputes that were not resolved through the negotiated grievance procedure.

If Arbitration is not invoked within twenty (20) calendar days, the last grievance response will be considered the final response on the matter.

#### **SECTION 2 - Notice to Invoke Arbitration**

If a grievance is not resolved under the Negotiated Grievance Procedure, it may be referred to Arbitration by the Agency or by the Union. The request for Arbitration shall be made in writing within twenty (20) calendar days after the receipt of the final grievance response or the date a response should have been received. The final grievance response will specify who within the charged Party should receive the request for Arbitration. Arbitration may only be invoked by the exclusive representative (Union) or the Agency.

*[References include, but are not limited: 5 C.F.R. § 7121(b)(1)(C)(iii)]*

#### **SECTION 3 - Selection of Arbitrator**

Within seven (7) calendar days after Arbitration is invoked, the Party invoking Arbitration will request a list of seven (7) Arbitrators with Federal sector experience from the roster maintained by the Federal Mediation and Conciliation Service (FMCS). The moving (referring) Party covers the full cost of obtaining the Arbitrator list from FMCS.

Within twenty (20) calendar days after receipt of the list of Arbitrators, the Parties will meet and attempt to select one (1) Arbitrator from the list by mutual agreement. If the Parties cannot mutually agree upon an Arbitrator to hear the case, the striking method will be utilized, and the moving (referring) Party has the right to strike the first Arbitrator from the list or require the opposing party to strike first. The Parties will alternate strikes from the Arbitrator list until only one (1) name remains. This will be the Arbitrator chosen to hear the case.

If the moving (referring) Party refuses, delays or fails to participate in the selection process within the aforementioned timeframe of twenty (20) calendar days, the grievance/Arbitration appeal will be considered terminated and withdrawn. If the charged Party refuses, delays or fails to participate in the selection process within the aforementioned timeframe of twenty (20) calendar days, the moving (referring) Party may select the Arbitrator from the FMCS provided list and unilaterally set the Arbitration date. The time limits under this Section may be extended by mutual agreement without being considered a delay.

- A. Following the selection, the moving (referring) Party will, within ten (10) calendar days, notify FMCS of the name of the Arbitrator selected, and copy (or cc) the charged Party. The time limits may be extended by mutual agreement.
- B. Once selection of an Arbitrator is made, the moving (referring) Party shall have the responsibility of contacting the selected Arbitrator and obtaining available dates for the hearing. The charged Party must be copied when the Arbitrator is contacted. Once available dates are received from the Arbitrator, the Parties will mutually agree on a specific date for the hearing. If for any reason the selected Arbitrator becomes unavailable, the last Arbitrator to have been struck will be contacted (and the charged Party cc'd) and the procedure in this subsection will begin again, until an Arbitrator with available dates has been selected. Should no Arbitrator on the list be selected due to unavailability, then a new list will be requested from FMCS generated in accordance with this section. The costs associated with obtaining a new list will be shared evenly between the Parties. The first strike from the new list will be made by the referring (moving) party.

#### **SECTION 4 - Procedures for Arbitration Hearing**

- A. The procedures used to conduct an Arbitration hearing shall be determined by the Arbitrator. The parties must comply with the procedures implemented by the Arbitrator.
- B. The Parties agree to follow these general guidelines:
  - 1. Both Parties shall be entitled to call and cross-examine witnesses during the Arbitration proceedings. All bargaining unit witnesses necessary for the Arbitration will be on duty time. When necessary, management will adjust the work schedule for Bargaining Unit witnesses so that they are on duty status during the Arbitration hearing. Such schedule changes may be made without regard to contract provisions in Article 29: Hours of Work and Overtime.
  - 2. The grievant will be granted adequate duty time to prepare for Arbitration and shall be on duty time for the duration of the hearing.
  - 3. Both Parties shall be entitled to call technical advisors during the Arbitration proceedings. All bargaining unit technical advisors necessary for the Arbitration will be on duty time, for both preparation and for the hearing.
  - 4. Observers may be permitted to attend Arbitration hearings by mutual agreement with prior notification to the opposing party.
  - 5. If either Party refuses to cooperate or produce evidence or witnesses, the Arbitrator will be empowered to direct that such evidence or witnesses be produced. Should the absence of cooperation from either party continue, the Arbitrator will be empowered to render the award based on the evidence and testimony already provided.

- C. The Arbitration may be at the location of the affected employee or through virtual methods by mutual consent. If either party wishes to have a change of venue from an Agency-provided facility, the requesting party is responsible for the fees and costs associated with the new venue.
- D. The Parties will attempt to submit a joint statement of the issue, or issues, to the Arbitrator. If the Parties do not agree to file a joint submission, each Party shall make a separate submission to the Arbitrator and, will provide a copy to the other Party. The Arbitrator shall determine the issue, or issues, to be heard.
- E. The Parties agree to exchange witness lists. Witness lists will normally be exchanged no later than fifteen (15) calendar days prior to the scheduled Arbitration. The Agency will arrange to have all ARS Employee witnesses available and confirm their availability with the Union and Employee at least seven (7) calendar days prior to the hearing. If the Union presents a witness after this timeframe, the Union will notify the Agency as soon as possible.
- F. Any time limits stated in this article may be extended by mutual agreement.

## **SECTION 5 - Costs**

After the Arbitrator has been selected, all fees and expenses associated with Arbitration shall be shared (Management - 50%, Union - 50%) by the Parties.

If prior to the Arbitration hearing, the Agency and the Union resolve the grievance, any cancellation fees shall be equally shared (Management - 50%, Union - 50%) by the Agency and the Union. If either party requests the hearing to be postponed, the cost from the Arbitrator, if any, will be borne by the party requesting the postponement.

If there is a mutual agreement for a verbatim transcript, the cost of the court reporter and the verbatim transcript will be equally shared as previously noted (Management - 50%, Union - 50%). If either party requests a verbatim transcript, and the other does not, the cost of the court reporter and the verbatim transcript will be paid by the requesting party.

## **SECTION 6 - Scope of Proceedings**

The Parties agree that the issue(s) to be arbitrated shall be no broader in scope than the issue(s) presented during the last step of the grievance procedure, except that the parties would not be precluded from introducing procedural and background material that is necessary and relevant. The Arbitrator will determine, at their discretion, if documents or other evidence, which were not made a part of the grievance process, will or will not be allowed to be presented during the hearing.

Any concerns about the grievability/arbitrability of an issue or complaint should be raised before or by the last Step of the grievance procedure. The Arbitrator has the authority to make all grievability and/or arbitrability determinations and whether or not these will be heard as threshold issues. The Arbitrator has the authority to determine if a separate hearing will be conducted to assess the grievability/arbitrability of the issues.

## **SECTION 7 - Awards**

The Parties may submit post-hearing briefs (including rebuttal briefs) or closing statements. It is further agreed that all documents given to the Arbitrator are also provided to the opposing party's representative at the same time. The Arbitrator will be requested to render a decision within sixty (60) calendar days from the hearing date.

The Arbitrator shall have no authority to make an award contrary to this Agreement or modify any provisions of this Agreement in issuing an award. However, recommendations made by the Arbitrator will be considered binding by both Parties. The Arbitrator shall have full authority to provide a remedy appropriate to resolve the grievance, including but not limited to back pay (with interest), restoration of leave or other benefits, monetary and non-monetary make-whole remedies, and attorneys' fees. Attorneys' fees shall be paid at the market rate as defined by the statute.

*[References include, but are not limited to: 5 U.S.C. § 5596]*

The award will be final and binding on the Parties, except that either Party may file an exception to an award with the FLRA under regulations prescribed by the FLRA within thirty (30) calendar days of receipt of the award or seek judicial review under 5 USC § 7121(f), as appropriate.

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

## **SECTION 8 - Official Time/Duty**

An appropriate amount of official time as determined by the Agency for Arbitration preparation will be granted for one (1) Union representative at a time. Union representatives will be on official time, and excused from duty, during the hearing, and any actions associated with exceptions to the award.

The grievant(s), technical advisor(s), if any, and all employees identified as witnesses, who are in duty status, shall be excused from duty and granted duty time, travel and per diem expenses (per travel regulations and Agency policies) as appropriate to the extent necessary to participate in any and all phases in the Arbitration proceeding, either as a Party or to testify as a witness, without loss in pay.

## **ARTICLE 35**

### **REDUCTION IN FORCE, REORGANIZATION AND TRANSFER OF FUNCTION**

#### **SECTION 1 - Definitions**

##### **Function**

Means all, or a clearly identifiable segment, of the Agency's mission, regardless of how it is performed.

##### **Reduction-in-Force (RIF)**

A form of layoff for Federal employees. Generally, there will be a permanent decrease in the total number of employees. The RIF regulations dictate whether an employee retains their current position or if they have the right to be assigned to another position.

##### **Furlough**

The placement of an employee(s) in a temporary nonduty and nonpay status for more than 30 consecutive calendar days, or more than 22 discontinuous workdays, but not more than one year. These circumstances are also considered RIF actions and must follow all related regulations.

##### **Administrative Furlough**

A planned event by the agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any budget situation other than a lapse in appropriations. Furloughs that would potentially result from sequestration would generally be considered administrative furloughs.

##### **Shutdown Furlough**

Also called an emergency furlough, occurs when there is a lapse in congressional appropriations and can occur at the beginning of a fiscal year, or upon expiration of a continuing resolution (CR) when no additional CR or appropriations are passed into law.

##### **Reorganization**

The planned elimination, addition, or redistribution of functions or duties in an organization.

##### **Transfer of Function (TOF)**

Takes place when a function ceases in one competitive area and moves to one or more other competitive areas that do not perform the function at the time of the transfer. This could include the movement of the competitive area to a different commuting area.

##### **Adverse Action**

A furlough of more than 30 calendar days, or more than 22 discontinuous calendar days if done on a discontinuous basis, but not more than 1 year.

## M2

Excepted employees who must work part time (PT) or full time (FT) during a lapse in Federal funding with supervisor notification and an Excepted Memo. M2 employees perform excepted work activities within the scope of their Position Description, and as determined by Management, during a lapse of funding. At any time during a lapse of funding, additional M2 employees may be identified by Management as needed, with timely notification.

*[References include, but are not limited to: 5 C.F.R. §351.203]*

## **SECTION 2 - General**

In the event of a proposed Reduction-in-Force (RIF), Administrative Furlough, an Adverse Action as defined in Section 1 of this Agreement, Reorganization and/or Transfer of Function at BARC/USNA, Management will notify the Union and all impacted BUEs in writing at least 60 calendar days prior to implementation and fulfill its obligation to bargain in good faith consistent with 5 U.S.C. Chapter 71.

*[References include, but are not limited to: 5 C.F.R. § 351.801]*

The notification must include:

- Description of the proposed change,
- Explanation of how the change will be implemented (i.e. phases/timeframes, points-of-contact, buildings, etc.),
- Date of proposed implementation,
- Names, positions, and potential post-RIF job status of all impacted BUEs, and
- Any known impacts and residual impacts (i.e. workplace changes, Position Description changes, change in duty station, etc.)

Management agrees to minimize the adverse effect of a staff reduction whenever feasible. Attrition will be utilized for this purpose, when possible.

Should a RIF be implemented, management will follow HR guidelines utilizing the OPM established tenure groups and subgroups, and adhering to appropriate retention factors (e.g. Veteran's Preference, Length of Service, and Performance).

*[References include, but are not limited to: 5 C.F.R. § 351.501]*

A Demand to Bargain may be submitted within fourteen (14) calendar days after notification has been received by the designated Union representatives. A Demand to Bargain is a request to negotiate and may include a request for I&I bargaining. Designated representatives from either Party may request a meeting to discuss the details of the proposed Reorganization and/or Transfer of Function.



Any modifications to the proposed RIF, Reorganization and/or Transfer of Function will result in a new fourteen (14) calendar day period to submit a Demand to Bargain, but only on the modifications.

The Union will provide the following information when submitting a request for I&I Bargaining:

- Proposals reasonably related to the proposed changes;
- Identify (if known) the adverse impacts of affected BUEs
- An explanation of the identified adverse impacts; and
- Recommended procedures and/or appropriate arrangements to reduce/remedy adversely affected employees.

The terms of any resolutions or outcomes reached during I&I Bargaining shall be written and signed by both Parties.

*[References include, but are not limited to: 5 U.S.C. Chapter 71; 5 C.F.R. § 351; USDA DR 4030-330-002]*

### **SECTION 3 - Planned Furlough (Adverse Action)**

The Agency will notify the impacted employees and the Union President, or designee, in writing at least thirty (30) calendar days of any planned furloughs of 30 or fewer consecutive calendar days or 22 or fewer discontinuous workdays. The Agency will follow the laws, rules, regulations, and procedures where applicable, as well as the guidelines and policies of the OPM and USDA Departmental Regulations whenever furloughs are to be utilized. The Union may submit a Demand to Bargain (and/or request I&I), and in a timely manner, the Parties will bargain in good faith over the planned furlough.

*[References include, but not limited to: 5 C.F.R. § 752.404]*

### **SECTION 4 - Shutdown Furlough**

In a budget shutdown furlough, the Agency must shut down any activities funded by annual appropriations that are not excepted by law. BUEs will be notified as soon as practicable of their status as Excepted (M2) employees. These impacted BUEs will be notified of the following at a minimum:

- Rotation times for onsite work
- Duties expected to be performed while onsite
- Points-of-Contact for the duration of the furlough

*[References include, but not limited to: 31 U.S.C. § 1341, OPM-Pay and Leave Furlough Guidance, the Government Employee Fair Treatment Act of 2019]*

## **ARTICLE 36**

### **CONTRACTING OUT**

#### **SECTION 1 – General**

Management will inform the Union when it exercises its discretion, in accordance with OMB Circular A76, to contract out work which is presently being performed by BUEs.

The Union will be notified when Management has decided to contract out work. Upon request, Management will provide the Union information concerning the decision which is disclosable under the Freedom of Information Act.

#### **SECTION 2 - Notification**

Upon receipt of notification of Management's decision to contract-out work, which is presently being performed by, or will have an impact on, BUEs, the Union may, within fifteen (15) calendar days, request negotiations concerning the impact on BUEs.

Upon timely request from the Union, the Parties shall meet and confer within fifteen (15) calendar days, concerning the impact upon BUEs.

#### **SECTION 3 - Employee Placement**

When permanent employees are impacted by a decision to contract out, the Agency will make maximum effort to find available positions for employees, in accordance with laws, rules and regulations.

These efforts can include, but are not limited to:

- Giving priority consideration for available positions within the Agency,
- Utilizing Interagency Career Transition Assistance Program (ICTAP), Career Transition Assistance Program (CTAP),
- Establishing an employment priority list and a placement program, and
- Paying reasonable costs for training that can contribute to the proper placement

**ARTICLE 37**  
**CONCERTED ACTIVITY**

**Illegal work stoppage**

Work stoppage or slowdown of work is illegal. The Parties understand that these illegal acts harm or adversely affect the operations or missions of the Agency. The Union agrees that it will not condone, initiate, or participate in a strike. The Union will not support such activity.

## **ARTICLE 38**

### **INFORMATION, PUBLICITY, AND DISTRIBUTION**

#### **SECTION 1 - Information**

Copies of this Agreement shall be posted on a designated USDA electronic platform. The Union shall be furnished with an electronic copy.

It is understood that this Agreement will be 508 compliant in accordance with the American with Disabilities Act (ADA).

The final Agreement should include:

- A Table of Contents referencing Article and page numbers
- A Glossary to define important terminology
- Page numbers
- Cover Sheet
- Signature Page
- Acknowledgements

#### **SECTION 2 - Publicity**

Management agrees to allow reasonable space for the posting of Union literature and material on designated official bulletin boards in employee-occupied buildings. The Union has the right to directly post literature on its bulletin board space with no prior approval or review by Management, and is responsible for all information posted on official bulletin boards.

The Union agrees that information posted or distributed must not:

1. Violate any law, regulation, this Agreement, or the security of the USDA; or
2. Contain slanderous/libelous material regarding any individual, the USDA, or the Federal Government.

If a management official has reasonable belief that any Union items posted on bulletin boards, as defined above, are not appropriate, then they will request that the appropriate Labor Relations Officer (LRO) or designee review it. The LRO or designee will inform the Union of the decision and, if appropriate, meet with the Union President or their designee to discuss items which appear to be in violation of this Article. If the parties cannot come to an agreement, the appropriate LRO or designee shall make the decision whether to allow the item to be posted. If the Union disagrees with the assessment, the Union may invoke their rights.

### **SECTION 3 - Distribution**

Union officials and stewards may distribute information for representational purposes during non-duty time, (employee breaks, lunch times, or before and after work) via desk drop or email. The Union representatives shall be considered on Official Time when distributing material related to representation.

### **SECTION 4 - Use of Government Furnished Equipment**

The Union is permitted to utilize government office resources (internet, devices, paper, etc.) in order to create and publish representational materials and update the contact information for Union representatives (names, work locations, phone numbers, and emails).

### **SECTION 5 - Contact Information**

Management agrees to include Union contacts and their contact information on BARC/USNA directories (ex. BARC Directory, etc.). The official email address for the Union that should be used for these directories is [afge.local3147@gmail.com](mailto:afge.local3147@gmail.com).

### **SECTION 6 - Use of Government systems**

The Union may use the Government email system to communicate with employees. However, the Union will not use the government email system to communicate partisan political material or to conduct internal Union business

*[References include, but are not limited to: The Hatch Act of 1939, as amended]*

## **ARTICLE 39**

### **DUES ALLOTMENT PROCESS**

#### **SECTION 1 - General**

This Article prescribes the procedures for eligible employees, who would like to become dues-paying members of the Union, to pay their dues through voluntary allotments from their compensation.

The Union will inform and educate its members on the voluntary nature for allotment of Union dues, including the conditions under which the allotment may be canceled.

#### **SECTION 2 - Eligibility**

Employees may have dues deducted through payroll deductions, or any other approved system. Such deductions will be discontinued only when the employee leaves the Bargaining Unit position, ceases to be a member in good standing of AFGE, or submits a timely cancelation form (SF-1188) under the procedures of this article.

To be eligible to make a voluntary allotment for Union dues, an employee must:

- be a member in good standing of the Union;
- be a member of the BARC/USNA Bargaining Unit; and
- have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues.

#### **SECTION 3 - Allotment Methods**

Voluntary Allotments by BUEs can be made by one of two methods: Payroll deduction or E-Dues.

- **Payroll Deduction** - Authorization by the Agency to deduct from an employee's total earnings for the purposes of paying for benefits or voluntary allotments in specified amounts on a regular and recurring basis. This method incurs no cost to the Union.
- **E-Dues** - Authorization by the employee to deduct from a personal account for the purposes of paying for benefits or voluntary allotments in specified amounts on a regular and recurring basis. E-Dues is a way for AFGE members to pay for benefits or voluntary allotments using EFT or Credit Card payments, rather than payroll deductions through the Agency.

To initiate a voluntary allotment through E-Dues for Union dues, employees should contact the Union President, or designee, to determine eligibility and obtain instructions for implementing.

All payroll deductions and transmittals will be made at no cost to the Union or BUEs.

*[References include, but are not limited to: Memorandum of Understanding Between USDA and AFGE, June 1979]*

#### **SECTION 4 - Procedures to initiate an allotment by the Agency**

To initiate a voluntary allotment through payroll deduction for Union dues, employees will obtain the “Request for Payroll Deductions for Labor Organization Dues” – Standard Form (SF) 1187, from a designated Union representative. The employee will fill out their portion of the form and return the completed form to their designated Union representative.

The Local Union President or any Local officer will verify the employee's information, ensure the form is correctly filled out, certify the SF-1187, email the SF-1187 to the Agency Labor Relations Officer (LRO)/designee, and cc the employee. Once submitted to the LRO/designee, the Agency is responsible for ensuring that the process is completed, and the dues are properly deducted within four (4) pay periods.

The LRO or designee will notify the Union President, or their designee, of the effective date the dues will begin to be deducted for each employee. The Union representative and employee will be updated by the Agency LRO or designee if there are any delays and/or the dues will not be deducted by the third pay period after the SF-1187 has been submitted.

The deductions certified on the SF-1187 by the authorized Union official shall be the dollar amount of regular dues, exclusive of initiation fees, assessments, back dues, fines, and similar charges and fees. One standard amount for all employees or different amounts of dues for different employees may be specified.

The Union will inform the LRO or designee of any changes in the amount of, or formula for, membership dues. Members do not need to complete a new form (SF-1187) for increases or changes in dues amounts.

Dues will be remitted by electronic funds transfer (EFT) each pay period to the bank account designated by the Union. Because payroll deductions are administered through the Agency's systems, the Agency is ultimately responsible for ensuring that deductions are effected in a timely manner.

The Agency is responsible for ensuring an employee's allotment for Union dues continues if/when the employee is assigned or promoted to another position within the Bargaining Unit.

Inquiries by Union representatives and/or impacted employees on dues-related issues will be addressed by the Agency in a timely manner.

*[References include, but are not limited to SF-1187, and the Memorandum of Understanding between USDA and AFGE, June 1979]*



## **SECTION 5 - Cancellation of allotments**

- A. To cancel a voluntary allotment of Union dues, the employee will complete “Cancellation of Payroll Deductions for Labor Organization Dues” - SF-1188 and submit this form to the Union President. The Local Union President, or designated representative, will email the SF-1188 to the LRO or designee and cc the employee.
- B. Management will ensure that such cancellations will be effective as soon as administratively feasible but normally within two pay periods from the LRO receiving the SF-1188. Union officials reserve the right to pursue available avenues to hold the Agency accountable for proper and timely cancellation.
- C. Dues cannot be canceled until one (1) year after the allotments begin. The one year begins on the date of the first Official Pay Date, as determined by the National Finance Center (NFC), in which the deduction began. For members using E-Dues for their voluntary allotments, the mandatory year begins on the date of your first allotment.
- D. The Agency is responsible for ensuring an employee's cancellation of Union dues is processed accurately and timely.
- E. This dues cancellation will become effective on the first full pay period after the effective date stated on the SF-1188.
- F. The Union, employees, and Management have a mutual responsibility to maintain communication so that issues can be resolved promptly and efficiently.
- G. BUEs may restart dues allotments to the Union by submitting a new SF-1187.

*[References include, but are not limited to, 5 C.F.R. 7115, 5 C.F.R. 2429.19, SF-1188]*

## **SECTION 6 - Back-pay**

The Agency agrees to withhold union dues from a back-pay award granted to an employee who was terminated and was on dues withholding at the time of a termination. The amount withheld from the back-pay award will be calculated from the date of termination until the employee's date of reinstatement. Upon their return to duty, the employee will be made whole and will continue the status quo in the BU and dues-paying status they were in at the date of termination.

The Agency agrees to withhold union dues from a back-pay award to an employee who was on dues withholding at the time of a suspension.

## **SECTION 7 - Continuation of Dues Allotments**

When an employee is detailed or temporarily promoted out of the BU, union dues withholding will be stopped and restarted automatically when the employee returns to the BU.

When an employee is detailed or by other personnel action placed in a BU position, the employee shall have all the rights of the BU, including the right of dues withholding.

**SECTION 8 - Position Determination**

Either party may file a Clarification of Unit with the FLRA to determine the position's status.

**ARTICLE 40**  
**CHARITIES, CIVIC ORGANIZATIONS, AND VOTING**

**SECTION 1 - Charities**

The Parties agree that BUEs may support charities sanctioned by the Agency, such as through the Combined Federal Campaign (CFC). The Parties recognize that support for CFC and any of its charities is voluntary.

To maintain the voluntary nature of fundraising for charities through Agency-approved avenues, the following shall not occur (this list is not all-inclusive):

- a. Solicitation of employees by their supervisor or by any individual in their supervisory chain of command.
- b. Supervisory inquiries about whether an employee chooses to participate or not to

## **ARTICLE 41**

### **AUTHORSHIP**

The Parties recognize that the designation of authorship is an issue of scientific ethics. In recognition of the above, the Parties agree that a good faith effort will be made to comply with Research, Education, and Economics (REE), P&P 152.2-ARS (or its successor), Authorship of Research and Technical Reports and Publications, dated May 5, 2011 (or its successor), and any other Departmental regulations.

In accordance with the policies and procedures, the senior author will circulate the manuscript in its final draft form to all those that meet eligibility guidelines for authorship.

The question of who an author should be is fundamentally an issue of science ethics. Each author must have participated sufficiently in the work to take public responsibility for the content of the article.

This participation must include:

- Conception, design, and execution; or analysis and interpretation; and
- Drafting the article or revising it for critically important intellectual content; and
- Final approval of the version to be published.

Any person who, in the judgment of the Research Leader (RL), meets the guidelines for authorship and who wishes to be listed as an author cannot be ethically denied authorship.

Upon request, supervisors must be prepared to provide the RL with a justification detailing how each listed author has met the three criteria.

Area and Center Director's (CD) offices require a detailed justification of how laboratory technicians listed as authors have met the three criteria. This must be included for approval prior to submission of a 115.

Persons who have contributed to the publication and whose contributions do not justify authorship may be named and their contribution described (i.e. Acknowledgements). Such persons must give their permission to be named. One or more statements should specify at an appropriate place in the article (if allowed by the policy of the publication):

- Contributions that need acknowledgement but do not justify authorship;
- Acknowledgement of technical help (required in a separate paragraph); and/or
- Acknowledgement of financial and material support.

Disagreements regarding authorship should be resolved in accordance with the P&P.

All individuals to be listed as authors, regardless of the classification of their positions, or other affiliation, must meet these authorship guidelines.

*[References include, but are not limited to: P&P 152.2 v2]*

## **ARTICLE 42**

### **DURATION**

#### **SECTION 1 - General**

The effective date of this Agreement, including any supplement(s) or amendment(s), shall be the date of its approval by the Agency Head. If the head of the Agency does not approve or disapprove the Agreement within thirty (30) calendar days from the date the Agreement is signed by the Parties, the Agreement shall take effect and shall be binding on the Parties subject to the provisions of 5 U.S.C. Chapter 71 and any other applicable law, rule or regulation.

#### **SECTION 2 - Expiration and Renegotiations**

This Agreement shall be in full force and effect for five (5) years from the date of its approval and remain in full force and effect until a new Collective Bargaining Agreement is signed and implemented by all interested parties. If the Parties do not open this Agreement for renegotiations by the expiration date, the Agreement will roll over for periods of one-year increments, and the current agreement shall remain in effect until the new agreement receives Agency Head Approval (AHA).

Either Party may give written notice to the other of their intent to renegotiate this Agreement not more than one- hundred and eighty (180) calendar days prior to the expiration date of this 5-year Agreement, and any subsequent one-year rollovers. Upon receipt of the written notice, negotiations will proceed in accordance with this Agreement.

#### **SECTION 3 - Implementation**

Upon AHA approval, this Agreement will supersede and cancel all Articles contained within the previous Collective Bargaining Agreement and will serve as the principal agreement between the Parties.

This Collective Bargaining Agreement between the Management Team and BUEs of the USDA/ARS BARC and the USNA was made possible because of the expertise and diligence of a very dedicated team. Each team member brought insight, perspectives, and respect throughout this process.

DATE: March 21, 2025

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