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## ARTICLE 1. GENERAL PROVISIONS

### Section 1. Authority

This Agreement is entered into under the authority granted by Federal Service Labor-Management Relations Statute, Title VII of Public Law 95-454, hereinafter referred to as the Statute. This Agreement will be approved according to the regulations of the US Department of Agriculture, hereinafter, referred to as USDA. Exclusive recognition was granted to the Federal Plant Quarantine Inspectors National Association by the Deputy Administrator, Plant Protection and Quarantine (PPQ) by the Agricultural Research Service (ARS) on February 19, 1963. Exclusive recognition was continued by letter from the Animal and Plant Health Inspection Service (APHIS), Plant Quarantine Division, ARS to the Plant Protection and Quarantine Programs of APHIS. By amendment of certification issued by the Federal Labor Relations Authority (FLRA) Washington, DC, Regional Office on September 30, 1985, the Union changed its name to the National Association of Agriculture Employees (NAAE).

### Section 2. Parties to and Purpose of the Agreement

This basic Agreement and any subordinate agreements as may be executed hereunder constitute a collective bargaining agreement by and between PPQ, APHIS, USDA, hereinafter referred to as the Employer, and the NAAE, hereinafter referred to as the Union. It is the intent and purpose of both Parties to foster employee-management cooperation, to promote and improve the efficient administration of PPQ, and to ensure the employees' participation in the development and application of policies, procedures, and other matters affecting their conditions of employment through consultation and negotiation when appropriate.

### Section 3. Coverage

This Agreement applies to all permanently employed professional PPQ officers, SITC Officers and all permanently employed nonprofessional employees of PPQ other than clerical, secretarial, and administrative employees employed in or by the USDA, APHIS, PPQ. Excluded are all other employees, employees engaged in federal personnel work other than in a purely clerical capacity, supervisors and managers as defined in the Statute.

New positions that are determined to be within the Bargaining Unit are covered by this Agreement.

## ARTICLE 2. AUTHORITY AND RESPONSIBILITY

### Section 1. Effect

Except as provided by law, in the administration of all matters covered by this Agreement, the Parties are governed by:

- A. Existing or future laws;
- B. Governmentwide rules or regulations in effect upon the effective date of the Agreement;
- C. Governmentwide rules or regulations issued after the effective date of this Agreement not in conflict with this Agreement;
- D. Governmentwide rules or regulations issued after the effective date of this Agreement when in conflict with this Agreement but only to the extent the conflicting rule or regulation implements 5 U.S.C. 2302; and
- E. Department of Agriculture or Animal and Plant Health Inspection Service rules, regulations, and directives not in conflict with this Agreement.

### Section 2. Reopener

- A. Should a provision of this Agreement be nullified or otherwise affected by appropriate authority (i.e., by federal statute or Governmentwide rules or regulations implementing 5 U.S.C. 2302) after the effective date of this Agreement, either Party may reopen the specifically affected sections and all other provisions directly affected by those sections.
- B. Should any other change in Governmentwide rules or regulations affect any provision(s) of this Collective Bargaining Agreement, the affected provision(s) may be re-opened by mutual agreement of the Parties.

### Section 3. Exclusivity

This Agreement supersedes all agreements, contracts and past practices in conflict with this Agreement, but only to the extent of such conflict. Local agreements, contracts and past practices will remain in effect pending local review and/or negotiations. All then current local contracts will be locally reviewed. Reviews will be initiated within 60 days of the effective date of this Agreement. If either Party requests, the local contract will be renegotiated, with renegotiations initiated within 120 days after the effective date of this Agreement. By mutual consent, current local contracts may be renegotiated after the expiration of this 120-day period. Upon completion, the local agreement will be

forwarded to the Regional Union representative and the Regional Labor Relations Specialist for their review and approval.

## ARTICLE 3. RECOGNIZED LEVELS OF AUTHORITY AND RESPONSIBILITY

### Section 1. Policy

- A. It will be the practice under this Agreement to settle each matter of business between the Parties at the point nearest its origin and at the level of the Employer with authority to deal with the issues. Matters will not be considered at higher levels unless there is evidence that efforts by the Parties to settle the matter at the lowest authoritative level are unsuccessful. The referral of unresolved grievances, disputes, and other matters to higher levels will be done in accordance with the applicable provisions set forth in this Agreement.
- B. Prior to taking any matter to a member of the Executive branch of the government, the Regional Director and Deputy Administrator, PPQ, will be given the opportunity to resolve it.

### Section 2. Levels of Authority

The recognized levels of authority at which the Parties will conduct labor-management activities will normally be:

For the Employer	For the Union
1. Port Director/ OIC (if applicable), State Plant Health Director (if applicable), or designated representative	1. Branch President or designated Union Representative
2. State Plant Health Director, if applicable, or designated representative	2. To be designated by the NAAE, as applicable
3. Regional Director or designated Representative	3. Regional Vice President or designated Union Representative
4. Deputy Administrator or designated representative	4. National President or designated Union Representative

“Designated Union Representative” means any employee within the bargaining unit identified in writing or any other person so designated in writing to represent the Union.

Customary and usual representational and other labor-management activities will be conducted at the levels as above. The Employer and the Union acknowledge there may be circumstances in which communications with other organizational levels may be desirable.

### Section 3. Election of Level

When a proposed change in working conditions impacts more than one work unit which is not covered by a single local, then the NAAE Regional Vice President will be the initial point of contact. If the proposed change impacts more than one Region the NAAE National President will be the initial point of contact.

## ARTICLE 4. DURATION AND TERMINATION

### Section 1. Effective Date and Terms

- A. This Agreement will remain in effect for three (3) years from the date of approval by Agency-Head review (effective date).
- B. This Agreement will remain in effect for yearly periods thereafter unless either Party serves the other Party with a written notice for the purpose of renegotiating the Agreement, not more than one hundred and five (105) days and no less than sixty (60) days prior to the expiration date.
- C. If neither Party serves timely notice to renegotiate this Agreement, the Agreement will automatically be renewed in increments of one (1) year on its approval date.

### Section 2. Reopener

- A. Either Party will have the right to reopen portions of this Agreement if the Party produces evidence that parts of the Agreement are being abused, interfere with the efficient operation of the organization, or has materially affected conditions of employment. Documentation must include specific evidence of the charge and the provisions of the Agreement involved. This reopener will be exercised by serving a written notice on the other Party of the provision(s) to be reopened.
- B. This Agreement may be opened for amendment upon the written request of either Party if any of the Sections herein is nullified by changes in law, order, rulings, judicial decisions, or third-party decisions. Requests for such amendment(s) must include a summary of the amendments proposed and make reference to the appropriate order, law, or decision necessitating the amendment(s) requested. Only the Sections nullified by the appropriate order, law, or decision will be reopened.
- C. This Agreement may be reopened at any time by mutual agreement of the Parties.
- D. The Green Book Appendix may be reopened by request of either Party to update the website references and/or contact information.

### Section 3. Status Quo

Upon the termination of this Agreement, the Employer agrees that it will not modify existing personnel policies and practices or matters affecting working conditions contained herein until it has fulfilled its bargaining obligations under appropriate law or regulations.

## ARTICLE 5. EMPLOYER RIGHTS AND OBLIGATIONS

### Section 1. Statutory Rights

- A. In accordance with the Civil Service Reform Act of 1978, the Employer retains the authority:
- B. to determine the mission, budget, organization, number of employees, and internal security practices of the Employer; and
- C. in accordance with applicable laws:
  - 1. To hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or to take other disciplinary action against such employees;
  - 2. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which the Agency's operations will be conducted;
  - 3. With respect to filling positions, to make selections for appointments from:
    - a. Among properly ranked and certified candidates for promotion; or
    - b. Any other appropriate source; and
  - 4. To take whatever actions may be necessary to carry out the Agency mission during emergencies.

### Section 2. Obligation to Inform

- A. The Employer recognizes that the Union may have valuable insight into pre-decisional discussions concerning conditions of employment and may seek Union input with various pre-decisional activities. This does not constitute formal notification to or negotiation with the Union over changes to conditions of employment. The Union retains the right to request consultation in accordance with Article 13 Consultation.
- B. The Employer agrees to notify the Union of any substantive change in conditions of employment proposed by the Employer. The notice will be clearly marked as "notice" and will be sufficiently specific for the Union to respond with changes clearly identified.

### Section 3. Official Communication Between the Parties

- A. When this Agreement requires one Party to provide a response, submission, or other action within a prescribed number of days from the date of a specified event, the computation of the time for that response, submission, or action will begin the next calendar day following the date of that event, i.e., day one will be the next day.
- B. A response, submission, or notice will be deemed timely filed or served if;
  - 1. postmarked on the due date when standard U.S. Postal Service or Registered Mail is used as the means of transmitting the response;
  - 2. hand-delivered on the due date to the intended recipient or a representative of the recipient authorized to accept delivery;
  - 3. tendered on the due date to a recognized expedited commercial or private delivery service (such as Express Mail, UPS, Federal Express, or DHL) for next-day or second-day delivery; or
  - 4. sent by electronic mail (e-mail) or facsimile transmission on the due date.
- C. If this Agreement requires the Party receiving the response, submission, or notice to respond or take other designated action within the Agreement's specified time frame, the computation of the date for making that response or taking that action will begin either:
  - 1. If standard U.S. Postal Service or Registered Mail, then the day after receipt of the notice or response, or the presumption will be five (5) calendar days after the postmark date (seven (7) calendar days when transmitted to or from a location outside CONUS (Continental United States));
  - 2. The next calendar day after delivery of the initial notice or response to the intended recipient or his/her representative by the commercial or private delivery service for next-day or second-day delivery; or,
  - 3. The day after receipt of electronic mail (e-mail) or facsimile transmission.
- D. If the last day upon which either Party must take action or provide notice or response to the other falls on a Saturday, Sunday, or federal holiday, then the Party obligated to take such action or provide such notice or response will have until the next regular federal workday within which to take that action or provide that notice or response.

#### Section 4. List of Employees

The Employer will provide the President of the Union at pay periods nine (9) and twenty-two (22) a current list of all bargaining unit employees arranged organizationally. Such a list will include name, grade, position, and location of each employee.

## ARTICLE 6. EMPLOYEE RIGHTS

### Section 1. Scope

Employees covered by this Agreement will 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 will be protected in the exercise of such right. Except as otherwise provided in the Civil Service Reform Act of 1978, such rights include 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 the Union as provided by law.

### Section 2. Prohibitions

Neither the Employer nor the Union will interfere with, restrain, coerce, or discriminate against an employee in the exercise of the rights assured by the provisions of this Article and this Agreement.

### Section 3. Right to Union Representation

- A. Each employee covered by this Agreement has the right to be represented by the Union, without discrimination and without regard to labor organization membership.
- B. An employee covered by this Agreement will be given an opportunity to be represented by the Union at:
  1. Any formal discussion between one or more representatives of the Employer and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practice or other general conditions of employment; or
  2. Any examination of an employee in the unit by a representative of the Employer in connection with an investigation if:
    - a. The employee reasonably believes the examination may result in disciplinary action against the employee, and
    - b. The employee requests representation.

#### Section 4. Right Not to Join Union

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

#### Section 5. Mutual Respect

The Parties recognize that employees and managers will conduct themselves in a professional and businesslike manner, characterized by mutual courtesy, in their day-to-day working relationships.

#### Section 6. Obligation to Obey Supervisory Orders

When an employee is ordered by a supervisor to perform any action which the employee believes to be a violation of law, the employee may do any or all of the following:

- A. Give the supervisor a written statement expressing the employee's objection to the order;
- B. Use the Office of Inspector General (OIG) hotline to report the alleged violation (information on the OIG hotline may be found in the Appendix of this Agreement);
- C. Verbally inform the supervisor of his/her concerns; and
- D. Take such other action as may be permitted by law, including, under limited circumstances and subject to the caveat noted below, disobeying the order.

Any such action by the employee must not interfere with his/her carrying out any lawful order. Failure to carry out any order is risky, should be an avenue of last resort, and may result in disciplinary action. The supervisor will assume full responsibility for the decision, but not for the employee's execution of the order.

#### Section 7. Representation Rights

Nothing in this Agreement will be construed to preclude an employee from:

- A. Being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any dispute or appeal action; or
- B. Exercising dispute or appellate rights established by law, rule, or regulation.

## Section 8. Conditional Right to Grieve

Any employee or group of employees may present grievances to the Employer under the negotiated grievance procedure set forth in Article 16 Grievance Procedure and have them adjusted, without the intervention of the Union, as long as the adjustment is not inconsistent with the terms of this Agreement. However, the Union will be given an opportunity to attend and participate in any grievance-related meeting. The Employer will give the Union copies of all grievance replies in such cases. Employee grievances may not proceed to arbitration without the consent of the Union.

## Section 9. Right to Disclose

An employee covered by this Agreement may, without fear of penalty or reprisal, engage in the disclosure of information which the employee reasonably believes evidences:

- A. A violation of any law, rule, or regulation; or
- B. Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

## Section 10. Notice of a Complaint

- A. The Employer will notify an employee of a written complaint received by management, if warranted. A “warranted complaint” for the purpose of requiring notice under this section is defined as a written statement, including any oral complaints reduced to writing by the Employer, by an identified complainant indicating dissatisfaction with an employee by reason of conduct, appearance, or carelessness or impropriety of an action taken by the employee.
- B. The Employer will provide the notification as soon as practicable following the receipt of the complaint. Upon request, the Employer will furnish the employee with a copy of the complaint or, if the complaint involves more than one employee, that portion of the complaint related to the requesting employee. The Employer will furnish the employee a copy of a written response by management upon written request by the employee.
- C. The Employer will afford the employee a reasonable period of time within which to prepare and furnish the Employer a response to the complaint. The Employer will consider the employee’s response before the Employer responds to the complainant.

## Section 11. Search Rights

When the Employer exercises its legal right to search an employee's possessions at the work site, (e.g., desk, locker, etc.) in a non-criminal matter, the employee and his/her representative will be allowed to be present during the search. If the employee and the employee's representative are not present at the work site, the search will be delayed for a reasonable period until such time as they are both available unless such delay materially impedes the purpose for which the search is conducted.

## Section 12. Gift Giving

- A. Participation in the Combined Federal Campaign, United States Savings Bond Drives, Blood Donor Drives, and other worthy programs will be on a voluntary basis.
- B. Contributions for gifts for supervisors, management officials, or fellow employees will be strictly voluntary.

## ARTICLE 7. UNION RIGHTS

### Section 1. Exclusive Representative

The Union is the exclusive representative of the employees in the unit and is entitled to act for, and represent the interests of, all employees in the unit without discrimination and without regard to labor organization membership.

### Section 2. Presence at Formal Discussions

- A. The Union will be given the opportunity to be represented at any formal discussion between one or more representatives of the Employer and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.
- B. The appropriate Union representative will receive reasonable advance notice of such formal discussions and advance copies or access to documents the Employer proposes to discuss unless such documents are protected by applicable laws, rules, and regulations. The appropriate Union representative to receive such notice and documents will be designated for the local by each Branch President or Regional Vice President.
- C. At any formal discussion, the designated Union representative will be identified and has the right to ask questions, comment, speak, and make statements related to the subject matter addressed by the Employer at that discussion and will not seek to take charge of nor disrupt the discussion.

### Section 3. Presence at Examinations

The Union will be given the opportunity to be represented at any examination of an employee in the unit by a representative of the Employer in connection with an investigation if:

1. The employee reasonably believes that the examination may result in disciplinary action against the employee; and,
2. The employee requests representation.

### Section 4. Presentation of Views

The Union will have the right to present its views, either orally or in writing, to the Employer on any matters of concern regarding personnel policies and practices and matters affecting working conditions.

## Section 5. Representation in Statutory Appeals

The Union has no obligation to represent employees in statutory appeals, e.g., before outside agencies such as the Merit Systems Protection Board (adverse actions) or the Equal Employment Opportunity Commission (discrimination appeals).

## Section 6. Addressing New Employees

- A. The Employer will give the Union representative of the local bargaining unit as much advance notice as possible of a new employee's first day of duty, name, position, and work location. The Union also will be notified of any employee employment orientation session and be allowed to participate. The Union representative will be provided a mutually agreed reasonable amount of time, to address the new employees at their permanent duty stations as part of this employee employment orientation session. If a new employee will not be included in a group orientation, a Union representative will be afforded a mutually agreed reasonable period of time, within the new employee's first month of employment, to discuss representational matters with that new employee.
- B. On prior arrangement with the Employer this same type of meeting will be permitted at Basic Agriculture Safeguarding Training (BAST).

## Section 7. Right to Information (5 U.S.C. 7114(b) (4))

- A. The Employer will promptly furnish the Union and any of its authorized representatives, upon written request, and to the extent not prohibited by law, all data the Employer normally maintains in the ordinary course of its business that:
  - 1. Is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining, including, but not limited to, the investigation, preparation, filing, and prosecution of a grievance and unfair labor practice; and
  - 2. Does not constitute guidance, advice, counsel, or training for management officials or supervisors relating to collective bargaining.
  - 3. Details regarding the impact of the Union's written request for information pursuant to 5 U.S.C. 7114(b) (4) for the negotiated grievance procedure and/or negotiations are found under Article 16 Grievance Procedure and Article 22 Negotiation Provisions.
- B. The Employer will furnish the Union representatives serving on all joint labor-management committees (whether national, regional, or local in scope), all

information, studies, and other data made available to management members of such committees and councils that support or relate to all subjects assigned to the committees and councils for discussion or action. Both Parties recognize that information shared may be sensitive (e.g. governed by the Privacy Act) and that sensitive information will not be made available to the general bargaining unit.

#### Section 8. Management Team Meetings

Any issue presented at any management meeting at which the designated Union representative is present and meant to constitute or serve as notice to the Union will be clearly identified in writing as such notice.

## ARTICLE 8. DUES WITHHOLDING

Dues withholding will be made according to the Memorandum of Understanding in affect between the USDA, Office of Personnel and NAAE under the provisions of the Statute.

Dues withholding will be accomplished in accordance with the principles and procedures as set forth in the Memorandum of Understanding for Dues. A link to the MOU can be found in the Index under Article 8.

### Section 1. Objective

The ability of the Union to provide adequate representation is in large part dependent upon the dues structure of the Union. This Article establishes a mutually beneficial dues withholding arrangement.

### Section 2. Employee Responsibility

- A. Any eligible employee of the USDA who is included in the bargaining unit may make a voluntary allotment for the payment of dues to the Union.
- B. To enroll as a dues paying member, the employee will obtain and complete an SF-1187, "Request for Payroll Deductions for Labor Organization Dues", and will mail (not FAX) the completed SF-1187 form, with an original ink signature, to the National Union President. The employee will complete the top portion, including the local branch number, and Part B of the form. Only the Social Security number will be entered in Block 2 of the form. Membership begins on the date the National Union President signs the form.
- C. An employee may voluntarily revoke an allotment for the payment of dues by completing an SF-1188, "Cancellation of Payroll Deductions for Labor Organization Dues", mailing (not FAX) the completed SF-1188 form, with an original ink signature, to Human Resources Division, APHIS (HRD), Attention: Processing. HRD will process the revocation so that it will become effective as of the first full pay period after September 1 of each year, provided the revocation was received by the HRD on or before the end of that pay period and provided the employee verifies that he/she has had Union dues withheld for more than one year.

### Section 3. Union Responsibility

- A. The National Union President or designee will, on each completed SF-1187 form, certify the employee is a member in good standing of the Union, insert the amount to be withheld and the NAAE code number (03 representing NAAE and four digits representing the local), and submit the completed SF-1187 to HRD. HRD will certify the employee's eligibility for dues withholding

and will process the deduction effective ten (10) working days after HRD receives the SF-1187, but no later than the second full pay period.

- B. If there is a change in the dues structure or amount, the authorized Union official will notify HRD. HRD, or HRO, will forward the certification to NFC promptly upon its receipt. The change will be effected at the beginning of the first full pay period after NFC receives the certification. Only one such change may be made in any one six month period.

#### Section 4. Management Responsibility

- A. Dues withholding forms will be maintained at regional offices.
- B. If dues withholding errors occur, they will be corrected in a timely fashion. Proper reimbursement will be made to affected parties (e.g., NAAE, employee).
- C. All dues withholding processing concerns will be communicated to the National President or designee.
- D. Dues allotment will be terminated:
  - 1. At the end of the pay period during which an employee member is separated, or permanently, or temporarily assigned to a position not included in the bargaining unit;
  - 2. At the end of the pay period during which HRD receives a notice from the National Union President that an employee member has ceased to be a member in good standing; or
  - 3. Annually during the first full pay period after September 1, after receipt of the employee member's written revocation of allotment (SF-1188 or memorandum in duplicate), provided the employee verifies that he/she has had Union dues withheld for more than one year.
- E. An employee who is temporarily promoted will have an automatic resumption of the dues withholding upon return to the bargaining unit.

#### Section 5. Joint Responsibility

- A. HRD and the employee members have a mutual responsibility to assure timely revocation of an employee's allotment for Union dues when the employee is permanently promoted or assigned to a position outside of a bargaining unit represented by the Union.

- B. If the dues allotments continue and the employee fails to notify HRD, there will not be a retroactive recovery of dues withheld from the employee, in accordance with applicable case law. The Union will consider requests for a refund from the employee.
  
- C. When an employee, on dues withholding, transfers from one work unit to another work unit within PPQ, the employee, the Union, and the Employer will inform appropriate parties to insure local union codes are properly changed. All available resources will be utilized to effectuate the change.

## ARTICLE 9. UNION REPRESENTATIVES

### Section 1. Non-Interference

The Employer will not interfere with, restrain, coerce, or discriminate against any employee for exercising his/her right to be represented by the Union concerning any matter relating to the employment of the employee.

### Section 2. Designation of Representatives

For the purposes of administering this Agreement and representing employees concerning any matter relating to their employment, the Union may officially designate Union officers and representatives as follows:

- A. The local Union may designate representatives who are available for representational activities. In the absence of a designated representative, the manager may contact the Regional Vice-President or designee. Where there are no locals the Union representative is the Regional Vice President or designee.
- B. A local representative or regional/national Union officer may represent any employee within his/her jurisdiction concerning matters related to the employment of the employee.
- C. In addition, the Employer will recognize the President of each existing NAAE Branch representing PPQ employees as authorized to represent the local Union in the administration of this Agreement locally and to represent employees within the President's respective work unit concerning any matter relating to the employment of an employee.
- D. The Union will select all bargaining unit members participating on labor-management committees, councils and panels
- E. On any committee dealing with working conditions, only Union designated representatives can express the views or represent the interests of bargaining unit employees.

### Section 3. Notice to the Employer

- A. The Union will provide the Employer with a current list of active Branches of the NAAE annually. Such list will include the Branch designation and the name of the Local President, and designee. The Union further will maintain the list on as current a basis as reasonably possible. The Union also agrees to provide the Employer with a current list of the National Officers and Regional Vice-Presidents and their telephone numbers. The information

supplied will be kept strictly confidential and used only for purposes of official business with the Union.

- B. The Union may change representatives at any time, but will provide written notice to the appropriate level of the Employer.

#### Section 4. Temporary Supervisory Positions

- A. When the Employer determines that a detail or temporary promotion must be made to fill a supervisory position, the Union representative will be given only secondary consideration, unless he/she has volunteered, when there are other available candidates who are equally qualified to fill the position. If the Union representative is selected, he/she will be required to relinquish all Union responsibilities for the duration of the detail and/or temporary promotion.
- B. This subsection will not prohibit a Union representative/officer serving as an acting supervisor for brief periods of time so long as no conflict of interest is created.

## **ARTICLE 10. FACILITIES AND SERVICES**

### **I. UNION RESOURCES**

#### Section 1. Office Space

- A. The Employer will provide a separate, non-shared desk for each Executive Committee Member of the National Union. Space availability and budget considerations permitting, the Employer will provide a work area, or where possible a separate area or office, suitable to accommodate a reasonable office environment, e.g., desk, chair, table, computer, printer, file cabinet and bookcase.
- B. The Employer will provide, in work units that have 10 or more bargaining unit employees, local Union officers reasonable and adequate space consistent with local availability and budget considerations, and in accordance with Governmentwide rules and regulations on space management.

#### Section 2. Meeting Space

- A. Upon reasonable advance request, the Employer will provide the Union meeting space in areas occupied by the Employer, if available, for meeting during non-duty hours. The Union will comply with all security, safety, and housekeeping rules in effect at that time and place.
- B. The advance request should designate the date, time, duration, and general purpose of the meeting.
- C. Upon reasonable advance request, the Employer will provide the Union private meeting space, if available, for official representational activities, during official hours of business in areas occupied by the Employer.

#### Section 3. Office Furniture, Equipment and Services

- A. The Employer will provide, at no cost, for the representatives listed in accordance with the provisions of Section 1 of this Article, minimum equipment needs for the work space including but not limited to: desk, chair, extra table, and lockable filing cabinets consistent with internal security practices of the Employer.
- B. For purposes stated in this section, upon request and approval in accordance with local policy, Union representatives may use or otherwise have access to, where reasonably available and when use does not interfere with daily program operations and accomplishment of program mission, Employer equipment and services to include: computers, photocopy equipment,

telecommunication equipment including telephone lines, telephones, facsimile machines, audiovisual equipment, etc. and future communications technologies. Such use will be for official representational purposes only.

#### Section 4. Communications

- A. The Employer agrees to provide National, Regional and Local Union Officers access to an FTS telephone or government leased lines, where available, at their places of assignment to be used for discussion for Employer-Union business.
- B. The Employer will provide the Union with one official bulletin board, for its exclusive use, per worksite occupied by employees. Any material placed on bulletin boards will be initialed by the local Employer prior to posting to assure compliance with this provision. The Union will ensure that any material it places on Employer-owned bulletin boards does not violate Governmentwide rules or regulations.
- C. Any National or Regional Union Representative, upon reasonable advance notice, may visit non-work areas located on the Employer's premises to discuss appropriate Union business (representational activities) with bargaining unit employees during on-duty and non-duty hours, unless to do so will disrupt the accomplishment of the Agency's mission.

#### Section 5. Distributing This Agreement

- A. An electronic copy of this Agreement will be posted on the APHIS Labor Relations' intranet website. The Agreement will be indexed (bookmarked) and in searchable PDF format.
- B. The Parties will encourage the use of the electronic version of this Agreement to avoid additional printing costs.
- C. An electronic message will be sent to the "PPQ All Employees Group" with a link to the Agreement.
- D. Newly hired employees will be provided a personal copy of the Agreement (electronic link with the opportunity to print a hard copy, CD or hard copy).
- E. The Union will be provided 100 hard copies of this Agreement for distribution.
- F. The Employer will arrange for and bear all expenses associated with the printing and distribution of this Agreement.

#### Section 6. Agreement Issues

- A. The Parties may jointly provide PPQ employees with written materials outlining the issues contained in the new Agreement and summarizing its principal provisions. The Employer will distribute this material to all PPQ employees.
- B. The preferred method of presenting the Agreement would be through joint meetings with Local Presidents and their recognized level of management.

#### Section 7. General Information Needs

- A. To be accurately informed and to expedite communication, the Employer will make a reasonable effort to keep employees updated (i.e., oral, hard copy, e-mail, internet, or other electronic means).
- B. Upon written request the Employer will provide the National President copies of all budget allocations and status of funds reports or equivalent regarding APHIS and PPQ. The Employer upon written request will also provide the National President with specific state and work unit budget information.
- C. The Employer will make available an annually updated checklist of all APHIS/MRP administrative issuances dealing with conditions of employment and personnel matters and the administrative issuance website URLs. In addition, the Employer will furnish a copy of each draft APHIS/MRP administrative issuance which is distributed for comment.

#### Section 8. Union Officials Listing

The Employer will post on the APHIS Labor Relations website a link to the NAAE official website.

#### Section 9. Local Agreement

In the administration of this Article, no Local Union Branch will forfeit any rights, privileges, benefits, or access to facilities or services provided in any local collective bargaining agreement or MOU, whether negotiated prior or subsequent to this Agreement, unless specifically in conflict with this Article.

## **II. EMPLOYEE RESOURCES**

#### Section 10. Physical Fitness

- A. The Parties will work together in an effort to institute a health fitness program emphasizing the development of cardiovascular fitness, muscular strength flexibility, proper nutrition, weight control and stress management.

- B. In each local commuting area where 25 or more employees are stationed, a joint labor management study group may be initiated by either party to determine employee interest and willingness to participate. Affected local Union branches will nominate two representatives on each study group. If sufficient interest is determined to exist, the group will explore options available to provide employees access to physical fitness centers. The group will explore such options as group discount rates at private facilities, use of public school facilities, etc.
- C. Employee use of physical fitness facilities will take place on non-duty time.
- D. The Parties agree to give particular attention to the above items at the time new space is requested and planned.

#### Section 11. Facilities

- A. The Employer will make reasonable good faith efforts to:
  - 1. Provide lockable lockers for uniformed employees to be located near their work areas and cause the General Services Administration and other authorities providing space to the Employer to furnish adequate locker space in new or replaced facilities furnished or constructed under its supervision. Personal security and privacy will be afforded all employees using or having access to such facilities, consistent with internal security practices of the Employer.
  - 2. Ensure that adequate eating space, lounges/break rooms, drinking fountains, sanitary facilities, and vending machines are available at all permanent locations and new or replaced facilities under construction, which will be properly air conditioned and ventilated.
- B. To the extent that the Parties have control over the configuration and content of breakroom and lunch facilities, configuration and provisioning of such rooms will be negotiated at the local level in conformance with this Agreement.

#### Section 12. Temperature Controls

The Employer will make reasonable efforts to ensure that temperatures within the office spaces are adjusted, where possible, to the allowable limits (i.e., up to 65 degrees Fahrenheit in winter and down to 78 degrees Fahrenheit in summer) in accordance with applicable law, or Governmentwide rule or regulation. Where temperatures consistently fail to meet the allowable limits referred to above, the Employer will make reasonable efforts to have the situation corrected through the appropriate leasing authority or facility manager.

### Section 13. Space Management

- A. The Employer will notify the Union in advance when it determines to acquire new or modify existing space, as this decision may affect unit employee working conditions. The Employer will consider Union recommendations in making determinations related to space management and will provide the Union documents related to making this determination, including but not limited to space layout drawings and lease contracts.
- B. The Union may raise space management concerns during the term of this Agreement. If the Union provides advance notice of a particular concern regarding space arrangements, the Employer will provide a briefing on lease arrangements impacting working conditions of unit employees related to the expressed concerns.
- C. The Employer will promptly forward to the lessor substantiated complaints by employees alleging problems relating to space management outside the Employer's control.
- D. Nothing in the above provisions will preclude the Union from negotiating, in accordance with law and the terms of this Agreement, the impact and implementation and substance of space leasing decisions or space management changes.

## ARTICLE 11. OFFICIAL TIME

### Section 1. General

- A. As reflected in 5 U.S.C. 7101 (a), the Congress finds that—
1. Experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—
    - a. safeguards the public interest,
    - b. contribute to the effective conduct of public business, and
    - c. facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment; and
  2. The public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, Congress finds that labor organizations and collective bargaining in the civil service are in the public interest.

- B. The Parties fully recognize that—
1. all the employee representatives of the Union are voluntary and whatever official time is spent in the conduct of labor/management activities is spent as much in the interest of the Employer as that of the employees; and
  2. the official time spent by the Union on the conduct of labor/management activities under the Statute contributes to the development of orderly and constructive labor-management relations.
- C. In recognition of sub-sections A and B above, reasonable official time will be granted for all representational activities, excluding internal Union business, in accordance with provisions of this Article.
- D. The term “official time” as used in this Agreement means an employee’s approved absence from duty during his/her regular hours of duty without loss of pay and without charge to leave and will include all necessary and reasonable travel time.

- E. The Employer will approve, in accordance with locally negotiated procedures, reasonable official time for the performance of those representational activities identified in this Article.

## Section 2. Representational Matters

Union designated representatives will be granted a reasonable amount of official time for participation in (including investigation of and preparation for) all matters relating to the National Agreement, local agreements (including MOUs), joint labor-management relations matters arising under Chapter 71, Labor-Management Relations Statute, Title 5, and any other activity for which the Civil Service Reform Act (CSRA) allows employees to use official time, including but not limited to:

1. Meetings with the Employer concerning any personnel policies, practices, or other general conditions of employment or any other matter covered by 5 U.S.C. 7114(a)(2)(A);
2. Oral and/or written replies to notices of proposed disciplinary, adverse, or unacceptable performance actions;
3. Meetings to present appeals in connection with statutory or regulatory appeal procedures in which the Union is designated as the representative;
4. Examinations of bargaining unit employees by a representative of the Employer in connection with an investigation;
5. Presentation of grievances at related meetings and arbitration hearings, including interviewing and preparing witnesses;
6. Meetings of committees on which Union representatives have membership;
7. Conferring with employees with respect to any matters for which remedial relief may be sought pursuant to the terms of this Agreement;
8. Meeting with representatives of the Union in connection with a grievance, arbitration, or ULP charge;
9. Participating in an FLRA, FMCS, and FSIP investigation, hearing, or other proceeding as a representative of the Union or bargaining unit employee;
10. Presentation of ULP charges, including meetings with those charged, in an effort to resolve or prevent the ULP charge;

11. Reviewing and responding to memoranda, letters, notices, requests and other proposals from the Employer which affect personnel policies, practices, or working conditions;
12. Preparing and maintaining records and reports required of the Union by 5 U.S.C. 7120(c); and
13. Contacting and meeting with members of Congress and their staffs to discuss legislative and related matters affecting the conditions of employment for employees.

### Section 3. Employee Official Time

- A. An employee who is a witness or the subject of an examination in connection with an investigation will receive official time for attendance at the following:
  1. Grievance meetings;
  2. Arbitration hearings;
  3. Oral reply meetings responding to a notice of proposed adverse disciplinary, or unacceptable performance action;
  4. An adverse action hearing;
  5. Other statutory or regulatory appeal hearings;
  6. Meetings for the purpose of presenting reconsideration replies in connection with the denial of a within-grade increase;
  7. An examination by a representative of the Employer in connection with an investigation which may lead to disciplinary action.
- B. Employees will also receive reasonable amounts of official time to participate in the activities covered in Section 2, 1-12 above.

### Section 4. Employee/Union Travel and Per Diem Reimbursement

- A. The Employer will reimburse travel and per diem expenses for Union representatives attending on official time the meetings and other activities referenced in Section 2 (excluding 7, 8, 11, 12, and 13) and Section 3 of this Article in which the Employer is an active participant and, when both Parties are directed to a specified third party (FSIP mediation-arbitration). Events before a third party covered by Article 16 Grievance Procedures are not

covered by this section. The reimbursement obligations for participation in negotiations are as set forth in Section 5 below.

- B. The Employer will also reimburse travel and per diem expenses of employees and Union representatives necessarily incurred to attend joint activities with the Employer, excluding the Union's convention (see Article 12 Consultation) in accordance with applicable Governmentwide regulations.
- C. The Employer will reimburse employees' travel and per diem to attend on official time the meetings, hearings and other activities set forth in Section 3 of this Article to the extent the employees are:
  - 1. The subject of or involved in a formal discussion or an examination covered by 5 U.S.C. 7114(a)(2);
  - 2. The Employer has requested the employee to attend; or
  - 3. The employee is required to attend by rule, law or regulation.
- D. The Union will give reasonable consideration to the most cost effective means for participation in meetings.

#### Section 5. Representation at Negotiations

- A. All bargaining unit employees on Union negotiating teams will be granted reasonable official time to represent the Union in National, supplemental/subordinate (local) agreement, substance, impact-and-implementation, and mid-term negotiations during the term of this Agreement.
- B. Consistent with Article 22 Negotiation Provisions, Section 4 (A) (12)(b), for local negotiations, if the Employer elects to have negotiators from outside the duty location where negotiations are to take place, the Union will be entitled to have an equal number of negotiators from outside the duty location. The Employer will pay the travel costs pursuant to an approved travel authorization for such Union Representatives and the lodging costs in accordance with the Federal Travel Regulations. The Union will pay for the meals and incidental expenses of its outside negotiators. The Employer will inform the Union of the identity of outside negotiators it intends to bring to the local negotiating table at least 10 days in advance of the first negotiating session.
- C. Consistent with Article 22 Negotiation Provisions, Section 5(A) (16), for national negotiations, except renegotiation of this Agreement and mid-term bargaining initiated by the Union, the Employer will reimburse airfare and lodging expenses for travel outside the commuting area for all bargaining unit members of Union negotiating and backroom support teams, up to the number equal to the number of Employer negotiating and backroom support

team members, respectively. The Union will pay its own M&IE expenses unless otherwise agreed. For travel within the commuting area, including for local negotiations, reimbursement will be made for mileage expenses payable at the current rate as published by GSA consistent with Governmentwide regulations.

- D. Consistent with Article 22 Negotiation Provisions, Section 5(A)(16), for Regional negotiations, the Employer will reimburse airfare and lodging expenses for all bargaining unit members of Union negotiating and backroom support teams for travel outside the commuting area. The Union will pay its own M&IE expenses unless otherwise agreed.

## Section 6. Training

- A. Employees and representatives of the Union will receive official time to attend training sessions sponsored by the Union or, subject to prior Employer approval, by another labor organization and designed primarily to advise employees or representatives on matters within the scope of CSRA and Title 5, Chapter 71, to instruct in the understanding, maintenance, and implementation of this Agreement, or to further the interest of government by bettering the labor-management relationship.
- B. Reasonable official time and related expenses for travel and per diem will be granted to employees and Union representatives for training in labor-relations issues sponsored/offered by a government agency, subject to advance notice to and approval by the Employer, which approval may not be unreasonably denied.
- C. The Parties agree to establish a bank of 480 hours of official time (on an annual basis with no rollover and outside of the Bank Time MOU) to be used for training for Union representatives that is not sponsored or offered by a government agency. The Union will be responsible for any additional costs including travel related expenses incurred with this official time.
- D. The Parties agree to conduct joint labor management training in webinar format. This training will not pertain to Green Book implementation. There will be two courses in each region for the first year of the contract (four courses total) and then one course in each region for each subsequent year of the contract provided there are at least 20 interested attendees per course. The classes will be half Employer and half Union attendees.

## Section 7. National Executive Committee

- A. The Parties have agreed to a Bank Time Memorandum to provide Official Time for Executive Committee members and other specified Union

representatives. A copy of this MOU can be found in the Appendix of this Agreement.

- B. Official time will be granted to employees to attend Executive Committee meetings involving labor relations activities, e.g., discussion of grievances, arbitration, and ULPs, and review of proposed changes, but excluding internal Union business. Travel costs incurred will be paid by the Union. An agenda will be provided in advance to the Employer upon request.
- C. If one or more days of the Executive Committee meeting are with a management representative, the Employer will pay all per diem costs of Executive Committee members in attendance for the day(s) of the meeting with management.
- D. Requests for additional grants of official time beyond the staff-year bank (Bank Time MOU) for preparation and participation in renegotiation of this Agreement will be made in accordance with applicable ground rules and federal law.

#### Section 8. Local Union Functions

- A. Each Local Branch of the Union will request and receive reasonable official time for their local officers to perform the basic, day-to-day representational activities described in Sections 2 through 7 of this Article. At the request of either party at the local level, the parties will negotiate additional amounts of official time for its local officers, i.e., to perform representational activities in conjunction with major projects, including but not limited to negotiating local agreements.
- B. Each Local Branch will allocate among its elected local officers in accordance with its needs the amounts of official time delegated to that Local Branch pursuant to Section 8 (A) above and will communicate that allocation promptly to local management. The Local Branches will have the option to negotiate schedules or “office hours” for the performance of representational duties.

#### Section 9. Effect on Performance Appraisals

Absences for and the conduct of representational activities on official time will not reflect adversely on the performance appraisals of any Union representative. Performance appraisal of such employees will be based solely on their performance of assigned work measured against the elements of their Performance Plan. In the absence of sufficient work for direct evaluation the evaluation period will be extended until the minimum rating period has been met and the employee can be evaluated. The last official rating of record will be the official rating until the minimum rating period has been completed and the new rating of record is completed.

## Section 10. Accountability

- A. Employees will enter on their T&As the correct codes related to labor relations for any official time used for any activity as described in this Agreement and Sections 2-9 of this Article. Employees will be responsible to complete this entry timely.
- B. The Employer will provide a prompt response, to any request for official time from a bargaining unit member or Union representative. If the Employer denies the request for official time in whole or in part, its denial must be in writing at the request of the employee and must state the reasons for the denial.

## Section 11. Scheduling Adjustments

- A. To the extent consistent with staffing needs and accomplishment of the mission, the Employer will make reasonable shift and work-assignment adjustments for Union representatives so they may attend labor-management meetings and participate in those activities listed in Sections 2-9 above during their duty hours without imposing personal hardship upon other employees attempting to carry out their assigned duties and accomplish the mission of the Employer.
- B. The Union representatives' performance of representational activities on official time will not preclude those representatives from participating in local overtime.

## ARTICLE 12. ECONOMY AND EFFICIENCY

### Section 1. Policy

The Employer and the Union will cooperate in the conservation of resources of both Parties and in the effective utilization of the workforce.

### Section 2. Notice to the Employer

- A. The Union will inform the Employer at the appropriate level of authority of any situation of which it is aware where greater efficiency in operations may be achieved. The Employer will give all formal Union suggestions due consideration and a formal reply. The Parties agree to consider suggestions, at the appropriate level, that would be of benefit to the Employer and Union and result in improved work and work life quality in PPQ.
- B. Nothing in this Article will preclude the Employer from exercising its rights, e.g., to discuss, propose and/or negotiate, as appropriate, or the Union from exercising its rights, e.g., to submit proposals, complaints, or topics in response to which the Employer is obligated by law or this Agreement to negotiate, consult, resolve, or otherwise take action.

### Section 3. Recycled Materials

The Employer and the Union recognize the value of promoting the use of recycled materials and the value of recycling in the workplace when reasonable options and opportunities are available. In the event employees either arrange to recycle waste materials generated in the course of work (e.g., office paper) for which the Employer has made no arrangements, and therefore would otherwise be discarded, or generate material themselves (e.g., aluminum cans), any resulting proceeds will be used in a manner determined by those participating in the recycling program, consistent with applicable laws.

## ARTICLE 13. CONSULTATION

### Section 1. Definition

For purposes of this Article, “consultation” will mean a verbal discussion or written communication between representatives of labor and management for the purpose of exchanging views on matters of concern to the bargaining unit and the Employer. Nothing in this Article will be construed as a waiver of, or a limitation upon, the Union’s bargaining rights.

### Section 2. Latitude and Method for Consultation

- A. The appropriate management official of the Employer will consult with the appropriate officials of the Union on those matters of concern to the bargaining unit and Employer. Consultation will also occur on all so-called “permissive areas” of bargaining.
- B. The Employer will consider the views and recommendations of the Union before taking final action on any matter with respect to which the views and recommendations are presented.
- C. Requests for consultation will be communicated between the Parties either orally or in writing.
- D. Consultation between the Parties will be conducted verbally or, if mutually agreeable, in writing. Upon the Union’s request for written consultation, the Employer will transmit the agenda in issue format to the appropriate Union official. A mutually agreeable amount of official time will be granted to the Union representative to respond to all agenda items.
- E. The Employer will respond, normally in writing, to the Union on any matter left open after consultation or upon which the Employer has promised to answer.
- F. Nothing in this Article will preclude the parties from mutually agreeing to not conduct a consultation, i.e., meeting less than contractually agreed to.

### Section 3. Consultation at the National Level

- A. Consultation meetings at the National level will be held two (2) times annually, or more often if mutually agreed to by both Parties. The Union will be permitted to have two (2) representatives present at such meetings on official time. A reasonable amount of official time will be granted to the Union representatives to prepare for consultation. Travel and per diem will be paid by the Employer for the two representatives in accordance with applicable law, rule and regulation, i.e., the Federal Travel Regulations.

- B. During the Union's convention at which the Deputy Administrator or designee is in attendance, official time will be granted to attendees who participate in a consultation meeting at the convention. Travel and per diem expenses for Union Representatives will not be paid by the Employer.

#### Section 4. Consultation at the Regional Level

Consultation meetings at the Regional level will be held semiannually or more often if mutually agreed to by both parties. The meetings may be held in conjunction with management meetings or held separately. Such meetings will be held at a location determined by the Employer, and be conducted on official time. A reasonable amount of official time will be granted to the Union representative to prepare for consultation. Travel and per diem will be paid by the Employer for the representative in accordance with applicable law, rule and regulation.

#### Section 5. Consultation at the Local Level

Consultation at the local level will be held at least quarterly, and may be initiated by either party. Meetings may be held in conjunction with other management meetings, local Partnership council meetings, or held separately. Such meetings will be held at a location determined by the Employer, and be conducted on official time. A reasonable amount of official time will be granted to the Union representative to prepare for consultation. Any allowable local travel costs will be paid by the Employer.

#### Section 6. Consultation at Other Levels

Consultation(s) may be held with other levels of the organization at the option of that management official, e.g., State Plant Health Director. Meetings may be held in conjunction with other management meetings or held separately. Such meetings will be held at a location determined by the Employer, and be conducted on official time. A reasonable amount of official time will be granted to the Union representative to prepare for consultation. As appropriate, travel and per diem will be paid by the Employer for the representative in accordance with applicable law, rule and regulation.

## ARTICLE 14. PARTNERSHIPS

### Section 1. General

The Employer and the Union recognize that partnerships vary by organization, but all have one essential characteristic -- a changed labor-management relationship. As this relationship matures, collaborative problem solving becomes the preferred method of resolving workplace issues. A new culture of successful partnership is characterized by:

- A. An environment that respects and values all employees;
- B. A willingness to share power;
- C. A high level of trust built on both Parties' demonstrated willingness to work in a good faith toward the goal of sharing power and toward resolving mutual issues;
- D. Mutual respect for the point of view and perspective on the issues of each party;
- E. Open and candid sharing of information;
- F. Operating norms that promote and ensure productive discussion of the issues;
- G. Joint decision-making and agreement reached through consensus;
- H. Cooperation even though some may disagree on specific issues;
- I. Jointly designing ways to test and resolve disagreements;
- J. Focusing on interests and common ground to jointly build solutions; and
- K. Problems identified and solved jointly to better serve customers and achieve the mission of the Employer.

### Section 2. Partnership Councils

- A. The Parties recognize that the forum for a Partnership Council is an informal adjunct to and not a substitute for the negotiation process.
- B. The establishment of a Partnership Council may be done if both Parties mutually agree.

C. Each Partnership Council will have the following provisions as operating norms, as well as any governing provisions in supplemental agreements:

1. The Union does not give up any of its rights under the Statute;
2. The presentation of issues to the Partnership Council does not constitute official notice to the Union as defined by 5 U.S.C., Chapter 71, and this Agreement;
3. The Parties will make decisions by consensus;
4. Discussions before the Council will not be used in third-party proceedings;
5. The council will normally have equal number of members from both the Employer and the Union.

## ARTICLE 15. NOTICE TO EMPLOYEES

### Section 1. Written Notice to the Union

When the Employer presents written notice to an employee for any of the appealable actions listed below, the Employer will provide the employee with two copies of the notice, one of which states, "THIS COPY MAY AT YOUR OPTION BE FURNISHED TO YOUR NAAE REPRESENTATIVE."

1. A reduction in force;
2. Leave restriction;
3. Denial of a within-grade salary increase;
4. A fitness for duty examination;
5. Reassignment or transfer;
6. An adverse action; or
7. A disciplinary action.

### Section 2. Changes in Personnel Practices

The Employer will send copies of changes in personnel practices and policies ripe for implementation electronically to each employee and then placed on an electronic bulletin board for a period of 12 months from date of notification to employees. The changes will also be provided by Labor Relations to the Union President. See Article 22 Negotiation Provisions, Section 3.

All employees, including employees primarily performing field work, will be given reasonable time to access Employer provided electronic information.

### Section 3. Notice of Representation

The Employer will notify all new employees that the Union is the exclusive representative of the employees in the unit.

### Section 4. Information with the National Contract

The Employer will distribute to each new employee, at the time of his/her orientation, a copy of this Agreement and the following to be provided by the Union: a copy of the current Federal Service Labor-Management Relations Statute as set forth in the CSRA;

basic information such as descriptive material about the Union; and lists of Union officers and their phone numbers. None of the information furnished by the Union will contain derogatory information, allegations or remarks concerning the Employer. The Union will provide this information to the Employer, at no expense to the Employer, to no more than five (5) locations designated by the Employer.

#### Section 5. Payroll Statement

The Employer will continue to provide each employee a biweekly copy of the payroll statement showing pay, deductions and leave status together with the total cumulative yearly earnings and total cumulative deductions in each category. The statement may be provided electronically or as a hard copy as appropriate. For more information on the earnings and leave statement, refer to the Appendix of this Agreement.

#### Section 6. Workers' Compensation

The Employer will make available on each region's Safety and Health website copies of the CA-550, CA-1 and CA-16. The Employer will promptly provide the appropriate OWCP forms to an employee reporting an occupational illness or disease. The Employer will provide reasonable assistance in the completion of the required form(s) and will review the form(s) for completion prior to submitting the completed form(s) to OWCP within the required time frames. When a medical emergency arises, the Employer will take appropriate action.

#### Section 7. Code of Conduct

The Employer will periodically direct the attention of all employees to the Code of Conduct and Employee Responsibilities, and their responsibilities there under, through orientation sessions, performance appraisal reviews, and formal and informal discussions. The Employer will not present conduct-related information in a threatening or intimidating manner.

#### Section 8. Strikes

The Union recognizes that it does not have the right to strike against the Government of the United States of America and will not willingly participate in or encourage any illegal strike, work stoppage, or slowdown. The Union will assist the Employer in preventing and/or stopping employees from participating and/or supporting any illegal strike, work stoppage, work slowdown, or picket. The Employer recognizes its obligation to insure

the safety and welfare of all employees and will take appropriate action prior to requiring employees to cross picket lines in the performance of their duties.

#### Section 9. Privacy Act

Privacy Act requirements will be met when information is collected from employees.

## ARTICLE 16. GRIEVANCE PROCEDURE

### Section 1. Scope

- A. The purpose of this Article is to provide a prompt and orderly method for the processing and disposition of grievances which may arise during the term of this Agreement.
- B. Except as set forth in Section 4 below, the procedures set forth in this Article will be the exclusive procedures available to bargaining unit employees and the Parties for resolving grievances which fall within its coverage.

### Section 2. Policy

- A. The Employer and the Union recognize and endorse the importance of addressing grievances promptly. As grievances are likely to arise in any work situation, the initiation of a grievance in good faith will not be cause for resentment on the part of the supervisors or for questioning an employee's desirability or loyalty to the Agency.
- B. The Parties to this Agreement endorse the concept that concerns and dissatisfactions, which might develop into grievances, should be resolved at the lowest administrative level and on an informal basis where possible. Therefore, the Union designated representatives and representatives of the Employer are encouraged to meet as necessary to discuss and attempt resolution of matters or problems of concern to either Party, but not limited to employee concerns or dissatisfactions.
- C. Grievances initiated by the Union that are national in scope will be served on the Labor Relations Branch Chief. Requests for reasonable extensions of time to respond to grievances will be granted.
- D. Grievances will be assigned to an Employer representative with the authority to deal with the issue.
- E. The Employer recognizes the importance of addressing and solving the grievances within the workplace, even when a grievant misses a time frame that the Employer claims precludes further processing of the grievance. The Employer may take steps necessary to address the negative working conditions alleged in the grievance.
- F. Grievants, Union representatives, and other employees involved in a grievance will be assured freedom from restraint, interference, coercion, discrimination, intimidation, or reprisal.

### Section 3. Definition

For the purpose of this Article, grievance means any complaint:

- A. By any employee in the bargaining unit concerning any matter relating to the employment of the employee;
- B. By the Union concerning any matter relating to the employment of any employee within the bargaining unit; or
- C. By any bargaining unit employee, the Union, or the Employer concerning:
  - 1. The effect or interpretation, or a claim of breach, of this Agreement; or,
  - 2. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

### Section 4. Exclusions

- A. The following matters are specifically excluded from the coverage of this Article:
  - 1. Any claimed violation of Subchapter III of Title 5 of the United States Code (relating to prohibited political activities);
  - 2. Retirement, life insurance, or health insurance;
  - 3. A suspension or removal under Section 7532 of Title 5 of the United States Code (in the interest of national security);
  - 4. The classification of any position which does not result in the reduction in grade or pay of any employee;
  - 5. Any examination, certification, or appointment;
  - 6. Any termination of benefits payable under Chapter 53, Subchapter VI of Title 5 of the United States Code (relating to grade and pay retention in certain reduction in grade actions);
  - 7. Non-selection to a position filled pursuant to Article 45 Voluntary Transfers;
  - 8. Termination of a probationary employee during the probationary period, except as permitted by law;
  - 9. Non-selection for noncompetitive and competitive promotion from a group of properly ranked and certified candidates, except to the extent

the grievance challenges the process or procedures used resulting in the non-selection, including but not limited to disparate treatment, pre-selection, prohibited discrimination, or improper panel make-up;

10. Notices of proposed actions which, if effected, would be covered under this procedure; and,

11. Granting of, failure to grant, or the amount of a performance award, quality step increase, or other kinds of honorary or discretionary awards, except to the extent the grievance challenges the process or procedure used.

B. The following matters are excluded from the coverage of this Article when an affected employee, at his/her option, elects to use a statutory appeals procedure:

1. A formal complaint of discrimination filed pursuant to 29 C.F.R., Part 1614 and filed after a grievance filed pursuant to this Agreement;
2. Any action taken under Reduction-In-Force (RIF) procedures appealable to the Merit Systems Protection Board (MSPB);
3. An alleged prohibited personnel practice, including, but not limited to a prohibited personnel practice under Section 2302(b)(1) of Title 5 of the United States Code (relating to equal employment opportunity violations); and
4. Matters covered by Sections 4303 and 7512 of Title 5 of the United States Code (relating to reduction in grade or removal of an employee for unacceptable performance and adverse actions taken for cause).

## Section 5. Initiation

- A. Grievances under this Article may be initiated by bargaining unit employees either singly or jointly. The Union may initiate grievances in accordance with Sections 3(B) and 3(C) above. The Employer may initiate grievances in accordance with Section 3(C) above.
- B. The grievant, and/or Union Representative, if any, will be entitled to a reasonable amount of official time, taking into account workload considerations, to prepare (e.g., gather facts and information, etc.), consult with a Union Representative, and present the grievance under this procedure.

## Section 6. Consolidation

When two (2) or more employees file individual grievances involving the same or similar facts, events, and the same or similar issues arising out of the same incident, the grievances will, to the extent permitted by law, be promptly consolidated for processing together through the grievance and arbitration procedure.

## Section 7. Content

- A. A grievance will be discussed informally between the grievant and the first line supervisor either orally or in writing. In presenting the informal grievance, the grievant will make clear that the matter is a grievance, the subject of the grievance, and the specific relief sought. If it is apparent that the supervisor is unable to resolve the grievance or does not have the authority to resolve the grievance, then the grievant should be so informed immediately. In all other cases, the recipient of the informal grievance will render a clearly identified decision to the grievant within ten (10) calendar days of receipt of said grievance. The grievance must be appealed formally within fourteen (14) calendar days of receipt of the informal decision or fourteen (14) calendar days from the date the informal decision was due, whichever is shorter. All deadlines fixed in this section may be extended by mutual consent of the grievant's representative, or the grievant if unrepresented, and the Employer.
- B. All formal grievances under this Article will be filed in writing with the aggrieved employee's servicing Labor Relations Specialist (LRS) or designee at the Program Regional Office. The grievance will be signed by the aggrieved employee(s) and/or the Union Representative.
- C. The written grievance will contain the following:
  - 1. The name of the management official(s) or others alleged to have committed the action grieved, including position title, grade, and organizational unit, if known;
  - 2. To the extent reasonably possible and if known, reference to the specific Article(s) and Section(s) of this Agreement, or subordinate agreements, or to the law, rule, or regulation alleged to have been violated, or to the employment condition in dispute;
  - 3. Statement of the circumstances giving rise to the grievance including the date, if applicable, of the alleged violation;
  - 4. Name, position title, grade, and organizational unit of the grievant(s) with address(es) and work telephone number(s) for communication;
  - 5. Date and name of supervisor to whom the informal grievance was submitted;

6. Date grievance is submitted to the employee's servicing LRS or designee;
7. Name of Union Representative (if any); and
8. General and specific relief and corrective action desired. Grievances also containing the language, "any other remedies that may be appropriate in accordance with law and regulation" or words of similar meaning, are legally sufficient to identify the remedy requested when coupled with an expression of specific relief and corrective action desired.

#### Section 8. Representational Rights

- A. An employee will have the right to be represented and advised by a Union Representative, designated by the Union, during the processing of any grievance filed under this Article. An employee will also have the right to be accompanied by a Union Representative, designated by the Union, at any formal meetings which the employee may attend during the processing of the grievance.
- B. An employee or group of employees will have the right to file grievances under this Article without representation by the Union. If the Employer elects to adjust, resolve, or remedy the grievance of the non-represented employee(s), the Employer will give the Union an advance written copy of the grievance and grievance answer, notice of the adjustment and an opportunity to bargain to the extent permitted by law if the Union asserts that adjustment may have impact on working conditions of bargaining unit employees other than the grievant(s), and the adjustment must be consistent with the terms and provisions of this Agreement and any local supplements thereto. The Union will be given an opportunity to be present at any formal meeting held where the grievance is discussed.

#### Section 9. Filing Deadline

- A. All grievances under this Article must be filed within thirty (30) calendar days following:
  1. The date of the incident which gives rise to the grievance; or
  2. The date upon which the aggrieved became aware of the matter or incident out of which the grievance arises.
- B. Grievances which are continuing in nature may be raised at any time.

- C. A grievance may be amended at any time if new information is obtained in response to a 7114(b) request submitted prior to invocation of arbitration. The Labor Relations Branch Chief will be promptly notified of the amendment prior to arbitration.
- D. A grievance amended based upon information received in response to a 7114(b) request submitted after invocation of arbitration may be returned to the Step 1 Responsible Official unless the Parties have mutually agreed to a different course of action.
- E. In the event the Employer returns a grievance due to an amendment to the grievance, alleged inappropriate filing level, or other technical error, i.e., Section 7C of this Article, and the grievant resubmits the grievance, the elapsed time will not be part of the thirty (30) days referred to in subsection A above. The grievant will have up to 30 calendar days from date of receipt to resubmit the grievance.
- F. If at any point in the grievance process a grievant's representative, or the grievant if unrepresented, and the Employer mutually agree with the grievant to enter into any conflict or alternative dispute resolution procedures applicable, all time frames will be held in abeyance pending the outcome of such procedure.
- G. All deadlines fixed in this section may be extended by mutual consent of the grievant's representative, or the grievant if unrepresented, and the Employer.

## Section 10. Formal Steps

### A. Step 1.

1. If no satisfactory settlement is reached informally in Section 7A above or if there is no decision within ten (10) calendar days, then a written and signed grievance must be presented to the grievant's servicing Labor Relations Specialist (LRS) or designee. The LRS will promptly supply the grievant and the grievant's Regional VP with acknowledgement of receipt of the grievance. Acknowledgement will include: names of the grievant(s), the servicing LRS or designee, the management official(s) identified as responsible for the action grieved, and the Step 1 responsible official designated by the Employer. The acknowledgement will also contain the date the grievance was received by the LRS or designee, the subject of the grievance, and the telephone numbers for the LRS (or designee) and the Step 1 Responsible Official.
2. The grievant and/or the assigned Union Representative will meet in person or by telephone with the Step 1 Responsible Official at a mutually agreed upon time to discuss and attempt to resolve the

grievance. Normally this meeting will take place not later than ten (10) calendar days after receipt of the grievance unless the Parties mutually agree to some other date. Normally the in-person meeting will take place at the employee's work location unless the Parties mutually agree otherwise. If resolution is not reached, the Parties may, upon mutual agreement, refer the dispute to a mediator.

3. If mediation is elected, the following will control the mediation process:
  - a. Mediator fees will not be incurred or paid by either Party. If mediators from third party neutrals, shared mediator programs, or other mediation services are not available without cost, mediation will not be scheduled.
  - b. Mediation must be scheduled and completed within thirty (30) calendar days of the agreement to request assistance. If mediation cannot be completed within this time frame, it will not be scheduled or, if scheduled, will be terminated.
  - c. If mediation is completed, the Employer's (or Union's, if grievance is Employer initiated) Responsible Official will have seven (7) calendar days after completion of the mediation to provide the employee with a written decision on his/her grievance.
4. If mediation is not elected or is canceled prior to completion, the Step 1 Responsible Official will provide the grievant and the Union with a written decision on the grievance within twenty-one (21) calendar days of receipt of a timely filed grievance. Included in this decision will be a statement indicating the grievant's right to submit the grievance to Step 2, as well as the name and title of the Step 2 Responsible Official to whom such grievance must be submitted.
5. If the Deputy Administrator (or designee) is the Step 1 Responsible Official, Steps 2 and 3 of the grievance procedure are waived. The grievant will be informed of the Union's right to invoke arbitration.
6. Grievances over the removal of an employee may, at the election of the employee, be filed directly with the Deputy Administrator or designee. The Employer will have thirty (30) days from receipt of the grievance to issue a decision.

#### B. Step 2.

1. If the grievant is dissatisfied with the response at Step 1, he/she may appeal the grievance, including a copy of the Step 1 grievance, the decision received, and any supporting documentation, to the Step 2 Responsible Official named in the Employer's answer to the Step 1 grievance. It must be appealed within fourteen (14) calendar days of

receipt of the Step 1 decision or fourteen (14) calendar days from the date the Step 1 decision was due, whichever is shorter.

- a. If no Step 1 decision was rendered, or if the Employer's answer to the Step 1 grievance does not name a Step 2 Responsible Official, a Step 2 grievance, including all of the information submitted at Step 1, must be filed with and resubmitted to the servicing LRS or designee.
  - b. The LRS (or designee) or Step 2 Responsible Official will promptly supply the grievant and the grievant's Regional VP with acknowledgement of the grievance filed at Step 2. Notification will include: name of grievant(s), the management official(s) believed responsible for the action grieved, and the Step 2 Responsible Official designated by the Employer. The notice will also contain the date the grievance was received by the LRS or Step 2 Responsible Official, subject of the grievance, and the telephone numbers for the Step 2 Responsible Official.
2. If a meeting is requested, and the Step 2 Responsible Official believes that either an in-person or telephonic meeting to clarify facts and issues that would resolve or be helpful in resolving the matter, the Step 2 Responsible Official will arrange for the meeting. Such a meeting will normally be scheduled within ten (10) calendar days from receipt of the Step 2 grievance.
  3. The Step 2 Responsible Official will provide the grievant and the Union with a written decision within twenty-one (21) calendar days of receipt of a properly filed Step 2 grievance. Included in this decision will be a statement indicating the grievant's right to appeal the Step 3 grievance to the Deputy Administrator or designee. If the Deputy Administrator is the Step 2 Responsible Official, Step 3 of the grievance procedure is waived. Included in the Step 2 decision will be a statement indicating the Union/s right to invoke arbitration.

### C. Step 3.

1. If the grievant is dissatisfied with the decision at Step 2, he/she may appeal the grievance, including a copy of the grievances submitted at Step 1 and Step 2 of the procedure, the decisions received at Step 1 and Step 2 of the procedure, or a statement that no timely response at Step 1 or Step 2 of the procedure was received, and any supporting documentation, to the Deputy Administrator or designee. It is not necessary to include a restatement of the circumstances if the grievance has not been amended. It must be submitted within fourteen (14) calendar days of receipt of the Step 2 decision or within fourteen (14) calendar days of the date the decision was due, whichever is shorter. The Employer will acknowledge receipt of the grievance and furnish the grievant's Regional Vice President a copy of all material the

grievant submits to the Deputy Administrator within fourteen (14) days of its submittal.

2. A meeting may be held to attempt to resolve the grievance upon the mutual agreement of the grievant's representative, or the grievant if unrepresented, and the Step 3 Responsible Official.
3. The Deputy Administrator will provide the grievant and the Union with a written decision within fourteen (14) calendar days of receipt of a timely filed Step 3 grievance. Included in this decision will be a statement indicating the Union's right to invoke arbitration.

#### Section 11. Employer's Grievance Procedure

A. All Employer grievances under this Article will be filed in writing with the appropriate Union Regional Vice President. The grievance will be signed by the aggrieved manager(s) or Employer representative. If the Union official to have committed the alleged action grieved is an NAAE Executive Officer, the grievance will be filed directly with the National President.

B. The written grievance will contain the following:

1. The name of the Union official or other alleged to have committed the action grieved, including position title, grade, and organizational unit, if known;
2. Reference to the specific Article(s) and Section(s) of this Agreement, or subordinate agreements, or to the law, rule, or regulation alleged to have been violated;
3. Statement of the circumstances giving rise to the grievance including the date, if applicable, of the alleged violation;
4. Name, position, title, grade, and organizational unit of the grievant(s) with address(es) and work telephone/fax number(s) for communication;
5. Date grievance is submitted to the appropriate Union Regional Vice President or National President;
6. Name of Management Employer Representative (if any); and
7. General and specific relief and corrective action desired.

C. Deadlines for filing Employer grievances will be governed by Section 9 parts A, B, E and F.

#### D. Step 1.

1. A written, signed grievance must be presented to the Union's Regional Vice President or National President, as appropriate. The Union Official to whom the grievance is submitted will promptly supply the grievant or the grievant's representative with notification of the filed grievance. Notification will include: date the grievance was received, the subject of the grievance, names of grievant(s), the Union official(s) believed responsible for the action grieved, the Responsible Official designated by the Union, and the telephone number(s) for the Union's Responsible Official.
2. The grievant and/or the assigned Employer representative will meet in person or by telephone with the Union Responsible Official at a mutually agreed upon time to discuss and attempt to resolve the grievance. If possible, that meeting should take place not later than ten (10) calendar days after receipt of the grievance unless all Parties mutually agree to some other date. If resolution is not reached, the Parties may, upon mutual agreement, refer the dispute to a mediator. The procedure for mediation will be governed by Section 10.A.3.
3. If mediation is not elected or is canceled prior to completion, the Union's Responsible Official will provide the grievant or the grievant's representative with a written decision on the grievance within thirty (30) calendar days of receipt of a timely filed grievance. Included in this decision will be a statement indicating the grievant's right to submit the grievance to the National President.
4. If the National President is the Step 1 Responsible Official, Step 2 of this procedure is waived and the Employer will be informed of its right to invoke arbitration, through election of the Deputy Administrator according to the procedure(s) in Article 17 Arbitration, if the grievance is unresolved.

#### E. Step 2.

If the Employer is dissatisfied with the resolution at Step 1 above, it may submit the grievance, including a copy of the decision received, and any supporting documentation, to the National President or his/her designee. The submission must be made within fourteen (14) calendar days of receipt of the Step 1 decision.

1. The National President or his/her designee will promptly supply the grievant or the grievant's representative with notification of the filed grievance. Notification will include the date in which the grievance was received, and name/phone number of the Union designated Responsible Official.

2. A meeting may be held to attempt to resolve the grievance upon the mutual agreement of the Parties.
3. The National President or his/her designee will provide the Employer or Employer's representative with a written decision within thirty (30) calendar days of receipt of a timely filed grievance. Included in this decision will be a statement indicating the Employer's right to invoke arbitration, through election of the Deputy Administrator according to the procedure(s) in Article 17 Arbitration, if the grievance is unresolved.

#### Section 12. Initiation of Arbitration

Arbitration will be initiated in accordance with Article 17 Arbitration.

#### Section 13. Application

- A. Any of the time limits or steps set forth in this Article may be waived or extended by mutual agreement of the Parties.
- B. "Days" means calendar days and if the day an action must be completed under this Article falls on a non-work day, the due date will be the next regularly scheduled Employer business day, Monday through Friday.
- C. Any grievance response or appeal to the next step or an invocation of arbitration will be considered timely if the response is postmarked, tendered to a messenger or overnight commercial delivery service, sent by electronic mail (e-mail), facsimile transmission or delivered to the appropriate individual designated in this Article no later than the final day of the designated time period.

#### Section 14. Information

- A. Upon written request, the Employer will provide the grievant or the grievant's authorized representative all reasonably available and necessary information, as required and not expressly excluded by 5 U.S.C. 7114(b) (4), for determining whether a grievance should be filed and/or for processing a filed grievance. This information will be provided promptly and without cost to the Union or employee, unless prohibited by the terms of 7114 or other laws or regulations. If the Employer denies any requested information, the Employer will state in writing the reasons for denying the information.
- B. The deadline for timely filing a grievance under this Article will be tolled on the date the Union or Employee (if the Union's authorized representative) submits a request for information to the Employer and will not resume until the Union or employee receives and has had a reasonable opportunity to review all or

substantially all of the information to which it or he/she is entitled under Section 14.A of this Article.

- C. If, for any reason, the Union or employee submits the request for information, pursuant to 7114(b) (4), to the Employer subsequent to the date the grievance is filed, the grievant has ten (10) days following the receipt of all information requested (and not legally excludable under 7114(b) (4)) within which to amend his/her grievance, including the basis for grievance and the relief requested.

## ARTICLE 17.      **ARBITRATION**

### Section 1.      Exclusivity

- A. The National President of the Union on behalf of the Union will have thirty (30) calendar days after the actual receipt of the Deputy Administrator's decision to invoke arbitration. If arbitration is not invoked by the National Union President or his/her designee within the thirty (30) calendar days, the decision will be final and binding.
- B. The National President or his/her designee will invoke arbitration by informing the Deputy Administrator in writing of the Union's election.
- C. The Deputy Administrator on behalf of the Employer will have thirty (30) calendar days after the actual receipt of the National Union's decision to invoke arbitration. If arbitration is not invoked by the Deputy Administrator or his/her designee within the thirty (30) calendar days the decision will be final and binding.
- D. The Deputy Administrator or his/her designee will invoke arbitration by informing the National President in writing of the Employer's election.
- E. If the party invoking arbitration is the Union, it may opt to postpone the arbitration hearing date until the FLRA has rendered its decision if the Union has filed an unfair labor practice charge alleging information relevant to the case has been withheld.

### Section 2.      Submission of the Issue

The Parties agree that a joint submission of the issue is the most desirable and will work diligently to arrive at one. If the Parties fail to agree on a joint submission of the issue for arbitration, each Party will submit a separate statement to the arbitrator who will determine the issue to be heard.

### Section 3.      Selecting the Arbitrator

- A. Upon receipt of notice by either Party to take a grievance to arbitration, the invoking Party will request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven impartial persons qualified to act as arbitrators whose offices are located within close proximity of the requested hearing site. The requested hearing site will be the city where the grievant's duty station is located unless the Union and the Employer mutually agree to a different site. An arbitrator may also be chosen by mutual agreement of the Employer and the Union.

- B. The Parties will confer within fourteen (14) calendar days after the receipt of the FMSC list for the selection of an arbitrator, unless an extension of time is mutually agreed upon. Selection will be made by each Party alternating striking off one potential arbitrator's name from the list until one arbitrator remains. The Party proceeding first will be based on rotation. If either Party refuses to participate in the selection process, by written document, the other Party will make a selection of an arbitrator from the list.

#### Section 4. Arbitration Costs and Location

- A. Except as provided below and in Section 8G, the Parties will share equally the expenses for the arbitration, including but not limited to the compensation and expenses of the arbitrator and the costs of any non-government hearing rooms or other facility that may be used.
- B. If either Party requests postponement or cancellation of the arbitration proceedings, except for the reason expressed in Section 1E, the requesting Party will bear any and all arbitration expenses the arbitrator incurs or assesses as a direct result of the postponement or cancellation. If both Parties agree to postpone or cancel an arbitration proceeding, or it is cancelled or postponed for the reason expressed in Section 1E, they will share equally the costs of any fees the arbitrator charges.
- C. In any grievance where the Parties settle the matter prior to or before the conclusion of an arbitration hearing, both Parties will share equally all arbitrator and hearing room costs incurred because of the cancellation of the hearing.
- D. If a Party requests a hearing transcript, the Party requesting the transcript will be liable for the entire cost. If both Parties request a transcript or if neither Party requests a transcript, but the arbitrator requests one, the entire cost will be shared equally, unless the arbitrator awards the costs to the prevailing Party.
- E. The arbitration hearing will be held, if possible, within the city where the grievant's duty station is located at a government facility and during regular day shift hours.

#### Section 5. Scope of Authority

- A. The arbitrator will have no authority to change, alter, modify, delete, or add to the terms and provisions of this Agreement and/or applicable policies and regulations, but will have the right to interpret them.
- B. The arbitrator will have the authority to make all arbitrability and/or grievability determinations.

- C. If either Party declares a grievance non-arbitrable or non-grievable, the original grievance will be considered amended to include the issue of non-grievability or non-arbitrability and, at the sole discretion of the arbitrator, may be heard by the arbitrator at the time of the hearing on the merits.

## Section 6. Arbitration Procedure

The Parties may mutually agree to expedited arbitration or a formal arbitration hearing. If the Parties do not agree on the process, a formal arbitration hearing will be held.

### I. Formal Arbitration

- A. Upon selection of the arbitrator in a particular case, the representatives of the Parties will communicate promptly with the arbitrator and each other in order to select a mutually agreeable date for the arbitration hearing.
- B. If the Parties are unable to agree to a hearing date(s) within sixty (60) calendar days after invocation, either Party may contact the arbitrator who will then select the hearing date(s). That date will be no sooner than forty-five (45) calendar days and no later than seventy-five (75) calendar days from the date the arbitrator is contacted to select the hearing date, subject to the arbitrator's availability.
- C. The arbitrator is authorized to hold an ex parte hearing if a Party refuses to participate.

### II. Expedited Arbitration

In some instances, the Parties may mutually agree that the formal procedures set forth in this Article are too time consuming, formal, and costly for the nature of the dispute. In such instances the Parties may mutually agree on one of the following three expedited arbitration procedures. If the Parties cannot agree on the process, a formal hearing will be held, pursuant to Part I of this Section.

- A. *A Decision on the Record.* A stipulation of facts to the arbitrator can be used when both Parties agree to the facts at issue and an oral hearing would serve no purpose. In this case, data, documentation, etc., stipulations are jointly submitted to the arbitrator with a request for a decision based on the facts presented as well as any written argument setting forth the position of the Party electing to present arguments.
- B. *Arbitrator Inquiry.* An arbitrator inquiry may be used to expedite the resolution of the grievance. In this case, the arbitrator would make such inquiries as he/she deems necessary, prepare a brief written summary of the facts and render an on-the-spot decision with a written summary opinion. The Parties may mutually agree to eliminate the summary opinion.

- C. *Mini-Arbitration.* In this case, an oral hearing will be held, to commence within ten (10) days after the selection of the arbitrator. The arbitrator will prepare a brief written summary of the facts with or without the benefit of briefs and render a written decision with a summary opinion. The Parties may mutually agree to eliminate the summary opinion.

Formal arbitration hearing should be used whenever necessary to develop and establish the facts relevant to the issue. In this case, a formal hearing is convened and conducted by the arbitrator pursuant to Part I of this Section.

#### Section 7. Arbitration Decisions

- A. The arbitrator will be requested to render a decision and remedy to the Parties as quickly as possible, but in any event, no later than thirty (30) calendar days after the closing of the hearing record and the filing of any post-hearing briefs unless the Parties otherwise agree. In expedited arbitration cases requiring a hearing, the arbitrator will issue his/her written award within five (5) working days after the close of the hearing and the filing of any briefs.
- B. The arbitrator's decision will be final and binding except for the appeal rights set forth in the Statute. The arbitrator will have the authority to make an aggrieved employee whole to the extent such remedy is not contrary to law, including but not limited to the authority to award back pay and interest, attorney's fees, reinstatement, and retroactive promotion where appropriate and to issue an order expunging the record of all references to a disciplinary, adverse, or unacceptable performance action if appropriate. The arbitrator may also provide such other remedy as the law may allow.
- C. An arbitrator will retain jurisdiction to resolve disputes concerning back pay calculations, award of attorney's fees, and clarifying his/her decision for the employee covered by the original grievance.

#### Section 8. Hearing Conduct

- A. Copies of all documents, including a certificate of service, filed with the arbitrator at any stage of the arbitration proceeding will be simultaneously served on the other Party.
- B. Neither Party may submit a pre-hearing brief except upon the specific request of the arbitrator or by mutual consent of the Parties.
- C. The rules of evidence will be liberally applied.

- D. Except as expressed in this Agreement, the arbitrator will determine the procedures to be followed at the hearing and will explain such procedures to both Parties at the outset of the hearing.
- E. The Party invoking arbitration will present its case first, except in disciplinary or adverse actions, in which case the Employer will present its case first.
- F. The grievant, his/her representative, and all employees who are called as witnesses will be excused from duty without charge to leave to the full extent necessary to participate in the arbitration, including the travel to the hearing, if any, and the Employer will provide, or reimburse costs for, the travel of such grievant and his/her representative, and travel not requiring an approved travel authorization for any witness(es) necessary.
- G. The Employer will make employees available as witnesses when requested by the Union. If the Employer determines it is not administratively practicable to comply with the Union's request, or otherwise declines to produce the witness, and if the arbitrator determines the employee's testimony is relevant, the arbitrator may order the Employer to produce the witness or, as a last resort, postpone the hearing and assess all hearing and arbitration costs incurred as a result of the postponement against the Employer. However, the Union may, in its sole discretion, elect to submit an affidavit in place of the direct testimony of the employee who is unavailable for reasons beyond the control of the employee or the Union.
- H. The arbitrator will have the obligation of expecting the representatives of the Parties to bring before him/her all necessary facts and considerations. This duty includes drawing an appropriate adverse inference when a Party fails to present facts or witnesses that the arbitrator deems necessary and relevant.
- I. Witnesses at a hearing must testify in the presence of the aggrieved employee and his/her representative unless waived by the employee and the employee's representative. Both Parties will have the right and opportunity to cross examine all witnesses except as provided in Section 8(G) above.
- J. Witnesses will be assured freedom from restraint, interference, coercion, discrimination, or reprisal by either Party in presenting their testimony.

## Section 9. Remand

In cases where a reviewing body has modified or rejected an arbitration decision solely because the remedy was ruled illegal, the case will be remanded to the arbitrator to fashion a new remedy, if appropriate and if so ordered by the reviewing body.

## Section 10. Bargaining History

Bargaining history may not be used in an arbitration hearing unless the Party proposing to use it has notified the other at least fifteen (15) days prior to the hearing of its intent to use it. If a Party gives notice of intent to use bargaining history, the other Party also may use it without providing notice.

#### Section 11. Burdens of Proof

- A. When an employee elects to raise a matter covered by 5 U.S.C. 4303 (reduction in grade or removal of an employee for unacceptable performance) in the negotiated grievance procedure and the Union moves the matter to arbitration, the arbitrator will be governed by 5 U.S.C. 7701(c) (1) (A) – i.e., the decision of the Employer will be sustained only if the Employer’s decision is supported by substantial evidence.
  
- B. When an employee has elected to raise a matter covered by 5 U.S.C. 7512 (adverse actions taken for cause) in the negotiated grievance procedure and the Union moves the matter to arbitration, the arbitrator will be governed by 5 U.S.C. 7701(c) (1) (B) – i.e., the decision of the Employer will be sustained only if the Employer’s decision is supported by a preponderance of the evidence.

## ARTICLE 18. CONFLICT/PROBLEM RESOLUTION

### Section 1. General Provisions

- A. The Parties recognize the need to address issues of concern in an expedient manner. The use of alternative dispute resolution methods, e.g., informal discussion, conflict resolution boards, or the Employer's Collaborative Resolution Program or successor which consists of mediation, can prove to be a viable option benefiting both Parties, including individual employees.
- B. Both the Employer and the Union mutually endorse the concept of a bilateral conflict resolution process. Additionally, both Parties will work together to either utilize an existing alternative dispute resolution forum, or to develop an alternative dispute resolution forum. The goal of these forums is to attempt to resolve conflicts or disputes. These forums should encourage, but cannot mandate, employees to meet in an attempt to voluntarily resolve disputes of all kinds.
- C. The intent of the forum will be to provide an environment of open communication and problem-solving; provide an array of methods to address work place disputes, with the desired effect of promoting the efficiency of the Agency by resolving disputes early and with little, if any, disruption to work operations; see consensual resolution of disputes; and, possibly reduce processing time and expense.

### Section 2. Process Provisions

- A. The Parties agree that time limits for statutory processes, e.g., ULPs, EEO Complaint Process, cannot be extended if alternative dispute resolution is utilized. The Parties also agree that the time limits for the negotiated grievance procedure will be held in abeyance if alternative dispute resolution is utilized.
- B. The employee may request and be given the right to representation, Union or otherwise, during the mediation attempt.
- C. The mediator does not have the authority to compel settlement.
- D. The Parties agree that the alternative dispute resolution method utilized cannot be used as a substitute for any other avenue of redress the employee may wish to pursue including the negotiated grievance procedure, the EEO Complaint Process or any other statutory appeals procedure.

E. The Parties understand that if a settlement is reached through the alternative dispute resolution method, the employee may waive his/her right to process the issue in other forums.

## ARTICLE 19. UNFAIR LABOR PRACTICE

### Section 1. Policy

The Parties will attempt to resolve differences and disputes informally at the lowest level. Prior to filing an Unfair Labor Practice (ULP) charge with FLRA, the Parties will attempt to discuss the alleged violation of the law with the charged Party. Resolutions will be attempted.

If attempts at resolution have been unsuccessful, submit the alleged violation on the appropriate FLRA form. See example of form in the Appendix of this Agreement. Due to the complex nature of these forms please contact your Regional Vice President or Labor Relations Specialist prior to filing. Nothing in this Article will be construed as a waiver of any statutes or government rule or regulation.

### Section 2. Instructions

#### Instructions on Filing a Charge with the Federal Labor Relations Authority (FLRA)

- A. The alleged ULP violation will be submitted on the appropriate FLRA form.
- B. The prescribed FLRA form will contain at a minimum the following information:
  1. Name, address, and telephone number of person(s) making the charge;
  2. The name, address, and telephone number of the Agency against whom the charge is made;
  3. A clear and concise statement of the facts and a statement of the section(s) and subsection(s) of the statute alleged to have been violated; and
  4. A statement of any other procedure invoked involving the subject matter of the charge and the results, if any (i.e., grievance procedure, Federal Service Impasses Panel (FSIP), Federal Mediation and Conciliation Service (FMCS), Equal Employment Opportunities Commission (EEOC), Merit Systems Protection Board (MSPB), or Federal Labor Relations Authority (FLRA) (negotiability appeal)).
- C. The charging Party will submit to the Regional Director of FLRA any supporting evidence and documents.

- D. Transmission of the documents to the charged Party and FLRA will be in accordance with FLRA regulations and the ULP form instructions.
- E. Upon the filing of a ULP charge, the charging Party will be responsible for the service of a copy of the charge, without the supporting evidence and documents, upon the charged person(s).
- F. The Employer will provide the name and address of the Party designated to represent the head of the Agency who must be served with the ULP charge. The Employer will provide the Union, on a continuing basis, any and all changes in the Employer's representatives.

## ARTICLE 20. PROTECTION AGAINST PROHIBITED PERSONNEL PRACTICES

### Section 1. Definition of “Prohibited Personnel Practice” and “Personnel Action”

- A. For the purpose of this Article and in accordance with 5 U.S.C. 2302, “prohibited personnel practice” means any action described in Section 2 of this Article.
- B. For the purpose of this Article, “personnel action” means:
  1. An appointment;
  2. A promotion;
  3. An action under Chapter 75 of Title 5 of the United States Code or other disciplinary or corrective action;
  4. A detail, transfer, or reassignment;
  5. A reinstatement;
  6. A restoration;
  7. A reemployment;
  8. A performance evaluation under Chapter 43 of Title 5 of the United States Code;
  9. A decision concerning pay, benefits, or awards or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subsection; and
  10. Any other significant change in duties or responsibilities which is inconsistent with the employee’s salary or grade level.

### Section 2. Employer Prohibitions

In accordance with 5 U.S.C. 2302, the Employer will not:

- A. Discriminate for or against any employee or applicant for employment:
  1. On the basis of race, color, religion, sex, or national origin, as prohibited under Section 717 of the Civil Rights Act of 1964;

2. On the basis of age, as prohibited under Sections 12 and 15 of the Age Discrimination in Employment Act of 1967;
  3. On the basis of sex, as prohibited under Section 6(d) of the Fair Labor Standards Act of 1938;
  4. On the basis of handicapping condition, as prohibited under Section 501 of the Rehabilitation Act of 1973; or
  5. On the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation.
- B. Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of:
1. An evaluation of the work performance, ability, aptitude or general qualifications of such individual; or
  2. An evaluation of the character, loyalty, or suitability of such individual.
- C. Coerce the political activity of any person (including the providing of any political contribution or service) or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity.
- D. Deceive or willfully obstruct any person with respect to such person's right to compete for employment.
- E. Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.
- F. Grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.
- G. Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in Section 3110(a)(3) of Title 5 of the United States Code) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in Section 3110(a)(2) of Title 5 of the United States Code) or over which such employee exercises jurisdiction or control as such an official.

- H. Take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of:
1. Any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences:
    - a. A violation of any law, rule, or regulation; or
    - b. Gross mismanagement, a gross waste of funds, an abuse of authority, or substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
  2. Any disclosure to the Special Counsel of the Merit Systems Protection Board or to the Inspector General of an agency, or another employee designated by the head of the Agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences:
    - a. A violation of any law, rule, or regulation; or
    - b. Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to the public health or safety.
- I. Take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of:
1. The exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;
  2. Testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subsection I (1) above;
  3. Cooperating with or disclosing information to the Inspector General of an Agency or the Special Counsel in accordance with applicable provisions of law; or
  4. For refusing to obey an order that would require the individual to violate a law.
- J. Discriminate for or against an employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others, except that nothing in this subsection will prohibit the Agency from taking into account in determining suitability or fitness any conviction of the employee or applicant

for any crime under the laws of any State, of the District of Columbia, or of the United States.

- K. Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in Section 2301 of Title 5 of the United States Code.

### Section 3. Protection of Congressional Disclosures

In accordance with 5 U.S.C. 2302, nothing in Section 2 above will be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

### Section 4. Protected Rights

In accordance with 5 U.S.C. 2302, nothing in this Article will be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the Civil Service under:

- A. Section 717 of the Civil Rights Act of 1964 prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
- B. Sections 12 and 15 of the Age Discrimination in Employment Act of 1967, prohibiting discrimination on the basis of age;
- C. Section 6(d) of the Fair Labor Standards Act of 1938, prohibiting discrimination on the basis of sex;
- D. Section 501 of the Rehabilitation Act of 1973, prohibiting discrimination on the basis of handicapping condition; or
- E. the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

### Section 5. Complaint Procedures

An employee aggrieved under Section 2 above may raise the matter under the appropriate statutory procedure or the grievance and arbitration procedure provided in this Agreement, but not under both.

## ARTICLE 21. CIVIL RIGHTS

### Section 1. General Policy

- A. It is the policy of the Government of the United States to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, age, or disability, marital status, political affiliation, or any other groups covered by law.
- B. No person will be subject to retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act (Title VII) (42 U.S.C. 2000 et seq.), the Age Discrimination in Employment Act (ADEA) (29 U.S.C. 621 et seq.), the Equal Pay Act (29 U.S.C. 2906(d)) or the Rehabilitation Act (29 U.S.C. 791 et seq.), or for participating in any stage of administrative or judicial proceedings under those statutes.
- C. The Employer will adhere to the policy of the United States Department of Agriculture to prohibit discrimination in employment because of sexual orientation.
- D. The Parties recognize that, consistent with applicable law, rule, and regulation, harassment and coercion will not be tolerated.
- E. The Employer will provide an environment free of sexual harassment.
- F. The Employer will post at each work unit or work station, as appropriate, or otherwise make available to all employees a copy of the regulations it issues to carry out its programs of equal employment opportunity, including but not limited to:
  - 1. A copy of the current MRP Directive on Civil Rights (or its equivalent), including the definition of discrimination;
  - 2. A copy of Title 29 Labor, Chapter XIV, Equal Employment Opportunity Commission, Part 1614, Federal Sector Equal Employment Opportunity of the Code of Federal Regulations;
  - 3. A flow chart, or other easily understandable memorandum of the Complaint Process, depicting time lines for the Employer and complainant, showing all options available to assist employees who believe that they have been discriminated against or who wish to report alleged discrimination practices; and
  - 4. The names, business telephone numbers and business addresses of the current EEO Counselors (unless the counseling function is

centralized, in which case only the telephone number and address need be provided), or other contacts to whom the employee is to report discrimination complaints.

## Section 2. Representation Rights

- A. Any employee who wishes to engage in protected activity will be free from coercion, interference, and reprisal, and will be entitled to expeditious processing of the complaint or appeal within the time limits prescribed by law, rule and regulation.
- B. An employee has the right to select a representative of his/her choosing at any stage of the complaint or appeal process as appropriate.
- C. The employee will have the right to present the complaint or appeal without representation.
- D. The employee may designate, in writing, his/her representative of choice, to the appropriate management official, e.g., designated responding official of the Employer.

## Section 3. Complaint Resolution

- A. If the employee elects to pursue the complaint under the negotiated grievance procedure of this Agreement and he/she elects to process the grievance without representation, the Union will have the right to be present at any formal meeting between the Employer and the employee concerning the grievance.
- B. If at any stage of the complaint process under a statutory procedure, the Employer determines to make changes to resolve the complaint with respect to personnel policies and practices or matters affecting the general working conditions of unit employees, the Union will be afforded reasonable notification and ample opportunity to negotiate the matter prior to implementation of such changes.
- C. Following adjudication under a statutory procedure, the decision will generally affect the complainant alone. However, when a formal discussion is held by the Employer with the complainant and/or the complainant's representative for the purpose of implementing a decision which impacts on employees in the bargaining unit, the Union will be afforded reasonable notification of the meeting and be given an opportunity to be represented at the meeting.
- D. Where the corrective or remedial action to be taken as a result of statutory or adjudicatory procedures would impact upon employees in the bargaining unit or would conflict with, or appear to conflict with, the provisions of this

Agreement, the Employer will afford the Union reasonable notification and an opportunity to negotiate the impact of the Employer's action effectuating the decision normally prior to implementation.

- E. The provisions of this Agreement may not serve to prevent implementation of statutory Equal Employment Opportunity decisions by the Merit Systems Protection Board, the Equal Employment Opportunity Commission or the Federal courts.

#### Section 4. Advisory Committees

- A. The Employer may establish Equal Employment Opportunity Advisory Committees at the appropriate levels. Such Committees will be advisory in nature and may make recommendations to the appropriate managers with regard to:
  - 1. Identified Equal Employment Opportunity problem areas;
  - 2. An assessment of the status of Equal Employment Opportunity; and
  - 3. The progress being made in the achievement of Equal Employment Opportunity objectives.
- B. These Committees will in their composition have a minimum of one Union representative per committee, selected by the Union. However, the employee selected may not be a voting member or assigned to a Special Emphasis Program Manager (SEPM), e.g., Hispanic Employment Program Manager, Federal Women's Program Manager.
- C. Any employee interested in serving on the Advisory Committee, usually as a SEPM, will notify the appropriate management official by the prescribed deadline of the announcement. Notification may include a statement of the employee's qualifications, reason for his/her desire to serve on the committee, and any additional information requested on the announcement.
- D. Committee members will be free from restraint, interference, coercion, discrimination, or reprisal in connection with the performance of their duties.
- E. Each Committee may have nonvoting members representing Special Emphasis Programs in attendance at its meetings.
- F. Each Committee will meet as needed as determined by the Employer.
- G. Where practicable, Committee meetings will be held during regular duty hours. The Employer will, to the extent possible, make shift changes to accommodate attendance by Union representatives. No employee will be required to donate his/her time during non-duty hours.

- H. To the extent feasible, employees on advisory committees will receive training commensurate with their Special Emphasis Program Manager position.
- I. Committee members will receive official time while attending committee meetings, including official time for travel. Travel and per diem will be reimbursed in accordance with the Federal Travel Regulations.

#### Section 5. Opportunity to Review, Comment and Bargain

- A. The Union recognizes the Employer is responsible for the development of Equal Employment Opportunity Plans, or its equivalent, at the appropriate level.
- B. Where the development and implementation of the Employer's Equal Employment Opportunity plans and programs involve changes in personnel policies, practices or working conditions, the Employer will fulfill its bargaining obligations with the Union under Chapter 71, Labor Management Relations, Title 5 of the United States Code.
- C. During the assessment stage of Equal Employment Opportunity Plan development at which information is gathered on the existing status of Equal Opportunity with the Employer, or at any time, the Union has the opportunity to present, in writing, its views, opinions, and other information on the status of the Equal Employment Opportunity Program. The Union's assessment and views will be submitted to the Employer's Civil Rights Enforcement and Compliance (CREC) offices and other management officials as appropriate.

#### Section 6. Reports, Statistics, and Data

- A. The following information will be provided by the Employer on the intranet or if not, then it will be provided upon request to the National President of the Union:
  - 1. Copy of the Agency Employment Plan or its equivalent;
  - 2. Copy of the annual Civil Rights Accomplishment Report or its equivalent;
  - 3. Copy of the annual summary statistical data found in the "Professional, Administrative, Technical, Clerical, Other, and Blue Collar" Report, also known as the PATCOB, or its equivalent, depicting employees by race, sex, color, religion, age, and national origin;

4. Summary report of statistical data of EEO formal complaints for the Employer; and
5. Summary report of statistical data of EEO counseling activity.

## ARTICLE 22. NEGOTIATION PROVISIONS

### Section 1. Purpose and Scope

This Article will establish the parameters and procedures for national negotiations to negotiate changes to the National Agreement during its term; to negotiate subordinate agreements and changes during their terms. Negotiations above the local level (regional) will follow national negotiation procedures.

Additionally, this Article will establish the parameters and procedures for local negotiations over local level Employer-initiated changes that have local impact, other matters specifically delegated to them by this Agreement, local level Union-initiated proposals, and local renewal agreements.

### Section 2. General Provisions

- A. All subordinate agreements and memoranda of understanding (MOU) must be consistent with the terms of this Agreement or are considered void. Any provision of an existing agreement or MOU may be reopened by the Employer when exercising a 7106(a) right or if such provision is shown to be a violation of law, rule, or regulation or the terms of this Agreement.
- B. To the extent not prohibited by law, including the “covered by” doctrine, either Party, local level or national, may propose changes in conditions of employment during the term of the local or National Agreement, respectively.
- C. The Parties agree that responses to proposed change(s) in conditions of employment submitted in the context of bargaining under this Article will not deal with extraneous matters.
- D. Those subjects specifically delegated to the parties at the local level by this Agreement or subsequent MOU(s) may be negotiated locally. For example, subjects may include but are not limited to:
  - 1. Procedures or arrangements concerning local leave scheduling;
  - 2. Procedures or arrangements concerning earning/scheduling time off for religious holiday observance;
  - 3. Procedures or arrangements concerning shift rotation schemes as needed;
  - 4. Procedures for exchanging shifts;

5. Other negotiable items normally covered by local negotiations and not covered by or otherwise inconsistent with this Agreement.
  6. Overtime assignment procedures if not specifically outlined in Article 29 Overtime and Premium Pay; and,
  7. TDY rosters if not specifically outlined in Article 32 Domestic TDY.
- E. The delegation of these subjects is not intended to require each local to have a negotiated agreement or include within its negotiated agreement provisions covering each of the listed items.
- F. In accordance with Article 2 Authority and Responsibility negotiations over only those items found to be inconsistent with the National Agreement, arising as a result of mandated local reviews will begin within 120 days after the effective date of this Agreement.
- G. Issues on related topics will be consolidated for bargaining to the greatest extent possible.
- H. Local agreements may be reopened:
1. At the request of either party seeking to renegotiate provision(s) nullified by changes in federal statute or Governmentwide rules or regulations implementing 5 U.S.C. 2302;
  2. If either party to the agreement produces evidence that parts of the agreement are being abused or interfere with the efficient operation of the organization. Documentation must include specific evidence of abuse or interference and the parts of the agreement involved. Renegotiations will be conducted only on those relative parts of the agreement; or,
  3. By mutual agreement.

### Section 3. Procedures

#### A. Employer Initiated Changes

1. Notice of proposed changes in conditions of employment by the Employer will be served upon the President of the Union or, if local in scope the local Union representative. Proposals will be delivered according to procedures outlined in Article 5 Employer Rights and Obligations.
2. Time frames for Union response (National):

- a. Within fifteen (15) calendar days of receipt of notice of a proposed change, the Union may request a briefing. The Union may submit any information or data requests pursuant to 5 U.S.C. 7114(b) (4).
  - b. Within fifteen (15) calendar days after the date of a briefing or thirty (30) calendar days after initial notice whichever is later, the Union will submit its proposals. The Union will be permitted to make additional or modified proposals based on the Employer's response to a 5 U.S.C. 7114(b) (4) request within fifteen (15) calendar days of receipt of the information.
  - c. Time frames in this section may be adjusted by mutual agreement.
3. Time frames for Union response (Local):
  - a. Within four (4) calendar days of receipt of notice of a proposed change, the Union may request a briefing. The Union may submit any information or data requests pursuant to 5 U.S.C. 7114 (b) (4).
  - b. Within ten (10) calendar days after the date of a briefing or fourteen (14) days after initial notice whichever is later, the Union will submit its proposals. The Union will be permitted to make additional or modified proposals based on the Employer's response to a 5 U.S.C. 7114 (b) (4) request within five (5) days of receipt of the information.
  - c. Time frames in this section may be adjusted by mutual agreement.
4. Failure to submit a written request to negotiate accompanied by written negotiating proposals, within the time frames specified above, will be considered acceptance of the proposals and will allow the Employer to implement the change.
5. If negotiations are required, they will commence in accordance with this Agreement within thirty (30) calendar days after receipt of bargaining proposals from the Union.
6. If the Employer refuses to provide the information requested in full, it will provide written confirmation of the information denied and state the reason for the denial. Within seven (7) calendar days after receipt of the Employer's written confirmation, the Parties may, at the election of the Union, discuss in a good-faith effort to resolve any disputes regarding the Employer's duty to provide the necessary and relevant information requested.

7. The Parties will negotiate in good faith to resolve outstanding information requests. The Union is not obligated to reach agreement during negotiations when there is an outstanding request for information. If the Parties reach agreement during negotiations conducted with an outstanding information request over an Employer initiated change, then the agreement on the change will represent the full and complete understanding between the Parties.

#### B. Union Initiated Requests to Bargain

1. Notice of proposed negotiable changes in working conditions by the Union will be served upon the Employer designated representative, according to procedures outlined in Article 5 Employer Rights and Obligations, Section 3.
2. Time frames for Employer response (National/Regional):
  - a. If negotiations are required, within fifteen (15) calendar days of receipt of notice of a proposed change, the Employer may request a briefing to attempt to resolve informally or attain additional information. If no briefing is requested, the Employer will submit its counter-proposals thirty (30) days after initial notice, or notify the Union of the Employer's determination that there is "no duty to bargain" the proposal.
  - b. Negotiations on negotiable proposals will be conducted in accordance with this Agreement and to the extent possible, should begin no later than thirty (30) calendar days after receipt of final bargaining proposals from the Employer.
3. Time frames for Employer response (Local):
  - a. If negotiations are required, within seven (7) calendar days of receipt of notice of a proposed change, the Employer may request a briefing to attempt to resolve informally or attain additional information. If no briefing is requested, the Employer will submit its counter-proposals within fourteen (14) days after initial notice, or notify the Union of the Employer's determination that there is "no duty to bargain" the proposal.
  - b. Negotiations on negotiable proposals will normally begin within fourteen (14) calendar days after receipt of the Employer's counter proposals, but no later than thirty (30) calendar days after receipt of final bargaining proposals from the Employer.

#### Section 4. Ground Rules for Negotiations at the Local Level

A. The following Ground Rules are for local negotiations between PPQ and NAAE.

1. Individual proposed changes will not be implemented until all proposals have been negotiated to agreement or through resolution by the FSIP, to the extent required by and in accordance with law.
2. Disagreements concerning application and interpretation of these Ground Rules will be handled through arbitration by requesting a panel of arbitrators from FMCS and selecting one (1) arbitrator to hear the dispute. Either party's Chief Negotiator may declare the parties in disagreement by submitting its written statement of position on the issue(s) in disagreement to the other party's Chief Negotiator. Each party will serve a copy of its statement of position on the President of the Union and the Chief of Labor Relations. The party initiating the declaration of disagreement will request FMCS to furnish the parties the panel of arbitrators and will specify the place of the dispute (of arbitration) to be the location the parties have selected to negotiate the proposed change under the terms of these Ground Rules, unless they mutually agree otherwise. The arbitrator will have the full authority to interpret these Ground Rules and law. The expenses of said arbitrator will be shared equally and each party's expenses will be borne solely by them.
3. Once the parties have exchanged counterproposals no new proposals or issues will be submitted without mutual agreement of the parties. However, proposals, counterproposals, or modifications of proposals addressing issues already raised, related issues that arise as a result of discussions at the table, or as a result of information provided pursuant to 5 U.S.C. 7114 (b) (4) will not be deemed "new" proposals.
4. These Ground Rules may be modified by mutual consent. Any change or waiver of any ground rule will be reduced to writing and signed and dated by both parties.
5. If these Ground Rules do not expressly address an issue, either local party may negotiate up to three (3) additional ground rules per side. The additional ground rules will be negotiated as soon as practicable after receipt. Any necessary preliminary negotiations to complete these ground rules will proceed in accordance with these Ground Rules.
6. The Employer has determined that the Employer's negotiating team will have up to four (4) members. The Union will be authorized to have up to the same number of Union negotiators on official time as the Employer has at the negotiating table. The numbers may be changed by mutual agreement of the parties.

7. Each Union team member who is a Plant Protection and Quarantine (PPQ) employee will be on official time not to exceed forty (40) regular hours per week while negotiations are in progress.
8. Each Union team member will be provided a reasonable amount of official time for performing functions related to negotiating including but not limited to; proposal preparation; travel to and from the negotiation site; preparation for and appearance at FLRA, FMCS, FSIP and/or arbitration proceedings.
9. Both teams will come to negotiations with at least one member authorized to bind his/her party and execute the agreement.
10. Times and dates of negotiations will not conflict with previously scheduled Employer or Union meetings or advanced annual leave.
11. Negotiations will normally be scheduled during periods that do not include holidays. Holidays may be worked only upon mutual agreement by the parties.
12. Negotiations will be conducted according to the following:
  - a. The Employer will provide the Union notice of its intended negotiators at the time the parties begin the process of fixing dates. The Union will provide the Employer the names of its intended negotiators as soon thereafter as practical, normally no less than ten (10) days prior to the beginning of negotiations.
  - b. If the Employer elects to have negotiators from outside the duty station, the Union will be entitled to have an equal number of negotiators from outside the duty station. The Employer will pay travel costs pursuant to an approved travel authorization for such Union representatives and the lodging costs in accordance with the Federal Travel Regulations. The Union will pay for the meals and incidental expenses of its outside negotiators. The Employer will provide the Union ten (10) days advance notice of the identity of those Employer negotiators it intends to bring to the negotiating table from outside the duty station.
  - c. The Employer will provide a room for negotiations. If any expenses are required to obtain the room, the Employer will pay.
  - d. Incurred and necessary parking expenses will be paid by the Employer when a Union negotiator must go to a negotiation site to which the negotiator is not regularly scheduled to report.

- e. Negotiations will take place during the negotiators' regular duty hours, normally between 0800 through 1700, Monday through Friday, at a time and date mutually agreed upon.
  - f. Union negotiators will be permitted to be assigned overtime during the negotiation period and to receive calls for the purpose of being assigned overtime jobs during the negotiation period, with minimal delay to the negotiation proceedings.
13. The Union team will have reasonable access to comparable facilities and equipment without expense to them at the negotiation site as the Employer's team will have including, but not limited to computer access, telephones, copiers, FTS, and facsimile machines.
14. There will be no smoking in the negotiation room.
15. Caucuses will normally be limited to twenty (20) minutes and may be called by either party. The party calling the caucus will leave the negotiating room.
16. Unless mutually agreed upon, no recording devices will be used during the negotiation sessions. There will be no limit to the number of laptop computers used by either party. Cell phones, pagers and/or other hand held devices will be on silent or vibration mode.
17. One observer may be permitted by mutual agreement at the respective party's expense. Official time will be provided during travel to and from and attendance at negotiations. Observers, in addition to participants, at telephonic sessions will be announced in advance. Upon agreement by the parties, subject matter experts (SME) may participate in informative discussions with both parties at the table. Participating SMEs are not considered to be observers or representatives of either party.
18. When the language of a provision or an article has been agreed to, it will be reduced to writing, the last page signed and dated and preceding pages initialed and dated by each Chief Negotiator. Upon completion of the agreement which is fully acceptable to both parties, the Employer will prepare the agreement in final draft, for mutual reviewing and proofreading. Both sides are to be provided with an original signed article and an electronic copy.
19. Prior to declaring impasse on any article at the bargaining table, each party must present its last, best, and final offer, in writing, to the other. If no agreement can be reached by the parties, the services of the Federal Mediation and Conciliation Service (FMCS) will be requested within thirty (30) days of declaration of impasse. In the event mediation does not result in agreement, either party may request the intervention of the

Federal Services Impasses Panel (FSIP). Use of FSIP and/or FMCS will be in accordance with the rules of the respective agencies.

20. If any article is at impasse after mediation attempts, then the Union and the Employer will submit their last, best and final offers from the negotiation table to the Impasse Panel. The Union members engaged in the Impasse Panel process will receive reasonable amounts of official time to prepare and participate in such activity. The decision of the Panel will be final and binding. All decisions of the Panel will be governed by the applicable laws and regulations. To the extent permitted by law, the Panel is authorized to make determinations of negotiability.
21. The Union and the Employer will equally share the cost of any arbitration proceeding, including but not limited to the compensation and expenses of the arbitrator.
22. The Employer, upon the Union's request will negotiate with the Union when an item is returned as negotiable or negotiable as modified from FLRA or a qualified third party.
23. Nothing in these Ground Rules will constitute a waiver of the Union's rights or an employee's rights under Title 7, CSRA, or any other law, rule or regulation. Similarly, nothing in these Ground Rules will constitute a waiver of the Employer's rights such as, but not limited to, 5 USC 7106.
24. Whenever the negotiations conducted in accordance with these Ground Rules requires a response, submission, or other action it will be served pursuant to Article 5 Employer Rights and Obligations, Section 3.

B. Consistency with the National Agreement.

Immediately following the conclusion of negotiations of a local agreement and execution of the document memorializing that agreement:

Step 1.

The local agreement will be submitted to the Branch Chief, Labor Relations or designee for review for consistency with the National Agreement and to the National President of the Union for review by the Executive Committee of NAAE for consistency with the National Agreement. The Parties will have ten (10) calendar days to accomplish the review.

1. If upon review for consistency the local agreement is agreed by the Parties to be consistent with the National Agreement, the Branch Chief, Labor Relations or designee, will initial the signature page of the local agreement and notify the local Employer and Union.

2. If upon review for consistency the local agreement is agreed by the Parties to be inconsistent with the National Agreement those sections in dispute will be returned to the local parties for resolution.
  - a. The local parties will attempt to renegotiate the item(s) in conflict.
    - i. If no agreement can be reached, the local parties will exchange best and final offers, in writing, and will request the services of the FMCS and/or FSIP as outlined in Section 4.19 of this Article.
    - ii. Upon agreement the local parties will execute a document memorializing the agreement and return to Step 1.
  - b. Those provisions of the local agreement not declared by either party's designated national representative to be in conflict with the National Agreement will be held as ready for implementation upon full and final implementation pursuant to Local Ground Rule number 1.
3. If upon review for consistency with the National Agreement, there is a dispute by the Parties concerning a conflict with the National Agreement, either Party may request mediation. If neither Party requests mediation or if mediation is unsuccessful, then the Party alleging the conflict will have thirty (30) calendar days to appeal to arbitration. The arbitrator will have the authority to determine if the provision is in conflict with the National Agreement.
  - a. If the provision is determined to be in conflict with the National Agreement then the local agreement will be returned to Step 1b.
  - b. If the provision is determined not to be in conflict with the National Agreement then the local agreement will proceed to Step 2.

#### C. Agency Head Review.

##### Step 2.

Upon completion of Step 1 the local agreement will be submitted for Agency Head review.

1. If Agency Head review of a local agreement is not completed within thirty (30) calendar days, the local agreement will take effect the 31<sup>st</sup> day from submittal.
2. If Agency Head review of a local agreement results in an allegation that one or more of its provisions conflict with existing law, rule, or regulation and thus are non-negotiable under 5 U.S.C. 7117(c), the

designated Agency Head reviewer will provide written notice of this decision to the Chief Negotiator for the local unit with a courtesy copy to the National President. The decision must be postmarked within thirty (30) calendar days from the date of submission for Agency Head review.

- a. An item returned by Agency Head review as being in conflict with existing law, rule or regulation, will require the parties, at the request of either party, to renegotiate that item and all related items and provisions that are directly affected, including those that in whole or in part have been negotiated at the table in exchange or in consideration for the returned item to begin within twenty (20) calendar days from the date of the decision.
- b. If the Union disagrees with the Agency Head review the Union representative may file a negotiability appeal with the FLRA as provided in 5 U.S.C. 7117(c), filing the Union's petition within fifteen (15) days after receipt of the allegation of non-negotiability.
  - i. If the FLRA determines the challenged provision(s) of the agreement are negotiable, those provision(s) will immediately go into effect the day after receipt of the FLRA decision unless the decision is appealed.
  - ii. If the FLRA determines one or more of the challenged provisions are non-negotiable, and in the absence of an appeal of the decision by the FLRA, the Union may submit new proposals to the Employer designed to address and obviate the non-negotiability ruling of the FLRA and all related items and provisions that are directly affected, including those that in whole or in part have been negotiated at the table in exchange or in consideration for the returned item. Those proposals must be submitted within seven (7) calendar days after receipt of the FLRA decision. Negotiations will commence in accordance with these Ground Rules.
3. If no conflict is found upon Agency Head review of the Agreement, the Branch Chief, Labor Relations or designee, will notify the Union and the agreement will take effect upon notification.

## Section 5. Ground Rules Above the Local Level (National/Regional)

- A. The following Ground Rules will apply to all negotiations at the National and Regional level.

1. Individual proposed changes will not be implemented until all proposals have been negotiated to agreement or through resolution by the FSIP, to the extent required by and in accordance with law.
2. Disagreements concerning application and interpretation of these Ground Rules will be handled through arbitration by requesting a panel of arbitrators from FMCS and selecting one (1) arbitrator to hear the dispute. The Chief Negotiator for either Party may declare the parties in disagreement by submitting its written statement of position on the issue(s) in disagreement to the other party's Chief Negotiator. Each Party will serve a copy of its statement of position on the President of the Union and the Branch Chief, Labor Relations. The party initiating the declaration of disagreement will request FMCS to furnish the Parties the panel of arbitrators and will specify the place of the dispute (of arbitration) to be the location the Parties have selected to negotiate the proposed change under the terms of these Ground Rules, unless they mutually agree otherwise.
3. Once the Parties have exchanged counterproposals no new proposals or issues will be submitted without mutual agreement of the Parties. However, proposals, counterproposals, or modifications of proposals addressing issues already raised, related issues that arise as a result of discussions at the table, or as a result of information provided pursuant to 5 U.S.C. 7114 (b) (4) will not be deemed "new" proposals.
4. These Ground Rules may be modified by mutual consent. Any change or waiver of any Ground Rule will be reduced to writing and signed and dated by both Parties.
5. If these Ground Rules do not expressly address an issue, either Party may negotiate up to three (3) additional ground rules per side. The additional ground rules will be negotiated as soon as practicable after receipt. Initially, negotiations on these additional ground rules will be completed under alternative means, e.g., electronic, telephonic, e-mail, etc. This would not preclude face-to-face negotiations if practical, e.g., in connection with a scheduled meeting that would take place in the near future. Any necessary preliminary negotiations to complete these Ground Rules will proceed in accordance with these Ground Rules.
6. The Employer has determined that the Employer's negotiating team will have up to five (5) members. The Union will be authorized to have up to the same number of Union negotiators on official time as the Employer has at the negotiating table. The numbers may be changed by mutual agreement of the Parties.
7. Each Union team member who is a Plant Protection and Quarantine (PPQ) employee will be on official time not to exceed forty (40) regular hours per week while negotiations are in progress.

8. Each Union team member will be provided a reasonable amount of official time for performing functions related to negotiating including but not limited to; proposal preparation; travel to and from the negotiation site; preparation for and appearance at FLRA, FMCS, FSIP and/or arbitration proceedings.
9. Both teams will come to negotiations with at least one member authorized to bind his/her Party and execute the agreement.
10. Times and dates of negotiations will not conflict with previously scheduled Employer or Union meetings or advanced annual leave.
11. Negotiations will normally be scheduled during periods that do not include holidays. Holidays may be worked only upon mutual agreement by the Parties.
12. To the maximum extent possible, national negotiations will be conducted telephonically and/or electronically. If electronic negotiations do not result in agreement, negotiations may, by mutual consent, be held on mutually agreed upon dates at a location identified by the Employer.
  - a. Should face-to-face negotiations occur, each session will last one week or longer if mutually agreed; Monday and Friday will be for travel. Each session may be extended into the weekend if the Parties mutually agree. Negotiations will begin at 0800 and end at 1700 and will include a meal period. Negotiations may proceed beyond 1700, if mutually agreeable.
13. The Employer will provide a room for negotiations. If any expenses are required to obtain the room, the Employer will pay.
14. Should negotiations occur telephonically or in a home duty station, Union negotiators will be permitted to be assigned overtime during the negotiation period and to receive calls for the purpose of being assigned overtime jobs during the negotiation period, with minimal delay to the negotiation proceedings.
15. Incurred and necessary parking expenses will be paid by the Employer when an employee must go to a negotiation site to which the employee is not regularly scheduled to report.
16. For any face-to-face negotiation session the Employer will pay airfare and lodging expenses for all Union negotiators and the Union will pay its own M&IE expenses unless otherwise agreed.

17. In the event additional face-to-face negotiations for a bargaining request must be scheduled, the same location, times and travel reimbursements agreed to for the first session will control.
18. The Union team will have reasonable access to comparable facilities and equipment without expense to them at the negotiation site as the Employer's team will have including, but not limited to computers, telephones, copiers, FTS, laptops, and facsimile machines.
19. There will be no smoking in the negotiation room.
20. Caucuses will normally be limited to twenty (20) minutes and may be called by either Party. During telephonic negotiations each party will have an Employer provided separate teleconferencing capability, at no cost to the Union. During face to face negotiation sessions, the party calling the caucus will leave the negotiating room.
21. Unless mutually agreed upon, no recording devices will be used during the negotiation sessions. There will be no limit to the number of laptop computers used by either Party. Cell phones, pagers and/or other hand held devices will be on silent or vibration mode.
22. One observer may be permitted by mutual agreement at the respective Party's expense. Official time will be provided during travel to and from and attendance at negotiations. Observers, in addition to participants, at telephonic sessions will be announced in advance. Upon agreement by the Parties, subject matter experts (SME) may participate in informative discussions with both Parties at the table. Participating SMEs are not considered to be observers or representatives of either Party.
23. When the language of a provision or an article has been agreed to, it will be reduced to writing, the last page signed and dated and preceding pages initialed and dated by each Chief Negotiator. During telephonic negotiations the article will be initialed/signed, dated and faxed between the Parties. After faxed signatures have been completed there will be an exchange of articles with original signatures. Upon completion of the agreement which is fully acceptable to both Parties, the Employer will prepare the agreement in final draft, for mutual reviewing and proofreading. Both sides are to be provided with an original signed article and an electronic copy.
24. Prior to declaring impasse on any article at the bargaining table, each Party must present its best, final offer in writing, to the other. If no agreement can be reached by the Parties, the services of the Federal Mediation and Conciliation Service (FMCS) will be requested within thirty (30) days of declaration of impasse. In the event mediation does not result in agreement, the Parties will request the intervention of the

Federal Services Impasses Panel (FSIP). Use of FSIP and/or FMCS will be in accordance with the rules of the respective agencies.

25. If any article is at impasse after mediation attempts, then the Union and the Employer will submit their best and final offers from the negotiation table to the Impasse Panel. The Union members engaged in the Impasse Panel process will receive reasonable amounts of official time to prepare and participate in such activity. The decision of the Panel will be final and binding. All decisions of the Panel will be governed by the applicable laws and regulations. To the extent permitted by law, the Panel is authorized to make determinations of negotiability.
26. An item returned by negotiability appeal as negotiable will require the Parties, at the request of either Party, to renegotiate that item and all related items and provisions that are directly affected, including those that in whole or in part have been negotiated at the table in exchange or in consideration for the returned item.
27. All face to face sessions before the FLRA, FMCS, FSIP and FSIP ordered procedures will be deemed bargaining sessions for the enforcement of official Government paid travel and lodging obligations under these Ground Rules.
28. The Union and the Employer will equally share the cost of any arbitration proceeding, including but not limited to the compensation and expenses of the arbitrator.
29. The Employer, upon the Union's request will negotiate with the Union when an item is returned as negotiable or negotiable as modified from FLRA or a qualified third party.
30. Nothing in these Ground Rules will constitute a waiver of the Union's rights or an employee's rights under Title 7, CSRA, or any other law, rule or regulation. Similarly, nothing in these Ground Rules will constitute a waiver of The Employer's rights such as, but not limited to, 5 USC 7106.
31. Whenever the negotiations conducted in accordance with these Ground Rules requires a response, submission, or other action it will be served pursuant to Article 5, Section 3, Official Communication Between the Parties.

#### B. Agency Head Review

Immediately following the conclusion of national negotiations of any agreement or MOU and execution of the document memorializing that agreement, the agreement will be submitted to the Branch Chief, Labor

Relations or designee for submission to the Department for Agency Head review in accordance with 5 U.S.C. 7114(c).

1. If no conflict is found upon Agency Head review of the agreement, the Branch Chief, Labor Relations or designee, will notify the Union and the agreement will take effect upon notification in accordance with Section 5.B.3 of this Article.
2. If Agency Head review of an agreement results in an allegation that one or more of its provisions conflict with existing law, rule, or regulation and thus are non-negotiable under 5 U.S.C. 7117(c), the designated Agency Head reviewer will provide written notice of this decision to the National President of NAAE.
  - a. Any item returned by Agency Head review as being in conflict with existing law, rule or regulation, will require the Parties, at the request of either Party, to renegotiate that item and all related items and provisions that are directly affected, including those that in whole or in part have been negotiated at the table in exchange or in consideration for the returned item.
  - b. If the Union disagrees with the Agency Head review, the Union representative may file a negotiability appeal with the FLRA as provided in 5 U.S.C. 7117(c), filing Union's petition within fifteen (15) days after receipt of the allegation of non-negotiability.
    - i. If the FLRA determines the challenged provisions of the agreement are negotiable, those provisions will immediately go into effect the day after receipt of the FLRA decision unless the decision is appealed.
    - ii. If the FLRA determines one or more of the challenged provisions are non-negotiable, and in the absence of an appeal of the decision by the FLRA, the Union may submit new proposals to the Employer designed to address and obviate the non-negotiability ruling of the FLRA. Those proposals must be submitted within seven (7) calendar days after receipt of the FLRA decision. Negotiations will commence in accordance with these Ground Rules.
3. Upon completion of an agreement and, following approval by Agency Head review, the agreement will become contractually binding. The Employer will post a copy of the agreement on the intranet. The Employer will also provide the web address with a link to the agreement to each bargaining unit employee.

## ARTICLE 23. EMPLOYEE CONDUCT AND DISCIPLINE

### Section 1. General Provisions

- A. A disciplinary action, for the purpose of this Article, is defined as an official letter of reprimand, or a suspension for fourteen (14) calendar days or less.
- B. Letters of caution and/or letters of warning or equivalents are not considered disciplinary and are not part of progressive discipline. Letters of caution, letters of warning or equivalents will have a limited retention period in local files as specified in Article 35, Section 1.B. In addition, employees may attach a rebuttal letter while they are on file.
- C. The Parties recognize that disciplinary actions will be for such cause as will promote the efficiency of the Service and will generally be progressive in nature. The Employer further agrees to follow a policy in which the discipline relates fairly to the offense.
- D. The Union will be given the opportunity to be represented at any examination of an employee in the bargaining unit by a representative of the Employer in connection with an investigation if:
  - 1. The employee reasonably believes that the examination may result in disciplinary action against the employee; and
  - 2. The employee requests representation.
- E. The employee is entitled to be represented by the Union, an attorney, or other representative of his/her own choosing, at any stage of the proposed action.
- F. The Employer will furnish a copy of the evidence file to the employee concurrent with the proposal notice being issued to the employee. The evidence file will contain all the information relied upon by the supervisor proposing the action. The evidence file will contain the complete investigative file. In addition, where the Employer has relied upon witnesses to support the reasons for the proposed action the Employer will make available their identity and will provide the employee copies of all witness statements in the Employer's possession pertaining to the incident or accusation that is the subject of the proposed disciplinary action.
- G. The Employer agrees that any disciplinary action taken will be appropriate to the specific offense and in accordance with applicable law, rule and Governmentwide regulation.
- H. The time limits for the oral conference and/or written reply may be extended by the mutual agreement of the parties. A request for an extension of time

must be submitted in writing, or if verbally then followed up in writing, within the initial time frame identified in the proposal notice.

- I. Employees will be given a reasonable amount of time during orientation to read and ask questions on the Employee Responsibilities and Conduct, 5 C.F.R. 735.1, 5 C.F.R. 26.35 – ethics prior to signing a receipt acknowledging they have read and are familiar with the Code. This will normally be done within two (2) weeks of arrival on duty date.

## Section 2. Procedures

When the Employer proposes to suspend an employee for fourteen days or less the following procedures will apply:

- A. A notice of proposed disciplinary action will be provided to the employee prior to the effective date of the action. The proposed notice, as well as the material required under Section 1 (E) of this Article, will inform the employee of:
  1. The proposed action;
  2. The specific reasons for the proposed action;
  3. The opportunity to review all evidence, on official time, that is relied upon to support the charge(s);
  4. The right on official time to prepare and make an oral and/or written reply within fourteen (14) calendar days from receipt of the notice of the proposed action, raising any defense to a proposed disciplinary action allowed by applicable law and regulation, and if the employee wishes to make an oral reply, the request for an oral reply must be made within ten (10) calendar days of the date the employee receives the letter of proposal and all relevant information (See Section 1.E);
  5. To whom the employee should furnish any supporting affidavits and other documentary evidence in support of the reply;
  6. The right to representation by the Union, or by an attorney or other representative of his/her own choosing, in connection with the proposed action;
  7. The right to receive and review the written report or recommendation of the oral conference officer (if any) together with the written decision; and
  8. The right to a written decision, including the specific reasons for the decision, within a reasonable period of time.

- B. If the employee responds, consideration will be given to the employee's answer(s). The Employer will issue a written decision including a statement of the employee's grievance appeal rights.

### Section 3. Decision Making Factors

- A. Disciplinary actions will be for such cause as will promote the efficiency of the Service and will generally be progressive in nature. The Employer further agrees to follow a policy in which the discipline relates fairly to the offense.
- B. The Employer will give due consideration to the relevance of any aggravating and/or mitigating circumstances. Consideration will include but not be limited to, relevant factors of penalty selection, commonly referred to as the "Douglas factors" which are identified below:
  1. 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;
  2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and or prominence of the position;
  3. The employee's past disciplinary record;
  4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
  5. The effect of the offense on the employee's ability to perform at a satisfactory level and its effect on the supervisor's confidence in the employee's ability to perform assigned duties;
  6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
  7. Consistency of the penalty with any applicable agency table of penalties;
  8. The notoriety of the offense or its impact upon the reputation of the agency;
  9. 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;

10. Potential for the employee's rehabilitation;
11. 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
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

#### Section 4. Grievance Rights

An employee who is dissatisfied with the disciplinary action may file a grievance pursuant to Article 16 Grievance Procedures of this Agreement. If arbitration is invoked, the arbitrator's decision will be in accordance with the provisions of Article 17 Arbitration of this Agreement.

#### Section 5. Off-Duty Conduct

In cases where a suspension is proposed for reasons of off-duty misconduct, the Employer's written notification provided for in Section 2.A of this Article also will contain a statement of the nexus between the off-duty misconduct and the efficiency of the Service.

#### Section 6. Service on Union

- A. The Union will be notified in advance of and given the opportunity to be represented at any formal discussion between the Employer and an employee regarding a disciplinary action or proposed disciplinary action, including a grievance concerning a disciplinary action. The mere distribution or dissemination of a proposal or decision letter does not constitute a discussion for purposes of this Section or an examination as detailed in Section 1(C).
- B. For information on providing notice to the Union of disciplinary actions see Article 15 Notice to Employees, Section 1.

#### Section 7. Purging Files

Letters of caution and letters of reprimand will be purged from the employee's OPF and any local personnel files according to the limits established in Article 35 Personnel Records, and won't be referenced, cited or relied upon in any personnel action initiated subsequent to the expiration date.

## ARTICLE 24. ADVERSE ACTIONS

### Section 1. General Provisions

- A. An adverse action for the purpose of this Article is defined as:
1. A removal;
  2. A reduction in grade;
  3. A suspension for more than fourteen (14) days;
  4. A reduction in pay; and
  5. A furlough of thirty (30) days or less for employees serving in bargaining unit positions at the time the action is initiated.
- B. The Parties recognize that adverse actions taken for disciplinary reasons will generally be progressive in nature if they are to correct the conduct of an offending employee. The Employer further agrees to follow a policy in which the remedy relates fairly to the offense.
- C. The Union will be given the opportunity to be represented at any examination of an employee in the bargaining unit by a representative of the Employer in connection with an examination if:
1. The employee reasonably believes that the examination may result in disciplinary action against the employee; and
  2. The employee requests representation.
- D. The employee is entitled to be represented during the action by the Union, an attorney, or other representative of his/her own choosing, in connection with the proposed action.
- E. The Employer will furnish a copy of the evidence file to the employee concurrent with the proposal notice being issued to the employee. The evidence file will contain all the information relied upon by the supervisor proposing the action. The evidence file will contain the complete investigative file. In addition, where the Employer has relied upon witnesses to support the reasons for the proposed action the Employer will make available their identity and will provide the employee copies of all witness statements in the Employer's possession pertaining to the incident or accusation that is the subject of the proposed disciplinary action.

- F. The Employer agrees that any adverse action taken will be appropriate to the specific offense and in accordance with applicable law, rule and Governmentwide regulation.
- G. Any of the time limits under the control of the Employer (i.e., not set by Statute) set forth in this procedure may be extended or waived by mutual agreement of the parties. Reasonable extensions of time will be granted by the Employer, on a case-by-case basis, upon good cause shown. A request for an extension of time must be submitted in writing, or if verbally then followed up in writing, within the initial time frame identified in the proposal notice.
- H. Nothing in this Article will be construed as a waiver of either the Union's rights, the employees' rights, or the Employer's rights contained under Title 7 of C.S.R.A. or any other law, rule, or regulation.

## Section 2. Procedures

- A. In all cases of proposed adverse actions, except for emergency furlough actions, or where there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, the employee will be given thirty (30) calendar days advance written notice, including a copy of the evidence file and the material required under Section 1(E) of this Article, which informs the employee of:
  - 1. The proposed action;
  - 2. The specific reasons for the proposed action;
  - 3. The opportunity to review all evidence relied upon to support the charges;
  - 4. The right on official time to prepare and make an oral and/or written reply within fourteen (14) calendar days from receipt of the notice of proposed action, to a proposed adverse action allowed by applicable law and regulation and if the employee wishes to make an oral reply, the request for an oral reply must be made within ten (10) days of the date the employee receives the letter of proposal and all relevant information (See Section 1.E above);
  - 5. To whom the employee should furnish any supporting affidavits and other documentary evidence in support of the reply;
  - 6. The right to representation by the Union, or by an attorney or other representative of his/her own choosing, in connection with the proposed action;

7. The right to receive and review the written report or recommendation of the oral conference officer with the written decision; and
  8. The right to a written decision and the specific reasons for the decision within a reasonable period of time.
- B. An official who sustains in whole or in part the proposed allegations against an employee in an adverse action will set forth his/her reasons in the decision letter including the specific reasons for the decision. A copy of this decision letter will be sent to the employee and a sanitized copy sent to the Union.
- C. The decision letter will inform the employee of his/her option to appeal the action to the Merit Systems Protection Board, grieve through the negotiated grievance procedure, or pursue through EEO procedures, and will inform the employee that he/she will be deemed to have exercised his/her option to raise the matter under one procedure or the other at the time the employee timely files a notice of appeal under the applicable statutory procedure or timely files a written grievance.
- D. The employee may elect to request the Union to proceed directly to Step 3 of Article 16 Grievance Procedure.
- E. If the Union moves a matter to arbitration under this Article:
1. The arbitrator will be governed by Section 7701(c)(1)(B) of Title 5, United States Code; i.e., the Employer will bear the burden of proof, and the decision of the Employer will be sustained only if the Employer's decision is supported by a preponderance of the evidence;
  2. The Employer's decision affecting any action under this Article will not be sustained if the Union:
    - a. Shows harmful error to the employee in the application of the procedures of this Article in arriving at such decision;
    - b. Shows the decision was based on any prohibited personnel practice; or
    - c. Shows the decision was otherwise not in accordance with the law.

### Section 3. Decision Making Factors

In deciding what action is appropriate, the Employer will give due consideration to the relevance of any mitigating or aggravating circumstances. In deciding what action is appropriate, the Employer will give due consideration to the relevance of any mitigating or aggravating circumstances. For a complete list of decision making factors (the Douglas factors) please refer to Article 23, Employee Conduct and Discipline, Section 3.

#### Section 4. Off-Duty Conduct

In cases where an adverse action is proposed for reasons of off-duty misconduct, the Employer's written notification provided for in Section 2.A of this Article also will contain a statement of the nexus between the off-duty misconduct and the efficiency of the Service.

#### Section 5. Service on Union

- A. The Union will be notified in advance of and given the opportunity to be represented at a formal discussion between the Employer and an employee regarding an adverse action or proposed adverse action, including a grievance concerning an adverse action. The mere distribution or dissemination of a proposal or decision letter does not constitute a discussion for purposes of this Section or an examination as detailed in Section 1(C).
- B. For information on providing notice to the Union regarding adverse actions please see Article 15 Notice to Employees, Section 1.

## ARTICLE 25.

## INVESTIGATIVE EXAMINATIONS

### Section 1. Notice of Nature of Interview

The Parties recognize the Employer's right to conduct investigative examinations concerning employee misconduct and the employee's right to request representation during such interviews also called "Weingarten rights".

- A. When an investigation is conducted by the Employer and the employee is the subject of the investigation, then the Employer will inform the employee of the general nature of the investigation.
- B. Any employee interviewed as part of an investigation, above the level of the first-line supervisor will be provided the Formal Interview Notification provided at the end of this Article to be signed by the employee.
- C. If the employee reasonably believes the interview may result in disciplinary action against him/her, the employee may request Union representation, thereby triggering the "Weingarten rights".
  1. Upon such request, the investigator will:
  2. Continue the interview and provide a written explanation why the employee was not entitled to representation;
  3. Ensure the employee has Union representation to participate in the discussion. Such representation may be "in person" if the Union Representative is already on site, or by telephone if remotely located; or,
  4. Reschedule the meeting to allow the Union representative to attend.

### Section 2. Employee Role

- A. In any interview in which the employee is not the subject of a criminal investigation or has been advised of his/her rights under Section 1 above, the representative of the Employer has the authority to and will inform the employee that:
  1. The employee must disclose any information known to him/her concerning the matter being investigated in response to specific questions;
  2. The employee must answer to the extent of his/her personal knowledge any questions put to him regarding any matter which has a

reasonable relationship to matters of official interest and may properly refuse to answer questions regarding matters which the Employer has no official interest, or which would require the disclosure of a privileged attorney-client communication protected and defined by law;

3. The employee's failure or refusal to answer such questions may result in disciplinary or adverse action; and
4. A false or misleading answer to any such question may result in administrative or criminal prosecution.

### Section 3. Union Role

A. When the Union representative accompanies the employee to the interview, the role of the representative may include, among other lawful functions:

1. Clarify the questions;
2. Clarify the answers;
3. Suggest other employees who may have knowledge of relevant facts; and
4. Advise the employee.

B. The role of the Union representative will not be to:

1. Answer for the employee;
2. Disrupt the proceeding; and/or
3. Terminate or delay the proceedings.

C. Nothing in this section will be construed as a restraint on conduct of the Union representative in an interview when that conduct is in accordance with law.

### Section 4. Record of Interview

No electronic voice recording or any media is allowable. This is applicable to the Employer, representative and the employee. Written notes taken serve as the record of the interview.

### Section 5. When Interviews May Be Conducted

Employee interviews under this Article will normally be conducted during the employee's duty hours and at the employee's work unit, unless extenuating circumstances require

otherwise. Employees will never be forced, absent their consent or a court order, to undergo an interview in their homes. Interviews continued beyond the employee's regular working hours will constitute hours of work and be compensated for by the Employer in accordance with law.

#### Section 6. Employee as Primary Information Source

Prior to interviewing anyone other than the subject of the investigation, the representative of the Employer will recognize and comport with its obligations to obtain all reasonable and necessary information from the employee, rather than others, in accordance with the Privacy Act.

#### Section 7. Notification

- A. The Employer will provide annual notice to all employees of the Weingarten rights.
- B. The Employer will assure that the EMIB (Employee Misconduct Investigation Branch) investigators are trained on Weingarten rights of employees and will ensure compliance by the investigators.
- C. The Employer will include a copy of the annual Weingarten notice as part of any formal new employee orientation program.
- D. The Employer will provide the annual Weingarten notice on the APHIS Labor Relations web page.
- E. Weingarten rights will be included as part of the Employer's Labor Relations training curriculum to supervisors.

#### Section 8. Criminal Investigations

Criminal investigations will be conducted within applicable laws, rules or established guidelines. Employee rights will be given at the time of the criminal interview/investigation.

## INVESTIGATIVE EXAMINATION NOTIFICATION

As a bargaining unit employee represented by a labor organization, you have the right to request representation by the labor organization (i.e. Union) at any investigative examination interview where you reasonably believe the examination may result in disciplinary action being taken against you. You may make this request at any time prior to or during the interview. If requested, the agency may opt to: suspend questioning and grant your request then resume the interview; discontinue the interview; or offer you the choice to proceed with the interview without a Union representative, or to forego the interview.

You may inquire if you are the subject of the investigation. You will receive an answer. If you are not the subject of the investigation, you may still be held responsible for any false statements you make or for any violation of the U.S. Department of Agriculture or APHIS Code of Conduct that you admit and for which you have not been granted immunity. Therefore, if at any time during the interview you reasonably believe you may be subjected to discipline as a result of your statements, you may request representation by the labor organization.

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Signature of Employee

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Date

## ARTICLE 26. PROBATIONARY EMPLOYEES

### Section 1. Probationary Period

Employees will serve a probationary period not to exceed one year in order for the Employer to determine their suitability for Federal employment. The Employer will utilize the probationary period as fully as possible to determine the fitness of the employee and will terminate his/her services during this period if he/she fails to demonstrate his/her qualifications for continued employment. In termination under this Article, the employee's separation from the rolls must be effected before the employee has completed his/her probationary period.

### Section 2. Employee/Supervisory Obligations

- A. During the probationary period, the employee is expected to become familiar with those regulations governing appropriate conduct as well as job performance expectations and will demonstrate fully his/her qualifications for continued employment.
- B. Questions the employee may have concerning either conduct or job performance expectations should be addressed to the supervisor for clarification.
- C. Upon request of the employee the supervisor will meet with the employee to counsel him/her in areas in which improvement is needed, i.e., conduct or performance.
- D. Supervisors will monitor and evaluate probationary employees' conduct and performance.

### Section 3. Termination

- A. When the Employer decides to terminate an employee serving a probationary period because his/her work performance or conduct during this period fails to demonstrate his/her fitness or his/her qualifications for continued employment, the Employer will terminate his/her services by notifying him/her in writing as to why he/she is being separated and the effective date of the action. The information in the notice as to why the employee is being terminated will, at a minimum, consist of the Employer's conclusions as to the inadequacies of his/her performance or conduct.
- B. When the Employer proposes to terminate an employee serving a probationary period for reasons based in whole or in part on conditions arising before his/her appointment, the employee is entitled to the following:

1. Advance written notice, stating the reasons specifically and in detail, for the proposed action;
  2. Reasonable time for filing a written answer, and to furnish affidavits in support of his/her answer; and
  3. Written notice of the decision, which, after considering the employee's written answer, will be delivered to the employee at or before the time the action will be made effective. The written answer will inform the employee:
    - a. Of the reasons for the action;
    - b. Of his/her right of appeal to the MSPB; and
    - c. Of the time limit within which the appeal must be submitted.
- C. The employee may request a meeting with a designated management official to discuss his/her deficiencies and the termination action.

#### Section 4. Appeal Rights

An employee may appeal to the Merit Systems Protection Board, in writing, the Employer's decision to terminate him/her under Section 3 above, in accordance with applicable law, rule, and regulation, currently set forth as 5 C.F.R. 315.

## ARTICLE 27. HOURS OF WORK

### Section 1. Scheduling

Except when prohibited by Governmentwide law, rule or regulation, or when the Employer determines it would be seriously handicapped in carrying out its functions or its costs would be substantially increased, the Employer will provide the following, consistent with 5 C.F.R. 610.121:

- A. The administrative workweek will be seven consecutive days, Sunday through Saturday.
- B. The working hours in each day in the regularly scheduled workweek will normally be the same.
- C. For employees whose basic workweek does not include Sundays, that basic workweek will be scheduled on five days, Monday through Saturday, and the two days outside the basic workweek will be consecutive, when possible.
- D. For employees whose basic workweek includes Sunday, the two days outside the basic workweek will be consecutive, when possible.
- E. The basic non-overtime workday may not exceed 8 hours.
- F. The occurrence of holidays may not affect the designation of the basic workweek.
- G. Assignments to tours of duty will normally be posted for each pay period at least one week in advance of the beginning of the pay period. Employees whose tours of duty are changed after the initial posting will be notified in advance of the affected administrative workweek.
- H. The Employer will make a reasonable effort to schedule a minimum of eight (8) hours between changes in tours of duty, unless the parties agree locally to a lesser period.
- I. If the Employer relies on one of the exceptions in Section 1A above to schedule an employee differently than 1-8 above, the Employer will provide the Union the reasons upon written request.
- J. An employee may request a special tour of duty (of not less than 40 hours) to take one or more courses at an educational institution that will equip him or her for current or future job related enhancement within the Agency. Request for a special tour of duty must be submitted to the employee's Union representative, who will provide the request to the employees' immediate supervisor for consideration. If a special tour of duty is approved for

educational purposes, the employee will not be paid any premium pay solely because of the special change in tour of duty.

- K. When mutually agreeable to the employees affected, qualified employees may trade work shifts, or duty stations with employees in similar positions consistent with the needs of the work unit and subject to advance supervisory approval.
- L. Employees assigned training may have their tours of duty modified to effectively accomplish the training. In these situations, the employee will be notified at least three (3) days in advance of the change, when possible.

## Section 2. Scheduling Standard

- A. The procedures used for scheduling of employees will be accomplished in a fair and objective manner consistent with the needs of the work unit.
- B. Employees performing work under Title 7 USC, The Plant Protection Act, as referenced in 7 CFR 354, may not have flexible schedules.
- C. The Employer retains the authority to establish new tours of duty and shifts in order to accomplish the mission. The Employer will consult with the Union predecisionally over changes in the times, days or duration of established and new tours of duty. The Employer will also provide reasonable notice to the Union and negotiate as required prior to implementation of such changes.

## Section 3. Compensation Standard

- A. Employees will be compensated for hours of work in accordance with applicable laws and regulations.
- B. Payment information for picking up or returning a GOV is located in Article 48, Section.3.

## Section 4. Alternative Work Schedule (AWS)

- A. The Parties recognize that the use of alternative work schedules have the potential to improve Employer efficiency, employee morale and provide improvements in service to the public.
- B. Alternative Work Schedules are negotiable and will be in accordance with Title 5 U.S.C., Part III, Subpart E, Chapter 61, Subchapter II, and this Agreement.
- C. Alternative Work Schedules will be deemed an exception to any conflicting provisions of Section 1 of this Article.

- D. Either Party may propose an AWS to the extent consistent with law, rule and regulation.
- E. Proposed alternative work schedules will be established for an initial trial period of ninety (90) calendar days only. The trial period may be reduced upon mutual agreement. At the end of the ninety (90) calendar days, the trial period will end; the employee(s) will return to his/her original schedule; the parties will review the trial period and will negotiate the AWS if it is proposed to be established on a permanent basis. At any time during the ninety (90) day trial period, the Employer may terminate the AWS based upon an adverse impact; however the AWS proposal may still be submitted to FSIP.
- F. When the Employer asserts that a proposed AWS would have an adverse impact, i.e., a reduction in productivity, a diminished level of services furnished to the public, or result in an increase in operating costs (other than a reasonable administrative cost relating to the process of establishing an AWS); the Employer will provide the Union, upon written request, a copy of the Employers' determination in writing. A duplicate copy of the Employers' determination will be forwarded to the appropriate union Regional Vice President and Regional Labor Relations Specialist.
- G. Should the Employer determine that an existing AWS has an adverse impact on the work unit; the Employer will notify the Union of its intent to renegotiate and seek modification or termination of such existing AWS. Such notice will include an explanation of the basis for the Employer's decision in writing and an offer to negotiate the proposed modification or termination in accordance with this Agreement and the Statute.
- H. Any affected bargaining unit member may at any time present to his/her union representative a written notice of the need for a significant personal hardship exemption from the AWS program. The union representative will provide the request to the employees' immediate supervisor for consideration. The Employer will provide the necessary notification to the Union prior to implementing a change to an AWS.
- I. Either Party may request FSIP to resolve an impasse resulting from a proposed AWS.

## Section 5. Meal Breaks

- A. Tours of duty without meal periods may be established under specified circumstances in accordance with Agency rules and regulations. For detailed information regarding tours of duty without meal periods please refer to HRDG 4610 in the Appendix of this Agreement.

- B. All employees scheduled to work five (5) or more hours in a workday must take a meal period, unless an exception has been granted in unusual circumstances. This applies to the regular workday as well as to overtime work.
- C. The amount of time for a meal period is set according to local practice and requirements of the work. Meal periods are a set amount of time from a minimum of thirty (30) minutes to a maximum of sixty (60) minutes. Meal periods may begin no sooner than two (2) hours after reporting for duty and end no later than six (6) hours after the report time.
- D. Normally, unpaid meal breaks will not be interrupted. Interrupted meal breaks will have any lost time restored as soon as the work is completed.
- E. Employees who have a medical condition requiring special meal periods may submit a request for accommodation.
- F. Normally employees will be afforded reasonable personal clean up time prior to the lunch period after performing filthy jobs or jobs requiring the use of toxic substances.

## ARTICLE 28. TRAVEL – GENERAL REGULATIONS

### Section 1. General Principles

- A. The Parties agree that travel on government business will generally occur during an employee's normal duty hours. If any portion of travel must occur during non-duty hours or the employee requests to travel during non-duty hours and has supervisory approval, that portion of travel time will be treated as compensatory time for travel in accordance with applicable Agency and federal laws, rules and regulations. This Agreement does not prohibit employees from requesting to travel during normal duty hours, e.g., if the employee must attend a meeting on Monday morning the employee may request to travel on Friday. All deviations from official travel orders must be approved in advance on an MRP 10-R or successor form.
- B. Employees may be responsible for any expenses they incur, while on official government travel, that are not pre-approved, or an official travel expense.
- C. The Parties jointly agree that determinations regarding travel allowances and other travel related matters will be made based upon the current Federal Travel Regulations (FTRs), departmental regulations and any agency regulations that have been implemented in accordance with statutory obligations.
- D. Employees may request to return home from a temporary duty station (TDS) after their assignment has been completed, but prior to their travel day, with supervisory approval and at no additional cost to the Employer. This travel time will be treated as compensatory time for travel in accordance with applicable Agency and federal laws, rules and regulations.

### Section 2. Notice of Travel Regulations

For more detailed information regarding travel, including the current FTRs, other applicable travel regulations and contact information for specific travel question(s) please refer to the Appendix of this Agreement.

### Section 3. Mode of Transportation

#### A. Air Travel

Employees, whose official travel will be by air, are required to use a contract city-pair fare unless otherwise pre-approved for a deviation, and the deviation is in compliance with federal laws, rules and regulations.

1. The Employer may authorize use of a fare other than a contract city-pair fare when:
  - a. Space on a scheduled contract flight is not available in time to accomplish the purpose of the travel, or use of contract service would require the employee to incur unnecessary overnight lodging costs which would increase the total cost of the trip;
  - b. The contractor's flight schedule is inconsistent with explicit policies of the Employer with regard to scheduling travel during normal working hours;
  - c. A non-contract carrier offers a lower fare to the general public that, if used, will result in a lower total trip cost to the Employer (the combined costs of transportation, lodging, meals, and related expenses considered). See the FTR for exceptions.
2. Any promotional benefits or materials received from a travel service provider in connection with official travel (including frequent flier miles) may be retained for personal use, if such items are obtained under the same conditions as those offered to the general public and at no additional cost to the Government.

## B. Driving

1. When pre-approved on the travel authorization, an employee may use his/her privately owned vehicle (POV) for official government travel. The mileage rate will be paid in accordance with the FTR.
2. POV travel in lieu of air travel or other public transportation may be approved for official government travel when the Employer determines that such use is advantageous to the Government by employee submission of a cost estimate of each method of travel (Form MRP-13 or successor form(s)).

If the employee does not travel by the method of transportation required by regulation or selected by the Employer, any additional expenses incurred will be borne by the employee and any excess travel time will be charged to annual leave.

3. Two (2) or more employees must obtain prior management approval for a common tour of duty when they are scheduled to travel together by POV or a government owned, leased or rented vehicle.
4. Employees may use their POV for official travel when authorized to commute to assigned work sites beyond their official duty station, even within the local commuting area, when a GOV is not available.

- a. When the employee begins his/her trip from the official duty station, mileage expenses will be paid in accordance with the FTRs.
  - b. When the employee begins his/her trip from his/her residence and the same mode of transportation as his/her normal commuting means is used, the mileage reimbursement is limited to the amount that exceeds his/her normal commuting expense.
  - c. When the employee begins his/her trip from his/her residence and a different mode of transportation from his/her normal commuting means is used, the full amount will be reimbursed. Employees will obtain approval in advance.
5. The Employer will not require employees to use a POV for government travel. However, if the employee has pre-approval to use a POV, the Employer will not require use of the POV for car-pooling.
  6. Employees who are issued a government owned, leased, or rented vehicle must possess a valid State motor vehicle operator's license and have completed any other training required by the Employer (defensive driving, etc.). The use of a government-owned, leased, or rented vehicle is subject to applicable Agency and federal laws, rules and regulations.

#### Section 4. Local Transportation While in Travel Status

- A. The Employer may authorize use of local transportation, to include the use of bus, subway, or streetcar and is an allowable expense for local travel between places of business at the employee's official station or a TDY station, and between places of lodging and place of business at a TDY station or to places where meals can be obtained. Where the nature and location of the work at the employee's TDY station are such that meals cannot be obtained there, travel to obtain meals at the nearest available place is an allowable expense.
- B. The Employer may authorize in advance, transportation in a GOV/POV for official purposes:
  1. Between places of official business;
  2. Between such places and places of temporary lodging when public transportation is unavailable or its use is impractical; and
  3. Between 1 and 2 above and restaurants, drug stores, barber shops, places of worship, cleaning establishments, and similar places

necessary for the sustenance, comfort, or health of the employee to foster the continued efficient performance of Government business.

#### Section 5. Rest Stops

- A. A rest stop not in excess of twenty-four(24) hours at either an intermediate point or at the destination may be authorized for employees in approved travel status if:
  - 1. Either the origin or destination point is outside the conterminous United States (OCONUS);
  - 2. The schedule flight time, including stopovers, exceeds fourteen (14) hours;
  - 3. Travel is by a direct or usually traveled route; and
  - 4. Travel is by coach-class service.
- B. The rest stop may be at any intermediate point, including points within the CONUS, provided the point is midway in the journey or as near midway as airline carrier scheduling permits.
- C. A rest stop will not be authorized when an employee, for personal convenience, elects to travel by an indirect route resulting in travel time in excess of fourteen (14) hours.
- D. When a rest stop is authorized the applicable per diem rate is the rate for the rest stop location.
- E. When an intermediate rest stop is not authorized because of the requirements in part A above, normally the employee will be scheduled to arrive at the temporary duty point with sufficient time to allow a reasonable rest interval before reporting for duty.

#### Section 6. Travel for Employees with Special Needs

The Employer will provide reasonable accommodations to an employee with special travel needs by paying for additional expenses incurred, i.e., an attendant and their allowable expenses. The special physical needs must be clearly visible and discernible; or, substantiated in writing by a competent medical authority. The medical documentation must be current and identify the employee's restrictions.

#### Section 7. Government Travel Charge Card

- A. Employees will use the travel charge card for all required official travel expenses unless the employee has an exemption. The use of the travel charge card is limited to expenses incurred in conjunction with official travel.
- B. The following are some examples of the official travel expenses that are exempted from required use of the travel charge card:
1. Expenses incurred at a vendor that does not accept the travel charge card;
  2. Laundry/ dry cleaning;
  3. Parking;
  4. Local transportation system;
  5. Taxi;
  6. Tips;
  7. Meals where use of the card is impractical, e.g., group meals or the travel charge card is not accepted; and
  8. Phone calls.
- C. The following misuses of the Government Travel Charge Card are prohibited:
1. Unauthorized charges and charges not associated with official travel;
    - Personal charges and family member use of the card;
  2. Charges while not in an official travel status;
    - Use of the card in the vicinity of the official duty station or residence unless used in connection with official travel;
    - Cash withdrawals from an automated teller machine;
  3. Shared use of the card with another employee for official travel purposes;
  4. Allow the travel card account to become delinquent;
  5. Failure to use the card while on travel unless exempted;
  6. Failure to pay accounts with sufficient funds;

7. Failure to properly use Government voucher reimbursements to repay travel expenses; and
  8. Excessive cash advances, or cash advances not commensurate with official travel.
- D. Proper use of the travel card reduces the need to cancel travel charge card privileges, eliminates the administrative burden of taking action against employees, lessens the stress for all involved, and preserves the reputation of USDA and its employees to achieve its mission and goals with integrity.
- E. For more detailed information regarding the Government Travel Card Use regulations please refer to the Appendix of this Agreement.

#### Section 8. Advance of Travel Expenses

- A. Employees are required to use the Government Travel Charge Card for all official travel expenses unless an exemption has been provided in accordance with the FTR. Exempted employees may have their travel expenses paid through a travel advance. The passenger transportation services may be paid by a centrally billed account.
- B. Employees may apply for travel advances by submitting APHIS Form 62-R, Request for Travel Advance For Employees Without a Government Travel Credit Card (See Appendix), or its successor form for the following expenses:
1. Cash transaction expenses, i.e., expenses that as a general rule cannot be charged and must be paid using cash, a personal check, or travelers check;
  2. M&IE covered by the per diem allowance or actual expenses allowance;
  3. Miscellaneous transportation expenses such as local transportation system and taxi fares; parking fees; ferry fees; bridge, road, and tunnel fees; and aircraft parking, landing and tie-down fees;
  4. Gasoline and other variable expenses covered by the mileage allowance for advantageous use of a POV for official business; and
  5. Other authorized miscellaneous expenses that cannot be charged using a Government Travel Charge Card and for which a cost can be estimated.
- C. Employees may receive travel advances for non-cash transaction expenses, e.g., lodging, common carrier, advance payment of discounted conference registration fee in the following situations:

1. Government Travel Charge Card not expected to be accepted;
2. Government Travel Charge Card issuance denied;
3. The Employer has decided not to provide the employee a Government Travel Charge Card;
4. There is an official change of station and the Employer has determined that the use of a Government Travel Charge Card would not be feasible incident to a transfer, particularly a transfer to another agency; or,
5. Financial hardship would be incurred.

D. The amount advanced by the Employer may not exceed:

1. The estimated amount of the employee's approved cash transaction expenses.
2. On a case by case basis the Employer may advance up to the full amount of the employee's expected non-cash transaction expenses for an individual trip (or not to exceed a 45-day period for an open authorization) in accordance with Section 7.C above.

#### Section 9. Per Diem

The Employer agrees to pay the maximum and authorized per diem allowances in accordance with applicable Agency and Federal laws, rules and regulations. In instances meeting specific criteria, the Employer may determine that the maximum M&IE rate is not appropriate for certain travel assignment situations. For more detailed information regarding per diem rates including the current rates please refer to the Appendix of this Agreement.

#### Section 10. Managing Expenses

- A. Obtaining travel authorizations, managing a Government Travel Charge Card account, and completing travel vouchers may be allowed during work hours, and is subject to supervisor approval. Employees may arrange, on official time, to temporarily receive and make payments of government credit card billings at their TDY work locations as long the use is limited on TDY assignments of more than three (3) weeks.
- B. The Employer will reimburse the employee for any late payment fees that are a result of the Employer's failure to reimburse the employee within thirty (30) calendar days after receipt of a proper travel claim.

## Section 11. Reimbursement of Expenses

- A. The Employer will pay those expenses essential to the transaction of official business, and have been specifically authorized and approved including:
  - 1. Transportation expenses;
  - 2. Per diem expenses;
  - 3. Miscellaneous expenses; and
  - 4. Travel expenses of an employee with special needs as provided in the FTR.
- B. The Employer will reimburse employees for the use of POVs, including mileage, road and bridge tolls, ferry fares, parking fees, etc., to the extent allowable by the FTRs.
- C. The Employer will reimburse employees for miscellaneous expenses authorized in advance, including connection fees for e-mail communications, determined to be in the interest of the Government.
- D. Employees will be reimbursed fees when traveling on an Airline Carrier that charges a fee for checked luggage and any other fee required for basic health and safety equipment or services necessary to air travel, e.g., airplane pay restrooms.
- E. If the employee has applied for and not received a government calling card or government cell phone, or the employee cannot use Government telephones furnished in offices, then the employee may be reimbursed for phone calls determined to be in the interest of the Government and approved in advance.
- F. In addition to emergency phone calls, calls determined to be in the interest of the Government include, but are not limited to:
  - 1. A reasonable length call once a day to spouse, minor children, dependent family members, or anyone sharing residence with the employee to discuss household matters;
  - 2. Calls placed to the local commuting area on day of return for notification of arrival times;
  - 3. One call per week to a non-family member within the employee's local commuting area to notify him/her of traveler's safe arrival or check on traveler's residence (if item #1 above is not used).

Reimbursement for calls may not exceed \$5.00 per day or the maximum amount allowable by applicable Governmentwide regulations, whichever is greater. Reimbursable telephone costs in excess of the daily allowance can be covered from other day's unused allowances. Receipts for phone calls are required if the total expense exceeds \$75.00. Travelers must input the following statement in the remarks section of the voucher no matter the cost:

"I certify that personal calls made during official travel comply with the requirements of DM 2300-001."

In emergency situations, an employee may request that an exception be made for reimbursement in excess of the \$5.00/day limit.

- G. An employee may voluntarily return home to their official duty station on non-workdays during a TDY assignment with supervisory approval. The maximum reimbursement for round trip transportation and per diem or actual expenses is limited to what would have been allowed had the employee remained at the TDY location.
- H. Allowances for expenses will be paid in accordance with applicable travel regulations when an employee in travel status becomes ill or experiences a personal emergency, where emergency is defined in the FTR as:
  - 1. Your becoming incapacitated by illness or injury not due to your own misconduct;
  - 2. The death or serious illness of a member of your family; and
  - 3. A catastrophic occurrence or impending disaster, such as a fire, flood, or act of God, which directly affects your home.

When these situations occur requiring immediate departure from the employee's temporary duty station, the employee concerned will contact the travel authorizing or approving official as soon as possible and the Employer will reimburse the employee for expenses incurred in returning to the employee's normal duty station.

## Section 12. Employer Notice

- A. In accordance with the FTR, the Employer will notify the employee when a travel claim is denied in whole or in part. Such notification will be in writing, clearly identifying the basis for non-approval.
- B. The Employer will provide reasonable assistance for correct and proper completion of claims for travel expenses when requested by the employee.

C. Any denial of an employee's claim for reimbursement for official travel may be the subject of a grievance in accordance with this Agreement.

## ARTICLE 29. OVERTIME AND PREMIUM PAY

### Section 1. Policy

- A. The overtime system will be based upon voluntary participation supplemented by a mandatory backup system administered in a fair and equitable manner in accordance with this Agreement and locally negotiated procedures.
- B. The Employer will consult with the Union predecisionally, prior to proposing changes to the terms and conditions of employment concerning overtime and premium pay. If consultation does not produce concurrence between the Parties, then the Employer will provide notice to the Union.
- C. The Parties agree that a fair and equitable overtime procedure should provide the employee with options. The local parties may select an overtime list(s) using a ranking system based on cumulative totals or a rotating list for voluntary and mandatory overtime. The parties should consider the use of daily volunteer lists with or without coverage periods and/or coverage areas.
- D. When the Employer determines to assign overtime to employees, initial consideration for assignments will be given to those employees who are available and qualified for the assignment as delineated below:
  - 1. *Qualified* – Recognizing professional and non-professional job requirements, when an employee normally performs all the duties required for an overtime assignment or after an appropriate amount of on the job training (OJT) or when deemed qualified by the employee's supervisor to perform the overtime assignment.
  - 2. *Available* – Parameters to be determined at the local level through local negotiations with the understanding that all employees in the local work unit will be considered part of the available pool of employees unless the employee has been provided a specific exemption by the supervisor and in consultation with the union normally for a period of time not to exceed ninety (90) calendar days and may be extended upon request.
- E. It is recognized that when possible advance scheduling of overtime assignments is desirable.
- F. Within sixty (60) days of the completion of joint training on this Agreement, either Party may request to renegotiate any local overtime assignment procedure agreement, regardless of the conformity of that local agreement with this Article.

## Section 2. Overtime Assignment Principles

- A. First consideration for overtime jobs will be given to those employees who are qualified for the job and for which the job would be contiguous to or a continuation of the employee's tour of duty.
- B. Employees may be required to perform all jobs in the same vicinity which can be reasonably initiated during the period for which they are receiving overtime compensation.
- C. Supervisors will be assigned employee overtime work only on an "as needed" basis and only as a last resort when all other eligible qualified employees have declined the assignment or are not otherwise available.
- D. If there are abuses of the negotiated overtime procedures by employees or the Employer, employees may take appropriate avenues of redress, including use of the negotiated grievance procedure.

## Section 3. Overtime Procedures

Local overtime procedures will include but are not limited to the following provisions:

- A. Reasonable advance notification of reporting time for employees whenever possible.
- B. Consideration for the safety and welfare of the employee as well as balancing work and family life when assigning overtime.
- C. Consideration for the least cost to fill the overtime assignment.
- D. Specification of the method by which employees will be contacted.
- E. Employees may swap or exchange overtime assignments with supervisor approval. The exchange or swap must be between same or similar overtime assignments (e.g., full callouts for full callouts).

## Section 4. Employee Exemptions

The Employer may approve a temporary exemption from the requirement to work overtime for documented medical reasons in accordance with Article 31 Temporary Light Duty or other documented personal hardships provided there are qualified and available volunteers to work the assignment *and it does not result in an increase in the cost of the overtime performed by other employees*. If there are no qualified and available volunteers for the overtime assignment or there are increased costs associated with the exemption, then the Employer is encouraged to consult with the local Union prior to making a determination on the request.

## Section 5. Travel Between Multiple Job Sites During Overtime

When overtime assignments require travel between prorated-job locations, the Employer will reimburse or otherwise compensate the employee for his or her expenses incurred in such travel, including but not limited to POV mileage, tolls, and parking, consistent with Governmentwide rules and regulations.

## Section 6. Premium Pay Principles

Premium pay will be computed and paid according to applicable provisions of APHIS overtime directives.

## Section 7. Night Differential Pay

Employees are entitled to earn night differential pay for regularly scheduled work between the hours of 6 p.m. and 6 a.m. in accordance with Governmentwide regulations.

In accordance with Agency regulations implementing 7 USC 2260 or successor, employees will be paid Night Differential for all time worked (regardless of whether it is a regularly scheduled tour or overtime, or call back over time) at the point of inspection during locally established hours of service that are between the hours of 6 p.m. and 6 a.m., including the 2-hour minimum but excluding any CTT.

## Section 8. Commuted Travel Time

- A. The Employer and the Union will recognize that CTT is based as far as practicable to cover the time necessarily spent reporting to and returning from the location of the overtime assignment.
- B. The Employer will provide the Union notice at the National level of any proposed change in or addition to a Commuted Travel Time (CTT) area prior to publication in the Federal Register.

## Section 9. Compensatory Time

- A. Compensatory time is granted on an hour-for-hour basis, in lieu of overtime pay for irregular or occasional overtime.
  - 1. When an employee's pay exceeds GS-10, Step 10, and the employee is FLSA exempt, then the supervisor may require the employee to take compensatory time in lieu of overtime pay.

2. Employees will be notified in advance when there is a change in the practice for payment of compensatory time or overtime.
  3. Overtime work performed under 7 USC 2260 or successor, may not be earned as compensatory time off in lieu of overtime pay.
- B. Compensatory time must be used within 26 pay periods from the time it is earned. If not used within this time frame, then it must be paid at the overtime rate in effect at the time the compensatory time was earned.
- C. Compensatory time will be granted by the supervisor in accordance with locally negotiated procedures for the granting of annual leave.

#### Section 10. Services Outside the Tour of Duty

The Parties encourage employees to discuss with the supervisor local procedures for providing services outside tours of duty. However, employees are not required to provide inspectional services or make regulatory decisions when not on duty. Compensation for services outside the tour of duty may be approved by the supervisor or designee.

#### Section 11. Training

Employees who are assigned training may have their tours of duty modified to effectively accomplish the training. In these situations, the employee will be notified at least three (3) days in advance of the change, when possible. Mandatory employee training will be delivered during compensable hours.

#### Section 12. Access to Documents

Upon request, the Union will have prompt, reasonable access to all records of overtime assignments to aid in resolving claims of unfair and inequitable overtime distribution, preparing for consultation or negotiation, and pursuing other legitimate employee or Union interests.

## ARTICLE 30. SAFETY, HEALTH AND WELLNESS

### Section 1. General Principle

The Parties agree that a safe work environment is critical to both the employee and Employer. To this end, the Parties agree to work together to identify and remedy unsafe and/or unhealthy working conditions and/or work practices.

### Section 2. Encouraging Safe Practices

- A. The Parties insist employees practice safe working habits/practices, including the observance of, and compliance with Employer and Federal safety and health regulations outlined in Section 19 of the Occupational Safety and Health Act of 1970, Executive Order 12196, and 29 CFR 1960 or as amended. Links to the above documents may be found in the Appendix at the end of this Agreement.
- B. Employees and the Union may make safety and health suggestions through their first line supervisor, safety officer, Union representative or member of a regional safety council.

### Section 3. Alleviating Unsafe Working Conditions

- A. The Parties agree that it is the Employer's responsibility to provide a safe and healthy work environment and the Parties agree to work together to alleviate unsafe or unhealthy conditions in the work environment.
- B. Employer policy requires employees to eliminate safety hazards when possible, and report hazards which cannot be eliminated to their immediate supervisor. The APHIS Safety & Health Manual contains the procedure for reporting unsafe or unhealthy working conditions and may be found in the Appendix of this Agreement.
- C. The Employer will initiate prompt appropriate action to correct unsafe conditions whenever they are found to exist.
- D. The Employer will provide reasonable security for employees working in potentially unsafe work sites including while on TDY.

### Section 4. Employee Rights and Responsibilities

- A. In accordance with the Occupational Safety and Health Act, the Employer will not discriminate against employees who properly exercise their rights under this Act. These rights include but are not limited to:

1. Filing a report of an unsafe or unhealthful working condition;
  2. Participation in Employer occupational safety and health program activities; and
  3. An employee may decline to perform an assigned task because of a reasonable belief that the task poses an imminent risk of death or serious bodily harm and there is insufficient time to utilize normal hazard reporting procedures.
- B. Employees will follow safety guidelines, safety standards and use the appropriate safety equipment provided while at work.
- C. If an employee believes performance of his/her assigned duties will jeopardize his/her health or exceed his/her physical capabilities, then the employee will promptly notify the supervisor and request assistance or other appropriate options.
- D. For detailed information regarding work restrictions and temporary light duty assignments please refer to Article 31 Temporary Light Duty.

## Section 5. Safety Equipment

### **Employer Responsibility**

- A. The Employer will provide employees with protective equipment in proper working order and provide training on the proper use and care of the government issued protective equipment as required and prescribed by applicable laws, rules, regulations, directives and manuals.
- B. When employees are required to perform duties that require full-face masks and the employee requires prescription glass inserts, the Employer will provide the inserts at no cost to the employee.
- C. The Parties recognize that supplemental gear, e.g., steel toe boots, snake bite chaps, etc. necessary to complete the mission and not provided in the uniform contract will be provided by the Employer.

## Section 6. Union Membership on Safety and Health Committees/Councils

- A. The Union will be permitted to appoint one member each to the national, regional and, if established, field safety and health councils. In addition, the Union will be permitted to appoint one member to the APHIS Work Life Wellness Committee. Representatives of the Union will receive official time,

travel, training and per diem for duties performed as part of the councils, when appropriate.

- B. The safety committees will function within the parameters of their charters. Minutes from the regional safety committee meetings will be provided to the Union upon request.
- C. Upon written request the Union will be provided a copy of the contract maintained by the Employer with the Employee Assistance Program provider.

#### Section 7. Disaster Recovery Awareness and Emergency Communications

- A. Each work unit will develop an Occupant Emergency Plan (OEP) containing guidance on emergency preparedness for a response to natural disasters, including inclement weather, tornadoes, hurricanes and earthquakes, and manmade disasters. The OEP will be posted at each work unit and updated annually.
- B. In each work unit the Employer may appoint an Emergency Coordinator, who will serve to advise employees of warnings received, and act to reestablish communications and operations as quickly as possible following an event. It is important that all employees be accounted for and their situation known. In emergency situations, employees may be permitted safe shelter in Employer controlled facilities. In the event that employees are on duty and not in the office during an emergency, the Employer will make a reasonable effort to contact and locate those employees.
- C. The Employer will maintain an emergency contact list for emergency use. This information will be made accessible to all authorized employees, but will only be used for official business.
- D. Employees will be offered first aid, CPR, and AED training at the appropriate interval.

#### Section 8. Temporary Duty

For specific information regarding safety and health issues while on a temporary duty assignment please refer to Article 32 Domestic TDY in this Agreement.

#### Section 9. Safety and Health Manual

A copy of the current APHIS Safety and Health Manual is accessible to all employees by using the Appendix at the end of this Agreement. A copy of the manual may also be posted at fumigation sites when the location is remote and internet access is not available. All updates and/or changes to the APHIS Safety and Health Manual will bear the date of issuance.

An electronic version of Section 18 of the current EPA FIFRA is listed in the Appendix of this Agreement. A hard copy of section 18 of the EPA FIFRA will also be posted in remote areas where internet access is not available.

## Section 10. Occupational Health

- A. The Occupational Medical Monitoring Program is designed for the protection of employees who are exposed to hazardous chemicals biological, radioactive materials, and hazards such as noise, which could be harmful to their health and welfare. Occupational medical monitoring specified under the program is an added safeguard and does not replace the need to work in an environment which limits exposure to hazardous material.

### Supervisor's Responsibilities:

1. Review all job functions under his/her immediate supervisor to determine if employees are working with, or being exposed to, any hazard.
2. Inform employees of hazards associated with specific job functions.
3. Establish occupational medical monitoring for any employee working with, or being exposed to, a hazard.
4. Evaluate all requests by employees for occupational medical monitoring, including the type of hazard involved.
5. The Employer will authorize medical tests recommended by the APHIS Occupational Medical Monitoring Program (FOH) on APHIS Form 29 based upon hazard exposure.

### Employee's Responsibilities:

1. Be knowledgeable of all hazards and hazardous materials that are handled and report to the supervisor unusual exposures.
2. Be alert in all work environments and report to the supervisor any unusual hazard that has resulted in an exposure, even if the employee is not working directly with the hazard.
3. Request approval from the supervisor for occupational medical monitoring whenever his/her health and physical well-being are jeopardized.

- B. Employees may obtain immunizations, e.g., typhoid fever, rabies, tetanus, influenza and Hepatitis B, through the occupational health program based on the review of APHIS Form 29 by the APHIS medical advisor.
- C. An employee will report possible exposure (direct contact with human blood, needle sticks, and human bites) to his/her supervisor immediately. The source will be tested if this status is unknown and consent is provided. The employee will also be tested for Hepatitis B and HIV activity. The employee will be provided medical treatment to evaluate the wound. Follow-up care and treatment, if necessary, will be handled under the Office of Worker's Compensation Programs (OWCP).
- D. The Employer will comply with all public health requirements for reporting incidents of communicable diseases.
- E. The Employer will provide and maintain standard First Aid kits in all work locations.
- F. Employees may participate in the Fitness Subsidy Program provided specified criteria are met. Participation in the program allows employees to be reimbursed for a portion of the cost of the health fitness facility membership. Please refer to the Appendix of this Agreement for more information on the Fitness Subsidy Program.
- G. Under specified criteria, the Employer will request that MRP provide bottled water to employees when there is no access to potable water within a reasonable distance of the work site. Please refer to the Appendix at the end of this Agreement for more detail on this policy.

#### Section 11. Illness or Injury at Work

- A. Employees are required to follow the Employer's workplace injury and illness reporting procedures. For more detailed information regarding workplace injuries, procedures and reporting requirements refer to MRP 4791 Workers' Compensation Policy and Procedures Manual referenced in the Appendix of this Agreement.
- B. An employee injured in the performance of his/her duties will report the injury to his/her supervisor. The supervisor will provide the employee with the appropriate forms to file a Worker's Compensation claim; CA-1, "Notice of Traumatic Injury" and CA-16, "Authorization for Examination" and/or Treatment. The employee will complete the CA-1 form and submit the completed document to his/her supervisor as soon as possible, and, if not already sought, seek medical care and treatment.

- C. If it becomes necessary for an employee to leave work because of an illness or injury and is unable to transport himself/herself, then the supervisor or designee will take the appropriate action to arrange for transportation.
- D. Upon request, employees working outside normal duty hours will be provided instructions should an employee be unable to complete an assignment.

## Section 12. Occupational Medical Examinations

- A. Employees may request written justification for the basis for any medical examination ordered by the Employer.
- B. The Employer will cover all costs for all officially ordered or offered examinations of employees conducted by a physician designated by the Employer. However, employees will cover all costs for a medical examination conducted by a private physician selected by the employee.
- C. Employees may request a copy of all medical documentation generated in conjunction with an Employer ordered medical examination.
- D. Employees are required to be fit-tested and undergo medical evaluation and clearance before performing tasks requiring the use of a respirator, e.g., filtering-face-piece; half face; full face; SCBA face piece; and powered air purifying respirators. For those work units where respirator protection is used, employees required to perform this duty will maintain the required medical clearance, updated as required with fit-testing performed annually. For further information regarding respirator clearance refer to the APHIS Safety and Health Manual, Chapter 11, Section 3.

## Section 13. Government Furnished Vehicles

For further information on regulations and safety requirements regarding GOVs refer to the MRP Motor Vehicle Manual in the Appendix of this Agreement.

## Section 14. Miscellaneous Provisions

Information concerning asbestos exposure, radiation safety, Video Display Terminals (VDT) and other safety topics may also be found in the APHIS Safety and Health Manual. A copy of the Safety and Health Manual is provided in the Appendix of this Agreement (Chapter 7, Section 10 Asbestos Abatement Program and Chapter 10, Section 7, Radiation Safety).

## Section 15. Pesticide Treatments and Fumigations

- A. The Employer will provide employees with all safety equipment and facility safety requirements necessary to perform pesticide treatments and fumigations in accordance with the appropriate related Agency manual, e.g., Treatment Manual, Aerial Application Manual, etc. and Agency and Federal regulations.
- B. The Employer will provide access to MSDS (Material Safety Data Sheets) at all work sites that have hazardous materials.
- C. The Employer will advise employees of relevant changes to procedures for working with fumigants and pesticides concerning safety and health.
- D. Copies of current compliance agreements will be made available to employees with a need for the information to perform their assigned duties.
- E. Procedures describing the conditions necessary to cancel a pesticide treatment or fumigation can be found in the Treatment Manual (2-4-21) and in the Appendix of this Agreement.

#### Section 16. Crossing Picket Lines

The Employer recognizes its obligation to insure the safety and welfare of all employees and will take the appropriate action prior to requiring employees to cross picket lines in the performance of their duties.

## ARTICLE 31. TEMPORARY LIGHT DUTY

### Section 1. Purpose

This Article identifies the procedures for requesting temporary light duty assignments. Temporary light duty assignments are for non-job related injuries that are temporary in nature and expected to be of short duration (normally, less than ninety (90) days). Employees may request an extension, if necessary. Temporary light duty assignments incorporate duties that are within the specific medical restrictions for an employee. These procedures are separate and distinct from the procedures for requesting reasonable accommodation or for worker's compensation (job related injury or illness).

The denial of reasonable accommodation, in and of itself does not prevent an employee from requesting temporary light duty under this Article.

### Section 2. Privacy of Information

- A. The employee will provide the following information when requesting temporary light duty:
  - 1. The general nature of the condition requiring temporary light duty;
  - 2. The anticipated duration for the need for temporary light duty;
  - 3. Any work restrictions or other changes in working conditions required by the temporary condition; and/or
  - 4. The likelihood of sudden incapacitation.
- B. The Employer's handling of medical records submitted pursuant to this Article will be handled according to the provisions of Article 35 Personnel Records, Section 3.

### Section 3. Procedures for Requesting Temporary Light Duty

#### A. General

- 1. Requests or requests for extensions for temporary light duty will be made in writing to the employee's supervisor or manager.
- 2. Requests for temporary light duty must be accompanied by relevant medical documentation. The medical documentation is only required to contain the information in Section 2A of this Article. In specific instances where the reason for the request is obvious the supervisor may accept the Request for Light Duty completed by the employee.

3. If the employee does not provide any medical documentation or if the medical documentation is insufficient, then the request will be returned to the employee and the information necessary to respond to the request will be identified.
  4. The employee will have two (2) weeks to submit any additional medical information requested. Upon written request from the employee the period of time to provide additional medical documentation will be extended provided there is good cause shown.
- B. Until such time as a decision has been made on the request for temporary light duty, the employee may request:
1. Sick leave, annual leave or leave without pay; or
  2. Temporary work within his/her medical restrictions for a period not to exceed thirty (30) calendar days or until a decision is made on the request for temporary light duty.
  3. The Employer will provide a decision on the request for temporary light duty within thirty (30) days from the date of receipt of the request from the employee. The decision will contain the reason(s) the decision was made and the name and title of the deciding official.
- C. The employee has fourteen (14) days from the date of receipt of the decision on the request for temporary light duty to appeal an adverse decision to the Regional Director, or designee for review of the decision.

#### Section 4. Grievance and Appeal

An employee who has been denied a request for temporary light duty may file a grievance in accordance with Article 16 Grievance Procedure.

## REQUEST FOR TEMPORARY LIGHT DUTY

Personal medical information provided to the Government is strictly controlled under the Privacy Act.

This form is to be completed by the employee's physician when requesting temporary light duty. Temporary light duty is for a non-job related injury that is temporary in nature and expected to be of short duration.

Name of Employee: \_\_\_\_\_

1. Please identify the general nature of the condition requiring temporary light duty:

2. Please identify the anticipated duration for the need for temporary light duty:

3. Please identify any work restrictions or other changes in working conditions required the temporary condition:

4. Please indicate whether there is the likelihood of sudden incapacitation:

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Signature of treating physician

Date

## ARTICLE 32. DOMESTIC TDY

### Section 1. Purpose

- A. The Parties have agreed that the purpose of this Article is to provide for a volunteer process augmented by a mandatory system for making domestic Temporary Duty (TDY) assignments. The only exemptions from these provisions are assignments to employees while participating on the regional Incident Management Teams (IMT) and Emergency Support Function 11 (ESF-11) collateral duty employees (e.g., Desk Officers). However, the Parties may subsequently negotiate additional exceptions.
- B. Domestic Temporary Duty (TDY) assignments, including emergencies, all hazard TDYs, and all other TDYs not covered by Article 43 Details, Special Assignments and Temporary Promotions, will be made according to the “Memorandum of Understanding for the Mobilization Guide and Temporary Duty Assignments” (TDY MOU), dated April 8, 2009, or successor agreement. Training, conferences, meetings, or seminars will not be considered a TDY for the purposes of applying the TDY MOU.
- C. At the request of either Party, the Parties will consult and/or negotiate over intrastate assignments to incidents using the TDY MOU one year after full implementation of the TDY MOU. Consultation and/or negotiations will commence within 180 days of the one year full implementation date. This provision will in no way restrict renegotiation of the TDY MOU under its terms.

### Section 2. Definition

- A. For the purpose of this Agreement, a domestic TDY assignment is defined as an assignment of more than ten (10) working days, including travel time, to a work location outside the employee’s regular duty station.
- B. A domestic TDY assignment normally will not exceed 28-calendar days (21-calendar days when the TDY assignment is administered above the PPQ level). However, the Employer retains discretion to extend or shorten a TDY assignment based on the nature of the emergency. To the extent possible, employees will be given at least ten (10) working days advance notification of any mandated changes to the length of the deployment.

### Section 3. Process

- A. Volunteers will be solicited electronically. The volunteers for the domestic TDY assignment will be selected based on qualifications and availability. If there are insufficient available and qualified volunteers then the Employer will initiate mandatory procedures for domestic TDY assignments.

- B. The Employer may identify specific single pest eradication or control program work units (e.g., Potato Cyst Nematode, Emerald Ash Borer, Citrus Health Response Program) with seasonal or intermittent workloads. Employees at these designated work units would receive priority consideration when volunteering for TDY assignments. The Employer will provide the Union courtesy notification of any such work units.
- C. Employer requests for a priority volunteer selection exception for geographic areas of consideration (GAC) or other considerations not addressed in the TDY MOU will be brought to the National President for case by case consideration.

#### Section 4. Qualification

The employee may ask the supervisor for an explanation as to why he/she was determined to be not qualified for a TDY assignment. If the employee is not satisfied with the explanation, then the employee may utilize the grievance procedure.

#### Section 5. Availability Exemptions

Employees may request an availability exemption for:

- A. Medical conditions;
- B. Serious personal obligation or hardship;
- C. Jury or court obligations;
- D. Military duty;
- E. Annual leave;
- F. Union activity;
- G. Return TDY assignments; and
- H. Other exemptions for valid reasons.

Employees participating in temporary promotions, special assignments and/or details must obtain permission to volunteer for domestic TDY assignments.

#### Section 6. Annual Leave Miscellaneous Provisions

- A. Prior to the start of the leave year, each employee will be permitted to select, identify and receive approval for up to six (6) weeks of long-term annual

leave, if accrued during the year or carried over from the previous year, in accordance with local negotiated procedures. Long-term annual leave is defined as annual leave approved for a minimum of a full work week and may be in 32-hour increments when there is a holiday. This long-term leave will be identified for purposes of this Agreement as unavailable for a TDY assignment.

- B. In those offices not selecting periods of annual leave at the beginning of the calendar year, the six (6) weeks of long-term annual leave must be identified, requested and approved during the calendar year at least thirty (30) calendar days prior to the notification for TDY assignment to qualify as a period of unavailability.
- C. When the long-term annual leave is annotated for unavailability for TDY deployment, the weekend (Saturday and Sunday) prior to the long-term annual leave and the weekend following the long-term annual leave will also be identified as not available.
- D. Nothing in these provisions will preclude an employee from requesting and receiving approval for additional periods of annual leave. If an employee with an additional period of annual leave is notified of a TDY deployment, then the employee may request to be considered for the next TDY deployment and be passed over on the TDY list. The Employer will make a decision on the request based on the employee's individual circumstances and the nature of the emergency.

#### Section 7. Cancelled Leave

- A. The Employer retains the right to cancel leave during periods of an emergency.
- B. If it becomes necessary in an emergency situation for the Employer to cancel approved leave for a TDY assignment, then the Employer will provide a written cancellation to the employee and will provide notification to the Union.
- C. When cancelled leave results in an employee having an excessive use or lose annual leave balance, then the employee must make an effort to request to use the annual leave during other periods of time before the end of the leave year. In addition, the Employer will continue to follow the rules and regulations for restoration of forfeited annual leave.

## ARTICLE 33. SHORT-TERM FOREIGN TDY

### Section 1. Program Information

- A. The Short-term Foreign TDY Roster was developed by PPQ and is maintained by PPQ's Preclearance Program Staff (PPS), or its equivalent, which also manages various overseas programs including cold-ship calibrations, military preclearance, bulb inspection in the Netherlands, Chilean fruit, New Zealand apples, Japanese pears and oranges, and others. Personnel to staff these temporary assignments may be selected from the updated Roster of qualified employees.
- B. Procedures for managing this Roster are delineated in the revised edition of "Temporary Foreign Assignments" prepared by the PPQ Office of the International Programs Coordinator in 1987, and further modified by PPQ on April 27, 1988 and by IS on July 12, 1991, found in the Appendix of this Agreement.
- C. The Union will be consulted before any subsequent changes to the Temporary Foreign Assignments Roster Protocol are proposed by the Employer. If consultation does not produce concurrence between the Parties to the agreement, their differences will be negotiated to the extent negotiable prior to implementation.

### Section 2. The Quarterly Report of Foreign TDY Roster Activity

- A. The Employer will update, publish, and make available to all employees on a quarterly basis the Quarterly Report containing the foreign TDY Roster, training and who participated, an up-to-date list of programs, and where to go for general information (e.g., how to qualify, get on or off the Roster, improve qualifications, how employees provide information on keeping lists up-to date, official duty station, and renewing their official passport before expiration).
- B. The use of the TDY Roster will be self-explanatory. That is, the Quarterly Report will show the assignment type, who was offered, who was denied, and who refused. Upon written request, an employee will receive a written explanation as to why a TDY opportunity was denied to her/him as an official refusal.
- C. The Quarterly Report may include discussion as to how PPS uses the experiences and input from participants to improve programs.
- D. Procedures for applying for training will be included with any training announcement.

- E. A copy of each Quarterly Report will be provided to the Union President of NAAE/designee, as soon as available.

### Section 3. Notification Process

- A. Initial notification and general written information provided employees assigned to foreign TDY will include as much of the following as is known and applicable:
  - 1. What is required, what to expect, access to the "country packet" or similar information to aid in getting around;
  - 2. Upon written request, employees will be given access to trip reports for same or similar assignments previously completed;
  - 3. Policy for responding to situations which are beyond normal standards, e.g., in-stream-boarding;
  - 4. Emergency contact telephone numbers, names, and addresses, including but not limited to U.S. Embassy, cooperators, supervisors or program managers and the PPS;
  - 5. Information concerning procedures to follow for any accident or illness occurring while overseas, and who to direct inquiries to;
  - 6. Recommended/required vaccinations, immunizations and other prophylaxes as per Center for Disease Control and/or Department of Defense; (Employee will be given sufficient time prior to travel to complete any inoculation program on official time and at government expense.)
  - 7. Identification of a travel agent who can make travel plans and purchase tickets according to government travel regulations (the Employer will assist in resolving any problems with travel agents.)
  - 8. During the preparation of the travel authorization, the employee will:
    - a. Be advised of the maximum travel advance allowance;
    - b. Be given the opportunity to request an advance of funds (to the extent allowable by the FTRs);
    - c. Be permitted the use of a Centrally Billed Account (if requested, available and necessary); and
    - d. Be advised of whether assignment qualifies for appropriate use of foreign flag carriers, consistent with the FTRs.

9. The employee will be advised in advance of all housing and additional travel arrangements made overseas, as well as overseas contact point(s), and, if the housing is not acceptable to the employee, the employee will be permitted on non-duty hours to find his/her own acceptable accommodations within allowed per diem, subject to approval of the Employer and consistent with applicable FTRs.

10. Availability of interpretive services; and

11. Performance elements.

B. The Employer will make reasonable efforts to give at least thirty (30) days notice to all employees offered foreign assignments. In no event will the employee who has been given less than 24 hours to accept or reject an assignment be penalized for rejecting the assignment.

C. The employee is responsible for providing PPS his/her address, names of immediate supervisor and work unit telephone numbers which the Employer may use to relay information to the employee (e.g., home emergencies, vacancy announcements, TDY roster openings, etc.).

#### Section 4. Travel

A. The employee will be granted official time to make arrangements necessary in advance of travel and the Employer will bear the expense of the arrangements, consistent with applicable law, and Governmentwide regulation.

B. The Employer will pay all expenses the employee incurs consistent with the prudent person rule, as the result of the travel including those expenses arising beyond the employee's control, consistent with applicable Governmentwide rules and regulations.

C. To the maximum extent possible and consistent with mission requirement, all administratively controllable travel will occur on official time.

#### Section 5. Rest Stops

Refer to Section 5 of Article 28 Travel-General Regulations of this Agreement.

#### Section 6. Evaluation

A. A copy of any evaluation will be provided to the employee within a reasonable amount of time.

- B. Official time will be provided for the preparation of any required trip report or other concluding documentation.
- C. The employee will file any grievances related to the foreign TDY assignment with the Labor Relations Specialist's office, or equivalent, of the Region servicing the employee's official duty station, in accordance with Article 16 Grievance Procedure of this Agreement.
- D. No employee will be punished by denial of future TDY assignments, or in any other way, for exercising his/her rights according to this Agreement.
- E. All foreign TDY assignments will be distributed equitably and fairly among all qualified volunteers to the maximum extent possible consistent with program requirements.

## ARTICLE 34. Reduction in Force/Transfer of Function

### Section 1. Procedure

- A. This Article covers actions taken pursuant to Title 5 CFR Part 351 Reduction in Force. The Parties will follow all procedures prescribed in the most current edition of the applicable Governmentwide regulations (5 CFR Part 351) and will apply those regulations when the Employer elects to exercise its rights Under 5 USC 7106 (a) to reduce the workforce by means of Reduction in Force, (RIF).
- B. The Parties will also follow procedures in the following Department-wide and Agency regulations when not in conflict with this Agreement:
  - 1. USDA Policies, including USDA Personnel Bulletin No. 351-1 (or successor issuances); and
  - 2. MRP Directive 4351.1 (or successor issuances).
  - 3. The Parties agree that there are no pre-existing agreements at any level of recognition regarding RIF that will carry forward into the enforcement of this Agreement. This Agreement supersedes all other agreements at all levels. This provision is not a bar to further negotiations specified by this Agreement.

### Section 2. Notice

Union notice of RIF will be provided as follows:

- A. The Employer will notify and provide the National President a copy of the request to conduct a RIF 75 days prior to the effective date of a RIF action. The “75 day notification” to the Union will include the locations and positions to be impacted.
- B. When a RIF is planned and notice is to be given the Union, the Employer will advise and consult with the Union on the potential RIF and the Union will be able to offer suggestions and alternatives for consideration to the Employer prior to issuing the official notification to the impacted employees.
- C. After specific RIF notices are issued and upon request, the Employer will provide the Union a copy of the retention registers used for the RIF.

### Section 3. Negotiations

- A. Upon receipt of notification of an action proposed under this Article, the Union may submit proposals for bargaining over any substantive issues, appropriate arrangements as well as over impact and implementation as provided for in this Agreement.
- B. Negotiations over matters covered under 5 USC 7106 (b) (1), the so-called “permissive” items, will only take place when elected by the Employer or as determined by competent regulatory or Judiciary authority.
- C. The Union and the Employer agree any negotiations pursuant to an action taken under this Article will take place in an expedited manner and, to the extent possible, will be completed within the timeframe required for the Agency to complete the action as planned.
- D. Negotiations over RIF actions taken under this Article will take place at the National level.

#### Section 4. Mitigation of Impacts

- A. The following tools may be used by the Employer to mitigate the impact of RIF:
  - 1. *Vacancies* may be used to mitigate the effects of a RIF.
  - 2. *Directed Reassignments* locally or to other geographic locations may be used to mitigate the effects of a RIF.
  - 3. *Voluntary Early Retirement Authority*: the Employer has the option to request Voluntary Early Retirement Authority (VERA) from the Office of Personnel Management through established channels for any downsizing. In any RIF involving the separation of bargaining unit employees, the Union may request that the Employer request VERA authorization from OPM. The Employer will reasonably consider all such requests.
  - 4. A *Hiring Freeze* may be initiated to provide greater opportunity for placement for internal employees impacted by RIF during the period of the RIF.
- B. Any other mitigation tools in effect at the time of the RIF.
- C. The Union and the Employer will regularly remind employees to review their Official Personnel Folders and Statements of Earnings and Leave to ensure that their records are accurate. RIF retention service credit determinations and all computations concerning severance pay and retirement are based on this information. Employees must contact their servicing Human Resources Operations office to update and/or correct their records.

- D. The Employer will offer employees identified for removal from service, as a result of RIF:
1. The Interagency Career Transition Assistance Plan (ICTAP), for permanent employees in surplus positions administered by the Office of Personnel Management and will consider other Governmentwide programs that may be available at the time a RIF is conducted.
  2. The U.S. Department of Agriculture (USDA) Special Placement Program, DR 4030-330-001, or successor issuances.
  3. The MRP Career Transition Assistance Plan (CTAP), MRP Directive 4330.1, or successor issuances.
  4. Other remediative programs that become available through Executive Order or Governmentwide regulations during the life of this Agreement.

#### Section 5. Competitive Areas and Competitive Levels

The Parties recognize that existing Federal Labor Relation Authority case law has determined that Competitive Areas and Competitive Levels are non-negotiable but will be assigned in conformance with CFR 351 and as supporting regulations identified in Section 2 above. (If there is a change regarding the negotiability of Competitive Areas or Competitive Levels, the Parties agree to negotiate as required).

#### Section 6. Restorations of Position or Grade

- A. *Repromotion Rights:* Employees who have been downgraded as a result of RIF will be provided repromotion priority under the USDA Repromotion Placement Plan included in the USDA Merit Promotion Plan, or subsequent issuances. In order to receive repromotion placement consideration for series other than the one from which downgraded, or for field employees to be considered for other USDA positions in their commuting area, employees will have to provide their servicing Human Resources office with an updated application.
- B. *Reemployment Rights:* Employees separated through RIF procedures will receive priority consideration for reemployment in accordance with provisions in the USDA Special Placement Program (or its successor).

#### Section 7. Transfer of Function

When Governmentwide regulations found in 5 CFR 351 have delegated a procedural matter to the discretion of the Agency, the exercise of that procedural discretion will be

a matter for negotiations, to the full extent permitted by law, prior to implementation of an action taken under this Article when the Union has timely requested negotiations under the Statute and this Agreement.

#### Section 8. Representational Rights

The Union will be given reasonable advanced notice, and an opportunity to be represented, at any formal discussion between one or more representatives of the Employer and one or more employees in the bargaining unit concerning RIFs, transfers of function, or furlough of thirty (30) days or more. Union participation at these formal discussions may be by telephone.

#### Section 9. Records

Upon written request, the Union will be permitted to inspect records the Employer used in establishing retention registers.

## ARTICLE 35. PERSONNEL RECORDS

### Section 1. Content of Personnel Folders

- A. The Employer will maintain in Official Personnel Folders of employees only information authorized by law or regulation to be maintained in such folders.
- B. The Employer will remove from the employee's Official Personnel Folder and/or all local folders or files (i) a letter of reprimand no later than 18 months from date of issuance and (ii) a letter of caution, warning or similar document memorializing information actions no later than 9 months from the date of issuance.

### Section 2. Access to Personnel Records

- A. The Employer will provide each employee, or his/her personal representative designated in writing, upon request, with access (electronically, via eOPF or hardcopy) for purposes of review and copying, in the presence of management representatives if the Employer requests, any document contained in the employee's Official Personnel Folder, or otherwise included as or deemed a part of that employee's personnel records, except those documents restricted by law or regulation. Upon request by the employee, this access will also apply, to the extent not prohibited by law, to evidence files and information for all proposed actions from suspension through removal as well as for disciplinary actions taken without a proposal.
- B. The Employer will provide copies or the opportunity to copy any requested documents within a reasonable amount of time. If such provision is to exceed two (2) weeks from the date of the request, the employee or designated representative will be advised of the anticipated date of provision and reason for the delay and will be provided similar up-dates every two (2) weeks thereafter upon request.
- C. Requests for access to Official Personnel Folders and/or other personnel records as defined in 5 C.F.R. 293 will be made in writing or electronically to the immediate supervisor or his/her designee. When feasible, the review of the Official Personnel Folder or other personnel record will take place at the requesting employee's duty station. When this is not feasible, it will take place at a site mutually agreed upon by the employee and/or Union representative and the Employer. This review will take place during the employee's tour of duty.
- D. In the event the Employer denies the request of an employee for a copy of his/her personnel records, the Employer will provide a written explanation

including the legal authority upon which the Employer relies to deny such a request.

E. The Employer will not maintain or allow to be maintained any material in an employee's Official Personnel Folder that may adversely affect an employee's career unless the affected employee has been given notice of the adverse material and a copy, or the opportunity to copy it, before it is placed in the file. An employee may submit written comments or a rebuttal of 1 (one) page to the adverse material which, if submitted will then become a part of the adverse material and kept in the same Folder if:

1. The employee has exhausted the grievance process and arbitration is not invoked; and
2. The employee has not appealed to MSPB.

Comments or a rebuttal must be submitted to the Labor Relations Branch Chief within 45 days of receipt of the Step 3 decision.

### Section 3. Protection of Personnel Records

All records, files and documents will be made available only to authorized personnel, and to any others entitled to the documents under applicable law, including 5 U.S.C. 7114 (b) and the Freedom of Information Act, and only for official use in conformity with the Privacy Act.

### Section 4. Notice of Supervisor Records

- A. Records, notes, and diaries maintained by a supervisor with regard to employees are merely extensions or memorializations of the supervisor's memory and may be retained or discarded at the supervisor's discretion.
- B. The Employer will not use such retained records, notes, or diaries as a basis for any disciplinary or adverse action against an employee unless the employee (1) has been shown and provided a copy of such record, note, or diary within a reasonable time after the date of the incident so recorded and (2) has been afforded a reasonable opportunity to submit a written response.
- C. Employees will be notified if the Employer perceives a series of infractions or other events memorialized in the supervisor's records, notes, or diaries that collectively may lead to future disciplinary or adverse action, if continued (e.g., tardiness). The employee will be made aware of any such trends and the corrective action desired within a reasonable period of time and provided the opportunity to offer explanation and take corrective action before any disciplinary or adverse action is proposed.

D. The Employer will not use such records, notes, or diaries as a basis for:

1. A performance evaluation of marginal or unacceptable;
2. Denial of a career ladder promotion, transfer, or reassignment; or
3. Denial of a within-grade increase;

unless the employee has been shown and provided a copy of such documentation within a reasonable period of time, not to exceed thirty (30) calendar days, after it has been determined the information will or may be used for such purpose, and is afforded reasonable opportunity to submit a written response before it is so used.

E. If an employee is shown a note, record, or diary as part of any administrative process, the employee may submit a written response and, if so submitted, the response must be maintained in the same file or folder with the note, record, or diary.

#### Section 5. Local Personnel Records

Personnel records maintained at the local work unit will be maintained in a confidential and secure location and pursuant to the accessibility provisions of Section 3 of this Article.

#### Section 6. Prohibited Information

Records pertaining to an employee's sex, race, color or national origin will not be maintained where the conditions, restrictions and other provisions of 29 C.F.R. 1614 cannot be met.

## ARTICLE 36. OVERPAYMENTS: WAIVERS AND OFFSETS

### Section 1. Requesting a Waiver

- A. An employee who receives a notice of overpayment may request a waiver in accordance with applicable laws, rules and regulations, by following procedures provided in the notice.
- B. The Employer will process all requests for waiver of overpayment as expeditiously as practicable and in accordance with applicable laws, rules, regulations and the provisions of this Agreement.
- C. To the extent permitted by law, if an employee has applied for a waiver of overpayment, no overpayment will be collected until the employee's application has been decided.
- D. The Employer will provide to the affected employee written notice as to whether the requested waiver has been granted, denied, or referred to the appropriate authority. A notice of denial in whole or in part will 1) state reason for such denial and 2) describe the applicable appeal process including identifying the appropriate authority to which the appeal may be filed.
- E. Upon request the Employer will provide to the affected employee a copy of the completed written report concerning his/her application for waiver.

### Section 2. Requesting a Hearing

- A. An employee who has been notified of an overpayment may file a petition to the Secretary of Agriculture (or designee) for a hearing or paper review not later than 30 calendar days from the date the employee receives the notice of indebtedness, by following the procedures contained in the notice. Hearings will be held in accordance with the standards set by 7 C.F.R. 3.58.
- B. If the hearing is not conducted by paper review or telephone, the Employer agrees to hold the hearing within the commuting vicinity of the employee's work site. The employee will be in a duty status, and if necessary, the employee's work schedule will be adjusted so that he/she can attend the hearing, or be available for a telephonic hearing, during normal business hours and on official time.

### Section 3. Scheduling Repayment

- A. When an employee has not requested or is not granted a waiver of overpayment, the employee will be permitted to schedule and make

repayment in accordance with applicable laws, Governmentwide rules and regulations and this Agreement.

- B. If an employee terminates employment with the Employer prior to the liquidation of any overpayment described in this Article, the Employer retains the right to satisfy any outstanding balance from any funds due to the employee.
  
- C. Prior to initiating any debt collection proceedings, the Employer will provide the employee with a minimum of 30 days advance written notice of the nature and amount of the indebtedness and the intention of the Employer to initiate proceedings to collect the debt through salary deductions. The notice will be delivered; by hand delivery or certified mail, to the employee's address listed on the employee's NFC Employee Personal Page (EPP). The 30-day advance notice is defined as 30 calendar days from the first whole day after hand or certified delivery of the notice of Intent to Offset Salary. In addition to meeting other requirements, this notice will also: inform the employee that upon request the Employer will provide the employee copies of all records pertaining to the debt claimed if personal inspection of those records is impractical; offer a reasonable opportunity to submit additional documentation for review; and include a voluntary repayment agreement which allows the employee to select from the following options:
  - 1. Lump sum repayment by personal check;
  - 2. Lump sum repayment through salary offset in employee designated pay period;
  - 3. Salary offset at 15% disposable pay each period until debt is paid;
  - 4. Salary offset at an amount, set by the employee, in excess of 15% disposable pay each pay period until debt is paid;
  - 5. Salary offset at an amount, set by employee less than 15% disposable net pay, but not less than \$25.00 each pay period until debt is paid; or
  - 6. Repayment plan as an alternative to salary offset, agreeable to the Employer.

#### Section 4. Offset Impact on Travel

Any travel advance is considered disposable income and may be subject to salary offset (garnishment) unless an "administrative hold" is requested and approved prior to issuance of the advance. Employees may submit requests for administrative hold to the appropriate specialist within the Leave and Compensation Team, MRPBS, HRO, for processing and approval. In addition, employees whose disposable income is subject to salary offset may request to have their transportation costs paid by the Employer.

## ARTICLE 37. POSITION DESCRIPTIONS

### Section 1. Definition of "Position"

For the purposes of this Article, a position consists of all the current major duties and responsibilities the Employer has assigned or delegated.

### Section 2. Definition of "Position Description"

The position description is a written record of the principal duties and responsibilities assigned to a position and collectively comprise the work assigned to an employee. The position descriptions will document duties that are performed on a regular and recurring basis and take up a significant portion of the employee's time.

### Section 3. Employer Responsibilities

The Employer will ensure that position descriptions reflect the currently assigned duties of the employee and that significant changes in duties and responsibilities are reflected in the position description.

### Section 4. Advance Notice

- A. The Employer will provide every employee with a copy of the employee's position description upon written request and to each new employee when he/she reports to their duty station.
- B. The Employer will provide the Union with:
  - 1. Copies of proposed classification standards, for bargaining unit positions;
  - 2. Proposed position descriptions for bargaining unit positions; and
  - 3. Copies of proposed position descriptions for positions which are closely allied with bargaining unit positions.
- C. The Employer will inform the Union as soon as possible of proposed changes to be made in the grade controlling duties and responsibilities of positions held by bargaining unit employees and in effected position descriptions.

### Section 5. Initiation of Position Review

An employee may initiate a request for a position review by bringing to the attention of his/her immediate supervisor or his/her designee, in writing, significant aspects of the employee's duty assignments that the employee believes his/her official position description does not cover. An employee may meet with appropriate management officials to discuss any position description problems. If the supervisor agrees that material differences exist, the supervisor will either arrange for the preparation of a new position description or amendment to bring the position up-to-date or take action to assign the employee the duties and responsibilities reflected in the position description of record.

#### Section 6. Classification Appeal

- A. An employee has the right to appeal the classification of his/her position at any time.
- B. The results of any classification appeal will be made effective and implemented in accordance with OPM rules no later than four (4) pay periods following the date of the certificate.
- C. An employee who has filed a classification appeal will not be subjected to any penalty, reprisal, discrimination, or harassment because he/she has filed such an appeal.

#### Section 7. Employee Representation

An employee who has filed a classification appeal will be entitled to a Union representative at any meeting with the Employer concerning the appeal.

#### Section 8. Uniform Classification

The Parties will actively pursue consistent and accurate classification of all bargaining unit positions.

#### Section 9. Notice of Classification Review

The Employer will notify the Union President before beginning a nationwide classification review. The notice will identify the specific positions and grade levels to be reviewed, and will be provided thirty (30) days in advance of the review, or within the time constraints imposed by higher authority.

## ARTICLE 38. PERFORMANCE APPRAISAL

### Section 1. Policy

It is the Employer's policy to operate a performance appraisal program in a manner which is consistent with applicable statutes, regulations, and this Agreement.

A written performance plan will be provided to each employee covered by this Agreement at the beginning of each appraisal period (normally within 30 days). The performance plan includes the dates of the appraisal period, and performance elements and standards.

### Section 2. Definitions

- A. *Appraisal Unit*: The unit of measure used to establish the relative weighted value of critical and non-critical performance elements.
- B. *Appraisal Period*: The official appraisal period for which a performance plan must be prepared, during which performance must be monitored, and for which a rating of record must be prepared is October 1 through September 30 of each year. The minimum performance appraisal period is ninety (90) days. If an employee has not served at least ninety (90) days at September 30, the rating official may extend the appraisal period accordingly.
- C. *Critical Element*: A work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. Such elements must be used to measure performance only at the individual level.
- D. *Element Rating*: The level of performance assigned to the employee's performance for an individual performance element as measured by a comparison of accomplishments to the performance standards established for that element.
- E. *Employee Performance File (EPF)*: A folder containing an employee's ratings of record and the associated performance plans for the most recent four years.
- F. *Inability to Rate an Employee*: When a rating of record cannot be prepared at the time specified, the appraisal period will be extended, such as, when the employee has not met the 90-day minimum rating period at the end of the appraisal period. Once the conditions necessary to complete a rating of record have been met, a rating of record will be completed as soon as practicable.

- G. *Minimum Period*: The minimum 90-day period of performance that must be completed before a performance rating may be prepared.
- H. *Performance*: The accomplishment of work assignments or responsibilities.
- I. *Performance Plan*: All of the written or otherwise recorded, performance elements that set forth expected performance. A plan must include all elements, critical and non-critical elements if used, and their performance standards.
- J. *Performance Standard*: The management-approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, cost-efficiency, timeliness, and manner of performance.
- K. *Progress Review*: Communicating with the employee about performance compared to the performance standards for critical and non-critical elements.
- L. *Rating Official*: A representative of management, generally the employee's immediate supervisor, who establishes the employee's performance plan; provides the progress review; prepares an interim appraisal, as applicable; and prepares the final rating of record.
- M. *Rating of Record*: The performance rating prepared at the end of an appraisal period for performance of assigned duties over the applicable period and the assignment of a summary rating.
- N. *Reviewing official*: A representative of management, generally the employee's second-level supervisor, who reviews and approves the performance plan; interim appraisal, as applicable; and rating of record.
- O. *Unacceptable Performance*: An employee's performance that fails to meet established performance standards in one or more critical elements of such employee's position.

### Section 3. Employee Responsibilities

- A. All employees are responsible for:
  1. Participating in discussions with their rating officials concerning the development of performance elements, standards and measures and participating in their progress reviews and performance appraisals;
  2. Ensuring they have a clear understanding of their performance expectations and how performance relates to the mission of the

organization and requesting clarification from the rating official, if necessary;

3. Taking responsibility to improve their own performance, performing at their full potential, supporting team endeavors, and continuing professional development;
4. Identifying work problems and cooperating to resolve them with rating officials; and,
5. Seeking performance feedback from their rating official and, as appropriate, from internal and external customers.

#### Section 4. Employer Responsibilities

##### A. Rating officials are responsible for:

1. Communicating performance expectations clearly and holding employees accountable, monitoring performance during the appraisal period and providing performance feedback to employees, developing employees, making meaningful distinctions for assigned ratings based upon performance, fostering and rewarding excellent performance, and taking appropriate actions to address performance not meeting expectations.
2. Conducting one or more progress reviews, giving feedback on the quality of performance during the appraisal period, and preparing ratings.
3. Engaging the employee in the process of establishing and documenting the employee's performance plan.
4. Preparing performance ratings in a timely manner and recognizing employees who demonstrate noteworthy performance, ensuring equity and consistency in consideration for awards.

#### Section 5. Rating Performance

- A. To be eligible for a rating of record, an employee must have worked under a performance plan for at least the 90 day *minimum period*. If necessary, the appraisal period will be extended until the minimum rating period has been met before a rating of record is issued.
- B. At least once during the appraisal period, the employee's rating official must conduct an interim progress review. The *interim progress review* must be conducted at the midpoint of the appraisal period to ensure that performance

elements and standards are appropriate and to advise the employee of current performance.

- C. A written record of rating will be issued to each employee as soon as practicable after the end of the appraisal period, normally within thirty (30) days. The rating of record consists of ratings for each element in the performance plan, and the assignment of a *rating of record*.

#### Section 6. Temporary Duty Assignments (Details) and Temporary Promotions

- A. For details and temporary promotions for 120 days or less, written performance elements and standards are not required. The supervisor responsible for the detail or temporary promotion should document the employee's accomplishments at the end of the TDY assignment or detail and forward it to the employee's rating official for appropriate consideration. For Emergency Programs Form ICS 225 or equivalent may be used to document the employee's accomplishments. The employee's rating official will give the accomplishments the appropriate consideration, e.g., performance of elements and standards associated with the employee's normal duties versus duties not normally performed.
- B. For details (within the Department) or temporary promotions for more than 120 days, the supervisor responsible for the detail or temporary promotion must establish elements and standards and communicate them, in writing, to the employee normally within thirty (30) days of the start of the detail or temporary promotion. An interim progress review must be conducted to document the employee's accomplishments at the end of the detail or temporary promotion and provided to the employee's rating official for consideration in the final rating of record.

#### Section 7. Employee's Performance File (EPF)

The ratings of record and the associated performance plans for the most recent four (4) years (or longer as required) will be maintained in the EPF. The information in the EPF will be safeguarded and maintained pursuant to Article 35 Personnel Records, Section 3.

#### Section 8. Individual Development Plans (IDP)

As a part of the performance planning process, each employee is encouraged to discuss short- and long-term learning and developmental goals with the supervisor and develop an IDP. The IDP includes approved elective training, education and developmental activities in which employees may engage to improve their knowledge, skills and abilities and ultimately, job performance. The IDP should be set forth on Form AD-0881, Individual Development Plan or subsequently approved form.

## Section 9. Unacceptable Performance

- A. If at any time during the performance appraisal period an employee's performance is determined to be unacceptable in one or more critical elements, the rating official must:
1. Notify the employee of the performance element(s) for which performance is unacceptable; and,
  2. Inform the employee of the performance requirement(s) or standard(s) that must be attained to demonstrate acceptable performance.

The rating official should inform the employee that unless his/her performance in the critical element(s) improves to and is sustained at an acceptable level, the employee may be reassigned, reduced in grade or removed. See also Actions Based Upon Unacceptable Performance as addressed in Article 39 and Article 41 Within Grade Increases (WGI).

- B. Performance Improvement Plans (PIP): For each critical performance element in which the employee's performance is unacceptable, the rating official must afford the employee a reasonable opportunity to demonstrate acceptable performance commensurate with the duties and responsibilities of the employee's position and place the employee on a performance improvement plan. The performance improvement plan must include:
1. a minimum opportunity period of 60-days to demonstrate acceptable performance; and,
  2. the identity and description of the performance deficiencies in the performance elements and standards for which the employee's performance is at the unacceptable level.

## Section 10. Miscellaneous Provisions

- A. Prior to the early termination of a previously announced evaluation period, the Employer will normally give employees at least thirty (30) days notice of termination of the evaluation period.
- B. Performance expectations must be communicated to employees before employees may be held accountable for them. The employee will not be required to sign a pre-dated performance plan.
- C. Employees are expected to exercise due diligence in performance of their assigned duties. However, the Employer will give appropriate consideration to matters beyond the employee's control when evaluating performance standards and elements.

- D. Employees may utilize the grievance procedures when they believe a manager is not following the Employer's performance appraisal process.
- E. The Employer will give appropriate consideration to duties performed outside of the employee's job description.
- F. The Employer will provide example(s) to each employee in writing prior to the evaluation year of what the employee may do to exceed acceptable performance in each standard and element. This written communication will be attached to the performance standards when given to the employee. The examples will be provided for illustrative purposes only and are not to be viewed as all inclusive. It is recognized that dynamic work requirements, changing priorities or mission emergencies may significantly impact what is viewed as exceptional performance during any given rating period.

## ARTICLE 39. ACTIONS BASED UPON UNACCEPTABLE PERFORMANCE

### Section 1. General Provisions

- A. The actions covered by the provisions of this Article include reduction in grade and removal for unacceptable performance for employees serving in bargaining unit positions at the time the action was initiated under 5 C.F.R. 432.
- B. No employee will be the subject of a performance based action except for such cause as will promote the efficiency of the Service. The Employer must prove, by substantial evidence, a connection between the employee's performance and the efficiency of the Service.
- C. Nothing in this Article will be construed as a waiver of either the Union's rights or the employee's rights contained under Title 7 of the C.S.R.A. or any other law, rule, or regulation.
- D. No employee will have a performance based action processed against him/her that relies in whole or in part on a position description under which he/she is not working or on performance expectations that have not been communicated to the employee consistent with the terms of this Agreement or law.
- E. The employee may request, or accept an offer from the Employer for a change to a lower grade due to his/her unacceptable performance in his/her current position in the absence of a Performance Improvement Plan.
- F. Prior to initiating an unacceptable performance action, against an employee, the Employer will initiate a Performance Improvement Plan ("PIP") in accordance with Article 38 Performance Appraisal. The employee will be provided a reasonable period of time to improve his/her performance to an acceptable level.
- G. Where sufficient improvement to meet the marginal level or above has not been demonstrated during the improvement period, the PIP may be extended for a reasonable period of time.

### Section 2. Notice to Employee

An employee whose reduction in grade or removal is proposed under this Article will be provided with at least thirty (30) calendar days advance written notice along with a copy of the evidence file which identifies and states:

- A. Specific instances of unacceptable performance by the employee on which the proposed action is based;
- B. The critical elements and performance standards of the employee's position involved in each instance of unacceptable performance;
- C. That the employee will receive a reasonable amount of official time to review the material relied upon to support the proposed action and to prepare an answer orally and/or in writing;
- D. That the employee has the right to be represented by the Union, an attorney, or other representative of his/her own choosing;
- E. That the Employer will provide a written decision, including the specific reasons for the decision, within a reasonable period of time.

### Section 3. Notice to Union

For information on providing notice to the Union of actions based upon unacceptable performance see Article 15 Notice to Employees, Section 1.

### Section 4. Procedures

- A. An employee against whom an action is proposed under this Article will be provided with reasonable time (normally 14 days) from receipt of notice of the proposed action and all information as set forth in Section 2 above to review all material relied upon by the Employer and to answer the proposed action orally and/or in writing. The employee may submit affidavits and/or other documentary evidence in support of the answer. If the employee wishes to make an oral reply, the request for an oral reply must be made within ten (10) calendar days of the date the employee receives the letter of proposal and all documentary information relied upon in the proposal. The employee will be given the right to review any written report or recommendation of the oral reply and make corrections or submit his/her own version of the report within a reasonable amount of time if corrections are not mutually agreeable.
- B. An employee will have the right to raise any defense to the proposed action allowed by applicable laws and regulations.
- C. The deciding official will carefully consider the employee's oral and/or written replies in rendering his/her decision.

### Section 5. Extension of Time

- A. Any of the time limits set forth in this Article may be extended or waived by mutual agreement of the parties except those dealing with an employee's appeal rights to the Merit Systems Protection Board or the EEOC.
- B. Reasonable extensions of time will be granted by the Employer on a case-by-case basis, upon good cause shown provided the request is within the time limits identified in the proposal notice.

#### Section 6. The Agency Decision

The decision to retain, reduce in grade, or remove an employee:

- A. Will be made within a reasonable period of time after the date of expiration of the notice period or the date of the employee's timely written and/or oral response; and
- B. In the case of a reduction-in-grade or removal, will be based only on those instances of unacceptable performance by the employee occurring during the one-year period ending on the date the notice was issued under Section 2 above, and for which there has been compliance with the notice and other requirements of this Article.

#### Section 7. Appeal Rights

- A. An employee aggrieved by an adverse decision under this Article may appeal the action to the Merit Systems Protection Board or file a grievance under the grievance procedure found in Article 16 Grievance Procedure, but not both.
- B. An employee will be deemed to have exercised his option under this Section at such time as the employee timely initiates an appeal to the Merit Systems Protection Board or timely files a written grievance under the provisions of this Agreement, whichever action occurs first.
- C. An employee who elects to appeal an action to the Merit Systems Protection Board may be represented by the Union or an attorney or other representative of his/her own choosing.

## ARTICLE 40. EMPLOYEE INCENTIVES & RECOGNITION

### Section 1. Education

Managers will receive information and upon request training in the use of the Employee Recognition Program. The training will be made available upon request and will include changes in the awards/recognition system and the different options available. Employees who are involved at the local level in award's committees will be provided information and when appropriate, training in the recognition system.

### Section 2. Types of Awards

The types of awards available are:

- A. Performance Bonus
- B. Quality Step Increase\*
- C. Time Off Award
- D. Spot Award
- E. Suggestion
- F. Extra Effort, and
- G. Keepsake

\* QSIs are not precluded by the pass/fail performance system.

### Section 3. Design of Program

- A. The Parties will promote participation on all levels in the application of the Agency Incentive Awards program and local programs. The Parties are encouraged to develop and evaluate incentive award programs.
- B. Items for consideration in the design of local incentive awards program are:
  - 1. Establishing parameters which allow employees to choose which type of award/recognition they would like to receive;
  - 2. Establishing the goals of the work unit and/or teams upon which awards will be based;

3. Establishing a recognition committee that will establish criteria for recognition of peers and customers within the work unit.

#### Section 4. Evaluation of Program

The Parties will on an annual basis monitor and evaluate the Agency recognition program. Evaluation of the program may be initiated by either Party. The instrument used for the evaluation will be the reports generated from NFC data and distributed to the Union President through the EEO Report as noted in Article 21 Civil Rights. Additional information may be requested under the provisions of 5 U.S.C. 7114(b) (4).

#### Section 5. Suggestions

- A. Employees are encouraged to be innovative and creative. At his/her option, the employee making the suggestion may furnish a copy to the Union representative who may submit recommendations concerning the suggestion to the appropriate level of management. The responsible official or coordinator for suggestions at the approving level will acknowledge receipt of the suggestion in addition to the final decision on all suggestions. If the employee does not receive a response within 30 days from the manager to whom the suggestion was submitted, he/she may elevate the suggestion to the next level of management with a copy to the manager to whom the suggestion was previously submitted.
- B. Recognition should be given to those employees whose suggestions are implemented. The evaluation of the contribution will be measured by tangible or intangible benefits.

#### Section 6. Publicizing Recognition

- A. Unless there is an existing local agreement which provides more than required below, the following will control:
- B. Upon local Union request, the Employer will provide an annual listing of bargaining unit employee awards. This list will contain the names of the employees, the amount of the award given, the reason for the award and the submitting individual. Notwithstanding any local Union requests, these lists will also be provided annually to the respective Union Regional Vice-President.

#### Section 7. Rights

Nothing in this Agreement will be construed as a waiver of the Union's rights to negotiate impact and implementation and applicable substance of changes to the award system consistent with law and Governmentwide rules and regulations.

## ARTICLE 41. WITHIN-GRADE INCREASES (WGI)

### Section 1. General Provisions

- A. This Article is applicable only to General Schedule employees occupying permanent positions within the bargaining unit. Acceptable level of competence (ALOC) determinations are made solely for the purpose of determining whether an otherwise eligible employee is entitled to a within-grade increase. Such determinations will be based on the most recent official rating of record.
- B. Within-grade increases (WGI) will be granted to all employees whose most recent official rating of record are Pass (or its equivalent) or higher.
- C. Absent an official rating of record or notice of the withholding of a within-grade increase (WGI), within-grade increases (WGI) will be granted at the appropriate time.
- D. The standard of proof to be borne by the Employer in denial of a within-grade increase will be that standard established by law.

### Section 2. Procedures

- A. The acceptable level of competence determination will be made by the employee's immediate supervisor in a fair and objective manner.
- B. The supervisor will use the last rating of record in making the acceptable level of competence decision.
- C. If the supervisor decides to withhold a within-grade increase, the employee will be given thirty (30) days notice in advance of the WGI due date within which to demonstrate performance at an acceptable level of competence. This notice will be provided through the issuance of a performance improvement plan (PIP) in accordance with Article 39 Actions Based Upon Unacceptable Performance. If thirty (30) days in advance of the within-grade due date the employee is on a PIP that includes a warning the within-grade may be withheld, then no additional notice will be required. If the employee's performance improves to the Pass level (or its equivalent), the notice will be canceled.
- D. If the employee's performance does not improve to the Pass level (or its equivalent), the WGI may be denied. When a WGI is to be denied, the employee will be informed that his WGI is being withheld as soon as possible. The written notification will include the reasons for the negative determination, the areas in which the employee must improve in order to be granted a within-

grade increase in the future, and a description of the type(s) of assistance the Employer will make available. The written notification will also contain the right to request reconsideration from an appropriate management official who will be identified in the notice.

### Section 3. Effective Date

- A. When an employee's work is determined to be of an acceptable level of competence in accordance with the requirements of subsection 2(A) of this Article, the effective date of the WGI will be the first day of the first pay period following completion of the waiting period.
- B. If a negative acceptable level of competence determination is changed upon reconsideration or appeal, the effective date for the WGI is the date on which it would have been due.
- C. When an acceptable level of competence determination is not made on a timely basis through administrative error, oversight, or delay, the determination will be made based upon the employee's performance during the period that would have been covered had the determination been made in a timely manner. The effective date for the WGI is the date on which it would have been due.
- D. In the situation described in Sections 3(B) and (C) above, an employee will be paid an amount equal to all or any part of the pay, allowances, or differentials, as applicable, including interest (if applicable), the employee would have earned or received during the period if the withholding of the WGI had not occurred, less any amounts earned by the employee through other employment during that period, i.e., the difference between what the employee actually earned and what he/she would have earned during the period in question.

### Section 4. Procedures Following Withholding

- A. After withholding a WGI, the Employer will determine, at a minimum, whether the employee's performance is at an acceptable level of competence after 90 days following the original due date for the WGI. If the new determination is again negative, the employee must again be so notified.
- B. After a WGI has been withheld, the Employer will grant the WGI on the first day of the first pay period after the Employer determines the employee has demonstrated an acceptable level of competence.

### Section 5. Appeals

Appeals under this Article are subject to the grievance procedures set forth in Article 16 Grievance Procedure.

#### Section 6. Limitations On Use

Determinations that an employee is not performing at an acceptable level of competence will not be used to dispose of questions of misconduct not directly related to job performance.

#### Section 7. Notice To Union

When the Employer presents written notice to an employee withholding a WGI, the Employer will provide the employee with two copies of the notice, one which states, "THIS COPY MAY AT YOUR OPTION BE FURNISHED TO YOUR NAAE REPRESENTATIVE."

## ARTICLE 42. MERIT PROMOTION

### Section 1. Policy & Procedures

This Article establishes procedures for the competitive promotion of all career and career-conditional employees to positions within the bargaining unit as defined in this Agreement. This Article represents the negotiations over the appropriate arrangements and negotiable procedures for information contained in the Employer's Merit Promotion Plan (MPP). The Parties agree that it is beneficial for the Employer to encourage promotion from within Plant Protection and Quarantine. However, the Employer retains the exclusive right to fill positions and make selections for appointments from among properly ranked and certified candidates for promotion or from any other source.

The Union will be provided appropriate notice of changes in the Merit Promotion Plan in accordance with Article 5 Employer Rights and Obligations. Any necessary negotiations will be conducted in accordance with Article 22 Negotiation Provisions.

### Section 2. When Competitive Procedures Do Apply

The following placement actions are covered by this Article:

- A. Actions processed as promotions;
- B. Reassignment, reinstatement, transfer or demotion to a position with more promotion potential than the position last held in the competitive service (except as required by reduction in force regulations);
- C. Transfer to a higher grade position;
- D. Reinstatement to a permanent or temporary position at a higher grade than the person held in a non-temporary position in the competitive service;
- E. Election for training where a training agreement substitutes training for normal qualification or time in grade requirements or when the training is part of a promotion program;
- F. Selection for detail for more than 120 days to a higher grade position or to a position with known promotion potential;
- G. Selection for temporary promotions for more than 120 days to a higher graded position ; and
- H. Any combination of 6 and 7 where total service would exceed 120 days during the previous 12 month period.

### Section 3. When Competitive Procedures Do Not Apply

The following placement actions are not covered by this Article:

- A. Career promotions which are promotions without current competition when an employee was previously selected from an Office of Personnel Management (OPM) certificate (or a list of eligibles prepared by an agency having delegated examining authority). The intention must be made a matter of record and career ladders must be documented in the promotion plan.
- B. Promotion resulting from an employee's position being classified at a higher grade because of additional duties and responsibilities when the following conditions are met:
  - 1. The employee continues to perform the same basic functions;
  - 2. The major duties of the former position are absorbed into the new position;
  - 3. The new position has no further promotion potential;
  - 4. No other positions within the organizational unit are adversely affected; and,
  - 5. The new position is not a reclassification from nonsupervisory to a lead or supervisory status.
- C. Reinstatement, transfer, promotion (including temporary), reassignment, or change to lower grade provided:
  - 1. The position has no promotion potential beyond that of the employee's current position or one previously held on a permanent basis in the competitive service (or other merit system with which OPM has an interchange agreement approved under Civil Service Rule 6.7);
  - 2. The employee was not demoted or separated from that grade because of deficiencies in performance or 'for cause' reasons; and,
  - 3. The former grade is documented with acceptable evidence.
- D. Temporary promotions or details to a higher grade position of 120 days or less.
- E. Promotion resulting from the upgrading of a position without a significant change in duties and responsibilities due to issuance of a new classification standard or the correction of an initial classification error;
- F. Position change permitted by reduction-in-force regulations

- G. Repromotion to a grade or position from which an employee was demoted without personal cause and not at his/her request (acceptance of a demotion in lieu of reduction-in-force or relocation in a transfer of function is not considered a demotion at the employee's request);
- H. Career ladder promotion following noncompetitive conversion of anyone participating in the Veterans Recruitment Appointment, Employees with Disabilities Program, or Student Career Experience Program and/or successor programs; or
- I. A selection based upon priority consideration.

#### Section 4. General Provisions

- A. Vacancy announcements for bargaining unit positions will:
  - 1. state the manner in which applications with all supporting documents must be submitted;
  - 2. specify that applications and supporting documentation must be submitted to the contact office listed;
  - 3. state that applications and supporting documents must be *received* by the closing date in the announcement; and
  - 4. the opening period for all vacancy announcements will be a minimum of seven (7) calendar days.
- B. The employee must submit an application for each vacancy for which he/she wants to be considered. The employee may withdraw an application for a position at any time (in writing).
- C. Selective placement factors will only be used in accordance with OPM regulations and will be identified in the vacancy announcement. Any procedures to be utilized in the selection process will also be identified in the vacancy announcement.

#### Section 5. Promotion Records

Records for each promotion are temporary records and may be destroyed after 2 years or after the program has been evaluated by the Office of Personnel Management (OPM) (whichever comes first). Records may not be destroyed while there is a pending formal grievance.

## Section 6. Career Ladder Promotions

A career ladder is an established grade progression through which employees may advance to reach the full-performance level of a particular position. Career advancement is the intent and expectation of an employee in a career ladder position. However, career ladder promotions are not automatic upon completion of time-in-grade or training requirements. Rather, they are contingent upon the fulfillment of the following conditions:

- A. The employee meets requisite qualification and time in grade requirements;
- B. The employee has a current performance rating of at least fully successful.

## Section 7. Career Counseling

- A. An employee may request counseling to identify areas of knowledge, skills and abilities that may be targeted for further development to enhance an employee's chances for future promotion. Counseling requests should be submitted in writing, to the employee's immediate supervisor. The request must include the employee's narrative addressing their strengths and accomplishments relative to the requirements of the higher level position. The counseling will be conducted by the employee's immediate supervisor or other appropriate management official.
- B. If an employee is not selected for a promotion, then the employee may submit to his/her supervisor a written request within thirty (30) calendar days from notification of non-selection for counseling in the areas, if any, in which the employee could improve in order to increase chances for future promotion.

## Section 8. Request for Information

The Union may request information concerning a grievance or potential grievance related to promotion actions with a 7114 (b) (4) request.

## Section 9. Career Enhancement

The Employer will consider the use of alternative hiring methods designed for career advancement of bargaining unit employees, e.g. merit promotion, Career Enhancement Program, Student Career Experience Program and other special hiring authorities.

## ARTICLE 43.        DETAILS, SPECIAL ASSIGNMENTS AND TEMPORARY PROMOTIONS

### Section 1.     Introduction

- A. The purpose of this Article is to address vacancies and special assignments but does not include domestic TDY assignments covered under Article 32 Domestic TDY. The Parties recognize that details, special assignments and/or temporary promotions to other positions and activities may be conducive to mission accomplishment.
- B. Assignments designed to improve employee performance deficiencies and assignments that address employee learning contracts are exempt from the provisions of this Article because they are employee-specific.
- C. Normally, the Employer will avoid continually assigning the same individuals to details and special assignments.
- D. Details, special assignments and temporary promotions of five (5) business days or less are exempt from the procedures of this Article.

### Section 2.     Definitions

- A. *Detail* is a temporary assignment to a different Position Description for a specified period, when the employee is expected to return to his/her regular duties at the end of the assignment. An employee who is on detail is considered for pay purposes to be occupying his/her permanent position.
- B. *Special assignment* is a set of tasks or projects given as learning and development experiences. The assignments can be specifically designed to offer opportunities to explore new areas and learn new skills. Special assignments may be used to complete special projects conducive to the Employer completing its mission.
- C. *Temporary promotion* is the assignment of an employee to a higher graded position.

### Section 3.     Vacancy Announcements

Upon request, the Employer will provide vacancy announcements to employees unable to access them electronically.

### Section 4.     Details Within the Bargaining Unit

- A. Normally, selections for details will be made from qualified volunteers within the work unit where the detail opportunity exists. Opportunities for these locally controlled details will be rotated equitably among all qualified volunteers in the work unit with the opportunity. The Employer may also choose to exercise its discretion to assign a qualified employee from outside the work unit to the detail assignment.
- B. At the conclusion of a detail assignment, the employee will be returned to his/her permanent position and original duty station.
- C. The Employer will give the appropriate consideration for employees with approved annual leave prior to a mandatory detail assignment.
- D. Additional information concerning details and performance appraisal may be referenced in Article 38 Performance Appraisal.

#### Section 5. Special Assignments Within the Bargaining Unit

- A. Normally, selections for special assignments will be made from eligible volunteers at the work unit where the special assignment opportunity exists. These locally controlled special assignment opportunities will be rotated equitably among all qualified volunteers in the work unit with the opportunity. The Employer may also choose to exercise its discretion to assign a qualified employee from outside the work unit to the special assignment.
- B. The terms of any special assignment will be made known in advance with as much notification to the employees as possible.
- C. In the event the Employer determines the area of consideration must be larger (state, regional or national), the Union will be informed and provided an explanation at the time the announcement is made.
- D. Additional information concerning special assignments may be found in Article 31 Temporary Light Duty.

#### Section 6. Temporary Promotions Within the Bargaining Unit

The Parties recognize that temporary promotions are of mutual benefit and will be handled accordingly.

- A. Use of Temporary Promotions. A temporary promotion may be used when a situation requires the service of an employee in a higher grade position expected to last for more than two pay periods but not more than five (5) years.
  - 1. A temporary promotion may be appropriate:

- a. When an employee has to perform the duties of a position during the extended absence of the incumbent.
- b. To fill a position which has become vacant until a permanent appointment is made.

For such purposes, a temporary promotion gives better recognition to management's needs and the employee's new responsibilities. It also compensates the employee for the higher grade work he/she is performing.

2. A temporary promotion is not appropriate:
  - a. To give an employee a trial period before a permanent promotion.
  - b. To decide among candidates for a permanent promotion.
  - c. To train or evaluate an employee in higher grade duties.
3. The following general regulations also apply:
  - a. Temporary promotions expected not to exceed 120 days may be made noncompetitively.
  - b. Temporary promotions of a specific employee lasting more than 120 days in a 12-month period must be made competitively. Prior service under all temporary promotions and details to higher grade positions during the previous 12 months count toward this limitation.
  - c. Temporary assignments to higher grades that are expected to last two pay periods or less should be filled by detail.
  - d. Competitive procedures must be used in making a temporary promotion permanent, unless:
    - i. The temporary promotion was made initially under competitive procedures; and
    - ii. The fact that it might lead to a permanent promotion was indicated on the vacancy announcement.
4. All requests for temporary promotions must be submitted on an SF-52, Request for Personnel Action, and accompanied with a signed AD-332, Position Description Cover Sheet, and/or position description. Requesting officials will document on the SF-52 the amount of time the employee is expected to be assigned to the higher grade position, and the basis on which the temporary promotion should be granted. All

requests will be reviewed and approved by the appropriate higher level manager with approval authority.

- B. At the conclusion of a temporary promotion not exceeding 120 days, the employee will be returned to his/her permanent position and original duty station. At the conclusion of a temporary promotion lasting more than 120 days, the employee will be returned to the same or equivalent position in accordance with Governmentwide rules or regulations.
- C. Before a temporary promotion may result in a pay increase, the individual must be assigned to a position that has been classified at a higher grade.
- D. Additional information concerning temporary promotions and performance appraisal may be referenced in Article 38 Performance Appraisal. \
- E. Normally, selections for temporary promotions will be made from qualified volunteers within the work unit where the temporary promotion opportunity exists. These locally controlled temporary promotions will be rotated equitably among qualified volunteers in the work unit with the opportunity. The Employer may also choose to exercise its discretion to assign a qualified employee from outside the work unit to the temporary promotion.

## ARTICLE 44. TRAINING AND EMPLOYEE DEVELOPMENT

### Section 1. Importance of Training

The Parties agree that the training and development of employees is of significant importance. In conjunction with this concept, the Employer, within budgetary limitations, will make available to employees the training the Employer determines is necessary for the performance of the employees' assigned duties. The Parties agree to continue their encouragement of self-initiated development efforts of individual employees.

### Section 2. Availability of Training Information

The Employer will maintain a current copy of USDA, APHIS, Professional Development Center (PDC), or successor, Learning Resource catalog in all work units, and will make available notices of non-USDA courses it receives. Information will be made available to all employees.

### Section 3. Retraining, New and Additional Training

- A. Retraining of employees whose positions are abolished or significantly re-engineered as a direct result of RIF and/or transfer of function, will be covered under Article 34 Reduction in Force/Transfer of Function of this Agreement.
- B. Before expecting employees to perform new duties or utilize new technology, the Employer will provide any necessary and appropriate training in a timely manner.

### Section 4. Elective Training

When an employee requests elective training, the Employer, upon approval of such training, will pay authorized expenses for such training at a facility the Employer has approved when the following conditions have been met:

- A. The training has been applied for on an SF-182 (or appropriate form) and approved in advance;
- B. Such training will enable the employee to increase his/her proficiency in the current position (i.e., the training is job-related);
- C. Existing training programs within PPQ will not adequately meet the training need;
- D. Establishing a new training program to meet the need effectively is not feasible;

- E. Reasonable inquiry has failed to disclose the availability of a suitable and adequate program elsewhere in the government;
- F. The approval of such training will not create undue interference with operational requirements or an imbalance in staffing patterns; and
- E. Funds are available to pay for the training.

#### Section 5. Selection For Training Opportunities

When the Employer gives training that enhances an employee's prospects for a promotion, or professional opportunity, or increases the employees' value to the Employer, selection for the training will be made, first consistent with the needs of the mission, in a fair, equitable and impartial manner and will apply applicable merit promotion principles.

#### Section 6. Reimbursement of Training Costs

The Employer will reimburse employees for all approved costs and expenses which are incurred in taking Employer required training to the extent not inconsistent with applicable law and regulations. When travel expenses related to training are incurred refer to Article 28 Travel-General Regulations of this Agreement.

#### Section 7. Notice of Training

- A. Unless the employee waives any notice rights, all employees required to attend Employer required training other than at their duty stations, must be given notification as far in advance as possible, but, absent circumstances beyond the Employer's control, no later than two (2) weeks prior to the commencement of such training.
- B. In the event of a notification of elective training posting failure affecting a group of employees the remedy available under this Agreement will be limited to priority consideration when such training is offered again.

#### Section 8. Documentation and Certification of Training

The Employer will record and document all successfully completed Employer required training and non-Employer training that meets the Employer's goals for the employees' and Employer's files.

#### Section 9. Budgetary Training

The Employer will, upon request, provide budgetary training to Union officials and interested employees in order to enable the Parties better to understand the budget process, provide insight as to how budgets are prepared, and to better understand how to expend funds in a more efficient and effective manner.

#### Section 10. Assessment of Training Needs

- A. The Parties agree that assessment of training, at the National level, is an important issue which will be addressed by the Parties periodically. Forums for such discussions will include, but is not limited to:
  - 1. Any Employer committee which addresses training, which will include at least 2 employees appointed by the Union;
  - 2. Any joint labor management committee; and/or
  - 3. Any Labor Management Consultation.
- B. The committee members will receive official time to study the Employer's, and non-USDA training programs and to prepare for meetings.
- C. Local work units are encouraged to form training committees and design training programs to meet the local as well as mission needs, and to enhance the professional development of the employees.

#### Section 11. Interagency Training

When available and when appropriate the Employer may offer training provided by other Agencies when to do so would result in:

- A. Better training;
- B. Improved service; or
- C. Savings to the Government.

## ARTICLE 45. VOLUNTARY TRANSFERS

### Section 1. Policy

- A. The Employer will consider requests for voluntary lateral transfers in accordance with this Article. When filling bargaining unit employee vacancies by lateral transfer, the Employer retains the right to select from among those who apply pursuant to the provisions of this Article. Voluntary lateral transfers will be made at the expense of the employee and during non-duty hours, i.e., approved leave status, except in those cases where it can be clearly shown to be advantageous to the Government. Nothing in this Article will be construed as a waiver of the Employer's 5 U.S.C. 7106(a) rights or the Union's rights.
- B. Voluntary transfers will be made between positions with identical official and/or working titles, e.g., SITC Officer to SITC Officer, Technician to Technician, etc. Voluntary transfers will not be permitted between positions with different titles, e.g., Pest Survey Specialist to Plant Health Safeguarding Specialist, etc.

### Section 2. Established Employee Priority Transfers

When filling vacancies, the Employer will give consideration to the lateral transfer list.

### Section 3. Voluntary Downgrade Transfer

Any employee taking an employee initiated voluntary downgrade transfer will apply through the provisions of this Article.

### Section 4. General Procedures

The Employer will provide employees the opportunity to indicate in advance those locations to which they desire to laterally transfer. When using the Lateral List to fill a position, the Employer will consider each eligible employee who has requested that location for a position with the same job title.

### Section 5. Transfer Eligibility Provisions

Eligibility for transfers other than hardships will occur when the following conditions have been met:

- A. New Hires become eligible to apply for lateral transfer:
  - 1. After serving eighteen (18) months from the date of entrance on duty,

2. Satisfactorily completing mandatory condition of employment training,
3. Minimum fully successful performance evaluation, and
4. Subject to satisfying other factors such as performance improvement plans or discipline related adverse actions.

B. Journey-people

1. Twelve (12) months on duty at existing current official duty station, except for return transfers necessitated by RIF/Bumping procedures and directed reassignments,
2. Minimum fully successful performance evaluation, and
3. Subject to satisfying other factors such as performance improvement plans or discipline related adverse actions.

C. The Employer will consult with the Regional Level of the Union on waivers of eligibility requirements for other extraordinary circumstances.

## Section 6. Lateral Transfer Procedure

The Employer will observe the following lateral transfer procedures once finalized:

The Employer and the Union will complete a negotiated memorandum of understanding within six months of the effective date of this contract detailing how the Employer in concert with its business services will administer a computerized database for maintenance of Voluntary Lateral Transfer Lists. If agreement is not concluded within the six months, this Agreement will be reopened and this Section will be negotiated to conclusion utilizing the Ground Rules in effect for negotiation of this Agreement.

The following parameters will be incorporated into the database as part of the procedure:

- A. Each employee's application will have a two (2) year life of eligibility calculated from the date of filing the most recent application or change application.
- B. Employee changes will be made no more often than once every six (6) months.
- C. There will be a check box on the site/position selection form or data entry point for each job series/title at each location with type availability posted.

- D. An eligible employee may apply to the Voluntary Lateral Transfer List at any time.
- E. The lists will be posted electronically (bulletin board or internet) as read-only output accessible to all employees.
- F. The initial application may be submitted by mail, or, when available, by electronic means.
- G. The list(s) will indicate the continuous duration in months that an individual employee has indicated an interest in a particular location.
- H. The Employer will issue special announcements if original conditions change (new station, paid move status, etc.);
- I. The Employer will permit a transfer which has been approved, but is delayed to take effect at the end of the delay if the vacancy is still available;
- J. Exceptions to the prescribed procedures will be granted in individual cases for extenuating circumstances if mutually agreed to by the appropriate Regional Vice President and Regional Director/designee.

## Section 7. Hardships

Any employee may request a lateral transfer for reasons of personal hardship by submitting a request in writing to his/her Regional Vice President. The employee is required to substantiate the hardship. Substantiating literature will be included with the written request. Within the written request, the employee will indicate which of the four reasons below he/she contends is applicable to the hardship request. The Regional VP will then submit all information to the Regional Director/designee. The Regional Director will inform the Regional Vice President and the affected employee of the decision for a hardship transfer.

### Reason One:

Hardships caused by emergency situations. These typically would be medical and family type emergencies which need immediate action. The emergency involves the employee or a family member. (Family member means the following relatives of the employee: (a) spouse, and parents thereof; (b) children, including adopted children, and spouses thereof; (c) parents of the employee including step-parents; (d) brothers and sisters including step-brothers and sisters, and spouses thereof; and (e) any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship). This does not mean that an employee will be granted a transfer if there is no vacancy at the desired location. It does mean that the employee will have priority over other hardships to that location.

### Reason Two:

If for example, the Employer relocates an employee because of a directed reassignment.

Reason Three:

Hardships caused by situations not created by the Employer which have a highly traumatic effect upon the employee. If, for example, a spouse who is not a part of the PPQ structure found a job in a distant location, the acceptance of that position creates difficulty or hardship for a member of the bargaining unit; marriage, engagement; etc.

Reason Four:

Hardships caused by situations not created by the Employer which are less traumatic. These situations cover many contingencies that are not covered in the previous categories.

#### Section 8. Swaps

Employees seeking to swap positions must work out the details between themselves in conjunction with their respective Regional Vice Presidents. The Regional Vice Presidents will then forward the requests to the respective Regional Directors for consideration. Swaps will be considered only between employees of similar qualifications, titles, series, and grades.

#### Section 9. Exclusion

Excluded from this Article are those positions which are to be filled by employees affected by reduction-in-force, reassignment in lieu of RIFs, reassignment under RIF procedures or transfer of function.

## ARTICLE 46. LEAVE

### Section 1. General Provisions

- A. Employees will earn annual and sick leave in accordance with applicable Governmentwide laws and regulations.
- B. The Employer will not use denial of leave requests in lieu of, or as part of, disciplinary or adverse actions.
- C. Leave will be charged in fifteen (15) minute intervals.
- D. Requests for approval or disapproval of leave will be documented on an Application for Leave (OPM-71) or equivalent. It is the employee's responsibility to ensure requests are submitted to, and received by, the approving official and, when practicable, approved prior to taking leave.
- E. Each work unit will establish, through collective bargaining, its own procedures concerning delivery and receipt of OPM-71s to the supervisor and the placement and subsequent rotation of employees on leave rosters.
- F. If the needs of the Employer to accomplish the Mission do not permit the approval of leave requested, the Employer will provide written reasons for the disapproval on the OPM-71 submitted by the employee and return the form to the employee.
- G. **Unscheduled Leave**
  - 1. When unscheduled leave is necessary, the employee will notify the immediate supervisor, or his/her designee, to request leave. If not available, the employee will leave a message for his/her supervisor, recognizing that supervisory notice and approval is required. In emergency situations the supervisor will accept notification from a third party acting as the employee's agent for purposes of this Article. The employee has the responsibility for contacting the supervisor as soon as reasonably possible to provide any required information or documentation in accordance with this Article.
  - 2. It is the intention of the Parties to respect the privacy of employees. However, a supervisor may request sufficient information concerning the circumstances and the duration of the absence, if known, as may be necessary, to permit the supervisor to evaluate the appropriateness of approving or disapproving leave. When it appears that an absence will extend beyond the original date of anticipated return to duty, the employee will promptly notify the supervisor and request approval for the new anticipated date of return.

H. When scheduling conflicts are unresolved by the locally negotiated procedures, the supervisor will make the final determination if the affected employees are unable to reach agreement amongst themselves.

I. Medical Certification

1. "Medical certification" means a written statement signed by a practicing physician or other medical practitioner certifying incapacitation and the period of incapacitation while receiving professional treatment. For sick leave requested because of exposure to a contagious disease, the medical certification should indicate the name of disease, that the disease is contagious, and the period of confinement and/or quarantine if the quarantine is required by ordinance or statute. If medical certification is required, it must be submitted to the supervisor or his/her designee as soon as practicable, but no later than by the date the employee returns to duty.
2. The supervisor may request medical certification to be submitted:
  - a. Or an unscheduled absence in excess of three (3) consecutive workdays;
  - b. For use of leave if the employee is officially on leave restriction;
  - c. For a chronic condition which does not necessarily require medical attention although absence from work may be necessary. If the employee has previously furnished a medical certificate, with prognosis, of the chronic condition the employee will not be required to furnish a medical certificate on a continuing basis. The supervisor may require reasonable updates to the medical certificate;
  - d. To consider an employee request for leave under the Family Medical Leave Act (FMLA) or any other family friendly leave benefit (using the appropriate DOL form);
  - e. To consider an employee request for special consideration such as reassignment or other reasonable accommodation see Article 31 Temporary Light Duty;
  - f. To consider requests for advance sick leave;
  - g. To consider requests for application for the Voluntary Leave Transfer Program; and

- h. From an appropriate physician or practitioner stating that the employee can return to work, noting any applicable limitations or restrictions upon such work.

## Section 2. Annual Leave

In accordance with this Article and consistent with the Federal Employee's Family Friendly Leave Act (FEFFLA) and locally negotiated procedures the Employer will approve annual leave for the following, but not limited to:

- A. An employee has requested up to seven days in the event of a death in his/her immediate family. For the purpose of this subsection, immediate family includes:
  - 1. Spouse or significant other;
  - 2. Children, stepchildren, including adopted children and foster children, and spouses thereof;
  - 3. Parents and spouse's parents; and
  - 4. Brothers and sisters and spouses thereof;
- B. An employee's request is for an established religious holiday which occurs on a regularly scheduled workday of the employee's basic workweek; and
- C. The request is for Local Presidents', National Officers', and Union designated representatives' of the Union attendance at the Union's convention.

## Section 3. Advance Annual Leave

- A. A permanent employee who expects to remain in service through the leave year may request advancement of annual leave in an amount not to exceed that which the employee will accrue for the remainder of the leave year.
- B. An employee who wishes to request advancement of annual leave will complete an OPM-71 and provide a written explanation of the reason for the request.

## Section 4. Sick Leave

- A. Sick leave will be granted, in accordance with law and Governmentwide rule and regulation, 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, stress, injury, pregnancy, or childbirth;
3. Provides care for a family member, as defined in 5 C.F.R. 630.201, who is incapacitated as a result of physical illness, mental illness, stress, injury, pregnancy, or childbirth; or who receives medical, dental, or optical examination or treatment;
4. Makes 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 his/her presence on the job because of exposure to a communicable disease; or
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.

B. An employee may use sick leave under this section without invoking the FMLA. If FMLA is invoked, the employee may elect to use accrued sick leave, in whole or in part, in accordance with law and Governmentwide rule and regulation.

C. *Advance Sick Leave.* Advance sick leave will not be granted when it is known or expected that the employee will not return to duty, i.e., the employee has applied for disability retirement, has received notice of separation or furlough, or has submitted notice of resignation. An employee may be advanced sick leave for any one of the following:

1. The employee is afflicted with a serious health condition and the period of incapacitation represents a consecutive absence from duty for more than three (3) workdays.
2. The full-time employee must provide care for a family member who is seriously ill. The employee will be limited to an advance amount of 240 hours per leave year for these conditions. Additional hours may be granted for other leave categories.
3. The full-time employee must attend the funeral of a family member. The employee will be limited to an advance amount of 104 hours per leave year for these conditions. Additional hours may be granted for other leave categories.
4. The employee must be absent from duty for adoption purposes for which sick leave would otherwise be granted.

## Section 5. Excused Absence

An excused absence is a period of official (administrative) leave without loss of pay or charge to annual, sick, or other leave. Excused absence may be granted for certain activities and within the limitations described by law and Governmentwide rule and regulation.

## Section 6. Leave Without Pay

- A. Leave without pay (LWOP) is a temporary absence from duty, without pay, which may be granted at the employee's request. Requests for LWOP must be approved in the following situations:
1. Military training or active duty for members of the Reserves or National Guard, who are not entitled to, or have exhausted their military leave;
  2. Medical treatment for disabled veterans;
  3. Employees exercising LWOP rights under the FMLA; and
  4. Employees to fulfill certain family obligations (up to 24 hours of LWOP each year).
- B. Local Presidents, National Officers, and/or Union designated representatives of the Union will be entitled to use LWOP for attendance at the Union meetings and conventions when they do not qualify for official time for such attendance.
- C. Compensable hours earned outside the basic 40 hour workweek during an administrative week (Sunday through Saturday) in which LWOP is taken will be used to complete the basic 40 hour workweek before being paid at the full overtime rates as follows:
1. Hours worked on a day that 8 hours of the basic 40 hour workweek are worked, including CTT, will be paid at the usual overtime rate minus the straight-time hourly benefit deduction for outstanding LWOP hours up to the number of LWOP hours taken during the week (currently Transaction Code (TC) 19);
  2. Hours worked on a day when less than 8 hours of the basic 40 hour workweek are worked, including CTT, will be applied toward completing the basic 40 hour workweek and will be paid at the straight time rate up to the number of LWOP hours taken during the week.

3. Hours worked outside the basic workweek will be applied toward completing the basic workweek in a manner most favorable to the employee, for example, holiday hours (currently TC 31) applied first, non-Sunday overtime hours (currently TC 21) applied second, and Sunday hours (currently TC 22) applied last.

## Section 7. Family and Medical Leave

The FMLA entitles eligible employees to a maximum of twelve (12) administrative workweeks of unpaid leave during a 12-month period for certain serious health conditions or needs of an employee or his/her family in accordance with law and Governmentwide rule or regulation. An employee may elect to substitute paid leave, as appropriate, for any leave without pay used under the FMLA. Certification of health care provider under the FMLA will be submitted by the employee on Form WH-380.

## Section 8. Military Leave

Consistent with law and Governmentwide rule and regulation:

- A. An employee who is a member of a reserve component of the uniformed services or a member of the National Guard will be granted military leave for active duty or training.
- B. Eligible full-time employees are credited with fifteen (15) days of military leave each fiscal year which may be taken successively or intermittently during each fiscal year. Up to fifteen (15) days of unused military leave may be carried over to the next fiscal year, but no more than thirty (30) days of military leave may be used by a full-time employee in any fiscal year.
- C. Each work day of absence, as listed in the military orders, is counted as a day of military leave.
- D. Eligible employees called to duty for a period in excess of their balance of available military leave authorized in subsection 2 above can use annual leave or leave without pay for the excess period.
- E. Employees serving in the military will be entitled to such other rights as any federal rule, law, or regulation may give them.

## Section 9. Leave for Jury or Witness Service

- A. An employee receiving a summons for jury duty or as a witness in a judicial proceeding will inform the Employer as soon as reasonably practicable.
- B. An employee who is under proper summons from a court to serve on a jury will be granted administrative leave from the date stated in the summons on

which he/she is required to report to the court to the date he/she is discharged by the court.

- C. When an employee, in a nonofficial capacity, is summoned as a witness by 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, the employee will be granted administrative leave during the time he/she is absent as a witness.
- D. When an employee utilizing the provisions of subsections B and C above is excused by the Court for a day, or a major part of a day, the employee will return to duty or be charged annual leave for the duration of his/her absence.
- E. The Employer will assign employees on jury duty a basic work week of Monday through Friday, 8 A.M. to 4 P.M.

#### Section 10. Home Leave

- A. Home leave will be granted and accrued in accordance with applicable law and Governmentwide rule and regulations and this Agreement.
- B. Home leave is intended for use in the United States, in the Commonwealth of Puerto Rico, or in the territories or possessions of the United States.

## ARTICLE 47. HOLIDAYS AND RELIGIOUS OBSERVANCES

### Section 1. Designated Holidays

The following days are treated as holidays for purposes of pay and leave of employees:

- A. New Year's Day - January 1
- B. Martin Luther King's Day - third Monday in January
- C. Washington's Birthday - third Monday in February
- D. Memorial Day - last Monday in May
- E. Independence Day - July 4
- F. Labor Day - first Monday in September
- G. Columbus Day - second Monday in October
- H. Veteran's Day - November 11
- I. Thanksgiving Day - fourth Thursday in November
- J. Christmas Day - December 25

Special Holidays include:

- K. Inauguration Day (for Washington, D.C., Metropolitan Area only)
- L. Any day designated by Federal Statute or Executive Order.

### Section 2. "In-lieu-of" Holidays

Except for employees on compressed work schedules covered by locally negotiated procedures for determining "in-lieu-of" holidays, when a holiday for an employee falls on a non-workday outside the employee's basic workweek, the day to be treated as his/her holiday is the workday immediately before the non-workday unless the holiday falls on Sunday - then the subsequent workday is the holiday.

### Section 3. Non-Federal Holidays

When a field office is closed and work cannot be properly performed due to a local, State, territorial or foreign holiday, field employees will be granted excused absence,

i.e., no loss of pay or charge to leave. Factors used to determine if an employee is actually prevented from working include:

- A. The building or office in which the employees work is physically closed, or building services essential to proper performance of work are not operating;
- B. Local transportation services are discontinued or interrupted; or
- C. The employee's duties consist largely or entirely of dealing directly with employees and officials of business or industrial establishments or local government offices, which are closed in observance of the holiday, and there are no other duties consistent with his/her normal duties to which the employee can be assigned.

#### Section 4. Religious Observances

- A. In accordance with law and Governmentwide rules and regulations, employees whose personal religious beliefs require the abstention from work during certain periods of the workday or workweek may elect to be absent during those periods on earned/advanced religious compensatory time so long as their absence will not interfere with the efficient accomplishment of the Agency's mission.
- B. Employees applying for and earning compensatory time for religious purposes will:
  - 1. Be permitted to use compensatory time for a religious purpose before it is actually earned;
  - 2. Be credited for compensatory overtime on an hour for hour basis or fractions thereof;
  - 3. Earn compensatory time no more than 4 pay periods in advance;
  - 4. Earn compensatory time during periods of non-reimbursable overtime when performing import/export activities;
  - 5. Repay any advanced amount of religious holiday time within 12 months of the time in which it was granted or have that time charged to annual leave or leave without pay unless a waiver of this time frame has been granted by the approving official; and
  - 6. Be paid for any unused balance at the end of either the leave year or the 12 month repayment period at the base hourly rate in effect the pay period it was earned.

## ARTICLE 48. GOV/POV USE

### Section 1. General

- A. Employees will be permitted to use Government Owned Vehicles (GOV) and Privately Owned Vehicles (POV) in accordance with Governmentwide regulations and the Employer's rules and regulations to the extent not in conflict with this Agreement.
- B. Employees are not required to own or use a POV for government work.

### Section 2. Home-to-Work Transportation

- A. The Employer may authorize employees the use of government vehicles for home-to-work transportation provided that such use is authorized by applicable law, rule or regulations.
- B. For more detailed information on home-to-work transportation please refer to the MRP Motor Vehicle Manual and Departmental Regulation 5400-005 or successor issuance referenced in the Appendix of this Agreement.

### Section 3. Pickup and Return of GOV

Employees will receive their regular pay for picking up and returning a GOV to the regular storage site during regular hours. If this activity occurs outside of regular hours, employees will receive applicable overtime or compensatory time under the following circumstances and in accordance with the Human Resources Desk Guide and Supplement 4500A found in the Appendix of this Agreement:

- A. Return travel to the storage site occurs after regular hours from a field assignment, or
- B. The employee is required to pick up a GOV before regular hours in order to report to a field assignment.

### Section 4. Privately Owned Vehicles

- A. Employees are responsible for making arrangements to report to their official station or assigned work site within the geographical area of the official station.
- B. If an employee elects to use his/her own vehicle in lieu of Employer-provided transportation, with prior approval, that employee will be compensated for

mileage under the appropriate regulations, which is at a reduced rate if a GOV is reasonably available.

- C. If there is no GOV available for the employee to perform an assignment occurring at a location other than the employee's official station and the employee elects to use his/her POV, then that employee will receive mileage compensation for the use of his/her POV under appropriate Federal Travel Regulations for the miles in excess of the commute to and from the regular duty station.

#### Section 5. Parking

- A. The Employer will make a reasonable effort to obtain parking space for employees at PPQ offices, stations, and substations where their presence is required or scheduled. This will include proper marking to preclude use by other than PPQ employees, and the spaces will be used by all employees without regard to position or grade. Except for handicapped personnel, those employees having inspectional responsibilities at more than one location will be given preferential consideration for accessible parking spaces. Handicapped personnel will receive first consideration.
- B. Employees may request to use Employer controlled parking spaces not required for official needs. The denial of any request for controlled parking is not covered by the negotiated grievance procedures in Article 16 Grievance Procedure.

#### Section 6. Accident Reporting

- A. In accordance with established safety regulations for reporting vehicle accidents employees will report to the supervisor, any accident, or incident, e.g., mechanical problems or damage, involving a government-owned, government leased, or privately-owned vehicle involved in an accident, while in the performance of official duties, including overtime assignments.
- B. Any employee who becomes aware of damage to a government vehicle will notify the immediate supervisor, as soon as possible.
- C. Employees are required to report all incidents or misuse and abuse of government vehicles to the Employer as soon as possible and in accordance with applicable laws, rules, and regulations.
- D. All government vehicles will contain an Accident Reporting Kit. The supervisor or designee will ensure that employees are familiar with and follow the guidelines in the MRP Motor Vehicle Manual or successor issuance prior to operating a government vehicle.

## Section 7: Official Station

For purposes of travel, "*Official Station*" is defined as the location of the employee's permanent work assignment. The geographic limits of the official station are:

- A. The corporate limits of the city or town where stationed or if not in an incorporated city or town;
- B. The reservation, station, or other established area (including established subdivisions of large reservations) having definite boundaries where the employee is stationed.

## **ARTICLE 49.        MASS TRANSIT**

### **Section 1.     Purpose and Authority**

The Employer has agreed to provide transit incentives for employees covered by this Agreement under the provisions of the 1998 Transportation Equity Act. Should the Act or the MRP directive change, the Employer agrees to notify the Union and negotiate as appropriate.

### **Section 2.     Policy**

All incentives implemented must be consistent with local transit authority regulations as well as applicable laws, and Governmentwide rules and regulations in effect at the inception of this Agreement.

### **Section 3.     Local Modifications**

The parties may mutually agree at the local level to negotiate additional/alternative procedures to facilitate the voucher, disbursement system, and accountability systems to conform with local needs or requirements.

### **Section 4.     Bicycles**

Negotiation for bicycle facilities is a local matter.

## ARTICLE 50. PART-TIME EMPLOYMENT

### Section 1. Procedures

- A. The Employer recognizes that part-time employment provides management with the flexibility to meet work requirements and provides a benefit to employees who require or prefer shorter hours, for example, students, and employees with family responsibilities.
- B. The Employer will consider requests for part-time career employment and, when appropriate, will make such opportunities available, consistent with resource and mission requirements.
- C. Employee requests for part-time employment must be made in writing to the employee's immediate supervisor. The Employer will give fair and objective consideration to the employee's request for part-time employment and grant such requests based on the Employer's need for the employee's services, the suitability of the position for part-time employment, availability of resources, and the impact on the efficiency of the Agency. A copy of the recommendation to go forward for approval or notice of disapproval of the request with reason for the denial will be provided to the employee within thirty (30) days of receipt of the request. A copy of the final decision will be given to the employee within ninety (90) days of the initial request.
- D. Prior to a request for part-time employment or upon approval of part-time request, employees may request information concerning the impact of the conversion from full-time to part-time employment in the areas of retirement, reduction-in-force, health and life insurance, and promotion and step increases, etc. This information will be provided to the employee in the form of a written fact sheet. The employee will be required to sign a statement indicating that he received this information.
- E. Any person who is employed on a full-time basis will not be required to accept part-time employment as a condition of continued employment.

### Section 2. Job Sharing

- A. Job-sharing is a form of part-time employment in which the tours of duty of two employees are arranged in such a way as to cover a single full-time position. The Employer will consider requests to job-share and may grant these requests based on the Employer's need for the employee's services, the suitability of the position for job-sharing, availability of resources, and the impact on the efficiency of the Agency.
- B. Employee requests to job-share must be made to the immediate supervisor(s) in writing in accordance with the procedures of Section 1 above.

- C. If one partner leaves the program for any reason, the other partner will have forty-five (45) days from receiving written notice from the Employer to find another partner or resume full-time employment unless workload demands require otherwise.

## ARTICLE 51. OUTSIDE EMPLOYMENT

### Section 1. Right to Engage

An employee has the right to engage in outside employment or participate in or be associated with a business enterprise, so long as such activity will not:

- A. Interfere with the efficient performance of the employee's duties or availability for duty;
- B. Result in a conflict of interest or the appearance of a conflict with the employee's official Agency duties;
- C. Bring discredit upon or lower public confidence in the Agency; or
- D. Violate any federal law or Governmentwide rule or regulation.

### Section 2. Guidelines

Employees are not required to obtain prior approval to engage in outside employment. However, employees must ensure that outside employment or activities do not conflict with their official government duties.

### Section 3. Avoiding Conflict

- A. Employees are encouraged to ask for, and the Employer further agrees to provide guidance and specific interpretative assistance on questions concerning outside employment when requested in writing by the employee. Employees should direct questions regarding outside employment and conflict of interest to their supervisor or the Employee Relations Specialist.
- B. Employees are cautioned that outside employment or activities that are found to be or appear to be in violation may be subject to appropriate corrective or disciplinary action.

## ARTICLE 52. RETIREMENT

### Section 1. Counseling

The Employer will provide retirement counseling on an as-needed basis, and in response to a request for counseling from an employee in the unit nearing eligibility for retirement. Counseling assistance may include informational material, and/or group counseling sessions. A current listing of counseling sources will be posted at each work unit. It will include counseling assistance, informational material, and/or group sessions. A current listing of counseling sources will be posted at each work unit.

### Section 2. Notice of Rights

The Employer will provide applicable information to each employee who separates voluntarily or involuntarily (except by retirement) such as:

- A. His/her rights to file for disability retirement if the employee has at least five (5) years of civilian service;
- B. The possibility of applying for a discontinued service annuity;
- C. Eligibility for a deferred annuity at sixty-two (62), provided the employee has had at least five (5) years of civilian service; and
- D. All the options regarding the contributions the employee has made to the retirement funds and the Thrift Saving Plan.

### Section 3. Withdrawal of Resignation/Retirement

An employee may withdraw a resignation or retirement application at any time prior to its effective date, provided the withdrawal is communicated to the Employer in writing and received prior to the Employer making a commitment to fill the position of the resigning or retiring employee. The above provision is not applicable to any agreements reached between an employee and the Employer resolving any other matters.

### Section 4. Employee Resignation Rights

The questions whether and on what date to resign are voluntary matters of free choice for each employee. When an employee is faced with the prospect of Employer-initiated action such as termination or removal, the employee will have the right not to resign or, if the employee chooses, to make a resignation effective at any time prior to the effective date of the Employer's action. Resignations will not be secured by coercive or deceptive means.

#### Section 5. Prompt Completion of Paperwork

The Parties recognize that final decisions concerning retirement applications and issuance of retirement checks are the responsibility of the Office of Personnel Management. The Employer agrees to process and transmit all necessary paperwork in connection with retirement applications in a prompt and timely fashion.

#### Section 6. Summary of Benefits

Upon receipt of a request from an employee who is eligible to retire, or who is within three (3) years of such eligibility, the Employer agrees to provide a statement setting forth an estimate of the employee's monthly compensation upon retirement, types of retirement options available, and the procedures for continuing any health or life insurance policies. This information will be updated at the employee's written request sent to the location posted with the list of counseling sources referenced in Section 1 above, but not more frequently than once a year.

## ARTICLE 53. CHILD CARE

### Section 1. General

The Employer and the Union agree that finding solutions to child care issues is conducive to a family-friendly work environment.

### Section 2. Procedures

Where child care issues are raised the Employer and the Union will jointly address the issues for the local work unit, i.e., negotiate. The parties may jointly request that GSA find suitable facilities for a child care center in reasonable proximity to the work location and may also utilize resources such as:

- A. Work Life Wellness Program
- B. Employee Assistance Program (EAP)

## ARTICLE 54. UNIFORMS

### Section 1. Policy

While in a duty status, employees will wear the official uniform in accordance with policy and published allowance guidelines, the Uniform Committee Charter, and APHIS/MRP Directives. The Parties recognize that it is important for PPQ employees to present a positive image to the public through personal appearance and conduct.

### Section 2. Guidelines

Basic uniform guidelines are provided in the appropriate APHIS/MRP Directive (currently 4591.1). Recommendations for changes in the PPQ uniform, including but not limited to: style, color, image, enhancement, additions, components, and source will be reviewed by the PPQ Uniform Committee.

The Uniform Committee will develop appropriate uniforms for maternity, tropical, and arctic environments.

Following Uniform Committee decisions the Parties will negotiate, where appropriate, the uniforms worn in the performance of duties, including image enhancement additions and insignia.

Optional use of uniform parts and insignia will be negotiated at the local level and not conflict with national policy and guidelines.

### Section 3. Joint Committee Composition

The PPQ Uniform Committee will be composed of equal numbers of management and Union employees and will meet annually or at such additional times as the Employer may direct in accordance with applicable sources.

The Committee will communicate with necessary sources, solicit input where appropriate and report results and decisions to the work force annually. Input from the work force may be submitted to Committee members at any time. The joint labor-management Uniform Committee will operate in accordance with the Charter found in the Appendix of this Agreement.

### Section 4. Employee Image

When making assignments the Employer will make positive efforts to assign employees to tasks which are consistent with their job description and do not diminish the Employee's image.