

**COLLECTIVE BARGAINING  
AGREEMENT**

**between**

**UNITED STATES DEPARTMENT OF  
AGRICULTURE RURAL  
DEVELOPMENT**

**and**

**AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES**

**Local 3354**

October 2, 2024 to October 1, 2029

(Business Center professional & non-professional Employees)

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## **ARTICLE 01 — ABANDONMENT OF POSITION**

### **01.01 Failure to Notify**

The absence of an Employee coupled with the failure of the Employee to notify and request leave from their immediate Supervisor or other management official for one (1) pay period in accordance with leave request procedures as outlined in the Agreement (i) shall be considered as an abandonment of the position (ii) in consequence of which the Employee shall be regarded as having resigned from their position with the Agency.

### **01.02 Procedures**

If an Employee has not reported for work or made contact with the Agency pursuant to the Leave Article for two (2) consecutive duty days, the Agency shall:

- A. Attempt to contact the Employee by telephone (if the Employee has a telephone), two (2) times each on two (2) of the Employee's normally scheduled duty days; and
- B. Attempt to contact the Employee by email sent to both the Employee's USDA and the Employee's personal (if known) email address; and
- C. Send a delivery confirmation letter to the Employee's address (as designated in the electronic personnel system) directing the Employee to:
  - 1. return to duty no later than a set date (which shall not be prior to the one (1) pay period duration that commenced the absence), and/or
  - 2. make contact with the individual(s) named in the return-to-duty letter to express their intent to return with specifics on when to return.
- D. If the Employee neither returns to duty nor makes contact (see (C)(1) & (2) immediately above), terminate the Employee's employment by an Abandonment of Position personnel action.

### **01.03 Changing a Processed Abandonment Action**

- A. An individual for whom the Agency has processed a personnel action terminating them for "abandonment of position" may thereafter request that the abandonment action on their official record be rescinded and replaced with "resignation" by presenting to the Agency either:
  - 1. a letter of resignation; or
  - 2. (i) evidence of unusual and compelling circumstances demonstrating a good and just cause for the individual's failure to respond to the Agency's attempts to contact them; and  
(ii) reasons the Agency should rescind the abandonment action.

- B. Any such individual who meets with an Agency representative in connection with such a request may have a Union representative present.

## **Article 02 — Alternative Dispute Resolution/ EEO Complaint Process**

### **02.01 General**

- A. To support good Labor-Management Relations, the Agency agrees to provide Employees with an Alternative Dispute Resolution (ADR) Problem-Solving Method. The ADR Program shall be available to all Employees.
- B. ADR is an opportunity for Employees to resolve disputes not rising to the level of a Grievance.
- C. The Parties are entitled to be accompanied, represented, and advised by a personally chosen representative in ADR proceedings consistent with all applicable laws, rules, regulations, policies, procedures, and practices, as amended.
- D. Provided the Employee has met the timeframes established for another complaint resolution procedure, the use of the ADR Program does not preclude the Employee from exercising his/her rights through the other complaint resolution procedure.
- E. During the Employee's initial orientation, and annually thereafter, the Agency shall provide Employees with ADR Awareness Opportunity information.
- F. Employee participation in the ADR Program is strictly voluntary, and all Participants must act in Good Faith.
- G. To assure the ADR Program remains a viable alternative to the Grievance Procedure, the Agency agrees to comply with all applicable laws, rules, regulations, policies, procedures, and practices, as amended.
- H. The ADR Program shall be timely, effective, and efficient.

### **02.02 Confidentiality**

Since the ADR Process may involve Personally Identifiable Information, all participants in the ADR Program must maintain the strictest and highest level of confidentiality. The Parties intent is for confidentiality to allow the Parties to candidly discuss their interests to reach the best possible resolution, without fear that statements made during the ADR process would not be used against them. Confidentiality provides protection from disclosure of information discussed or disclosed during the ADR process. In addition, confidentiality provides assurance that ADR participants shall not disclose information shared during the ADR process. The Parties may not introduce Information, including resolution options, discussed during or specifically prepared for the ADR proceedings as evidence in subsequent hearings or legal proceedings, except as permitted under the ADR Act.

### **02.03 Negotiated Resolutions Set No Precedent**

A decision reached by the Parties resulting in the total or partial end or closure of the conflict, complaint, grievance, appeal, or litigation shall not be precedential (not precedent setting).

## **ARTICLE 03 — ARBITRATION**

### **03.01 General**

- A. If any grievance processed under the Negotiated Grievance Procedure is still unresolved after Step 3, the Agency and the Union each may invoke arbitration by sending written notice to the other Party within thirty (30) calendar days after issuance of the final written decision or, if no decision was issued, the date that decision was due.
- B. If either Party objects to arbitrating a complaint on the basis that it is not grievable under the Negotiated Grievance Procedure and/or not arbitrable under this Article, that objection shall be arbitrated separately while arbitration of the dispute over the merits is held in abeyance. Only if the complaint is found to be grievable/arbitrable shall it be arbitrated as to its merits, and only by an arbitrator other than the one who found the complaint to be grievable/arbitrable. The provisions of this Article regarding the selection and payment of an arbitrator shall apply to arbitration hearings on grievability/arbitrability just as they apply to hearings on the merits.

### **03.02 Scheduling an Arbitration**

- A. Within seven (7) calendar days from invoking arbitration, the invoking Party shall ask the Federal Mediation and Conciliation Service to provide both Parties a list of seven (7) video capable impartial persons qualified to act as arbitrators.
- B. Within thirty (30) calendar days from receipt of the list, the Parties shall meet to mutually agree upon one (1) arbitrator. If the Parties cannot agree, each Party shall strike one name from the list and the remaining individual shall be the duly appointed arbitrator. The invoking Party shall strike first.
- C. Once selected, the invoking Party shall contact the arbitrator for a list of possible hearing dates and provide an informational copy to the opposing Party. Upon receipt of possible hearing dates, the invoking Party shall contact the opposing Party to coordinate a mutually agreeable hearing date. The invoking Party shall notify the selected arbitrator of the selected hearing date. The invoking Party shall act with due diligence to ensure that the arbitration hearing is conducted within a reasonable period of time. The arbitration hearing shall normally be conducted not more than ninety (90) calendar days from the date the arbitrator was selected, should the arbitrator be available.
- D. The arbitration hearing shall be held virtually, unless the Parties agree differently, during the regular day shift hours of the basic workweek (Monday through Friday). No hearing shall be scheduled at a time which would result in the Agency compensating participating Employees at overtime rates.

### **03.03 Arbitrator's Authority**

An arbitrator is bound to enforce the terms of this Agreement and may not change, alter, modify or delete any terms of this Agreement.

### **03.04 Liability for Expenses of Arbitration**

The arbitrator's fees and expenses, the cost of any transcript, and any other expenses of arbitration shall be borne by the losing Party when the arbitrator's decision has become final.

The Arbitrator shall specify the proportion of expenses to be borne by each Party according to the extent to which that Party's position did or did not prevail.

### **03.05 Transcripts**

If either Party desires a copy of a transcript of an arbitration hearing, that Party is solely responsible for paying for its own copy.

### **03.06 Time Limits**

Time limits specified in this Article may be extended by agreement of the Union and the Agency.

### **03.07 Pre-Arbitration Exchange of Information**

- A. All Arbitrations. Not later than fourteen (14) calendar days before the date of a scheduled arbitration, the Parties shall exchange the following information:
1. a proposed statement of the issue(s) the Party wishes to have heard by the Arbitrator,
  2. a list of expected witnesses with names and duty sections (Supervisor's name is to be included for witnesses the Union wants the Agency to make available on hearing day), and
  3. a list of expected documentary exhibits.
- B. The Parties shall attempt to work out agreements on joint exhibits, stipulations of fact, and a mutually acceptable statement of issue(s).
- C. Arbitrations resulting from grievances filed in lieu of appeals to the MSPB. The Agency may seek additional information from any Employee whose grievance is to be presented to an arbitrator in lieu of taking an appeal to the MSPB and the Union may seek information from any proposing or deciding official for the underlying adverse action. Each Party may submit no more than five (5) single-part interrogatories to be answered in the form of a sworn declaration under the provisions of 28 U.S.C. 1746. The requesting Party must serve the other Party's representative with the interrogatories or questions thirty (30) or more calendar days before the date for which the arbitration hearing is scheduled. Responses must be returned no less than fifteen (15) calendar days before the date for which the arbitration hearing is scheduled.

### **03.08 Representatives and Assistants**

At arbitration hearings, the Agency and Union shall be entitled to the presence of equal numbers of representatives and/or assistants and observers.

### **03.09 Opinion & Award**

The arbitrator shall be requested to provide his/her decision to the Agency and the Union by email within thirty (30) calendar days, but in no event later than sixty (60) calendar days after the conclusion of the hearing.

### **03.10 Attorney Fees**

Attorney fees may be awarded in connection with a grievance processed under this Article only as provided in 5 U.S.C. 7701 and 5 U.S.C. 5596.



### **03.11 Arbitrator Award**

The arbitrator's award is binding on the Parties except that either Party may file exceptions to the award with the Federal Labor Relations Authority (FLRA) or other appropriate venue for review under regulations of the Authority.

## **ARTICLE 04 — ATTIRE**

- A. While on duty, Employees shall dress in a neat and orderly manner, consistent with the environment in which they work and that is conducive to safety. Employees' attire shall be in good repair and shall not be inappropriately revealing for the office environment.
- B. Employees should dress in business casual attire when the Employee is attending a meeting or conference, making a formal presentation, delivering formal training, or otherwise representing the Agency. On a daily basis and except as noted above, attire that is permitted includes business attire, business casual attire, jeans, and cropped or Capri pants (below the knee). Attire that is not permitted includes shorts and exercise or workout wear.
- C. Employees may be requested to dress in business casual attire when there are visitors in the workplace. Employees shall be provided prior notice regarding such visits. Dressing in business casual attire when performing one's normal duties may be requested but shall not be required.

## **ARTICLE 05 — AWARDS & RECOGNITION**

### **05.01 Employee Recognition Program**

The Employee suggestion, incentive, and performance award programs are beneficial to both Management and the Employee. The awards program shall be administered in accordance with 5 CFR 451, 430, and 531, and the U.S. Department of Agriculture (USDA) Guide for Employee Recognition. The awards program shall emphasize safety, productivity, efficiency, and public service. Labor Management Relations Committees and/or Partnership Councils (if in existence) may periodically evaluate and review the unit's awards program to ensure the administration is fair, equitable, effective, and understandable.

It is the policy of the Agency to recognize outstanding performance, teamwork, cost-efficiency, empowerment of Employees, work force diversity, and effective customer service. The purpose of the Employee Recognition Program is to improve Government efficiency, economy, and effectiveness by motivating Employees to increase productivity and creativity by recognizing and rewarding their efforts.

### **05.02 Employee Suggestion Program**

The Agency agrees to encourage Employees to submit suggestions under the Employee Suggestion Program in accordance with DR-4040-430, Employee Performance and Awards.

## **ARTICLE 06 — BILINGUAL POSITIONS**

### **06.01 Purpose and Scope**

- A. This article applies to: (1) those Employees who occupy positions that require the possession and use of bilingual skills, i.e., information receptionist, claims specialist, telecommunication specialist, and service specialist; and (2) all bargaining unit Employees who are hired, assigned, or promoted into positions where bilingual ability is a condition of that assignment/action, and the requirement for bilingual skills is a matter of official record.
  - 1. Bilingual is defined as “proficiency in one language, in addition to English.”
  - 2. Bilingual skills and duties include speaking, understanding, reading, and writing.
- B. Upon request, the Agency shall make appropriate bilingual dictionaries available to bilingual Employees to assist them in carrying out their official duties.
- C. The Agency shall make a reasonable effort to provide a glossary of USDA/Business Center (BC) terminology or other technical dictionary for use by bilingual Employees in carrying out their bilingual duties.

### **06.02 Compliance with External Directives**

- A. The Agency shall comply with Departmental Manual 4050-575-001, “Recruitment, Relocation, and Retention Incentives”.
- B. Any changes in applicable CFRs shall be effective as provided by the announcement thereof.

### **06.03 Recognition of the Use of Bilingual Skills**

The following section applies to those positions for which retention allowances have been authorized pursuant to Departmental Manual 4050-575-001, “Recruitment, Relocation, and Retention Incentives”.

- A. The BC has been authorized to pay a retention allowance to those Employees occupying a position designated as “Bilingual” if they have:
  - 1. A current performance rating of “pass” in a pass/fail system or at least “fully successful” in a multi-tier system; and
  - 2. Completed one year of immediate prior continuous service. The retention allowance is subject to final approval by appropriate authorities and is based on the criteria in 5 CFR 575.305.
- B. Should the Agency determine the retention allowance is no longer warranted based on the factors in 5 CFR 575.311(g)(3), Management shall notify the Union and the Employee (or a group or category of Employees), in writing, within thirty (30) calendar days of receiving that decision. The factors outlined in 5 CFR 575.311(g)(3) include, but are not limited to:
  - 1. Whether any retention allowance should be available to retain an Employee (or a group or category of Employees), or whether a lesser amount would be sufficient to retain an Employee (or a group or category of Employees); or

2. Whether labor market factors make it more likely (or reasonably likely) to recruit candidates with competencies similar to those possessed by the Employee (or a group or category of Employees); or
  3. Whether the Agency's need for the services of the bilingual Employee has been reduced to a level that makes it unnecessary to continue payment of a retention allowance, or to continue payment at the level originally approved; or
  4. Whether budgetary considerations make it difficult to continue payment of a retention allowance, or to continue payment at the level originally approved; or
  5. Other supporting factors.
- C. Employees shall receive any scheduled incentive payments through the end of the pay period in which the written notice is provided, or until the date of their separation, whichever is sooner.
- D. Bilingual Employees may choose to forego the receipt of a retention allowance and request to change positions to an English-only speaking position at any time.

## **ARTICLE 07 — CONTRACTING OUT**

### **07.01 Notification**

- A. The Agency shall notify the Union in writing when a study pursuant to Office of Management and Budget (OMB) Circular A-76 (or any superseding directive) is being initiated when the study concerns the potential contracting out of a complete work function currently performed by bargaining unit Employees. This Article does not apply to actions taken by the Agency to simply augment its current work force through the use of temporary help obtained by contract or other agreement when an Agency work function is not being wholly contracted out.
- B. The Agency shall notify the Union at least thirty (30) calendar days prior to implementing a decision to contract out work which substantially impacts Employees in the bargaining unit.
- C. Management shall provide the Union with a summary of the type of work currently performed by members of the bargaining unit. The Union shall be given ten (10) calendar days to comment.
- D. When, as in paragraph A above, an A-76 study is to be carried out, periodic briefings shall be held with affected bargaining unit Employees for the purpose of providing timely information concerning the study. The Agency shall provide monthly written statements when there is updated information.

### **07.02 Compliance**

The Agency shall exercise its right to make determinations with respect to contracting out in accordance with controlling laws, rules and regulations, including the Office of Management and Budget (OMB) Circular A-76, as it may be revised from time-to-time by OMB or superseded.

## ARTICLE 08 — DETAILS & REASSIGNMENTS

### 08.01 Details

#### A. General.

1. Details (the temporary assignment of an Employee to a different position or statement of duties for a specified period with the Employee (i) continuing to encumber and receive the salary and entitlements of the position from which they are detailed and (ii) returning to their official position at the end of the detail) are one of many temporary means by which the Agency may accomplish work. A detail takes the form of temporary assignment to (i) a statement of duties (e.g., a “special project”), or (ii) a position of the same grade, or (iii) a position at a lower grade, or (iv) a position at a higher grade.
2. Details are not an Employee entitlement.
3. Most frequently, the Agency details Employees to meet emergencies, excessive workload of limited duration, shortage of personnel, special projects, or studies that are short-term or temporary in nature, changes in mission or organization, or unanticipated Employee absence for an extended period of time.
4. In recognition of the benefit to both the Agency and Employees when Employees are given the opportunity to acquire new experience and learn new skills at work, management shall strive to distribute detail opportunities equally when doing so does not interfere with achieving the purpose of the temporary assignment.
5. The Agency shall detail Employees in accordance with applicable laws, rules, regulations, policies, procedures, and practices, as amended, and in this Agreement.

#### B. Eligibility. To be eligible for an Employee-requested detail assignment, an Employee must:

1. Have at least twelve (12) consecutive months of current employment with the BC; and
2. Be performing at the “Fully Successful” (equivalent) or higher Level of Performance; and
3. Not have received a Demonstration Opportunity/Performance Improvement Plan letter within the prior twelve (12) months; and
4. Not have received any leave restriction letters within the prior twelve (12) months; and
5. Not have received any type of disciplinary action within the prior twelve (12) months.

#### C. Procedure.

1. For all details, the Agency shall:
  - a. Issue a solicitation of interest. The solicitation shall include, but is not limited to, the following information:

- i. The work area/organization where the work exists; and
    - ii. The approximate or estimated length of the detail; and
    - iii. The competencies necessary to perform the work; and
    - iv. Whether interested Employees must submit a resume or other written description of their competencies/qualifications; and
    - v. The name of the Supervisor or designated Point of Contact (POC) for the work area/organization.
  - b. Give Employees five (5) business days from the date the Agency issued the solicitation of interest to respond. The time used to submit their resume or other written description shall be considered as Duty Time.
  - c. Formally document details of thirty (30) calendar days or more by placing a Standard Form 52, Request for Personnel Action, in the Employee's Official Personnel File (OPF).
2. For all details, the Agency may:
- a. Consider rotating Employees through the detail assignment; or
  - b. Select or not select any of the volunteers/interested applicants.

## **08.02 Temporary Promotions**

When an Employee is assigned to a position with a higher grade and the assignment lasts more than thirty (30) calendar days, the Agency shall retroactively promote the Employee temporarily and compensate the Employee at the higher rate of pay effective on the first day of the assignment unless the Employee is not qualified.

## **08.03 Reassignments**

### **A. General.**

- 1. Reassignments are another of the many means by which the Agency may fill vacant positions. Reassignments are not an Employee entitlement.
- 2. The Agency may reassign an Employee using several means including, but not limited to, any of the following means:
  - a. Through the application process for which there is a current open vacancy announcement; or
  - b. By granting an Employee's request for reassignment; or
  - c. By granting an Employee's request for reassignment based on documented personal hardship or medical condition; or
  - d. At the direction of the Agency.

### **B. Employee-requested reassignments.**

- 1. To be eligible to request a reassignment, an Employee must:
  - a. Have at least twelve (12) consecutive months of current employment with the BC; and
  - b. Be performing at a minimum of the "Fully Successful" or equivalent level of performance; and
  - c. Not have been placed on a Demonstration Opportunity/Performance Improvement Plan within the prior six (6) months; and



- d. Not have been placed on a Leave Restriction within the prior ninety (90) calendar days; and
  - e. Not have received any type of Disciplinary or Adverse Action within the prior twelve (12) months.
2. To be considered for a reassignment, an Employee must submit a resume and any required documentation directly to the Supervisor, or his/her Designee, where the vacancy exists.

C. Directed Reassignments.

The Agency shall reassign Employees only when: (i) an authorized vacancy exists, and (ii) the Employee that the Agency intends to reassign meets all the applicable requirements regarding qualifications and eligibility.

D. Special projects.

- 1. Special projects are a type of detail (see A-1 above).
- 2. When working on a special project (i) would afford Employees an opportunity to acquire new career-related skills or significantly enhance existing skills and (ii) is projected to last more than thirty (30) calendar days, the Agency shall solicit expressions of interest from Employees in the immediate work area and follow the procedure identified in C-1 above.

## **ARTICLE 09 — DISCIPLINARY & ADVERSE ACTIONS**

### **09.01 General**

- A. The Agency and the Union recognize that the public interest requires the maintenance of high standards of conduct. Bargaining unit Employees shall not be subjected to disciplinary/adverse action except for just and sufficient cause.
- B. Disciplinary/adverse action shall be initiated only after investigation into the facts and circumstances concerning the alleged misconduct. Managers are encouraged to ask questions of Employees prior to issuing a disciplinary or adverse action so they have the relevant facts to determine whether or not to proceed with the action. An Employee who, during questioning or examination in connection with an investigation, reasonably believes that the investigation may result in disciplinary action, has the right to a Union representative, provided the Employee makes such a request. If the Employee elects to be represented, further questioning of the Employee, if any, shall be done in the presence of the representative, provided no unreasonable delay will occur.

### **09.02 Exclusions**

The discharge of Employees during the probationary period and of Employees on temporary and temporary part-time appointments is not covered by this Article.

### **09.03 Timeliness**

- A. Disciplinary/Adverse actions shall be imposed on a case-by-case basis after the Agency has: (a) become aware of the need for corrective action; and (b) had a reasonable period of time to investigate and evaluate the matter appropriately, e.g., by applying the *Douglas* factors (see § 09.07 below) when required.
- B. Under normal circumstances, when an Employee's conduct or poor performance arises the Agency may counsel the Employee rather than taking more serious action.

### **09.04 Letters of Warning and Reprimands**

- A. Letters of Warning may be maintained by the Supervisor for a period not exceeding one (1) year and a Letter of Reprimand may be maintained in the electronic Official Personnel Folder for a period not exceeding two (2) years.
- B. An Employee who has been issued a Letter of Warning or Reprimand may request that the issuing official remove such action from his/her file six (6) months after issuance if the Employee believes that the purpose of the discipline has been served. The issuing official shall give due consideration to the reasons provided in support of such a request. Upon request, the Employee shall be notified in writing of a decision to deny the request and of the reason(s) for such decision.
- C. The Agency shall inform the Employee of his/her right to grieve a Letter of Warning or Reprimand by using the Negotiated Grievance Procedure.

### **09.05 Processing Suspensions of Fourteen (14) Days or Less**

In cases of suspensions of fourteen (14) calendar days or less, the following procedures shall apply:

- A. The Employee shall be provided a minimum of seven (7) calendar days advance notice, which states:
  - 1. The entire specific charge, including which rules or regulations were violated.
  - 2. A complete description of any other evidence relied upon; and
  - 3. The proposed action.
- B. The notice of proposed action shall contain a statement, which informs the Employee of his/her representation rights.
- C. Within seven (7) calendar days of notification, the Employee shall have the right to respond orally, in writing, or both to the deciding official or his/her Designee. Where the response requires additional time to prepare, the Agency may grant reasonable additional time to the Employee and/or the representative upon written request. The response may include written statements of the persons having relevant information and/or other appropriate evidence.
- D. The Agency shall give the Employee a reasonable amount of official time to review the evidence on which the notice is based and that is being relied on to support the proposed action. The notice of proposed action shall inform the Employee of the management official the Employee should contact to schedule the use of official time. Upon request, one (1) copy of any document(s) in the evidence file shall be provided to the Employee and his/her designated representative.
- E. Notice of a final decision to take action shall be in writing and shall inform the Employee of grievance rights.

**09.06            Suspension of More Than Fourteen (14) Days,  
Reductions In Grade or Pay, Furloughs  
for Thirty (30) Days or Less, or Removals**

In cases of suspension of more than fourteen (14) calendar days or more severe actions, the following procedures shall apply:

- A. The Employee shall be provided with a minimum of thirty (30) calendar days advance written notice unless the Agency invokes the crimes provision. The notice shall include:
  - 1. The entire specific charge, including which rules or regulations were violated.
  - 2. A complete description of any other evidence relied upon; and
  - 3. The proposed action.
- B. The notice of proposed action shall contain a statement, which informs the Employee of his/her representation rights.
- C. Within fourteen (14) calendar days of notification, the Employee shall have the right to respond orally, in writing, or both, orally and in writing to the deciding official or Designee. Where the response requires additional time to prepare, the Agency may grant reasonable additional time to the Employee and/or the representative upon written request.

- D. The Agency shall give the Employee a reasonable amount of official time to review the evidence on which the notice is based and that is being relied on to support the proposed action. The notice of proposed action shall inform the Employee of the management official the Employee should contact to schedule the use of official time. Upon request, one copy of any document(s) in the evidence file shall be provided to the Employee and his/her designated representative.
- E. Notice of a final decision to take action shall be in writing and shall inform the Employee of appeal or grievance rights.

#### **09.07            The *Douglas* Factors**

In cases of adverse actions appealable to the Merit System Protection Board, the following *Douglas* factors (see *Douglas v. VA*, 5 MSPR 280, 5 MSPB 313 (1981)) apply:

- A. The nature and seriousness of the offense, and its relation to the Employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- B. The Employee's job level and type of employment, including Supervisory or fiduciary role, contacts with the public, and prominence of the position;
- C. The Employee's past disciplinary record;
- D. The Employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- E. The effect of the offense upon the Employee's ability to perform at a satisfactory level and its effect upon Supervisors' confidence in the Employee's ability to perform assigned duties;
- F. Consistency of the penalty with those imposed upon other Employees for the same or similar offenses;
- G. Consistency of the penalty with any applicable agency table of penalties;
- H. The notoriety of the offense or its impact upon the reputation of the agency;
- I. The clarity with which the Employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- J. Potential for the Employee's rehabilitation;
- K. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- L. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the Employee or others.

## **ARTICLE 10 — DURATION OF CONTRACT**

### **10.01 Effective Date**

- A. Pursuant to § 7114(c) of the Federal Service Labor-Management Relations Statute (the Statute), the Agency shall approve this Agreement within thirty (30) calendar days from the date the Agreement is executed if the Agreement is in accordance with the provisions of the Statute and any other applicable law, rule, or regulation.
- B. If the Agency does not approve or disapprove the Agreement within the thirty (30) calendar day period, the Agreement shall take effect and be binding on the Agency and the Union.

### **10.02 Renewal/Termination/Reopening Agreement**

This Agreement shall renew itself automatically on the 5th anniversary of its effective date, and each 5<sup>th</sup> anniversary thereafter, unless either Party gives written notice of its desire to reopen and renegotiate the Agreement not more than 105 and not less than sixty (60) calendar days before the expiration date. If such notice is given: (1) the Parties shall begin negotiations on Ground Rules by meeting and exchanging written proposals within thirty (30) calendar days; and (2) following expiration of this Agreement, the terms of this Agreement shall remain in effect during the renegotiation period except that any provision of the Agreement shall be null and void to the extent that it is inconsistent with the Statute and/or government-wide rules and regulations in effect at the time.

During the 18th month of this Agreement, either Party may open up to two (2) Articles by giving the other Party notice of its desire to renegotiate the Article(s) at issue. During the 30<sup>th</sup> month of this Agreement, either Party may open up to three (3) Articles by giving the other Party notice of its desire to renegotiate the Article(s) at issue. The current language of each opened Article shall remain in effect until such time as the renegotiated provisions have become final following Agency Head Review under 5 U.S.C. § 7114(c).

### **10.03 Distribution**

The Agency shall post the Agreement on the BC SharePoint site or other location(s) accessible to bargaining unit Employees and the Union.

# **ARTICLE 11 — EQUAL EMPLOYMENT OPPORTUNITY**

## **11.01 Laws and Regulations**

- A. The Agency is committed to providing equal employment opportunities (EEO) to all Employees and to preventing discrimination because of race, color, religion, sex, national origin, disabling condition, sexual orientation, or age, while the Union is committed to cooperating with the Agency in achieving those EEO objectives.
- B. The Agency shall administer its EEO program in accordance with: the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, as amended; the Age Discrimination in Employment Act (ADEA); Executive Order 11478 as amended; and all other applicable legislation, rules and regulations.

## **11.02 Information and Data**

- A. When requested by the Union, the Agency shall provide as soon as practical a report of BC EEO activity which shall include the following information sorted by race, age (over 40/under 40) if available, and gender:
  - 1. Workforce Analysis.
    - a. Analysis of BC's workforce by grade, major occupations, branch groupings.
    - b. Comparison of BC's workforce with the appropriate Civilian Labor Force.
  - 2. Discrimination complaints (resolution activity numbers and current inventory).
  - 3. Recruitment and Hiring.
  - 4. Training.
  - 5. Promotions.
  - 6. Disciplinary Actions.
  - 7. Awards.
- B. The Agency shall: (i) make available to Employees the EEO complaint procedures; and (ii) post or otherwise publicize the names of the Agency's full-time EEO counselors with their work telephone numbers and email addresses.

## **11.03 Equal Employment Opportunity Advisory Committee or Its Equivalent**

In the event the Agency re-establishes an Equal Employment Opportunity Advisory Committee or its equivalent covering the BC, the Union shall have the right to appoint a member.

## **11.04 Duty Status**

- A. The Agency shall grant a reasonable amount of official time to Employees and/or representatives of Employees to prepare and/or assist in preparing and presenting EEO complaints during times when those Employees and/or representatives would otherwise be in duty status.

- B. Employees who use authorized official time in EEO activities who otherwise would be in a duty status shall not be disadvantaged on their appraisals for approved absences to participate in functions authorized under this article.
- C. Employees and their representatives shall have access to office space providing privacy and to equipment, e.g., telephone, fax, conference room, etc., for use during when preparing and presenting EEO complaints.

## **ARTICLE 12 — EMPLOYEE ASSISTANCE PROGRAM**

### **12.01 Eligibility to Participate in the EAP**

- A. Employees and family members may participate in the nationwide Rural Development Employee Assistance Program (EAP) Service. Employees and Supervisors shall be informed about this program.
- B. Family member:
  - 1. Spouse – Legally married spouse of an EAP member
  - 2. Children – dependents of the EAP member
  - 3. Domestic partner – partner who resides in the home of an EAP member
  - 4. Household members – any legal dependents regardless of home address, or significant other living in the Employee’s household
  - 5. Student – dependent children of the EAP member who attend school but do not reside with the eligible EAP member

### **12.02 Participation/Non-participation in EAP is Protected**

Employee participation in the EAP shall be voluntary and shall not in any way impact an Employee’s job security or promotional opportunities. The Agency shall neither require any Employee to be referred to counseling services, nor impose any penalty on an Employee for merely refusing such referral.

### **12.03 EAP Participation is Confidential**

The Parties shall maintain the confidentiality of the participation of individual Employees in the EAP. Without an Employee’s specific written consent, the Supervisor may not obtain information about the substance of an Employee’s involvement with a counseling program, except where disclosure without consent of the client is allowed. This applies to all releases, including those to Supervisors, treatment facilities, and family members, without regard to the type of problem(s) the individual is experiencing. Disclosure without consent is only permissible in a few specific instances, such as: to medical personnel in a medical emergency; in response to an order of a court of competent jurisdiction; to comply with Executive Order 12564, “Drug-Free Federal Workplace”.

### **12.04 Leave Requests Governed by Law and This Agreement**

Employee leave requests based upon EAP participation or treatment shall be considered in accordance with applicable laws, rules, regulations, and this Agreement.

### **12.05 Work Time and EAP Participation**

An Employee shall receive three (3) hours of duty-time for his/her initial visit with appropriate EAP personnel. This limitation does not preclude an Employee, seeking assistance on a different issue, from receiving an additional three (3) hours of duty-time for the initial visit with the appropriate EAP personnel on that different issue.



Employees shall attempt to schedule any additional EAP Counseling Sessions during non-duty time (before work or after work).

RD Employees and family are granted up to 6 one-hour sessions for EAP counseling services, per issue. That includes the Employee and spouse as well as other immediate family members (dependents).

If the EAP counselor determines that it is a long-term matter that would clearly need more than 6 sessions, he/she may recommend and refer the individual to their medical benefits for continued assistance.

#### **12.06 Possible Effect of Participation in EAP on Agency Action**

When an Employee is subject to disciplinary or adverse action and such action is a result of a problem for which the Employee is seeking help through the EAP, the Agency shall consider the Employee's enrollment, good faith participation, and progress in the program.

## **ARTICLE 13 — FOOD SERVICE**

The Agency shall encourage the General Services Administration (GSA) to provide, in or near BC-leased space and at no additional cost to the BC or to bargaining unit Employees: (1) a cafeteria facility capable of serving hot entrees as well as traditional short order items; (2) an adequate number of confectionaries/convenience stores/snack shops; and (3) an adequate number of diversified vending machines and products.

## **ARTICLE 14 — FURLOUGHS**

### **14.01 Purpose**

- A. This Article describes the procedures the Agency shall follow in the event of a furlough.
- B. The Agency shall implement Furloughs in accordance with applicable laws, rules, regulations, policies, procedures, and practices, as amended.

### **14.02 Notification**

- A. The Agency is responsible for notifying the Union as soon as practicable when the Agency suspects that it may have to execute a Furlough. To the extent practicable, such notice shall be, in writing. While it may not be practicable to give advance notice in the event of an Emergency/Shutdown Furlough, the Agency shall notify the Union as soon as practicable, barring any exigent or unforeseen circumstances.
- B. The notification to the Union shall be in writing and shall include, but is not limited to, the following information:
  - 1. The type of Furlough to occur (Administrative, Emergency, or Shutdown); and
  - 2. The expected Beginning Date of the Furlough; and
  - 3. The expected Duration of the Furlough/Ending Date, if known; and
  - 4. As an attachment,
    - a. the names of all the Excepted (sometimes called “mission essential”) Employees, who must report to work, and are not subject to the Furlough initially; and
    - b. The circumstances in which activities are excepted/mission-essential might require the presence of Employees whose activities are otherwise not excepted/mission-essential initially during the shutdown.
  - 5. In the event the Agency determines that additional Employees are needed to perform unanticipated excepted/mission-essential activities, the Agency shall give the Union additional notice as required by B-1, 2, 3 and 4 immediately above.

### **14.03 Suspension of Operations**

- A. To ensure an orderly shutdown, management may communicate with those Employees whose assistance and physical presence is required in the office on the last business day before the furlough begins.
- B. All Employees shall complete the tasks necessary to implement the suspension of normal Agency business operations. All Employees shall complete the tasks in an orderly manner, and in accordance with applicable laws, rules, regulations, policies, procedures, and practices, as advised by Management.

### **14.04 Leave Status Under Furlough**

During a Furlough and unless contrary to law, the Agency shall handle leave status as follows:

- A. The Agency shall suspend all annual leave, sick leave, court leave, military leave, compensatory time, and/or credit time during the term of the furlough; and

- B. Employees on Continuation Of Pay (COP) status under the Worker's Compensation Act shall remain on COP status; and
- C. Employees on approved Leave Without Pay (LWOP) shall remain on LWOP for the duration of the approved LWOP.
- D. Employees on approved LWOP, under the Family and Medical Leave Act (FMLA), shall continue to be on LWOP. However, the Furlough LWOP time shall not count towards the twelve (12) week entitlement, as required by applicable Law.
- E. During the Furlough, the Agency shall place those Employees, who are on Paid Leave while exercising their FMLA rights, on Furlough. The Furlough time shall not reduce the twelve (12) week entitlement for Leave under FMLA.

**14.05 Furloughs Associated with Reductions-In-Force and Transfers-Of-Functions**

Furloughs which last more than twenty-two (22) discontinuous or thirty (30) continuous calendar days are covered by the Reduction in Force (RIF)/Transfer of Function (TOF) Article of this Agreement.

## **ARTICLE 15 — GRIEVANCE PROCEDURE**

### **15.01 Purpose and Policies**

The purpose of this Article is to provide a mutually acceptable method of prompt and equitable resolution of grievances.

- A. Most grievances arise from misunderstandings which can be settled promptly and satisfactorily on an informal basis at the immediate Supervisory level. Thus, the Agency, Union and, when appropriate, Grievant shall make every reasonable effort to settle grievances as early as possible at the lowest possible level. A decision by an Employee, Union or Agency to grieve in good faith shall not cast any reflection on their standing with his/her Supervisor or their loyalty to the organization, nor shall the grievance be construed as reflecting on the Employee's Supervisor.
- B. Grievance meetings shall be scheduled with management officials who have the authority to decide the grievance, which may include granting the relief requested, if the relief is appropriate to the grievance.
- C. The resolution of grievable and other complaints as early and informally as possible is to be encouraged. Therefore, nothing in this Article shall be interpreted to discourage communication between representatives of the Union and Agency to resolve complaints.
- D. Agreements to settle grievances shall be incorporated into written documents embodying the terms on which the Parties agreed. For this purpose, an exchange of emails extending an offer and accepting that offer is fully acceptable.
- E. This Negotiated Grievance Procedure shall be the exclusive procedure available to the Union, Agency, and bargaining unit Employees for resolving grievances which fall within its coverage.
  - 1. an Employee may either grieve or appeal to the U.S. Merit Systems Protection Board ("the Board), but not both, any action that is within the Board's jurisdiction; and
  - 2. an Employee shall be deemed to have exercised his/her option under this provision when he/she either timely files an appeal with the Board or a timely grievance is filed under this Article, whichever occurs first.
- F. An Employee or group of Employees using this procedure may represent themselves or be represented by the Union. Employee(s) representing themselves may present their grievances to the Agency and have them adjusted without the intervention of the Union, as long as the Union is given an opportunity to represent the bargaining unit at the grievance proceedings. No relief/resolution of a grievance may amend or violate the terms of this Agreement without the Union's concurrence.
- G. At meetings to discuss grievances, the Supervisor and the Grievant are entitled to the presence of equal numbers of representatives and/or assistants and observers.

## **15.02 Definitions**

A grievance is a complaint:

- A. by an Employee concerning any matter relating to the employment of the Employee;
- B. by the Union concerning any matter related to the employment of any Employee,
- C. by the Union, an Employee or the Agency concerning:
  - 1. the effect of, interpretation of, or claim of breach of this Agreement, and/or
  - 2. any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

## **15.03 Issues Which May Not Be Grieved Under This Procedure**

Complaints about the following matters shall not be raised as grievances under this Article:

- A. Any allegation which by law or applicable regulation may not be raised as a part of a Negotiated Grievance Procedure.
- B. Any claimed violation relating to prohibited political activities.
- C. Any action concerning any Employee benefit over which the Agency has no authority.
- D. A suspension or removal under 5 U.S.C. 7532 (National Security reasons).
- E. Any examination, certification, or appointment.
- F. Non-selection from among a group of properly ranked and certified candidates, except complaints alleging a procedural violation or non-merit consideration.
- G. The classification of any position which does not result in the reduction in grade or pay of an Employee.
- H. Any action that can be raised through the Equal Employment Opportunity (EEO) law and/or regulations.
- I. Any appeal or request for relief that has been submitted to the Comptroller General or General Services Board of Contract Appeals.
- J. Any Prohibited Personnel Practice or issues if the complaint has been raised to the Office of Special Counsel (OSC).
- K. A proposed disciplinary action or a proposed performance-based action.
- L. Failure of the Agency to adopt a suggestion.
- M. An action terminating a competitive temporary promotion within a period of one (1) year and returning the Employee to the position from which temporarily promoted or to an equivalent position.

- N. Performance standards.
- O. A discharge during an Employee's probationary period.
- P. A personnel action resulting from a properly conducted Reduction-in-Force (RIF) except complaints alleging a significant procedural violation in the conduct of the RIF.
- Q. Any action concerning the Voluntary Early Retirement Authority (VERA) or the Voluntary Separation Incentive Payment (VSIP).
- R. Any action processed as an abandonment of position except where claims of procedural violation are raised.

**15.04 Time to Prepare a Grievance**

The Agency shall approve requests for reasonable amounts of official duty time to prepare and/or present grievances when such requests are submitted to their Supervisors by Employees who wish to do so. If business needs make it unreasonable for a Supervisor to approve the requested hour/date, the Supervisor shall propose alternative hours/dates. No Supervisor shall be obligated to approve such a request if doing so would result in the Employee performing work compensable at overtime rates.

**15.05 Grievance Format and Contents**

All grievances shall be presented in writing by email or in person, and shall set forth the following:

- A. A description of the action/inaction being grieved including the name(s) of the individual(s) who committed the occurrence, as well as the date and hour of the occurrence;
- B. The provision(s) of law, regulation, or this Agreement which allegedly has been misinterpreted, misapplied, or violated;
- C. The relief sought; and
- D. For grievances on behalf of Employees: the name and duty organization of the Employee (the position title, series, and grade should be included if known), and the name of the Union representative, if any.

**15.06 Grievances on Behalf of One or More Individual Employees—  
Procedure**

- A. STEP 1
  - 1. The grievance shall be submitted to the Grievant's most immediate Supervisor who possesses the authority to grant a remedy (usually the Grievant's first-line Supervisor), within thirty (30) calendar days of (i) the occurrence(s) being grieved or (ii) the date the Grievant became aware of the occurrence or reasonably should have become aware of it.
  - 2. Within fourteen (14) calendar days following submission of a written grievance, the Supervisor to whom the grievance was submitted and the Grievant shall meet to discuss the grievance at Step 1.

3. The purpose of the Step 1 meeting is to gather facts and details surrounding the dissatisfaction, clarify any perceived violation of the contract, law, rule, or regulation, and discuss the requested relief. The management official may attempt to resolve the grievance at the Step 1 meeting or may choose to research the facts/evidence presented.

At this meeting, the Grievant shall present a full and complete statement of his/her evidence and reasons for believing the occurrence in question violated this Agreement.

4. The Supervisor shall, within fourteen (14) calendar days following the Step 1 meeting, issue a written decision to the Grievant and Union representative, if any, setting forth his/her reasons for sustaining or denying the grievance and, if applicable, proposed remedy.

**B. STEP 2**

1. If the grievance is not satisfactorily settled at Step 1, the grievance may be advanced to Step 2 by submitting it in writing to the Supervisor at the next level (at present, usually the Division Director) within fourteen (14) calendar days from the date of the Step 1 written response.
2. Within fourteen (14) calendar days after a grievance has been advanced to Step 2, the Supervisor to whom the grievance was submitted shall meet with the Grievant to discuss the grievance as at Step 1.
3. The Supervisor shall, within fourteen (14) calendar days following the Step 2 meeting, issue a written decision to the Grievant and Union representative, if any, setting forth his/her reasons for sustaining or denying the grievance and, if applicable, proposed remedy.

**C. STEP 3**

1. If the grievance is not satisfactorily settled at Step 2, the grievance may be advanced to Step 3 by submitting it in writing to the Agency BC-Head (at present, the BC Chief Operating Officer) within fourteen (14) calendar days from the date of the Step 2 written response.
2. Within fourteen (14) calendar days after a grievance has been advanced to Step 3, the Agency BC-Head or Designee shall meet with the Grievant to discuss the grievance as at Steps 1 and 2.
3. The Agency BC-Head or Designee shall, within fourteen (14) calendar days following the Step 3 meeting, issue a written decision to the Grievant and Union representative, if any, setting forth his/her reasons for sustaining or denying the grievance and, if applicable, proposed remedy.

**15.07 Grievances on Behalf of One or More Individual Employees**

- A. In the event two (2) or more Employees have identical complaints and the Agency and Union agree it would be more efficient to process them together as a single grievance than



to treat them separately, the grievances shall be combined so a decision on the combined grievance is binding on each individual grievance.

- B. In the event a single complaint concerns all or substantially all bargaining unit members, the Union may fill a grievance on behalf of the unit at Step 3.
- C. Amended grievance. A grievance may be amended to add matters when additional, relevant information becomes available during the grievance process.
- D. A new grievance must be filed when the Parties do not agree to amend a grievance to resolve new matters discovered during the grievance process.

### **15.08 Institutional Grievances on Behalf of the Union or Agency— Procedure**

The Union and the Agency have thirty (30) calendar days from the date of (i) an occurrence alleged to violate this Agreement or (ii) the date the grieving Party became aware of the occurrence or reasonably should have become aware of it during which to submit, at Step 3, a written grievance on behalf, respectively, of: (a) the Union as an organization; or (b) the Agency as an organization. Within fourteen (14) calendar days following submission of the written grievance, the Parties shall meet to discuss the grievance.

- A. Union grievances shall be (i) submitted in writing to the Agency BC-Head; and (ii) heard by the Agency BC-Head or Designee.
- B. Agency grievances shall be (i) submitted in writing to the Union President; and (ii) heard by the Union President or Designee.

Within fourteen (14) calendar days following the Step 3 meeting, the Union or Agency official to whom the grievance was submitted shall issue a written decision setting forth his/her reasons for sustaining or denying the grievance and, if applicable, a proposed remedy.

### **15.09 Time Limits**

- A. Any time limit in this Article may be extended by agreement of the Agency and Union.
- B. Failure by a grieving Party to meet a time limit shall waive that Party's right to advance the grievance further in the grievance and arbitration procedures.
- C. Substantial failure to present evidence and/or reasons supporting a grievance at any Step of the procedure shall waive the right to present such evidence and/or reasons at a later stage in the procedures for grievance and arbitration.
- D. Any issue concerning grievability shall be raised no later than the date of the final written response or the date that response is due, whichever is later.

### **15.10 Alternative Dispute Resolution**

- A. Using alternative types of dispute resolution procedures and techniques ("ADR"; e.g., mediation using the services of neutral third-Parties acting as "honest brokers") to assist in negotiating mutually acceptable resolutions to disputes may be an efficient, effective and economical method for resolving grievances which would otherwise be submitted to

arbitration. Therefore, the Agency and Union may each propose at any time to submit a grievance to ADR.

- B. If all Parties to a grievance agree, that grievance shall be submitted to ADR according to the terms of their agreement.
- C. An agreement submitting a complaint to ADR shall have no impact whatsoever on the running of time limits to process the grievance under the grievance and arbitration Articles of this Agreement unless the Parties agree to suspend the running of time limits for a specific period of time.
- D. The first source from which the Parties seek ADR facilitators shall be the FMCS and its Shared Neutrals Program.
- E. The Parties to any agreement settling a grievance between an individual Employee or Employees representing themselves and the Agency shall include the Union.

## **ARTICLE 16 — HEALTH & WELLNESS**

### **16.01 Health**

The Agency shall provide and maintain a healthy working environment for all Employees, to the extent of its authority and consistent with applicable laws, rules, regulations, policies, procedures, or practices, as amended, as well as other applicable health requirements and codes.

### **16.02 Wellness**

- A. The Agency and the Union encourage bargaining unit Employees to participate in USDA-wide Health and Wellness Programs and initiatives which encourage active and healthy lifestyles. When the Agency and/or USDA permits the use of duty time and/or excused absence so Employees may participate in an officially sponsored and sanctioned Health and Wellness Program or initiative, the Agency shall permit interested Employees to participate on duty time and/or excused absence.
- B. Consistent with business needs: (1) the Agency shall approve requests from Employees for up to two and one-half (2-1/2) hours per week of time (i.e., use of flexible work hours, credit hours, or accrued leave) in order to exercise; (2) if the Department issues guidance authorizing duty time and/or excused absence in order to exercise, such approvals shall, consistent with budget, be for duty time and/or excused absence rather than use of flexible work hours, credit hours, or accrued leave; and (3) the Agency shall permit all Employees, including Remote, to participate in Agency-sponsored group wellness events.

### **16.03 Tobacco-Free Environment**

This Section applies to the use of all tobacco, nicotine, or vapor related products, whether the product is chewed, packed, smoked, sniffed, stuffed, or used in any other manner, and whether the product is natural, man-made, or electronic, regardless of the manufacturing method or means used to produce the end item.

- A. Consistent with all applicable laws, rules, regulations, policies, procedures, or practices, as amended, the Agency shall not permit any smoking within any Agency owned, leased, or occupied space.
- B. Since the Agency does not recognize nor shall the Agency permit Employees to take "Smoke Breaks," Employees may smoke before work, after work, while on their official morning or afternoon breaks, or during their lunch periods only.

## **ARTICLE 17 — INFORMATION REQUESTS**

### **17.01 Agency Obligation When Presented With a Request for Data/Information**

- A. When the Union submits a request for data supported by a statement of its particularized need pursuant to § 7114(b)(4) of the Federal Service Labor-Management Relations Statute, the Agency shall respond within fourteen (14) calendar days:
1. by producing the requested data/information, and/or
  2. when it has good and reasonable cause, by explaining in writing and in detail the reason(s) the requested data is not being provided, and/or
  3. when it has good and reasonable cause, by explaining in writing and in detail the reason(s) the requested data shall be provided more than fourteen (14) calendar days after the date of the request, and naming the earliest date when it reasonably expects to deliver the requested information.
- B. Before the Agency responds in the manner described by '1-A-2' and/or '1-A-3', the Agency shall attempt to work out with the Union an agreement that satisfies efficiently and effectively the legitimate interests of both Parties and is mutually acceptable.

### **17.02 Grievability/Arbitrability of Disputes Over Information Requests**

Any dispute over the compliance of either Party with this Article shall be subject to the grievance and arbitration provisions of this Agreement.

## **ARTICLE 18 — LEAVE & ABSENCE**

[NOTE: This Article is divided into three (3) parts.

[Part I: Annual Leave use and planning.

[Part II: Sick Leave use.

[Part III: "Administrative Leave or Excused Absence", deals with excused absence (also called "Administrative Leave") and other matters related to time and absences not already covered in Parts I and II.]

### **PART I: ANNUAL LEAVE USE AND PLANNING**

#### **18.01 General Provisions**

Employees accrue and have a right to use accrued Annual Leave ("AL") in accordance with applicable laws and regulations and this Agreement.

- A. The determination as to whether to approve a request for leave and, if so, the time and amount of leave granted at any specific time is made by the Supervisor considering such factors as workload, staffing and training requirements, and Employee desires.
- B. The minimum charge for AL is fifteen (15) minutes with additional charges in multiples thereof.
- C. It is the Employee's responsibility to request Supervisory approval of AL or other planned absences as far in advance as possible.
- D. When an Employee requests Supervisory approval of a planned absence, the Supervisor shall respond expeditiously, normally within two (2) working days, indicating the Supervisor's approval/disapproval and the reason(s) for any disapproval.
- E. The Agency shall provide each Employee the opportunity to use all accrued AL in order to avoid forfeiture.
- F. Prior to October each year, all use or lose leave shall be requested and scheduled for use by end of the leave year.
- G. Employees may request AL for any duration, for any time and in any pattern they desire.
- H. No arbitrary or capricious restraints shall be established to restrict when leave may be requested.
- I. The Agency shall not cancel leave requested and approved in accordance with this Article except when necessary to meet a bona fide emergency need. In the event of such a cancellation, the reason(s) shall be explained to the Employee.

#### **18.02 Annual Vacation Leave Plan**

- A. Employees shall be advised at the beginning of each calendar year of the Annual Vacation Leave Plan ("AVLP") submission period. Employees who wish to have an approved AVLP

shall submit their leave preferences to their Supervisors no later than February 15 of each year.

- B. Supervisors shall review and approve/disapprove requests in time to return approved AVLPs to Employees by March 1.
- C. Approval of the AVLP constitutes approval of the leave. However, Employees must still enter their leave in the webTA (or successor) system before actually taking the scheduled AL.
- D. Seniority based on SCD-Leave shall be used when a conflict occurs.
- E. After the time to submit requests (see "A" above) has ended, Employees may not change their selections until approved AVLPs have been returned (see "B" above). However, changes are not permitted at any time if they would adversely impact the approved request of another Employee.

### **18.03          Unplanned Leave**

- A. Unplanned leave requests shall be submitted as soon as the need for leave is known.
- B. The Supervisor shall respond within two (2) working days from the date of the request, or as much notice that was provided to the Supervisor, allowing time for the Supervisor to make a decision.
- C. Unplanned leave shall be on a first-come, first-served basis.

### **18.04          Emergency Annual**

- A. Leave when emergencies or unforeseen circumstances arise, requiring the use of AL that has not been approved in advance, the approval of AL cannot be presumed by the Employee.
- B. If an Employee is unable to report for duty due to an emergency, he/she must notify their Supervisor prior to the beginning of the shift unless compelling circumstances prevent this.
- C. If additional information is required, the Supervisor may withhold the decision on approval or disapproval of AL for emergency reasons until the return of the Employee to duty.

### **18.05          Forfeited Leave**

Leave that has been forfeited, but not because the Employee has been at fault, may be restored in accordance with appropriate regulations.

### **18.06          Leave Transfer Program**

AL may be donated to specific Employees in accordance with the Agency's AL transfer program.

### **18.07          Advanced Annual Leave**

- A. Requests for advanced AL shall be submitted in webTA or a successor system.

- B. Final approval authority shall be made at the appropriate level. When the decision is made, the Supervisor shall notify the Employee within two (2) workdays.
- C. Advance leave may be granted up to the number of hours the Employee will accrue within the remaining leave year.
- D. The Agency shall consider requests for advanced AL fairly and objectively on a case-by-case basis.

**18.08 Annual Leave for Internal Union Functions**

Management may approve AL when Union officials need leave for internal Union functions.

**PART II: SICK LEAVE USE**

**18.09 General Provisions**

- A. Employees shall earn Sick Leave (“SL”) in accordance with applicable statutes and regulations. SL shall be charged in fifteen (15) minute increments.
- B. The Agency and the Union recognize the importance of SL and the obligation of the Employee, as well as the advantage to the Employee to utilize it only when incapacitated for duty by sickness, injury, or other valid reasons.
- C. The Parties agree to jointly encourage Employees to conserve SL so that it will be available to the Employees in the event of an extended illness.

**18.10 Sick Leave Use**

- A. SL shall be administered in accordance with 5 CFR Part 630 and this Article. The Agency shall grant SL to an Employee when the Employee:
  1. receives medical, dental, or optical examination or treatment;
  2. is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth;
  3. provides care for a family member who is incapacitated as the result of physical or mental illness, injury, pregnancy, childbirth, or who receives medical, dental, or optical examination or treatment;
  4. makes funeral arrangements necessitated by the death of a family member or attends the funeral of a family member;
  5. would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by their presence on the job because of exposure to a communicable disease;
  6. must be absent from duty for purposes relating to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed; or

7. provides care for a family member with a serious health condition.
- B. When SL is requested for medical, dental or optical examination or treatment it shall be granted unless: (i) the Employee is on leave restriction; or (ii) business needs require the Employee's presence at that time.
1. The Employee shall request the SL using webTA or successor system, email, or verbal communications with their Supervisor.
  2. Request should be at least one (1) week in advance if the Employee has that much notice of the examination or treatment.
  3. The Agency shall provide a prompt written or oral response.

### **18.11 Sick Leave Notification**

Employees have the responsibility to assure that the Supervisor is notified of their need for unplanned SL. The Employee shall make the notification personally, unless the degree of injury or illness prevents it.

- A. Notification shall be provided prior to the start of the tour of duty. In cases where the degree of injury or illness prevents it, notification shall be made as soon as possible. Such Employee's notification does not in itself constitute approval of SL.
- B. The Agency shall provide a method to receive the notification, which shall include the name and telephone number of appropriate officials to whom to report. When reporting, the Employee shall furnish the reason for the absence and the estimated duration.
- C. The Employee shall notify the immediate Supervisor. If the immediate Supervisor is not available, the next Supervisor in the chain-of-command shall be notified.

### **18.12 Acceptable Evidence**

Employees shall be required to furnish acceptable evidence (medical certificate - 5 CFR, Part 630) to substantiate a request for approval of SL if SL exceeds three (3) consecutive workdays. The information must be provided on the Employee's physician's or medical practitioner's office stationery (i.e., prescription pad, letterhead, official form), signed and dated.

- A. If the Employee did not consult a medical practitioner, he/she may provide a signed self-certification statement, except for an Employee under the SL abuse requirement.
- B. The Agency reserves the right to accept or reject the Employee's statement of self-certification for reasonable cause. Low SL balance in and of itself is not reasonable cause.
- C. The Agency shall keep information confidential in a manner consistent with the Privacy Act (5 USC 552 and 5 CFR Part 297).
- D. If the Employee does not provide acceptable medical documentation within fifteen (15) calendar days after requested, he/she is not entitled to SL and may be charged AWOL.
- E. Employees shall normally not be required to furnish administratively acceptable evidence to substantiate a request for approval of SL for three (3) consecutive workdays or less.



- F. In accordance with 5 C.F.R., Part 630, Employees may be required to furnish a medical certificate or other administratively acceptable evidence to substantiate a request for approval of SL for an absence of any duration when deemed necessary.
- G. Administratively acceptable documentation shall be comprised of.
  - 1. Doctor's statement indicating (i) the Employee is under their care, and (ii) any limitations.
  - 2. The (i) expected duration of the condition, and (ii) date the Employee can be expected to return to full duty (prognosis).
  - 3. The Agency reserves the right to contact the provider in order to authenticate medical documentation submitted by Employee.

### **18.13 Sick Leave Abuse**

When the Agency has reasonable grounds to question whether an Employee is properly using SL (for example, when SL is used in unusual patterns or circumstances), the Agency may inquire further into the matter and ask the Employee to explain.

- A. Failure to provide an acceptable explanation may result in the Employee receiving verbal or written notice requiring them to furnish additional medical documentation for the initial and each subsequent absence due to illness or incapacitation for duty, regardless of duration.
- B. Verbal notification shall be confirmed in writing and provided to the Employee. Any such notice shall describe the patterns or circumstances that led to its issuance.
- C. The notice shall state that, for a period not to exceed six (6) months, no request for SL, or other leave in lieu of SL, shall be approved unless supported by a medical certificate.
- D. Employees who are not subject to the restrictions of SL abuse shall not be required to furnish a medical certificate on a continuing basis if the Employee (i) suffers from a chronic condition that does not necessarily require medical treatment, although absence from work may be necessary, and (ii) has previously furnished medical certification of the chronic condition.
- E. The Agency may periodically require further medical certification to substantiate an Employee's continued use of this provision. However, the Agency shall not ordinarily require the Employee to provide further certification for the period covered by medical certification already on file with the Agency.

### **18.14 Advanced Sick Leave**

As an appropriate arrangement for Employees under 5 USC 7106(b)(3), an Employee may request up to 240 hours advanced SL.

- A. An Employee who is under a SL abuse requirement may or may not be granted advance SL.
- B. For other Employees, advanced SL shall be given when all the following conditions are met:

1. The Employee is eligible to earn SL.
2. There is no reason to believe the Employee will not return to work after having used the leave.
3. The Employee has provided acceptable medical documentation of the need for advanced SL.
4. There is reason to believe that the Employee will accrue enough SL to repay the advance.

### **18.15 Medical Information Confidential**

The Agency shall treat as confidential any medical information given by an Employee in support of a request for SL. The Agency may disclose such information subject to its Privacy Act obligations for work related reasons on a need-to-know basis only.

### **18.16 Care for Family Members**

A covered full-time Employee may use 40 hours of SL each year to care for a family member's general health or bereavement.

- A. Full-time Employees are entitled to use up to twelve (12) administrative workweeks (480 hours) of SL each year to care for a family member's serious medical condition.
- B. Full-time Employees are entitled to a total of twelve (12) weeks (480 hours) of SL each year for all family care purposes as described in "A" immediately above.
- C. Part-time Employees may also use SL for these purposes. The amount of SL permitted under the Family & Medical Leave Act ("FMLA") is pro-rated in proportion to the average number of hours of work in the Employee's scheduled tour of duty each week.
- D. "Family member" is defined as:
  1. Spouses, and parents thereof;
  2. Children, including adopted children and spouses thereof;
  3. Parents;
  4. Brothers and sisters, and spouses thereof; and
  5. Any individual related by blood or affinity whose close association with the Employee is the equivalent of a family relationship.
- E. Documentation for SL under this section is:
  1. For serious medical condition: DOL Form WH 380-F (which shall be provided by the Agency upon request), or equivalent information.
  2. For bereavement: a newspaper notice (obituary), funeral home documentation, or a death certificate.

3. For general health conditions: webTA request or successor system and additional documentation for an absence in excess of three (3) consecutive workdays.

#### **18.17 Sick Leave: Bereavement Leave**

- A. An Employee is entitled to use a total of up to 104 hours (13 days) of SL each leave year for family care and bereavement (including making arrangements required by the death of a family member and attending the funeral of a family member).

Family Member: (1) spouse and parents thereof; (2) sons and daughters, and spouses thereof; (3) parents, and spouses thereof; (4) brothers and sisters, and spouses thereof; (5) grandparents and grandchildren, and spouses thereof; (6) domestic partner and parents thereof, including domestic partners of any individual in #2 through #5; and (7) any individual related by blood or affinity whose close association with the Employee is the equivalent of a family relationship.

- B. Parental Bereavement Leave

Parental bereavement leave provides eligible Employees two (2) workweeks (up to 80 hours) of paid SL in connection with the death of a qualifying child. The death of an Employee's child triggers the law's one-time entitlement to two (2) workweeks of parental bereavement leave which must be used within twelve (12) months of the child's death.

To be eligible, your child must be under the age of 18, or 18 and older and incapable of self-care because of a mental or physical disability.

### **PART III: ADMINISTRATIVE LEAVE OR EXCUSED ABSENCE**

#### **18.18 Administrative Leave**

Administrative Leave is approved absence from duty without loss of pay and without charge to leave.

When the Agency decides that the workplace will close due to inclement weather or other unexpected conditions, Employees who are not required to remain on/report for duty or who are not already on approved leave, not on a telework or remote work agreement shall be granted Administrative Leave, as opposed to being required to take their own AL.

#### **18.19 Compensatory Time Off**

Compensatory time off is time off with pay in lieu of overtime pay and is governed by Article 13, "Hours of Work & Overtime", of this Agreement.

#### **18.20 Compensatory Time Off and Credit Hours: Religious Observance**

Consistent with law, government-wide regulations, Departmental Regulations, RD Instruction 2066 A, "Leave Program", business needs and approved work schedules, the Agency shall approve:

- A. Employee requests for absences covered by religious Comp Time or Credit Hours when personal religious belief requires the Employee to abstain from work during certain periods of the workday or workweek; and

- B. Employee requests to accrue credit for Comp Time or Credit Hours for the purpose of taking time off without charge to personal leave.

### **18.21 Court Leave**

Court Leave shall be granted, pursuant to applicable law and regulations, to an Employee who is summoned to act as a witness before a court on behalf of any Party in connection with any judicial proceeding to which the United States, District of Columbia, or a state or local government is a Party; or, to perform jury duty in any court of law.

- A. When an Employee is called as such a witness or juror, the Employee shall immediately notify the Supervisor and submit a copy of the subpoena or summons. Upon completion of service, the Employee shall submit written evidence of the dates the Employee served as such a witness or juror.
- B. The Agency shall provide written request for excusal for an Employee whose services are required at the job site.
- C. If such excusal is not acceptable to the court, the Agency shall grant Court Leave.
- D. If an Employee is excused from court service with sufficient time to enable that Employee to return to duty for at least two (2) hours of the scheduled workday, including travel time, the Employee shall return to duty unless granted appropriate leave by the Agency.
- E. It is an Employee's responsibility to request and receive approval prior to going on leave.
- F. If an Employee receives their regular pay from the government for a period on Court Leave, the Employee shall reimburse the government the amount paid by the court, except that Employees may retain reimbursement for out-of-pocket expenses (e.g., mileage, tolls, and parking).
- G. An evening or night shift Employee who performs court services during the day may elect to be granted Court Leave for the Employee's regularly scheduled night tour of duty.
- H. The Employee shall continue to be entitled to night differential in accordance with applicable law or regulation.
- I. An Employee shall be released from work with pay for the days they were scheduled to work that coincide with court duty.
- J. At the Employee's request, if the court duty continues into the following week(s), the Employee's workweek shall be changed to coincide with court days.
- K. An Employee's tour of duty shall not be changed to avoid the granting of Court Leave.

### **18.22 Blood or Blood Plasma Donation**

Employees are encouraged to serve as unpaid blood or plasma donors. If requested, Employees may be excused from work without charge to leave for up to four (4) hours of excused absence, subject to operational requirements.

- A. This is not intended to mean that every Employee is expected to need four (4) hours. Within the four (4)-hour maximum, the time includes time necessary for blood donation, recuperation, and necessary travel.
- B. Normally requests for absence to donate blood shall be made as far in advance as possible. The Employee shall provide verification of donations.

**18.23 Military Leave/Disabled Veteran Leave (DVL)**

Military leave and DLV shall be administered in accordance with government-wide rules, regulations, and the statute.

**18.24 Voting Leave**

- A. The Agency may excuse Employees for a reasonable time up to four (4) hours on Administrative Leave when practicable to do so without seriously interfering with operations, to vote in Federal, State, county, tribal, territorial, or municipal elections or in referendums on any civic matters in their communities.
- B. Employees may use up to four (4) hours of Administrative Leave per calendar year to serve as non-partisan poll workers or observers.

**18.25 Leave Without Pay**

Leave without pay shall be administered in accordance with government-wide rules and regulations, and applicable statutes.

**18.26 Maternity/Paternity Leave**

Maternity and Paternity Leave shall be administered in accordance with FMLA and applicable statutes.

**18.27 Bone Marrow or Organ Donation**

Pursuant to Public Law 103-329, Section 629(a), Employees are entitled to seven (7) days of paid leave each calendar year (in addition to Annual and SL) to serve as bone marrow donor, and 30 days for organ donation.

## **ARTICLE 19 — MENTORSHIP**

### **19.01 General**

- A. The Agency shall provide all Employees the opportunity to participate in an informal or a formal Mentorship Program.
- B. The Agency shall annually publicize the availability of the Mentorship Program through its electronic mail and bulletin board system.

### **19.02 Objective**

The Mentorship Program has the following multiple advantages for the benefit of BC Employees:

- A. Assist new Employees settling into the Agency;
- B. Improve retention of existing Employees;
- C. Assist mentors and protégés in continuing to develop as leaders;
- D. Create a knowledge-sharing environment; and
- E. Improve succession planning by developing Employees.

### **19.03 Participation**

- A. Employees, who wish to participate as a mentor or protégé, must complete an application and submit to the proper office.
- B. Once the Agency receives and processes the Employee's application, the Agency shall review available mentors and protégés to find a match.
- C. Once the Agency matches a mentor and protégé, the Agency shall:
  - 1. Schedule an initial program introduction training session. At that initial introductory session, the mentor and protégé shall:
    - a. Agree upon the protégé's goals and objectives;
    - b. Establish the frequency of recurring meetings;
    - c. Conduct the agreed upon meetings;
    - d. Conduct periodic reviews of the mentoring relationship to determine whether the Parties should continue or whether the Parties should revise or terminate the mentoring relationship;
    - e. Assess the success of the mentorship experience; and
    - f. Conduct a close out meeting.
  - 2. Grant the mentor and the protégé one (1) hour a month to meet the goals and objectives as developed for the mentorship meetings.
  - 3. If appropriate, update the Employee's Individual Development Plan for participants.

#### **19.04 Mentor Responsibilities**

The mentor shall:

- A. Assist in the protégé's professional and technical development;
- B. Maintain the highest level of confidentiality;
- C. Request time for meetings from their Supervisor at least one (1) business day in advance;  
and
- D. Encourage support for the Mentoring Program.

#### **19.05 Protégé Responsibilities**

The protégé shall:

- A. Develop the goals and objectives they expect to accomplish while participating in the Mentorship Program;
- B. View mentoring sessions as a vehicle for growth;
- C. Take advantage and value the advice and guidance provided by their mentor;
- D. Have respect and build a confidential relationship with their mentor;
- E. Be open, share ideas, goals, hopes, etc., with their mentor;
- F. Request time for meetings from his/her Supervisor at least one (1) business day in advance; and
- G. Honor all scheduled appointments.

#### **19.06 Progress Assessments**

The protégé, the mentor, and the Agency Mentorship Program Manager/Designee shall conduct periodic reviews to discuss the Parties' success in meeting the protégé's goals and objectives, as well as any other issues resulting from the mentoring relationship. The Parties shall work to resolve any issues arising from the reviews.

## **ARTICLE 20 — MERIT PROMOTION**

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

### **20.01 Purpose**

The purpose of this Article is to ensure that all competitive promotions and other placement actions comply with Merit System principles.

### **20.02 Coverage**

- A. The policies and procedures outlined in this Article apply to the following actions:
1. Competitive promotion;
  2. Reassignment or change to a lower grade position with known promotion potential greater than the Employee's current position (except as permitted by RIF regulations, if applicable);
  3. Transfer to a higher graded position or to a position with greater known promotion potential than the position previously held;
  4. Reinstatement to a permanent or temporary position at a higher grade or with greater promotion potential than the last non-temporary position previously held;
  5. Selection for details for more than 120 calendar days to a position at a higher grade or to a position with higher promotion potential (prior service during the preceding 12 months under both (i) non-competitive details to higher graded positions and (ii) non-competitive time-limited promotions count toward the 120-calendar day total);
  6. Selection for training that is any one of the following:
    - a. Part of an authorized training agreement;
    - b. Part of a promotion program;
    - c. Required before an Employee may be considered for promotion;
    - d. Part of a Career Enhancement Program;
  7. Temporary or time-limited promotions for more than 120 calendar days to a higher-graded position (prior service during the preceding 12 months under non-competitive time-limited promotions and non-competitive details to higher graded positions counts towards the 120-calendar day total). A temporary promotion may be made permanent without further competition provided the temporary promotion was originally made under competitive procedures and the fact that it might lead to a permanent promotion was made known to all potential candidates, i.e., statement included in the vacancy announcement. Time-limited promotions made under competitive procedures may be extended up to five (5) years. Extensions beyond (5) years must be approved by OPM.



- B. The requirements of this Article do not apply to the following actions:
1. Competitive selection from an Office of Personnel Management (OPM) certificate or a certificate issued by the Agency under delegated examining authority (i.e., on a DEU announcement);
  2. Promotion resulting from an Employee's position being reclassified to a higher grade because of accretion of duties and responsibilities;
  3. Promotion resulting from the upgrading of a position, without significant change in the duties and responsibilities, due to the issuance of a new classification standard or the correction of an initial classification error;
  4. Career-ladder promotion when an Employee was previously selected for an assignment intended to prepare the Employee for the position being filled. Sources of initial selection may be an OPM certificate, a list of Employees issued under delegated examining authority, selection under competitive promotion procedures, or any direct hire authority;
  5. Promotion, reassignment, change to a lower grade, transfer, reinstatement or detail from one position to another having no greater promotion potential than that of the position the Employee currently holds or previously held on a permanent basis in the competitive service and did not lose for performance or conduct reasons;
  6. Detail or temporary promotion, not longer than 120 calendar days, to a higher-graded position or to a position with known promotion potential. All details to higher-grade positions and temporary promotions held during the preceding 12-month period are counted in the calculation of the 120-day total.
  7. Employees who (i) are assigned to higher-graded duties for more than 30 calendar days and (ii) meet the qualification requirements of the position shall be temporarily promoted to cover the period of time not to exceed 120 calendar days. The Agency shall not evade promoting an Employee temporarily by repeatedly rotating one or more Employees in and out of a position for 30 calendar days or less.
  8. Action taken as a remedy for failure to receive proper consideration in a competitive promotion action;
  9. Promotion of an Employee upon exercise of reemployment rights if the Employee's former position was reclassified during their absence;
  10. Selection of a candidate from the Reemployment Priority List (RPL) for a position up to the highest grade previously held in the competitive service;
  11. Position change permitted by Reduction-in-Force (RIF) regulations;
  12. Repromotion to a grade or position from which an Employee was demoted as a result of RIF;
  13. Permanent promotion to a position held under temporary promotion when:
    - a. the assignment was originally made under competitive procedures; and

- b. it was made known under competitive procedures (noted on the vacancy announcement) to all individuals at the time that it might lead to a permanent promotion.
- 14. Selection of an eligible Career Transition Assistance Plans (CTAP) or Interagency Career Transition Assistance Plan for Displaced Employees (ICTAP) candidate.
- 15. A promotion on or after non-competitive conversion of a Pathways Employee, Veterans' Recruitment Appointment (VRA) appointee, Presidential Management Fellow, or another authorized program, provided the full performance level of the position was identified upon initial hire for Pathways recent graduates and VRA appointments, or prior to conversion for Pathways interns and Presidential Management Fellows;
- 16. A promotion from a trainee position when the Employee was selected for the target position and grade level under competitive procedures;
- 17. Accretion of duties across organizational lines.

### **20.03 Vacancy Announcements**

- A. Vacancies may be filled by any appropriate method including, but not limited to, special placement programs, new appointment, reassignment, transfer, reinstatement, and promotion.
- B. Vacancy announcements shall be posted to the USAJOBS website when filling vacancies through the competitive procedures described in this Article.
- C. Vacancy announcements shall be open a minimum of five (5) business days, not including weekends and Federal Holidays. Additionally, vacancy announcements are not to open or close on a weekend or Federal Holiday. If a cut-off number is established because large numbers of applications are expected, that number shall be stated in the announcement.
- D. Vacancy announcements shall include the information required by the USDA Departmental Regulations then in effect.
- E. Employees wishing to be considered for posted vacancies must submit an application and any supplemental documents as specified in the vacancy announcement. Failure on the part of an applicant to submit the required material shall result in the applicant not being considered for the position. Additional materials not specified in the vacancy announcement, e.g., position descriptions, publications, award certificates, shall not be considered in the ranking process. The Human Resources Office (HRO) may permit exceptions to this requirement for reasons such as extended power outages and severe weather.
- F. Employees for whom applying online poses a hardship may apply using alternative methods in accordance with the instructions referenced in the specific vacancy announcement.
- G. Applications shall normally be accepted from candidates under special hiring authorities such as, but not limited to, Veterans Recruitment Act (VRA) appointments, 30% Disabled

Veteran, Persons with Disabilities. Qualified candidates shall be referred on the appropriate certificate as non-competitive referrals.

- H. Employees within the area of consideration who are absent from their positions for legitimate reasons (such as detail, authorized leave, temporary duty, training, Intergovernmental Personnel Act (IPA) assignments, transfer to a public international organization, or military service) are eligible to receive consideration for promotion under this Article. Employees are responsible for seeking information on positions in which they are interested and applying for such positions by the required application deadline.
- I. Employees who applied for a vacancy using the USAJOBS website and wish to learn whether their application was received, and/or the status of their application, and/or the status of the vacancy for which they applied are encouraged to do so by: (1) using the USAJOBS website; and if unable to do so by that means, (2) contacting the Human Resources contact person listed on the announcement. Employees who applied for a vacancy using an alternate method because applying online posed a hardship should contact the Human Resources contact person listed on the announcement.

#### **20.04 Qualification Standards**

- A. Applicants shall be rated basically eligible for a position if they meet the minimum qualification requirements as prescribed by the OPM Operating Manual – Qualification Standards.
- B. Applicants must meet all U.S. citizenship requirements by 11:59 p.m. Eastern Time of the closing date of the vacancy announcement. Normally, information submitted after the closing date shall not be considered. Exceptions may be made by the HRO and acceptance of materials shall be applied consistently to all applicants for the specific vacancy announcement.

#### **20.05 Evaluation and Ranking Procedures**

- A. The method(s) used to evaluate applicants must be identified in the vacancy announcement. The evaluation process assures that the selection is made from among those applicants rated best-qualified. Evaluations must be based on job-related requirements and applied fairly and consistently. Evaluation methods may include the use of crediting plans or rating guides, questionnaires, and/or other assessment tools such as structured interviews and performance exercises.
- B. Once a vacancy announcement closes, the HR Specialist/Assistant shall assess all applications to determine if the applicant:
  - 1. Is within the area of consideration;
  - 2. Meets the basic qualification requirements, any applicable selective factor(s), and time-in-grade restrictions (if applicable) for the position based on the information contained in their resumes, self-certification question responses, applicant assessment question responses, and any SF-50s, performance appraisals, CTAP/-ICTAP/RPL documentation, DD-214s (to confirm VEOA/VRA eligibility), licenses, transcripts, foreign education equivalencies, and/or Schedule A documentation received; and

3. Has submitted all required documents.
- C. If there are eleven (11) or more qualified competitive applicants the Agency may use a panel according to the following procedures:
1. Evaluation for positions shall be made by a Merit Promotion panel. The panel shall consist of three (3) or five (5) Subject Matter Experts (SMEs) at an equivalent or higher-grade level than the full performance level of the position being filled who are not supervised by the position. A HR Specialist shall serve as a facilitator.
  2. Based upon the span of numerical scores, the evaluator(s) must determine which of the qualified candidates are best qualified and should therefore be referred to the selecting official. The best qualified applicants are those with the highest scores. This shall generally be determined by a significant or meaningful break in numerical rankings which separate the best qualified group from the remaining applicants.
  3. The best qualified applicants shall be referred for each position and/or grade level. The number of best qualified applicants referred may vary based on a meaningful break in scores, the number of vacancies, or other relevant factors.
  4. The names of the best-qualified applicants shall be listed alphabetically for referral to the selecting official. Individual scores shall not be listed.
- D. When there are ten (10) or fewer well qualified applicants per grade level, formal rating and ranking is not required; all well-qualified applicants may be deemed best-qualified and referred in alphabetical order to the selecting official for equal consideration among all those referred.
- E. Applicant Referral.
1. Certificates referring the applicants to be considered should list candidates in alphabetical order. Certificates expire fifteen (15) calendar days from issuance, but fifteen (15) calendar day extensions up to a total of 90 calendar days may be granted.
  2. Competitive Applicants: Applicants must be listed in alphabetical order without their scores. VEOA candidates must be listed on the same certificate as merit promotion candidates. A separate certificate must be issued for each grade level and geographic location advertised.
  3. Non-Competitive Applicants: Applicants eligible for non-competitive consideration shall be identified on a referral certificate/list separate from the list of competitive applicants. Under a merit promotion announcement, the Agency must consider eligible, qualified military spouses in the same manner as it considers other applicants who are eligible for non-competitive appointments (e.g., Peace Corps volunteers, 30% or more disabled veterans, VRA, Schedule A(u), etc.). 5 CFR 315 Subpart F, Career or Career-Conditional Appointment under Special Authorities, contains a complete list of non-competitive hiring authorities.
  4. Should the original area of consideration fail to produce a sufficient number of well qualified applicants (less than three (3)), the selecting official may decide to re-advertise the position using a wider area of consideration. Selecting officials have

the right to select or not select and to consider applicants from any appropriate recruitment source (e.g., merit promotion certificate, reassignment, transfer, reinstatement, delegated examining certificate, special hiring authority, etc.). While a selecting official is not required to make a selection from the certificate(s), it is improper to return it/them unused in order to obtain another certificate at a later date. Selecting officials are required to document the reason(s) for not using a certificate and file the documentation with the announcement case file.

F. Reconsideration of Qualifications or Rating.

1. When a request for reconsideration is received in writing from an applicant, the HR Specialist reviews the case and forwards a summary of their initial rating decisions and any proposed changes along with the reconsideration request to the next higher level (i.e., team leader or direct Supervisor) for the decision. The team leader or direct Supervisor shall respond in writing with their decision directly to the applicant, providing a copy to the HR Specialist.
2. If the applicant requests in writing a second level review, that request, along with decision documentation from the first review is forwarded to the HR Specialist's second level Supervisor (i.e., the Branch Chief or the HR Director (or Designee)), for additional review and a final decision. The Branch Chief or HR Director then responds in writing with their decision directly to the applicant, providing a copy to the HR Specialist and first level reviewer.
3. Applicant's request for reconsideration must be received within five (5) business days of receipt of the not-qualified or not-referred notification letter. The HRO response must be provided within five (5) business days of receipt of applicant's request for reconsideration. A second level request and corresponding response also must each be within five (5) business days.

G. Sharing of Certificates.

1. In an effort to promote efficiency in the hiring process, every effort is to be made to share resumes of best-qualified applicants among HR staff. HR Specialists are strongly encouraged to conduct internal pre-recruitment surveys (prior to posting an announcement) to see if an opportunity exists to share vacancy announcement and/or certificate. To ensure a valid opportunity exists, all aspects of the vacancies must be the same, including the title, series, grade(s), promotion potential, general job responsibilities, location (or note dual locations), selective factors, competencies documented in the job analysis, and any evaluation/testing requirements stated in the original announcement.
2. If a certificate is less than 90 calendar days old, based on issuance date, the certificate may be used to make a selection for a like position (same series, grade(s), and location) without issuing a new, separate vacancy announcement. Management is not required to select from prior job opportunity announcement (JOA) certificates for like positions.

## H. Applicant Interviews

1. When considering best-qualified candidates from a merit promotion certificate, interviewing is strongly recommended in evaluating candidates' competency levels. If interviewing, the selecting official must interview at least five (5) candidates (or all those referred, if fewer than five (5)) on that certificate. Selecting officials are encouraged to interview non-competitive referrals, but such is not required.
2. The selecting official coordinates interview arrangements. Interviews may be conducted either in person or electronically.
3. To further ensure fairness and equity in the hiring process, Managers must develop standard questions for each vacancy. Follow-up questions may be asked. Selecting officials should take notes during the interview and retain them in the event the interviews need to be reconstructed.
4. Selecting officials and/or servicing HRO staff may receive requests for reasonable accommodation for the interview process from applicants with disabilities. Requests for reasonable accommodations should be responded to quickly and effectively. The Disability Employment Program Manager may be contacted to assist with these provisions.

## 20.06 Order of Referral

- A. When a position is announced with an area of consideration limited to all or some portion of the USDA workforce, the order of consideration for priority and other candidates is as follows:
  1. Agency CTAP eligibles
  2. USDA CTAP eligibles
  3. Agency/USDA repromotion eligibles
  4. Agency priority consideration eligibles
  5. All other applicants within the area of consideration, and
  6. RPL registrants at the option of the selecting official
- B. When a position is announced with an area of consideration which exceeds the current USDA workforce, e.g., Government-wide or all sources, the order of consideration for priority and other candidates is as follows:
  1. Agency CTAP eligibles
  2. USDA CTAP eligibles
  3. USDA RPL registrants
  4. USDA ICTAP applicants
  5. Agency/USDA repromotion eligibles

6. Agency priority consideration eligibles
7. ICTAP eligibles (other than those displaced by USDA), and
8. All other applicants

#### **20.07 Selection**

- A. The selecting official shall comply with the law and this Agreement. The selecting official must consider candidates for the position according to the following order:
  1. Career Transition Assistance Program (CTAP) applicants who are well qualified;
  2. Former Department Employees who are on the Department's priority reemployment or repromotion list; and
  3. Best qualified applicants from all other sources.
- B. The selecting official is not required to fill a vacancy if there is an insufficient number of well-qualified applicants (less than three) but may request to:
  1. Re-advertise the position using a wider area of consideration;
  2. Re-advertise the position following additional recruitment efforts; and/or
  3. Fill the job by some other type of placement action.
- C. The Agency shall promptly notify bargaining unit Employees covered by this Agreement of their selection and release them from their existing positions, normally at the end of the first full pay period after selection or another date mutually agreed upon by the HRO, the gaining and losing Supervisors, and the Employee.
- D. Applicants not selected for a position may contact the hiring official to discuss reasons for their non-selection.

#### **20.08 Priority Consideration**

- A. Employees are entitled to priority consideration when reconstruction of a promotion action shows that, but for an error, e.g., incorrect qualification determination, failure to consider, improper rating, failure to follow required competitive procedures, the Employee would have appeared on a promotion certificate. The Employee shall be entitled to one bona fide consideration for the type of position affected by the error (same grade, same type of position, same promotion potential).
- B. A priority consideration certificate shall be forwarded to the selecting official prior to the issuance of a competitive certificate. If no priority consideration candidate is selected, the selecting official shall provide a written job-related justification for the non-selection.

#### **20.09 Information**

Upon request to the HRO, Employees are entitled to the following information.

- A. Explanation and supporting regulations concerning the Merit Promotion Plan
- B. Qualifications required for a position

- C. Whether the Employee was considered and basically qualified, and if not, an explanation of the reasons
- D. Whether the Employee was among the best qualified and how the Employee was evaluated by the Agency's HR personnel based on the applicant's answers to assessment questions
- E. The cut-off score for best qualified
- F. Scores of other candidates, not identified by name
- G. The number of qualified candidates
- H. The number of candidates certified as best qualified
- I. The name of the selectee (once all candidates have been informed of whether or not they were selected)



## **ARTICLE 21 — MID-TERM BARGAINING**

The Parties shall follow the procedures set forth in this Article for bargaining about conditions of employment during the life of the Agreement. References herein to “days” refer to calendar days.

### **21.01 Bargaining About Changes to Conditions of Employment not Covered by This Agreement**

Bargaining during the term of this Agreement sometimes occurs because the Agency proposes to change conditions of employment not covered by this Agreement.

- A. When the Agency considers whether to: (i) change an existing condition of employment (COE), and/or (ii) establish a new policy, practice, procedure, or process which creates a new COE and the change would be, in either case, more than de minimis, the Agency shall request the Union’s pre-decisional input. The Union shall have ten (10) business days from receipt of the request in which to respond.
- B. When the Agency decides to: (i) change an existing COE, or (ii) establish a new policy, practice, procedure, or process creating a new COE and the change is, in either case, more than de minimis:
  - 1. the Agency shall notify the Union by sending written notice of the change to the Union.
  - 2. the notice shall be sent so the Union receives it at least thirty (30) calendar days before implementation.
  - 3. the notice shall: (i) describe the change, (ii) explain the reason for making the change, (iii) identify the effective date of the change, and (iv) identify the bargaining unit Employees affected.
- C. The Union may, within five (5) business days of receiving the Agency’s notice of a change, request a briefing and/or additional data/information about the proposed change, in which event the Agency shall conduct the briefing and/or provide the data/information as soon as possible following the request.
- D. If the Union wishes to bargain about the substance and/or the impact and implementation (procedures and appropriate arrangements) of the change, it shall notify the Agency within five (5) days of receiving the Agency’s notice, or of the briefing, or of receiving the data/information, whichever is latest, by sending the Agency: (i) notice of the Union’s desire to bargain about the change; and (ii) the Union’s specific proposal(s).
- E. If the Union has timely requested negotiations regarding a change, the Agency shall delay, where practicable, the implementation of such change until the Parties reach agreement on all negotiable issues connected with the change.
- F. The Parties shall begin negotiations within five (5) days of receiving the Union’s notice and proposals.

- G. Although timeframes may be extended by agreement of the Parties, if the Union fails to meet any of the deadlines identified above, it forfeits any further action on the issue and the Agency may implement at its discretion.
- H. Bargaining governed by this § 21.01 shall be governed by the following Ground Rules.

#### GROUND RULES

1. The Agency and Union may each appoint a Bargaining Committee consisting of a Chief Negotiator and up to two (2) other Negotiators.
2. The Bargaining Committees shall meet with one another at mutually convenient times/places and/or by electronic means to discuss the issue(s) until they reach agreement or acknowledge they are at impasse and need a Mediator.
3. The Agency shall make necessary arrangements for meetings (e.g., room reservations, communications technology, etc.).
4. All negotiations shall occur during Core Hours.
5. Bargaining shall occur on consecutive Mondays, Tuesdays, Wednesdays, and Thursdays.
6. All agreements reached during negotiations are tentative until agreement has been reached on all issues.
7. Negotiations end any of several different ways.
  - a. *The Bargaining Committees are unable to reach complete agreement but are at impasse.*

In this event, the Parties shall seek the assistance of a mediator from the Federal Mediation & Conciliation Service and, if disagreements remain after mediation, submit unresolved issues to the Federal Service Impasses Panel (FSIP). The terms of the agreement resulting from proceedings before the FSIP shall be submitted to the Agency Head for review pursuant to 5 U.S.C. § 7114(c).
  - b. *The Bargaining Committees reach complete agreement.*

In this event, the Agency shall draft a Memorandum of Agreement/-Memorandum of Understanding (MOA/MOU) embodying the terms of the agreement, the Bargaining Committee members (see Ground Rule #1 above) shall execute the MOA/MOU document which shall then be presented to the Head of the BC (currently the Chief Operating Officer) for his/her review. The BC Head has ten (10) days to approve or to disapprove and propose changes to the MOA/MOU.

    - i. *The BC Head approves a complete agreement reached by the Bargaining Committees.*

In this event, the MOA/MOU shall be submitted to the Agency Head, if applicable, for review pursuant to 5 U.S.C. § 7114(c).
    - ii. *The BC Head disapproves and/or proposes changes to a complete agreement reached by the Bargaining Committees.*

In this event, the Chief Negotiators shall meet to discuss and seek to agree on the unresolved issues for a period of ten (10) days. If the Chief Negotiators do not agree within those ten (10) days, they shall select and meet with a Mediator within the next twenty (20) days. If issues remain unresolved, the Parties shall submit them to the Federal Service Impasses Panel (FSIP). When all disputed issues have been resolved by agreement or the FSIP, the Bargaining Committees shall execute an MOA/MOU embodying the terms of the agreement and forward that MOA/MOU to the Agency Head for review pursuant to 5 U.S.C. § 7114(c).

- c. *The outcome of Agency Head review pursuant to 5 U.S.C. § 7114(c).*  
If the Agency Head approves the MOA/MOU, it shall become effective. However, if the Agency Head rejects the MOA/MOU, the Chief Negotiators shall reconvene for a period of ten (10) days to discuss and seek to agree on language that the Agency Head will find conforms to the Federal Service Labor-Management Relations Statute and other applicable laws, rules and regulations. If the Chief Negotiators do not agree by the end of those ten (10) days, then they shall seek mediation during which the two (2) Bargaining Committees meet with the Mediator as soon as possible. If issues remain unresolved, the Parties shall submit them to the Federal Service Impasses Panel (FSIP).

- I. Each MOA/MOU shall receive a BC Control Number consisting of the year, followed by the number of the Agreement's pertinent Article, and the sequential number of the MOA/MOU. For example, the BC Control Number for the first MOA/MOU over an issue pertaining to Article 32 during calendar year 2015 would read "2015-32-01". The Agency shall place the Control Number in a header at the center top of the first page of the MOA/MOU, and then include the MOA/MOU as part of the Agreement following immediately after the end of the Article to which the MOA/MOU pertains.

**21.02 Right to Reopen and Bargain Articles of the Agreement During its Life.**

- A.
  - 1. During the 18th month of this Agreement, either Party may reopen up to five (5) Articles by serving the other Party written: (a) notice of its desire to renegotiate the Article(s) at issue; and (b) copies of its proposal(s).
  - 2. During the 30th month of this Agreement, either Party may reopen up to fifteen (15) Articles by serving the other Party written: (a) notice of its desire to renegotiate the Article(s) at issue; and (b) copies of its proposal(s).
- B. Whenever either Party exercises its right to reopen and bargain articles of the Agreement pursuant to this § 21.02, such bargaining shall be governed by the following.

**GROUND RULES**

- 1. Following receipt of notice and proposal(s), the non-moving Party shall have seven (7) days in which to submit to the moving Party an equal number of its own proposed modified article(s).

2. The current language of each opened Article shall remain in effect until such time as the renegotiated provisions have become final following Agency Head Review under 5 U.S.C. § 7114(c).
3. Negotiations shall begin at a mutually agreed time, no more than thirty (30) days from the date of the moving Party's original notice.
4. The Agency and Union may each appoint a Bargaining Committee consisting of a Chief Negotiator and up to three (3) other Negotiators.
5. The Bargaining Committees shall meet with one another at mutually convenient times/places and/or by electronic telecommunications to discuss the issue(s) until they either reach agreement or one or both Committees decide the Parties are at impasse and need a Mediator.
6. The Agency shall make necessary arrangements for meetings (e.g., room reservations, communications technology, etc.).
7. All negotiations shall occur during Core Hours, Central Time Zone.
8. Bargaining shall occur on consecutive Mondays, Tuesdays, Wednesdays, and Thursdays.
9. All agreements reached during negotiations are tentative until agreement has been reached on all issues.
10. Concluding negotiations.
  - a. *The Bargaining Committees are unable to reach complete agreement but are at impasse.*  
In this event, the Parties shall seek the assistance of a mediator from the Federal Mediation & Conciliation Service and, if disagreements remain after mediation, submit unresolved issues to the Federal Service Impasses Panel (FSIP). The terms of the resulting agreement shall be submitted to the Agency Head for review pursuant to 5 U.S.C. § 7114(c).
  - b. *The Bargaining Committees reach complete agreement.*  
In this event, the Agency shall draft a document embodying the complete terms of the agreement, and the Bargaining Committee members (see Ground Rule #4 above) shall execute the agreement which shall then be submitted to the Agency Head for review pursuant to 5 U.S.C. § 7114(c).
  - c. *The outcome of Agency Head review pursuant to 5 U.S.C. § 7114(c).*
    - i. If the Agency Head approves the Agreement, it shall become effective according to its own provisions or the Agency Head's approval.
    - ii. If the Agency Head rejects the MOA/MOU, the respective Bargaining Committees shall reconvene for a period of ten (10) days to discuss and seek to agree on language that the Agency Head will find consistent with the Federal Service Labor-Management Relations Statute and other applicable laws, rules and regulations. If the Parties do not agree by the end of those ten (10) days, then they shall consider themselves

at impasse and proceed according to Ground Rules #5 and 10(a) above.

### **21.03 Bargaining About Other Matters**

If the Parties engage in still other bargaining during the term of this Agreement:

- A. Either Party may propose at any time to amend this Agreement by adding to it a provision or provisions covering a matter or matters not covered already by serving the other Party written notice of its desire and decision to do so.
- B. Such written notice shall include the moving Party's proposals.
- C. Following receipt of such notice, negotiations shall begin at a mutually agreed date and time no more than thirty (30) days from the date of the moving Party's original notice.
- D. Bargaining governed by this 21.03 shall be governed by the Ground Rules found in 21.01, except that the respective Bargaining Committees (see Ground Rule 4) may each include up to six (6) Negotiators in addition to the Chief Negotiators.
- E. All bargaining during the term of this Agreement that is not covered by 21.02 or 21.03 shall be covered by this 21.03.

### **21.04 Miscellaneous Provisions Applying to all Negotiations Under This Article**

- A. Negotiability issues
  - 1. If the Agency declares a Union proposal Non-Negotiable, the Agency shall provide the Union with a written allegation of Non-Negotiability and the reasons supporting the allegation.
  - 2. The Union shall have fifteen (15) days following receipt of the Agency's written allegation of Non-Negotiability to either refute or accept the Agency's allegation. The Union's failure to submit timely a written refutation shall waive the Union's right to proceed under the next numbered subsection below (21.04-A-3).
  - 3. Upon receipt of the Agency's written allegation of Non-Negotiability, the Union may either file with the Federal Service Impasses Panel (FSIP) a petition for review, or continue to bargain and request in writing a written allegation of Non-Negotiability subsequently, if necessary.
  - 4. At the conclusion of negotiations, the Parties shall refer any issues still in dispute other than Negotiability to the Federal Service Impasses Panel (FSIP).
- B. Impasse proceedings
  - 1. If either Party believes negotiations are at impasse and the Parties need a Mediator, that Party may immediately contact the Federal Mediation and Conciliation Service (FMCS) and request its services and assistance.
  - 2. Although neither Party may declare an impasse until the Parties have fully discussed all issues, if the mediation services of the FMCS do not result in resolution of the

issue(s), the Mediator shall declare the Parties at impasse vis-à-vis all issues except any the Agency has declared Not Negotiable, after which either Party may give the other Party notice of its intent to invoke the services of the FSIP, and do so.

3. Once a Party requests the services of the FSIP, both Parties shall follow the FSIP's procedures.

C. The life of agreements negotiated pursuant to this Article

Unless negotiated and incorporated into this Agreement or otherwise agreed, all agreements resulting from bargaining under this Article shall expire when the Agreement expires.

## **ARTICLE 22 — NO-STRIKE PROVISION**

The Union shall not call or engage in any strike, work stoppage, or slowdown, or condone any such activity by failing to take affirmative action to prevent or stop such activity.

## **ARTICLE 23 — OFFICIAL DUTY TIME**

This article governs the use of “official time”, i.e., duty time during which bargaining unit Employees serving as Union representatives and other bargaining unit Employees perform activities set forth in 23.01 of this Article below without loss of pay or charge to leave:

- (i) as they are entitled by 5 U.S.C. 7131(a) and (c), and
- (ii) as the Agency and Union agree, under the authority of 5 U.S.C. 7131(d), is reasonable, necessary and in the public interest.

### **23.01 The Proper Uses of Official Time**

- A. The following are representational purposes or activities for which official time may be used:
1. Attending or preparing to attend a formal discussion between one or more representatives of the Agency and one or more Employees in the unit or their representatives concerning any grievance, personnel policy, practice, or other general condition of employment.
  2. Attending or preparing to attend an 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.
  3. Attending or preparing to attend a meeting between one (1) or more representatives of the Union and one or more representatives of the Agency.
  4. Preparing for and participating in negotiations, including mediation and/or the resolution of a bargaining impasse and/or negotiability question.
  5. Preparing for and participating in proceedings of the Federal Labor Relations Authority, Federal Mediation & Conciliation Service, Federal Service Impasses Panel, Merit Systems Protection Board, and before an Arbitrator appointed under Article 03, “Arbitration”, of this Agreement.
  6. Preparing for and participating in the following:
    - a. filings with the agencies referenced in 23.01-A-5 immediately above.
    - b. proceedings related to grievances, adverse actions and other appeals under relevant USDA/Rural Development regulations, and this Agreement.
    - c. any other negotiation (e.g., so-called “impact and implementation”), grievance or arbitration procedures as outlined in this Agreement.
  7. Preparing for and presenting grievances, appeals of adverse actions, and other appeals under relevant USDA/Rural Development regulations, and this Agreement.
  8. Attending labor-management relations training.
  9. Visiting, phoning and writing elected representatives concerning pending or desired legislation which would impact the conditions of employment of bargaining unit Employees.



10. Performing the work necessary to (i) prepare financial and membership reports required by the U.S. Government, including reports to the U.S. Department of Labor and Internal Revenue Service, and (ii) maintain the records required by those reports.
  11. Traveling to engage in any of these activities.
- B. The following are some, but not all, of the purposes or activities for which official time use is prohibited:
1. Attending meetings for internal Union business;
  2. Solicitation of membership;
  3. Collecting dues;
  4. Elections of Union officials;
  5. Preparing and distributing Union newspapers, flyers, bulletins or other publications;
  6. Discussing internal Union business by telephone, in person or otherwise;
  7. Engaging in partisan political activities; and
  8. Traveling to engage in any of these activities.
- C. The Union recognizes that both the Agency and the Union bear full responsibility for ensuring that all official time is used for legitimate representational purposes and activities.
- D. If the Union decides that official time is required for any purpose in addition to those enumerated above, it may demand to bargain with the Agency to add such use to the enumeration above.
- E. The Union shall provide the Agency with a list (and updates as changes occur) of the names and titles of up to 25 officers and representatives of the Union (no more than one (1) from the HRO, but at least two (2) each from every other BC Office, when possible), authorized to request and use official time to represent bargaining unit Employees in dealings with the Agency.
- F. The Union shall make a good faith effort to distribute the use of official time across the six (6) BC Offices in proportion to the percentage of the bargaining unit comprised by Employees employed in each Office.

### **23.02 Procedures for Using Official Time**

Agency Supervisors/Designees shall approve properly submitted requests for official time as needed by Union representatives for the purpose of engaging in any of the representational activities identified above in 23.01.

- A. Release of Union Representatives/Employees.
1. Whenever possible, a Union official/Employee who wishes to use official time shall submit a written request to their immediate Supervisor/Designee no later than 48 hours in advance.
  2. Unless (i) the hours requested are for activities other than those listed in 23.01 above, or (ii) there is a conflicting bona fide business need for that individual's services at that particular time, the Supervisor/Designee shall notify the requestor of approval/disapproval by the same time the next business day as the request was submitted and received. If notice of approval/disapproval is not timely, the request shall be approved automatically.
  3. Before a request for official time is denied, the Supervisor/Designee shall consult with LR and a designated senior management official prior to informing Union official/Employee. When a request for official time is denied, the Supervisor/-Designee shall notify the requesting Union official/Employee of the denial and of the reason in order to permit:
    - a. (i) the Union official/Employee to submit a new request, and/or
    - (ii) the Supervisor/Designee and Union official/Employee to collaboratively attempt to identify the next reasonably foreseeable opportunity when the Union official/Employee may complete the representational task(s).
    - b. If a dispute concerning an official time request is not resolved within two (2) business days of the submission of the original request, the dispute shall be forwarded to the BC organization's Office Head for consultation with a designated management official who has full authority to render a decision.
  4. When a request for official time is approved:
    - a. the requesting Union official/Employee shall submit the request in the Agency's automated Time and Attendance (T&A) reporting system.
    - b. thereafter, if the Union official/Employee finds that additional time is needed, he/she shall contact their Supervisor/Designee and request additional time. In the absence of approval for additional time, the Union official/Employee shall return to their work area at the end of the approved time.
  5. Upon completion of any representational task on official time, the Union official/-Employee shall report their use of official time in the Agency's T&A reporting system.
- B. For impromptu and brief (less than fifteen (15) minutes) incoming and outgoing telephone calls and/or personal visits between a Union official and an Employee or representative of the Agency to discuss a representational matter, no prior approval is required. However, if the length of the call or visit equals or exceeds fifteen (15) minutes, the Union official shall (i) request permission before continuing longer, and (ii) report the use of official time in the Agency's T&A system. If the Union official is contacted by an Agency representative superior to the Union official's Supervisor, the official (i) may presume that the use of sufficient official time to complete the discussion is approved so obtaining the immediate Supervisor's approval is unnecessary, and (ii) shall report the use in the T&A system.

- C. When Union officials visit the workplace of a BC Employee other than the Union official's own Official Duty Station, they shall notify the host at that facility of their visit at least 24 hours in advance whenever possible.
- D. Procedure related to traveling on official time. If a Union official travels to/from local Agency offices for representational purposes related to the BC bargaining unit, the official time approved shall be consistent with the official's hours of work and with the actual time to travel and to perform the representational tasks. For an example, a Union official whose Tour of Duty is 8, or 9, or 10 hours shall be approved for up to 8, 9, or 10 hours of official time if that is the amount of time actually required to travel and accomplish the representational task.
- E. The Union President or Designee shall submit any request for official time for training/- legislative work/lobbying to the BC Office Director or Designee at least five (5) workdays in advance. Such a request shall: (i) include a copy of the agenda, (ii) identify the dates and location of the training/legislative work/lobbying, and (iii) describe the subject matter of each training/legislative work/lobbying session.
- F. This Article shall not be interpreted and applied in a manner which limits the freedom of a Supervisor to change an approved request to use official time by altering the scheduled use of the time or by rescinding approval altogether because of an emergency.

### **23.03 Official Time for Work Area Meetings**

- A. When the Union wishes to meet with a representative group of Employees to obtain feedback on a matter being bargained or to interview Employees who may have information required by the Union for representational purposes, the Union shall notify the affected Employees' BC Office Director at least one (1) workday in advance, and identify in writing (i) the names of the Employees with whom it wishes to meet, (ii) the reason the meeting with the Employees is necessary, and (iii) an estimate of how much time will be needed.
- B. Management shall grant such official time as is reasonable and consistent with workload considerations, in the public interest, and necessary for the Union to carry out its representational responsibilities. The Union shall normally not request, and Management shall normally not approve, organization-wide meetings on duty time.
- C. When a request for official time has been submitted and approved, the Union representative shall contact the immediate Supervisor of the Employees and arrange for their release at a time consistent with workload demands.
- D. Nothing in this section, "Official Time for Work Area Meetings", shall be interpreted and applied as requiring an Employee to speak with a representative of the Union.

## **ARTICLE 24 — PARKING & TRANSPORTATION**

- A. Accessible parking for Department of Agriculture (USDA)/BC Employees is a matter of mutual interest to the Parties.
- B. On a space available basis, persons who routinely work unusual hours, such as a tour of duty beginning at or after 6:00 p.m. shall be provided access to building parking between the hours of 6:00 p.m. and 6:00 a.m.
- C. The Agency shall annually notify Employees of ridesharing and public transportation subsidies that are available.

## **ARTICLE 25 — PERFORMANCE APPRAISAL**

### **25.01 Overview**

- A. The Agency shall administer the Performance Management program in accordance with 5 U.S.C. Chapter 43 and 5 C.F.R. Part 430.
- B. Terms used in this Article that relate to the Performance Management System, such as “appraisal,” “critical element,” or “performance rating”, shall have the same meaning as in 5 C.F.R. Part 430.

### **25.02 Critical Elements and Performance Standards**

- A. The Agency shall comply with 5 C.F.R. Part 430 when making its reserved management right decision as to the number of levels of performance for each critical element, and when determining whether a rating level will have a written performance standard.
- B. Application of all performance standards shall be fair and equitable, and consistent with 5 C.F.R. Part 430.

### **25.03 Communications**

- A. Normally within the first thirty (30) calendar days of every rating period or within thirty (30) calendar days of employment or reassignment, the Supervisor shall discuss the performance plan with each Employee. The Supervisor shall present to the Employee a copy of the draft performance plan, which contains the Critical Elements and performance standards.
- B. Employees are encouraged, but not required, to provide input on the plan. The Supervisor shall give the Employee a copy of the final performance plan and ask the Employee to sign and date to acknowledge receipt.
- C. During the rating period, the Supervisor shall discuss with and notify the Employee of any changes in the Employee’s Critical Elements or performance standards, annotate them in the performance plan, and provide a copy of the revised performance plan to the Employee.
- D. Performance discussions:
  - 1. A mid-year discussion and a closeout of current appraisal period and establishment of standards for the new appraisal period discussion must take place each appraisal period.
  - 2. Performance discussions should occur throughout the performance appraisal period. Discussions may be initiated by the Supervisor or Employee and may be held one-on-one or in a work group. Employees are encouraged to seek feedback from their Supervisor about their performance throughout the performance appraisal period.
  - 3. Performance discussions between the Supervisor and the Employee shall be aimed at improving the work process or product and developing the Employee. As appropriate, the discussion shall provide the opportunity to assess accomplishments and progress and identify and resolve problems.

4. Performance discussions are not formal discussions.

#### **25.04 Procedures**

- A. Normally within thirty (30) calendar days of appointment, reassignment, or change in supervision, the Employee shall be issued a new performance plan.
- B. Employees will receive an annual performance rating for the performance appraisal period. Performance ratings are issued in writing to the Employees as soon as practicable after the end of the rating period.
- C. Employees must be working under a performance plan for a minimum of ninety (90) calendar days before a rating can be given.

#### **25.05 Addressing Unacceptable Performance**

The provisions in this Article shall not preclude the Agency from taking an action for unacceptable performance under 5 U.S.C. Chapter 75. A Supervisor is not required to use the procedures in this Section or 5 U.S.C. Chapter 43 when taking an action for unacceptable performance.

- A. At any time during the rating period, if the Supervisor identifies that an Employee's performance in one or more Critical Elements is at the Unacceptable level, the Supervisor may notify the Employee of the Critical Elements for which performance is unacceptable and inform the Employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance with the issuance of a Notice of Opportunity to Demonstrate Acceptable Performance (NODAP).
- B. The NODAP must inform the Employee that unless his or her performance in the Critical Element(s) at issue improves and is sustained at an acceptable level of performance, the Employee may be demoted or removed from employment.
- C. The NODAP shall afford the Employee generally 45 calendar days to demonstrate acceptable performance under the Critical Elements at issue, commensurate with the duties and responsibilities of the Employee's position.
- D. During the NODAP period, the Supervisor may offer assistance to the Employee in improving unacceptable performance.
- E. A Supervisor can issue an Unacceptable rating prior to issuing a NODAP. However, no reduction in grade or removal action will be taken under 5 C.F.R. Part 432 until the completion of the NODAP period.
- F. Once the NODAP period has ended or the Supervisor determines that the opportunity period is no longer needed, the Supervisor shall provide the Employee with a written notice of his/her determination of the Employee's level of performance at that time.

#### **25.06 Statutory Procedures Provide Exclusive Redress**

Statutory procedures and appeals provide exclusive redress for alleged violations of Employee rights involving appealable adverse and performance-based actions under this Article. Pursuant to 5 USC 7121(a)(2), disputes over appealable adverse and performance-based actions arising under this Article shall not be subject to the negotiated grievance and arbitration procedures.

- A. Details and Temporary Promotions. The Agency shall ensure that when an Employee is initially detailed or temporarily promoted to a position for one hundred and twenty (120) calendar days or more, the Agency must develop a performance plan within thirty (30) calendar days of the beginning of the assignment and issue a copy to the Employee. Upon development, the plan shall be communicated to the Employee for the Employee's input. A summary rating shall be prepared to document the Employees' accomplishments at the end of the detail or temporary promotion. For details or temporary promotions of less than one hundred and twenty (120) calendar days, no summary rating will be developed. However, some documented record of the Employee's performance during the timeframe shall be kept and considered when the annual rating of record is prepared.
- B. Position Changes. When an Employee changes positions during the appraisal period, and the Employee has served under the same performance requirements at least ninety (90) calendar days in the position from which they changed, a performance rating shall be prepared and provided to the Employee's new Supervisor for consideration. When the Employee's position changes but his/her Supervisor does not change, the Supervisor should prepare documentation of the Employee's performance in the former position and consider this in the Employee's annual rating of record.
- C. Change in Supervisor. When an Employee works under different Supervisors during the appraisal period, each Supervisor of ninety (90) calendar days or more shall prepare a summary rating and forward it for appropriate consideration to the Employee's new Supervisor, unless an Employee has not been under the same set of performance requirements for at least ninety (90) calendar days.
- D. Transfer of Rating. Should an Employee transfer to a new Federal Agency, department, or organization after serving at least ninety (90) calendar days under the same performance requirements in the position from which they are being transferred, a performance rating shall be prepared and provided to the Employee.

**25.07           Records of Performance.**

- A. Supervisors shall maintain performance data sufficient to support the rating assigned to each element.
- B. The annual rating of record shall be kept in accordance with Government-wide regulations.

## **ARTICLE 26 — PERSONAL COMMUNICATION DEVICES**

### **26.01 General**

- A. While in Duty Status, Employees shall use Personal Communication Devices (PCDs) for emergency responses only.
- B. Although PCDs are for emergency use only, Employees may make personal use of their PCDs during Breaks, or while in Non-Duty Status (before work, after work, and during Lunch). Employees making personal use of their PCDs shall confine such use to Break Rooms, outside BC-occupied space, or designated location.
- C. While in work areas, while Teleworking, and while in Duty Status at Remote duty stations, all PCDs must be maintained in silent mode unless other arrangements are made with Supervisor.

### **26.02 Security**

Employee shall not use any camera function feature or any voice recording feature, while in BC-occupied space.



## **ARTICLE 27 — POSITION CLASSIFICATION**

### **27.01 General**

- A. The Agency shall classify Positions by comparing the duties, responsibilities, and Supervisory relationships in the official PD in accordance with applicable laws, rules, regulations, policies, procedures, and practices, as amended.
- B. Each Position established or changed must be accurately described and classified, in writing, to the proper Occupational Title, Series, and Grade.
- C. The Agency shall apply any newly issued Office of Personnel Management (OPM) Classification and Job Grading Standards as soon as practicable.

### **27.02 Audits**

Employees may request a Classification Audit through their immediate Supervisor, in accordance with applicable laws, rules, regulations, policies, procedures, and practices, as amended.

### **27.03 Appeals**

- A. If the Employee is not satisfied with the results of the Classification Audit, the Employee may file a Classification Appeal.
- B. Upon request, the Agency shall provide an Employee exercising their classification appeal rights with a copy of the applicable rules, regulations, policies, procedures, and practices for filing a Classification Appeal.

## **ARTICLE 28 — POSITION DESCRIPTIONS**

### **28.01 Position Descriptions**

- A. Employees have the right to an accurate and classified position description. Employees may request a copy of their current position description from their immediate Supervisor and may request a desk audit of their current duties. Consistent with the Equal Pay Act, Employees performing different jobs with substantially equal content should receive substantially equal pay.
- B. Disputes regarding the appropriate major duties, schedule, title, series, or grade are covered under established classification appeal procedures and may only be appealed through these procedures.
- C. Any duty or responsibility for which a performance standard has been established shall be based on the requirements and expectations of the position.
- D. Position Descriptions (PDs) shall accurately reflect the Principal Duties and Responsibilities of the Position to which the Agency assigns the Employee. The Parties understand the PDs may not include every Assignment, Duty, or Responsibility. However, any Agency assigned Duties and Responsibilities, other than those included in the PD, shall be as closely related to the PD as practicable.
- E. The Agency maintains the right to change a PD at any time. However, the Agency shall notify the Employee and the Union of any major duty changes to an Employee's PD.

### **28.02 Duties and Responsibilities**

The Agency may assign or temporarily change the duties and responsibilities of a PD to accomplish organizational needs. Should this occur, the Agency shall re-assign or detail the Employee to a separate PD or statement of duties, if the duties are not classified.

## **ARTICLE 29 — REASONABLE ACCOMMODATION**

### **29.01 Reasonable Accommodations Governed by Law**

The Agency shall comply with all applicable laws, rules, regulations, policies, procedures, and practices, as amended, in assisting Employees seeking a Reasonable Accommodation.

### **29.02 Requests Initiated by Employees**

An Employee who wishes to request a Reasonable Accommodation must initiate the request through his/her immediate Supervisor. Management shall immediately address such requests from Employees.

### **29.03 Reasonable Accommodations and this Agreement**

An accommodation request may not violate the terms of this Collective Bargaining Agreement without both Parties to this Agreement agreeing in writing for a waiver to the CBA on the Accommodation.

## **ARTICLE 30 — RECOGNITION, HISTORY AND DESCRIPTION OF UNITS, COVERAGE AND RESOLUTION OF REPRESENTATIONAL ISSUES**

### **30.01 Recognition**

In accordance with the Federal Service Labor-Management Relations Statute (“the Statute”), and Certifications of Representation issued by the Federal Labor Relations Authority (“the Authority”) in Case Nos. WA-RP-20-0055 (January 22, 2021) and WA-RP-20-0012 (April 10, 2020), the Agency recognizes: (1) American Federation of Government Employees, AFL-CIO, as the exclusive representative for collective bargaining purposes of the bargaining units described by the previously mentioned Certifications; and (2) American Federation of Government Employees, AFL-CIO, Local 3354 as the agent of American Federation of Government Employees, AFL-CIO, for the purpose of collective bargaining in accordance with those previously mentioned Certifications.

### **30.02 History of the Units**

#### **A. The unit of non-professional Employees**

On September 22, 1997, following a representation election conducted by the Authority in Case No. DE-RP-70037, the Authority certified American Federation of Government Employees, Local 3354, as the exclusive representative of Employees in the following bargaining unit:

Included: All non-professional Employees of the U.S. Department of Agriculture, Rural Housing Service, Centralized Servicing Center, St. Louis, Missouri.

Excluded: All professional Employees; temporary Employees with no expectations of continued employment of 90 days or less; management officials; Supervisors; and Employees described in 5 USC 7112(b) (2), (3), (4), (6), and (7).

On January 22, 2021, following a reorganization of Agency operations which created the BC, the Authority issued a Certification in Case No. DE-RP-20-0055 clarifying the unit previously certified in Case No. DE-RP-70037 by naming American Federation of Government Employees (AFL-CIO) as the successor exclusive representative of Employees in the following bargaining unit:

Included: All non-professional Employees of the U.S. Department of Agriculture, Rural Development Business Center.

Excluded: All professional Employees; temporary Employees with expectations of continued employment of 90 days or less; management officials; Supervisors; and Employees described in 5 USC 7112(b) (2), (3), (4), (6), and (7).

## B. The unit of professional Employees

On December 23, 2013, following a representation election conducted by the Authority in Case No. DE-RP-13-0011, the Authority certified American Federation of Government Employees, AFL-CIO, as the exclusive representative of Employees in the following bargaining unit:

- Included: All professional Employees of the U.S. Department of Agriculture, Rural Development, Office of the Deputy Chief Financial Officer, St. Louis, Missouri.
- Excluded: All nonprofessional Employees, Supervisors, management officials, and Employees described in 5 USC 7112(b)(2), (3), (4), (6), and (7).

On April 10, 2020, following a reorganization of Agency operations which created the BC, the Authority issued a Certification in Case No. DE-RP-20-0012 clarifying the unit previously certified in Case No. DE-RP-13-0011 by naming American Federation of Government Employees, AFL-CIO as the successor exclusive representative of Employees in the following bargaining unit:

- Included: All professional Employees of the U.S. Department of Agriculture, Rural Development Business Center.
- Excluded: All Supervisors, management officials, non-professional Employees, and Employees described in 5 U.S.C. 7112(b) (2), (3), (4), (6), and (7).

### **30.03 The Coverage of this Agreement**

The Parties to this Agreement, U.S. Department of Agriculture, Rural Development (“Agency”) and the American Federation of Government Employees, AFL-CIO and its agent, American Federation of Government Employees, Local 3354 (together the “Union”), have chosen to negotiate a single Collective Bargaining Agreement for application, to the extent legally permissible, to all the members included in the bargaining units described in the preceding section as if those Employees were members of a single bargaining unit.

### **30.04 Federal Labor Relations Authority**

Any questions related to the bargaining unit status of any position(s) shall be resolved in accordance with applicable rules, regulations and procedures of the Federal Labor Relations Authority.

### **30.05 Governing Laws and Regulations**

In the administration of all matters covered by this Agreement, the Parties are governed by existing law and Government-wide regulations.

### **30.06 Past Practices and Previous Agreements**

Privileges of Employees that by custom or tradition have evolved, known past practices, along with MOAs, MOUs, and other Agreements executed prior to this Agreement are hereby extinguished.

## **ARTICLE 31 — REDUCTIONS-IN-FORCE/ TRANSFERS-OF-FUNCTION**

This article governs the conduct of any Reduction-In-Force (RIF) and of any Transfer-of-Function (TOF) affecting bargaining unit Employees.

### **31.01 General**

- A. Both the Agency and the Union recognize that a Reduction-In-Force (RIF) or a Transfer of Function (TOF) may seriously or adversely affect Employees. Consequently, the Agency shall execute all RIF and TOF obligations in accordance with applicable laws, rules, regulations, policies, procedures, and practices, as amended.
- B. This Article addresses Agency Procedures other than those subject to applicable laws, rules, regulations, policies, procedures, and practices, as amended.
- C. Once the Agency becomes aware a RIF or TOF may be necessary, the Agency shall seek input from the Union.

### **31.02 Definitions**

- A. Reduction in Force (RIF)

A RIF occurs when the Agency releases a competing Employee from his or her competitive level by furlough for more than 30 calendar days, separation, demotion, or reassignment requiring displacement. For RIF procedures to apply, such release is required because of lack of work, shortage of funds, insufficient personal ceiling, reorganization, the exercise of re-employment rights or restoration rights, or reclassification of an Employee's position due to erosion of duties when such action will take effect after the Department has formally announced a reduction-in-force in the Employee's competitive area and when the reduction-in-force will take effect within 180 calendar days.

- B. Transfer of Function (TOF)

A TOF is the transfer of a continuing function from one competitive area to one or more other competitive areas, unless the function involved is virtually identical to functions already being performed in the new area(s). It also includes the movement of the competitive areas in which the function is performed to another commuting area.

- C. Competitive Area

An area in which Employees compete for retention is known as a Competitive Area. A competitive area must be defined solely in terms of the Agency's organizational units and position status (remote or non-remote).

- D. Competitive Level

Positions in a competitive area that are in the same grade (or occupational level), same classification series and similar enough in duties, qualification requirements, pay schedules, and working conditions, so that the agency may reassign the incumbent of one position to any of the other positions in the level without causing undue interruption in the agency's work share the

same competitive level. Competitive levels shall be established consistent with statutory requirements and governing regulations.

### **31.03 Notification**

- A. The Agency shall notify the Union, in writing, (i) as soon as practicable after the Agency becomes aware it is going to implement a RIF or TOF, and (ii) to the extent practicable, at least ninety (90) calendar days before the anticipated date of implementation.
1. The written notice shall include, but is not limited to, the following information:
    - a. The reason for the action taken; and
    - b. The approximate number of bargaining unit Employees initially affected; and
    - c. The types of positions initially affected; and
    - d. The anticipated implementation date; and
    - e. The competitive area affected by the action; and
    - f. The competitive levels affected by the action.
  2. Upon receipt of the notice, the Union shall have five (5) workdays within which to demand to bargain about matters related to the RIF or TOF.
- B. The Agency shall (i) send written notice to any Employee likely to be adversely affected by a RIF/TOF, and (ii) do so at least thirty (30) calendar days before the anticipated implementation date.
1. The written notice shall include, but is not limited to, the following information:
    - a. The reason for the action taken; and
    - b. All information required by laws, rules, regulations, policies, procedures, and practices, as amended; and
    - c. This Agreement; and
    - d. The specific action taken; and
    - e. The implementation date of the action; and
    - f. The Employee's competitive area; and
    - g. The Employee's competitive level and subgroup; and
    - h. The Employee's RIF/TOF Service Computation Date (SCD), as adjusted by (i) below; and
    - i. The last three (3) annual performance ratings of record during the applicable 4-year period; and
    - j. The place where the Employee may inspect regulations and records pertinent to their case; and
    - k. Any relevant grade and pay retention information; and
    - l. The Employee's appeal rights.
  2. Subject to Agency approval, an Employee shall receive eight (8) hours of excused absence to reply to a specific RIF/TOF Notice.

### **31.04 Factors Used in Determining an Employee's Assignment Rights**

- A. Competitive levels
1. Competitive levels shall include all positions of similar duties and responsibilities.

2. When the Agency releases an Employee from their competitive level, the Agency shall determine the Employee's assignment rights, if any, in accordance with then-current applicable laws, rules, regulations, policies, procedures, and practices.

B. Performance appraisals

1. The Agency shall freeze all annual performance appraisals used for determining RIF retention standings as of a single predetermined date.
2. The Agency shall use the three (3) latest annual performance ratings of record issued within the last four (4) years before the predetermined date to determine the Employee's adjusted SCD for RIF/TOF.
3. In determining the SCD for those Employees whose performance appraisals contain Pass/Fail results, the Agency shall use the Pass/Fail point system in force at the time the Employee was so evaluated.
4. To determine an Employee's adjusted SCD, the Agency shall only consider properly reviewed, signed, issued, and recorded performance ratings of record.

C. Competitive areas

1. The Competitive Area of an Employee on a detail assignment shall be the Employee's official position of record, and not the position to which the Employee has been detailed.
2. The Competitive Area of an Employee on a temporary promotion assignment shall be the Employee's official position of record, and not the position to which the Employee has been promoted temporarily.

**31.05 Competitive Areas and Levels**

- A. In determining the Competitive Area of a Reduction in Force the Agency shall seek to minimize the adverse impact on all affected Employees.
- B. The Competitive Levels shall include all positions of similar duties and responsibilities in accordance with applicable laws, rules, regulations, policies, procedures, and practices, as amended.
- C. When the Agency releases an Employee from his/her competitive level, the Agency shall determine the Employee's assignment rights, if any, in accordance with applicable laws, rules, regulations, policies, procedures, and practices, as amended.

**31.06 Re-Employment and Placement Assistance Rights of Affected Employees**

The Agency shall assist Employees adversely affected by a RIF/TOF in accordance with applicable laws, rules, regulations, policies, procedures, and practices, as amended. Such Agency assistance shall include, but is not limited to:

- A. Maintaining a re-employment priority list (RPL); and



- B. Complying with any applicable Career Transition Assistance Programs (CTAP) and Interagency-Career Transition Assistance Programs (I-CTAP); and
- C. Informing other federal agencies of the availability of adversely affected Employees.

**31.07 Employee Use of Excused Absences and Departmental Facilities**

- A. Whenever RIF/TOF actions identify an Employee for separation, change to a lower grade, or reassignment, the Agency shall permit that Employee, as needed, reasonable time (while the Employee is otherwise in a duty status and without charge to leave) for the following:
  - 1. Reviewing job bulletins and announcements; and
  - 2. Preparing, revising, and/or reproducing job resumes and/or job application forms; and
  - 3. Participating in employment interviews.
- B. Except as prohibited by applicable laws, rules, regulations, policies, procedures, and practices, as amended, the Agency shall permit adversely affected Employees reasonable use of the following facilities and/or services for and during the excused absence and activities identified by Credit Hours 31.07-A immediately above: computers, reproduction equipment, telephones, internal message mail service, electronic mail messaging, word processing, copying facilities, fax machines, and/or services provided through the Employee Assistance Program (EAP).

**31.08 Special Problems**

- A. The Agency shall provide group-counseling for problems associated with handling stress during periods of job insecurity.
- B. The Agency shall authorize reasonable time (while the Employee is otherwise in a duty status and without charge for leave) for Employees to participate in such group counseling. Excused absence used for this purpose shall not count against the individual's right to excused absences for Employee Assistance Program (EAP) services covered by the EAP Article.

**31.09 Records**

The Agency shall maintain all lists, records, and information pertaining to RIF/TOF actions in accordance with applicable laws, rules, regulations, policies, procedures, and practices, as amended.

**31.10 Negotiability**

The Union may exercise its right to bargain over procedures for the Agency to follow and over arrangements for adversely affected Employees (a/k/a "Impact and Implementation" or "I & I" in accordance with applicable laws, rules, regulations, policies, procedures, and practices, as amended.

### **31.11 Access to Information**

- A. In accordance with applicable laws, rules, regulations, policies, procedures, and practices, as amended, the Agency shall make available to the Union a copy of the retention registers and any other identifiably relevant data/information (D/I) necessary for the Union to carry out its representational duties and responsibilities in connection with a RIF/TOF. The Agency shall have such D/I available for review within thirty (30) calendar days of the announcement of the RIF/TOF. Such D/I shall be general in nature until the Agency officially announces the implementation date of the RIF/TOF.
  
- B. If an Employee believes the D/I used by the Agency to place the Employee on the RIF/TOF register is inaccurate, incomplete, or otherwise not in accord with applicable laws, rules, regulations, policies, procedures, and practices, as amended, the Employee may submit to his/her Supervisor a written: (i) request that Human Resources review and, if necessary, correct the information in his/her electronic Official Personnel File ("eOPF"); (ii) list of the information in the eOPF believed to be inaccurate; and (iii) authorization to perform the review. Following receipt of the requesting Employee's written submission, the Agency shall complete the review and send written notice of the results to the Employee within fifteen (15) calendar days.

## **ARTICLE 32 — REMOTE WORK**

### **32.01 Remote Work Generally**

Remote Work in the BC shall be governed by this Agreement and USDA's Departmental Regulation 4080-811-002, "Telework and Remote Work Program". When consistent with business needs and approved by their Supervisors, Remote Workers may participate in Flexible/Compressed work schedules or other flexible work arrangements.

### **32.02 Remote Work Policy**

- A. Remote Work Defined: Remote Work is an arrangement under which BC Employees are scheduled to perform their position's job duties at an approved alternate worksite, typically the Employee's residence.
1. The remote worksite may be within or outside of the local commuting area of the BC office worksite.
  2. Remote Work Employees are expected to work at a designated approved location, typically the Employee's residence, on a regular and continuing basis.
  3. Because the alternate worksite for Remote Work must be approved by the Agency, is specifically identified in the Remote Work Agreement, and is documented on the Employee's "Notification of Personnel Action" (Standard Form 50) as the Employee's Official Duty Station (ODS), an Employee with a Remote Work Agreement shall not relocate from the designated approved location without obtaining formal documented approval first.
- B. Remote Work Procedures:
1. Remote Work Employees are generally not expected to report to the BC office worksite.
  2. However, the Supervisor has the right to direct a Remote Work Employee to report to an alternate work site in order to meet business needs.
    - i. Notice to report shall normally be given one (1) business day in advance.
    - ii. When the Agency requires an Employee with an ODS within the local commuting area to be present at an alternate work site on the same day, that Employee shall receive no more than two (2) hours to arrive unless the Supervisor finds and approves a need for additional time. Such travel time shall be compensable as hours of work.
- C. Remote Work arrangements should be cost-neutral or low-cost, to the extent practical, after factoring in the net cost savings accrued moving each Employee to a remote arrangement. Supervisors should minimize official travel between the Remote Work location and the BC office worksite unless necessary to accomplish mission-critical or operational needs or where alternative virtual communication means (e.g., teleconference, virtual meetings) are not suitable or available.
- D. When travel is required, clear communication between the Employee and Supervisor will ensure an accurate understanding of mutual responsibilities and obligations. When the Agency authorizes a Remote Worker to travel from their ODS to an office worksite for

official duty, the Agency shall pay travel costs consistent with applicable travel regulations and policies.

### **32.03 Employee Requests to Establish or Change a Remote Work Arrangement**

- A. BC Employees may request to work remotely, to change an existing Remote Work arrangement, or to terminate their Remote Work arrangement. The Employee requesting a change must:
  - 1. Discuss the request with their Supervisor. Changing the Employee's ODS is likely to affect the Employee in several ways (e.g., locality pay, Reduction-in-Force (RIF) competitive area, bargaining unit status, unemployment compensation). When discussing such requests with the Employee, management must address other available workplace flexibilities, including but not limited to, Alternative Work Schedules, details, leave options (e.g., extended leave without pay (LWOP), and shared leave programs.
  - 2. The Employee then may submit a request for a Remote Work arrangement, change to a Remote Work arrangement, or termination of a Remote Work arrangement in writing. The request must include the proposed ODS and effective date.
- B. To the extent the eligibility criteria in DR 4080-811-002 are met, Supervisors normally will approve requests to set up a Remote Work arrangement from Employees occupying positions that are remote-eligible. Supervisors may consider, however, whether there is a need to limit the geographic location of the ODS for the Remote Work arrangement due to travel or other mission requirements.
- C. Supervisory considerations of Employee requests to change or terminate a Remote Work arrangement include:
  - 1. That the proposed creation or change of a Remote Work arrangement does not negatively affect the BC's budget or ability to execute its mission; and
  - 2. Requests to terminate a Remote Work arrangement may be denied due to space limitations within a BC office worksite.
- D. Generally, to the extent the eligibility criteria in DR 4080-811-002 are present, Employees may be considered eligible for a Remote Work arrangement. However, an Employee becomes permanently ineligible for a Remote Work arrangement if they have been formally disciplined for either:
  - 1. A violation of Subpart G, Misuse of Position, of the Standards for Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computing device to include cell phones and tablets or while performing official, Federal Government duties; or
  - 2. Absence without leave (AWOL) for five (5) or more days in any calendar year.

- E. Performance and Conduct. Employees on Remote Work arrangements are subject to the same laws, rules, regulations, and policies that address performance deficiencies and Employee misconduct.
- F. Participation in Remote Work may be changed, suspended, terminated or denied by the Agency if an Employee no longer meets the eligibility criteria or the Agency's performance expectations or for other bona fide business reasons.
- G. A bargaining unit Employee may appeal the Agency's change, suspension, termination or denial of a Remote Work arrangement by means of this Agreement's Negotiated Grievance Procedure.

### **32.04 Pay, Holiday, and Time & Attendance**

- A. The basic rate of pay of a Remote Work Employee is determined by the Employee's base pay rate, the applicable locality pay rate and any special pay rate associated with the Employee's ODS of record, as recorded on the Employee's OPM Standard Form (SF)-50, Notification of Personnel Action. For Remote Work Employees, the official worksite typically is their residence.
- B. Remote Workers shall follow Departmental policies and procedures for requesting and using approved leave. Leave should be requested and approved in accordance with standard leave approval procedures, with leave hours accurately recorded in the time and attendance system.
- C. In general, the Agency shall not pay relocation expenses related to Remote Work arrangements.
- D. Remote Work Employees traveling on official business are eligible for the same travel benefits as non-Remote Work Employees. Supervisors should, whenever possible, minimize the official travel of Remote Work Employees. Alternate communication technologies should be leveraged to the greatest extent possible to minimize travel unless necessary.
- E. Remote Work Employees generally will not have an assigned or dedicated workspace at the BC's office worksite.
- F. Under the Federal Employees' Compensation Act administered by the U.S. Department of Labor's Office of Workers' Compensation Programs (OWCP), Remote Work Employees may be eligible for Workers' Compensation benefits for work-related injuries or illnesses sustained while performing their duties. For further information, see 5 U.S.C. 81.

### **32.05 Roles & Responsibilities**

Remote Workers shall:

- A. Abide by the conditions of their approved Remote Work Agreements;
- B. Follow Agency safety requirements and ensure proper security of Agency equipment, information, and materials;

- C. Provide the same level of support, availability, and accessibility to customers, coworkers, and their Supervisor(s) as if working at an official BC duty location;
- D. Meet organizational and individual work requirements as established (e.g., customer service, time frame for returning phone calls, voicemail messages, and email communication), staff meeting attendance, duty hours, and accurately coding time and attendance;
- E. Complete all applicable mandatory training courses;
- F. Ensure appropriate arrangements for the care of dependents while working remotely. Remote Work is not a substitute for dependent care. However, an Employee is not precluded from having a caregiver in the home who provides care to the dependent(s) while the Employee works. Also, a dependent may be permitted in the home provided they do not require constant supervision or care (i.e., older child or adolescent) and their presence does not disrupt the Employee's ability to work effectively;
- G. Ensure the alternate worksite provides adequate connectivity and technology to accomplish work tasks. Employees are expected to provide internet service and other general utility costs at their own expense;
- H. Acknowledge, in the Remote Work Agreement that they are bound by the Standards of Ethical Conduct for Employees of the Executive Branch while working remotely; and
- I. Understand that travel provisions apply to Remote Workers. A Remote Worker who is directed to travel to another worksite during their regularly scheduled basic tour of duty would have the travel hours credited as hours of work.

### **32.06 Temporary Work Interruption for Remote Work Employees**

- A. The Supervisors of Remote Work Employees are authorized to approve requests for Weather & Safety Leave when unplanned power, weather, connectivity or other external conditions outside the Employees' control which occurred at the Employees' homes make it temporarily impossible or unsafe for Employees to accomplish any Agency work.
- B. Apart from situations described in §§ 32.06-A above, Employees whose homes are their ODSs are generally not granted Weather & Safety Leave except in those rare situations when they have no work to perform because similar unplanned circumstances occurred elsewhere.
- C. Nothing under this section shall be interpreted and applied in a manner that authorizes Employees to receive Weather & Safety Leave for times when they could complete training, manage files and records, or perform other independent assignments and tasks, etc.

## ARTICLE 33 — RIGHTS OF EMPLOYEES

### 33.01 Employee Rights

- A. The Union has not waived any of its statutory rights nor any statutory rights of the bargaining unit Employees by entering into this Agreement.
- B. Supervisors who retain personal notes and/or other records documenting the conduct and performance of Employees shall do so in compliance with the Privacy Act. Upon request, Supervisors shall permit Employees to review and/or obtain copies of such files.
- C. In an atmosphere of mutual respect, all Employees shall be treated fairly and equitably and without discrimination in regard to their political affiliation, union activity, race, color, religion, national origin, gender, sexual orientation, marital status, age, or non-disqualifying handicapping conditions irrespective of the work performed or grade assigned. Employees shall also be afforded proper regard for and protection of their privacy and constitutional rights. For these reasons, the Agency shall endeavor to establish and maintain working conditions that are conducive to enhancing and improving Employee morale and efficiency.
- D. An Employee who does not understand an instruction/order communicated to him/her by a management official has the right to request clarification of that instruction/order. A Supervisor's order must be complied with once given whether or not the Employee believes those instructions to be consistent, fair, or reasonable except that an Employee has a right to decline to perform his/her assigned tasks because of reasonable belief that, under the circumstances, both: (1) the task poses an imminent risk of death or serious bodily harm; and (2) there is sufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures. An Employee who concludes that a Supervisor's instruction(s)/order(s) are not consistent, fair, or reasonable has the right to pursue his/her dissatisfaction through the Negotiated Grievance Procedure.
- E. No Employee will be subjected to intimidation, coercion, harassment or retaliation by management officials.
- F. Recognizing that productivity is enhanced when Employee morale is high, Managers, Supervisors, and Employees shall endeavor to treat one another with utmost respect and dignity.
- G. No Employee shall be subjected to reprisal or retaliation because they exercise any statutory or contractual right but shall be treated fairly and equitably.
- H. Consistent with this Agreement, all BC Employees shall:
  - 1. Be provided a healthy and safe work environment;
  - 2. Be encouraged to enhance their work life and career development; and,
  - 3. Be afforded assistance and told of the Agency's expectations for the performance of their jobs.

### **33.02 Rights Related to Union Activity and Membership**

Each Employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely, and without fear of penalty or reprisal, and each Employee shall be protected in the exercise of such right. Except as may be provided otherwise by this Agreement, such right includes the right:

- A. to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the Executive Branch of the Government, the Congress, or other appropriate authorities; and
- B. to engage in collective bargaining with respect to conditions of employment through representatives chosen by Employees under 5 U.S.C. 71.



## **ARTICLE 34 — RIGHTS OF THE AGENCY**

### **34.01 Statutory Management Rights**

- A. Subject to subsection (b) of this section, nothing in this Agreement shall affect the authority of any management official of the Agency--
1. to determine the mission, budget, organization, number of Employees, and internal security practices of the Agency; and
  2. in accordance with applicable laws--
    - a. to hire, assign, direct, layoff, and retain Employees in the Agency, or to suspend, remove, reduce in grade, or pay, or take other disciplinary action against such Employees;
    - b. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;
      - i. with respect to filling positions, to make selections for appointments from
      - ii. among properly ranked and certified candidates for promotion; or
    - c. any other appropriate source; and
    - d. to take whatever actions may be necessary to carry out the Agency mission during emergencies.
- B. Nothing in this section shall preclude the Agency and Union from negotiating--
1. at the election of the Agency, on the numbers, types, and grades of Employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;
  2. procedures which management officials of the Agency will observe in exercising any authority under § 7106(a) of the Federal Service Labor-Management Relations Statute (the Statute); or
  3. appropriate arrangements for Employees adversely affected by the exercise of any authority under § 7106(a) of the Statute by such management officials.

### **34.02 Discussions Concerning Matters Which are not Conditions of Employment**

Management officials and Supervisors retain the right to meet with Unit Employees without the presence of a Union representative concerning any matter that is not a condition of employment, as stated in 5 U.S.C. § 7114(a)(2).

### **34.03 Application of this Article**

This Article shall apply to this Agreement and to all supplemental agreements between the Parties.

## **ARTICLE 35 — RIGHTS OF THE UNION**

### **35.01 Retention of Rights**

The Union retains its rights contained in the Federal Service Labor-Management Relations Statute, except as amended in this Agreement. The Union does not waive any of its statutory rights by entering into this Agreement.

### **35.02 Fair Representation**

The Union recognizes its responsibility to represent the interests of all Employees in the unit without discrimination based upon race, color, religion, gender, age, disability/handicap, national origin, sexual orientation, political affiliation, marital status and/or labor organization membership, with respect to grievances, personnel practices, policies, and/or procedures, and other matters affecting general conditions of employment.

### **35.03 Union Obligations**

The Union shall encourage Employees to actively support the Agency's efforts to remain fiscally sound, eliminate waste, conserve materials and supplies. The Union shall encourage Employees to actively participate in and promote programs designed to improve work methods and conditions. Conscientiously perform assigned duties; comply with ethical standards of conduct; cooperate and strive to maintain good working relations with their Supervisors and fellow Employees; be courteous to the public; and recognize the need to participate in continuing education programs to keep abreast of changes.

### **35.04 Limits on the Right to Represent**

- A. The Union shall not have the right to be present during any of the following:
1. A formal investigation conducted by an investigative or law enforcement organization from outside the Department of Agriculture, or
  2. A discussion involving an alleged Equal Employment Opportunity violation where the Union is not an official representative of the Claimant; or
  3. An inquiry involving possible criminal conduct; or
  4. An inquiry involving the security of the Agency or its Employees.
- B. The Union shall not have the right to restrict or delay Management in the lawful exercise of its statutory right to take disciplinary action.

### **35.05 Formal Discussion**

- A. The Union shall be given the opportunity to be represented at:
1. any formal discussion between one or more representatives of the Agency and one or more Employees in the units or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or
  2. any examination of an Employee in the units 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 Union's rights to be given an opportunity to be represented at formal discussions and at examinations are not intended to apply to any formal investigation conducted by an investigative or law enforcement organization outside the Department of Agriculture, or to any inquiry involving possible criminal conduct or conduct affecting the safety or internal security of the Agency or its Employees. Furthermore, the exercise of these rights is not intended and shall not be interpreted to unreasonably restrict or delay Management in the lawful exercise of its statutory right to take disciplinary action. Rather, these rights (i) protect the Union's role as exclusive representative of the bargaining unit, and (ii) guarantee the Employee whose conduct is under investigation an opportunity to address an allegation of questionable conduct before a decision is made to take disciplinary or adverse action based on misconduct.

### **35.06 Orientation**

- A. The Agency shall notify the Union at least one (1) week in advance of any orientation for new Employees.
- B. Whenever the Agency conducts an orientation for new Employees, the Agency shall permit the Union one (1) hour at the end of the session during which to address new Employees.
- C. At the orientation, the Union shall only present union-neutral material.

### **35.07 Negotiation**

The Union has the right to negotiate:

- A. A Labor-Management Relations Collective Bargaining Agreement (Contract) governing the conditions of employment of Employees in the covered Units.
- B. The procedures and appropriate arrangements (a/k/a impact and implementation) of more-than de minimis changes in conditions of employment.

### **35.08 Grievance**

- A. At the Employee's request, the Union shall have the right to represent the Employee at any stage in the grievance process.
- B. The Union shall always have the right during the grievance process to represent the interests of the bargaining unit.

### **35.09 Bargaining Unit Lists**

- A. Once per calendar year, upon request, the Agency will provide to the Union, to the extent available in an existing automated database, listings of bargaining unit Employee names, job titles, series, professional or nonprofessional status, service, work location, and duty station.

- B. If the Agency is temporarily unable to comply with the Union's request made under A above, it will immediately notify the Union of when the information will be available.

**35.10 Official Time**

The Union has the right to use authorized Official Time when conducting representational duties and responsibilities on behalf of, and that have a direct connection to, the BC bargaining unit and the work it performs.

**35.11 Internal Union Business**

The Union shall ensure that Employees who engage in internal Union business, such as soliciting membership, collecting dues, election of officers and Union meetings is conducted while such Employees are in a non-duty status or on approved leave.

## **ARTICLE 36 — SAFETY & ENVIRONMENT**

### **36.01 General**

- A. The Agency shall provide and maintain safe working conditions for all Employees, to the extent of its authority and consistent with applicable laws, rules, regulations, policies, procedures, and practices, as amended.
- B. Where complaints arise with respect to safety issues not under the direct authority of the Agency, the Agency shall present the Employees' concerns to the appropriate authority for action.

### **36.02 Occupational Injury/Illness**

- A. If an Employee becomes injured or ill while performing their occupational tasks, the Employee shall immediately report such injury/illness to their immediate Supervisor or Designee (references hereafter to "Supervisor" include the Designee). As soon as the Employee informs the Supervisor of the injury/illness, the Supervisor shall immediately:
  - (1) take action, if appropriate, to correct any unsafe or unhealthy condition; and
  - (2) complete and submit the initial injury or illness report (currently the on-line "First Report Tool").If the injury/illness results in an Employee's immediate absence from the work area and the Supervisor does not learn of the occurrence until later, the Supervisor shall submit the initial injury or illness report upon learning of the occurrence and any necessary supplement or correction as soon as learning additional information.
- B. The Agency shall provide the Employee with the necessary immediate First Aid to treat and reduce the injury.
- C. The Agency shall provide appropriate leave information to the Employee regarding any absence from work because of the injury/illness.
- D. When an Employee returns to work from an occupational injury/illness and submits a medical certificate from a licensed health care provider restricting the Employee to light-duty work, the Agency shall consider assigning the Employee to temporary light-duty work within the Employee's work unit. Such light-duty assignments shall not exceed ninety (90) calendar days, unless specified by a medical certificate.

### **36.03 Union Participation**

- A. The Agency recognizes that Union participation in its Occupational Safety and Health Program is essential for the success of that program. The Union has the right to inform the Agency of safety and health problems.
- B. The Union shall designate one representative as its Safety & Health Representative to serve as point of contact with the Agency for safety and health matters. The Safety & Health Representative's functions shall include such matters as: (1) participating in inspections of work areas; (2) reporting on inspection findings to the appropriate management official; (3) participating, as appropriate, in inspections conducted by governmental authorities outside the Agency's control; and (4) receiving and forwarding Employee reports of unsafe or unhealthy conditions to the Agency. The Union shall notify the Agency promptly when the identity of the Union's Safety & Health Representative changes.

- C. The Agency shall afford the Union the opportunity to participate in all scheduled workplace inspections which are intended to detect hazards to safety and health, whether conducted by USDA Safety and Health personnel, non-Agency Employees acting on behalf of the Agency, Occupational Safety and Health Administration (OSHA) and Environmental Protection Agency (EPA) personnel, or other regulatory agencies and bodies.
- D. When the Agency conducts a workplace inspection that impacts or affects bargaining unit Employees, the Union Safety & Health Representative shall be allowed to accompany the inspector(s) on Official Time in each affected area.

#### **36.04 Report, Evaluation, and Abatement of Unsafe and Unhealthy Working Conditions**

- A. Any Employee, group of Employees, or representative of Employees who believes that an unsafe or unhealthy working condition exists in any workplace has the right to report such condition to the appropriate Supervisor, the appropriate Safety and Health official, or the Union. In the case of immediate threat to life or danger of serious physical harm, the situation shall be reported immediately to the Supervisor or Safety and Health personnel.
- B. Safety and Health personnel may evaluate Employee reports of unsafe or unhealthful working conditions in accordance with 29 CFR 1960. The Agency shall notify the Union of all serious hazards as defined in 29 CFR 1960.
- C. The Agency shall ensure prompt abatement of unsafe and unhealthful working conditions, and prepare an abatement plan if an unsafe or unhealthy working condition cannot be abated within thirty (30) calendar days. When abatement action is dependent upon Agency owned, leased, or occupied buildings and/or spaces, the abatement must be prepared in conjunction with appropriate members of that group. The Union Health and Safety Representative shall be timely notified and consulted. The plan shall contain a proposed timetable for the abatement and a summary of steps being taken in the interim to protect Employees from being injured because of the unsafe or unhealthy working conditions.

#### **36.05 Comprehensive Analysis of Injuries and Illnesses**

Upon written request, the Agency shall promptly provide the Union any available sanitized reports of job-related injury and/or illness claims filed during the period of time specified by the request.

#### **36.06 Imminent Danger Situations**

- A. The term “imminent danger” means any conditions or practices in any workplace which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through normal procedures [29 CFR 1960.2(u)].
- B. In an imminent danger situation, an Employee who becomes aware of the imminent danger shall report it by the most expeditious means available. The Employee has a right to decline to perform his/her assigned tasks because of a reasonable belief that, under the circumstances, both: (1) the task poses an imminent risk of death or serious bodily harm; and (2) there is insufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures. However, in these instances, the Employee must

report the situation to his/her Supervisor or another Supervisor who is immediately available. Any refusal by an Employee to perform an assignment is subject to the Agency's right to take disciplinary action if it is determined that there was no reasonable basis for believing in the existence of an imminent risk and/or in the insufficiency of time.

- C. If the condition can be corrected and the corrected condition does not pose an imminent danger, the Employee must return to work. If the condition cannot be corrected, the Supervisor shall request an inspection by facility safety and/or health personnel.

### **36.07 Allegations of Reprisal**

The Agency shall not restrain, interfere, coerce, discriminate, or retaliate against an Employee: (1) for filing a report of an unsafe or unhealthful working condition; or (2) for participating in USDA Occupational Safety and Health Program activities; or (3) because the Employee exercises, on behalf of self or others, any right afforded by Section 19 of the Occupational Safety and Health Act, Executive Order 12196, or 29 CFR 1960.

### **36.08 Temperature Conditions**

Temperature conditions in and around work areas can have a direct bearing on Employees' health, and the problems of hot or cold temperature extremes and appropriate measures to reduce the risk of exposed Employees are appropriate matters to be referred to facility Health and Safety personnel. The Agency shall make reasonable efforts to provide comfortable humidity and temperature control.

### **36.09 Workplace Structural Environment**

Working areas occupied by bargaining unit Employees shall at all times meet the standards of the General Services Administration (e.g., the then-current P100, "Facilities Standards for the Public Buildings Service", for repairs and alterations, lease construction, and tenant improvements, as well as applicable local, state and nationally recognized model building codes and zoning laws and other requirements, etc.).

### **36.10 Asbestos**

- A. Management shall review all construction and/or space modification contracts to determine if asbestos is present and, if so, how to proceed with appropriate removal or containment.
- B. Management shall notify the Union prior to initiating procedures for asbestos removal.
- C. Where it has been determined that asbestos exists in a facility, Management shall conduct periodic air sampling as appropriate. If air sampling indicates that airborne concentrations of asbestos fibers exceeds regulatory levels, the Agency shall send written notice to Employees who have been exposed within five (5) business days after discovery of the excessive asbestos concentration. On request, the Agency shall assist affected Employees in filling out and filing the appropriate forms to apply for Worker's Compensation.
- D. If the airborne asbestos concentration amounts are exceeded, Management shall ensure abatement of the asbestos hazard pursuant to 29 CFR 1910.1001(f). If significant airborne asbestos particles are detected, Management shall conduct sampling at intervals of no greater than three (3) months to monitor Employee exposure levels. The Agency

shall give the Union Health & Safety Representative a copy of tests monitoring asbestos levels.

- E. Asbestos abatement plans may include, but are not limited to, the discontinuance of work or the shifting of Employee work location. The Agency shall notify the Union of such abatement action in advance of the action, except in an emergency when such notice shall be given as soon as possible. Management shall meet its labor obligations in both instances.
- F. Management shall ensure that all external surfaces within the unrestricted work environment in any facility shall be maintained free of accumulated asbestos fibers.
- G. Asbestos and asbestos-contaminated material shall be collected and disposed of in accordance with appropriate Environmental Protection Agency regulations.

### **36.11 On-Site Security**

- A. The Agency shall make reasonable efforts to protect Employees from abusive and threatening occurrences and shall take reasonable precautions to ensure such protections.
- B. The Agency shall arrange for emergency protective assistance to enable Employees to receive assistance if the situation requires it.
- C. Employees shall not be required to divulge personally identifiable information to the public in individual circumstances where the Employee reasonably believes harassment or physical abuse may result. In such cases, the Employee should inform the Supervisor in a timely manner.
- D. Annually and as changes occur, in accordance with each USDA facility's Occupant Emergency Plan the Agency shall inform Employees working in USDA facilities of appropriate emergency contact information.

### **36.12 Emergency Preparedness**

- A. USDA facilities shall have an Occupant Emergency Plan: (1) showing the chain of command; (2) identifying a member of management who will be physically present to direct Employees during all scheduled work hours in each installation; (3) stating procedures for Employees to follow in the event of fire, earthquake, bomb threat, tornado, flood, hurricane, or similar emergency; and (4) providing for annual evacuation drills. The Union shall be afforded an opportunity to comment and provide input regarding the plan.
- B. If there is an emergency in an office or work area, the Agency's first concern shall be for the welfare of the Employees. When a decision is made to evacuate a USDA facility in which bargaining unit Employees work, in order to ensure prompt and orderly evacuation without undue delay the Agency shall notify all work areas and take all necessary steps to guarantee the safety of Employees. The Agency shall take steps to ensure that Employees are informed of the safety area where they are to report until they can reenter the building. Appropriate action shall be taken to ensure that Employees are able to cross heavy traffic areas in order to reach that area quickly and safely. Ordinarily, individuals shall not be readmitted until the Agency determines that being present in the facility no



longer presents any danger. The Union Health & Safety Representative shall be notified as soon as possible regarding the emergency.

- C. The Agency shall annually identify to the BC workforce the names of BC Employees who are (i) currently certified to perform, and (ii) agreeable to performing cardio-pulmonary resuscitation (CPR; also called "Basic Cardiac Life Support" (BCLS)) in an emergency, and (iii) agreeable to being so identified. If the Agency pays for training so Employees may train to be certified in BCLS, those Employees who wish to take such training must agree to be so identified to the BC workforce before they take the training.
- D. If an Employee is injured on the job, the Agency's first priority shall be to make certain that the Employee gets prompt emergency medical aid. Doubts over whether medical attention is necessary shall be resolved in favor of arranging medical aid.
- E. When it is necessary to assist an Employee to return home because of illness or incapacitation or to provide transportation to a medical facility, the Agency shall arrange for transportation. If a co-worker transports the Employee, there shall be no charge to leave for the co-worker.
- F. The Agency shall maintain adequate first aid supplies at each permanent USDA facility. All Employees shall have reasonable access to these supplies.

### **36.13 Video Display Terminals**

"Video Display Terminal" (VDT) refers to a television-like screen that displays information generated by a word processor or computer terminal.

- A. Consistent with the Agency's policy of providing safe and healthful workplaces for all Employees, the Agency acknowledges that the health and comfort of VDT users can be impacted by ergonomic and environmental factors, e.g., the proper design of workstations, the education of Managers, Supervisors, and Employees about ergonomic job design, and organizational solutions to VDT problems as recommended in various studies published by the National Institute for Occupational Safety and Health (NIOSH).
- B. The Agency shall provide Employees information (e.g., OSHA Safety and Health Guidelines, and NIOSH and other available literature) about ergonomic hazards and how to prevent ergonomically-related injuries.

### **36.14 LincPass Computer Security**

- A. During the workday, Employees shall remove their LincPass cards from their computers when leaving their workstations.
- B. At the end of the workday when Employees log off their computers, Employees shall remove their LincPass cards from their computers.

### **36.15 Indoor Air Quality**

All Employees working indoors in Agency facilities are entitled to an environment with safe and healthful air. Accordingly, the Agency shall abide by all applicable: (i) laws, rules and regulations; and (ii) guidance issued by the Occupational Safety and Health Administration and the General Services Administration.

## **ARTICLE 37 — TELEWORK**

### **37.01 Telework Generally**

- A. Teleworking in the BC shall be governed by this Agreement and USDA's Departmental Regulation 4080-811-002, "Telework and Remote Work Program" (the DR).
- B. The BC Telework Program begins with the premise that all positions are presumed suitable for Telework unless the Agency determines the position unsuitable for Telework. Such determinations shall:
  - 1. be supportable by written justification; and
  - 2. require that, on a daily basis, (i) an Employee be physically present at the office worksite; and (ii) properly performing the assigned work from an alternative worksite is not reasonably practical.
- C. Employees who wish to telework may request to do so on either a Core (Regular/-Recurring) or Situational/Non-Scheduled (i.e., episodic) basis by completing and obtaining their Supervisor's approval of a Telework Agreement (TA). On a case-by-case basis, the Employee and the Supervisor may agree to change the established schedule of the Employee to meet Situational/Non-Scheduled or episodic requests.
- D. Time spent in a Telework status includes overtime, compensatory time, and credit hours. All time and requests shall be accounted for and reported in the same manner as if the Employee reported for duty at the Official Duty Station (ODS).
- E. Within the BC, teleworking shall be offered to all eligible positions in which all, or substantially all, critical element duties are portable. Any work that requires Personally Identifiable Information (PII)/Sensitive Security Information (SSI) shall adhere to the Rural Development "Government Furnished Information Technology Equipment for Use within and outside of USDA facilities" policy and RD Instruction 2033-A, "Management of Rural Development Records".
- F. When consistent with business needs and approved by their Supervisors, Teleworkers may participate in Flexible/Compressed work schedules or other flexible work arrangements. A teleworker shall report physically to their employing office worksite location for two (2) full workdays or a combination of workday and some form of personal leave each biweekly pay period (PP) on a regular and recurring basis.

### **37.02 Eligibility to Telework**

In order to participate in the BC Telework Program, Employees shall satisfy all of the requirements established by applicable laws, rules, regulations, policies, and procedures, as amended, and:

- A. Shall have high speed internet connection for use at their alternate worksite; and
- B. Shall have an appropriate specific work location which is safe, comfortable, and free from distractions; and
- C. Shall not be under an Opportunity to Improve Notice; and

- D. Shall not have received an Absent Without Official Leave (AWOL) charge exceeding eight (8) hours within the last six (6) months. If an Employee has received an AWOL charge exceeding eight (8) hours, they shall not participate in the Telework Program for six (6) months from the date the Employee receives his/her ninth (9th) hour of AWOL. If the Employee receives an AWOL charge of four (4) hours or more at any time during the Employee's six (6) month preclusion period, the Employee shall not participate in the Telework Program for an additional six (6) months from the date he/she receives the AWOL charge.
- E. An Employee may be found ineligible for telework temporarily if the Employee was subject to formal disciplinary action, adverse action, or was placed on a leave restriction within the previous six (6) months but may reapply for telework when the action or restriction has been completed and six (6) months have passed provided the Employee has not been subject to further disciplinary action or restriction.

**37.03 Procedures for the Agency to Follow When Approving Applicants to Telework**

- A. If there are conflicting Telework schedule requests, the Agency shall grant Employee requests by seniority, with the most senior Employees receiving schedule approvals before other Employees. The Agency shall use the Employee's Retirement Service Computation Date to rank Employees by seniority.
- B. In certain temporary situations, such as when an Employee is recovering from an injury or illness, and where the medical condition does not preclude the Employee from teleworking, the Agency may permit the Employee to telework provided the Employee submits a Medical Certificate from his/her Health Care Provider. The Medical Certificate shall be written on the official letterhead of the Health Care Provider, and shall contain, but is not limited to, the following information:
  - 1. Statement that the Employee is under the Doctor's care; and
  - 2. Work limitations that may impact any Employee's functions; and
  - 3. The expected duration of the absence; and
  - 4. A statement regarding the amount of time in each day the Employee may Telework; and
  - 5. The name, address, telephone number, and original signature of the Health Care Provider.
- C. Nothing in this Article shall diminish any statutory right of an Employee to telework.

**37.04 The Conditions of Teleworking**

- A. Exercising its best judgment taking into account BC's business/mission-related priorities and other similar considerations, and in compliance with this Article, the Contract, and all applicable laws, rules, regulations, policies, and procedures, as amended, including especially RD's December 17, 2021 "Government Furnished Information Technology Equipment for Use within and outside of USDA facilities" policy, the Agency shall provide government-owned laptops and supplies for teleworking Employees to use when

teleworking. The Agency retains ownership and control of all such property. Teleworking Employees shall be responsible for transporting such property between their ODSs and their Telework locations, and for complying with all requirements for checking such property in and out of the BC.

- B. The supplies provided by BC shall be those basic expendable office supplies routinely used in the BC workplace.
- C. Limit on right of individual Employees to telework. Supervisors may approve TAs permitting Employees to telework up to eight (8) days/PP.
- D. With the advance approval of their Supervisors and when needed for business reasons:
  - 1. With Supervisory approval, Employees with an approved TA may telework after normal business hours or on weekends.
  - 2. When a normally scheduled Telework day falls on a holiday, Employees with an approved TA may request a Situational/Non-Scheduled Telework day, in lieu of their regularly scheduled Telework day in order to telework on a different day within the same PP.
  - 3. When a normally scheduled teleworker's day to physically report to the employing office worksite falls on a holiday, it is not required to add an alternate day to the Employee's requirement to physically report to the employing office worksite for that specific biweekly PP unless the Supervisor identifies a business need for the Employee to report.
  - 4. With Supervisory approval, Employees with an approved TA may telework additional days provided they do not exceed eight (8) days/PP.
  - 5. All Employees may be authorized to work Situational/Non-Scheduled telework in response to specific duty status announcements issued by OPM or authorized USDA officials during periods of inclement weather or other emergency situations, or to maintain productivity during short-term situations.
- E. The BC has the right to direct that any teleworking Employee report to his/her ODS on his/her scheduled teleworking day in order to meet operational needs. Notice to report shall normally be given one (1) business day in advance. When he/she is required to report to the traditional worksite on a regularly scheduled Telework day, the Employee may request to work an additional Situational/Non-Scheduled day. The Supervisor shall approve/disapprove the request based on business considerations. When the Agency requires an Employee to be present on a day when the Employee is already teleworking, that Employee shall receive no more than two (2) hours to arrive at his/her ODS. Such travel time shall be compensable as hours of work. Mileage for a privately-owned vehicle between the ODS and Telework site shall not be reimbursable.
- F. Understand that travel provisions applicable to Employees working at an official duty station also apply to teleworkers. A teleworker who is directed to travel to another worksite (e.g., official duty station) during their regularly scheduled basic tour of duty would have the travel hours credited as hours of work. Similarly, teleworkers who are required to travel to the official duty location after their regularly scheduled telework basic tour of duty

to perform irregular or occasional overtime work are entitled to at least two (2) hours of overtime pay or compensatory time off (5 CFR § 550.112 (h), Call-back overtime work, and 5 CFR 551.401(e)).

- G. Teleworking Employees shall sign into and maintain connectivity using Agency-approved communications technology. Employees are expected to be as available to the Agency, co-workers and customers by phone, E-mail, instant communicator (e.g., Microsoft Teams), voicemail or other communications media during their scheduled daily tour of duty as when they work at their normal ODS. Use of personal communications media to perform duties is not authorized. The Agency may contact an Employee at any time they are on duty at the Telework site.
- H. The Agency shall not be liable for any violation of a local zoning ordinance or community association rule.
- I. A TA remains in effect until either (i) the Employee and Supervisor agree on a changed TA, or (ii) the Employee no longer volunteers to telework, or (iii) the Supervisor amends or adjusts the TA for business reasons.
- J. When an Employee with an approved Telework schedule transfers from the schedule-approving authority of one Supervisor to that of another, the new Supervisor may schedule the Employee's Telework schedule considering the desires of the Employee, Telework schedules by other Employees in the new organizational unit, and the requirements of the organization. If the Agency may accommodate the Employee's original Telework schedule in the new organization without disruption to the existing Telework schedule of the other Employees, or negatively affecting workload or other business considerations, etc., the Agency may consider the accommodation.

### **37.05 Terminating Participation in Telework**

When the Agency terminates a TA, where practical the Agency shall provide the Employee a written documented explanation and allow him/her at least seven (7) calendar days advance notice, to allow the Employee an opportunity to arrange transportation to commute to the work site on those days that were his/her terminated Telework days.

### **37.06 Office Closures/Interrupted Service**

- A. Employees with a TA shall telework during inclement weather office closures. Employees should anticipate inclement weather and be telework ready.
- B. If an Employee is unable to adequately perform his/her duties or responsibilities while in Telework status, the Employee shall immediately notify his/her immediate Supervisor or Designee by telephone.
- C. If there is a disruption of services at the Telework site and the Employee cannot continue due to loss of contact with the work site, the Employee shall notify his/her immediate Supervisor or Designee that he/she is having technical difficulties. The Employee shall have one (1) hour from that notice to regain connectivity. If, at the end of that one (1) hour, the Employee has not regained connectivity, the Agency shall offer the Employee the option of coming to the work site, or requesting leave for the remainder of the workday.

- D. Although the Agency shall not normally consider an Employee's commute time to and from the traditional work site as duty time, whenever an Employee comes to work on a previously scheduled Telework day, if the return to work is due to USDA technical difficulties the Agency shall consider up to two (2) hours of the Employee's commute time to the traditional work site as duty time.

### **37.07 Block Out**

The Agency shall identify those positions with recurring episodic critical work needs and inform the Employees who occupy those positions that they may be precluded from teleworking at certain times during the work year.

### **37.08 Telework Policy**

- A. When creating a Job Opportunity Announcement, the Agency shall, in accordance with the DR, identify whether the position is eligible for a Telework arrangement.
- B. Pay, Holiday, and Time and Attendance: Teleworkers are required to follow Departmental policies and procedures for requesting and using approved leave. Leave should be requested and approved in accordance with standard leave approval procedures, with leave hours accurately recorded in the time and attendance system.
- C. Roles and Responsibilities Teleworkers shall:
  - 1. Follow the conditions of their approved TAs;
  - 2. Follow USDA safety requirements and ensure proper security of USDA equipment, information, and materials;
  - 3. Provide the same level of support, availability, and accessibility to customers, coworkers, and their Supervisor(s) as if working at a USDA official duty location;
  - 4. Meet organizational and individual work requirements as established (e.g., customer service, time frame for returning phone calls, voicemail messages, and email communication), staff meeting attendance, duty hours, and accurate coding of time and attendance;
  - 5. Complete all mandatory training courses;
  - 6. Ensure appropriate arrangements for the care of dependents while teleworking. Telework is not a substitute for dependent care. However, an Employee is not precluded from having a caregiver in the home who provides care to the dependent(s) while the Employee works. Also, a dependent may be permitted in the home provided they do not require constant supervision or care (i.e., older child or adolescent) and their presence does not disrupt the ability to work effectively;
  - 7. Ensure the alternate worksite provides adequate connectivity and technology to accomplish work tasks. Employees are expected to provide internet service and other general utility costs at their own expense;
  - 8. Acknowledge, using the applicable TA form, that they are bound by the Standards of Ethical Conduct for Employees of the Executive Branch while teleworking.

## **ARTICLE 38 — TEMPORARY, PROBATIONARY, & PART-TIME EMPLOYEES**

### **38.01 General**

All Employees of the bargaining unit shall be covered by the terms of this Agreement to the extent consistent with applicable laws and regulations, and except as specifically provided by the Agreement.

### **38.02 Temporary Employees**

- A. Temporary Employees may be separated at any time upon written notice from the Agency.
- B. When it is decided that a temporary Employee is to be separated because of lack of work prior to his/her "Not to Exceed" date, the Employee will be given written notice of this decision, if possible, prior to the effective date of the action.
- C. When a temporary Employee is to be separated due to performance, these performance problems will be brought to the Employee's attention, if possible, before termination of the temporary appointment.

### **38.03 Probationary Employees**

- A. Probationary Employees' rights shall not exceed, nor shall their rights be inconsistent with applicable Laws, Rules, Regulations, Policies, Procedures, and Practices, as amended, except as provided in this Agreement.
- B. During the probationary period, the Agency shall observe and measure the probationary Employee's performance and conduct.
- C. The Agency may Terminate/Remove a Probationary Employee at any time during his/her Probationary Period. Although Probationary Employee Terminations/Removals may be appealable, their Terminations/Removals are not grievable.

### **38.04 Conversion from Full-Time to Part-Time or Part-Time to Full-Time**

- A. Individual Employees who desire to convert from a full-time work schedule to a part-time work schedule or from part-time work schedule to a full-time work schedule for personal reasons should make their request known to their immediate Supervisor in writing. The immediate Supervisor will consider the request based on workload, staffing, and budgetary requirements. When the approval of such requests require higher level authority, the Supervisor will forward the request with his/her recommendations to the appropriate management official.
- B. The HRO will advise the Employee, prior to implementing such requests, of the effects of the change from full-time to part-time or part-time to full-time employment on the Employee's pay, benefits, working conditions and other rights or entitlements.

## **ARTICLE 39 — TIMELY & PROPER COMPENSATION**

### **39.01 Timely Receipt**

The Agency will make every effort to ensure that Employees receive their salary payment by the established payday. The Agency will make every reasonable effort to ensure that Employees receive, on a timely basis, W-2 forms, and leave and earnings statements.

### **39.02 Errors in Payment**

- A. Employees are responsible for reviewing their leave and earnings statements and notifying the HRO of any unexplained changes. If a payment is not received at the designated location by the established payday, if the payment received is incorrect, or if a duplicate payment is received, the Employee is responsible for notifying the HRO as soon as possible after becoming aware of the error. The HRO will contact the National Finance Center and take necessary steps to correct the salary payment problem as quickly as possible.
- B. Employees are also responsible for notifying the HRO and arranging for the timely repayment of overpayments received. Where Employees have been overpaid, the HRO will advise Employees of the procedures available for requesting a waiver of overpayment.



## **ARTICLE 40 — TRAINING & CAREER DEVELOPMENT**

### **40.01 Scope and Coverage**

Since the training and development of Employees in the bargaining unit is a matter of importance to the Parties, the Agency shall make a reasonable effort to (i) announce training and development opportunities as it becomes aware of them and (ii) provide training and development to all Employees, including, but not limited to, training necessary to carry out all requirements of their jobs within a reasonable length of time after they enter new positions. Each Employee is responsible for applying reasonable effort, time, and initiative to increase their individual potential by self-development and training.

### **40.02 Types of Training**

- A. Job-Related Training consists of training that relates directly to the Employee's current job duties. When the Agency determines that training directly related to accomplishing the Employee's job requirements is necessary, the Agency shall, consistent with its needs and resources, provide the Employee the appropriate training. Employees may recommend training that is job-related to their Supervisors at any time.
- B. Career Development Training is training to improve competencies and career growth potential for Employees. It may include, but is not limited to, (i) training related to the work of the BC but not necessarily to the work currently performed by the Employee, (ii) cross training on job assignments, and (iii) Office of Personnel Management or other Government-provided training.

### **40.03 Selection for Training**

- A. The choice of subject matter, areas of training, selections, and assignment of training priorities, and the selection of Employees to be trained are responsibilities of the Agency, which the Agency shall carry out in accordance with applicable laws, regulations, and this agreement. Job-related training and associated travel are a duty assignment.
- B. Selection for training shall be carried out in a fair and equitable manner based on the needs of the organization and its Employees.
- C. The Agency shall provide a basic training program for BC Employees, which normally shall be completed within the Employee's first year of service. This program shall include an overview of the BC mission, as well as job-related training necessary for Employees to carry out the minimum requirements of the job.
- D. If training leads directly to promotion opportunities, selection for such training shall be in accordance with the procedures contained in the Merit Promotion Article.
- E. When the Agency requires Employees to attend job-related training courses and attendance at the course requires a change in work schedule or in location, the Agency shall make a reasonable effort to grant the Employee notice two (2) weeks in advance of the training.
- F. When the Employee submits a timely request (i.e., at least thirty (30) calendar days in advance of the training) for career development training, the Agency shall notify the

Employee at least twenty-four (24) hours prior to the training as to whether the request has been approved or disapproved. Whenever possible, such notice shall be in writing.

- G. The Agency shall approve or provide a reasonable amount of training regarding resume writing and competencies.

#### **40.04 Individual Development Plans**

- A. Employees shall prepare their Individual Development Plans (IDPs) consistent with the then-current Rural Development Instruction 2057-A, this Agreement, Public Law 85-507, "The Government Employee's Training Act," and any other applicable laws and regulations.
- B. The IDP provides Management officials and Employees with a systematic process for effectively identifying the individual development needs of the Employee related to performing the official duties and responsibilities of the position, selecting optimum development activities, and preparing development schedules.
- C. Full-time Employees shall update their IDPs annually and discuss them with their Supervisors during the annual performance discussion. Employee input shall be obtained in basically the same manner as such input is obtained for performance plans.
- D. The Agency shall remind Employees annually about the availability of self-paced training. To complete training identified in the IDP, Employees should participate in self-paced training to the maximum extent possible.
- E. The Agency shall explore the possibility of bringing training courses in-house when there is widespread interest in the training subject.
- F. Employees may take on their own time training identified on their IDP which is not directly job-related (e.g., non-mandatory career development training).
- G. The individual Employee's IDP for a given fiscal year shall include a tentative plan for scheduling the specific training and developmental activities. To the maximum extent possible, it shall take into account budget and operational needs. The IDP shall specify the fiscal year during which the training is to be provided.
- H. Employees shall complete the job-related training scheduled on the IDP as long as (i) resources are available and (ii) except for emergency or unforeseen work situations which make the Employee unavailable.

#### **40.05 Training-Related General Provisions**

- A. Adjustments to Schedules.
  - 1. When job-related required training is scheduled during the Employee's regularly scheduled work hours, the Employee shall be granted time to attend the training. It may be necessary for Employees to modify their work hours to comply with the hours of the training.
  - 2. For training that is approved but not required by the Agency, the Employee may request appropriate leave or a schedule adjustment in order to attend.

- B. Notice of Training Opportunities.
  - 1. The Agency shall notify Employees when training funds become available.
  - 2. The Agency shall notify Employees periodically of training opportunities.

#### **40.06 Tuition Reimbursement**

The following governs reimbursement, when the Agency's budget permits, of tuition incurred by job-related training in a graded course identified on an Employee's approved IDP at an accredited non-Government facility, e.g., a post-secondary school, technical school, college, or university.

- A. To be eligible for reimbursement, the Employee must:
  - 1. have at least twelve (12) consecutive months of current federal service; and
  - 2. be performing at the "Fully Successful" (or equivalent) or higher level; and
  - 3. not be on a Demonstration Opportunity/Performance Improvement Plan; and
  - 4. not be on any type of disciplinary action; and
- B. The Employee must apply, and the Agency must approve the request, in advance of the start date of the training by completing and submitting:
  - 1. an application using Standard Form (SF) 182, "Request, Authorization, Agreement, and Certification of Training," and
  - 2. copies of (i) the course description and (ii) documentation of tuition costs.
  - 3. following completion of the course, evidence of having received credit with a grade of "A", "B", or "C".
- C. The Agency shall reimburse Employees upon successful completion of the training and submission of required documentation.
- D. The maximum reimbursement to any Employee shall be \$500 per course up to a maximum of \$1,000 per Fiscal Year.
- E. The Agency shall not reimburse any Employee receiving a grade lower than a "C" or for any Pass/Fail classes, audited classes, or for any class for which the Employee has been reimbursed previously.
- F. When the Agency has approved requests sufficient to exhaust its tuition reimbursement funds for a Fiscal Year, or if the Agency does not receive any such funds for a Fiscal Year, the Agency shall not approve additional requests for that Fiscal Year.
- G. For courses of eighty (80) or more classroom hours, the Employee must agree in writing to stay with the Agency three (3) times the actual length of the course as computed according to 5 CFR 410.310. Failure to complete this required service shall result in the

Employee being required to repay costs incurred by the Agency. This requirement may be waived at the Agency's discretion.

#### **40.07 Costs of Job-Related Training**

The following governs the Agency's payment, when its budget permits, of costs of job-related training (i.e., travel, per diem, course materials, and other related costs) authorized but not necessarily required by the Agency.

- A. The Agency shall pay all authorized expenses in connection with job-related training that has been required by the Agency.
- B. When sufficient funds are available, the Agency shall encourage and make available to Employees the opportunity to participate in training consistent with the mission, goals and training priorities of the BC although not necessarily directly related to duties the Employee is performing currently.
- C. The Employee must apply, and the Agency must approve the request in advance of the start date of the training by completing and submitting:
  - 1. an application using Standard Form (SF) 182, "Request, Authorization, Agreement, and Certification of Training," and
  - 2. copies of (i) the course description and (ii) documentation of travel, per diem, books, and other related costs.
  - 3. following completion of the course, evidence of having faithfully attended.
- D. If requests for such training exceed funding available for BC-related training, requests shall be approved/disapproved on the basis of the mission, goals and training priorities of the BC.

#### **40.08 Retraining and Required Additional Training**

- A. When advance knowledge of the impact of pending changes in function, organization, and mission is available, it shall be the responsibility of the Agency to plan for required retraining of the Employees involved.
- B. The Agency shall, whenever possible, give advance notice to the Union regarding processes which would result in substantive change of work assignments or require additional training. Such notice shall be provided in accordance with timeframes and procedures outlined in Article 21, Mid-Term Bargaining.

#### **40.09 Quarterly Joint Facilitated Discussions**

As they may agree on an ad hoc basis, the Union and Agency shall jointly plan and conduct quarterly meetings of up to 30 minutes which shall be open to Employees who wish to attend voluntarily. The subjects of such meetings shall be matters in which Employees have an interest arising from their employment in the bargaining unit, e.g., retirement planning, health savings accounts, how to apply for a job, rights/obligations/protections created by federal statutes and this Agreement, etc.

## **Article 41 — Union Dues Withholding**

### **41.01 Initiation/Authorization**

- A. Any Employee who wishes to join the Union may have their Union Dues paid to the Union through the payroll deduction process. The Employee may obtain from the Union or the HRO, a Standard Form (SF) 1187, "Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues." The Employee shall complete the form and submit it to the appropriate Union representative for processing and forwarding to the appropriate administrative office for further action. The deduction shall become effective at the beginning of the first pay period that begins three (3) or more business days after the SF-1187 is submitted by the Union to the appropriate administrative office.
- B. In the events of a change in the dues structure or amount, the Union shall establish a blanket authorization, containing each Employee's name, social security number, and dues withholding amount. Within thirty (30) calendar days of such a change, the Union shall submit the authorization to the appropriate administrative office of the Agency for further action. The authorization listing shall identify the labor organization, labor organization code, and/or the bargaining unit status codes of the Employees. The Union may make only one (1) such change during any twelve-month period.

### **41.02 Cancellation/Revocation**

- A. An Employee may withdraw from the Union any time after being a dues paying member for at least one (1) full year. However, an Employee who rejoins the Union after withdrawing voluntarily must complete at least one (1) full year from their return date before seeking to withdraw again.
- B. To withdraw from the Union or to revoke voluntary dues withholding, the Employee must submit to the Union a completed Form SF-1188, "Cancellation of Payroll Deductions for Labor Organization Dues." An Employee may request an SF-1188 cancellation form from the Union or the HRO. The Employee must process the form through the Union.
- C. The Union shall forward the completed Form SF-1188 to the appropriate administrative office of the Agency within five (5) business days of receiving the form from the Employee.
- D. The Agency shall terminate an allotment in the event of any one of the following:
  - 1. As of the first full pay period immediately following notice that the exclusive recognition has been withdrawn;
  - 2. At the end of the pay period during which a member is separated from the Agency;
  - 3. At the end of the pay period during which the payroll office receives notice that the Employee is no longer a Union member in good standing;
  - 4. At the end of the pay period during which the Employee's bargaining unit status changes and the Employee is no longer eligible for dues withholding;
  - 5. Within ten (10) business days of receiving a Form SF-1188 from the Union.

**41.03 Reimbursement**

- A. If the Union fails to timely process an Employee's dues withholding cancellation Form SF-1188, the Union shall reimburse the Employee for any additional dues withheld.
- B. If the Agency fails to timely process any Employee dues withholding authorization Form SF-1187, or any Union dues withholding increase, the Agency shall reimburse the Union for any lost Union dues.
- C. Neither the Union nor the Employee may claim more than ninety (90) calendar days of lost revenue.
- D. Neither the Union nor the Agency shall be liable for more than ninety (90) days of lost revenue.

## **ARTICLE 42 — USE OF GOVERNMENT EQUIPMENT & FACILITIES**

### **42.01 Use of Government Equipment and/or Facilities**

Usage of the Agency's telecommunications and internet services is governed by USDA DR 3300-001. Further, limited personal use of the Internet and the Government e-mail system is authorized provided that such use:

- A. Does not adversely affect the performance of official duties by the USDA Employee or the USDA Employee organization;
- B. Is of reasonable duration and frequency, and whenever possible, made during the USDA Employees personal time such as after-duty hours or lunch periods;
- C. Serves a legitimate public interest (such as educating the USDA Employee on the use of the telecommunications system; enhancing the professional skills of the USDA Employee; job searching in response to Federal Government downsizing);
- D. Does not put Federal Government telecommunications systems to uses that would reflect adversely on USDA or the Agency (such as uses involving pornography; playing on-line games; for purposes of private business; chain letters; unofficial advertising, soliciting or selling except on authorized bulletin boards established for such use; violations of statute or regulation; inappropriately handled sensitive information; and other uses that are incompatible with public service);
- E. Does not overburden the telecommunications system (such as may be the case with broadcasts and group mailings), and creates no significant additional cost to USDA or to the Agency; and
- F. Is not used for partisan political purposes at any time.

### **42.02 No Expectation of Privacy When Using Government Email**

Bargaining unit Employees and the Union shall use Federal Government telecommunications systems with the understanding that such use serves as consent to monitoring of any type of use, including incidental and personal uses, whether authorized or unauthorized. In addition, access of such systems is not anonymous. For example, for each use of the Internet over Federal Government systems, these systems may capture information transmitted, received or stored on the system.

## **ARTICLE 43 — WORK SCHEDULES**

### **43.01 General Provisions**

- A. The work schedule arrangements for Bargaining Unit Employees shall be governed solely by the provisions of law, Government-wide regulations, and the terms of this Agreement.
- B. The Parties recognize that this Article increases work schedule flexibility. However, the availability of specific flexibilities varies in different mission-area organizations within the BC (see e.g., 43.16 below) and from time-to-time as the result of differing types of work, organization, workload variations, Employee competencies, staffing, etc. Because Employees and Managers work to carry out the overall mission of the Agency by providing professional, technical, and clerical services to internal and external customers, both Managers and Employees have a responsibility to inform each other in a timely fashion of any significant events that may affect the work schedule.
- C. Unless stated otherwise, all times herein are intended to be the recognized local time of the Employee governed by the Article.

### **43.02 Definitions**

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

- A. Alternative Work Schedule (AWS) – any schedule other than the Standard Work Schedule (see “R” below in this section); includes both flexible (see “J” below in this section) and compressed (see “E” below in this section) work schedules.
- B. Basic Work Requirement – the number of hours, excluding overtime hours, an Employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award.
- C. Pay Period (PP) – the 2-week period for which an Employee is scheduled to perform work.
- D. Compensatory Time Off – time off in lieu of overtime pay for regularly scheduled or irregular or occasional overtime work.
- E. Compressed Work Schedule (CWS) – an Alternative Work Schedule that:
  - 1. In the case of a full-time Employee, has an 80-hour biweekly basic work requirement that is scheduled for fewer than ten (10) days.
  - 2. In the case of a part-time Employee, has a biweekly basic work requirement of less than 80 hours that is scheduled for less than ten (10) workdays and that may require the Employee to work more than eight (8) hours in a day.
- F. Core Hours – the time periods during the workday, workweek, or PP that are within the tour of duty hours during which an Employee covered by a Flexible Work Schedule is required by the Agency to be present for work. Core hours are between 9:00 a.m. and 2:30 p.m.



- G. Core Hours Deviation (CHD) a/k/a “Flex-in/Flex-out” or “Tour of Duty Deviation” – an absence during the Core Hours (or Tour of Duty) requested by an Employee on a FWS and specifically authorized in advance by the Supervisor, which must be made up within the same day during flexible time in lieu of charge to any type of leave.
- H. Credit Hours – those hours within a Flexible Work Schedule that an Employee voluntarily elects to work in excess of his or her basic work requirements so as to vary the length of a workweek or workday. Credit hours may be earned between 6:00 a.m. and 6:00 p.m., Monday through Friday.
- I. Fair Labor Standards Act (FLSA) – the principal U.S. federal law (i) governing the payment of wages, (ii) creating the right to a minimum wage, (iii) requiring the payment of overtime pay to Employees who are not exempt from the FLSA’s coverage, and (iv) making it illegal for industries engaged in interstate commerce to employ minors in oppressive child labor.
- J. Flexible Work Schedule (FWS) – an Alternative Work Schedule that:
  1. In the case of a full-time Employee, has an 80-hour biweekly basic work requirement that allows an Employee to determine his or her own schedule consistent with the procedures in this Article; and
  2. In the case of a part-time Employee, has a bi-weekly work requirement of less than 80 hours that allows an Employee to determine his or her own schedule consistent with the procedures in this Article.
- K. Flexi-start – from day to day, an Employee on a FWS may start their Tour of Duty up to 30 minutes before or after their approved start time without advance notice to and approval by their Supervisor. Changes in the set starting time must be made in advance with Supervisory approval.
- L. Gliding Schedule – a Flexible Work Schedule under which an Employee has a basic work requirement of eight (8) hours per day, forty (40) hours per week, and the Employee may, with Supervisory approval, select and change starting/stopping times each day, and may change starting/stopping times daily within the established flexible hours. See Section 43.06 below.
- M. Lunch Band – the period of time between 11:00 a.m. and 2:00 p.m. when an Employee may take his or her lunch break. An Employee shall not be required to work more than six (6) hours without a break for lunch.
- N. Lunch Period – the mealtime of 30 minutes, 45 minutes, 60 minutes or other duration requested by the Employee and approved by the Supervisor. Any approved ad hoc time exceeding the normal duration approved by the Supervisor must be worked the same business day. When work is compensable at premium pay rates because the Employee is working on a non-scheduled workday, having a lunch period is optional.
- O. Maxiflex Work Schedule – a type of Flexible Work Schedule that allows an Employee to vary their start and stop times on a given workday and to schedule work for fewer than ten (10) days per PP so long as the 80 hour per PP requirement is met. See Section 43.07 below.

- P. Overtime Hours (full-time Employees who are FLSA nonexempt) –
1. for Employees under a CWS, (i) all officially ordered and approved hours of work in excess of the CWS and (ii) any hours worked outside the CWS that are suffered or permitted (see “S” below in this section); or
  2. for Employees under a FWS, all hours of work officially ordered in advance in excess of the approved FWS (for a day or biweekly PP); or
  3. for Employees under a traditional work schedule who are FLSA nonexempt, (i) all officially ordered or approved hours of work in excess of eight (8) hours in a day or 40 hours in a week and (ii) any hours worked outside the traditional work schedule that are suffered or permitted.
- Q. Overtime Pay – the compensation paid to an Employee for work during “overtime hours”; the rate of such compensation is usually one and one-half (1-1/2) times the usual hourly rate.
- R. Standard Work Schedule (SWS) – a schedule of Monday through Friday, eight (8) hours a day, with a preset starting time between 6:00 a.m. and 9:00 a.m., and a Lunch Period during the Lunch Band.
- S. Suffered or permitted work – any work performed by an Employee for the benefit of the Agency, whether requested or not, provided the Employee’s Supervisor knows or has reason to believe that the work is being performed, and has an opportunity to prevent the work from being performed.
- T. Temporary Schedule Change – a change of two (2) PPs or less.
- U. Tour of Duty – the hours of a day (daily tour of duty) and the days of an administrative workweek (weekly tour of duty) that are scheduled in advance and during which an Employee is required to perform work on a regularly recurring basis.

**43.03 Work Schedule Options**

- A. Bargaining unit Employees may choose to work either a Standard Work Schedule (see 43.02-R above) or one of the Alternative Work Schedules listed in 43.03-B next below.
- B. The following two (2) tables summarize the AWS options that are available.

<b>1. Compressed Work Schedules</b>		
	<b>5/4-9</b>	<b>4-10</b>
<b>Tour of Duty</b>	Eight (8) nine- (9)-hour days and one (1) eight- (8)-hour day per PP	Four (4) ten- (10)-hour days per week as scheduled
<b>Start time</b>	9-hour day: may begin as early as 6:00 a.m., but no later than 8:30 a.m.  8-hour day: may begin as early as 6:00 a.m. but no later than 9:00 a.m.	May begin as early as 6:00 a.m. but no later than 7:30 a.m.

<b>Nonwork day</b>	One (1) day per PP as established	One (1) day per week as established
<b>Glide (starting and stopping times may vary)</b>	Ineligible	Ineligible
<b>Credit hours</b>	Ineligible	Ineligible
<b>Overtime</b>	Eligible (Section 43.12)	Eligible (Section 43.12)
<b>Compensatory Time Off</b>	Eligible (Section 43.11)	Eligible (Section 43.11)
<b>Holiday Pay</b>	Eight (8) hours on short day Nine (9) hours on long day	Ten (10) hours
<b>Core Hours Deviation</b>	Ineligible	Ineligible
<b>Flexi-start</b>	Ineligible	Ineligible

<b>2. Flexible Work Schedules</b>		
	<b>Maxiflex</b>	<b>Gliding Schedule</b>
<b>Tour of Duty</b>	As scheduled up to ten- (10-) hour days	Eight- (8-) hour workday
<b>Non-workday</b>	One (1) or more as established	Ineligible
<b>Start time</b>	May begin as early as 6:00 a.m. but no later than 9:00 a.m.	May begin as early as 6:00 a.m. but no later than 9:00 a.m.—may change daily if Supervisor approves
<b>Glide (starting and stopping times may vary)</b>	Eligible	Eligible
<b>Credit Hours</b>	Eligible (see Section 43.10)	Eligible (see Section 43.10)
<b>Overtime</b>	Eligible (Section 43.12)	Eligible (Section 43.12)
<b>Compensatory Time Off</b>	Eligible (Section 43.11)	Eligible (Section 43.11)
<b>Holiday Pay</b>	Eight (8) hours	Eight (8) hours
<b>Core Hours Deviation</b>	Eligible	Eligible
<b>Flexi-start</b>	Eligible	Eligible

- C. Employees shall record their time worked as directed by the Agency. If the Agency decides to change its practices for recording time, it shall notify the Union and give it an opportunity to bargain pursuant to Article 21, “Mid-Term Bargaining”, of this Agreement.
- D. If the Agency finds that a particular AWS has had an “adverse agency impact” on the work of the BC, a mission-area organization within the BC, or an individual Employee, the Agency may discontinue that AWS by: (i) giving the Union notice of its decision to discontinue that AWS at least one (1) full PP in advance of the effective date; and (ii) if the Union demands to bargain about the change, following the procedures of 5 U.S.C. 6131(c)(3)(A).

#### **43.04 Procedures for Requesting Work Schedules**

- A. Using the means indicated by their Supervisors, Employees shall request a work schedule and designated Lunch Period (30, 45, or 60 minutes) during the Lunch Band (between 11:00 a.m. and 2:00 p.m.).

Supervisors may disapprove requests and may withdraw their prior approval of such requests for Alternative Work Schedules because of a schedule's adverse impact, i.e., increased costs, reduced productivity, or a decrease in customer service. Supervisory approval/disapproval of requests for particular days off and start/quit times shall be based on the workload, office coverage, and customer service needs of each office.

A Supervisor or Manager shall approve or disapprove a work schedule option request within two (2) working days of actual receipt. It is the Employee's responsibility to ensure the Supervisor's actual receipt of the request. If the work schedule option requested is disapproved, the Supervisor or Manager shall provide the reasons for such disapproval in writing to the Employee within the two (2) working days.

- B. If the Supervisor cannot honor an Employee's request for a particular compressed day off or start/quit time, the Supervisor or other management official shall meet with the Employee in an attempt to reach a mutually acceptable alternative schedule. If no agreement can be reached, the Supervisor or other management official shall make the final determination concerning the schedule.
- C. Time and attendance shall be recorded using the Agency's automated timekeeping system (currently webTA, but soon to be govTA).

#### **43.05 Compressed Work Schedule**

- A. Compressed Work Schedules are arranged to allow Employees to fulfill their basic work requirements in fewer than ten (10) days during a biweekly PP. There are two types of CWS: the 5/4-9 and the 4-10.
- B. Employees on CWSs have a fixed starting time which may be as early as 6:00 a.m. but no later than 9:00 a.m., and a fixed ending time no later than 6:00 p.m.
- C. Employees on CWSs may not earn credit hours.
- D. Full-time Employees working on a CWS who are relieved or prevented by Federal statute or Executive Order from working on a day designated as a holiday (or an in-lieu-of holiday) are entitled to their rate of basic pay for the number of hours of the CWS on that day.
- E. Part-time Employees working on a CWS who are relieved or prevented by Federal statute or Executive Order from working on a day designated as a holiday are entitled to their rate of basic pay for the number of hours on the CWS on that day. Part-time Employees are not entitled to an in-lieu-of holiday if the official holiday occurs on the Employee's non-workday.

#### **43.06 Gliding Work Schedule**

- A. Employees on a Gliding Work Schedule (i) work 8-hour days Monday through Friday, (ii) select an anticipated arrival/start time, e.g., 8:00 a.m., within the established flexible hours of 6:00 a.m. to 9:00 a.m., but (iii) may vary their actual arrival/start and departure times day-by-day. Thus, the Employee selects an anticipated starting time so the Supervisor knows generally when to expect the Employee. However, the Employee may change the actual arrival time from day-to-day. Supervisors may require that an Employee provide advance notice when the Employee will not be arriving within 30

minutes of their anticipated arrival time. The Employee's scheduled Tour of Duty must be completed by 6:00 p.m.

- B. Employees on a Gliding Schedule may earn and use credit hours between 6:00 a.m. and 6:00 p.m. on Monday through Friday. See Section 43.10, "Credit Hours", below for more information.

#### **43.07 Maxiflex Work Schedule**

- A. Employees may vary starting and stopping (or arrival and departure) times on a daily basis during the established flexible hours of 6:00 a.m. to 9:00 a.m. An Employee may also vary the length of the workday and the workweek. The scheduled number of hours for a day must be completed by 6:00 p.m.
- B. An Employee may work less than 10 workdays biweekly because of the absence of core hours on one of the normal workdays. A full-time Employee must have 80 basic work requirement hours in a biweekly pay period.
- C. Employees on Maxiflex may earn and use credit hours between 6:00 a.m. and 6:00 p.m. on Monday through Friday. See Section 43.10, "Credit Hours", below for more information.

#### **43.08 Breaks**

- A. Full-time Employees shall receive one (1) paid rest break of fifteen (15) minutes duration in the first half of their tour of duty, and another in the second half.
- B. Part-time Employees shall receive one (1) daily rest break of fifteen (15) minutes duration for each four (4) hours of work.
- C. Rest breaks may not be used to arrive late for duty, to leave early from duty, or in conjunction with the Lunch Period.

#### **43.09 Work Schedule Changes**

This section governs changes in Tours of Duty within a Standard or Alternative Work Schedule, from a SWS to/from an AWS, and from an AWS to/from a different AWS.

- A. The Agency may temporarily change an Employee's work schedule after discussion with the Employee. A temporary schedule change may be made based on an Employee's demonstrated attendance or performance problems, and to accommodate such matters as workload, training needs, attendance at meetings, travel, office coverage needs, and operational exigencies. Employees may be required to adjust or change their work schedule or tour of duty for the PPs affected by official travel or training.
- B. With Supervisory approval, Employees may request to change their Tour of Duty within a SWS or AWS, from a SWS to/from an AWS, and from an AWS to/from a different AWS four (4) times annually by submitting a completed USDA Form AD-2001, Designation of Tour of Duty. The Supervisor may approve more than four (4) changes by an Employee in a year in cases of emergency and of personal hardship. Such requests must be made at least one (1) PP in advance of the change, unless the Employee's personal situation does not allow for such time.

- C. If the Agency needs to make work schedule changes for more than one (1) Employee in the same work unit because of a management-initiated change, it shall give the Union notice and an opportunity to bargain in accordance with the provisions of Article 21, "Mid-Term Bargaining".
- D. In the event of a conflict between Employee preferences for schedules which cannot all be granted, the Supervisor shall resolve the conflict in a manner dictated by mission needs. If mission needs do not dictate a specific resolution, the Employees whose preferences conflict shall be given an opportunity to work out a resolution by voluntary agreement amongst themselves. If the Employees are unable to agree amongst themselves to a resolution, the Supervisor shall grant the request of the Employee(s) with (i) earliest SCD, and then (ii) most recent birth.

### **43.10 Credit Hours**

- A. Credit hours are earned by working in excess of the basic workday or workweek requirement on a voluntary basis. Employees do not receive overtime pay for these extra hours. Although credit hours are worked voluntarily, the length of time to be worked and the type of work to be completed must be approved in advance by the Supervisor.
- B. Credit hours may be earned by Employees on FWSs only. They may not be earned by Employees on SWSs or CWSs.
- C. There is no limit to the total number of credit hours that may be worked in a workday so long as the total hours worked including regular tour of duty and credit hours does not exceed twelve (12) hours.
- D. Full-time Employees may carry over no more than 24 credit hours from PP to PP. Part-time Employees are limited on a pro-rata basis and may carry over an amount of credit hours equal to one-fourth (1/4) of their biweekly work requirements.
- E. Credit hours may be earned in increments of fifteen (15) minutes between the hours of 6:00 a.m. and 6:00 p.m. on Monday through Friday.
- F. Credit hours may not be earned while Employees are traveling because travel in connection with Government work is not voluntary. Credit hours may not be earned by hours spent in training or by working on Saturday or Sunday.
- G. An Employee requesting to use earned credit hours shall obtain advance authorization by submitting the request using the Agency's timekeeping system.
- H. If an Employee transfers to another agency, separates, or is no longer on a FWS, the Employee shall be paid for their balance of credit hours at the Employee's basic hourly rate.

### **43.11 Compensatory Time Off**

- A. There must be an entitlement to overtime before compensatory time off may be granted. The Agency retains final approval authority for granting compensatory time off.
- B. Employees requesting to use earned compensatory time off shall be approved in advance in the same manner as annual leave. Compensatory time off must be used within 26 PPs

from when it was earned and before annual leave is used, except in cases when an Employee will forfeit annual leave that cannot be carried forward into the next leave year. If compensatory time off is not taken within the specified time limit, the Agency shall compensate the Employee at the overtime rate in effect during the PP in which the compensatory time off was earned.

- C. Employees on an approved FWS may earn compensatory time off in lieu of overtime pay whether or not the excess work hours are irregular or occasional.
- D. Employees on an approved CWS may earn compensatory time off in lieu of overtime pay only for excess work hours which are irregular or occasional.
- E. The Agency may require that an Employee on an approved CWS or FWS who performs irregular or occasional overtime work be compensated with compensatory time off in lieu of overtime pay if the Employee has a rate of basic pay exceeding the maximum rate of basic pay for GS-10 (the straight-time hourly rate for GS-10 step 10). However, the Agency may not do so if the Employee's rate of basic pay does not exceed that maximum.
- F. The Agency may grant compensatory time off in lieu of overtime pay to a non-exempt Employee, regardless of grade level, only when specifically requested by the Employee.

#### **43.12 Overtime**

- A. Overtime pay shall be administered consistent with the applicable provisions of Title 5 of U.S. Code, the Fair Labor Standards Act, and Government-wide regulations, 5 CFR Part 550 and Part 551. An Employee who has performed overtime work is entitled to overtime pay or may elect compensatory time off in lieu of overtime pay, as appropriate. The Agency shall provide an Employee with as much advance notice as possible when assigning overtime.
- B. For Employees on approved SWSs and FWSs, overtime hours are all hours of work in excess of eight (8) hours/day or 40 hours/week which are officially ordered and approved in advance. This applies to non-exempt and exempt Employees under the FLSA. However, because the Agency participates in an AWS program as defined by 5 U.S.C. 6122, overtime work for Employees on an FWS does not include hours that are worked voluntarily, including credit hours, or hours that an Employee is suffered or permitted to work when they have not been officially ordered in advance, e.g., an Employee on Maxiflex who schedules 50 hours in the first week of the PP and 30 hours in the second week.
- C. For Employees on an approved CWS, overtime hours are all officially ordered and approved hours of work in excess of the approved CWS. Overtime work for non-exempt Employees shall also include any hours worked outside the approved CWS that are suffered or permitted. Overtime work for a part-time Employee is hours in excess of the approved CWS for a day (must be more than eight (8) hours) or for a week (but must be more than 40 hours).

#### **43.13 Holiday Pay**

- A. "In-Lieu-of" Holidays. A holiday is a day on which the Agency is closed because of the occurrence of an official Federal holiday or when ordered by Federal statute or Executive Order. All full-time Employees, including those on FWSs and CWSs, are entitled to an "in-

lieu-of" holiday when a holiday falls on a non-workday. In such cases, the Employee's holiday is the basic workday immediately preceding the non-workday. A basic workday for this purpose includes a day when part of the basic work requirement for an Employee under a FWS or CWS is planned or scheduled to be performed.

1. Exceptions:
    - a. If the non-workday is Sunday (or an "in-lieu-of" Sunday), the next basic workday is the "in-lieu-of" holiday. (See section 3 of E.O. 11582, February 11, 1971)
    - b. If Inauguration Day falls on a non-workday, there is no provision for an "in-lieu-of" holiday.
    - c. If the head of the Agency determines that a different "in-lieu-of" holiday is necessary to prevent an "adverse agency impact", the head may designate a different "in-lieu-of" holiday for those full-time Employees on CWSs. (See 5 U.S.C. 6131(b))
  2. In addition, on a case-by-case basis, if a Supervisor and Employee agree that a different "in-lieu-of" holiday is preferable, they may agree to change the regularly scheduled non-workday so the "in-lieu-of" holiday occurs on an alternate workday.
  3. Part-time Employees are not entitled to "in-lieu-of" holidays.
- B. When the official federal holiday or in-lieu-of holiday falls on an Employee's scheduled workday, the Employee is entitled to pay for holiday leave as follows:
1. For Employees on any type of CWS, the total number of hours scheduled for that day. For example, if a holiday falls on Monday and the Employee is scheduled to work nine (9) hours, the Employee is entitled to nine (9) hours for the holiday.
  2. For Employees on any type of FWS, the Employee is entitled to eight (8) hours holiday leave, regardless of whether the holiday or in-lieu-of holiday falls on a nine (9) or ten (10) hour workday.
- C. When a federal holiday occurs on a day that a part-time Employee is:
1. Not scheduled to work, the Employee is not entitled to holiday leave;
  2. Scheduled to work, the part-time Employee is entitled to be paid for the number of hours scheduled for that day, up to eight (8) hours.

#### **43.14 Night Pay**

- A. If an Employee's tour of duty includes eight (8) or more hours available for work between 6:00 a.m. and 6:00 p.m., he/she is not entitled to night pay even if he/she voluntarily elects to work during hours for which night pay is normally required.
- B. The Agency shall pay night pay for those hours that must be worked between 6:00 p.m. and 6:00 a.m. to complete an 8-hour daily Tour of Duty.



- C. An Employee is entitled to night pay for any non-overtime work performed between 6:00 p.m. and 6:00 a.m. during designated Core Hours.
- D. An Employee who is entitled to overtime pay for regularly scheduled overtime work performed at night is also entitled to night pay.

#### **43.15 Reasonable Accommodation**

Core Hours and/or Tour of Duty reporting procedures may be waived as a form of reasonable accommodation. A full-time Employee must still meet the 40-hour weekly or 80-hour biweekly basic requirement.

#### **43.16 Differing Availability of Flexibilities to Specific Mission-Area Organizations Within the BC.**

From time-to-time, every BC Office may find it necessary because of business needs to restrict temporarily the use of flexibilities which are available ordinarily. The following subsections list flexibilities which are, ordinarily, not available.

- A. Servicing & Asset Management Office:
  - 1. Gliding Schedules are not available; and
  - 2. in the Customer Engagement Division, only Standard Work Schedules are available.
- B. Technology Office: in the Operations & Scheduling Branch during the two (2) PPs before January 31, in order to complete work Congress has mandated must be completed timely, Employees work Saturdays and Sundays, on overtime when appropriate, and no leave is approved.
- C. Finance Office: Gliding Schedules are not available.
- D. Enterprise Office: all flexibilities are available.
- E. Procurement Management Office: all flexibilities are available.
- F. HRO: all flexibilities are available.

## **ARTICLE 44 — WORK STATION ASSIGNMENTS**

### **44.01 Types of Available Individual Work Stations**

In facilities where the BC controls some or all of the work areas (WAs) and individual workstations (IWSs), there are usually two (2) types of IWS used by Bargaining Unit Employees (BUEs):

- A. Standard workstations (StWs). BUEs are eligible to be assigned to StWs only. StWs shall be assigned to BUEs who may be physically present in the office on a frequent and regular basis; and
- B. Hoteling workstations. Vacant workstations shall be open for hoteling and used on a first-come/first-served basis.
- C. Space rented or sublet or assigned to be used by a Party outside the BC is not available for occupancy by BUEs.

### **44.02 Steps to Follow When IWSs Are to be Assigned**

In such facilities, when the Agency decides to establish and/or change (i) the configuration of a WA for one or more organizational units (e.g., branches) or IWSs, or (ii) the assignment(s) of individual BUEs to one or more WAs or IWSs, the Agency shall:

- A. comply with all applicable statutory, regulatory and other directives;
- B. give a 30 calendar day announcement, to all impacted BUEs, of the StWs available for assignment;
- C. permit each impacted BUE to select a seat from the available StWs in their assigned WA. BUEs shall select StWs beginning with the BUE having the greatest and ending with the BUE having the least: (a) federal government service as measured by Service Computation Date-Leave; then (b) continuous USDA seniority; then (c) continuous seniority in Rural Development agencies.
- D. Any BUE who was absent shall be permitted on their return to choose from the remaining IWSs.

### **44.03 Idle IWSs Available for Business Use**

During the absence of an Employee, nothing shall bar the Agency from using temporarily, for business purposes and subject to the usual workplace rules, any IWS and/or its non-personal contents.

**For USDA Rural Development:**

**SHARON  
RANDOLPH**

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**For Local 3354, American Federation of  
Government Employees, designated agent  
of the certified representative of the  
Employees, the American Federation of  
Government Employees:**

**ANTONIO BURNETT**

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**DONZA DAVIS**

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