

**MONTANA**

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## PREAMBLE

This Agreement is made in compliance with Title VII, Civil Service Reform Act of 1978, PL 95454, and between Farm Service Agency (State of Montana), United States Department of Agriculture, herein after referred to as the "Employer", and the American Federation of Government Employees (AFGE), Local 1585, hereinafter referred to as the "Union", for employees of the described Unit, hereinafter referred to as "Employees".

## WITNESSETH

In consideration of the mutual covenants herein set forth, the parties hereto intending to be bound hereby agree as follows:

Whereas Title VII of the Civil Service Reform Act of 1978, PL 95-454, states 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. Contributes to the effective conduct of public business, and
  - C. Facilitates and encourages the amicable settlements 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, labor organizations and collective bargaining in the civil service are in the public interest.

Now, therefore, the parties hereto agree as follows, with respect to this agreement and all amendments and supplements:

## ARTICLE 1 - LEGAL AUTHORITIES

**1.1 AUTHORITY:** This agreement is made under authority contained in Title VII, and in accordance with a Certification of Representation dated July 8, 1971, from the Department of Labor.

**1.2 RECOGNITION AND UNIT DESIGNATION:** Under authority contained in Title VII the Union is hereby recognized as the exclusive representative of all the employees in the unit described in Article 1.3. The Union recognizes its responsibility to represent the interest of all unit employees with respect to grievances, personnel policies, practices, and procedures, or other matters affecting their general working conditions, subject to the express limitations set forth herein:

**1.3 UNIT:** The bargaining unit for which AFGE Local 1585 is exclusive representative is described as follows:

**Included:** All professional and non-professional employees of the Farm Service Agency (USDA) headquartered throughout the State of Montana, under the jurisdiction of the State Executive Director at Bozeman, Montana.

**Excluded:** All management officials, employees engaged in Federal personnel work in other than a purely clerical capacity, supervisors, confidential employees, employees primarily engaged in investigation or audit functions relating to the work of individuals employed by the Agency and employees described in 5 USC 7112 (b) (2) (3) (4) (6) and (7).

**1.4 OUTSIDE CONSULTATION:** From time to time management may engage in consultation or dealings with religious, social, fraternal, professional, or other lawful associations, not qualified as a labor organization, with respect to matters or policies which involve individual applicability to it or its members; provided that such consultation or dealings shall be so limited that they do not assume the character of formal consultation on matters of general employee-management policy covering employees in the bargaining unit.

**1.5 CONTROLLING AUTHORITIES:** In the administration of all matters covered by the agreement, the Agency officials and the Union and the bargaining unit employees are governed by existing and future laws and government-wide regulations. The employer and all bargaining unit employees are governed by existing and future Agency regulations to the extent such regulations are not in conflict with this Agreement. The Employer, in prescribing Agency regulations relating to personnel policies, practices, procedures, and conditions of employment, will consult with the Union, and upon written request, will negotiate with the Union in accordance with the provisions of Article 27 "Negotiations". In the event that existing provisions of Agency regulations, including local regulations or procedures, are in conflict with this Agreement, the provisions of this Agreement shall govern.

**1.6 REPRESENTATION:** The Employer agrees that National Representatives of AFGE/and/or Local Representatives at 1585 will be permitted to meet and discuss matters pertaining to this agreement when necessary with Employer's representative (at times and places mutually agreeable). It is recognized that the bargaining authority rest between AFGE Local 1585 and Montana FSA as per Article 3.

## ARTICLE 2 - EMPLOYEE RIGHTS AND RESPONSIBILITIES

**2.1 EMPLOYEE:** Each Employee shall have the right to form, join, or assist any labor organization, or to refrain from such activity, freely and with out fear of penalty or reprisal, and each Employee shall be protected in the exercise of such right. Except as otherwise provided, such rights include the right;

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

**2.2 ACCOUNTABILITY:** An Employee is accountable for the performance of official duties and compliance with standards of conduct for Federal employees. Employees shall have the right to engage in outside activities and employment of their own choosing, and otherwise conduct their private lives in accordance with the following guidelines: 5 CFR 735 and 2635: USDA Personnel Bulletin 735-1 and FSA handbook 3-PM.

**2.3 INFORMING EMPLOYEES:** The employer shall take such action consistent with law or regulation, as may be required, in order to inform employees of their rights and obligations, as prescribed in the Civil Service Reform Act of 1978 and this agreement. 5 USC 7114 (A)(3) will be permanently posted on the bulletin boards in each office.

**2.4 NONDISCRIMINATION:** All Agency employees shall be treated fairly and equitably, and without discrimination in regard to their political affiliation, union activity or involvement, race, sex, color, religion, national origin, marital status, age or disability.

**2.5 AGREEMENT:** This agreement does not prevent any Employee from bringing matters of personal concern to the appropriate Officials in accordance with applicable laws, regulations, or agency policies.

**2.6 MANAGEMENT:** Management will not take reprisal actions against employees for the exercise of any appeal right granted by law, rule, regulation, or this agreement.

**2.7 REPRESENTATION:** Any bargaining unit employee shall be given the opportunity to have a Union representative present at any formal meeting involving the employee or at any examination of an employee in connection with an investigation if:

- A. The employee reasonably believes that the examination may result in disciplinary action against the employee;
- B. There are two or more management personnel in attendance at the meeting;
- C. The employee requests representation.

The Agency shall inform employees of their rights to this respect.

When a bargaining unit employee is notified that he or she is to be interviewed in any manner where his or her rights under Section 2.7 of this Article are invoked by the employee, and the Union representative of the employee is not immediately available; the interview will be deferred for a reasonable period of time, to permit the presence of the Union representative.

An Employee may be represented by an attorney or representative other than the American Federation of Government Employees, of the Employees own choosing, in any appeal action not under the negotiated grievance procedure. The Employee may exercise grievance or appellate rights, which are established by law, rule, or regulation.

**2.8 CONFIDENTIAL:** Counseling of employees shall be done privately and considered a confidential matter.

## ARTICLE 3 - UNION RIGHTS AND REPRESENTATION

### **3.1 RECOGNITION:**

- A. The Employer recognizes AFGE Local 1585, its duly elected officers, appointed officials, and union representatives as the exclusive representatives of employees in the bargaining unit, and that the Local has the exclusive right to represent all employees in the unit in negotiations and joint meetings with the Employer with regard to matters affecting the conditions of employment.
- B. The Union President within the bargaining unit will be the primary person in all contacts with the Employer on matters involving personnel policies and/or practices or other general conditions of employment. The Union will provide the Employer a list in descending order of those officials who will carry out the provisions of this section in the absence of the Union President.

**3.2 RIGHTS:** The Union has the right to represent an employee or group of employees in presenting a grievance or other appeal, or when raising matters of concern or dissatisfaction with Management. The Union has exclusive right to represent employees under the negotiated grievance procedure in this Agreement. An employee or group of employees may present a grievance without representation by the Union, provided that the Union is a party to all discussions between the grievant and the appropriate deciding official. The adjustment must be consistent with the terms of this Agreement. For written grievances, the Union will have access to all written responses upon request. The Union will be given copies of all decisions.

**3.3 FORMAL DISCUSSIONS:** The Union has the right to be in attendance at any formal discussion between one or more representatives of the Employer and any member of the bargaining unit in connection with any personnel policy or practice or other general conditions of employment. The Union's request for a response during formal meetings will be honored. The agenda or subject matter will be provided to the Union in a reasonable amount of time prior to the meeting.

**3.4 INVESTIGATION:** The Union has the right to be represented at any examination of a bargaining unit employee by a representative of the Employer in connection with an investigation if the Employee reasonably believes that the examination may result in disciplinary action against the Employee and the Employee requests the Union to represent them.

**3.5 NEGOTIATIONS:** The Employer agrees to respect the rights of the Union and meet jointly and negotiate with the Union on all appropriate matters as defined in 5 USC Chapter 71 affecting the general conditions of employment, and further agrees to negotiate with the Union the procedures and appropriate arrangements (5 USC, Chapter 71, Sec 7106) of proposed new policy or changes in such policy affecting the

Employees or their general conditions of employment that are under the control of the Employer with the view of arriving at a mutually acceptable position.

**3.6 CONSULTATIONS:** It is recognized that the implementation and execution of the provisions of this Agreement requires appropriate machinery for effective discussions and communication. In addition, there are other matters concerning personnel policies, procedures and working conditions not covered by this Agreement, which may become a matter of interest to either party. In both situations, these matters may be subject to consultation between the Union and the Employer.

**3.7 ACCESS TO RECORDS:** The duty of the Employer and the Union to negotiate in good faith under the law shall include the obligation of the Employer to furnish the Union or its authorized representative upon request, and to the extent not prohibited by law, data which is normally maintained by the employer in the regular course of business; which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and which does not constitute guidance, advice, counsel, or training provided for Management Officials or supervisors, relating to collective bargaining. (See 5 USC 7114(b)(4)).

**3.8 MEMBERSHIP DRIVES:** Upon request and subject to normal security limitations, the Union shall be granted authority to conduct up to two membership drives, within a one (1) year period, up to thirty (30) days duration each, before and after duty hours, and at break periods and lunch periods, in non duty areas, the details of which will be worked out between the Union and Employer. Upon request, the Employer shall provide the Union with available reasonable space and equipment for use in such drives.

**3.9 RECOGNITION OF AFGE NATIONAL REPRESENTATIVE:** The Employer agrees to recognize any National Representative of AFGE. It is recognized that the bargaining authority rest between AFGE Local 1585 and Montana FSA as per Article 3.

**3.10 RIGHT TO SUBMIT VIEWS TO AGENCY HEAD:** Employer recognizes the rights of the union to submit proposals or views directly to the Agency head for consideration when changes in Agency procedures are proposed by the Agency.

**3.11 RESTRAINT:** There shall be no restraint, coercion, or discrimination against any Union official because of the performance of duties in consonance with this agreement and the Act, or against any employee for filing a grievance or acting as a witness under this agreement, the Act, or applicable regulations. Nor shall the performance of such representational duties adversely affect the performance appraisal of any representative who performs the representational duties in accordance with this Agreement.

Union representatives shall be free to exercise their respective responsibilities, as specified in this Agreement and/or law, to advance the best interests of and to represent the employees covered by this Agreement. They shall be permitted to engage in authorized activities on behalf of the Union; provided, however, that nothing herein shall be construed to authorize the performance of activities of internal Union business on official time.

## ARTICLE 4 - MANAGEMENT RIGHTS AND RESPONSIBILITIES

**GENERAL:** The Agency retains the rights in accordance with Title 5 U.S.C. 7106.

<http://www4.law.cornell.edu/uscode/5/7106.html>

In recognition of management's reserved right to assign work, whenever language in this Agreement refers to specific duties or responsibilities of specific employees or management officials, it is intended only to provide a guide as to how a situation is to be handled. It is agreed that the Employer retains the sole discretion to assign work and to determine who will perform the function discussed.

## ARTICLE 5 - ORIENTATION OF NEW EMPLOYEES

**5.1 GENERAL:** During orientation of new employees who are in the bargaining unit, the Employer will advise them of their right to form, join, or assist any labor organization, including AFGE Local 1585; freely and without fear of penalty or reprisal, or to refrain from any such activity, and that the employees are protected in the exercise of such right. The employee will also be informed of the location of the contract on the MT FSA intranet site.

**5.2 UNION BRIEFING:** As part of the new employee orientation briefing, the local Union president, or designee, they so choose, will be introduced to the employee(s) and allotted up to 15 minutes to present an overview of the labor management relationship and functions of the union. This shall not normally be construed to authorize Union presence every time a new employee reports to duty. This is intended to address situations in which scheduled meetings are held with groups of new employees. Employer will notify all new employees that the Union is the exclusive Representative of employees in the Unit and that the Agreement may be accessed through the USDA/Montana intranet site. Notice may be given by e-mail. Employer will also provide all new employees with a union packet provided by the Union.

**5.3 UNION INFORMATION:** Employees shall be given the names and current work areas and phone numbers of the local union officers representing the employee, and the name of the steward along with the steward's phone number. The Union shall provide the above information, in writing, to the Employer on a current basis.

## ARTICLE 6 - DUES WITHHOLDING

**6.1 GENERAL:** Voluntary allotments by employees for the payment of dues to the AFGE 1585 will be authorized and processed in accordance with the article.

**6.2** Any Bargaining Unit Employee of the USDA who is included in AFGE Local 1585 may make a voluntary allotment for the payment of dues to AFGE Local 1585. This shall be the only authorized method for obtaining dues withholding.

**6.3** The employee shall obtain SF-1187, "Request for Payroll Deductions for Labor Organization Dues", from AFGE Local 1585 and shall file the completed SF-1187 with the designated AFGE representative. The employee shall be instructed by AFGE on how to complete the form.

**6.4** The President, Secretary/Treasurer, or other authorized official of the Local Union will certify on each SF-1187 the amount to be withheld, and the appropriate Local number and submit the completed SF-1187 to the Servicing Personnel Office of the USDA Agency involved. The Servicing Personnel Office shall certify the employee's eligibility for dues withholding after receipt and transmit the SF-1187 to the National Finance Center (NFC).

**6.5** The NFC will make every effort to process the dues deduction effective as of the beginning of the first full pay period after the NFC receives the SF-1187. The Union will forward a copy of the SF-1187 to the AFGE National Secretary/Treasurer in accordance with the National Constitution.

**6.6** The NFC will provide the Union with a list, every pay period, of dues paying members.

**6.7** The Agency and Union recognize that administrative coding errors occur. If dues deductions were inadvertently withheld from an employee's pay without authorization, the Union will promptly refund the appropriate amount. If dues were not deducted, for 2 pay periods or less, the Union will not seek action to collect back dues from the Agency. If dues were not collected the Union and bargaining unit employees will have the option to negotiate the method to collect the back dues owed. Some of these options are:

- A. The Union has the option to forgive the back dues;
- B. The employee will pay cash for the back dues; or

C. The employer will collect through payroll deductions an amount authorized by the employee per pay period of additional dues until the correct amount is deducted and remitted to the Union.

**6.8** Union members wishing to stop their dues allotment must submit an SF-1187 to the Union Treasurer for processing. Union members withdrawing from the Union have only 1 window period, annually, at which to do so. This window period will be no more than 2 weeks prior to the anniversary date of joining the Union.

## ARTICLE 7 - TRAINING

### 7.1 RESPONSIBILITIES:

**A. MANAGEMENT RESPONSIBILITIES:** The Agency will maintain a State Training Plan based on the FSA Strategic Plan, training needs, and budget allocations. Priority will be given to employees enrolling in any training course to provide them with whatever training is necessary to maintain & update the skills, knowledge, and abilities that will best enable them to do their job.

**B. SUPERVISORS:** Supervisors will work with employees to develop/review Individual Development Plans (IDPs) within 30 days of the beginning of the performance period. They will make recommendations for appropriate training for employees and ensure that new employees receive an appropriate orientation and training.

The primary emphasis of the plans will be: first, to address skills needed by employees in their current positions; second, to prepare them for new career opportunities which may come available as a result of organizational restructuring or re-engineering of the positions of the Agency; and, third, to address skills needed for advancement within their promotion potential for their position.

All employees will be selected for training based on employee/organization need, employee requests and relevance to current position will be considered and management will make the final selection. The decisions regarding selection or non-selection for training will be communicated to employees in a timely manner.

During the first quarter of the fiscal year, the Supervisor will submit any Requests for Training to the Training Coordinator for review. Subsequent requests will be submitted to the Training Coordinator and approved on a case by case basis, taking into consideration budgetary constraints and the Agency goals and mission.

**C. EMPLOYEES:** Employees are responsible to develop their potential by applying their own efforts, time, and resources together with the opportunities provided by the Agency. In consultation with their supervisors, employees will develop an Individual Development Plan requesting needed training that best meets needs in an economical manner. They will inform the Training Coordinator and supervisor if unable to attend scheduled training as soon as possible. Employees shall satisfactorily complete training and apply on-the-job knowledge and skills learned.

**7.2 TRAINING PROCESS:** All training requests must be submitted to the Training Coordinator. The Employer will record official training received in the Official Agency Records of the employee. An approved request is required for all training that is 8 hours or more, regardless of any costs involved. (Exception: Any training of less than 8 hours must be approved by the Supervisor if no cost involved.) An approved request must also be used for any training, regardless of the number of hours, if there are any costs involved.

**7.3 EXAMINATIONS, LICENSES, AND CERTIFICATIONS:** When an Agency employee is required to take examinations, or obtain and maintain licenses and/or certifications necessary to perform the duties of his or her position, the Agency will reimburse the employee for the cost of those examinations, licenses, or certifications to include travel and per diem.

**7.4 PURCHASE OR RENTAL OF BOOKS, MATERIALS AND SUPPLIES:** If prior approval is obtained, the agency will pay for the purchase or rental of books, materials, and supplies associated with a training course, if such materials and/or supplies are required by the training, or are necessary in the performance of an individual's job duties.

**7.5 EMPLOYEES WITH DISABILITIES:** The employer must ensure that discrimination does not result from the use of facilities that deny access on other grounds, such as lack of "reasonable accommodation" of people with disabilities. They will make every practical effort to ensure that training programs and meetings are accessible to participants with disabilities. The Agency may pay for individuals to accompany or aid employees with disabilities traveling on official business (including travel for training and/or meetings) within prescribed U.S. General Services Administration salary, travel, and per diem rates for Federal employees. The Agency will pay the cost of readers and interpreters for employees attending training and meetings. Prior notification is necessary to insure that appropriate arrangements can be made.

## ARTICLE 8 - MERIT PROMOTION PLAN

**8.1 BACKGROUND:** This establishes the procedures for merit promotion and placement actions for bargaining unit positions in the Montana Farm Service Agency. This document is in accordance with 5 CFR, Part 335 and provides supplemental information to comply with these requirements.

### **8.2 POLICY**

- A. In order to promote fair and equitable treatment for all employees, this plan defines how consideration will be given to all interested applicants.
- B. This plan does not guarantee promotion, nor does it require a vacancy be filled by promotion.
- C. Actions under this Merit Promotion Plan, whether in identification, qualification, evaluation, or selection of candidates, or any other phase of the promotion process shall be made without discrimination for any nonmerit reason.
- D. This plan covers promotions in the competitive service in bargaining unit positions through GS-15 and similar pay schedules, and to or from any prevailing rate schedule position.
- E. The Agency and Union agree that any proposed changes or exceptions to this language may be agreed to by mutual consent.

### **8.3 OBJECTIVES**

- A. The objectives of this plan are to:
  - 1. Narrow the number of candidates to a reasonable number and assure that selections are made from among the best qualified applicants;
  - 2. Bring the best qualified candidates from an appropriately ranked list of candidates to the attention of the selecting official;
  - 3. Give employees fair, equitable, and appropriate consideration for higher level jobs;
  - 4. Provide an incentive for employees to improve their performance and develop their knowledges, skills, and abilities (KSAs);
  - 5. Provide career opportunities for employees.

#### **8.4 COVERAGE.**

The following types of personnel actions are covered:

- A. Competitive promotion
- B. Reassignment or demotion to a position with more promotion potential than the highest actual grade held by an employee on a permanent basis under a career or career-conditional appointment.
- C. Transfers to a higher-graded position or a position with higher promotion potential than the highest actual grade held by an employee on a permanent basis under a career or career-conditional appointment.
- D. Reinstatement to a higher-graded position or a position with higher promotion potential than the highest actual grade held by an employee on a permanent basis under a career or career-conditional appointment.
- E. Selections for details for more than 120 day to a higher-grade position to a position with known promotion potential.
- F. Selection for training that is any one of the following:
  - 1. Part of an authorized training agreement.
  - 2. Part of a promotion program, although the promotion may not immediately follow the training.
  - 3. Required before an employee is qualified for reassignment to a different occupational series.
  - 4. Part of a Career Enhancement Program.
  - 5. Designed primarily to prepare employees for advancement, or to fulfill specific qualification requirements for a position with known promotion potential.
- G. Time limited promotion for more than 120 days to a higher-graded position or a position with higher promotion potential, unless the selectee has held the grade previously on a permanent basis.

#### **8.5 EXCEPTIONS**

The following types of personnel actions are not covered:

- A. Competitive selection from an Office of Personnel Management (OPM) certificate or a certificate issued by an Agency with delegated examining authority;

- B. Promotions resulting from an employee's position being reclassified at a higher grade because of accretion of duties and responsibilities;
- C. Promotions resulting from upgrading a position, without significant changes in the duties or responsibilities, because of either the issuance of a new classification standard or the correction of an initial classification error;
- D. Career-ladder promotions when an employee was previously selected for an assignment intended to prepare him/her for the position being filled. Sources of selection may be:
  - 1. An Office of Personnel Management certificate;
  - 2. A list of employees issued under delegated examining authority;
  - 3. Selection under competitive promotion procedures;
  - 4. Special Placement Programs; or
  - 5. Any other direct hire authority.
- E. Repromoting, reinstating, or transferring an employee up to the highest grade held on a permanent basis; provided the employee was not demoted or separated from that grade because of deficiencies in performance or "for cause" reasons;
- F. Details, not longer than 120 days, to a higher-graded position or to a position with no known promotion potential;
- G. Details at the same or lower grade;
- H. Actions taken as a remedy for failure to receive proper consideration in a competitive promotion action;
- I. Promoting an employee upon exercise of reemployment rights if the employee's former position was reclassified during his/her absence;
- J. Selection of a candidate from the Reemployment Priority List (RPL) for a position up to the highest grade previously held in the competitive service;
- K. Position changes permitted by Reduction-in-Force (RIF) regulations;
- L. Repromotion to a grade or position from which an employee was demoted as a result of a RIF;
- M. Selection by reassignment to a position with the same or less promotion potential than a position previously held under a career or a career-conditional appointment;

- N. A temporary promotion from 0 to 120 days will be voluntarily rotated among minimally qualified candidates to a higher-grade position or to a position with known promotion potential;
- O. Permanent promotion to a position held under a temporary promotion when:
  - 1. The assignment was originally made under competitive procedures; and
  - 2. It was made known under competitive procedures to all competitors at the time that it might lead to a permanent promotion.
- P. Voluntary change to a lower grade with the same or less promotion potential than previously held under a career or career-conditional appointment;
- Q. A position change from a position having known promotion potential to a position at the same grade having no higher potential.
- R. Selection of an eligible CTAP or ICTAP candidate.

## **8.6 METHODS FOR FILLING VACANCIES**

In the event the announcement is concurrent with an external announcement, external candidates will be submitted to the selection official at the same time but will not be considered until after those internal employees, if any, have been given first consideration. (Consideration does not constitute selection.)

## **8.7 PRIORITY PLACEMENT PROGRAMS**

- A. When a position is announced with an area of consideration limited to all or some portion of the USDA workforce, the order of consideration for priority and other candidates is as follows:
1. Agency CTAP eligibles
  2. USDA CTAP eligibles
  3. Agency/USDA repromotion eligibles
  4. Agency priority consideration eligibles
  5. All other applicants within the area of consideration, and
  6. RPL registrants at the option of the selecting official
- B. When a position is announced with an area of consideration which exceeds the current USDA workforce (e.g., Government-wide or all sources), the order of consideration for priority and other candidates is as follows:
1. Agency CTAP eligibles
  2. USDA CTAP eligibles
  3. USDA RPL registrants
  4. USDA ICTAP applicants
  5. Agency/USDA repromotion eligibles
  6. Agency priority consideration eligibles
  7. ICTAP eligibles (other than those displaced from USDA) and
  8. All other applicants
- C. USDA Repromotion Placement Plan. Employees downgraded through no fault of their own are entitled to priority consideration for a period of 2 years from the effective date of the employee's downgrade.

- D. Priority Consideration. Employees are entitled to priority consideration whenever reconstruction of a promotion action shows that, except for some error, (i.e., wrong qualification determination, failure to receive bonafide consideration, improper rating, failure to follow competitive procedures, etc), the employee would have appeared on a promotion certificate. The employee shall be entitled to one bonafide consideration for the type (same series, grade, up to the same promotion potential, and geographic area) of position previously applied for under competitive procedures. A priority consideration certificate will be forwarded to the selecting official prior to issuing a competitive certificate. If no priority consideration candidate is selected, the selecting official must provide job-related justification for the non-selection.

## **8.8 INITIATING THE VACANCY**

- A. The supervisor of the vacancy will submit an SF-52, Request for Personnel Action, through appropriate channels. With the SF-52, the supervisor will attach a Position Description Cover Sheet and a current position description that accurately describes the position to be filled.
- B. No action will be taken to permanently staff the vacant position until the position is classified.
- C. The selecting official will determine, in consultation with the Human Resources Specialist, the best way to fill the vacancy (merit promotion procedures, OPM register, transfer, reinstatement, Special Placement Programs, etc.).

## **8.9 PROCEDURES WHEN VACANCY IS ANNOUNCED**

The following procedure will be followed for all merit promotion vacancies:

- A. Identification of selection criteria.

Before posting the vacancy announcement, the Personnel Specialist determines that KSA's or job-related statements are:

- a. established for the position. The Personnel Specialist will discuss and review with the selecting official the existing KSA's or job-related statements to determine whether they are still appropriate;
- b. not established for the position. The Personnel Specialist will contact the the selecting official to establish the KSA's or job-related statements.

## B. Minimum Area of Consideration.

The following is designated as the minimum area of consideration for bargaining unit positions:

1. Montana statewide (Current federal employees with status or reinstatement eligibles in Montana).
2. A wider or narrower area of consideration may be initially established with Union concurrence to obtain more qualified candidates if it is anticipated that sufficient candidates will not be available.

## C. Preparation and posting vacancy announcements.

1. Vacancy announcements will be posted for a minimum of 10 work days. Announcements with the area of consideration limited to CTAP/ICTAP candidates may be open for 5 calendar days.
2. Nationwide/Government wide will be posted for a minimum of 21 calendar days.
3. Close of business in field offices will be determined by the appropriate official in each office.
4. All vacancy announcements (bargaining and non-bargaining unit) will be posted on the automated bulletin board systems prescribed by OPM. The Agency will e-mail all Farm Service Agency Montana employees including the Union President that it has been posted and the address of the automated bulletin board.

## 8.10 SUBMITTING APPLICATIONS

Internal applicants are encouraged to submit internal and external applications.

A. To be considered for posted vacancies, the following procedures must be followed:

Applicants must submit:

1. SF-171, Application for Federal Employment, or OF-612, Optional Application for Federal Employment, or resume; and supplemental statement that addresses each of the KSAs separately or other information included in the announcement; and current performance appraisal/rating, or a statement advising the performance appraisal/rating is unavailable. (This applies only to current Federal Employees). Any other information as specified in the vacancy announcement.

2. Non-competitive referral candidates are not required to submit KSA supplemental statements although they are encouraged to do so.
3. The employer will provide guidance and references for application procedure upon request of the applicant.

NOTE: Failure on the part of the applicant to submit the requested material will result in not being considered for the advertised position. Additional materials, such as copies of position descriptions, publications, award certificates, will not be considered in the ranking process.

- B. Applications must be received at the specified location by the close of business on the closing date of the vacancy announcement unless otherwise stated on the vacancy announcement. Exceptions to this requirement may be made by the servicing Human Resources Office for reasons such as extended power outages, severe weather, etc.
- C. Applications submitted by facsimile or other electronic means as specified in the announcement will be accepted.
- D. Employees who are on extended leave are responsible for notifying their supervisor if they want to be considered for promotional opportunities while they are on travel or leave. Employees shall leave a telephone number, e-mail address and/or facsimile number with their supervisor. The supervisor is responsible for contacting the employee to provide vacancy information.
- E. Voluntary applications within the Agency will not be accepted unless so stated on the vacancy announcement. The vacancy announcement will outline the method of considering candidates when applications are accepted.
- F. Applications will be accepted from candidates under special hiring authorities, i.e., VRA, 30% Disabled Veteran, Persons with Disabilities, etc. Qualified candidates will be placed on the Promotion certificate as non-competitive referrals.

#### **8.11 EVALUATION TO DETERMINE ELIGIBILITY, BASIC QUALIFICATIONS, AND NOTIFICATION TO CANDIDATES**

- A. Qualifications of the applicants will be determined from the application package submitted and the applicant notified of the results.
- B. Minimum qualification standards used for placements are standards approved by the Office of Personnel Management and may be found in the OPM Handbook, Qualification Standards for General Schedule Positions and the X-118C, Internal Qualifications Guide for Trade and Labor Jobs. The Human Resources Specialist will assure that all of the following requirements are met:

1. Time-in-grade restrictions.
  2. Qualification standards for General Schedule Positions or the X-118C standards.
  3. 90-days after competitive appointment restriction.
  4. Any other requirements such as a selective placement factors (e.g., ability to communicate in a foreign language).
  5. Summary performance rating of fully successful or results achieved.
- C. Applicants must meet all of the above requirements by the closing date of the announcement.
- D. Submission of additional information after the closing date will not be accepted.

## **8.12 RATING AND RANKING PROCEDURES.**

Either a Merit Promotion Panel, Personnel Specialist/Subject Matter Expert, or automated rating of responses to job-related statements may be used to rate and rank candidates.

A panel may be used for any vacancy regardless of the number of competitive candidates.

### **A. Merit Promotion Panel Method**

#### **1) Merit Promotion Panel Composition**

- a. The Personnel Specialist will assemble a Merit Promotion Panel consisting of at least two members who occupy positions at a grade level not lower than the full performance level of the position being filled. The selecting official may recommend members to serve on the panel subject to the approval of the Personnel Specialist.
- b. The Personnel Specialist will serve as a facilitator with responsibility for assuring the requirements of merit promotion procedures are followed and to assist in expediting the process.
- c. Neither the supervisor, the selecting official, nor the approving official of the vacancy may be a member of the panel. They may, however, be asked to appear before the panel to answer any questions regarding the vacancy or the crediting plan.
- d. Merit Promotion Panels should include minority group members and/or women Subject Matter Experts.
- e. Members of the panel and observers will protect the confidentiality of all information received or reviewed during the committee process.
- f. There may be an EEO observer present during this process

2) Merit Promotion Panel Delegated Responsibility.

The Merit Promotion Panel has the final responsibility for determining best qualified candidates based on valid, job-related criteria and employee's application package. They are accountable for defending their final decision to any regulatory or investigative agency.

3) Merit Promotion Panel's Rating of the Candidates

- a. The Merit Promotion Panel will use the following rating instruments to determine a candidate's possession of each identified KSA and the level of proficiency attained:

Rating instrument - application, KSAs, performance appraisal, related awards, training and self-development.

Note: These factors may be considered in the evaluation process only to the extent that they are clearly related to one or more of the skills and knowledges important to successful performance in the job to be filled.

- b. A rating scale will be developed for each KSA against which an applicant's possession of that KSA will be measured. The point range is 5-0.

Superior	–	5 points will be assigned
Satisfactory	–	3 points will be assigned
Minimally acceptable	–	1 point will be assigned
No evidence	–	0 point will be assigned

B. Human Resources Specialist/Subject Matter Expert Ranking Method

- C. If there are 9 or fewer qualified competitive applicants at each particular grade level for a vacancy, a human resources specialist may be used to determine the best qualified.
- D. The human resources specialist or subject matter expert will apply the same rating criteria used by a merit promotion panel as described above.

### C. Automated Rating of Job-Related Statements

An Automated rating of responses to job-related statements may be used to rate candidates.

### D. Determining the Best Qualified

1. Each basically qualified competitive candidate is evaluated against criteria developed from the job analysis process which was developed before rating. Each candidate is given a score based on their experience, education, related awards, training, and self-development. These scores are then combined and recorded on the master score sheet.
2. Up to 10 candidates may be certified for each grade level if meaningful distinctions cannot be made among a smaller number.
3. Where distinctions simply cannot be made if a tie occurs for the 10th position, all names with that score will be referred.
4. If more than 1 position is to be filled, three additional names may be certified for each additional vacancy.
5. If insufficient candidates (3 or less) are best qualified, the selecting official may make a selection or request that the area of consideration be extended.
6. There is no provision allowing the selecting official to request and make a selection from candidates who have not been rated best qualified.

## 8.13 ALTERNATIVE EVALUATION METHOD

- A. This is an alternative approach for determining well qualified candidates when 10 or fewer applications are received from basically qualified candidates who must compete.
- B. The Personnel Specialist reviews application materials to determine that an applicant meets basic qualifications and any selective factors identified for the position. A further review is conducted to distinguish well qualified candidates from those who only meet minimum requirements.
- C. If a Personnel Specialist is not familiar with the requirements of the position to determine whether experience, education, or training relates to evaluation criteria, then a subject matter expert may perform the evaluation or his or her technical advice may be obtained.
- D. Applicants who meet all these requirements are referred to the selecting official as well qualified candidates for consideration by the selecting official.
- E. Any basically qualified candidates for lateral reassignment and those eligible for consideration under special hiring authorities or for reinstatement will be referred to the selecting official without being evaluated by any of these methods.

## 8.14 SELECTION PROCESS

- A. The names of the best qualified candidates will be listed on the promotion certificate(s) by grade level in alphabetical order.
- B. The selecting official may be provided with all best qualified candidates' KSA, supplemental statements, applications and any other related material.
- C. The selecting official has the option to either or not to interview the best qualified candidates on a promotion certificate. If one best qualified candidate is interviewed, then all best qualified candidates must be interviewed. Noncompetitive referrals need not be interviewed, nor must the selecting official interview all noncompetitive referrals if they interview one.
- D. The selecting official is entitled to make a selection from any of the candidates listed on a promotion certificate based on his/her judgment of how well the candidate will perform in the particular job being filled.
- E. The selecting official will make his/her selection and forward it through appropriate approving officials. Each candidate will be notified of the selection.
- F. The promotion certificate should be returned within 30 days. If the selecting official is unable to make the selection, extensions may be granted up to 90 days from the date the certificate was originally issued. In the event a like (same Agency, official title, series, grade, and geographic location) vacancy occurs within the original area of consideration during the 90 day period, the same certificate may be used to fill the subsequent vacancy(s) without re-advertising.
- G. After the selecting official has given consideration to the **Montana Farm Service Agency** area employees he/she is not required to make a selection from the promotion certificate but may select from any other appropriate source.
- H. A selected candidate will normally be released to enter on duty in the new position no later than 1 full pay period after selection. Extensions beyond the normal 1 pay period will be negotiated between the supervisors involved and the Personnel Specialist.

## 8.15 PROMOTION RECORDS AND INFORMATION.

- A. The Human Resources Office will establish and maintain an official promotion case file for 2 years.
- B. The following information will be provided to any employee upon request:
  - 1. Explanations, supporting regulations and negotiated merit promotion article concerning the Merit Promotion Plan

2. The qualifications required for a position.
  3. If the employee was considered basically qualified.
  4. If the employee was among the best qualified and how the employee was evaluated by the Merit Promotion Panel or Human Resources Specialist.
  5. Cut-off score for best qualified.
  6. Scores of other candidates (not identified by name) and the score of the Candidate.
  7. Number of qualified candidates.
  8. Number of candidates certified as Best Qualified.
  9. Who was selected.
- C. Employee complaints. An employee has the right to file a grievance or complaint if he or she feels:
1. There has been an improper application of governing rules and regulations.
  2. Individual judgments used in merit promotion process or non-selection from a group of properly ranked or certified candidates are not subject to the formal administrative grievance process.
- D. All employees are encouraged to discuss plans and opportunities for advancement with their supervisor and request information and/or assistance from the servicing office on specifics of the Merit Promotion Plan, qualification standards, etc.

## 8.16 PROGRAM REVIEW

This plan will be reviewed and reported on periodically in conjunction with managers, supervisors, employees and Union to ensure that:

- A. The plan is effective and useful to employees and management;
- Note: Nothing in this merit promotion plan prohibits either the Agency or the Union from negotiating appropriate arrangements to the merit system process based on mutual consent.
- B. Promotion actions and employee complaints are handled promptly and properly;
- C. Promotions are used to encourage competent employees to investigate new careers and to make the best use of their knowledge and skills; and
- D. Employees, supervisors, and managers have a full understanding of the merit promotion process.

## 8.17 EMPLOYEE, SUPERVISOR AND PERSONNEL RESPONSIBILITIES

### Employee Responsibility:

- A. Review announcement under the Merit Promotion Program.
- B. Review announcements and, if they feel they meet specific experience and training requirements for the position, properly complete and forward all required application material by the closing date for each position for which they wish to be considered, keeping in mind that the Promotion Certificate can be used for another identical vacancy that occurs within 90 calendar days.
- C. Keep supervisors informed of career interests. Before departure on temporary duty, scheduled leave, and other absences, provide supervisor with a telephone number, e-mail address and/or facsimile number at which they may be contacted.
- D. Take advantage of self-development and training opportunities, both on and off the job.
- E. Demonstrate competence and readiness for advancement by diligent and effective performance in current assignment.
- F. When requested, participate in applying OPM regulations to establish reasonable job-related evaluation criteria (KSAs), or job-related statements, and participate on promotion panels for determining best qualified candidates.
- G. Assure that official personnel records reflect all experience, education and training.
- H. Keep informed of the provisions of this plan.

### Supervisory Responsibility:

- A. Maintain a current copy of this plan, make it available to their employees, and exert every effort to ensure that employees fully understand the plan.
- B. Inform new employees where position vacancy announcements are posted.
- C. Periodically inform employees, either orally or in writing, that questions about the plan or specific promotion actions should be referred to the servicing human resources office for informal handling; that formal means for resolving promotion complaints are available through union/agency grievance procedures.
- D. Anticipate personnel vacancies and initiate action in a timely manner so that sufficient qualified applicants can be found to facilitate the best selection.

- E. Participate in applying OPM regulations to establish reasonable job-related evaluation criteria (KSAs or job-related statements).
- F. Participate in or make employees available for rating panels.
- G. Give fair, equitable, and full consideration to all candidates referred and make a final selection from the list without discrimination for any nonmerit reason and without favoritism based on personal relationship or patronage.
- H. Under the provisions of this plan, release a selected employee for assignment to his/her new job.
- I. On a fair and equitable basis, guide and assist employees in developing skills and abilities through cross-training, special assignments, and formal education, as needed. Encourage and advise employees regarding self-development needs and opportunities, and on areas where improvement should be made to increase chances for future promotion.

**Human Resources Responsibility:**

- A. Develop and administer the Merit Promotion Plan.
- B. Ensure the quality and effectiveness of the merit promotion program and management/employee understanding and acceptance.
- C. Through job analysis, develop and administer selective placement factors for basic eligibility and identification of job-related criteria.
- D. Determine and/or develop appropriate evaluation methods and instruments to be included in crediting plans or automated staffing systems.
- E. Provide technical advice and assistance to panel members responsible for rating candidates.
- F. Publicize the program to keep management and employees well informed.
- G. Furnish advice and assistance to employees interested in advancing or transferring to new career fields.
- H. Evaluate program effectiveness to include initiation of improvements or necessary changes.
- I. Maintain records in accordance with OPM and USDA requirements.
- J. Give new employees general information on the program as part of employee orientation.

- K. Advise of methods and procedures for filling all vacancies.
- L. Advise candidates who apply for promotion whether they meet basic eligibility requirements and inform them of action taken on their applications.
- M. Ensure that position vacancy announcements are published and/or comply with e-mail provision previously mentioned in 8.9(C)(4).

## ARTICLE 9 - WORK SCHEDULES

**9.1 GUIDELINES:** The employer agrees to administer hours of duty and flexible work schedules in accordance with FFAS 17-PM (Revision 2) on matters not covered in this agreement. Flexible work schedules must be administered fairly and equitably to all bargaining unit employees in a work section. The Union must be given the opportunity to negotiate any changes to FFAS 17-PM before the changes are implemented.

**9.2 WORK SCHEDULES:** Employee work schedules will be established to begin no earlier than 6 a.m. and end no later than 6p.m. on FSA-956. A FT employee must be at work or on approved leave, except for non-workdays during the Core Hours which shall be 9 a.m. until 3:30 p.m.

**9.3 FLEXIBLE WORK SCHEDULES (FWS):** Employees may apply for a FWS as provided in FFAS 17-PM. If the supervisor denies a schedule that is irreconcilable they will provide the employee with a written explanation within 5 working days, with a copy to the Union.

**9.4 OFFICE CLOSURE:** An office will not be closed as the result of employees' Non Work Day (NWD) without the prior approval of the State Executive Director or designee.

**9.5 OFFICE HOURS:** Offices will remain open and capable of providing customer service during the noon lunch break. Exceptions will require prior approval of the State Executive Director or designee.

**9.6 REST PERIODS:** Employees shall be allowed two paid rest periods – one rest period during the middle of the first time period (a.m.) and one rest period during the middle of the second time period (p.m.) of each basic work day. These rest periods will be limited to 15 minutes each. Rest period cannot be accumulated or used as an extension of lunch and/or early dismissal. If an employee leaves the work area during their break, their supervisor or co-worker will be informed.

## ARTICLE 10 - LEAVE

**10.1 PURPOSE:** To create a family friendly workplace which enables the Agency to meet its mission needs while allowing employees sufficient flexibility to meet both work and family needs. Management benefits by improved employee effectiveness and morale while giving employees more control over their lives.

**10.2 INTRODUCTION:** Managers and supervisors authorized to approve leave have the responsibility of systematically scheduling employees' absences in order to:

- A. maintain the workforce necessary for mission accomplishment;
- B. permit employees to make adjustments in their plans in order to meet work requirements;
- C. ensure that all absences from scheduled tours of duty are charged to the appropriate leave category; and
- D. ensure that their employees know the procedures for requesting and using leave.

It is essential that managers and supervisors who approve leave and time and attendance (T&A) reports have a good understanding of the leave provisions. They serve as a vital link in ensuring that leave is administered fairly and equitably. Inaccurately recorded absences from duty reported on the T&A affect not only an employee's leave balances, but may affect his/her retirement entitlement, overtime, premium pay, and a variety of other forms of compensation.

Employees must observe designated duty hours and be punctual in reporting for work and returning from lunch periods. Employees, or someone acting on their behalf, shall notify their immediate supervisor, designee, or Office Head, as early as possible on the first day of absence when they are unable to report to their official worksite as scheduled. They must continue to call in each workday until they return, unless they are excused from work for a specific period of time. When an employee fails to properly notify his or her supervisor, absences may be charged as an unauthorized absence (AWOL). It may also result in appropriate disciplinary action.

### 10.3 ANNUAL LEAVE

- A. Definition - Annual leave is provided to allow employees:
  - 1. an annual vacation period of extended leave for rest and recreation;
  - 2. periods of time off for personal business or emergencies which must be handled during working hours.

B. Accruals

1. The amount of annual leave an employee earns depends on their length of service and their type of employment.
2. Full-time employees with appointments of 90 days or more accrue leave at the beginning of the full biweekly pay periods of employment as follows:

<b>Annual Leave Category</b>	<b>IF a full-time employee has...</b>	<b>THEN they accrue...</b>
4	less than 3 years of service	4 hours of annual leave each pay period.
6	at least 3 years of service, but less than 15 years	6 hours of annual leave each pay period. Also, these employees accrue 10 hours during the last biweekly pay period before the end of the calendar year.
8	15 years or more of service	8 hours of annual leave each pay period.

3. Part-time employees with appointments of 90 days or more accrue at the end of the full biweekly pay period of employment as follows:

<b>Annual Leave Category</b>	<b>IF a part-time employee has...</b>	<b>THEN they accrue 1 hour for every...</b>
4	less than 3 years of service	20 hours in pay status
6	at least 3 years of service, but less than 15 years	13 hours in pay status.
8	15 years or more of service	10 hours in pay status.

Note: If an original appointment is for less than 90 days and is then extended beyond 90 days, an employee may be entitled to retroactive accruals.

4. Intermittent employees are not eligible to accrue leave.
5. Annual leave accrues while the employee is in pay status or a combination of pay and nonpay status not subject to reduction. Changes in rates of accrual are effective the beginning of the pay period following the date on which the employee completes the required period of creditable service. There is no credit of leave for a fractional biweekly pay period either at the beginning or end of an employee's period of service, except in certain instances of continuity of employment.

- C. Limits - Generally, the maximum amount of annual leave employees may carry forward from one leave year to the next is 240 hours.
- D. Usage - Annual leave may be used in increments of 15 minutes.
- E. Employee Responsibility - Annual leave may be requested in increments of 15 minutes. All requests shall be made in advance, when possible, and documented on SF-71.
- F. Supervisor Responsibility - The first-line supervisor has the authority to approve or disapprove annual leave requests based on the workload and work requirements to accomplish the Agency's mission. Advance planning and careful consideration will be given to scheduling leave to assure the necessary workforce is available, particularly during peak workload periods, to get the job done and prevent loss of any leave due employees at the end of the leave year. To the maximum extent possible, the leave schedule should allow an employee, upon request, at least one continuous period of 80 hours of annual leave per year.
- G. Forfeiting and Restoring Leave - Annual leave in excess of the maximum carryover is forfeited at the end of the leave year. All "use or lose" annual leave must be scheduled and approved in writing no later than 3 pay periods before the end of the leave year so that forfeited annual leave can be considered for restoration. Forfeited leave may only be restored and credited to an employee's leave account upon approval by the servicing personnel office or State administrative officer shall:
  - \_ authorize the restoration of lost annual leave
  - \_ advise the employee and the employee's timekeeper of the leave restoration.
- H. By law, the following are 3 conditions under which annual leave may be restored:
  - \_ administrative error
  - \_ employee illness
  - \_ exigency of public business.
- I. Restoration of annual leave cannot be requested until forfeiture after the end of the leave year, but no later than April 1st. In order for forfeited annual leave to be restored the scheduled leave must be canceled, or disapproved, in writing. This can be done by memorandum to the employee indicating that the scheduled leave is being canceled, or by indicating "disapproved" on the SF71 if the leave is not approved when the employee submits the request for annual leave.
  - \_ The employee's request for restoration of forfeited annual leaves shall be done in accordance with handbook 17-PM.

- J. Restored leave is to be placed in a separate leave account and not added to the employee's regular annual leave balance. Restored annual leave must be scheduled and used not later than the end of the leave year ending two (2) years after the dates established for restoration in accordance with provisions contained in 5 C.F.R. 630.306(a).
- K. Leave prior to Separation Terminal leave, or annual leave granted just before separation from Federal service without return to duty, should not be granted in most instances where additional annual leave will accrue. Annual leave will be liquidated by a lump sum payment to the employee.
- L. Accruals during absences due to on-the-job injury - Employees do not accrue annual leave for full pay periods for which they are paid disability compensation through the Department of Labor, OWCP.
- M. Substitution of Annual Leave - Substitution of annual leave for earned sick leave and/or advanced sick leave previously granted and charged is NOT permitted unless the request is made within the current pay period.
- N. Substitution of annual leave for a period of nonpay status may be made ONLY:  
when an administrative error was made in placing an employee in a nonpay status rather than annual leave.

#### **10.4 ADVANCING ANNUAL LEAVE**

- A. Limits - Employees may be advanced annual leave as follows:
1. Permanent employees may be granted the leave they will accrue for the remainder of the leave year if they expect to remain in service throughout the leave year.
  2. Temporary employees may only be granted the annual leave they will earn in the current pay period.
- B. Employee Responsibility - Employees must obtain advance written authorization for advanced annual leave on an SF-71, Request for Leave or Approved Absence. Employees requesting advanced or unearned annual leave must indicate their intentions to continue in Federal or CO service until the end of the leave year.
- C. Supervisor responsibility - First-line supervisors have the authority to approve or disapprove requests for advanced annual leave.
- D. Usage - Annual leave may be advanced in increments of 15 minutes.

## 10.5 SICK LEAVE

A. Definition - Sick leave is approved absence from scheduled duty granted when an employee is unable to work due to illness, injury, pregnancy and confinement, or is undergoing medical, dental or optical examination or treatment. (See also Family Friendly Leave Act and Sick Leave for Adoption and Bone Marrow).

### B. Accruals

1. A full-time employee whose appointment is 90 days or more accrues four (4) hours of sick leave every full biweekly pay period. The accruals are credited to the employee's account at the beginning of the pay period.
2. A part-time employee whose appointment is 90 days or more accrues one (1) hour of sick leave for every 20 hours worked during a pay period. The accruals are credited to the employee's account at the end of the pay period.
3. There are no accruals of sick leave for fractional biweekly pay periods either at the beginning or end of an employee's period of service except in certain instances of continuity of employment. Sick leave accrues while the employee is in pay status or a combination of pay and nonpay status not subject to reduction.

Note: If the original appointment is for less than 90 days and is extended beyond 90 days, an employee may be entitled to retroactive leave accruals.

C. Accruals during absence due to on-the-job injury - An employee does not accrue sick leave for full pay periods for which they are paid disability compensation through the Department of Labor, OWCP

D. Employee Responsibility -An employee or someone acting on their behalf shall notify the employee's immediate supervisor of illness or injury before core time or as soon as practical on the first day of absence.

For a scheduled absence, such as surgery or medical appointment, supervisory notification shall be made in a **timely** manner before absence.

Employees shall use SF-71 (Exhibit 6) to request sick leave as follows:

\_ for requesting sick leave for scheduled appointments or treatments, SF-71 shall be submitted and approved in advance

\_ for using sick leave for unscheduled illness or emergency, complete SF-71 for approval upon return to duty.

Employees, who attend outside training at Federal or CO expense and who become ill or injured, shall notify their immediate supervisor of the need for sick leave as soon as possible on the first day of absence from training.

For absences of **more than** 3 workdays, the supervisor may require medical documentation. In situations where the medical services of a physician were not sought, the supervisor may request a signed statement from the employee stating

the nature of the illness along with an explanation of why a licensed medical practitioner was not sought.

E. Supervisor Responsibility - The first-line supervisor has the authority to approve or disapprove sick leave requests. The supervisor has the authority and responsibility to determine that the documentation is sufficient to determine that the employee's illness does, in fact, incapacitate the employee for duty. The supervisor also has the responsibility for ascertaining that the other reasons for which sick leave is granted are true.

F. Usage:

1. Sick leave may be granted in increments of 15 minutes.

G. Substitution of sick leave

1. If an employee becomes ill while on annual leave, the employee may request to substitute sick leave for the period of illness. The supervisor may request an employee to submit medical documentation for the period of illness.

a. Substitution of sick leave for annual leave must be made within:

(i) the pay period in which the employee returns to duty, or

(ii) 30 days after the illness occurs, whichever occurs first.

H. Abuse of sick leave -Sick leave is provided to employees as a benefit and may be used only under the conditions in this part. If there is reasonable doubt concerning the valid use of sickleave, the supervisor may:

\_ require the employee to submit acceptable medical documentation

**Note:** If medical documentation is unacceptable or inadequate, supervisors shall contact an employee relations specialist in their servicing personnel office for assistance.

\_ initiate leave restrictions with the review and concurrence of the employee relations staff.

Sick leave abuse can lead to disciplinary action.

## 10.6 ADVANCED SICK LEAVE

### A- Granting Sick Leave

1. Advanced sick leave may be granted for medically justifiable reasons according to FFAS 17-PM subparagraph 83 A.

2. Permanent leave-earning employees may request advanced sick leave up to a maximum of 240 hours. Supervisors have the discretionary authority to approve advanced sick leave, but approval should be based on a reasonable expectation that the employee will be returning to work and able to repay the

advanced leave. **Medical documentation is required when requesting approval of advanced sick leave.**

- Supervisors shall review all requests for advanced sick leave and respond to the employee in a **timely** manner. Approval of advanced sick leave shall be made in a fair and equitable manner according to laws, regulations, and Agency policy.

#### **B- Earned Sick Leave Exhausted**

- When an employee has exhausted their earned sick leave, they are eligible to request advanced sick leave. Requesting advanced sick leave does not require the employee to exhaust accumulated annual leave. Requests for advanced sick leave should be documented and approved before use, when practical.

See FFAS 17-PM Part 10, Sections 1 through 3 for guidance about family friendly leave programs.

#### **C-Authority to approve**

- The first-line supervisor has the authority to approve or disapprove advance sick leave.
- Supervisors shall not grant advanced sick leave:
  - \_ when it is unlikely that the employee will be returning to duty
  - \_ after an employee has received notice of separation, furlough, or has resigned
  - \_ when an employee is on leave restrictions.

Do not grant an employee serving a probationary period advanced sick leave in excess of the sick leave that they will earn from date of request until the end of their probationary period or until retention of the employee is known. Employees holding a limited appointment, ending on a specific date, may be granted advanced sick leave equal to the amount of sick leave they will earn before the end of their appointment.

### **10.7 SICK LEAVE FOR FAMILY MEMBERS**

#### **A. Source of Authority**

Effective June 20, 2000, FFLA of December 1994 is renamed to Sick Leave for Family Care (SLFC). The regulations are in 5 CFR 630.401.

#### **B. Introduction**

Besides the name change, this new legislation has added provisions for "Expanded Family Care". There are currently 3 levels of coverage under SLFC:

- Basic Coverage
- Additional Coverage
- Expanded Coverage.

The employee must be a leave earning employee and the amount of sick leave an employee may use for each level of coverage will be dependent on their type of employment; full-time or part-time, and their current sick leave balance.

### **C. Provisions**

SLFC allows the use of sick leave to:

1. to provide care for a family member experiencing;
  - a. a medical condition, either physical or mental
  - b. an illness, injury, surgery, or disability
  - c. pregnancy or incapacitation because of childbirth
  - d. a communicable disease that could jeopardize the health of others, as
  - e. determined by the health authorities having jurisdiction or by a health care provider
  - f. a serious health condition, as defined in subparagraph F
2. accompany a family member receiving a medical, psychiatric, dental, or optical examination, treatment, or therapy
3. make arrangements necessitated by the death of a family member, attend the funeral of a family member, or both.-

### **D. Leave Transfer Impact of SLFC**

By law, employees who consider applying to LTP or LB because of a medical emergency affecting a family member **must** first exhaust their maximum entitlement to SLFC and their earned annual leave before they are **eligible** to be a leave recipient.

### **E. Definition of SLFC FamilyMembers**

The following are defined as family members for SLFC purposes:--\*

1. employee's spouse and spouse's parents
2. employee's children, including adopted children, and children's spouses
3. employee's parents
4. employee's brothers, sisters, and their spouses
5. any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship

### **F. Definition of Serious Health Condition**

Under Expanded Coverage, a serious health condition is an illness, injury, impairment, or physical, or mental condition that involves:

1. inpatient care in a hospital, hospice, or residential medical care facility
2. a regimen of continuing treatment or therapy by a health care provider
3. a period of incapacity of more than 3 consecutive calendar days, including complications because of pregnancy or childbirth
4. incapacity or treatment because of a chronic serious health condition
5. a continuing period of incapacity because of episodic medical condition, such as asthma, diabetes, epilepsy, etc.
6. a period of incapacity that is permanent, long-term, or terminal.

#### **G. Entitlements for Full-Time Employees**

A full-time leave earning employee is entitled to use:

1. Basic Coverage up to 40 hours of earned **or advanced** sick leave per leave year
2. Additional Coverage up to an additional 64 hours of earned sick leave may be used each leave year, but only to the extent that the additional hours do not cause the employee's sick leave balance **to fall below 80 hours**

**Note:** These additional hours **cannot** be advanced.

3. Expanded Coverage up to **480 hours of earned sick leave** per leave year to care for a family member with a **serious health condition** according to subparagraph 291 F, but the employee must maintain an earned sick leave balance of **no less than 80 hours**.

**Note:** If an employee has previously used any amount of SLFC during the leave year, those hours **must be subtracted** from the expanded hours entitlement.

#### **H. Entitlements for Part-Time Employees**

A part-time leave earning employee is entitled to use the following:

1. Basic Coverage. A part-time employee is entitled to an amount equal to the average number of work hours they are scheduled to work in a workweek. These sick leave hours may be either earned or advanced.

**Example:** A part-time employee who is scheduled to work 32 hours a week is entitled to use up to 32 hours of earned or advanced sick leave per leave year.

2. Additional Coverage. A part-time employee who maintains an accrued sick leave balance **greater than** the number of hours they are scheduled to work **bi-weekly**, may use additional sick leave hours. Any additional sick leave hours used for SLFC must not cause the employee's sick leave balance to fall below their "biweekly" work hours total and must not cause their total SLFC hours for the leave year to exceed the total number of sick leave hours they will earn for the leave year.

**Example:** A part-time employee in leave category 4, who works 64 hours a pay period is entitled to use additional sick leave hours up to a maximum of 83 hours per leave year, but the employee's earned sick leave balance **may not fall below 64 hours**.

**Note:** The additional hours **cannot** be advanced.

3. Expanded Coverage. A part-time employee may use up to 12 times the average number of hours they work weekly, but they must maintain an accrued sick leave balance equal to their biweekly work hours.

**Example:** A part-time employee scheduled to work 32 hours a week could use up to a maximum of 384 earned sick leave hours (32 x 12) during a leave year, but the employee's earned sick leave balance may not **fall below 64 hours**.

**Note:** If an employee has previously used any amount of SLFC during the leave year, those hours **must be subtracted** from the expanded hours entitlement.

## **I. Employee's Responsibilities**

Employees requesting the use of sick leave under SLFC shall:

1. complete SF-71, dated 12/97 or after, and enter "Sick Leave for Family Care" or SLFC in the "Remarks" section
2. request SLFC leave in advance, when possible
3. provide acceptable medical documentation or death notification when advanced sick leave is requested
4. be required to provide acceptable medical documentation to support a "serious health condition" when sick leave is to be used for Expanded SLFC Coverage.

## **J. Timekeeper's Responsibilities**

Timekeepers shall:

1. on AD-1098, record the number of hours by pay period and total cumulative sick leave hours used under SLFC during LY

**Example:** See an example of AD-1098 in subparagraph E.

2. notify the employee and supervisor when requested SLFC hours will exceed SLFC limitations, according to FFAS 17-PM paragraph 292
3. update AD-1098's each pay period
4. file AD-1098 with the current T&A information
5. record the use of SLFC with prefix 62 and transaction code 62 when preparing T&A's.

## K. Supervisor's Responsibilities

Supervisors:

1. shall ensure that timekeepers are aware of their reporting responsibilities on
2. AD-1098
3. shall require acceptable medical documentation or death notification when **advanced** sick leave is requested
4. shall require acceptable medical documentation for "serious health condition" under Expanded Coverage option
5. may ask for acceptable medical documentation or death notification for an absence of more than 3 workdays.

### 10.8 SICK LEAVE FOR ADOPTION

- A. Definition - The law permits employees to use earned sick leave for purposes related to the adoption of a child.
- B. Eligible Employees - All leave earning employees are eligible to request sick leave for adoption of a child.
- C. Benefits - Employees may request the use of earned sick leave for:
  1. appointments with adoption agencies, social workers, or attorneys
  2. court proceedings
  3. required travel
  4. absences, including bonding periods, ordered or required by the adoption agency or the court
  5. any activity that is necessary to allow the adoption to proceed.Sick leave for bonding is not included, unless ordered or required. See sick leave for family member and FMLA for other benefits.
- D. Requesting and Documenting Sick Leave - The initial written request to use sick leave for adoption related purposes shall include any known details of the adoption which will require time-off from work. Employees shall:
  1. continue to keep their supervisor updated until the process is completed
  2. submit SF-71 in advance, when possible for any leave used of 1 day or more
  3. write "Adoption" on their SF-71, in the Remarks section.

Supervisors may request evidence for adoption related activities.

- E. Requesting Advanced Sick Leave - Advanced sick leave may be requested for adoption related purposes, but only when the urgency of the situation requires the employee's absence. Employees shall provide evidence for needing the advanced sick leave for adoption-related activities.
- F. Filing documentation - Any documentation that is provided to the supervisor about the adoption shall be kept with the appropriate biweekly T&A information.

#### **10.9 FAMILY MEDICAL LEAVE ACT (FMLA)**

- A. Introduction - The Family Medical Leave Act (FMLA) Title II, covers Federal employees, except for intermittent and temporary employees with appointments not to exceed 1 year, who are covered by FMLA, Title I.
- B. Summary of benefits - FMLA provides eligible employees with a total of up to 12 administrative workweeks of leave without pay (LWOP), during a 12-month period for:
  - 1. the care of the employee or a family member
  - 2. son or daughter, who is a biological, adopted, stepchild, or legal ward
  - 3. spouse, an individual who is a husband or wife by legal union, including common law marriage between a man and a woman where legal
  - 4. child, who is given 24-hour foster care by, or with an agreement with, the State of residence
  - 5. parent, who is a biological parent or an individual who substituted as a parent to the employee when the employee was a child. This term does not include in-laws
  - 6. recovery from a serious health condition.
- C. Eligibility - All leave-earning Federal employees (except intermittent and temporary employees with appointments not to exceed 1 year) are eligible for FMLA, Title II benefits as long as they have completed at least 12 months of Federal service.
- D. Purpose - Family medical leave may be used for one or more of the following purposes.
  - 1. Birth of a son or daughter and care of newborn.
  - 2. Placement of a child with an employee for adoption or foster care.
  - 3. Care of spouse, son, daughter, or parent with a serious health condition.
  - 4. Serious health condition of employee that makes employee unable to perform duties of his or her position.

E. Authorized uses of FMLA - For purposes 1 and 2 (see above), the entitlement to family medical leave:

1. may begin on or before the actual date of birth or placement of the child
2. shall expire no later than 12 months after the date of birth or placement.

For purposes 3 and 4, (see above) family medical leave may be taken continuously, intermittently, or as part of a reduced work schedule. FMLA leave shall be:

3. medically certified and necessary
4. tracked by the employee's timekeeper
5. accumulated on an hour-for-hour basis, until the medical emergency ends or the 12workweek maximum is reached.

Intermittent leave or reduced work schedules must be discussed and receive prior approval from the employee's supervisor.

F. Required Medical Documentation - The following medical documentation is required for employees requesting family medical leave:

1. for purposes 1 or 2, employees shall provide evidence of birth, adoption, or foster care
2. for purposes 3 or 4, employees shall provide medical certification from a licensed health care provider or medical treatment center.

This certification shall include:

- a. date serious health condition started
- b. the probable duration of the serious health condition
- c. the appropriate medical facts, within the knowledge of the health care provider, regarding the serious health condition, including a general statement about when the incapacitation or treatment may be required
- d. a statement concerning a spouse, son, daughter, or parent of the employee who required psychological comfort and/or physical care

(Examples of physical care include assistance for basic medical, hygienic, nutritional, safety, or transportation needs.)

- e. dates of planned medical treatment and the duration of that treatment.

The Agency, at its own expense, may require a second medical opinion if there are

concerns over the validity of the original medical documentation.

- G. Notification Requirements - The time frame for notifying an employee's supervisor of the need for family medical leave, depends upon either of the following circumstances:
1. when the need is foreseen, employees shall provide their immediate supervisor with 30 calendar days notice
  2. when the need is not foreseen, employees shall notify their supervisor as soon as possible of their intent to request family and medical leave.
- H. Substituting Leave - LWOP during any part of the family medical leave period may, at the option of the employee, be substituted with:
1. accrued or advanced annual leave
  2. accrued or advanced sick leave, when the use of sick leave complies with established sick leave laws and regulations
  3. leave made available through the leave transfer program
  4. accumulated compensatory time or credit hours.

Supervisors must not require employees to use accrued leave.

Employees **may not** retroactively substitute accumulated compensatory time or credit hours for unpaid leave taken during a period of FMLA leave.

- I. Definitions - A serious health condition is an illness, injury, surgery, impairment, or physical or mental condition that involves:
1. Inpatient care in a hospital, hospice, or residence care facility
  2. continuing outpatient therapy or treatment by a licensed or certified health care provider
  3. a health recovery period
  4. continuing medical evaluations or examinations

Note: This term does not cover short-term conditions for which treatment and recovery are brief. These conditions are covered by normal annual and sick leave policy.

- J. Employment Status on Return to Work - After returning to the Agency from family medical leave, the employee shall be restored to either of the following:
1. the same position held before the family medical leave started
  2. an equivalent position, with equivalent benefits, pay, status, and other terms

and conditions of employment in the same commuting area.

- K. Employee Responsibility - Employees using family medical leave shall:
1. submit SF-71 for any leave used under this section for 1 day or more
  2. be sensitive to the workload of the office when requesting intermittent leave or a reduced work schedule.
- L. Timekeeper Responsibility - Timekeepers shall:
1. on the employee's T&A, in the remarks section, enter FMLA and the number of FMLA hours used during the current pay period
  2. maintain an employee file containing all FMLA related documents
  3. track the cumulative use of family medical leave
  4. notify the employee and supervisor when the 12-workweek limit is near.
- M. Supervisor Responsibility - Supervisors shall:
1. grant qualified employees their entitlement to family medical leave
  2. ensure receipt of medical certification or evidence of birth or placement
  3. try to reach a mutually beneficial arrangement with their employees about using family medical leave
- N. Eligible Employees - Intermittent employees and employees on temporary appointments not to exceed 1 year are covered by FMLA, Title I regulations.
- O. Eligible service - FMLA, Title I and Title II have the same entitlement and rules except for eligible service and call to duty. To be eligible, intermittent employees or employees servicing on temporary appointment not to exceed 1 year, must
1. be employed for at least 12 months, and
  2. be in a pay status at least 1,250 hours during the 12-month period immediately preceding the request for family medical leave
  3. intermittent employees shall not be called to duty during a period of approved family medical leave.

#### **10.10 LEAVE FOR PARENTAL PURPOSES**

- A. Leave for Maternity Reasons - There will be no specified time granted for absence for maternity reasons. The length of time will be determined by the employee, her supervisor, and her physician. However, the supervisor will not ordinarily require the employee to return to duty earlier than 12 weeks after childbirth absent severe work interruption.

1. Use of leave -

- e. Sick leave is appropriate for the period of incapacitation for delivery and recuperation. Period of recuperation will vary because of the physical condition of the mother and the physician's instructions. Sick leave may also be used to provide care for the child consistent with family friendly leave.
- f. Annual leave is appropriate for the period of adjustment after delivery and recuperation. Annual leave may also be used to make arrangements for the care of the child.
- g. Leave without pay may be substituted for sick or annual leave. The employee may use all or a part of her available sick and/or annual leave. In addition, consistent with law and regulation, sick leave, annual leave, and leave without pay may be used in any combination during any pay period. LWOP may also be requested consistent with the Family Medical Leave Act.
- h. Advanced Sick Leave - Advanced sick leave may be granted for the period of incapacitation for delivery and recuperation, for no more than 30 days if the employee has indicated a commitment to return to duty. The request must be supported by medical documentation.

- B. Employee Responsibility - An employee must request leave for maternity reasons in writing. Any use of leave must be requested on an OPM-71, Request for Leave or Approved Absence. The request should include the types of leave to be used, the dates and anticipated return to duty date. This will allow the supervisor to prepare for any staffing adjustments necessary to compensate for the employee's absence.
- C. Medical Certificate - The supervisor may request a medical certificate from the employee if there is a question as to the employee's physical fitness to continue work before delivery or to return to work.
- D. Accommodation - The supervisor will make a reasonable effort to accommodate a pregnant employee's request for modification of duties or a temporary assignment when the request is supported by acceptable medical documentation.
- E. Leave for Paternity Reasons - A male employee who has provided his supervisor with reasonable advance notice may be absent on a part-time or full-time annual or sick leave (consistent with family friendly leave), or leave without pay for a reasonable period of time for the purpose of assisting or caring for his minor children, or the mother of the newborn child while she is incapacitated for maternity reasons. LWOP may also be requested consistent with the Family Medical Leave Act.
- F. Leave for Family Reasons - In addition to time off to take care of a newborn, supervisors should also be cognizant of the needs of employees as they relate to

leave for adoption and foster care, elder care, and child care. Approval of annual leave, sick leave or leave without pay will normally be appropriate in these situations. See also Sick Leave for Adoption, Sick Leave for Family Members, Family Medical Leave Act, and Voluntary Leave Transfer Program.

- G. Authority to approve - The first-line supervisor has the authority to approve or disapprove requests for sick and annual leave and LWOP. A request of LWOP for 30 days or more must be requested on an SF-52, Request for Personnel Action, and OPM-71 and sent to the state human resources staff for the SED approval.

#### **10.11 LEAVE WITHOUT PAY (LWOP)**

- A. Definition - Leave Without Pay (LWOP) is a temporary non-pay status and absence from duty granted to an employee upon request.
- B. Granting LWOP - Authorizing LWOP is a matter of administrative discretion. An employee cannot demand that they be granted such leave as a matter of right except in cases of:
1. disabled veterans in need of medical treatment
  2. members of the National Guard and reservists ordered to active duty for training activities when authorization of military leave is not appropriate
  3. employees who suffered a job connected injury (or disease) and are pursuing a compensation claim with the Office of Worker's Compensation Programs
  4. illness as defined in the Family Medical Leave Act (with required medical documentation).

In most cases, LWOP is the result of a lack of sufficient annual or sick leave credits in the employee's accounts to cover all or a portion of the requested period of absence.

- C. Considerations - Each request for LWOP should be examined closely to assure that the value to the Agency or the serious needs of the employee are sufficient to offset the costs and administrative inconveniences associated with retaining the employee in such status.

A basic axiom in the granting of LWOP requires that there be reasonable expectation that the employee will return at the expiration of the approved leave, with the exception of an employee applying for disability retirement or when an employee is seeking other federal employment after relocating. In addition, at least one of the following benefits to the Agency should accrue: increased job ability; protection of an employee's health; retention of a desirable employee; or furtherance of a program of interest to the Federal Government.

- D. Duration - An employee requesting extended LWOP will normally be required to exhaust all annual leave to their credit before such leave may be granted except as otherwise authorized, i.e., FMLA, maternity reasons, employees applying for disability retirement, etc. LWOP may be granted for periods of 1 year or less.

- E. Relationship to AWOL - LWOP is a permissive type of leave such as sick or annual, and does not have a disciplinary connotation. Absence without leave (AWOL), on the other hand, results from a non-approved absence and may provide the basis for disciplinary action.
- F. Authority to Approve - First-line supervisors have the authority to approve LWOP. A request of LWOP for 30 days or more must be requested on an SF-52, Request for Personnel Action, and OPM-71 and sent to the state human resources staff for the SED approval.
  - 1. Examples - LWOP may be approved in the following instances:
    - a. for maternity reasons
    - b. disabled veteran receiving medical treatment
    - c. members of the National Guard and reservists ordered to active duty training or law enforcement activities.
    - d. on-the-job injuries or work connected disabilities
    - e. pending approval of a disability retirement
    - f. relocation purposes of a career/career-conditional employee to prevent break in service while seeking other Federal employment (90 days)
    - g. extended illnesses or a serious medical condition of employee or family member, especially if invoked under the Family Medical Leave Act
    - h. treatment under the Employee Assistance Program
    - i. death in the immediate family
    - j. male employee assisting while his wife is incapacitated for maternity reasons and/or for the purpose of assisting or caring for his minor children
    - k. education beneficial to the mission of the agency subject to work requirements of the employer
    - l. up to 24 hours for participation in school activities, routine family medical appointments and elderly relatives health needs.
  - 2. The following are examples of potentially improper approvals of LWOP requests:
    - a. for vacations or to extend vacation periods not covered by annual leave
    - b. absence from duty in lieu of or in absence of accrued annual leave for non-emergency reasons
    - c. for personal business reasons in lieu of or in absence of accrued annual leave

## **10.12 ABSENCE WITHOUT LEAVE (AWOL)**

- A. Definition - Absence without leave (AWOL) is a non-pay, non-duty status. Unlike leave without pay (LWOP) it is an UNAUTHORIZED absence.
- B. Considerations - AWOL should be charged when an employee is gone from the work site without requesting or being approved leave. AWOL is not a disciplinary action but can form the basis for disciplinary action.

If management has granted annual leave, sick leave or leave without pay, management has approved the absence and cannot take disciplinary action against the employee. An employee who has a leave problem may be disciplined if s/he has been charged AWOL.

- C. Authority - First-line supervisors have the authority to charge AWOL.

- 1. Examples - The following are examples of when AWOL should be charged:
  - a. Employee on a sick leave restriction letter fails to bring in medical documentation to support his or her absence from the worksite due to an illness
  - b. Employee signs-in or signs-out at a different time than when s/he actually arrived or left work
  - c. Employee fails to request leave in the appropriate manner
  - d. Employee's leave request has been denied but s/he fails to report for work anyway
  - e. Employee leaves work for a period of time on personal business without requesting leave
  - f. Employee habitually reports for work after the start of core time (after counseling), even if the employee has annual leave available

## **10.13 EXCUSED ABSENCE**

- A. Definition - Excused absence, sometimes referred to as administrative leave, is an absence from duty, administratively authorized, without loss of pay and without charge to leave.
- B. Granting excused absences - Granting excused absences should be authorized in limited circumstances for the benefit of the agency's mission or a Government-wide or agency recognized and sanctioned purpose. Some types of excused absences may include, but are not limited to:
  - 1. Time off for voting - Typically, polling places throughout the United States are open for extended periods of time. Therefore, excused absences should rarely be needed.
    - a. Generally, where the polls are not open at least 3 hours either before or after an employee's regular work hours, an agency may

grant a limited amount of excused absence that will permit the employee to report to work 3 hours after the polls open or leave work 3 hours before the polls close, *whichever requires the lesser amount of time off*. In addition, if an employee's voting place is beyond normal commuting distance and vote by absentee ballot is not permitted, the employee may be granted sufficient time off (not to exceed 1 day) in order to be able to make the trip to the voting place to cast a ballot. If more than 1 day is needed, the employee may request annual leave or leave without pay for the additional period of absence.

- b. An employee's "regular work hours" are to be determined by reference to the time of day the employee normally arrives at and departs from work.
2. Military funerals - Employees who are veterans, as identified below, can be excused for as much as 4 hours in a day to participate as pallbearers, members of firing squads, or honor guards in funeral ceremonies for members of the Armed Forces whose remains are returned from abroad for final interment in the United States.
    - a. Is a veteran of any war
    - b. Participated in a campaign or expedition for which a campaign badge has been authorized
    - c. Is a member of an honor guard or ceremonial group of a veteran's organization

Employees can be excused for as much as 3 workdays to make arrangements or to attend the funeral or memorial service for an immediate relative who died as a result of wounds, disease, or injury incurred while serving in a combat zone as a member of the Armed Forces. The 3 days need not be consecutive and may include travel time.

3. Blood donation - An employee making a donation of blood for which there will not be compensation can be excused from work without charge to annual or sick leave for a period not to exceed 4 hours (not including the time needed for the donation) for the purpose of subsequent rest and recuperation. Supervisors may require medical evidence of blood donation as deemed necessary. Employees who receive compensation for blood donation during duty hours are required to take leave for the period of absence.
4. Bone-Marrow and Organ Donation - Employees may be granted up to 7 workdays each calendar year to serve as bone-marrow donors and up to 30 workdays each calendar year to serve as organ donors. Annual and sick leave may be granted in conjunction with the excused absence.

Employees must notify their immediate supervisor as soon as possible after the donor procedure has been scheduled. He/she must provide medical

documentation on business stationery and certified by an attending physician, donor hospital, or medical center, and it must include:

- a. date of scheduled donor procedure
  - b. period required for post-operative recuperation
  - c. post-operative certification that the procedure has been performed.
5. Qualification examinations - Employees shall be given official leave to take job qualification examinations or to obtain professional licenses if the examination:
- a. is required for the position the employee currently occupies
  - b. is for a position to which the Agency or Department has recommended the employee be transferred, promoted, or reassigned
  - c. is required for a professional license or certification (CPA certification, engineer's license, etc) which is considered advantageous to the agency.
6. Before/after official travel - An employee may be excused up to 2 hours without charge to leave before or after travel status if the time of departure from or arrival at duty station makes reporting to the office impractical. This excused absence may not be used in conjunction with leave.
7. Volunteer activities - An employee may be granted excused absence for short period of time to participate in volunteer activities that are:
- a. directly related to the Agency's mission
  - b. officially sponsored or sanctioned by the Agency.
  - c. enhancing to the professional development and/or skills of the employee in his/her current position.
8. Hazardous Weather conditions - Criteria for granting administrative dismissals because of hazardous weather varies for different parts of the country depending on local conditions during times of hazardous weather. Hazardous weather conditions and emergencies which disrupt travel are conditions which are unusually severe and disruptive to normal travel or transportation of employees between their homes and their duty stations (hurricanes, cyclones, floods, blizzards, severe snow or icing on roads).
- a. Office closure - If hazardous conditions exist before regular working hours and it has been decided that the office is closed, employees should be notified as soon as possible. Once an office is declared closed before regular opening hours of work, employees cannot be charged annual leave for any part of the day, even if

conditions improve. This applies to employees already on scheduled leave.

- b. Early dismissal - When an early dismissal decision is made, employees may be approved annual leave, as requested, between the notice of dismissal and the actual dismissal. They are not to be charged leave from the time of actual dismissal to the end of the workday. In the interest of safety, employees may be dismissed at different times.

Employees on leave who are not scheduled to return to work that day shall be charged leave to the end of the workday.

If an employee's area of residence is affected the employee may be excused without charge to leave if **all** of the following apply:

- i. weather conditions in the area of an employee's residence are publicly declared extremely hazardous by an appropriate State or local authority and driving has been limited
- ii. the employee is unable to report to duty and was not on scheduled leave

Under unusually severe weather conditions, where it is considered reasonably unavoidable, tardiness not in excess of 2 hours may be charged to excused absence. In the case of employees who do not report for duty during hazardous weather, annual leave is to be charged unless the employee's supervisor or head of the office concerned determines, after personal review of the facts, that the employee made every reasonable effort to get to work but was unable to do so because of weather conditions. In such cases excused absence may be approved up to 1 day.

Employees are considered on active duty when excused from duty because of emergency conditions such as floods, storms, or other natural disasters, plant shutdowns, strikes, or disorders of such magnitude that life or property is threatened.

Employees must make themselves available to return to work when ordered after the emergency. Employees who are not available to return to duty, shall be charged appropriate leave.

9. Voluntary Emergency Services - Time off without loss of pay or charge to other leave may be given to employees who serve as volunteer firemen or perform other rescue or protective work during emergency situations. Conditions for granting leave for these emergencies are:

- a. employee must be a member of a voluntary rescue or protection

organization, or be officially requested to participate in an emergency situation

- b. employee must actually participate in an emergency situation
- c. work in the office must not be adversely impacted on a regular basis

The amount of leave granted shall not exceed the duration of the emergency.

The employee must provide the supervisor documentation reflecting their membership on any voluntary rescue or protective organization, prior to being allowed to use this leave.

The first line supervisor has the authority to limit or prohibit the use of leave if the employee's absence is adversely impacting the operation of the office.

- C. Employee Responsibility - An employee must request excused absences in advance and in writing, when possible. If requested, appropriate supporting documentation must be submitted.
- D. Supervisor Responsibility - The supervisor should carefully review and approve or disapprove each request.

#### **10.14 COURT LEAVE/WITNESS SERVICE**

##### A. Definitions:

- 1. Court leave - The authorized absence of an employee from work, without charge to leave or loss of pay, for jury duty or for attending judicial proceedings in a nonofficial capacity as a witness on behalf of either party, as long as one of the parties is a federal, state or local government.
- 2. Judicial proceeding - Any action, suit, or other proceeding of a judicial nature, not including administrative proceedings, i.e., EEOC, MSPB hearings, or arbitration hearings.

B. Eligibility - All full-time and part-time leave-earning employees are eligible if their services are required during their regularly scheduled tours of duty. For example, if a part-time employee is not scheduled to work on Mondays and they are summoned for jury duty that day, they are not entitled to court leave for that day.

C. Allowable time - An employee may be granted court leave from the report date stated in the summons through the date discharged from the court.

An employee is expected to report for duty when s/he is excused from jury duty for a day or substantial portion of a day.

D. Use of annual - If an employee is on annual leave when called for jury service, court leave should be substituted.

- E. Nonpay status - An employee on LWOP, although otherwise eligible, may not be granted court leave when called to jury duty.
- F. Witness service:
  - 1. Official capacity - An employee called as a court witness to testify in his/her official capacity, no matter on whose behalf, is in an official duty status rather than court leave. The employee must be paid government travel expenses as appropriate.
  - 2. Nonofficial capacity - An employee summoned as a witness to testify in a nonofficial capacity on behalf of either party, as long as one of the parties is Federal, State or local government is entitled to court leave during the time absent as a witness.  
  
If the witness service is in a nonofficial capacity on behalf of a private party and the government is not one of the parties, the employee's absence must be charged to leave.
- G. Fees - Employees are allowed to keep fees paid for reimbursement of expenses but are not allowed to keep fees paid to him/her for jury/witness services when court leave is granted.
- H. Employee Responsibility - As a U.S. Citizen it is your responsibility to serve on jury duty when requested. Court leave should be requested in advance on an SF-71. A copy of the notice of jury duty or court summons must be submitted with the leave request or as soon as possible upon return to duty.
- I. Supervisor Responsibility - The supervisor must ensure that the documentation is adequate to support the use of Court Leave.

#### **10.15 MILITARY LEAVE**

- A. Definition - Military leave is absence with pay for active duty or training.
- B. Covered Employees - Full-time career employees, part-time career employees who work at least 16 hours but no more than 32 hours per week, temporary indefinite (TAPER) employees, and employees who have unlimited excepted appointments under Schedule A or C authority, are eligible for military leave with pay.
- C. Accruals - An employee receives 15 calendar days of military leave during a year and may carry over 15 days of military leave from prior years.
- D. Military leave is granted on a prorated basis to part-time employees. The amount of military leave is determined by dividing 40 into the employee's weekly tour of duty, multiplying by 15 days and rounding down to the lower number of whole days.
- E. Use - The military leave may be used during one or more periods of military duty during the fiscal year. The employee may also take the full 15 days of military leave immediately at the beginning of a fiscal year even if up to a maximum of 30 days had been taken during the prior year and even if the military duty is continuous. An employee does not need to return from military duty to a civilian

position before additional military leave, earned during a new fiscal year, may be used.

- F. Employee Responsibility - Military leave must be supported by a copy of the employee's military orders directing him or her to report for active duty or training.
- G. Emergency Military Leave - Reservists are entitled up to 22 workdays of leave each calendar year to assist civil authorities in emergencies. The reservist must be activated by order of the President or State Governor to provide military aid to enforce the law, or in the protection or saving of life and property or the prevention of injury.
- H. Military Leave for Contingency Operations - Employees who perform full-time military service as a result of a call or order to active duty in support of a contingency operation as defined in section 101(a)(13) of Title 10, United States Code, are entitled to 22 days of military leave under 5 U.S.C. 6323(b). Under this provision the employee is entitled to the greater of his military or civilian pay.
- I. Federal employees using emergency military leave, must refund, through their servicing personnel office, any monies received for emergency military leave, with the exception of monies paid for travel, transportation, and per diem allowances. No refund is necessary if the employee uses annual leave.
- J. Other Leave - If the employee does not have sufficient military leave to cover the absence, the employee may use other leave as appropriate.
- K. Supervisor Responsibility - First-line supervisors may approve military or other leave upon employee's submission of proper documentation.

#### **10.16 ADJUSTMENT OF WORK SCHEDULES FOR RELIGIOUS OBSERVANCES**

- A. Purpose - To allow an employee to work compensatory overtime for the purpose of taking time off without charge to leave when personal religious beliefs require that the employee abstain from work during certain periods of the workday or workweek. There are no restrictions on the "kind" of religious holiday or observance that an employee may observe.
- B. There is no relationship between overtime worked for this purpose and regular overtime worked under Title 5 and the Fair Labor Standards Act.
- C. Eligibility - Full-time and part-time employees are eligible to elect to work compensatory time or to take compensatory time off to meet his or her religious obligations.
- D. Employee Responsibility - An employee must state in writing the date and time period they wish to take off for religious observance, along with a proposal on when compensatory time will be earned.
- E. Earning and use - Compensatory time for this purpose may be earned the pay period before the employee expects to take off, or, if the compensatory time is

advanced, it should be repaid within the next two pay periods after its use or not later than the end of the leave year.

- F. Supervisor Responsibility - First-line supervisors may approve employee requests to work or take compensatory time off for religious observances. Supervisors are encouraged to accommodate such requests.

## 10.17 VOLUNTARY LEAVE TRANSFER PROGRAM

**PURPOSE** – The Voluntary Leave Transfer Program allows Federal employees to voluntarily donate earned annual leave to another Federal employee with a medical emergency, who has exhausted their own leave. All individuals involved in the leave transfer program are responsible for protecting the confidentiality/privacy of the participants of the program.

### A. Definitions -

#### Medical emergency

##### 1. A medical condition:

- a. of an employee or an employee's family member
- b. that is likely to require the employee's absence from duty for a prolonged period of time and result in a substantial loss of income to the employee because of the lack of paid leave

##### c. Family member

Includes:

- d. employee's spouse and spouse's parents
- e. employee's children, including adopted children, and the children's spouses
- f. employee's parents
- g. employee's brothers and sisters, and their spouses
- h. any individual related by blood or affinity whose close association with the employee is equivalent to a family member.

### B. Eligibility – To be eligible as a recipient in the leave transfer program, it must be determined that the:

1. employee is in a leave-earning category
2. medical emergency is of a personal nature or that of a family member
3. absence would result in unpaid leave (or expected unpaid leave) as follows:
  - a. 24 hours for a full-time employee

- b. 30 percent of the scheduled biweekly work hours of a part-time employee. For part-time employees, work hours or workdays do not have to be consecutive to qualify
  - i. Employee has exhausted all earned:
  - ii. annual and sick leave to qualify for a personal medical emergency
  - iii. annual and family friendly sick leave to qualify for a family medical emergency

Note: Earned leave does not include advance leave.

- C. Documentation – Documentation justifying the medical emergency must:
  - 1. be on the doctor's, hospital's or clinic's letterhead
  - 2. be signed and dated by a practicing physician, psychiatrist, psychologist, physician's assistant, or practitioner
  - 3. include the beginning date of the medical emergency and the approximate date the emergency should end
  - 4. include a diagnosis or prognosis of the employee's or family member's condition
  
- D. Applying to be a leave recipient – Federal employees seeking to become a leave recipient, or the applicant's designee, should contact their leave transfer coordinator to apply.
  - 1. Employee's or their designee should:
    - a. complete AD-1046, Leave Transfer Program – Recipient Application, along with medical documentation to the employee's immediate supervisor for concurrence.
  
- E. Recipient's responsibility – Approved leave recipients shall:
  - 1. use donated leave for those leave hours specifically related to the current approved medical emergency
  - 2. advise timekeeper on how to handle leave hours not covered by leave donations; such as, advanced annual leave, advanced sick leave, and LWOP
  - 3. provide a second medical opinion, if requested by the Agency (The Agency shall reimburse the recipient, or pay the practitioner directly, if additional medical documentation is necessary.)
  - 4. comply with the regulations and policy of the leave transfer program (Failure to comply may result in termination of program eligibility.)
  - 5. contact their leave transfer coordinator upon return to work or termination of the medical emergency

6. advise their leave transfer coordinator if they are approved for OWCP worker's compensation or disability retirement during a period covered by the leave transfer program
  7. discuss the impact of remaining in the leave transfer program after having applied for disability retirement
  8. provide follow-up medical documentation as requested.
- F. Solicitation – Employees who complete Item 18 of AD-1046 will be assisted by the leave transfer coordinator in finding leave donors. This assistance will be in the form of a written notice (transmitted electronically or by hardcopy) to all employees serviced by that human resources staff.
- G. Recipient's accruals – Recipients will continue to accrue up to 40 hours each of sick and annual leave while receiving and using donated or paid leave. These hours will be placed in a separate account until the medical emergency terminates or the employee has exhausted all donated leave.
- Part-time employees' hours are pro-rated based on the weekly scheduled tour of duty.
- Recipients, whose medical emergency only requires intermittent use of donated leave shall have their donated leave tracked separately from their regular earned leave.
- H. Supervisor's responsibility – The applicant's immediate supervisor:
1. shall verify, review, sign, and fax or send the AD-1046 and the associated medical documents to the leave transfer coordinator for approval within 5 workdays of receipt
  2. may, in a case where the employee qualifies as a leave recipient but is unable to apply:
    - a. verify the employee's medical emergency
    - b. write a brief statement of condition
    - c. complete and sign AD-1046
    - d. forward the statement and AD-1046 by mail or FAX, to the leave transfer coordinator. (This statement will temporarily satisfy medical certification requirements for approval, but the employee or designee must still provide certified medical documentation as soon as possible.)
    - e. shall monitor the use of donated leave by an approved leave recipient
    - f. shall forward questionable employee requests to the leave transfer coordinator with an explanation of their concerns.

- g. In conjunction with the leave transfer coordinator, may request a second medical opinion or require medical certification more frequently than described in Recipient's Responsibilities, if the validity of the medical emergency is in question.

I. Timekeeper's Responsibility –

1. Recipient's timekeeper shall:

- a. exhaust the recipient's accrued leave before using donated leave when the medical emergency causes the recipient to be continuously absent from work
- b. track a recipient's regular leave separately from donated leave when the medical emergency requires only intermittent use of donated leave Note: tracking of the donated leave may be done on the T&A in the Remarks section
- c. attach all leave transfer documents to the employee's T&A for the pay period.
- d. make appropriate leave adjustments to the recipient's automated T&A records
- e. on the T&A, in the Remarks section, enter either of the following:
  - i. the number of leave hours donated by the leave donor
  - ii. the number of leave hours received by the leave recipient
- f. if the recipient remains absent from work continuously for more than:
  - i. 10 pay periods for leave category 4 employees
  - ii. 7 pay periods for leave category 6 employees
  - iii. 5 pay periods for leave category 8 employees

NOTE: contact the leave transfer coordinator for instructions regarding accrual limitations.

- g. provide the servicing human resources staff with a leave audit, if requested.

2. Donors' timekeepers shall:

- a. make appropriate leave adjustments to the donor's automated T&A records.

J. Applying to be a leave donor – Employees wanting to donate annual leave to an employee within the Agency shall:

- 1. obtain and complete AD-1043, Leave transfer Program – Donor Application, specifying the number of accrued annual leave hours to be transferred to the recipient
- 2. donate annual leave in 1 hour increments

- a. sign and date AD-1043
  - b. Fax, mail, or deliver AD-1043 to the leave transfer coordinator in their servicing human resources staff.
- K. Donations outside Agency – Employees wanting to donate to a Federal recipient outside of their Agency shall:
1. follow the procedures for donating leave
  2. provide the name and telephone number of the outside recipient's leave transfer coordinator on the AD-1043, items 17 & 18
  3. forward the AD-1043 to the leave transfer coordinator for approval and processing. Do not send AD-1043 to the recipient's human resources staff.
- L. Donor's limitations and waivers – A donor may donate earned annual leave, but is limited to:
1. one half of the annual leave that will be earned in the donation leave year  
Example: A leave category 8 employee will earn 208 hours during a leave year and may donate up to 104 of those earned hours.
  2. the number of work hours remaining in the leave year  
Example: At the end of the leave year with 1 pay period remaining to be worked, a full-time employee may donate a maximum of 80 hours. Exception: a donor may request, in writing, from their leave transfer coordinator, a waiver to these limitations, if the intended recipient is still in need of leave for their medical emergency
  3. Donors may not donate leave to their immediate supervisor.
- M. Processing AD-1046's –
1. Leave transfer coordinators shall process AD-1046's as follows:
    - a. Have all AD-1046's date stamped when received
    - b. Verify that AD-1046 has been completed properly and that it was signed and dated by the applicant or applicant's designee and the applicant's immediate supervisor
    - c. Ensure that the medical documentation is attached to AD-1046 or that the applicant's immediate supervisor has provided appropriate verification of the medical emergency
    - d. Ensure that dates on the medical documentation correspond with the dates of employee's absence or expected absence
    - e. Verify employee's eligibility
    - f. Approve/deny AD-1046 within 10 workdays of receipt

- g. Ensure that the NFC database is updated for recipient status by FAX, e-mail, or mail, notify applicant or applicant's designee and applicant's immediate supervisor of approval into the leave transfer program
- h. Distribute notice soliciting leave donations, if requested
- i. Based on the amount of leave requested on AD-1046, item 16 accept a reasonable amount of donated leave over the hours requested or needed by the recipient. At this point, donations to the recipient may be temporarily closed

2. Leave transfer coordinators shall process AD-1043's as follows:

- a. Verify AD-1043 was signed and dated by the leave donor
- b. Verify current annual leave balances in NFC database
- c. Complete AD-1043, Part II
- d. Approve/deny AD-1043 within 10 workdays of receipt
- e. Ensure that the NFC database is updated for donor and recipient leave adjustments
- f. Ensure that donor's timekeeper is advised of the amount donated
- g. Ensure that recipient's timekeeper is advised of total hours received each pay period
- h. Return excess donated leave to donors on a pro-rated basis. Excess donated leave may not be redistributed to other recipients

N. Disapproving AD-1046 and AD-1043 – When the AD-1046 or AD-1043 is disapproved the leave transfer coordinator shall:

- 1. check "No" in Part II
- 2. state the reason for disapproving
- 3. return the application to the donor or recipient

O. Monitoring cases: Leave transfer coordinators shall:

- 1. periodically review recipient cases to ensure continued eligibility
- 2. ensure that recipients seeking disability retirement are counseled on the impact of remaining in the leave transfer program
- 3. ensure that recipients, who have been in the leave transfer program for more than 12 months, are counseled about their leave and retirement choices.

- P. Recipient returns to work – When leave recipients return to work, they must contact (FAX, e-mail, or telephone) and advise their leave transfer coordinator of:
1. their desire to terminate the Voluntary Leave Transfer Program
  2. the status of their medical emergency

Recipients who return to work, but did not receive enough donated leave to cover the leave hours used for their medical emergency, may request and shall be granted up to 90 calendar days to solicit and receive additional donated leave hours.

- Q. Follow-up visits and therapy – A recipient may remain in the Voluntary Leave Transfer Program until all aspects of the medical emergency, such as therapy and doctor visits, have been completed.
- R. Termination of eligibility – A recipient's leave transfer eligibility terminates and no further leave donations can be accepted, when one of the following occurs:
1. end of the pay period in which the leave transfer coordinator receives written notice or determines that the recipient is no longer impacted by the emergency
  2. 90 calendar days from the date the leave transfer coordinator grants an eligibility extension of the recipient to solicit and receive additional donated leave hours
  3. the employee resigns, retires or is separated from Federal service
  4. the recipient's application for disability retirement is approved
  5. the recipient begins to receive unemployment benefits or OWCP benefits for the medical emergency
  6. the recipient dies
  7. death of the family member with the medical emergency

The leave transfer coordinator will ensure that the NFC database is updated for recipient status.

- S. Excess donated leave hours – When a leave recipient who is no longer eligible for the Voluntary Leave Transfer Program and has excess (unused) donated leave hours, the leave transfer coordinator shall:
1. request a leave audit from the recipient's timekeeper
  2. ensure that all leave hours, such as, advanced annual or sick leave or LWOP, used in conjunction with the recipient's current medical emergency have been covered with donated leave
  3. restore any unused donated leave hours to leave donors

- T. Restoring donated leave – The leave transfer coordinator shall:
1. prorate and restore to leave donors any unused donated leave, except when the number of eligible donors exceeds the number of restorable hours
  2. take the following steps to restore unused leave

Step	Action
1	Prepare a leave restoration list
2	Update the NFC database for restored annual leave
3	Advise the donor and the donor's timekeeper of restored annual leave. The timekeeper will update the donor's automated T&A record

Restorations shall be made in the current leave year, except when the restoration will place the employee in a use or lose annual leave situation at the end of the leave year. In this case, restore the annual leave in pay period 2 of the following leave year.

Do not restore donated leave to an employee who has separated from Federal service. There is no entitlement to restored leave after the donor's death or separation.

- U. Transfer of recipient to another Federal Agency – A leave recipient who transfers to another Federal position without a break-in-service:
1. may take donated annual leave
  2. retains his or her recipient status
- V. End of leave year – A leave recipient may maintain and carry into the new leave year an annual leave balance that is greater than their annual leave ceiling. The 240 hour rule does not apply to an employee in "recipient" status.
- W. Confidentiality of Leave Transfer – Anyone involved in processing leave transfer documents must protect the privacy and confidentiality of:
1. all parties involved in the leave transfer
  2. all leave transfer documents

Persons with access to leave transfer information must not disclose such information to anyone, except someone who has a need to know.

- X. Leave Transfer Files – Files maintained for the leave transfer program constitute a system of records under the Privacy Act. Keep these files separate from other personnel files.

All documentation and correspondence associated with a recipient's case shall be kept or 6 years and then destroyed.

## ARTICLE 11 - POSITION DESCRIPTION AND CLASSIFICATION

**11.1** Each employee is entitled to a position description which is accurate as to title, series, and grade and clearly states the principal/primary duties and responsibilities of the position which are reflected in performance elements. The position description shall be reviewed annually by the employee and work supervisor, within 30 days of the beginning of the rating period. This is the time when the employee is to ask what it takes to excel in their performance.

- A. Any employee who feels that he/she is performing duties outside the scope of the position description, or that it is inaccurate may request to the immediate supervisor that the position description be reviewed. The position description is to be reviewed and the findings presented to the employee within forty five (45) days. In conducting such reviews, the reviewer will consider the employee's written and oral comments. If the employee is not satisfied with the results of the review, they may grieve according to Article 28.
- B. If an employee believes that his/her position is incorrectly classified as to series and/or grade, s/he may choose any or all of the three actions to pursue a classification appeal:
  - 1. With the Farm Service Agency Director for Human Resources Division;
  - 2. With the USDA Director Office of Human Capital Management;
  - 3. With the U.S. Office of Personnel Management.

State Office Human Resources staff will provide an employee with the necessary information to pursue any of these avenues. The employee may request Union representation during classification review.

- C. Upgrades that are exempt from the merit promotion plan due to reclassification shall become effective the beginning of the first pay period after the position was classified at the higher level.

**11.3** When a new position description has been approved and classified, the supervisor and the employee will review and discuss said position descriptions within 15 days of completion.

**11.4** If a classification audit reveals that there has been an accretion of duties deserving of a higher grade, the employee will be promoted, unless the employer eliminates and/or redistributes the grade controlling duties.

**11.5** When employees are assigned additional duties, which comprise 25% of their time, or are grade controlling, and are not reflected in their position description, the employer will revise the position description to reflect the change in accordance with Section 11.1 above.

**11.6 DOWNGRADES:** General Schedule employees in the unit whose positions have been downgraded may appeal to the Merit Systems Protection Board. Notices of such actions shall include an explanation of the employee's options for review and/or use the negotiated grievance process, including the address of the MSPB office. Saved grade and saved pay rights shall be afforded to those whose positions are downgraded in accordance with 5 CFR 536.

## Article 12 – PERFORMANCE APPRAISAL SYSTEM

21.1 PURPOSE: The parties to this Agreement each recognize that continual and consistent job performance of the Agency's employees is essential to the efficient operation of the Agency and is necessary for the achievement of the goals and programs for which it is responsible. The purpose of this article is to set forth procedures to be utilized by supervisors to inform employees of their performance and in aiding employees to reach optimum level of performance. The Agency employee performance appraisal system will be in accordance with appropriate regulations and, as supplemented by this Agreement, shall be utilized in evaluating employee performance.

### 21.2 DEVELOPMENT OF STANDARDS AND ELEMENTS:

- A. Performance standards and identification of critical elements should be developed by the supervisor with input from the employee. Employees and their supervisors shall meet at least once each year, in October or within 30 days of the start of assignment to a position or changes in duties, to engage in constructive communication while reviewing and/or revising the performance standards and elements to be applicable for the coming appraisal year. The standards and critical elements shall be documented in the web-based Performance Management system.. Any amendments made during the appraisal year will be updated in the system and reviewed with the employee.
- B. Performance elements and standards shall be consistent with the duties and responsibilities actually assigned to employees and will be reflected in the employee's official position description.
- C. Performance elements and standards must, to the maximum extent feasible, permit the accurate evaluation of job performance. To the greatest possible extent, objective, measurable, and quantifiable criteria will be used for elements and standards. They must be applied fairly and equitably.

### 21.3 PERFORMANCE APPRAISAL:

- A. The appraisal given employees shall be fair and equitable and shall be prepared in accordance with the following:
  - 1. A minimum of one Progress Review will be conducted and documented during the period 30 days prior to and 30 days after the midpoint of the review cycle.

2. If deficiencies have been identified in the employee's performance, the employee shall be notified. If the supervisor anticipates that the employee may receive a rating below fully successful if current performance continues, the supervisor will inform the employee what is needed to bring his or her performance to the fully successful level. The supervisor will identify corrective actions, and discuss with the employee, the deficiencies as well as specific ways, including training, for the employee to improve.
3. The annual performance evaluation will be entered in the web-based system by October 30th.
4. After performance appraisals have been given, if an employee wishes to dispute a rating of any element, the employee may grieve the rating through the negotiated grievance procedure.

B. Confidentiality: Employer will take precautions to insure confidentiality of the performance appraisals. Only authorized individuals will have access to the evaluations.

C. Career Ladder

1. If the employee is not to receive a career ladder promotion, based on performance, the supervisor will notify the employee in writing normally forty-five (45) calendar days before the employee is eligible for the promotion. The supervisor will provide:
  - a. An explanation of those aspects of performance in which the employee's performance falls below an acceptable level, with specific examples; and
  - b. Specific advice as to what the employee must do to bring the employee's performance up to a level to receive the Career Ladder Promotion;
2. If the employee receives the career ladder promotion, notice given as provided above will be cancelled and removed from all files. If the promotion is not granted, the supervisor will then periodically (at least quarterly) review the employee's performance to determine if the promotion is in order at the time.

D. Within Grade Increase

1. Prior to the date an employee is eligible for a within grade increase, the supervisor will review the work of the employee. When and if a supervisor deems that the employee's work is not deemed to be at-an

acceptable level, the supervisor will provide a written notification to the employee normally sixty (60) calendar days before the employee is eligible for the within grade increase, the following:

- a. An explanation of those aspects of performance in which the Employee's service falls below an acceptable level, with specific examples of deficiencies in each area of performance;
  - b. Specific written recommendations as to what the employee must do to bring his or her performance up to the acceptable level;
  - c. A statement that employee's performance may be determined as being at an unacceptable level unless improvement to an acceptable level is shown; and
  - d. A statement that an employee has a period of forty-five (45) calendar days in which to bring the employee performance up to an acceptable level or that the employee will be denied a within grade increase. In accordance with 5 CFR 531.409(c), there are certain circumstances which require delaying a within grade increase. If, following the delay, the employee's performance is determined to be at an acceptable level the WGI will be granted retroactively to the beginning of the pay period following completion of the applicable waiting period.
2. At least 15 days before the original WGI due date, if the supervisor determines that the employee is performing at an acceptable level, the within grade increase will be processed. The notice given as provided above will be removed from all files. If the employee's performance has not improved the supervisor will notify the employee in writing that the within grade increase will be withheld. The notice will include reasons for the action and will also inform the employee of his/her right to request reconsideration. The supervisor will then periodically (at least every 90 days) review the employee's performance to determine if the WGI is in order at that time.
- E. Unacceptable Performance: If the supervisor determines that the employee's performance is unacceptable the supervisor shall conduct an interim performance rating, and mark the appropriate elements as unacceptable and discuss with the employee. Supervisors shall:
- assist employees in improving less than "Fully Successful" performance in a critical element
  - inform employees in writing as soon as the less than "Fully Successful" performance is apparent and give a reasonable opportunity to demonstrate acceptable performance through an Opportunity To Improve (OTI).

The OTI provides formal notice to employees that performance is unacceptable and provides employees the opportunity to demonstrate acceptable performance. OTI may include activities like developmental assignments, structured employee assistance or counseling, formal or on-the-job training, and mentoring. Careful records must be kept of the assistance offered and results achieved under OTI. Supervisors should provide the following:

- notification of elements in which performance is unacceptable
- specific examples of the unacceptable performance
- performance requirements or standards that **must** be attained to demonstrate acceptable performance
- a reasonable opportunity period to demonstrate acceptable performance on the elements at issue
- notice that the employee **must** improve to the acceptable level by the conclusion of the opportunity period and **must** sustain that level of performance for at least 1 year from the start of the opportunity period.

1. In the event that the supervisor determines that the employee did not meet the requirements of the OTI, and should be removed or receive a reduction in grade or pay, the supervisor will provide a 30 day advance written notice to the employee proposing the employee's removal or reduction in grade or pay. The notice proposal will inform the employee:

- a. The type of action proposed;
- b. Of the specific instances of unacceptable performance by the employee;
- c. Of the critical elements of the employee's position involved in each instance of unacceptable performance;
- d. A reasonable time (at least 15 calendar days) to answer orally and/or in writing.
- e. The right to be represented by an attorney or other representative of the employee.

2. After considering the employee's response, the Employer will issue a written decision. It is the Agency policy that the deciding official will be an official who is in a higher position than the official who proposed the action.

3. The decision letter to an employee stating that action under this Article will be taken; will inform the employee of the right to appeal the action either to the Merit Systems Protection Board, or, through

the negotiated grievance procedure. The decision letter will also will inform the employee that he/she will be deemed to have elected their option to raise the matter under one procedure or the other at the time the employee timely files a written grievance or files a notice of appeal under the applicable MSPB procedure.

## ARTICLE 13 - EMPLOYEE RECOGNITION

**13.1** The parties agree that the Employee Recognition Awards Program is beneficial to both management and the employee. Timely recognition provides a source of motivation for continued excellence. The Parties mutually agree that safety, civil rights, productivity, efficiency, and public service will receive emphasis in the awards program in accordance with 5 CFR Parts 451 and 430. The awards program as set up by the Mt FSA Partnership council will take precedence over the following while it is in existence, however if it ceases to exist or have an awards program the balance of Article 13 will be used.

### **13.2 LEGAL AUTHORITIES THAT GOVERN EMPLOYEE RECOGNITION**

- A. Chapter 45, Title 5, United States Code (U.S.C.) provides authority to establish an employee recognition program (5 U.S. C. 4503); and Title 5 Code of Federal Regulations (CFR) Part 451;
- B. The Federal Employees Pay Comparability Act of 1990 (FEPCA), Public Law 101-509, provides Federal agencies authority to grant employees time-off from duty, without loss of pay or charge to leave, as employee recognition;
- C. Regulatory requirements for Quality Step Increases for General Schedule (GS) employees are found in 5 CFR Part 531.

**13.3 COVERAGE:** This covers all employees of the Montana Farm Service Agency Bargaining Unit.

### **13.4 RESPONSIBILITIES:**

- A. Management is responsible for:
  - 1. Ensuring that the program supports the Agency's mission, goals, and objectives.
  - 2. Ensuring equity in the distribution of recognition.
  - 3. Ensuring that employees are informed of recognition policies and procedures.
  - 4. Providing periodic training on the effective use of the recognition program.
  - 5. Conducting annual reviews to ensure the effective use of the program.
  - 6. Emphasizing the importance of teamwork through recognition of groups.
  - 7. Incorporating funding for recognition into agency budget planning.
  - 8. Ensuring that employee recognition is publicized.
  - 9. Eliminating unnecessary levels of review to ensure timely processing of

recognition.

10. Encouraging innovative recognition at the local level.
11. Maintaining an Awards Committee that will include at least two (2) Union Representatives. The Union President will assign the Union Representatives.

B. The Human Resources Manager is responsible for:

1. Providing technical and operational support and advice.
2. Ensuring the employee recognition program is administered in a manner consistent with applicable laws, rules, and regulations.
3. Processing personnel actions related to recognition.
4. Ensuring that employee recognition records are maintained in the Servicing Human Resources Office in accordance with requirements in 5 CFR parts 430 and 432.
5. Providing training on the employee recognition program.
6. Providing an annual report to the Union President on employee recognition and awards during the first quarter of the fiscal year.
7. Coordination of the awards committee meetings.

C. Supervisors and Managers are responsible for:

1. At the beginning of the appraisal period, the supervisor will discuss the performance standards and elements, and what is needed to meet and exceed those standards and elements. The supervisor will also explain to the employee that if the standards and elements are clearly exceeded, the supervisor will consider nominating the employee for a performance award.
2. Recognizing employees for specific achievements.
3. Ensuring equity in the distribution of recognition.
4. Considering input as appropriate from co-workers, customers and unions, when making recognition decisions.
5. Recognizing contributions in a timely manner.
6. Emphasizing the importance of teamwork through recognition of groups.

7. Promoting the recognition program by encouraging employee participation, arranging for appropriate presentation, and publicizing recognition.
  8. Allowing those recognized to choose the type of recognition, when appropriate.
  9. Reviewing nominations to ensure recognition is linked to the work accomplishments and the amount accurately reflects the value of the contribution rather than the grade level or other non-merit factors.
- D. Nominating Officials are responsible for:
1. Actively seeking out exceptional achievements worthy of recognition.
  2. Developing employee recognition nominations in a nondiscriminatory manner.
  3. Accurately documenting the exceptional achievements of others and ensuring the appropriate guidelines are applied to all nominations.
  4. Except for QSIs, employees may develop award nominations involving co-workers or employees with Montana Farm Service Agency. Subordinates cannot nominate an award for their immediate supervisor or higher level official.
- E. Awards Committee is responsible for:
1. Reviewing nominations to ensure recognition is linked to the work accomplishments and the amount accurately reflects the value of the contribution rather than the grade level or other non-merit factors.
  2. Encouraging teamwork through consistency of funding levels among the programs.
  3. Periodically evaluating and reviewing the Awards Program and making recommendations to the Union/Management Joint Committee to ensure effectiveness and understanding of the Awards Program.
  4. Meeting on an annual basis to review nominated awards and forward recommendations to the Designated Approval Official.
- F. Designated Approval Official is responsible for:
1. Providing support to employees, supervisors, and managers.
  2. Reviewing employee initiated awards for compliance to stated criteria and certifying funds availability.

## **13.5 RECOGNITION CATEGORIES:**

### **A. CASH**

1. All Federal employees are eligible to receive cash awards.
2. Cash awards may range from \$50 to \$10,000, depending on the contribution level. Awards may not exceed 10% of an employee's annual salary.
3. Cash awards less than or equal to \$500 will be issued immediately and taxes will be added to the award amount. When an employee reaches the threshold of \$501 during the preceding twelve (12) months, taxes cannot be added to the award. The award must be processed through the NFC system for payment and taxes must be deducted from the award.

### **B. CERTIFICATES, LETTERS OF COMMENDATION AND THANK YOU NOTES**

1. All Federal employees and nonfederal individuals and organizations are eligible to receive certificates of appreciation, certificates of merit, letters of commendation, and thank you notes.
2. All employees are encouraged to write letters of thanks, appreciation, and commendation for individuals when they believe a contribution to be noteworthy. When a contribution warrants additional recognition, a letter of commendation from a higher organizational level may be requested.

### **B. GIFT CERTIFICATES (Consistent with USDA Policies)**

1. All employees and private citizens (including volunteers and other mission-related partners) are eligible to receive gift certificates. Gift Certificates may not exceed \$100.
2. Gift certificates are items that can be redeemed for merchandise or services at a particular place of business, a group of businesses, or a retail location (this includes chain stores, restaurants, and shopping centers).
3. The Internal Revenue Service considers gift certificates to be taxable fringe benefits that must be taxed on the fair market value. The face value of the gift certificate is the fair market value. At the time the personnel action recording the recognition is processed, the amount will be adjusted to include the taxes due. The total of the gift certificate plus taxes will be reflected on the employee's Leave and Earning Statement.
4. A gift certificate cannot be converted to a cash payment.

## D. KEEPSAKES

1. All employees are eligible to receive keepsakes. Private citizens who contribute to the mission of USDA or the Federal government as a whole may also receive keepsakes. Non-Federal County office employees, Conservation District employees, state agencies, and other mission-related partners are eligible on the same basis as other private citizens. When appropriate, concurrence from the non-Federal employer should be gained prior to issuing recognition.
2. For recognition of volunteers, refer to respective Agency guidelines for additional direction.
3. Keepsake items emphasize symbolic recognition of significant contributions and public recognition. Items presented as honorary awards must meet all of the following criteria:
  - a. Be something that the recipient could reasonably be expected to value, but not something that conveys a sense of monetary value;
  - b. Have a lasting trophy value;
  - c. Symbolize the Agency-recipient relationship in some fashion;
  - d. Take an appropriate form to be purchased with public funds and be used in the public sector.
4. Keepsakes can include such items as paperweights, key chains, clocks, plaques, jackets, T-shirts, coffee mugs, pen and pencil sets, etc. Presenters of awards should be particularly sensitive to public perceptions that could arise from granting expensive, keepsake items. Offices are cautioned not to give "personal gifts" to employees. Keepsake awards should normally meet the following criteria:
  - a. Be of an honorary nature;
  - b. Be able to be worn, displayed, or used in the recipient's work environment; and
  - c. At a minimum, include the Department seal or logo. The Department name, or logo, should be clearly visible on the keepsake and must be permanently affixed. A peel-off sticker is not adequate.
5. No more than \$250 may be spent on any one item. The cost of customizing the item must be included in the total cost.

## **E. QUALITY STEP INCREASES**

1. Employees may receive one Quality Step Increase (QSI) in a 52-week period.
2. A QSI is an additional within-grade increase which may be granted for sustained, high quality performance significantly above that expected at the "results achieved" level. It must be supported by a "results achieved" rating. The supervisor must provide documentation that specifically describes:
  - a. The actual results(s) achieved and their linkage to established targets:
  - b. How the employee substantially exceeded the performance standards and expected work results communicated to the employee by the supervisor; and
  - c. How the employee's performance has been sustained at such a high level throughout the performance appraisal period.
3. Quality increases are not appropriate when it is known an employee is in step 10 of the pay range or when it is known that the employee is about to receive a promotion or vacate a position within 60 days. A QSI may be appropriate if the employee is moving to a similar position at the same grade level and performance is expected to continue at the same level of effectiveness.
4. Since quality increases are in addition to within grade increases, an employee who receives a quality increase does not start a new waiting period to meet the time requirements for a regular within grade increase. The time the employee served in the previous pay step (before the quality increase was effective) will count toward the total waiting period for the next within grade increase.
5. When the QSI places the employee into a step at which the waiting period becomes longer (e.g., at step 4 the waiting period becomes 104 weeks, and at step 7 the waiting period becomes 156 weeks), the waiting period for the next within-grade increase is extended by 52 weeks; however, the employee receives the benefit of the quality increase during this period.

## **F. TIME OFF AWARDS**

1. All employees are eligible for time off awards.
2. A full-time employee may be granted up to 80 hours of time off during a leave year. A part-time employee or an employee with an uncommon tour of duty may be granted up to the average number of hours worked in a pay period or the employee's scheduled tour of duty. Awards are in full-hour increments.

3. The amount of time off that can be granted for a single contribution is one-half the maximum that may be granted during the leave year.
4. A time off award must be scheduled and used within 1 year after the effective date of the award; any unused time off is forfeited. The award is effective the first full pay period following approval. Before using any time off, the supervisor must concur with the requested dates.
5. A time off award will not convert to a cash payment under any circumstances.
6. Time off awards may be approved at any time without the review of the Awards Committee.

**G. U.S. SAVINGS BONDS (Consistent with USDA policies)**

1. All employees are eligible to receive Savings Bonds.
2. U.S. Savings Bonds must be purchased in the employee's name.
3. The amount of the award should be equal to the purchase price of the bond.
4. The Internal Revenue Service considers U.S. Savings bonds to be taxable fringe benefits that must be taxed on their fair market value. The fair market value of a savings bond generally is the purchase price of the bond. For example, if a \$200 bond is purchased for \$100, tax withholding must be based on \$100. At the time the personnel action recording the recognition is processed, the amount will be adjusted to include the taxes due. The total of the fair market value plus taxes will be reflected on the employee's Leave and Earning Statement.

**H. LENGTH OF SERVICE AWARDS**

Length of Service Awards are given to recognize an employee's federal and FSA county service. Employees should be recognized at 5 years of service and each 5-year increment thereafter. In computing eligibility, employees shall receive credit for total federal and FSA County service, including civilian and all honorable military service. Recognition should be timely, as close to the anniversary date as possible. Keepsakes may also accompany Length of Service certificates. Keepsakes should be appropriate, of nominal value (not exceeding \$100) and be commensurate with the length of service.

**I. AGENCY HONORARY AWARDS**

Each agency may establish honor awards and criteria as appropriate.

**J. DEPARTMENT HONOR AWARDS**

Departmental Honor Awards provide recognition to employees of the Department and our partners. Honor awards are the most prestigious recognition that can be granted by the Department for career accomplishments, exceptional support of the departmental mission, or for heroism.

**K. OTHER FEDERAL AND EXTERNAL HONOR AWARDS**

These awards are sponsored by other federal agencies or organizations or are cosponsored with the Department. These awards may include, but are not limited to, the GEICO Public Service Award, the Roger W. Jones Award, the William T. Pecora Award, and the WISE (Women in Science and Engineering) award. The Department will disseminate award criteria including the sponsor, the due dates, and other pertinent information, through Agency Human Resources Management Divisions, when awards are announced.

## ARTICLE 14 - DISCIPLINE AND ADVERSE ACTIONS

**14.1** The parties agree that the objective of a disciplinary measure is to maintain an orderly, competent, and productive organization. Disciplinary/adverse actions against all Employees must be based on just cause, be consistent with applicable laws and regulations, and be fair and equitable. It is recognized by the Agency and Union that discipline is meant to be corrective in nature, not punitive. Disciplinary actions consist of formal letters of reprimand and suspensions from employment for fourteen (14) calendar days or less. Adverse actions consist of suspensions from employment for more than fourteen (14) calendar days, removals, reduction in grade, reduction in pay, and furloughs for thirty (30) days or less. Disciplinary and adverse actions against all Employees must be based on just cause, be consistent with applicable laws and regulations, and be fair and equitable. The lowest degree of discipline likely to correct the problem shall normally be taken.

### **14.2 NON-DISCIPLINARY ACTIONS:**

Actions such as counseling and oral admonishment are not disciplinary. When a supervisor counsels an employee on either a conduct or a performance issue, that discussion will be documented in writing. The employee will be provided a copy of the documentation and encouraged to initial for receipt.

**14.3 DISCIPLINARY/ADVERSE ACTIONS:** It is recognized that the Agency retains the right to discipline. However, it is also recognized that any disciplinary/adverse action demands the exercise of responsible judgment so that an employee will not be penalized out of proportion to the character of the offense. Therefore, the Agency agrees to utilize the Douglas Factors. It is further recognized that in order for disciplinary/adverse action to be effective, it must be initiated within a reasonable time of the incident or becoming aware of the incident precipitating the action.

**14.4** An employee, upon request, will be permitted to review that material which is relied on to support the reasons for the action given in the notice referred to in Sections 6 and 7 below.

**14.5** When an employee receives a letter of reprimand, the letter will inform the employee of the name of the Union President, address and telephone number and the employee's right to be represented by the Union in a grievance over the disciplinary/adverse action. Letters of reprimand will be removed from Official Personnel Folders after two (2) year.

#### **14.6 SUSPENSION OF FOURTEEN (14) CALENDAR DAYS OR LESS:**

- A. An Employee against whom a suspension for fourteen (14) calendar days or less is proposed is entitled to:
1. A written notice stating the specific reasons for the proposed action. Also, the letter will inform the employee of the name of the Union President, address and telephone number and the employee's right to be represented by the Union in a grievance over the disciplinary action.;
  2. A reasonable time, normally fifteen (15) calendar days from receipt of letter, to answer orally and/or in writing and to furnish affidavits and other documentary evidence in support of the answer. Should an oral reply be desired, it must be requested within seven (7) calendar days from receipt of letter. A reasonable extension of time will be granted upon request based on valid reasons.
  3. Be represented in the process by the Local. The Local will inform management in writing if an attorney will represent the Local/Employee in the process.
  4. After investigating the incident and carefully considering the evidence and the Employee's response and any mitigating factors, the deciding official shall accomplish one of the following:
    - a. Institute the proposed action;
    - b. Institute a lesser action;
    - c. Withdraw the proposed action;
- B. After considering the Employee's response, the Employer will issue a written decision. If the decision is unfavorable to the Employee, the decision may be grieved through the negotiated grievance procedure. If the negotiated grievance procedure is used it will begin with the last step of the grievance procedure. The written decision will advise the Employee of this right.

#### **14.7 ADVERSE ACTION - REMOVAL, SUSPENSION FOR MORE THAN FOURTEEN (14) CALENDAR DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR THIRTY (30) DAYS OR LESS:**

- A. An Employee against whom such an action is proposed is entitled to:
1. At least 30 days advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed or other reasons as stated by law, stating the specific reasons for the proposed action. Also, the letter will inform the employee of the name of the Union President, address and telephone number and the employee's right to be represented by the Union in a grievance over the adverse action;

2. A reasonable time, normally fifteen (15) calendar days from receipt of letter, to answer orally and/or in writing and to furnish affidavits and other documentary evidence in support of the answer. Should an oral reply be desired, it must be requested within seven (7) calendar days from receipt of letter. A reasonable extension of time will be granted upon request based on valid reasons.
  3. Be represented by an attorney or other representative of his/her choosing. The Agency agrees to notify the Union President or his/her designee when the employee chooses to be represented by other than the Union.
  4. A written decision and the specific reasons, therefore, at the earliest practicable date; and
- B. After considering the Employee's response, if made, the Employer will issue a written decision. If the decision is to effect an action specified in this section, it will specify the reason, the effective date, the action to be taken, and the applicable appeal rights. The Employee has the right to appeal the decision to the Merit Systems Protection Board or, the Employee may file a written grievance under the terms of the Agreement, but not both. Any such grievance will be initiated at the last step of the negotiated grievance procedure. An Employee shall be deemed to have elected their option at such time as the Employee timely initiates an action under the statutory procedure or timely files a written grievance, whichever occurs first.

## ARTICLE 15 - CONTRACTING OUT

**15.1 GENERAL:** The parties acknowledge that the right to contract out is a management right under 5 USC 7106. If the Agency determines whether to contract out commercial activities currently performed by the Agency, it will comply with the provisions of OMB Circular A-76. The Employer acknowledges its obligation to adhere to all applicable laws and regulations, and Agency policy in contracting out for work or services.

**15.2 NEGOTIATIONS:** The Union shall have the right to negotiate on the procedures and appropriate arrangements (5 USC, Chapter 71, Sec 7106) of a decision to contract out any bargaining unit work, up to and including Impasse Procedures.

**15.3 NOTIFICATION:** Within 10 working days of becoming aware of a requirement to do an A-76 study of bargaining unit positions, Farm Service Agency Montana will notify the Union. The notice will include, but is not limited to:

- A. The names of the employee(s) who may be adversely affected.
- B. Type of action to be taken.
- C. The reason(s) for the action.
- D. The proposed competitive area(s).
- E. The competitive level(s) of affected position(s).
- F. The expected or approximate date of such action/step.
- G. A copy of any study made in conjunction with the action.
- H. The measures being considered to reduce the adverse impact.

The Union must advise the Agency, in writing, within ten (10) working days of the notification if it intends to negotiate the impact of the decision. The Union agrees to provide written proposals to the Agency fifteen (15) working days after the Union has been notified. If proposals are submitted, negotiations will begin within fifteen (15) working days after the Agency acknowledges receipt of the Union proposals.

Within fifteen (15) working days of Management becoming aware or upon the request of the Union President, Management will provide the Union with a copy of the FAIR Act Inventory and any subsequent revisions.

**15.4 PLACEMENT:** The Employer will make a reasonable effort to place all employees adversely affected by the decision to contract bargaining unit work, in accordance with the Reduction in Force article of this agreement and 5 CFR 351.

**15.5** The Union will be offered an opportunity to participate in all appropriate committees and teams. The Union President will provide Management with a list of up to three qualified subject-matter experts to serve on any such committee/team. Management will select the participant. The participant will be required to sign a Conflict of Interest and Non-Disclosure Agreement as a condition for participation.

**15.6 EARLY RETIREMENT:** Farm Service Agency Montana agrees to request to the National Office for implementation of the early retirement provisions of Title 5 U.S. Code, at least 120 days prior to the notification of bargaining unit employees, in order to minimize the impact of the RIF.

**15.7 PERSONNEL FILES:** The Union and the Agency will jointly encourage each employee to see that the employee's personnel file and OF-612 or resume are up-to-date as soon as the RIF is announced. At least 75 days prior to the RIF, the Agency will add to the personnel file appropriate changes or amendments requested by the employee. The Agency agrees to provide an advance notice of this section and Article to the Bargaining Unit Employees of their responsibility to update their work experience/resume. The Agency may waive qualification requirements for a period of time in accordance with appropriate regulations for otherwise ineligible employees.

**15.8** The Union retains the right to bargain procedures and appropriate arrangements (5 USC, Chapter 71, Sec 7106) of a contracting out issue.

## ARTICLE 16 - REDUCTION IN FORCE (RIF)

**16.1 DEFINITION:** A Reduction-in-force (RIF) occurs when the Agency releases an employee from his or her competitive level by separation, demotion, furlough for more than thirty (30) days, when lack of work or funds, reorganization, reclassification due to change in duties, or the need to make a place for a person exercising reemployment or restoration rights. Reduction-in-force procedures do not apply to the return of an employee to his or her regular position following a temporary promotion or to the release of a reemployed annuitant. Reduction-in-force procedures do not include reclassification of a position, other than as provided in 5 CFR 351, resulting in a downgrade even through reduction-in-force procedures may be used in those situations.

**16.2 STATEMENT OF PRINCIPLE:** When the Employer becomes aware of the necessity to conduct a reduction-in-force, it will attempt to minimize the adverse affect on bargaining unit employees through appropriate means such as reassignment, attrition, and positive placement efforts.

**16.3 NOTIFICATION:** The parties to this agreement are cognizant of the requirements found in 5 CFR 351 respecting notice to employees in a reduction-in-force. The affected employee is entitled to a 60 day notice. The parties hereto share the common purposes of minimizing adverse impact upon bargaining unit employees affected by any reduction-in-force and of accommodating the administrative needs of the Agency. The parties therefore agree that consistent with 5 CFR 351, the Employer will use every good faith effort to notify the President of the Local at least 60 calendar days in advance of any impending reduction-in-force.

**16.4 DOCUMENTATION:** Following notification of a reduction-in-force, the Employer shall furnish to the Union, upon request, any relevant and available documents or information concerning the reduction-in-force, subject to any Privacy Act limitations. The parties acknowledge that such documents and information include, but are not limited to, all those which are a matter of required official record, but do not include internal management communications.

**16.5 EFFECTIVE DATE:** The Employer shall provide a specific written notice to each bargaining unit employee affected by the reduction-in-force. The notice shall state specifically what action is being taken, the effective date of the action, the employee's service computation date, and the competitive level and competitive area. It shall state why any lower standing employee is retained in his or her competitive level. An extra copy of this notice will be given to the employee should he or she desire to have Union representation.

**16.6 OFFER OF POSITION:** The Employer shall use every good faith effort to make a best offer of employment to each bargaining unit employee adversely affected through implementation of the reduction-in-force procedures. The offer, if made, shall be of a position as close as possible to, but not higher than, the current grade of the affected employee, and the position shall be within the employee's competitive area. Employees adversely affected by a reduction-in-force may timely request, in writing, assignment to a position at the same or lower grade with any grade or pay retention to which they may be entitled. Any such request shall be answered in writing within 30 calendar days.

**16.7 RESPONSE TO OFFER:** Bargaining unit employees shall respond to a best offer of employment to another position, in writing, within 5 working days of receipt of a written offer. Failure to respond within 5 working days shall be considered a rejection of the offer.

**16.8 COMPETITIVE LEVELS AND RETENTION REGISTERS:** The Employer shall establish competitive levels and retention registers in accordance with applicable laws and regulations. The Union and the employee shall have the right to review competitive levels and retention registers as may be applicable to the employee or to the bargaining unit. The appropriate personnel office shall maintain all lists, records, and information pertaining to a reduction-in-force for at least one year following the effective date of the reduction-in-force.

**16.9 SEPARATION:** The Employer shall assist separated employees in their endeavor to find employment in other Federal agencies within the commuting area. Employees for whom no positions are found may be counseled by a representative of the Employer on the benefits to which they may be entitled, including information concerning early retirement with discontinued service annuity, where applicable. Reemployment priority lists shall be established for employees who cannot be retained.

**16.10 WAIVER OF QUALIFICATIONS:** In accordance with applicable regulations, when the Employer is unable to offer an assignment, the Employer may make exceptions to qualifications standards to assign an employee to a vacant available position at the same or lower representative rate, if it is determined that the employee has the capacity, adaptability, and skills required, or can be retrained to assume the duties of the new position within a reasonable period of time.

**16.11 INFORMATION TO EMPLOYEES:** The Employer shall provide training to remaining employees affected by a RIF.

**16.12 RETIREMENT:** There will be no coercion, direct or indirect, intended to influence the employee's decision, but the Employer will freely advise the employee of any prospective retirement rights.

**16.13 COMPETITIVE AREA:** All positions in the same commuting area shall constitute the same competitive areas. Competitive areas will be negotiated prior to the Reduction-in-Force.

**16.14 DISPLACEMENT:** The Employer will utilize vacant positions to attempt to reduce the need for separations.

**16.15 RELOCATION:** For directed re-assignment in connection with a reduction-in-force and where applicable, the Employer agrees to grant official time and pay relocation expenses as provided by the Federal Travel Regulations.

**16.16 NEGOTIATION:** Nothing in this article prevents the Union from bargaining the procedures and appropriate arrangements (5 USC, Chapter 71, Sec 7106) on this issue.

**16.17 RIF RECORDS:** Employees will be allowed to review their OPF file, retention records, and other RIF records pertinent to the proposed action.

**16.18 DOCUMENTS:** Retention registers and other transfer of function documents will be made available to affected employee(s) and/or employee representative. Upon request, employee(s) and/or employee representative will be given the opportunity to review retention registers listing other employees that may be entitled to displace the employee and review registers for positions for which the employee is qualified and related records to the extent that these apply to the employee's situation.

**16.19 MULTIPLE SKILLS:** Employees possessing skills in more than one area will be considered for positions in such areas.

**16.20 PRIORITY CONSIDERATION:** All employees demoted or separated without personal cause, misconduct or inefficiency, will receive priority consideration for repromotion/rehire.

**16.21 RE-EMPLOYMENT PROGRAMS:** The Agency will maintain a displaced employee program consistent with OPM Regulations. The Agency will also provide a program of outplacement assistance. The primary aim of the program will be to assist in finding continuing Federal employment for affected employees. The Agency will establish and maintain a Reemployment Priority List for eligible employees. The Agency's program will include entering affected employee names on various reemployment and priority placement lists and include employee counseling and contacts with other Federal agencies, State employment sources, as well as employers in the private sector.

**16.22 REPROMOTION:** When the position previously held by an employee demoted through RIF becomes vacant and is being filled, the demoted employee will be considered for repromotion, noncompetitively, to the position provided the employee has continued to work at an acceptable level. If more than one employee meets the above criteria the employee with the highest service computation date (SCD) will be considered first.

## ARTICLE 17- EQUAL EMPLOYMENT OPPORTUNITY

**17.1 GENERAL:** The Employer and the Union agree that no individual will be a victim of discrimination on the basis of race, color, national origin, gender, religion, age, mental or physical disability. EEO complaints will be processed in accordance with applicable laws and regulations.

**17.2 LEGAL AUTHORITIES** that govern EEO can be found at [www.eeoc.gov/laws.html](http://www.eeoc.gov/laws.html)

**17.3 EEO COUNSELORS:** The telephone number of the Equal Employment Opportunity Counselors will be posted on the EEOAC official bulletin board and the Montana Farm Service Agency office phone listing.

**17.4 EEO COMPLAINT PROCESS:** An employee that perceives that they have been submitted to any form of work force discrimination has 45 calendar days to report the incident to an EEO Counselor. During the informal stage, the employee may request to remain anonymous while the EEO Counselor attempts to resolve the employee's complaint

**17.5 UNION REPRESENTATION:** An employee has the right to choose to be represented by the Union when discussing an allegation of discrimination with an EEO counselor or when processing an EEO complaint. The employee will need to make the initial contact with the EEO Counselor.

## ARTICLE 18 - SEXUAL HARASSMENT

**18.1 THE EMPLOYER AND THE UNION ACKNOWLEDGE:** That sexual harassment undermines the integrity of the Federal Government and will not be condoned. Employees will be allowed to work in an environment free from sexual harassment. Further, sexual harassment is a prohibited personnel practice when it results in discrimination for or against an employee on the basis of conduct not related to performance, such as, the taking or refusing to take a personnel action, including promotion of employees who submit to sexual advance or refusal to promote employees who resist or protest sexual overtures.

**18.2 SEXUAL HARASSMENT IS DEFINED AS, BUT NOT LIMITED TO:** Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile or offensive work environment.

**18.3 NOTIFICATION:** Federal employees have a responsibility to place any potential violator for sexual harassment on notice that the action must cease and desist. Once the alleged offender has been notified to cease and desist, and the behavior has continued, the employee has an obligation to report the violation to a management official having no involvement in the alleged violation. The employee may request Union representation for such notice and any subsequent reporting to management.

## ARTICLE 19 - PROHIBITED PERSONNEL PRACTICES

**19.1 GENERAL:** Any Federal employee that believes that they have been affected by a Prohibited Personnel Practice violation may contact the Office of Special Counsel, a Union Representative, an EEO Counselor, and/or Agency management official.

**19.2 DEFINITION:** Twelve prohibited personnel practices, including reprisal for whistle blowing, are defined by law at 2302 of the Title 5 of the United States Code (U.S.C.).

<http://www4.law.cornell.edu/uscode/5/2302.html>

**19.3 WHISTLE BLOWER COMPLAINTS:** The Office of Special Counsel also provides a safe channel through which current and former federal employees, and applicants for employment, may disclose information that they believe shows: a violation of law, rule or regulation, gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.

**19.4 JURISDICTION:** Employees covered by a collective bargaining agreement must choose one of three avenues: an OSC complaint, an EEOC complaint, or a grievance under the collective bargaining agreement.

## ARTICLE 20 –HEALTH AND SAFETY

**20.1 EMPLOYER RESPONSIBILITIES:** In accordance with 29 CFR, Part 1960 and Executive Order 12196, the Agency will provide and maintain a safe and healthy work environment for all employees. The Employer and the Union have a common interest in promoting safe working habits and healthy working conditions. The Employer has an obligation to provide safe working conditions and will comply with the following:

- A. The Employer will ensure that the poster titled "Occupational Safety and Health Protection for USDA Employees" is displayed in each office with appropriate contact persons identified.
- B. Each building in which bargaining unit employees are stationed will have an Occupant Emergency Plan. The plan will be reviewed on an annual basis in conjunction with the annual office safety inspection.
- C. The Employer will provide first-aid kits at all Farm Service Agency building locations. Supervisors will ensure kits are maintained and order replacement supplies when needed.
- D. Management will supply and maintain on a regular basis an adequate number of fire extinguishers with up-to-date inspections performed.

**20.2 EMPLOYEE RESPONSIBILITIES:** All employees are responsible for the prompt reporting of unsafe working conditions. The Employer and the Union recognize that observing safe work practices and wearing of prescribed protective equipment are primarily the responsibility of each employee. The Employer and the Union will cooperate in encouraging employees to work in a safe manner and to report promptly any unsafe or unhealthy conditions to appropriate supervisors.

**20.3 SAFETY INSPECTIONS:** Each office of the Employer will receive an annual Health and Safety inspection. If available, a union representative employee from that office from the appointed list, will be afforded an opportunity to accompany the Farm Service Agency official making the annual safety inspection.

Upon request, the Employer will forward a copy of any inspection reports when available to the Local President. All health and safety inspections will be conducted in accordance with this Agreement and applicable laws, rules, and regulations.

**20.4 WORKING CONDITIONS:** If an employee or union official notifies management of a health or safety issue, an inspection will be conducted within 10 working days.

When an employee feels that he or she is subject to conditions so severe that even short-term exposure to such conditions would be dangerous to health or safety, he or she will report the circumstances to the immediate supervisor and, if they choose, a Union official. An employee has the right to decline to perform their tasks because of a reasonable belief that, under the circumstances, the task or work environment poses an immediate risk of death or serious bodily harm. The employee will be available for work under other conditions until the hazard is stopped. Once the hazard has been removed, the employee is required to return to work.

If the employee still believes the hazard exists, they will need to utilize the grievance procedures. The supervisor and the appointed Union Representative will inspect the work area to insure that it is safe before requiring the employee to carry out the work assignment. If any doubt regarding the safety of existing conditions is raised by the supervisor or the Union official, a ruling shall be obtained from the appropriate safety or environmental health official.

No employee will be subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthy working condition.

**20.5 IMMEDIATE DANGER:** When an immediate dangerous situation is discovered, it will be brought to the attention of the supervisor, who will take prompt action to eliminate or reduce the hazard, if it is so determined that a hazard exists, or cease operations and withdraw exposed personnel until such action is taken.

**20.6 SAFETY STANDARDS:** When the employee has reasonable evidence that asbestos, mold, lead-based paint or other indoor air quality issues are present, the employer will investigate within 60 days in accordance with applicable OSHA and EPA regulations and take all the necessary steps to assure the health and safety of employees. The employer will provide adequate lighting and maintain minimum noise decibels to meet applicable safety standards. The employer will provide the Union with all test results and abatement plans.

**20.7 ERGONOMICS:** To the extent practicable and within available resources, management will provide an ergonomic working environment based on the guidelines issued by the American National Standards Institute (ANSI) and/or National Institute of Occupational Safety and Health (NIOSH) as appropriate. Upon request, bargaining unit employees will be provided adaptive devices such as padded wrist rests, mouse pads, document holders that have adjustable height and tilt, foot rests, keyboard trays and other appropriate adaptive devices designed to prevent repetitive strain injuries. Ergonomic-related injuries will be treated in accordance with OWCP procedures.

## ARTICLE 21 - ON THE JOB ILLNESS OR INJURY

**21.1 RESPONSIBILITIES:** It shall be the responsibility of the employee, who suffers occupational illness or injury in the performance of duties, to report such illness or injury as soon as possible to the supervisor consistent with policies of the Office of Workman's Compensation Programs (OWCP), U.S. Department of Labor.

The employee's supervisor shall promptly forward to the State Office complete documentation required when an employee sustains an on-the-job injury or contracts an occupational disease. The State Office will take appropriate action, which includes forwarding to T&T Management or subsequent contactor complete documentation(s) required when an employee sustains an on-the-job injury or contracts an occupational disease.

The Servicing OWCP Manager in the State Office, or designee, will immediately counsel the employee as to his or her right to file for compensation benefits and procedures for filing claims, and the appropriate forms will be provided to the employee or his or her representative. The Employer will notify the Union when an employee files a claim with the Office of Worker's Compensation.

In case of an on-the-job injury or illness, the employee will complete documentation of injury or illness. If the employee is unable to complete the documentation, then an individual on behalf of the employee may do so.

In case of serious on-the-job injury, illness or death of an employee, the employee's supervisor shall notify the appropriate Union representative as soon as possible after notification of immediate family.

**21.2 REPRESENTATION:** An occupationally ill or injured employee shall have the right to representation of his or her choice. Any files maintained by the Employer relative to the employee's claim shall be available for review by the employee or his or her designated representative.

**21.3 LEAVE COVERAGE:** The affected employee may elect to be placed on accrued sick or annual leave or leave without pay pending a decision on his or her compensation claim.

## ARTICLE 22 - EMPLOYEE ASSISTANCE PROGRAM

**22.1 GENERAL:** The Employee Assistance Program (EAP) is a voluntary program that provides short-term counseling services for employees and members of their household who are having difficulty with relationships, finances, alcohol, drug use, work and job performance, stress, domestic violence, grief and loss, depression, anxiety and other personal problems. The Parties acknowledge that the employee has the primary responsibility to maintain acceptable performance and for taking any actions or treatment necessary to maintain it.

### **22.2 MANAGEMENT RESPONSIBILITIES:**

- A. Publicize the EAP through internal memos, newsletters, posters, etc.
- B. Encourage employee utilization of the EAP
- C. When an employee sincerely seeks treatment in order to maintain or regain acceptable performance or conduct, the Employer will provide assistance and create an atmosphere of understanding in the workplace.

**22.3 CONFIDENTIALITY:** The EAP provider will treat all information and client records in a confidential manner. An individual's participation in the EAP is not disclosed to local management/union without the employee's consent.

## ARTICLE 23 - LABOR MANAGEMENT COUNCIL

This article will only be enforced if the FSA Partnership council ceases to exist.

### 23.1 MISSION STATEMENT:

The Employer and Union agree to promote a cooperative relationship between the parties, with the expressed goals of improving efficiency of the Government service, encouraging productive innovation, and providing a better working environment. The parties should create a "win-win" relationship between the Employer, the employees, and the Union. Local 1585 and Montana Farm Service Agency Management will establish a Labor Management Council for the purpose of providing constructive input and discussing matters of mutual concerns and interest. All parties should learn to avoid situations in which single party interest would create problems at the expense of the other parties to this cooperation.

**23.2 COUNCIL PRINCIPLES:** The purpose of this council is to make recommendations regarding organizational issues and operational improvements for the overall well being of employees and achievement of the Agency's mission. This council has no input or interest in grievances or disputes covered by Article 28. The Union retains the right to bargain over council issues, in accordance with the provisions of this agreement.

The Council principles includes the following goals and objectives:

- A. **COMMITMENT:** positive attitudes; mutual respect; openness; trust; shared responsibility; receptiveness to change; and confidentiality.
- B. **CONSENSUS:** communication and interest-based problem solving.
- C. **TIMELINESS:** information sharing; joint training; pre-decisional involvement and evaluation.

**23.3 MEMBERSHIP:** The Farm Service Agency Labor/Management Council will consist of 6 regular members, composed of three management and three labor. Substitutions are allowed as mutually agreed upon prior to the meeting. Advisors may be called upon by the Council when appropriate but advisors are not actual members.

**23.4 ADMINISTRATION:** The Council will designate the person responsible for logistical support and the meeting coordinator (For example: meeting room arrangements, time, agenda, travel, etc.). Farm Service Agency Council related time is Official Time and will not be charged to Union representation time. All official time for meetings will be coded as appropriate for Time and Attendance purposes in order to account for all Council time.

**23.5 MEETINGS:** The Labor Management Council will meet in person every year after the approval of the State budget. Teleconferences will be held on an as needed basis. A quorum shall exist if a minimum of two labor and two management are present. Agency will pay the costs for meetings. Meetings will be conducted by a rotating chair decided at the end of each meeting. The chair will alternate between labor and management.

- A. Minutes of the meeting will be taken by a recorder designated by the Council. Draft minutes of the meeting will be distributed to Council members by the end of each following day's meeting. Recommendations will be made to the recorder with a final draft due prior to dismissal of the meeting. Final meeting minutes will be approved and signed by all Council members and distributed to all employees within 5 working days of the conclusion of the scheduled meeting. For issues which cannot be resolved by participant consensus, the Council will make a decision as to the appropriate resolution process prior to adjournment of the meeting.
  
- B. Agenda: Input from members and/or information and material will be required at least 10 working days prior to meetings. All agenda items brought to the Council should be coupled with suggested remedies that may result in a solution. Written agendas and/or materials will be provided to council members within 5 working days of scheduled meeting.

Council may establish committees, task forces and/or other work groups as appropriate and may invite subject matter experts.

## ARTICLE 24 - LABOR RELATIONS TRAINING

**24.1 UNION-SPONSORED TRAINING SESSIONS:** The Employer agrees to grant administrative leave to employees who are Union officers or representatives for the purpose of attending Union-sponsored and other training sessions, provided the training is of benefit to the employees and the employer. Administrative leave for this purpose will not exceed one hundred sixty (160) hours for the bargaining unit within a fiscal year (beginning October 1st of each year). A written request for administrative leave will be submitted as early as possible, but normally at least two (2) weeks in advance by the Union President to the Employer. The request will contain information about the duration, purpose, and nature of the training. If the supervisor determines that work requirements preclude release of the employee at that time, the employee will be provided the reason for denial.

**24.2 EMPLOYER/UNION - SPONSORED TRAINING SESSIONS:** The Employer agrees to consider to schedule and conduct joint training sessions at meetings occurring as soon as possible during the first year of the duration of the contract regarding the administration of this contract. A reasonable amount of official duty time will be used during these sessions. The representative of the Employer will be designated by the Employer. The Union will appoint a joint training representative that is already scheduled to attend the training session if possible.

**24.3 STATEWIDE MEETINGS:** When a state meeting is planned the Agency will contact the Union for agenda items and estimated time frames. If requested a minimum of 1 (one) hour will be provided.

## ARTICLE 25 - OFFICIAL USE OF FACILITIES

**25.1 SPACE:** Upon request, the Employer will grant AFGE 1585 use of conference rooms or other suitable space, if available, for the purpose of holding meetings during non-duty hours. If the subject of the meeting is related to negotiations or grievances, meetings rooms may be reserved during duty hours.

**25.2 TELEPHONE SERVICE:** The Employer agrees to permit the Union to use the telephone for official Union duties relating to the administration of this agreement. The Union agrees it will be judicious in the use of the telephone and that it will not use the telephone for internal Union business.

**25.3 INTERNAL E-MAIL/MAIL-SERVICE:** The internal mail service of the Employer will be available for use by the Union, subject to the Employer's prior approval of volume mailing. The existing agency e-mail service may be used by a Union Officer to communicate with bargaining unit employees for representational purposes and/or official labor-management activities on a limited basis in accordance with Agency guidelines for personal use of government equipment. The Union's mail should not be opened by the Agency.

**25.4 COPIES OF AGREEMENT:** A copy of this Agreement will be available electronically on the MT FSA intranet site to each current Farm Service Agency employee and to all new employees.

**25.5 BULLETIN BOARDS:** The Employer will designate reasonable space on bulletin boards in each service center and State office for Union use. The Union shall not post inappropriate information on those boards.

**25.6 OFFICE MACHINES:** Union representatives will be allowed reasonable use of office machines for representational duties within the Unit.

**25.7 LIST OF EMPLOYEES:** The Employer agrees to furnish the Union the current telephone directory upon request. Agency telephone directories or listings published will contain the name and phone number of the Local Union President and Steward.

## ARTICLE 26 - OFFICIAL TIME

**26.1 AUTHORIZED OFFICIAL TIME:** In accordance with 5 USC 7131, Union officers and representatives shall be permitted reasonable time during working hours without loss of leave or pay to represent employees. Official time is the time necessary to accomplish a labor relations task for which official time has been requested, including time to travel to and from the task location.

Official time includes:

- A. The time authorized for the preparation and negotiations of the Labor/Management Agreement, including time to prepare and present matters to the Federal Mediation Conciliation Service and the Federal Service Impasse Panel;
- B. The time for receiving, investigating, preparing and presenting a complaint, grievance or appeal depending on the facts and circumstances of each case; and
- C. The time for preparation of information reports required under 5 USC 7120(c), including the amount of time granted to gather and complete financial reports and trusteeship reports.

**26.2 RECORDING OFFICIAL TIME:** Union officers and representatives shall be permitted reasonable time during working hours without loss of leave or pay for representational duties.

The following are not included in representational duties:

- A. The preparation and negotiation of labor management agreements;
- B. The participation in arbitration and legal proceedings; and
- C. The attendance of meetings initiated by management, including labor/management council meetings.

All official time shall be recorded on the time and attendance report with the appropriate coding. The Union will be provided a quarterly report of official time used. If any denial of official time will cause a delay of a contractual time limit, the union will be given an extension of time equal to the delay.

**26.3 UNION REPRESENTATIVES:** Each representative is required to obtain permission for official time from the immediate supervisor. Each union representative is responsible for notifying the supervisor as early as possible when official time is to be requested. The representative will provide an estimate of time that he/she believes may be necessary to complete the task, and, if applicable, a telephone number where he/she may be reached. If additional time is needed the supervisor will be notified.

The Union will take workload needs into consideration when assigning representational duties. When the workload does not permit the absence of the representative at that time, the supervisor will make a reasonable effort and attempt to permit the use of official time as soon as practical.

**26.4 RELEASE OF EMPLOYEE:** An employee who wishes to leave the employee's work area to contact a Union representative, concerning any matters addressed in 26.1 above, must first obtain permission from the immediate supervisor. Normally permission will be granted to employees requesting to leave their work area. If the supervisor determines that work requirements preclude release of the employee at that time, the employee will be provided the reason for the delay and an alternative time when it can be taken.

**26.5 TRAVEL EXPENSES:** The Agency agrees to pay the travel expenses incurred by employees while using official time under the terms of this agreement. Any travel expenses incurred by employees, with prior approval by the Agency, will be reimbursed in accordance with Agency travel regulations. The Union will take into consideration geographical locations when assigning representational duties.

## ARTICLE 27 - NEGOTIATIONS

**27.1 MANNER:** The Union and the Employer have the responsibility of conducting negotiations and other dealings in good faith and in such manner as will further the public interest and mission of the Agency. The parties agree to make every reasonable effort to resolve all differences that arise between them in connection with the administration of this agreement.

**27.2 MANDATED CHANGES:** If a future law, Executive Order, or judicial decision requires a change to this Agreement, the Employer will promptly notify the Union, by e-mail, of the proposed specific change. The Union shall, if it desires, negotiate any negotiable aspect of the change, notify the Employer, by e-mail, within ten (10) working days of receipt of the notification from the Employer. Such response by the Union shall include a specific proposal for negotiations. Neither the Union nor the Employer shall be permitted to propose changes unrelated to the mandate of the law, Executive Order, or judicial decision. However, for the purposes of carrying out the intent of this article, the Employer and the Union mutually recognize and agree that their respective proposals may be modified during the course of the negotiations to permit realistic good-faith bargaining on all aspects of the negotiable subject matter, including aspects not anticipated when the written proposals were exchanged.

**27.3 NEGOTIATIONS OF CHANGES:** The Employer and Union shall meet in accordance with Ground Rules outlined below. No negotiable change to this Agreement shall be effective for bargaining unit employees prior to completion of negotiations, or in the event of impasse, prior to a decision by the Federal Services Impasses Panel or such other appropriate authority as may be called upon to resolve the differences.

**27.4 CONFLICTING REGULATIONS:** Nothing in this article shall be construed to relieve the Employer of the consequences stated in 5 USC, Section 7116(a)(7), Federal Labor-Management Relations Statute. That section provides that it shall be an unfair labor practice for the Employer to enforce any rule or regulation in conflict with this Agreement if the Agreement was in effect before the date of the rule or regulation.

### **27.5 CHANGES IN PERSONNEL POLICIES, PRACTICES, AND CONDITIONS OF EMPLOYMENT:**

- A. Employee Notification: Before implementing a change in a personnel policy, practice, procedure, or condition of employment applicable to employees in the bargaining unit, the Employer will notify the Union in accordance with the provisions of this Article.

- B. **Definition:** For the purpose of this Article, the term "consult" shall be construed to mean the exchange of views, either orally or in writing. The term "negotiate" means the act of meeting at reasonable times and bargaining in good faith on specific proposals in an effort to reach mutual agreement.
- C. **Notification Procedure:** Notification of proposed changes as described above, may include a final date for the Union to request negotiation with respect to the proposed change. When a final date for the Union to request negotiations is specified, such final date shall be reasonable so as to allow the Union adequate time to prepare a request for negotiations, but in no case shall such final date be less than ten (10) working days from the date of receipt of the notification of the proposed change. When the notification does not include a final date for the Union to request negotiations, and the Union wishes to negotiate, it shall make such request within thirty (30) calendar days from the date of receipt of the notification. The parties recognize that either party may be unavoidably absent, and in such cases, by mutual consent, extending of the time limits shall not be unreasonably withheld.
- D. **Union Requests for Negotiations:** When the Union desires to negotiate with respect to a proposed change, it shall notify the Agency official from whom the notification was received of such desire, in writing, and within the specified time period, if any, or within the standard time period. Such notice shall state the specific proposal the Union wishes to offer for negotiation, including specific language for a written agreement. The Union's notice shall also state the identity of the Union Chief Negotiator, and the names Union Negotiating Team authorized to participate in the negotiations.
- E. **Limitations:** No agreement negotiated in accordance with this Article shall operate in any way which is in conflict with or inconsistent with any provision of or the whole of this Agreement.

**27.6 NONNEGOTIABILITY:** When Management believes that a matter is non-negotiable, within ten (10) calendar days, it will provide in writing the specific reasons and rational to the Union, citing the specific references. The Union may, within fifteen (15) work days of receipt of the Management statement, file an appeal with the Federal Labor Relations Authority (FLRA) in accordance with the period of review, will not implement or proceed with the issue under dispute until resolved by Chapter 71 of 5 USC, to determine whether the issue is negotiable or not.

**27.7 GROUND RULES:**

- A. Each party will identify their Chief Negotiator, and members of their negotiating team.
- B. The Chief Negotiators, or their designees will arrange for the negotiations at a mutually agreed upon location.

- C. Negotiations will commence on an agreed upon time and date(s), and if necessary on consecutive days. If additional time is needed to conclude negotiations, the time and date will be agreed upon by the Chief Negotiators.
- D. Proposals will be exchanged no less than fifteen workdays prior to the commencement of the negotiations, unless mutually agreed upon by the Chief Negotiators. Issues that are not covered in the current negotiated agreement will be identified as new articles.
- E. If either party needs to postpone or cancel negotiation sessions, the Chief Negotiator of the party will notify the Chief Negotiator of the opposing party as soon as possible, but not later than two (2) business days before the scheduled negotiation. The parties, by mutual agreement, may reschedule, adjust the schedule, or cancel the negotiation session.
- F. Members of the Union negotiating team will be granted official time to prepare for negotiations.
- G. The negotiating teams will be assigned equal numbers on official time for representation, but not less than two (2) and not to exceed three (3), including the Chief Negotiators.
- H. Negotiators may be replaced by alternates who will have the same rights to speak for and bind their principals as the members they replaced. The Chief Negotiators will give, in advance, notice of a substitute so as to allow appropriate relief, if possible.
- I. The Chief Negotiators may designate any members of their team to make appropriate presentations.
- J. Either party may call a caucus. The party calling a caucus will leave the negotiating room and will meet in another suitable location.
- K. Articles for negotiations will be considered in numerical order. Either party may move to table an article, or any part of an article, but the tabling of an article will only be done by the mutual consent of the parties. Any article, or part of an article, that is tabled will be brought from the table prior to the conclusion of the negotiations. Either party may move to bring an article, or part of an article, from the table; however, the bringing of an article or part of an article will only be done by mutual consent while other articles are still pending, in numerical order. When all articles have been initially addressed, and the parties cannot agree as to bringing which tabled articles from the table, tabled articles will again be addressed in numerical order.
- L. Copies of needed laws, rules, regulations, or policies will be made available to the Union, by the Agency, upon request.
- M. As proposals are agreed upon, the Chief Negotiators for each party will initial and date the final language.

- N. Either party may request the services of the Federal Mediation and Conciliation Service (FMCS). Should the parties to this agreement fail to resolve the impasse after intervention by the FMCS, then either party or both shall seek the services of the Federal Service Impasse Panel.
- O. The Union Negotiating Team has the authority to speak for the local membership; however, the Collective Bargaining Agreement will not be binding upon the Union unless ratified by the membership.
- P. The Employer will forward one copy of the negotiated agreement to the Under Secretary for the Farm Service Agency Mission Area for review pursuant to the provisions of 5 USC 7114.
- Q. When the Union has ratified the agreement and the Agency head review is complete, the negotiated agreement will be formally signed and executed.

## ARTICLE 28 - GRIEVANCE PROCEDURE

**28.1 COMMON GOAL:** The Employer and the Union recognize the importance of settling grievances promptly, fairly, and in an orderly manner that will maintain the self-respect of the employee and be consistent with the principles of good management. To accomplish this, every effort will be made to settle grievances expeditiously and at the lowest level of supervision.

**28.2 SCOPE:** This negotiated grievance procedure will apply to matters of concern or dissatisfaction regarding the interpretation, application or violation of law, regulation, or this agreement; conditions of employment; or relationships with agency supervisors and officials, including prohibited personnel practice charges, and disciplinary/adverse actions. It shall apply to all matters indicated above, whether or not set forth in this agreement. This grievance procedure does not apply to:

- A. A violation relating to prohibited political activities;
- B. Retirement, life insurance or health insurance;
- C. A suspension or removal for national security reasons;
- D. Any examination, certification or appointment;
- E. Classification of position which does not result in reduction in pay or grade for the employee;
- F. Termination of temporary or probationary employees
- G. Reduction in force of any employee
- H. Matters concerning or involving non-bargaining unit positions.

Nothing in this section shall prevent an employee from exercising the option of appealing adverse actions to the Merit Systems Protection Board (MSPB).

**28.3 PRESENTATION:** The parties acknowledge that workplace concerns can normally be best addressed between the employee and the supervisor. For that reason, an employee who has a concern should first attempt to resolve it in a one-on-one meeting with the supervisor. The employee may request a meeting with their supervisor with a Union representative present. The Union has the right to assist the employee in the presentation, or the employee may file a grievance in accordance with the following procedures:

- A. Employee(s) who believe they have a grievance will present it in writing to his/her immediate supervisor within 15 working days of the occurrence or when the employee became aware of the issue which gave rise to the grievance. The employee will provide the supervisor with the requested relief. The supervisor will provide the employee with a written reply within 10 working days of receipt of the grievance. That reply will inform the employee of the options available if the employee is unsatisfied by the reply. If the supervisor does not have the authority to provide the requested relief, the supervisor will so inform the grievant in the written reply.
- B. If the grievance has not been resolved to the satisfaction of the grievant(s), or if the immediate supervisor does not have the authority to resolve the grievance, the grievant will present the matter in writing within 10 work days of the immediate supervisor's decision, to the next higher level of supervision. The next level of supervision will attempt to resolve the grievance within 15 work days of the receipt of the matter. Decisions will be submitted in writing to the grievant.
- C. If the grievant does not believe the issue has been satisfactorily resolved at this point, she/he may submit the grievance to the State Executive Director within 15 working days of the response. The submission to the State Executive Director must also be in writing and cite any remaining requested relief. The Union will be notified of a formal grievance if the employee was not represented by the Union. The Union will be given an opportunity to be represented at formal discussions and the adjustment. The State Executive Director will issue a written decision within 15 working days of receipt of the matter. If the grievant is not satisfied with that decision, the Union may invoke arbitration in accordance with Article 29.
- D. As an alternative to Paragraph C above, the parties may jointly agree to voluntarily pursue an alternative resolution process. In this alternative process, the parties will use the services of an independent neutral third party. This party will function in the role of a mediator. Meeting jointly and separately with the parties, the mediator will attempt to move the parties to resolution of the issue(s). This process will take no more than eight hours. The cost, if any, for the mediator will be paid by the employer. If the matter has still not been resolved, the grievant can choose to return to the formal grievance process to pursue resolution. This effort must occur within 15 working days of the mediation effort.

**28.4 TIME LIMITS:** Time limits in this Article may be extended by mutual consent of the Parties. The Parties agree to respond to the grievance within the time frames allowed. However, if the Parties are unable to respond within the time frames, the reason for the delay will be stated, and an automatic 7 (seven) day extension of the time limits will be granted. When information is requested from a Party which is needed to process a grievance or determine if a grievance exists, the party will supply a response within 10 work days and the time limits will be extended equal to the amount of time required to receive the information. Failure by the grievant to meet time limits or to request and

receive an extension of time, shall automatically cancel the grievance, unless mitigating circumstances prevail.

**28.5 GRIEVABILITY/ARBITRABILITY DETERMINATIONS:** The arbitrator shall have the authority to make all grievability and/or arbitrability determinations. Threshold questions of arbitrability shall be heard by the arbitrator on the same hearing date as the hearing on the merits of the case, unless otherwise agreed by the parties.

**28.6 SOLICITATION:** Union and or Employer shall not solicit complaints or grievances.

**28.7 EMPLOYER/UNION GRIEVANCE:** The Employer or Union may file a grievance with the State Executive Director or President of AFGE 1585. If the parties jointly and voluntarily agree, the alternative mediation process discussed in 28.3 C above may be used before formally proceeding with the grievance as described below. The submission must be in writing within 15 work days of the time of the incident which gave rise to the grievance or when the grievant could have reasonably become aware of the occurrence. The Employer/Union will have 15 work days from receipt of the above written notification to respond.

## ARTICLE 29 - ARBITRATION

**29.1 CONDITIONS FOR INVOKING ARBITRATION:** The Union or the Employer may invoke arbitration in writing within 30 work days after receipt of the final decision under Article 28.

**29.2 SELECTING AN ARBITRATOR:** The party invoking arbitration will request the FMCS to provide the parties a list of impartial persons qualified to act as arbitrators. Such a list will be requested within 30 work days of the decision to proceed to arbitration. An informational copy of the request will be sent to the other party. The State Executive Director and the Union will jointly decide within ten work days of receipt of the list which of the arbitrators on the list they will use. If they cannot agree, they will each strike one name from the list and continue until one name remains. The party striking first will be decided by a flip of the coin.

### **29.3 FEES AND EXPENSES:**

- A. The arbitrator's fees and expenses shall be borne by the losing party, except that in any decision not clearly favoring one party's position over the other, the arbitrator may specify that cost be split proportionate to the arbitrator's decision.
- B. If clarification of an arbitrator's decision is necessary, the requesting party will pay the additional fees and expenses. If jointly requested, the parties will split the additional cost equally.

**29.4 PROCEDURE:** Both parties must mutually agree to any procedure other than a full arbitration hearing.

**29.5 SCOPE OF ARBITRATOR'S AUTHORITY:** The arbitrator shall have the authority to interpret and define this agreement, Agency and higher level instructions and regulations, and applicable laws. The arbitrator shall have no authority to add to, subtract from, alter, or modify any terms of this agreement or higher level instructions, regulations, or applicable law. The arbitrator shall accept that applicable FLRA, MSPB, and judicial precedent will be considered. His/her decision shall be binding on the parties, unless either party files exceptions with FLRA under regulations prescribed by them.

**29.6 TIME LIMIT:** The arbitrator will be requested to render a decision and remedy as quickly as possible, but in any event no later than thirty (30) calendar days after the conclusion of the hearing unless the parties otherwise agree.

**ARTICLE 30 - DURATION OF CONTRACT**

**30.1 TERM:** This Agreement shall take effect upon execution by both parties and approval in accordance with 5 U.S.C. 7114(c).

**30.2 RENEGOTIATION:** It shall remain in effect for three (3) years before it may be renegotiated. The Agreement shall be renewed for an additional one (1) year period on each yearly anniversary date thereafter, unless between sixty (60) and thirty (30) calendar days prior to any such date either party gives written notice to the other of its desire to amend or modify the agreement. If this provision is exercised, negotiations will be commenced within 30 calendar days after such notice or as may be otherwise mutually agreed by the parties. If such notice is given, this agreement shall remain in full force and effect until the changes have been negotiated and approved.

**30.3 SIGNATURES OF NEGOTIATORS:**

Signed the 10th day of February, 2006, at Montana State Farm Service Agency, Bozeman, Montana.

FOR AFGE LOCAL 1585

FOR FARM SERVICE AGENCY

\_\_\_\_\_  
Mary R. Fabian

\_\_\_\_\_  
Roger Meredith

\_\_\_\_\_  
Edmond Daugherty

\_\_\_\_\_  
Linda Itoh

\_\_\_\_\_  
Randall A. Biehl

\_\_\_\_\_  
Richard A. Deschamps

**SIGNATURES OF UNIT HEADS**

\_\_\_\_\_  
PRESIDENT, AFGE LOCAL 1585  
March 14, 2006

\_\_\_\_\_  
STATE EXECUTIVE DIRECTOR, FSA  
March 14, 2006

Contract effected in accordance with Section 7114(c) of the Civil Service Reform Act of 1978.