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

PARTIES TO THE AGREEMENT

1.1 The parties to this Agreement are the U.S. Department of Agriculture, Foreign Agricultural Service, hereinafter known as the "Agency," "Employer," "FAS," or "Management," and the American Foreign Service Association, hereinafter known as the "Union" or "AFSA/FAS." FAS and AFSA/FAS shall be jointly referred to as the "Parties."

UNIT OF RECOGNITION

1.2 The unit of recognition covered by this Agreement is that unit certified by the Federal Labor Relations Authority in Case No. WA-RO-40033F. FAS recognizes AFSA as the sole and exclusive bargaining agent of all foreign service bargaining unit members.

BARGAINING UNIT COVERAGE

1.3 Per Section 1012 of the Foreign Service Act of 1980 (hereinafter referred to as "the Act"), included in the bargaining unit are all Foreign Service employees employed by FAS worldwide. Excluded from the bargaining unit are all employees engaged in personnel work, in other than a purely clerical capacity, and employees engaged in criminal or national security investigations or who audit the work of individuals to insure that their functions are discharged honestly and with integrity.

1.4 The Parties recognize that the management officials as defined in Section 1002(12) of the Act, are excluded from the bargaining unit. Consistent with the cited definition, the following FAS positions are acknowledged to meet that definition:

a. Administrator

b. Associate Administrator

c. General Sales Manager

d. Deputy Administrator

e. FAA Assistant Deputy Administrator

1.5 Further, the Parties recognize that the Federal Labor Relations Authority will resolve disputes over whether any other FAS management official meets the referenced definition in accordance with applicable law and regulations.

ASSIGNMENT OF WORK TO SPECIFIC FAS OFFICIALS

1.6 The Parties recognize management's right to assign work in accordance with Section 1005 of the Act and Article 5 of this agreement. Consistent with that right, the Parties acknowledge that this Agreement contains work assignments to be performed by specific agency officials referred to by position (e.g. Administrator FAS, Deputy Administrator FAA). Such language is not intended to contractually bind management to assign the stated work to those officials. Rather, it is intended to reflect management's decision to make those assignments in accordance with its reserved right to assign work. It is included in the Agreement as a matter of administrative convenience to promote full understanding of the processes and procedures contained herein.

CERTIFICATION

1.7 A copy of the Federal Labor Relations Authority (FLRA) certification is found in Appendix 1.

ARTICLE 2: STATEMENT OF POLICY AND PURPOSE

2.1 The Parties agree to mutually establish and maintain a work environment that ensures the integrity of the Federal Service, promotes the most effective and efficient delivery of Agency programs and services, protects the interests of American taxpayers, promotes good workmanship and the principles of good management, protects human dignity, assures equal and fair treatment of employees, and promotes a work experience for all employees that is personally challenging, rewarding, and that provides equal opportunity for professional growth and success.

2.2 Employees and managers shall conduct themselves in a professional and business-like manner, characterized by mutual courtesy and consideration in their day-to-day working relationship.

2.3 The Parties, especially Union representatives and first-line supervisors, are encouraged to meet as necessary to informally discuss and attempt resolution of matters or problems of concern to either party, including, but not limited to, employees' concerns or dissatisfactions and problems of Agreement interpretation and administration. Such discussions reinforce the Parties' commitment to resolve differences at the earliest opportunity.

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

2.5 The Parties agree that the process for resolution of grievances and complaints shall be orderly, expeditious, professional, and consistent, so as to maintain the self-respect of the Parties and follow principles of good management and public interest.

2.6 The definitions of all terms in this agreement shall be consistent with definitions of identical terms contained in the Foreign Service Act of 1980, (hereinafter referred to as "the Act"), Chapter 10, Labor-Management Relations, Section 1002, as amended, or other relevant provisions of law, as applicable, unless otherwise specified in this Agreement.

ARTICLE 3: EMPLOYEE RIGHTS

3.1 Each employee shall have the right to form, join or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided, such rights include, but are not limited to, the right to:

a. Act for AFSA/FAS in the capacity of a representative and the right, in that capacity, to present the views of AFSA/FAS to heads of agencies and other officials of the Executive Branch of the Government, the Congress, or other appropriate authorities, and the public;

b. Engage in collective bargaining with respect to conditions of employment through representatives chosen by employees.

3.2 An employee has the right to be represented by AFSA/FAS at any meeting with FAS Management or with anyone acting as an agent of FAS Management when the employee has any complaint concerning conditions of employment.

3.3 An employee has the right to be represented by a Union representative at all stages of a grievance, appeal or disciplinary action.

3.4 An employee also has, under his/her Weingarten Rights, the right to Union representation at any examination by the employer, or any agent 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 such representation.

a. If the employee makes a request for union representation, the Employer or agent acting on behalf of the Employer will:

1. Grant the request and allow a reasonable period of time for a AFSA/FAS representative to make himself/herself available for the interview;

2. Discontinue the interview; or

3. Offer the employee the choice between continuing the interview unaccompanied by a AFSA/FAS representative or having no interview.

b. The Employer will provide written notice (e-mail is acceptable) of the "Weingarten Right" to bargaining unit members in October of each year. A copy of the notice will be placed on the FASTNET.

c. When a Supervisor is aware of an investigatory meeting, s/he will notify the employee of his/her right to AFSA/FAS representation prior to, and no later than, the onset of any Management-initiated investigative meeting that may result in disciplinary action.

3.5 An employee has the right to seek AFSA/FAS representation or advice at any point in the EEO or grievance process. This does not preclude an employee from being represented by an attorney or other representative in any grievance proceeding under Chapter 11 of the Act, as amended, or exercising grievance or appeal rights established by law, rule, or regulation.

3.6 Employees covered by this Agreement may, without fear of penalty or reprisal, engage in the disclosure of non-classified and non-market sensitive information which the employee reasonably believes evidences a violation of law, rule, or regulation; or evidences mismanagement, a waste of funds, an abuse of authority, or a danger to health, morals or safety in accordance with applicable law and regulations.

3.7 Each employee has the right to file a complaint or grievance, act as a witness, and exercise any appeal or other right granted by law, rule, regulation, or this Agreement without fear of restraint, coercion, discrimination, or reprisal.

3.8 Employees shall have the right to conduct their private lives as they see fit, and to engage in outside activities and employment of their own choosing, in accordance with applicable law and Government-wide regulations.

3.9 Copies of the rules, regulations, and policies under which employees are obligated to work will be available at each office having primary responsibility for the program to which the regulations apply and will be made available to employees and AFSA/FAS upon request for review or copying. For example, regulations governing the delivery of the personnel program to employees will be available in the Servicing Personnel Office.

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

3.11 An employee may review all official records about him/herself upon request and shall be given copies of the records upon proper request. For a representative list of official files, and procedures to review files, see FASTNET. Records maintained on an employee that are not maintained on a permanent basis will be removed from official records in accordance with the Government's retention schedule unless otherwise specified in this Agreement. The records removed will be destroyed.

3.12 Employees have the right to use a reasonable amount of official time to meet with their Union representatives in accordance with Article 8 of this Agreement (Official Time and Union Representatives).

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

3.14 Every employee has the right to a work space area sufficient to provide a productive work environment.

3.15 The Employee will be monitored only to determine unauthorized access or use of the computer system and to assist in specific investigations.

ARTICLE 4: UNION RIGHTS AND RESPONSIBILITIES

EXCLUSIVITY

4.1 The American Foreign Service Association (AFSA) of the Foreign Agricultural Service (FAS) is the sole and exclusive representative of all employees in its bargaining unit and, as such, is entitled to act for and negotiate collective bargaining agreements covering these employees. AFSA/FAS must represent the interests of all employees in the bargaining unit without discrimination and without regard to labor organization membership and shall have unrestricted access to these employees to perform these responsibilities.

REPRESENTATION

4.2 For the purpose of administering this Agreement, the Employer agrees to recognize representatives of the American Foreign Service Association, AFSA/FAS and their designees. For any single issue, AFSA/FAS will designate a single point of contact.

4.3 AFSA/FAS shall be given the opportunity to be represented at any examination of a bargaining unit member by the Employer or an agent 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 such representation. The Employer shall notify the employee of his/her right to union representation at the beginning of any such meeting.

4.4 AFSA/FAS has the right to represent an employee or group of employees at any formal discussions between one or more representatives of the Employer and one or more employees of the bargaining unit concerning a grievance, personnel practice or procedure or any other matter that could affect other bargaining unit members' general working conditions in the United States or abroad. AFSA does not require employee permission to be present at such discussions.

4.5 When possible, AFSA/FAS shall be given a minimum of 24 hours written notice of general meetings and formal discussions with bargaining unit members. AFSA/FAS recognizes that there may be circumstances that preclude such notice and, in those cases, the Employer agrees to give AFSA/FAS a reasonable amount of time to arrange for representation before proceeding with the meeting. At its discretion, AFSA/FAS may designate up to three (3) representatives, including the AFSA/FAS Vice President, to attend such meetings.

4.6 The AFSA/FAS Vice President or his/her designee from the bargaining unit shall represent AFSA/FAS at formal meetings outside the Washington, DC metropolitan area. The representative will be granted official time, including reasonable and

necessary travel time, to attend such meetings. The Employer normally will not pay travel and/or per diem expenses related to such meetings, but may consider doing so in limited circumstances.

4.7 The Employer shall provide AFSA/FAS notice and opportunity to be represented at all formal EEO complaint settlement discussions where the complainant is a bargaining unit member. When possible, AFSA will receive 48 hours notice of all such settlement discussions.

4.8 The Employer shall provide AFSA/FAS notice and opportunity to be represented at grievance settlement discussions.

RESTRAINT

4.9 AFSA/FAS officials and representatives performing duties under this Agreement and applicable statutes will not be subject to restraint, coercion, reprisal, or discrimination as the result of performing such duties.

ACCESS TO INFORMATION

4.10 AFSA/FAS shall have access to all pertinent information necessary to carry out its representational responsibilities. In accordance with the provisions of Section 1013 (e) (4) of Chapter 10 of the Foreign Service Act, the Employer agrees to provide AFSA/FAS, upon request and to the extent not prohibited by law, all data, which is normally maintained by FAS in the regular course of business and which is reasonably available and necessary for the 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 confidential employees, relating to collective bargaining.

4.11 These data will be transmitted to AFSA/FAS as soon as possible, but in general, within 10 working days of the request. The Employer will notify the requesting AFSA/FAS representative if it will be unable to provide the requested information within about 10 working days of the request.

ARTICLE 5: MANAGEMENT RIGHTS AND RESPONSIBILITIES

5.1 In the administration of all matters covered by this Agreement, the Employer is governed by:

a. Existing and future laws;

b. Government-wide rules and regulations;

c. Department of Agriculture (USDA) rules and regulations; and,

d. The terms and conditions of this Agreement.

5.2 The Employer retains the right to:

a. Determine the mission, budget, organization, number of employees, and internal security practices of the Agency, and the number of individuals in the Foreign Service (FS) or the Agency;

b. Hire, assign, direct, layoff, and retain individuals in the FS or in the Agency; to suspend, remove, or take other disciplinary action against such individuals;

c. Determine the number of individuals in the FS to be promoted, and to remove the name of or delay the promotion of any individual in accordance with prescribed regulations;

d. Conduct reduction in force and to prescribe regulations for the separation of individuals pursuant to prescribed regulations;

e. Assign work, to make determinations with respect to contracting out, and to determine the personnel by which the Employer's operations shall be conducted;

f. Fill positions from any appropriate source;

g. Determine the need for uniform personnel policies and procedures between or among the Foreign Affairs Agencies;

h. Take whatever actions may be necessary to carry out the Agency's mission during emergencies (an emergency shall be defined as an unexpected, serious event or situation requiring prompt action); and,

i. Designate the Employer's representative(s) or point(s) of contact for any single issue taking into account the uniqueness of individuals in the FS in that they can serve as management's representative while remaining a bargaining unit member. Accordingly, care will be taken to minimize any potential conflict when designating a bargaining unit member as the Employer's point of contact or representative.

5.3 Management agrees to exercise these rights and responsibilities in a fair and equitable manner to all employees in the bargaining unit.

ARTICLE 6: PRECEDENCE OF LAWS, REGULATIONS, AND PAST PRACTICES

6.1 In the administration of all matters covered by this Agreement, AFSA/FAS and the Agency are governed by the following:

a. Existing and future laws;

b. Government-wide rules and regulations in effect on the effective date of this Agreement;

c. Department of Agriculture (USDA) rules and regulations in effect on the effective date of this Agreement. To the extent that the Department's published rules and regulations are in conflict with this Agreement, the provisions of the Agreement will govern;

d. The Agency's rules and regulations in effect on the date of this Agreement. To the extent that Agency's published rules and regulations are in conflict with this Agreement, the provisions of the Agreement will govern;

e. Government-wide, USDA, and Agency rules and regulations issued after the effective date of this Agreement that do not conflict with this Agreement; and

f. Provisions of the Foreign Affairs Manual (FAM) that have not been superseded by this Agreement and to which the Agency is a party.

6.2 This Agreement supersedes all past practices in conflict with this Agreement. Past practices not in conflict with this Agreement shall continue. The Agency recognizes its responsibility to promptly and timely notify AFSA/FAS and to negotiate, if requested by the Union, on any proposed change in Agency procedures, practices or changes in working conditions for employees in the bargaining unit prior to implementation. Procedures for implementing changes in working conditions are outlined in Article 11.

ARTICLE 7: DUES WITHHOLDING

7.1 Members of the bargaining unit are authorized to effect a voluntary allotment for the payment of dues to the Union subject to the provisions outlined in the Memorandum of Understanding between the American Foreign Service Association and the U. S. Department of Agriculture dated July 20, 1994. A copy of the Memorandum of Understanding is in Appendix 3.

ARTICLE 8: OFFICIAL TIME AND UNION REPRESENTATIVES

DEFINITIONS FOR THIS ARTICLE

8.1 Official Time: The time expended by the Employer's bargaining unit members when in a duty status, without charge to leave of any kind and approved by the Employer, in carrying out a representational activity in accordance with this Article and section 1013 of the FS Act, as amended.

8.2 Reasonable Time: The time necessary to accomplish a labor relations task for which official time is requested, including a reasonable amount of time to travel to and from the task location.

8.3 Preparation Time: The time spent by the Union designee(s), witnesses, or the individual party(s) preparing for the activities described in sections 8.14 and 8.15 of this Article.

8.4 Participation Time: The time spent by the Union designee(s), witnesses, or the individual party(s) to the actions or activities described in sections 8.14 and 8.15 of this Article.

8.5 Internal Union Business: Internal Union business includes, but is not limited to, membership meetings, soliciting Union membership, collecting Union dues or assessments, campaigning for Union office, distributing or posting Union membership literature, notices, or authorization cards, and/or any activities pertaining to the internal management of the Union.

8.6 Designee: Elected union officials (AFSA/FAS Vice President and Representative) and/or AFSA/FAS bargaining unit member assigned duties as needed resulting from either non-availability of elected officials, required expertise, or work load.

PERMITTED USE OF OFFICIAL TIME

8.7 Union designees shall request official time from their supervisor and shall be granted the use of reasonable and necessary official time for purposes defined in sections 8.14 and 8.15 of this Article, unless the Union designee's absence will significantly interfere with the completion of the Employer's critical day-to-day operations or the performance of its overall mission.

8.8 Official time will not be granted for internal Union business.

DESIGNATION OF UNION OFFICIALS FOR USE OF OFFICIAL TIME

8.9 The Employer agrees to recognize duly elected officers and other designees from the bargaining unit of AFSA/FAS. The Employer agrees that the AFSA/FAS Vice President shall be on 100 percent official time. AFSA/FAS agrees that its Vice President will be a Washington-based employee of the Employer.

8.10 FAS will review the continuing need for 100 percent official time by the AFSA/FAS Vice President in January prior to biannual AFSA board elections. Should FAS determine that a change should be made, FAS will notify in writing AFSA/FAS of the proposed change and the reasons for it. If requested, FAS agrees to negotiate over the proposed change.

8.11 The Employer agrees to grant official time to AFSA/FAS bargaining team members. The number of AFSA/FAS bargaining team members receiving official time will be determined in the ground rules governing a specific negotiation. In the absence of ground rules, the number of AFSA/FAS bargaining team members eligible to receive official time will be limited to the number of members on the Employer's bargaining team. However, AFSA/FAS shall be permitted to have at least two (2) designees in any negotiations between AFSA/FAS and the Employer.

8.12 AFSA/FAS will provide the Employer with the name, title, duty location, and telephone number of the AFSA/FAS Vice President and Representative within fifteen (15) work days after each general election of officers. AFSA/FAS will notify the Employer of changes between general elections within fifteen (15) work days.

8.13 The Employer, upon notification from AFSA/FAS, agrees to recognize the designation of an AFSA/FAS bargaining unit member as AFSA's designee at post. The Employer, upon notification from AFSA/FAS, agrees to recognize the designation of an AFSA designee at post to represent an AFSA/FAS bargaining unit member. Upon receipt of notice from AFSA/FAS, the Deputy Administrator/FAA will notify post management of the designation and authorization to deal with the named individual. All dealings between the designee and post management which impact AFSA/FAS bargaining unit members will be in compliance with this Agreement and any supplements thereto.

PURPOSES FOR OFFICIAL TIME

8.14 For the purpose of this Article, official time for representational activities is covered by section 1013 of the Act as amended, and shall include, but is not limited to:

a. Representation at formal meetings, including grievances and appeals;

b. Representation at investigatory meetings or interviews;

c. Any meeting between AFSA/FAS and one or more representatives of the Employer that is initiated by either Party in order to informally resolve problems of concern to either Party;

d. Participation in bargaining, mediation, impasse or negotiability proceedings;

e. Participation in proceedings initiated by either Party in connection with the statutory or regulatory appeal proceedings involving any member of the bargaining unit;

f. Appearing before or meetings with members of Congress or their staffers to discuss legislation affecting conditions of employment in FAS. This will be limited to not more than two (2) Union designees;

g. Participation in a Labor/Management Council and any of its committees or subgroups.

h. Preparation for, investigation of, and/or representation in a through g above; and/or,

i. Reasonable and necessary time for AFSA/FAS bargaining unit members to carry out their responsibilities when serving as the designee at post.

REQUESTING, GRANTING, AND USING OFFICIAL TIME

8.15 The Employer, upon request properly received, will grant bargaining unit members serving on negotiating teams or as the designee at post a reasonable amount of official time to conduct their representational functions unless to do so will significantly interfere with the completion of the Employer's critical day-to-day operations or the performance of its overall mission.

8.16 AFSA/FAS recognizes its responsibility to ensure that its designees will not unduly absent themselves from their assigned work and that AFSA/FAS designees will make every effort to perform their representational functions on behalf of the bargaining unit in a proper and expeditious manner.

8.17 The following procedures shall be followed when requesting the use of official time for the purposes set forth in sections 8.14 and 8.15 above:

a. The AFSA/FAS designee shall request official time from his/her supervisor at the earliest reasonable opportunity. The request shall be for a finite period,

based on the AFSA/FAS designee's good faith estimate of the time required to perform the particular function. For incoming and reasonable duration outgoing telephone calls, no prior approval is required. Official time may be requested by submitting the agency's standard leave form, "Request for Leave or Approved Absences" (SF-71) or by e-mail.

b. AFSA/FAS designees shall request official time from their immediate supervisor, or in the absence of the immediate supervisor, to the next higher level of supervision. It is the designee's responsibility to ensure that approval is obtained from the supervisor. Approval will be granted unless work situations would demand otherwise.

c. In the event the AFSA/FAS designee requires additional time due to unforseen circumstances, after approval has been given, the designee shall request an extension of that time, by telephone or other appropriate means. The request shall be made to the approving official, or in that person's absence, to the next higher level of supervision. The time extension shall be granted unless the AFSA/FAS designee's absence will significantly interfere with the completion of the Employer's critical day-to-day operations or the performance of its overall mission.

d. The Parties understand that unforeseen needs may arise precluding advance approval, such as telephone calls or visits to the AFSA/FAS designee's work site. AFSA/FAS designees will make a reasonable effort to ensure that bargaining unit members use proper procedures for obtaining approval of official time to engage in representational activities.

e. The AFSA/FAS designee will inform his/her immediate supervisor when the designee leaves the work site on representational activities. After completing the representational activity, the AFSA/FAS designee will inform his/her immediate supervisor of his/her return. It is the AFSA/FAS designee's responsibility to document his/her official time used on his/her biweekly time sheet.

f. Requests for official time for purposes other than those enumerated in sections 8.14 and 8.15 above will be considered by the Employer and responded to in a timely manner. Such requests should be made by the designee to the Servicing Labor Relations Specialist.

AVAILABILITY OF OFFICIAL TIME IN CASE OF DISAPPROVAL

8.18 In the event that a AFSA/FAS designee's request for official time is disapproved, in whole or in part, the Employer's decision making official will notify the AFSA/FAS

designee as soon as possible, in writing, so that the Union may select an alternative designee. The Employer will state the reason for the denial.

8.19 In the event that a AFSA/FAS designee's request for official time is approved but the Employer delays the scheduling of the representational activity, any filing window under the control of the Employer will be extended for a time equal to the delay.

8.20 In the event of disapproval or delay, the Employer will make every reasonable attempt to reschedule the representational activity or modify the representational deadline.

EMPLOYEES' RIGHT TO OFFICIAL TIME

8.21 Employees are entitled to a reasonable amount of official time to consult with Union designees on conditions of employment and to prepare for and attend meetings with the Employer regarding conditions of employment. Employees shall obtain supervisory approval to use official time using the agency's standard leave form.

8.22 In the event that an employee's request for official time is denied, the Employer will, if possible, agree to an alternate time. Further, if a request for official time is denied, the Employer will make every effort to reschedule representational events and/or modify representational deadlines to enable the employee to adequately prepare and respond to the event or action that gave rise to the request for official time.

RECORD KEEPING

8.23 AFSA/FAS elected representatives and bargaining unit members using official time are to record its use on their biweekly time sheets using the following codes:

a. Code 35 - Basic, Renegotiation, or Open Negotiations

b. Code 36 - Mid-term Negotiations

c. Code 37 - Ongoing Labor-Management Relations

d. Code 38 - Grievances and Appeals

8.24 Official time for handling telephone calls related to representational activities will be summarized daily and placed on the biweekly time sheet using code 37.

TIME IN CLASS (TIC)/TIME IN SERVICE (TIS) EXTENSIONS

8.25 An individual serving as AFSA/FAS Vice President may be eligible to receive a TIC/TIS extension. An individual who is not reviewed by the Selection Boards will receive a one year TIC/TIS extension and the Boards will be informed of the individual's non-ratable status. An individual who is reviewed by the Selection Boards will not receive a TIC/TIS extension for any time covered by the performance rating period for which the individual is reviewed. Other parameters governing this provision are as follows:

a. An individual who has held the AFSA/FAS Vice Presidency for less than 180 calendar days during a performance rating period will be reviewed by the Selection Boards for that period, unless the individual is deemed non-ratable for other reasons (e.g., LWOP).

b. An individual who has held the AFSA/FAS Vice Presidency for 180 calendar days or more during a performance rating period will not be reviewed by the Selection Boards for that period, unless the individual so requests.

c. The incumbent at the time this contract is ratified may choose to be grandfathered under the terms of the previous contract for his/her entire incumbency, or to be covered under the terms of this contract for the entire incumbency, but may not be covered by both. If the incumbent chooses to be covered under the terms of this contract and was required to be reviewed by a Selection Board under the previous contract during the incumbency, s/he will be considered as not having been reviewed for the purposes of section 8.25 above.

ARTICLE 9: FACILITIES AND SERVICES

GENERAL

9.1 The Employer agrees to provide the following facilities and services in connection with AFSA/FAS's representation of FAS bargaining unit members in a world-wide bargaining unit.

OVERSEAS APO/FPO AND POUCH SYSTEM

9.2 AFSA/FAS may use the Employer's overseas APO/FPO and/or pouch facilities on a reasonable basis for the distribution of general printed matter and individually addressed correspondence to AFSA/FAS's bargaining unit members arising from AFSA/FAS's role as exclusive representative. The following procedures shall govern the use of the APO/FPO or pouch system:

a. General Printed Matter

1. AFSA/FAS shall enclose general printed matter related to the Employer's business in sufficient copies for distribution to all bargaining unit members at post in an envelope addressed to the AFSA representative at post. If there is no AFSA representative, envelopes will be addressed to the Agricultural Officer.

2. The envelope shall contain a memorandum on AFSA/FAS letterhead requesting that the enclosed material be distributed in a routine manner through the post's distribution system to AFSA/FAS bargaining unit members.

b. Individually Addressed Matter: The front of the envelope shall be addressed in accordance with the requirements of the system being used.

9.3 In only those instances where it is necessary for AFSA/FAS to fulfill its representational functions may AFSA/FAS use the Employer's facilities for registered mail to transmit legal (for example, grievance, EEO or disciplinary actions) and related documents between its Washington headquarters and its bargaining unit members. Such registered mail will travel via the usual pouch facilities and will be receipted as other similarly registered mail in the Employer's pouch system.

9.4 AFSA/FAS bargaining unit members at post may use the APO/FPO and/or pouch mail system, including registered mail, for matters arising under Chapters 10 and 11 of the Act, as amended.

9.5 Material not in compliance with these procedures will be returned to the originator.

TELECOMMUNICATIONS SYSTEM

9.6 AFSA/FAS's access to the Employer's telecommunications system shall be confined exclusively to matters arising from the performance of its representational obligations to its bargaining unit members. This system will not be used for internal AFSA/FAS business, including but not limited to, solicitation of members and/or dues deductions. Cables should be utilized when other forms of communication are not suitable.

9.7 The Employer will establish and maintain an electronic mail box for AFSA/FAS's receipt and distribution of cables.

9.8 AFSA/FAS's use of the telecommunications system shall be subject to the following conditions:

a. General

1. Cables will be free of defamatory, scandalous, or scurrilous language, and personal attacks on management officials. Cables shall satisfy accepted standards of business courtesy and will not deal with internal AFSA/FAS business. All cables will show that transmission is from AFSA/FAS through FAS.

2. Cables shall be unclassified except in extraordinary circumstances and then only by agreement of both Parties. AFSA/FAS cables, unless agreed upon by the Parties, will not be given higher priority than FAS business and will not normally exceed 1,000 words (5,000 characters).

3. Material that is not in compliance with the requirements and procedures contained in paragraphs 9.2 - 9.8 will be returned to the originator.

b. Washington Procedures

1. AFSA/FAS will follow standard FAS procedures in preparing and submitting cables for transmission. Cables will be presented to the Area Officer of the recipient for clearance.

2. If a number of cables are being requested on the same subject or to the same recipient, the appropriate Area Officer(s) of the recipient(s) will discuss alternate forms of communication with AFSA/FAS.

c. Overseas Procedures

1. AFSA designated representatives at post or an AFSA/FAS bargaining unit

employee, if no representative is designated, may transmit cables consistent with the restrictions contained in section 9.6 and 9.8a above. Such cables will be cleared in accordance with post procedures.

2. Distribution of AFSA/FAS cables at overseas posts should be made in the following priority order:

   (a) Individual designated, if appropriate; or

   (b) AFSA representative; or

   (c) Agricultural Officer

   (d) No copies of AFSA/FAS cables will be kept in the telecommunications office in Washington. Copies of AFSA/FAS cables originating at foreign posts will be maintained or destroyed in accordance with the post's regulations.

SPACE AND FURNITURE

9.9 The Employer agrees to provide at no cost to AFSA/FAS:

a. An office with a locking door in the South Agriculture Building of substantially similar size to those available to most employees to adequately accommodate two file cabinets, desk, printing equipment, and a meeting table.

b. Office furniture commensurate with the office provided;

c. A computer and software compatible with the standard FAS desktop;

d. Two (2) telephone lines and telephones with voice mail and speaker phone capabilities;

e. Fax machine; and,

f. Two five-drawer locking file cabinets.

9.10 AFSA/FAS is responsible for providing additional equipment and services. Any additional equipment must be consistent with building regulations and housekeeping rules.

9.11 The Employer will assure that the Department provides AFSA/FAS with mail

delivery services through an established mail drop site at the AFSA/FAS office.

9.12 AFSA/FAS agrees that the Vice President and Representative will, to the extent practicable, perform their representational duties in the office provided. AFSA/FAS also agrees to publish the location and telephone numbers of the office to bargaining unit members and to advise members to contact their representatives at that office. The Employer will list in the Agency telephone directory the location and telephone numbers of the AFSA/FAS office.

9.13 AFSA/FAS may request the use of space in the South Agriculture Building to hold meetings related to AFSA/FAS's representational duties. AFSA/FAS is responsible for finding and scheduling the room in accordance with standard operating procedures. Should it be necessary to relocate or cancel the meeting to accommodate FAS or Department of Agriculture business, alternative space will be provided to AFSA/FAS. In using these facilities, AFSA/FAS agrees to comply with all FAS and Department of Agriculture security and housekeeping rules.

TELEPHONES

9.14 The Employer agrees to furnish local and long distance telephone service in the office space provided for AFSA/FAS at no cost to AFSA/FAS. Officers and other designated representatives of AFSA/FAS may use FAS telephones only to conduct AFSA/FAS representational business for AFSA/FAS bargaining unit members.

9.15 AFSA/FAS agrees that long distance and/or overseas telephone calls will be limited to emergency situations where the use of the telecommunication system, e-mail or mail systems do not provide adequate service.

REPRODUCTION FACILITIES

9.16 AFSA/FAS may use specified reproduction facilities during duty hours. Official FAS business shall take precedence over use of facilities by AFSA/FAS.

INTER-OFFICE MAIL AND DISTRIBUTION

9.17 AFSA/FAS may use the inter-office mail and distribution facilities on a reasonable basis and at no cost to AFSA/FAS to correspond with:

a. Individual AFSA/FAS bargaining unit members for representational matters only; and,

b. FAS officials on labor relations matters.

9.18 Mailings to bargaining unit members shall be placed in envelopes addressed to the appropriate AG Stop and individual(s) to whom the correspondence is to be delivered.

BULLETIN BOARDS

9.19 The Employer will provide AFSA/FAS with use of the FAS computer network to include:

a. the ability to create, store and retrieve documents on the network;

b. the ability to create, store and publish documents on the Agency intranet (FASTNET); and

c. management and use of a Lotus Notes discussion database.

9.20 Use of the Agency computer network shall be in accordance with all applicable policies and procedures. Information placed on the FAS computer network is subject to the constraints listed in sections 9.6, 9.8, and 9.21 - 9.26 of this Article. AFSA will be responsible for providing the system administrator with appropriate access control information.

E-MAIL SERVICES

9.21 The AFSA/FAS Vice President and/or Representative shall be given reasonable access to the Employer electronic mail system to communicate with one another, bargaining unit members, and with management officials concerning representational matters. Communications with bargaining unit members will not:

a. Duplicate documents which are distributed or produced through other FAS offices or channels; or,

b. Be given higher priority than FAS business unless otherwise agreed to by the Parties.

9.22 AFSA/FAS bargaining unit members will be given reasonable access to the Employer's electronic mail system to provide input to AFSA/FAS representatives on representational or grievance matters.

9.23 The Employer will establish a mail box for AFSA/FAS on its electronic mail system. Electronic mail between AFSA/FAS bargaining unit members and their representatives regarding representational or grievance matters should be sent to the AFSA/FAS electronic mail address and not to the address of the individual representative.

9.24 AFSA/FAS assumes all responsibility related to the transmission, reproduction, and distribution of information by AFSA/FAS via the Employer's electronic mail system. AFSA/FAS agrees that its messages shall not contain defamatory, scandalous, or scurrilous language or personal attacks on management officials, and shall satisfy accepted standards of business courtesy.

9.25 AFSA/FAS's use of the Employer's electronic mail system shall be consistent with all regulations, policies and practices applicable to the system.

9.26 Upon showing good cause (e.g., violation of this section, and/or abuse or misuse of the system) the Employer may terminate the use of the electronic mail system by AFSA/FAS by providing written notice to which AFSA/FAS may respond in accordance with the negotiated grievance procedure.

MISCELLANEOUS

9.27 Transportation: AFSA/FAS representatives and/or bargaining unit members may be required to travel locally on official time to discharge their representational responsibilities. The Employer agrees to reimburse FAS employees for such travel in accordance with the procedures used to reimburse any employee for official travel.

9.28 Copies of Agreements:

a. The printing costs for reproducing this Agreement shall be borne by the Employer. Drafts, before printing, will be presented to the AFSA/FAS Vice President for approval.

b. Upon AFSA/FAS ratification and Agency Head approval of this Agreement, AFSA/FAS will be provided printed copies, equal to one hundred and ten (110) percent of the number of AFSA/FAS bargaining unit members, for distribution to its bargaining unit and to meet its needs.

9.29 Administrative Assignments List: The following offices and services of AFSA/FAS will be listed in the Administrative Assignments List:

a. AFSA/FAS Vice President

b. AFSA/FAS Representative

ARTICLE 10: CONTRACT DURATION AND RENEWAL

EFFECTIVE DATES

10.1 Full-term or mid-term agreements will be submitted for Agency Head review after AFSA/FAS certifies that they have been ratified by its bargaining unit.

10.2 This agreement shall become effective on the date approved by the Agency Head or on the date on which the 30-day time limit for Agency Head review expires, whichever is earlier.

DURATION

10.3 This agreement shall remain in effect for four (4) years from its effective date. Thereafter, it shall automatically renew in increments of one (1) year on the day after the anniversary date.

FULL-TERM NEGOTIATIONS

10.4 Either Party may serve the other with notice of a desire to amend, supplement or renegotiate specific section(s) of this agreement, in whole or in part. Such notice shall be provided in writing by either Party to the other not more than one hundred and twenty (120) calendar days nor less than sixty (60) calendar days prior to the anniversary date of this Agreement.

10.5 Upon receipt by either Party of notice, the Parties will meet within ninety (90) calendar days of receipt of a proposal to begin full-term negotiations, unless another time frame is mutually agreed upon or negotiated.

EXTENSION OF EXISTING AGREEMENT

10.6 When either Party notifies the other that it wishes to modify this Agreement, this Agreement will be extended until the effective date of the modified agreement.

AGREEMENT UNDER THIS ARTICLE

10.7 Any agreements reached under the provisions of this Article shall be deemed to be supplemental to this Agreement and will expire when this Agreement expires.

10.8 Should a provision of any agreement negotiated pursuant to this Article be rendered invalid by appropriate authority, either Party may reopen the specifically affected section as well as issues related to any invalid section. Notwithstanding this Article, nothing shall affect the authority of Management to take whatever actions may be

necessary to carry out its mission during emergencies.

MANDATED CHANGES

10.9 Future statutes or Judicial decisions may require the Parties to change this Agreement. If any part of the contract is found to be unlawful or invalid, the rest of the contract will remain in force, and the Parties will negotiate substitute language for the invalidated portion. If either Party desires to negotiate the impact and implementation of a change , it shall provide written notification requesting bargaining to the other Party. Such notice shall be followed by submission of a specific formal proposal for negotiations or a request to use interest-based bargaining techniques within ten (10) work days of the request to bargain.

10.10 The receiving Party will respond within ten (10) work days of receipt of the request to bargain.

10.11 Neither Party will be permitted to propose changes unrelated to the change specifically required by statute or Judicial decision.

10.12 To the extent permitted by statute or Judicial decision, Management will delay the implementation of such change until such time as the Parties complete negotiations on all negotiable issues connected with the change.

MID-TERM NEGOTIATIONS

10.13 Either Party may serve the other notice of a desire for mid-term negotiations to amend, supplement or renegotiate specific section(s) of this Agreement. Such notice shall be provided in writing by either Party to the other not more than one hundred and twenty (120) calendar days nor less than sixty (60) calendar days prior to the mid-anniversary date of this Agreement.

10.14 During mid-term negotiations, each Party may request to amend, supplement, or renegotiate up to five (5) articles contained in this contract. By mutual consent, more than five (5) articles may be reopened by a Party.

10.15 Requests for mid-term negotiations will normally be accompanied by written proposals. The proposed changes will be identified from the existing agreement. If a Party elects to use an interest-based approach to bargaining, a request for mid-term negotiations using this approach and stating the issues of concern will meet this notice requirement.

OTHER NEGOTIATIONS

10.16 Requests for bargaining over procedures, substance or appropriate arrangements related to changes in working conditions not covered in this Agreement will follow the process found in Article 11 (Reorganization and Changes in Working Conditions).

10.17 IMPASSE PROCEDURES

a. Declaration of Impasse can be made by either Party.

b. Neither Party may declare an impasse until all articles and sections have been negotiated. The Parties agree that each will use their best good-faith efforts to avoid impasse.

c. In the event either Party declares an impasse, the Collaboration and Alternative Dispute Resolution Program (CADR) of the Federal Labor Relations Authority shall be immediately requested to provide services and assistance to resolve the dispute.

d. If mediation services of the CADR do not result in resolution of the impasse, either Party may invoke the services of the Foreign Service Impasse Disputes Panel. Prior to taking such action, the Party seeking to invoke the services of the Foreign Service Impasse Disputes Panel will provide notice to the other Party of its intent to take such action.

NON-NEGOTIABILITY PROVISIONS

10.18 Either Party declaring a provision non-negotiable will provide to the other Party a statement of nonnegotiability and reasons therefore, without prejudice to later supplementation of the reasons.

10.19 The services of the CADR may be used if agreed to by both Parties. Otherwise, the procedures in 22 CFR 1424 will be followed.

ARTICLE 11: REORGANIZATION AND CHANGES IN WORKING CONDITIONS

REORGANIZATION

11.1 The procedures outlined below are intended to increase communication between management and employees, reduce potential employee/management friction and improve employee morale while recognizing both management's and AFSA/FAS' rights.

11.2 In these procedures, the term "reorganization" is considered synonymous with the terms "realignment", "organizational adjustment", or other major workplace changes that are bargainable.

11.3 These procedures are intended to permit reorganization issues to be resolved at the lowest possible level, and in a more expeditious way than traditional bargaining.

OPEN COMMUNICATIONS

11.4 The Administrator and Deputy Administrators will meet periodically (at least once a year) with AFSA/FAS. The intent is to establish dialogue on key factors affecting the Agency, including those that might lead to reorganizations. The Administrator and Deputy Administrators will also meet periodically with FAS employees in an "all employees" context to discuss these issues at the Agency and program area levels, respectively.

PRE-PROPOSAL STAGE

11.5 As early as practicable, managers, employees, and union representatives are expected to discuss all pertinent available information including key factors which might warrant reorganization. Managers are encouraged to use team building techniques to formulate reorganization proposals.

11.6 Managers are encouraged to hold additional meetings with union representatives and affected employees as needed to formulate a written proposal.

PRE-DECISIONAL STAGE

11.7 A pre-decisional written proposal is presented to union representatives and affected employees to evaluate.

11.8 Management announces and schedules at least five days in advance a pre-decisional employee-management meeting at the level affected by the proposal. At the same time, union representatives will be notified and included.

11.9 During the pre-decisional meeting, participants should establish a date by which comments on the pre-decisional package and meeting are to be received by management.

11.10 Management may respond to questions during the meeting or at the time it responds to further input received from AFSA/FAS or employees.

EVALUATION STAGE

11.11 Management presents complete formal reorganization proposal to AFSA/FAS and affected employees. This will include a background statement, which bargaining unit members are affected, old and proposed organizational charts (including grade and job series changes), physical location of employees, target dates for implementation, management's point of contact, and any other necessary documents.

11.12 Upon receipt, the union(s) have a 10 workday period to gather bargaining unit member input, request additional reasonable information, and/or respond to management.

11.13 Management shall meet all reasonable union requests for relevant additional information, and, if needed, the evaluation period may be extended by mutual consent for up to an additional 10 workdays.

11.14 Management may similarly respond to concerns of other affected employees.

DETERMINATION STAGE

11.15 After evaluating the reorganization plan, the union(s) responds to management with one of the following options:

a. Proceed with Plan: Management and the union(s) agree on plan as presented.

b. Proceed with Specified Changes: Modifications are worked out in writing by the union(s) and management and the reorganization proceeds.

c. Interest-based Bargaining Session: By mutual consent, the union(s) and management may request a facilitated session in an attempt to reach consensus rather than proceed to formal negotiations.

d. Formal Negotiations: The union(s) and management revert to formal negotiations. Date is established by consensus.

e. Stop Plan: Management and the union(s) agree by consensus to stop the reorganization procedures.

IMPLEMENTATION

11.16 Management proceeds with implementation of the reorganization plan in accordance with existing personnel rules and labor relations law. The union(s) and management will discuss any additional changes proposed after implementation begins. By mutual consent, the union(s) and management may request a facilitated session to address significant additional changes to the reorganization plan.

WORKPLACE CHANGES OTHER THAN REORGANIZATION

11.17 Changes, other than reorganization, involving bargaining unit member relocation and modification of work sites in the Washington, D.C., metropolitan area will be handled in accordance with procedures contained in this section. The steps and/or time frames outlined may be modified or waived by mutual consent of all parties, i.e., management and the union(s) affected by the change.

a. At the earliest possible stage, the manager notifies relevant union(s) and the SPO of the need to schedule meetings/discussions with a bargaining unit member(s) on negotiable workplace change matters.

b. A pre-decisional meeting is scheduled by the manager at a mutually convenient time for the union(s), affected bargaining unit member(s), and the SPO.

c. At least two (2) workdays in advance of the pre-decisional meeting, a written pre-decisional information package is provided to the union(s) and the SPO. In the case of office moves, a current and proposed floor plan should be prepared that shows location of affected employees, equipment, etc. Other material relevant to the workplace change which may help clarify to the union(s) the impact of the change should also be provided, if available.

d. The pre-decisional meeting is held which includes all affected bargaining unit members and the union(s). The affected bargaining unit members are provided with the latest written and verbal information about the change and are encouraged to provide verbal feedback to management on the plan during the meeting or afterwards through their respective union(s).

e. During the meeting, the manager and the union(s) agree upon a deadline for timely submission of bargaining unit members' written comments/suggestions on the pre-decisional plan.

f. After the meeting, bargaining unit members' written/verbal comments/suggestions will be channeled through the union(s) to the manager and the SPO.

g. The manager decides how comments/suggestions are to be incorporated into management's final plan.

h. Management submits its final plan to the union(s). The plan should include: detailed current and proposed floor plan with desk locations, before and after room square footage, and equipment placement; a statement on how employee comments are being addressed; and a copy of the MSD Project Plan with tentative action dates.

i. The union(s) has 10 workdays after management submits the final plan to work with bargaining unit members and management to resolve differences between parties, if any. Within this time frame, the union(s) will decide whether to concur with the final plan or request formal negotiations. In either case, the union(s) will alert the manager and the SPO.

j. Provided the union(s) concurs with the final plan, the manager will notify affected bargaining unit members and the union(s) five (5) workdays prior to implementation.

k. If changes to agreed upon final plan are required, the manager will notify the union(s) and the SPO to assure the union(s) may negotiate on behalf of bargaining unit employees, if desired.

11.18 Changes, other than reorganization, involving bargaining unit member relocation and modification of work sites outside the Washington, D.C. metropolitan area will be handled in accordance with the procedures established by management and the work site.

CHANGES IN WORKING CONDITIONS

11.19 All other changes involving working conditions for bargaining unit members in the Washington, D.C. metropolitan area will be governed by the following:

a. A proposed change affecting the conditions of employment of any bargaining unit member, e.g. changes in personnel practices, past practice, procedures, or

other matters affecting working conditions, will be submitted in writing by the Party proposing the change to the other Party. For management, the notice will be transmitted to the AFSA/FAS Vice President or, in his/her absence, to his/her designee. The notice will include the following:

1. A description of the change or proposed change;

2. An explanation of how the change will/would be implemented; and,

3. The date of implementation or proposed implementation, if one has been established.

b. The receiving Party will respond to the notice of proposed change within 10 workdays of receipt of the notice. The receiving Party's response may include a request for information, briefing, and/or negotiation.

c. The proposing Party will respond to the receiving Party's request for information, briefing, and/or negotiation within 10 workdays of receipt of the request.

d. Requests for negotiation will be made within 10 workdays of receipt of information requested or completion of any briefing, and will be accompanied by proposals or counter proposals, as appropriate. Upon receipt of a request to negotiate, the proposing party is precluded from implementing its proposed action until final agreement has been reached. Management reserves the right to implement any action for employees not covered by this Agreement.

e. The Parties may mutually agree to extend the time limits described above.

f. If requested, the Parties will negotiate in good faith over all matters related to the proposed change consistent with law and this Agreement.

11.20 All other changes involving working conditions for bargaining unit members at post will be governed, to the extent possible, by this Agreement and the procedures established by the post.

IMPASSE PROCEDURES

11.21 Declaration of impasse may be made by either Party.

11.22 Neither Party may declare an impasse until: (1) in a single-issue negotiation, progress is not being made, or (2) during mid-term or end-of-term negotiations, all articles and

sections have been negotiated. The Parties agree that each will use their best good-faith efforts to avoid impasse.

11.23 In the event either Party declares an impasse in negotiations, the Collaboration and Alternative Dispute Resolution Program (CADR) of the Federal Labor Relations Authority shall be immediately requested to provide services and assistance to resolve the dispute.

11.24 If mediation services of the CADR do not result in resolution of the impasse, either Party may invoke the services of the Foreign Service Impasse Disputes Panel. Prior to taking such action, the Party seeking to invoke the services of the Foreign Service Impasse Disputes Panel will provide notice to the other Party of its intent to take such action

11.25 Either Party declaring a provision non-negotiable will provide to the other Party a statement of nonnegotiability and reasons therefore, without prejudice to later supplementation of the reasons.

ARTICLE 12: REPORTS

The following reports will be provided, according to reporting schedule, to AFSA/FAS by the office indicated:

12.1 The Bargaining Unit Listing, by name, position title, series and class/grade, on a semiannual basis. The report will be provided electronically by April 30 and October 31 by the SPO.

12.2 The FAS Staffing Pattern on a quarterly basis. The report will be produced for the quarters ending December 31, March 31, June 30, and September 30 and will identify each employee by organizational subdivision, name, position title, series and class/grade. The staffing pattern will be provided electronically by the SPO.

12.3 The Union Activity Report showing the amount of official time used for representational activities by bargaining unit members. This report will be provided electronically within three weeks of the close of each pay period by the SPO.

12.4 The Bargaining Unit Personnel Activity Report listing employees who have had a personnel action processed during the last two pay periods. The report will contain the employee's name, position title, pay plan, series, class/grade, type of action, bargaining unit status, agency, division, and effective date. The report will be provided electronically by the SPO within three weeks of the end of the pay period in which the activity took place.

12.5 Civil Rights Complaints Monthly Report from the Office of Civil Rights, FAS, listing the number of EEO complaints received by the agency and the basis for the complaint. The report will be provided in hard copy or electronically (when available).

12.6 Grievance information will be provided by the SPO, when requested. The report will show the number of grievances filed and the nature of the complaint.

12.7 The Summary of Offenses Report will be provided by the SPO on a quarterly basis. This is a report of bargaining unit member offenses (absent any information protected by the Privacy Act) and the discipline imposed for that offense. The report will be produced for the quarters ending December 31, March 31, June 30, and September 30.

12.8 Copy of all decisions (absent any information protected by the Privacy Act) issued by EEOCR in cases brought by Foreign Service employees. The report will be forwarded when received by the SPO.

ARTICLE 13: TECHNOLOGY, METHODS, AND MEANS OF PERFORMING WORK

13.1 Proposed changes in technology, methods, and means of performing work initiated by either the Employer or AFSA/FAS will require appropriate advance notice, pre-decisional involvement of bargaining unit members, and bargaining in accordance with applicable law, Executive Order, and this Agreement, as appropriate. Training and retraining opportunities to support technological changes will be provided to all employees per Article 31 (Career Development and Training).

ARTICLE 14: PROHIBITED PERSONNEL PRACTICES

DEFINITIONS

14.1 For the purpose of this Article, and in accordance with Chapter 1, Section 105 of the Act, amended and in accordance with 5 U.S.C. 2302, prohibited personnel practice means any action described in section 14.3 - 14.5.

14.2 For the purpose of this Article with respect to an employee in, or applicant for, a covered position in FAS, personnel practice means:

a. An appointment;

b. A promotion;

c. An assignment including assignment to any position or salary class;

d. An award of performance pay or special differential;

e. A within-class salary increase;

f. A separation;

g. A performance evaluation; and,

h. Any decision, recommendation, examination, or ranking that relates to section 14.2a - g.

PRACTICES DEFINED IN THE ACT AND 5 U.S.C. 2302

14.3 Any employee who has the authority to take, direct others to take, recommend, or approve any personnel action, shall not with respect to such authority:

a. Discriminate for or against any employee or applicant for employment on the basis of:

1. race, color, religion, sex, or national origin, as prohibited under Section 717 of the Civil Rights Act of 1964;

2. age as prohibited under Sections 12 and 15 of the Age Discrimination in Employment Act of 1967;

3. sex, as prohibited under Section 6(d) of the Fair Labor Standards Act of 1938;

4. disabling condition, as prohibited under Section 501 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act; and,

5. sexual orientation, marital status, political or union affiliations, as prohibited under any law, rule, or regulation.

b. Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of an evaluation of the:

1. work performance, ability, aptitude, or general qualifications of such individual; or,

2. character, loyalty, or suitability of such individual.

c. Coerce the political activity of any person (including the providing of any political contribution or service) or take any action against any employee as a reprisal for the refusal of any person to engage in such political activity;

d. Deceive or willfully obstruct any person with respect to such person's right to compete for employment;

e. Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

f. Grant any preference or advantage not authorized by law, rule, or regulation to any employee (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

g. Appoint, employ, promote, advance, or advocate for appointment, employment, promotion or advancement, in or to a civilian position any individual who is a relative (as defined in 5 U.S.C. 2302, Section 3110(a)(3)) of such employee if such position is in the Agency in which such employee is serving as a public official (as defined in 5 U.S.C. 2302, Section 3110(a)(2)) or over which such employee exercises jurisdiction or control as such an official;

h. Take or fail to take a personnel action with respect to any employee or applicant for employment as reprisal for:

1. disclosures of information by an employee or applicant which the employee or applicant reasonably believes evidences:

   (a) a violation of any law, rule, or regulation; or,

   (b) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety if such disclosure is not specifically prohibited by law or if such information is not specifically required by Executive Order to be kept secret in the interest of national security or the conduct of foreign affairs; or,

2. any disclosure to the Special Counsel for the Merit Systems Protection Board, or the Inspector General of an agency or another employee designated by the Head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences:

   (a) violation of any law, rule, or regulation; or,

   (b) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

i. Take or fail to take any personnel action against an employee or applicant for employment as reprisal for the exercise of any appeal right granted by any law, rule, or regulation;

j. Discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others, except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness, any conviction of the employee or applicant for any crime under the laws of any state, the District of Columbia, or the United States; or,

k. Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in 5 U.S.C. 2301.

14.4 While it is recognized that threats are not specifically covered as prohibited personnel practices, FAS will not tolerate such practices.

WITHHOLDING INFORMATION

14.5 Nothing in section 14.3 above shall be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress.

EQUAL EMPLOYMENT OPPORTUNITY

14.6 Nothing in section 14.3 above shall be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee in the Federal service under:

a. Section 717 of the Civil Rights Act of 1964, prohibiting discrimination on the basis of race, color, sex, or national origin;

b. Sections 12 and 15 of the Age Discrimination in Employment Act of 1967, prohibiting discrimination on the basis of age;

c. Under Section 6(d) of the Fair Labor Standards Act of 1938, prohibiting discrimination on the basis of sex;

d. Section 501 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, prohibiting discrimination on the basis of disabling condition; or,

e. The provisions of any law, rule, or regulation prohibiting discrimination on the basis of sexual orientation, marital status, political or union affiliation.

14.7 None of the above precludes any bargaining unit employee from filing a grievance on any matter covered in this Article.

PROHIBITED PERSONNEL PRACTICE COMPLAINTS

14.8 Employee affected by a prohibited personnel practice may raise the matter under a statutory procedure or the Foreign Service Grievance Procedure, but not both. In either of these procedures, the employee is entitled to AFSA/FAS representation.

ARTICLE 15: NOTICE TO EMPLOYEES

15.1 When the Employer presents written notice to an employee concerning a personnel action in which the employee has appeal rights in accordance with applicable law, rule, regulation, and/or this Agreement, the Employer will provide the employee with a second copy of the written notice. An original notice will be provided to the employee to the extent allowed by filing and distribution requirements. AFSA/FAS will be notified and provided the opportunity to attend such meetings.

15.2 When the Employer presents an employee with a written notice in accordance with section 15.1 above, a second copy provided to the employee shall include the following statement: "This copy may, at your option, be furnished to AFSA/FAS."

ARTICLE 16: OUTSIDE EMPLOYMENT

16.1 Employees interested in engaging in outside employment must meet the requirements of 5 CFR 2635.803, and any supplemental USDA regulation issued under it. (Currently, this means that employees who file either a public or confidential financial disclosure report (SF-278 or OGE 450), or an alternative form of reporting approved by OGE, are required to seek prior approval before engaging in any outside employment .)

16.2 Employees interested in seeking approval for outside employment should refer to the Department's supplemental regulation, which can be accessed on the ethics website: www.usda.gov/ethics. They can also obtain guidance from the Ethics Advisor in the Servicing Personnel Office (SPO).

16.3 Situations in conflict with Federal, Department, and Agency regulations may result in disciplinary action to include removal from Federal service.

16.4 An employee engaged in a matter that may have the potential or appearance of a conflict of interest should contact the Ethics Advisor in the SPO.

ARTICLE 17: CONTRACTING OUT

17.1 This Article pertains to work performed or that could be performed by existing bargaining unit members that is adversely impacted by commercial contracting.

17.2 The Agency agrees to provide AFSA/FAS a copy of any Statement of Work (SOW) to be performed by a contractor that will affect working conditions or may adversely impact work performed or that could be performed by existing bargaining unit members AFSA/FAS will be given 10 business days to respond before proposals are solicited from potential contractors.

17.3 The Employer agrees to make available to AFSA/FAS:

a. Copies of any regulation relevant to contracting which are maintained in any agency office regarding work performed by existing bargaining unit members.

b. Office of Management and Budget Circular A-76, as it may be revised from time to time.

17.4 The Employer agrees that, if requested, it will discuss with AFSA in a timely manner, the impact of possible results of a solicitation of proposals on the working conditions and work performed or that could be performed by existing bargaining unit members.

17.5 AFSA reserves the right to negotiate the impact and implementation of any final management contracting decision which affects the working conditions and work performed or that could be performed by existing bargaining unit members. AFSA/FAS shall have 10 business days from the time of notification of the result of the solicitation to request such negotiation.

17.6 The Employer agrees to follow Article 20, Reduction in Force, (RIF) of this Agreement when bargaining unit members are subjected to a RIF as a result of actions described in this Article.

ARTICLE 18: ADMONISHMENTS AND DISCIPLINARY ACTION

18.1 Disciplinary and/or adverse action(s) shall be consistent with the concept of progressive discipline, as appropriate, and shall be applied in accordance with 3 FAM 4300, Disciplinary Action. Progressive discipline is defined as admonishment or oral reprimand, followed by a written reprimand, then suspension, and finally, separation.

18.2 The Parties agree that changes and amendments made to 3 FAM 4300 to which the agency is a party, during the term of this Agreement will control the discipline and adverse action process of bargaining unit members.

ARTICLE 19: DISPUTES AND GRIEVANCES

DISPUTES

19.1 The Parties agree that disputes should be resolved in an orderly, prompt, and equitable manner. A dispute is defined as any difference of opinion between an employee and the employer, or the union and employer. The Parties agree that every effort should be made to resolve disputes informally with the first level supervisor or others, as appropriate, and to settle disputes at the lowest possible supervisory staff level.

19.2 Any employee, supervisor or manager can request a mediation session when they feel they have an issue or concern where a neutral third party (mediator) could assist in resolving the issue or concern. Procedures for requesting mediation are outlined in the AFSA/FAS Conflict Resolution Program (CRP) guidelines and can also be found on FASTNET, currently under Initiatives, on the Civil Rights Home Page.

GRIEVANCES

19.3 Grievable issues are defined in 3 FAM 4400, the Foreign Service Grievance System, and include the interpretation, application, enforcement or alleged violation of an expressed provision of this Agreement and appendices. The process for filing a grievance is also detailed.

19.4 An individual and/or the union may proceed with a formal grievance in accordance with 3 FAM 4400. The first official step in filing a grievance is submitting the complaint in writing to the Servicing Personnel Office.

19.5 The Parties further agree that changes and amendments made to 3 FAM 4400 to which the agency is a party, during the term of this Agreement will control the grievance process.

ARTICLE 20: REDUCTION IN FORCE

PURPOSE

20.1 This article implements Section 611 of the Act. This article establishes the procedures the Employer will use if it becomes necessary to run a reduction in force (RIF) action in the Foreign Service.

DEFINITIONS

20.2 Competitive Area: The organizational and geographical boundaries within which individuals compete in a RIF.

20.3 Days: Calendar days unless otherwise stated.

20.4 Furlough (under RIF procedures): The placement of an individual in a temporary non-duty and non-pay status for more than 30 consecutive days (or more than 22 work days, if done on a noncontinuous basis), but not more than one year, when the action is based on one of the RIF reasons and is not in accordance with preestablished conditions of employment. (See Article 21 (Furlough) regarding furloughs for 30 consecutive days or fewer, or for 22 noncontinuous work days or fewer.)

20.5 Liquidation Procedures: The release of all individuals in a competitive area for the purpose of completely closing the work site.

20.6 Notice: An official written communication provided to an individual announcing that he/she will be affected by a RIF action.

20.7 Reduction in Force: A personnel action that releases an individual by separation or furlough for more than 30 days due to lack of work, shortage of funds, insufficient personnel ceiling, reorganization, or lack of appropriations.

20.8 Relative Standing: An individual's relative position on the Selection Board rank order list.

20.9 Retention Group: See section 20.24 of this Article.

20.10 Retention Register: A list of competing individuals organized by class and retention group within a competitive area.

20.11 Retention Standing: An individual's relative position on the retention register based on length of service, relative standing, veterans preference, and retention group.

20.12 Sanitized retention register: Copy of the retention register with individual names and Social Security numbers deleted (except for the name of the individual requesting the information in accordance with section 20.29(d) of this Article), but including retention points received for each category and total retention points received for each individual.

20.13 Unsanitized retention register: Copy of the retention register including all individual names, retention points received for each category, and the total retention points received.

20.14 Veterans Preference: Additional credit given to competing individuals based on military service as defined by 5 U.S.C. 2108, subject to 5 U.S.C. 3501(a)(3). Any future changes affecting these provisions will also apply to members of the Foreign Service.

POLICY

20.15 Reductions in personnel strength will be accomplished, whenever possible, by planning and attrition. Every effort will be made to avoid use of RIF procedures to effect such reductions. RIFs will be implemented only if their necessity cannot reasonably be abated through other means, such as; hiring freezes, furloughs, reduction in travel and training that is not critical to the mission of FAS, or reduction of contracts with consultants or contractors, and any other expenses that are not critical to the mission of FAS.

20.16 The Employer will notify the Union in advance of any necessity for a RIF with sufficient lead time to permit predecisional involvement by the Union. The Union will assist the Employer in developing plans for effecting the RIF as fairly as possible.

20.17 The Employer will issue a general notice normally at least 120 calendar days in advance of a pending RIF. The notice will contain the anticipated effective date of the RIF and the cut off date for inclusion of additional information in an individual's official personnel file and performance folder. Individuals may make reasonable use of time, equipment, and supplies for the purpose of finding other employment as long as it does not unduly interfere with the Employer's business.

20.18 The employer will make every reasonable attempt to rehire individuals separated under RIF. (See section 20.36 Rehire Priority)

20.19 Outplacement assistance will be provided to all individuals who are separated as a result of RIF.

RIF PROCEDURES

20.20 NOTICE TO EMPLOYEES

a. Notice Period

1. Written specific RIF notices to employees will be issued not less than 60 days before the RIF effective date.

2. Specific RIF notices issued to employees do not require an extension of the time period if an amendment favorable to the individual is made. However, if an amendment results in a more severe action, a new 60 day specific RIF notice is required.

b. Content of the Notice to Employees: The written specific notice of RIF issued to an individual will include the following information:

1. A general statement of the reasons the RIF is being conducted;

2. A statement of the specific action to be taken i.e., separation, furlough, or reassignment;

3. The effective date of the RIF action;

4. The information on which the individual's RIF retention standing is based;

5. The place where the individual may inspect the regulations and records pertinent to his/her case;

6. If applicable, the reasons for retaining a lower standing individual;

7. If applicable, a statement that individuals are being separated under liquidation procedures without regard to retention standing and the date that the liquidation will be complete;

8. If applicable, the individual's rights, entitlements, and responsibilities with respect to outplacement programs that may be available;

9. If applicable, notice to the individual of the right to re-employment consideration;

10. If applicable, information on applying for unemployment compensation;

11. If applicable, information on the individual's eligibility to continue health and life insurance benefits; and/or,

12. The individual's appeal and grievance rights, the time limits for filing, a copy of the Merit Systems Protection Board (MSPB) appeal form, the address of the appropriate MSPB office and the location of the MSPB regulations regarding the processing of appeals.

STATUS DURING THE NOTICE PERIOD

20.21 The notice period begins the day after the individual receives the RIF notice. Neither the day the individual receives the notice nor the effective date of the RIF action may be counted in computing the notice period. Generally, individuals will remain in a duty status during the RIF notice period. Under emergency conditions due to lack of work, lack of funds, or lack of appropriations, individuals may be placed on annual leave, leave without pay, or other non-pay status, with or without their consent, for all or part of the notice period, with the prior approval of the Administrator/FAS and in consultation with the Union.

20.22 LEAVE WITHOUT PAY (LWOP) AND ANNUAL LEAVE USAGE

a. Individuals who receive an initial or subsequent notice of separation or furlough due to RIF will not be carried on LWOP beyond the effective date of the RIF action.

b. Individuals will not normally be carried in annual leave status beyond the effective date of a RIF action. However, if an individual being separated would become eligible to retire with an immediate annuity if retained in pay status beyond the effective date of a RIF action, he/she will be allowed to use accrued annual leave until he/she becomes eligible to retire.

COMPETITIVE AREAS FOR RIF

20.23 The Employer has made the determination that the competitive area shall be worldwide.

20.24 Establishing Retention Register.

a. Within each class, the retention register will be divided into three retention groups:

1. Retention Group 1 - Commissioned career members and tenured Foreign Service secretaries.

2. Retention Group 2 - Non-commissioned career candidates and untenured Foreign Service secretaries.

3. Retention Group 3 - Individuals serving on limited career extensions.

b. Individuals in Retention Group 3 will be released first, then individuals in Retention Group 2, and finally individuals in Retention Group 1. Individuals with the lowest number of retention points on the retention register will be released first.

20.25 An individual's standing on the retention register is determined by accumulated retention points based on length of service, relative standing, and veterans preference.

a. Length of Service: Foreign Service employee will receive one (1) retention point for each full year of completed Federal (including military) service. Completed service will be calculated based on the effective date of the RIF. For purposes of a RIF, the Service Computation Date for leave will be used in determining a Foreign Service employee's length of service.

b. Relative Standing

1. Four (4) points will be given for each time an individual has been ranked in the upper third of the class in which rated during the last five (5) evaluation periods before the RIF effective date.

2. Three (3) points will be given for each time an individual has been ranked in the middle third of the class in which rated during the last five (5) evaluation periods before the RIF effective date.

3. One (1) point will be given for each time an individual has been ranked in the lower third of the class in which rated during the last five (5) evaluation periods before the RIF effective date.

4. If an individual does not have five (5) evaluation periods in the Foreign Service, Civil Service evaluations will be credited to the extent necessary. If a Civil Service evaluation is used, the individual will receive four (4) points for an Outstanding performance rating, three (3) points for a Superior rating, three (3) points for "Pass" under a Pass/Fail system, and one (1) point for a fully successful rating.

5. If an individual does not have a combination of five (5) Foreign Service and Civil Service evaluations, the points for each rating received shall be added together and divided by the number of actual ratings received, and rounded

using mathematical rounding rules. This score shall become the rating of record for the years in which the individual does not have an actual rating, in order to bring the total number of evaluation periods to five (5).

6. When using Foreign Service evaluations, the relative standing of all individuals in a class must have been determined at least sixty (60) days prior to the issuance of the RIF notice for that evaluation period to be used in determining the retention standing. Civil Service evaluations used must have been received in the Servicing Personnel Office (SPO) not later than 60 days prior to the issuance of the RIF notice.

c. Veterans Preference: Points will be distributed as follows for those who are eligible:

1. Members who have compensable service connected disabilities of 30% or more - 3 points.

2. All other veterans - 1 point

BREAKING TIES IN RETENTION STANDING

20.26 If there is a tie on the retention register, the tie will be broken by using the earliest service computation date for leave. The individual with the earliest computation date for leave will be placed higher on the retention register.

PLACEMENT IN LIEU OF RIF

20.27 Based on the retention standing of individuals on a retention register, the Employer may choose to reassign an individual at class to a vacant Foreign Service position in lieu of separation by RIF. The offer of reassignment will be made to the individual with the greatest number of retention points (adjusted by the tie-breaking factor) that has been identified for RIF.

RECALL FROM FURLOUGH UNDER RIF

20.28 All individuals, regardless of class, will be re-ranked in a single listing based on their retention points computed under the RIF procedures. Individuals with the highest points will be recalled from furlough first. In the event of a tie, the individual with the earliest service computation date for leave will be placed higher on the listing.

20.29 RIGHTS TO INFORMATION FROM THE EMPLOYER

a. The Union reserves its statutory right to information.

b. The Employer will provide timely notice to the Union that the final unsanitized retention register(s) and all draft, preliminary retention registers are available for review such that adequate time is provided for Union input.

c. All individuals whose names appear on the retention register are entitled to review the records and information used in determining their retention standing.

1. Requests to review this data must be made to the SPO in writing.

2. If the individual making the request desires to grant access to this information to a representative, that representative must be named in the written request.

d. An individual adversely impacted by the RIF action is entitled to review the sanitized RIF retention register for his/her class.

e. A copy of the unsanitized RIF retention register used in running a RIF action will be provided to AFSA/FAS on the day RIF notices are provided to employees.

1. It is understood by AFSA/FAS that the copy of the RIF retention register provided to the Union may not be copied and/or released to individuals because of the sensitive personal information contained in it.

2. Also, it is understood that AFSA/FAS will refer to the SPO any individual desiring to review the RIF retention register or review the compilation of their personal RIF retention points. A representative of AFSA/FAS may accompany the individual during this review if the individual making the review so desires.

BENEFITS

20.30 RETIREMENT BENEFITS

a. Foreign Service employees who are separated under RIF and who are eligible for an immediate annuity on the effective date of the RIF will receive retirement benefits in accordance with applicable statutes and regulations.

b. Individuals eligible to receive an immediate annuity are not eligible to receive severance pay.

20.31 SEVERANCE PAY: Foreign Service employees who are separated under RIF and who are not eligible for an immediate annuity on the effective date of the RIF will be paid severance benefits in accordance with applicable statutes and regulations.

20.32 DEFERRED ANNUITIES

a. Foreign Service employees who are separated under RIF and who are not eligible for an immediate annuity but who have at least five (5) years of credit toward retirement, may elect to receive an annuity in accordance with applicable statutes and regulations. In accordance with current applicable statutes and regulations, this deferred annuity will commence at age 60.

b. In lieu of deferred annuities, Foreign Service employees may elect to receive a refund of the contributions they made in accordance with applicable statutes and regulations.

APPEAL AND GRIEVANCE PROCEDURES

20.33 An individual has the right to appeal the RIF action to the Merit Systems Protection Board (MSPB) or use the Foreign Service grievance procedure with ultimate appeal to the Foreign Service Grievance Board (FSGB). An individual cannot do both.

20.34 MSPB APPEALS

a. Appeals must be filed directly with MSPB during the 30 calendar days beginning with the day after the date on which the individual is separated or furloughed under RIF.

b. The filing of an appeal with the MSPB does not change the effective date of the action proposed in the RIF notice.

20.35 GRIEVANCES

a. Grievances will be limited to cases of reprisal, interference in the conduct of an individual's official duties, or similarly inappropriate use of the authority under Section 611 of the Act.

b. The individual must first file a grievance with the SPO prior to the effective date on which the individual is separated or furloughed under RIF. This filing does not change the effective date of the action proposed in the RIF notice.

c. If the grievance is not resolved within the Agency, the individual may then file a grievance with the FSGB. This filing does not change the effective date of

the action proposed in the RIF notice.

d. Any individual separated under RIF procedures is not entitled to interim relief. In other words, regardless of the nature or status of an individual's respective grievance, the individual will be separated on the effective date of the RIF.

REHIRE PRIORITY

20.36 Foreign Service employees separated under RIF will be rehired into the Foreign Service before any employees are converted through the lateral entry process, for a three-year period beginning on the date of the RIF. Individuals will be rehired at the class held on the date of separation. All individuals, regardless of class, will be re-ranked in a single listing based on their retention points computed under the RIF procedures. Individuals with the highest points will be rehired first. In the event of a tie, the individual with the earliest service computation date for leave will be placed higher on the listing. Any individual who declines an offer for rehire will be permanently removed from the rehire priority listing.

PLACEMENT ASSISTANCE

20.37 Placement assistance will be offered in accordance with the Federal, Departmental, and Agency Career Transition Assistance Program (CTAP).

20.38 The Employer will provide resume-writing software and access to the Internet and allow reasonable use of its equipment to prepare resumes by individuals seeking outplacement to the extent that such activities do not interfere with ongoing Agency work. Agency equipment shall include but not be limited to: computer, phones, fax machines, printers and copiers.

20.39 The Employer will grant administrative leave to the maximum extent possible without unduly interfering with the employer's business to attend the following:

a. USDA Career Transition Resource center;

b. job fairs;

c. job interviews;

d. seminars, counseling services and appointments with outplacement consultants; and,

e. other job search activities.

20.40 The Employer will make facilities available for:

a. in-house job fairs; and,

b. office space for outplacement consultants, counseling services, and classroom space for retirement and job hunting seminars.

20.41 The Employer will obtain and make available:

a. access for bargaining unit members to search job posting bulletin boards on Internet and other electronic sources; and,

b. retirement and job hunting seminars, counseling services, and outplacement consultants.

ARTICLE 21: FURLOUGH

POLICY

21.1 AFSA/FAS recognizes that circumstances beyond the control of the Employer may necessitate having to furlough employees. AFSA/FAS also recognizes that the decision to furlough employees, which employees are furloughed, and the duration of any furlough will be made by the Employer subject to numbers, and classes of bargaining unit members to be furloughed in nonemergency situations.

21.2 The Employer recognizes that AFSA/FAS, in agreeing to the following, does not waive any individual employee's rights under Statute or regulation.

21.3 Furloughs, whether they are emergency or nonemergency furloughs, will be implemented in accordance with applicable Statutes, regulations, and negotiated agreements.

21.4 Nonemergency furloughs will be implemented only if their necessity cannot be reasonably abated through other means, such as hiring freezes, reduction in travel or training that is not critical to the mission of FAS, reduction of contracts with consultants and contractors, etc.

DEFINITIONS

21.5 Days: Calendar days unless stated otherwise.

21.6 Emergency Furlough: A furlough because of lack of appropriations or lack of work due to unpredictable events such as natural disasters, fires, etc.

21.7 Furlough: The placement of an employee in temporary non-duty and non-pay status for not more than 30 consecutive days or 22 nonconsecutive work days during the twelve (12) month period beginning the day after the effective date of the furlough. For furloughs of more than 30 consecutive days or more than 22 nonconsecutive work days see Article 20 (RIF) of this Agreement.

21.8 Nonemergency Furlough: A furlough because of budgetary short-fall or lack of work other than noted in the definition of emergency furlough.

FURLOUGH NOTICES

21.9 In emergency furlough situations, employees will be given as much advance notice as possible.

21.10 In nonemergency furlough situations, employees will be given as much advance notice as possible but not less than the minimum required by Statute or regulation. In the event that no minimum notice period is defined by Statute or regulation, employees will be provided with a minimum of 14 days advance notice of furlough.

21.11 Employees will be provided written notice of furlough. The furlough notice will contain all of the information required by Statute or regulation, and will include the following:

a. A general statement of the reason for the furlough;

b. If the furlough is a nonemergency one, the notice will state the maximum number of furlough days;

c. If the furlough is an emergency one, the Parties recognize that the number of furlough days may not be known in advance and that the Employer may not be able to notify bargaining unit members. If the number of furlough days becomes known after the onset of the furlough, the Employer will make reasonable efforts to communicate this information to the furloughed employees;

d. An explanation of why the employee is being furloughed if not every employee is being furloughed; and,

e. The employee's appeal or grievance rights and the time limits for filing.

21.12 In nonemergency furlough situations, and to the extent possible in emergency furlough situations, the Employer will submit a draft furlough notice to AFSA/FAS for comment prior to distributing it to employees.

21.13 The Employer will provide AFSA/FAS with a list of employees which identifies those who will be furloughed.

a. In an emergency furlough situation, the listing of employees will be provided to AFSA/FAS on the day furlough notices are given to employees.

b. In a nonemergency furlough situation, the listing of employees will be provided to AFSA/FAS as much in advance of the anticipated furlough date as possible.

PROCEDURES

21.14 The Agency will identify the number of employees to be furloughed by program area,

geographical location, or class. Within this designation, the following applies:

a. In nonemergency furlough situations when not all employees are being furloughed, the Employer will ask employees to volunteer to be placed in leave without pay (LWOP) status.

1. The Employer reserves the right not to accept a voluntary request for LWOP from an employee for mission related reasons.

2. The savings from voluntary LWOP will be used to reduce the number of employees subject to furlough or the number of hours of furlough for all employees being furloughed.

3. If there are insufficient volunteers to mitigate the need for furlough, employees will be selected for furlough on the basis of their leave service computation date with the employee having the least amount of service being the first furloughed.

4. If there are more than enough volunteers to obviate the need for the furlough, employees will be placed in LWOP status on the basis of their leave service computation date with the employee having the most amount of service being given the first right of being furloughed.

b. In a nonemergency furlough situation, and to the extent it is possible to do so, the Employer will permit employees to choose the days on which they will be furloughed. In the event of scheduling conflicts among equally qualified employees, the employee with the most amount of service will be granted his/her request.

c. In a nonemergency furlough situation, and to the extent it is possible, the Employer will not schedule both the work day before and the work day after a holiday as furlough days.

21.15 SHUTDOWN PROCEDURES:

a. Necessary shutdown functions may include but are not limited to:

1. Making necessary contacts outside the Agency to communicate status of operations;

2. Canceling meetings, hearings, and other previously arranged Agency business;

3. Issuing notices to customers and cooperators regarding termination of

activities;

4. Performing the tasks necessary to protect classified and confidential information, including listing of all papers to be accorded confidential status and accounting for all classified documents;

5. Inventorying and preparing Government property for disposition; and,

6. Performing requisite administrative functions, such as processing payroll for the period until the expiration of funds, assuring that employees are accorded all due personnel rights, providing employees with requisite documents, etc.

b. The Employer shall minimize the number of employees required for shutdown activities.

1. Only employees designated as critical and employees notified as required for shutdown activities will be required to report for duty on the first day of an emergency furlough.

2. However, if noncritical employees or employees not required for shutdown activities are requested to report for duty, the Employer strongly urges that employees report for duty. Failure to report for duty during the employee's normal tour will result in the employee not being paid for that day if the furlough ends on or prior to 11:59 PM on that day. If the furlough ends prior to the beginning of an employee's scheduled tour of duty and the employee is either late reporting or fails to report on that day, he/she will be considered to be in Absence Without Leave status, absent a reasonable explanation for granting other leave status.

3. Employees on prior approved leave on the first day of an emergency furlough will not be required to report for work unless otherwise directed or designated as a critical employee.

c. Employees required to report to work on the first day or any subsequent days of shutdown will be:

1. Informed by their supervisors either orally or in writing of the shutdown activities which they are required to perform;

2. Released from work upon completion of their assigned shutdown activities and approval by their supervisor; and,

3. Informed by their supervisor as early as possible but not later than the termination of the employee's workday, whether the shutdown activity in which they are engaged requires the employee's presence on a subsequent day(s) and if so, where and to whom to report.

PERSONNEL CONSIDERATIONS

21.16 HOURS OF DUTY

a. During the period of an emergency furlough, full-time or part-time employees will be furloughed on the days and for the number of hours of each day in accordance with their last approved payroll time and attendance submission.

b. During nonemergency furloughs for budgetary short falls or lack of work, all full-time employees furloughed will be furloughed for the same number of hours. Part-time employees furloughed will be furloughed in the same proportion as full-time employees. For example, a part-time employee who works 20 hours a week will be furloughed for fifty (50) percent of the number of hours that a full-time employee is furloughed.

21.17 TIME IN NON-PAY STATUS

a. Furlough days count toward time-in-class.

b. The effective date of a within-class increase will not be delayed because an employee is placed on furlough.

21.18 ABSENCE AND LEAVE

a. An employee will not receive credit for annual or sick leave accruals during any pay period in which he/she accumulates 80 hours of LWOP (furlough time).

b. When an emergency furlough is required, employees on approved annual leave on the effective date of the furlough will have their annual leave canceled and they will be permitted to remain absent from work for the duration of the furlough.

1. Upon expiration of the furlough, employees who were on approved annual leave that did not extend beyond the end of the furlough will report for duty.

2. Employees who have had annual leave canceled due to a furlough will be given every opportunity to reschedule that leave.

3. Employees who have had annual leave canceled or who were prevented from taking scheduled annual leave due to a furlough, and who make reasonable efforts to reschedule their leave and are denied an opportunity to take use or lose leave by the Employer, are entitled to request restoration of any excess leave under exigency of the public service leave regulations. If regulatory requirements are met, the Employer will grant requests under these circumstances.

c. When an emergency furlough is required, employees on approved sick leave on the effective date of the furlough will have their sick leave canceled and they will remain absent from work for the duration of the furlough.

1. Upon expiration of the furlough, employees who were on approved sick leave that did not extend beyond the end of the furlough will report to duty unless their medical status precludes them from doing so.

2. If an employee's medical status precludes him/her from reporting to work upon the expiration of the furlough, the employee must request sick leave in accordance with applicable procedures.

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

e. Furlough days do not count against Family Medical Leave absences and entitlements.

f. Employees in continuation of pay (COP) status will remain in COP status in accordance with Department of Labor regulations during a period of furlough.

21.19 HEALTH AND LIFE INSURANCE

a. Health insurance benefits will continue for up to 365 days in non-pay status.

1. The Government shall continue to pay the Employer share of the health insurance premium.

2. The employee is responsible for his/her share of the health insurance premium. Payment of the employee's share of the premium during a furlough will be made in accordance with National Finance Center procedures.

b. Life insurance shall continue for up to 365 days in non-pay status at no cost to the employee.

21.20 PAY DURING FURLOUGH

a. Employees who are required to report for duty during an emergency furlough will be compensated in accordance with applicable Statute and regulation.

b. Employees who are placed on emergency furlough because of a lapse of appropriations will be retroactively paid when appropriations are approved to the extent permitted by Statute and regulation. Absence without charge to leave shall be retroactively granted barring statutory prohibition, or actions that would be in violation of the Anti-Deficiency Act, 31 U.S.C., or statements of Congressional intent to the contrary.

c. Furlough will not be used in lieu of another adverse or disciplinary action.

d. Performance expectations shall be adjusted to take into account the effect of being away from the workplace on furlough.

MISCELLANEOUS CONSIDERATIONS

21.21 To the extent the Employer has information available on contact points for unemployment compensation and other benefits to which employees being placed on furlough may be entitled, it will be provided to those employees.

21.22 Outside employment may be accepted during furlough days as long as the work does not constitute a conflict of interest.

21.23 To the extent possible, AFSA/FAS Vice President or designee shall be allowed access to the designated AFSA/FAS offices and related space during a furlough, of whatever type and duration, in order to continue to fulfill the Union functions and responsibilities delineated in Chapter 10 of the Act. AFSA/FAS recognizes that the Employer does not control access to the South Building, but the Employer shall seek cooperation and approval by the Department to ensure Union access.

EXPEDITED FURLOUGH GRIEVANCE AND APPEALS

21.24 This section applies only to furlough grievances and appeals. Either Party may submit an implementation dispute grievance over the interpretation of this Article, or its general application, to the servicing Labor Relations Specialist or AFSA/FAS Vice President.

21.25 The grievance will be in writing and submitted within 5 work days of either Party's becoming aware of the issues giving rise to the grievance.

21.26 Within 5 work days of receipt of the grievance, representatives of the Parties will meet to attempt to mutually settle the grievance.

21.27 If settlement cannot be reached, the Parties will request a listing of not less than 3 nor more than 5 arbitrators from the Federal Mediation Conciliation Service.

21.28 Within 2 working days of receipt of the list of arbitrators, representatives of the Parties will meet and select an arbitrator by alternately striking names. The loser of a coin toss will strike first.

21.29 The arbitrator's authority will be limited to interpreting this Article and determining remedies for breach of this Agreement. The arbitrator is not empowered to fashion a remedy that decides the appeal of any individual employee.

21.30 An expedited arbitration procedure will be used. The arbitration hearing will be scheduled for the earliest date available on the calendar of the arbitrator selected. The arbitrator shall be asked to issue a bench ruling, followed by a short written confirmation of his/her award.

21.31 The arbitrator's fee will be paid by the losing party. In the event of a split decision by the arbitrator, the arbitrator's fees shall be paid by the Parties in a proportion determined by the arbitrator.

21.32 This grievance procedure does not cover individual employee appeals of furlough actions.

ARTICLE 22: MEDICAL CLEARANCES, WAIVERS, AND HEALTH ISSUES

MEDICAL CLEARANCE AND WAIVERS

22.1 The regulations and procedures governing FAS pertaining to the Medical and Health Program are those cited in this Article and 3 FAM 1900.

22.2 It is the responsibility of the individual to notify, in writing, the Deputy Administrator/ FAA and the Servicing Personnel Office (SPO), no less than 60 days prior to departure for an overseas assignment, that they have NOT obtained medical clearance for all family members. The individual, based upon the information that has been provided by State Department, should also indicate what steps he or she is taking to resolve the issue.

MEDICAL REVIEW OF A CLEARANCE DECISION FOR IN-SERVICE INDIVIDUALS

22.3 On occasion, a medical clearance is denied because an individual or his/her eligible family members(s) has a medical condition that is serious enough to preclude or limit overseas assignment.

22.4 If a medical clearance is denied or limited, an individual may request, in writing, a medical review of the clearance decision.

22.5 At the request of an individual, the Medical Director/State Department will convene a panel of three (3) physicians to review the clearance decision. If the review board determines that there would be undue risk to the examinee at the proposed post, the original clearance decision will stand.

22.6 Following the decision of the review board, an individual may request an administrative waiver for a proposed overseas assignment. The individual must initiate a request to the SPO, in writing, for the waiver within 10 days of notification of the clearance decision. After notifying the SPO, the individual must also submit the following information within 20 days:

a. a written explanation of why the individual believes the medical requirements should be waived; and,

b. medical documentation, if available, from physicians other than State Department that would support the individual's request for the waiver.

22.7 An FAS Overseas Employment Review Committee will be convened to review the waiver request. The Committee will consist of the Deputy Administrator/FAA or his/her designee, a representative from the SPO, a Foreign Service Officer selected

from a list of six (6) recommendations provided by AFSA/FAS, and a representative from the Civil Rights Staff/FAS.

22.8 The Committee will contact the Medical Director/State Department or designee and request a summary presentation of the clearance decision. In reviewing the decision, the Committee should also consider such factors as the length of the proposed assignment, the impact the assignment may have on the individual's or eligible family member's medical condition, Agency need, and necessary accommodations. Based on the information provided, the Committee will determine whether an administrative waiver is appropriate. If a waiver is granted, the decision will be forwarded to State Department for implementation.

MEDICAL REVIEW OF A CLEARANCE DECISION FOR PRE-EMPLOYMENT

22.9 On occasion, a medical clearance may be denied or limited because an applicant has a medical condition that is serious enough to preclude conversion to the Foreign Service.

22.10 If a medical clearance for an applicant or eligible family member is denied or limited, an applicant may request, in writing, an administrative waiver.

22.11 The individual must initiate a request to the SPO, in writing, for the waiver within 10 days of notification of the clearance decision. After notifying the SPO, the applicant must also submit the following information within 20 days:

a. a written explanation of why the applicant believes the medical requirements should be waived; and,

b. medical documentation, if available, from physicians other than State Department that would support the applicant's request for the waiver.

22.12 An FAS Overseas Employment Review Committee will be convened to review the waiver request. The Committee will consist of the Deputy Administrator/FAA or his/her designee, a representative from the SPO, a Foreign Service Officer selected from a list of six (6) recommendations provided by AFSA/FAS, and a representative from the Civil Rights Staff/FAS.

22.13 The Committee will contact the Medical Director/State Department or designee and request a summary presentation of the clearance decision. In reviewing the clearance decision, the Committee should consider such factors as progressive nature of the medical condition, whether accommodation of the medical condition would cause an undue hardship on the Agency, and whether the applicant is willing to accept, in writing, unaccompanied tours. Based on the information provided, the Committee

will determine whether an administrative waiver is appropriate. If a waiver is granted, the decision will be forwarded to State Department for implementation.

22.14 An applicant or eligible family member(s) cannot be granted an administrative waiver of the medical examination on the grounds of religious convictions.

FITNESS FACILITIES

22.15 The Employer agrees to continue support of FAS employees' ready access and utilization of fitness/health centers located at the South Building or any work site where the majority of FAS employees are located. AFSA/FAS reserves the right to bargain to the fullest extent permitted by law and executive order, over fitness and health facilities if bargaining unit members' access to fitness and health facilities changes.

FOOD SERVICES

22.16 The Employer agrees to continue to support FAS employees' ready access and utilization of food service centers located at the South Building. AFSA/FAS reserves the right to bargain to the fullest extent permitted by law and executive order over food service facilities if bargaining unit members' access to food service facilities changes.

SMOKING POLICY

22.17 The smoking policies are clarified in the USDA Secretary's announcement (DR 4400-6) dated December 16, 1996. The Employer agrees that no bargaining unit member shall be discriminated against based on his/her smoking status.

SMOKING CESSATION PROGRAM

22.18 The Employer will allow up to two hours per pay period on duty time for employees to voluntarily attend the smoking cessation program of their choice. This opportunity will be made available on a one time basis for each employee. Employees who attend smoking cessation programs during work hours will notify their direct supervisor in advance with the following information: the purveyor of the program, the schedule of classes, and the total hours to be spent in the classes.

22.19 The parties recognize that continuation of this program is dependent on available funds within the Employer's budget. The Employer will review the availability of funds as part of its annual budget process. Should the Employer believe a change in the program is warranted, the Employer will provide AFSA/FAS with a written

statement describing the change, and negotiate if appropriate and requested.

22.20 The Employer reserves the right to terminate the program upon the announcement of reduction in force and/or furlough actions that may be necessitated by budget or ceiling constraints or other constraints beyond the control of the Employer.

ARTICLE 23: LATERAL ENTRY PRECEPTS

LEGAL AUTHORITY

23.1 These regulations are issued in accordance with sections 302 and 306 of the Act. All Foreign Service Officers (FSO's) of FAS shall be appointed by the President, by and with the consent of the Senate. All appointments will be made to a class and not to a particular post. No person will be eligible for appointment as a Foreign Service Officer unless that person is a citizen of the United States. Such an appointment is initially to career candidate status with subsequent commissioning to career status.

PURPOSE OF LATERAL ENTRY

23.2 The purpose of the Lateral Entry Program is to ensure that the Foreign Agricultural Service has a sufficient number of FS Officers to accomplish its mission.

POLICY

23.3 Appointment as a FS Career Candidate in the Foreign Agricultural Service is governed by this Agreement. An applicant who successfully passes the lateral entry examination process will be offered a five-year limited appointment in the Foreign Service at the FP-04 Class level (GS-12 equivalent), following receipt of medical and security clearances. A candidate below a GS-12 grade will not be converted until promoted to a GS-12 grade. A candidate at a GS-13 or higher grade will be converted at the GS-12 equivalent class. Career candidates who accept another type of appointment or leave the Agency prior to conversion will lose their eligibility to convert and will need to reapply, if they wish to join the Foreign Service.

23.4 Applicants are responsible for submitting the forms necessary to obtain medical, security, and suitability clearances to the Servicing Personnel Office (SPO) within 60 calendar days from receipt of notice that they have been invited to join the Foreign Service. Applicants will then have one year from the 60 calendar day expiration date to obtain all required clearances for conversion to the Foreign Service. Exceptions to this one year deadline will be made where circumstances are administratively beyond the control of the applicant. Requests made to applicants for additional forms, tests, or other data necessary to complete the investigation must be complied with, in accordance with the time stated in the request. Applicants who fail to submit the required forms, or schedule required tests, as specified above will not be converted into the FS. Applicants who fail to obtain the required clearances within the 1-year time frame indicated above will be required to reapply for future lateral entry opportunities if they are still interested in a career in the FAS Foreign Service.

23.5 The Commissioning Board, normally makes its initial determination regarding a

career candidate's commissioning into the Foreign Service after the candidate has spent three years under a limited appointment. A subsequent review for candidates not commissioned on initial review occurs 12 months thereafter. If necessary, the Board will conduct a third review approximately 60 days prior to the expiration of the candidate's limited appointment. Every candidate is entitled to a minimum of one review by the Board; however, the period of career candidacy may not exceed five years. Candidates who are not commissioned prior to the expiration of their limited appointments will be separated from the Career Candidate Program no later than the expiration date of their appointments.

23.6 Candidates are entitled to re-employment rights to their former GS level in FAS under section 310 of the FS Act, if they entered from a career/career-conditional appointment and failed to meet the requirements for commissioning.

APPLICABILITY

23.7 These regulations apply to employees of FAS. Lateral entrants will be drawn from FAS employees of proven ability who possess high potential for advancement and meet the eligibility requirements.

ELIGIBILITY REQUIREMENTS

23.8 Applicants must be in a career or career conditional position and have eighteen (18) months of service in the U.S. Department of Agriculture of which twelve (12) months must have been in a position in FAS, be a GS-11 grade or above at the time of application, and meet the qualification requirements for the Foreign Agricultural Affairs Officer series.

APPLICATION FORMS

23.9 Applicants for lateral entry must submit the following information in response to a vacancy announcement:

a. a resume, or Optional Application for Federal Employment (OF-612), or any other written format such as an Application for Federal Employment (SF-171);

b. supplemental statements addressing the specific evaluation criteria in the announcement;

c. the Supervisory Appraisal Form;

d. a current performance appraisal (no more than 15 months old);

e. a narrative statement;

f. the applicant's certification of worldwide availability; and

g. any other information requested in the vacancy announcement.

QUALIFICATIONS REVIEW

23.10 The SPO establishes a file for each applicant, placing therein all submitted documents and forms which will be used to evaluate the applicant's potential for appointment as a FS career candidate. The filing of an application for appointment in the FS does not in itself entitle an applicant to examination. The applicant's file is reviewed by the SPO to determine if the applicant meets the eligibility requirements and the qualification standards for the Foreign Agricultural Affairs Officer series.

DETERMINING THE NEED FOR AND NUMBER OF LATERAL ENTRANTS.

23.11 Each year, the Administrator/FAS will determine the number of additional FS Officers the Agency requires to accomplish its mission and so inform AFSA prior to soliciting lateral candidates. In determining this number, the Administrator will take into account workforce planning, including, but not limited to, estimated future FS retirements, resignations, separations, personnel on details, and personnel on leave without pay.

EVALUATION PANEL - COMPOSITION

23.12 If it is determined that additional FS Officers are required, the SPO will solicit applications from eligible Agency employees. The SPO will review all applications and forward to the Qualifications Review and Evaluation Panel (QREP) those applications which meet all minimum eligibility requirements.

23.13 The QREP will consist of five-members appointed by the SPO. The SPO will advertise the opportunity to participate as a panelist via an announcement to Foreign Service Officers. To fill panel positions, the SPO may select any eligible individuals, including non-respondents. Individuals should not serve on consecutive QREPs, unless other qualified individuals are unavailable. The QREP is comprised of the following:

a. One FAS Senior Foreign Service (SFS) Officer as Chairperson;

b. Two FAS Career FSO's in Class 2 or above;

c. One FAS Career FSO in Class 3 or above;

d. One Career FSO in Class 1 or above, from another Foreign Affairs Agency.

23.14 The SPO will provide AFSA a list of the recommended panel members for comment prior to public announcement. AFSA will have two business days to provide comment. Every effort will be made to comply with EEO goals to ensure that at least one QREP member is a member of a minority group and/or a female.

EVALUATION PANEL - RESPONSIBILITIES

23.15 The QREP will create and submit to the SPO for transmission to the Administrator/FAS, a rank-ordered list of applicants, starting with the highest ranked, it has determined possess the qualifications and abilities required for successful performance as a Foreign Service Officer.

23.16 The Administrator/FAS will review the list and, starting with the highest ranked individual, refer, to the extent possible, the number of qualified applicants to the Foreign Service Board of Examiners (BEX) considered necessary to obtain the number of FS Officers required by the Agency.

23.17 In its deliberations, the Panel will rate each applicant's knowledge, skills, and abilities against criteria identified as essential to successful performance in the Foreign Service. The Panel also will consider supervisory appraisals, experience, training, foreign language proficiency, disciplinary actions and awards when rating each applicants knowledge, skills, and abilities.

23.18 The SPO will provide Panel members clear, written guidance for rating applicants. In addition, the SPO will remind Panel members that the QREP is an initial screening and ranking process designed to provide the Administrator with a list of applicants who are best qualified for selection and submission to the BEX for further evaluation.

23.19 The QREP may provide Management with recommendations to improve the Panel's policies, procedures, and materials. Such recommendations will be submitted in writing by the Panel Chairperson to the SPO as soon after the conclusion of the QREP as possible. Prior to the next QREP, Management will implement those recommendations it approves and provide the Chairperson a written document, with a copy to AFSA, of all modified policies, procedures and materials. If the Chairperson so requests, Management will discuss its reasons for rejecting any recommendation.

23.20 Normally, within one week of the conclusion of the QREP, the SPO will forward the Panel's recommendations to the Administrator/FAS.

BEX PRECEPTS

23.21 Applicants submitted for further consideration are scheduled for an examination conducted by a panel of three deputy examiners appointed by the BEX. Two of the deputy examiners are FAS career FSO's and one is an FSO from the Department of State or other Foreign Affairs agency.

23.22 The BEX examination consists of two segments; a written examination and an oral examination. The examination process is designed to determine an applicant's competence to perform the work of an FSO, potential growth in the Foreign Service, and suitability to serve as a representative of the United States abroad.

a. Written Examination: The purpose of this examination is to determine if the applicant can produce written work which meets the standards of an FSO in a field office setting and to measure the applicant's understanding of one or more facets of the FAS mission and programs.

b. Oral Examination: The purpose of this examination is to determine the applicant's knowledge of FAS in general and its programs in particular. It is designed to assess the applicant's skill in oral communication, ability to marshal key facts to present positions and/or arguments on topics related to the work of FAS abroad, and the applicant's suitability to serve as a representative of the United States abroad.

c. Grading

1. The applicant's written and oral presentations will be graded by the deputy examiners according to standards established by the BEX and FAS.

2. Applicants who score at or above the passing levels for both examinations will be permitted to continue the lateral entry process. Applicants who score below the passing level for either of the examinations will be withdrawn from further consideration for lateral entry. They may apply again when lateral entry is offered.

3. The decisions of duly constituted panels of examiners and deputy examiners are final, unless modified by specific action of the BEX.

4. Applicants will be notified of the results of the examination by the Panel's Chairperson on the day of the oral examination.

5. Once an applicant has been recommended by the BEX , s/he will be given a conditional offer to convert to the FS contingent upon a satisfactory

completion of security, medical and suitability reviews.

FOREIGN LANGUAGE REQUIREMENT

23.23 An applicant may be offered a career conditional appointment without first obtaining proficiency in a foreign language, but a candidate cannot be commissioned as a career FSO until s/he has achieved proficiency in a foreign language. Proficiency must be achieved prior to expiration of the five-year limited appointment. Candidates who fail to satisfy language qualification requirements by the end of their five-year limited appointment will be separated from the Service.

MEDICAL ELIGIBILITY

23.24 An applicant recommended by the BEX panel for an FSO career candidacy is required to be medically cleared for worldwide assignment. Eligible family members must be medically cleared in order to travel at U.S. Government expense to assignments abroad.

MEDICAL DETERMINATION

23.25 The Medical Director of the Department of State determines, on the basis of the report of the physician(s) who conducted the medical examination, whether an applicant has met the required medical standards for appointment to the Foreign Service and whether an applicant's eligible family members are medically cleared to accompany the applicant to assignments abroad (see 3 FAM 1900, Appendix B, Health and Medical Program).

MEDICAL DISQUALIFICATION

23.26 When an applicant or eligible family member fails to obtain medical clearance, the applicant may apply for a medical waiver. Waivers will be reviewed based on Article 22 (Medical Clearances, Waivers, and Health Issues) of this Agreement and 3 FAM 1900 Appendix B. An Overseas Employment Review Committee established by FAS and the Department of State, when authorized by the applicant or eligible family member, will review the medical files of the applicant or eligible family member who has been denied medical clearance. Decisions of the Committee are final and not appealable.

23.27 If a waiver is not granted to an eligible family member who is denied a clearance, the applicant must agree, in writing, to accept unaccompanied tours.

SECURITY INVESTIGATION AND SUITABILITY CONSIDERATIONS

23.28 Before conversion into the FS can be completed, each applicant must obtain a top secret security clearance under Executive Orders 10450 and 12968.

DRUG TESTING

23.29 Career candidates are subject to the Department's random drug testing program.

EFFECTIVE DATE OF CONVERSION

23.30 Conversion of those career candidates at the GS-11 grade level will be delayed until they are promoted to GS-12. Effective dates for conversion will not be delayed more than ninety (90) calendar days to allow for receipt of any within grade increase.

TIME OF CONVERSION

23.31 Career candidates will be converted to the class of FP-04 (equivalent to GS-12). Candidates' pay will be determined based on their highest previous rate of civil service pay that falls within, or up to, step 14, the maximum step within the FS pay plan. There is no saved pay beyond the basic pay rate of FP-04, step 14.

TERMINATION OF ELIGIBILITY

23.32 Those career candidates who do not obtain a language proficiency prior to the expiration of their five-year limited appointment will be separated from the career candidate program no later than the expiration date of their appointment. Separated candidates will be entitled to re-employment rights under Section 310 of the FS Act.

ASSIGNMENT AVAILABILITY

23.33 Assignments are made in accordance with Article 27 (Assignment Policy) of this Agreement. Career candidates must be worldwide available. Refusal of an assignment will be handled in accordance with procedures outlined in Article 27.

ARTICLE 24: FOREIGN SERVICE CAREER CANDIDATE PROGRAM

LEGAL AUTHORITY

24.1 The regulations relating to appointment, assignment, promotion, commissioning and termination of Foreign Service Officer (FSO) career candidates and Foreign Service Administrative Assistant (FSAA) career candidates are prescribed under authority of Sections 211, 301, 302, 306, 307, 309, 404, 502, 601, 602, 603, 605, 610, and 611 of the FS Act.

PURPOSE

24.2 The Foreign Service Career Candidate Program is a comprehensive program of training, assignment, counseling and evaluation intended to enable career candidates to demonstrate through on-the-job experience, and in the shortest time practicable, whether they have the aptitude and capability to serve successfully as career Foreign Service Officers or Foreign Service Administrative Assistants.

APPLICABILITY

24.3 These regulations apply to career candidates who have been appointed under the authority of the FS Act, Section 306, for a period not to exceed 5 years.

ASSIGNMENTS

ASSIGNMENT DETERMINATION

24.4 When there are projected vacancies abroad, Foreign Agricultural Affairs/Washington (FAA) and the Servicing Personnel Office (SPO) review the career candidate list and the Deputy Administrator/FAA recommends career candidates to the Administrator/FAS for consideration for assignments abroad. Offers of assignments are made only after the proposed assignments are approved by the Administrator/FAS.

CRITERIA AND OBJECTIVES

24.5 Career candidates are to be selected for an assignment abroad or long-term language training as soon as practicable after conversion to the Foreign Service (FS).

24.6 The Deputy Administrator/FAA is guided by the following parameters when recommending assignments:

a. Current and long-range staffing needs of the FS;

b. Effective utilization of a candidate's abilities and potential for progressive career development;

c. Individual qualifications (language, previous work experience, education, etc.); and,

d. Assignment preferences as indicated by a candidate on the "Bidding for Overseas Assignments" form, FAS-193.

24.7 When assigning FSO career candidates, the Deputy Administrator/FAA, as guided by Article 27 (Assignment Policy) of this Agreement and the constraints and needs of the FS and other limitations, will ensure that no initial assignment is made without reasonable expectations that the candidate will be able, through applied effort, to become language qualified before the period of career candidacy is completed. Career candidates preparing for language qualification at post are also expected to concurrently demonstrate career competency in their work performance.

TRAINING BEFORE ASSIGNMENT

24.8 Language Training: FSO career candidates normally will receive language training before their initial assignment abroad in accordance with the guidance provided in Article 31.44-47, unless they are already qualified in a language relevant to the assignment.

24.9 Management, Leadership and Other Training: FSO career candidates normally will be scheduled for 80 hours of training in such areas as supervisory skills, Foreign Service orientation, area studies, information technology, coping with violence, security abroad, and other necessary training associated with service abroad including, when feasible, leadership, interpersonal communications, budget management, and public speaking.

PROMOTIONS

PROMOTION OF FSO AND FSAA CAREER CANDIDATES

24.10 FSO career candidates and FSAA career candidates will be considered for promotion by the annual FS Selection Board after serving the requisite time-in-class required for career FS Officers or FS Administrative Assistants in their class, as established in the Selection Board Precepts. They will be reviewed in the same competitive groups as career individuals. Any time spent in an equivalent grade in the Civil Service will be credited.

24.11 FSO career candidates may receive one promotion prior to achieving proficiency in a foreign language. If a candidate is recommended for another promotion by a subsequent Selection Board, that promotion cannot be effected until the candidate satisfies the language proficiency requirements. If the career candidate has not achieved language proficiency prior to the convening of the next Selection Board, the candidate must re-compete for promotion.

COMMISSIONING AND TENURE

FSO CAREER CANDIDATE COMMISSIONING POLICY

24.12 The Commissioning and Tenure Board (hereinafter referred to as the "Board") recommends FSO career candidates for commissioning or to terminate a candidacy. Only career candidates recommended by the Board are eligible for commissioning.

24.13 The primary criterion for recommending commissioning is based on a candidate's demonstrated potential, for success in the Foreign Service and adaptability to the discipline and rigors of a Foreign Service career through Class 1.

24.14 No quota or numerical limit is placed on the number of commissions a Board can recommend. Each candidate's performance, as recorded in his/her personal performance file, is reviewed separately. It is not compared against the performance of other career candidates. Career candidates not recommended for commissioning after three Board reviews will be separated from the FS at the expiration of their limited appointments or at an earlier date, if so recommended by the Board. A limited appointment normally is for five years.

a. After completing three years under a limited appointment, a candidate will be referred to the Board for review. While two years of service abroad are desirable, completion of one full year of FAS service abroad is required for commissioning. In appropriate cases, the Board may recommend commissioning, conditional upon subsequent completion of the one year of service abroad requirement before the expiration of the candidate's limited career appointment. In such cases, the Board's decision will not become effective until after the service requirement is met. A candidate who fails to meet this requirement will be separated from the Service at the end of his/her limited appointment.

b. A candidate recommended for commissioning will be commissioned as an FSO as soon as possible after the conclusion of the Board. A candidate not recommended for commissioning by the first Board will be reviewed by a second Board 12 months later, and, if necessary, by a third Board approximately 60 days prior to the expiration date of the candidate's limited

appointment. Career candidates not recommended by the third Board for commissioning will be separated from the FS no later than the expiration date of their limited appointments.

c. The SPO will notify career candidates of board results in a timely manner.

FS ADMINISTRATIVE ASSISTANT CAREER CANDIDATE TENURE POLICY

24.15 The Board recommends FSAA career candidates for tenure or to terminate a candidacy. Only those career candidates recommended by the Board are eligible for tenure in the Foreign Service.

24.16 The criterion for recommending tenure is based on a candidate's demonstrated potential to perform effectively as an FSAA in a normal range of assignments through Class 4.

24.17 No quota or numerical limit is placed on the number of tenures a Board can recommend. Each candidate's performance, as recorded in his/her personal performance file, is reviewed separately. It is not compared against the performance of other career candidates. Career candidates not recommended for tenure after three Board reviews will be separated from the FS at the expiration of their limited appointments or at an earlier date, if so recommended by the Board. A limited appointment normally is for five years.

a. After completing two years under a limited appointment, a candidate will be referred to the Board for review. While two years of service abroad are desirable, completion of one full year of FAS service abroad is required for tenure. In appropriate cases, the Board may recommend tenure, conditional upon subsequent completion of the one year of service abroad requirement before the expiration of the candidate's limited career appointment. In such cases, the Board's decision will not become effective until after the service requirement is met. A candidate who fails to meet this requirement will be separated from the Service at the end of his/her limited appointment

b. A candidate recommended for tenure will be appointed as a career FSAA. A candidate not recommended for tenure will be reviewed by a second Board 12 months later and, if necessary, by a third Board approximately 60 days prior to the expiration date of the candidate's five year limited appointment. Career candidates not recommended for tenure by the third Board review will be separated from the FS no later than the expiration date of their limited appointments.

c. The SPO will notify career candidates of board results in a timely manner.

INFORMATION TO BE CONSIDERED BY THE BOARD

24.18 The SPO will guide the Board in the technical procedures it must follow. The Board will address all queries regarding its work to the SPO.

24.19 The Board will base its decisions only on material properly included as part of a candidate's performance folder, including information on disciplinary and adverse actions.

24.20 A candidate is entitled to interim performance appraisals prior to the second and third Board reviews. Interim appraisals will cover the period between the candidate's last annual performance appraisal reviewed by the Board and October 31 of the year the Board meets, for Boards meeting in December. For Boards meeting during other months, the interim period will end 30 days prior to the date of the Board meeting.

a. Interim appraisals will be completed using the same forms as those required for an annual FS performance appraisal.

b. Interim appraisals will be superceded by annual performance appraisals. Thus, interim appraisals will be removed from a candidate's performance folder when an annual appraisal covering the same period is added to the folder.

c. Interim appraisals will be permitted for Commissioning and Tenure Boards only.

24.21 The Board will ignore any information in the file which is currently inadmissible. Such information will not be the subject of discussion or a basis for the Board's decisions.

24.22 Board members will neither seek nor receive any information on a candidate other than that properly included in the performance file.

FOREIGN LANGUAGE PROFICIENCY

24.23 An FSO career candidate may not be commissioned until the candidate has demonstrated proficiency in at least one foreign language. In appropriate cases, however, the Commissioning and Tenure Board may render a favorable decision conditional upon subsequent achievement of the required language proficiency before the expiration of the limited career appointment. In such cases, the Board's action will not take effect until the required language proficiency is achieved. A candidate who fails to obtain language qualification by the end of a five-year limited

appointment will be separated from the Service.

24.24 Language proficiency requirements for commissioning are listed below, by language category. Management reserves the right to add to or delete from the languages under each category based on Agency needs, in consultation with AFSA. An up-to-date list of the language categories can be found in FAS Notice, "Language Proficiency Requirements for Commissioning of Foreign Service Officers and for Incentive Pay." The notice can be found in the Overseas Administrative Handbook on the FASTNET and currently on the FAA Homepage. Management will normally only pay for training to bring an employee to the required proficiency level for commissioning in languages under the conditions listed in the FAS notice.

Language Categories
(As of the effective date of this agreement)

HARD	INTERMEDIATE	BASIC	ADDITIONAL
Arabic	Bulgarian	French	Czech 2/
Chinese (Mandarin)	Indonesian	German	Chinese (Cantonese) 1/
Japanese	Polish	Italian	Danish 3/
Korean	Russian	Portuguese	Dutch/Afrikaans 3/
	Serbian	Spanish	Greek 2/
	Thai		Hindi 2/
	Turkish		Hungarian 2/
	Ukranian		Malay 2/
	Vietnamese		Romanian 3/
			Swahili 2/
			Swedish 3/
			Tagalog 2/
			Urdu 2/
			Croatian 2/
	Commissioning Proficiency Level		
S-2/R-N	S-2/R-2	S-3/R-3	1/ S-2/R-N
			2/ S-2/R-2
			3/ S-3/R-3

24.25 FSAA career candidates may be tenured without demonstrating foreign language proficiency.

THE COMMISSIONING AND TENURE BOARD

24.26 Organization: The Board is composed of five members appointed by the SPO. Every effort will be made to comply with EEO goals to assure that at least one Board

member is a member of a minority group and/or a woman. To ensure the widest possible participation, the SPO will solicit for members through an announcement to Foreign Service Officers. The SPO may, however, select members from any appropriate source in order to meet the composition shown below. The SPO will provide AFSA a list of the recommended Board members for comment prior to notification of prospective board members. AFSA will have two business days to provide comment. The Board is composed of the following five members:

a. An FAS Senior Foreign Service Officer who will serve as Chairperson;

b. Two (2) FAS career FSO's in Class Two or above;

c. An FAS career FSO at least one grade above any candidate reviewed; and,

d. A career FSO in Class One or above from another Foreign Affairs Agency.

24.27 Responsibilities and Duties: The Board will meet annually or at the request of the SPO to review the performance files of all eligible career candidates and FSAA career candidates and make recommendations regarding the commissioning or tenure of these career candidates. No action unfavorable to a candidate will be taken without review of the file by all members of the Board. The concurrence of at least three members is required for an action to:

a. Commission or tenure a candidate;

b. Not commission or tenure a candidate, but continue the candidacy for subsequent Board review; or,

c. Not commission a candidate and separate the candidate from the Foreign Service.

24.28 Board Reports: The Board will prepare, in draft, the following reports:

a. An alphabetical list of the names of FSO career candidates and Administrative Assistants the Board has determined should be commissioned as career FS Officers or tenured as career Foreign Service Administrative Assistants.

b. An alphabetical list of the names of the FSO career candidates and Administrative Assistants reviewed for the first and second time that the Board has determined should not be commissioned but whose candidacy should be continued for subsequent Board review. The Board will prepare statements, as guidance to the career candidates, identifying areas in which they should direct their efforts to improve. Such statements will not become part of a candidate's

file unless the candidate so requests in writing.

c. An alphabetical list of the names of the FSO career candidates and Administrative Assistants reviewed for the first or second time that the Board has determined should not be commissioned and for whom early separation is warranted. The Board will prepare a statement explaining the reasons early separation is appropriate and the SPO will establish the effective date of termination.

d. An alphabetical list of the names of FSO career candidates and Administrative Assistants reviewed for the final time that the Board has determined should not be commissioned or tenured. Career candidates not recommended for commissioning or tenure will be separated from the FS at the end of their limited appointments. The Board will prepare a statement explaining the reasons separation is appropriate.

e. At their discretion, the Board may prepare a statement of observations on the operation of the Career Candidate Program.

24.29 Board Recommendations: The Chairperson will give the candidate lists to the SPO advisor to prepare in final form for signature. After the Chairperson has signed them, the lists will be returned to the SPO which will:

a. Initiate the necessary administrative action to finalize the recommendations;

b. Notify the career candidates in writing of the Board recommendations; and,

c. Release the notification letters to the appropriate Deputy Administrators for delivery to their career candidates.

REMOVAL OF NAMES FROM COMMISSIONING AND TENURE LISTS

24.30 The procedures below apply to all FSO career candidates and Administrative Assistant career candidates included on the commissioning and tenure lists prepared by the Board. (Adapted from 3 FAM 2246.8)

a. The Deputy Administrator/FAA, or designee, may order the temporary exclusion from a commissioning or tenure list of the name of any candidate if, in the SPO's opinion, such commissioning or tenure would be inconsistent with the national interest or the efficiency of the FS. Such reasons must be based upon either:

1. Issues of loyalty, security, misconduct, suitability, or malfeasance; or,

2. Indications that documentation available to the Board regarding an employee's performance may have been significantly inaccurate or incomplete.

b. The SPO will inform the affected candidate in writing of the action taken and will initiate, pursue, or monitor such inquiry, investigation, or proceeding as is appropriate to the issue giving rise to the removal. The candidate will be given five (5) working days from receipt of the written notification to submit whatever information or documentation s/he believes is pertinent to the case. The five day limit may be extended at the discretion of either the Deputy Administrator/FAA or the SPO. Upon disposition or resolution of the issue, the SPO will either:

1. Request that the necessary administrative action be initiated to commission or tenure the candidate, respectively, as a career FSO or career FSAA; or,

2. Request that the original Board reconvene to determine whether the candidate is, on the basis of the updated performance file, qualified to be commissioned as a career FSO or tenured as a career FSAA.

   (a) The reconvened Board will not receive any information regarding the candidate not previously supplied, other than material supplied under the provisions of this section. Prior to Board review, the candidate will be provided copies of all material added to the file and will be accorded the opportunity to submit a written response or rebuttal for placement in the file.

   (b) The subsequent finding of the Board will be final and binding. If the Board concludes that the candidate is to be commissioned as a career FSO or tenured as a career FSAA, the SPO will initiate administrative action to commission or tenure the candidate. If the Board concludes that the candidate is not presently qualified for commissioning or tenure based on the current record, the SPO will make permanent the prior exclusion of the candidate's name from the commissioning or tenure list.

ARTICLE 25 FOREIGN SERVICE SELECTION BOARDS

STATEMENT OF PURPOSE

25.1 The Foreign Service Performance Precepts, established in accordance with the FS Act, provide the rules of conduct that a Foreign Agricultural Service (FAS) Foreign Service Selection Board must follow and serve as guidelines to:

a. rank order all career members and career candidates based on their relative merit;

b. determine those career members and career candidates qualified for promotion, meritorious service within-class increases, within-class increases, performance pay, and SFS re-certification;

c. identify career members and career candidates subject to low ranking and selection out for noncompetitive or unsatisfactory performance; and

d. offer or renew limited career extensions.

25.2 These precepts are policy statements describing desirable performance by career members and career candidates of the Foreign Service. As a result, all Foreign Service career members and candidates should use these precepts as guidelines for the performance of their duties and the development of their careers.

25.3 If the Administrator/FAS chooses to extend the provisions of this Article to employees serving on limited non-career appointments to the Foreign Service, these employees will be reviewed with all Foreign Service employees.

ELIGIBILITY REQUIREMENTS FOR SELECTION BOARD COMPETITION

25.4 Senior Selection Board

a. Senior Foreign Service (SFS) career members are eligible for Senior Selection Board competition.

b. Class 1 Foreign Service career members are eligible for Senior Selection Board competition. All career members in Class 1 and above are eligible for promotion except those career members who have not served as a "Head of Post" or "Director of an Agricultural Trade Office" and as a supervisor or management official in FAS/Washington. Any Class 1 career member who has not made application to the Senior Foreign Service will be withdrawn from promotion consideration after the Board has completed the rank

ordering. (See Special Directives, Appendix E of this Article).

25.5 Intermediate Selection Board: All career members and career candidates in Classes 4 through 2 and Foreign Service Administrative Assistants are eligible for Intermediate Selection Board competition.

25.6 Re-certification: SFS career members who have been continuously employed in the SFS for 156 weeks preceding the end of the Foreign Service performance cycle will be reviewed for re-certification. The career member's performance during the last three years prior to evaluation by the Board will be reviewed. These three years include the year in which the Board convenes. (See Special Directives, Appendix D of this Article for specific instructions on re-certification.)

25.7 Limited Career Extension: SFS career members in the classes of Career Minister, Minister Counselor, and Counselor whose maximum time-in-class will expire after the date on which the Board meets but before the next Board convenes, are eligible for consideration for a Limited Career Extension (LCE) and will be reviewed by Panel A of the Senior Selection Board. Career officers at the FO-1 level whose TIC/TIS expiration occurs between Board meetings are also eligible for such consideration and will be reviewed by Panel B of the Senior Selection Board.

25.8 Pay Level Adjustments: SFS career members who have served at their present salary for one complete performance cycle and received a "Satisfactory" rating are eligible for pay level adjustments provided they have received their three year re-certification (if applicable).

25.9 Performance Pay: At the end of the most recent rating period, SFS career members are eligible to compete for performance pay. Performance pay is discussed in further detail in Appendix B of this Article.

25.10 Credit for Equivalent Service: In determining eligibility for Selection Board review, career members and career candidates will receive credit for previous time spent in an equivalent GS grade.

25.11 Non-consideration: A Board will not consider career members and career candidates who, at the time the Board convenes, are pending separation. The performance folders of career members and career candidates who retire, resign, or separate while the Board is in session will be withdrawn from consideration.

BOARD COMPOSITION AND COVERAGE

25.12 The composition of the Selection Boards will reflect the gender, ethnic, and cultural diversity of the Agency workforce. The chairperson of each Board panel will preside over the work of each panel and will ensure that the panels carry out their tasks in accordance with the General and Special Directives (Article 25.19-25.56 and the Appendices to Article 25, respectively).

25.13 Senior Selection Board

a. Composition

1. The Senior Selection Board will be composed of two panels - Panel A and Panel B - with five members each.

2. Panel A will consist of the following members:

(a) A USDA senior official who will serve as chairperson;

(b) Two (2) USDA Senior Executive Service (SES) members;

(c) An SFS career member from another Foreign Affairs Agency; and,

(d) A public member.

3. Panel B will consist of the following members:

(a) An FAS SFS career member who will serve as chairperson;

(b) An FAS SFS career member;

(c) An FAS SES member or SFS career member;

(d) An SFS career member from another Foreign Affairs Agency; and,

(e) A public member.

b. Coverage: The Senior Selection Board panels will review career members of the Foreign Service as follows:

1. Panel A will review the performance folders of:

(a) All eligible SFS career members by class. The panel will rank order each career member, by class, for promotion to the next authorized

class.

(b) All eligible SFS career members as one competitive group. The panel will rank order each career member for performance pay and identify from the rank ordered list those career members who should be recommended for Presidential Rank Awards (for Distinguished or for Meritorious Service), and those career members who should be recommended for performance awards (see Appendix B of this Article for the Special Directive on Performance Pay).

(c) All SFS career members eligible for an LCE.

(d) All applicable SFS career members for re-certification, as required by the Ethics Reform Act of 1989 (Public Law 101-194, November 30, 1989).

(e) All applicable SFS career members for pay level adjustments as required by the FS Act.

2. Panel B will review the performance folders of:

(a) All eligible career members in Class 1 for promotion into the SFS to the Class of Counselor.

(b) All Class 1 career members eligible for an LCE.

3. The rank-ordered lists developed by Panels A and B will be used to determine actions specified in (1) and (2) above, as well as those actions specified in the General and Special Directives.

25.14 Intermediate Selection Board

a. Composition: The Intermediate Selection Board will be composed of three panels, C, D, and E, with five members each. These panels will consist of the following members:

1. An FAS SFS career member who will serve as chairperson;

2. An FAS career member in Class 1 or above;
3. An FAS career member or career Civil Service employee in Class 1 or Grade 15 or above;

4. A career member in Class 1 or above from another Foreign Affairs Agency;

and,

5. A public member.

b. Coverage: Panels C, D, and E will review the performance files of all eligible individuals as indicated, and rank order each career member, career candidate, and administrative assistant for actions specified in the General and Special Directives.

1. Panel C - all eligible Class 2 career members;

2. Panel D - all eligible Class 3 career members and career candidates; and

3. Panel E - all eligible Class 4 career members, career candidates, and all administrative assistants.

25.15 Lists provided to the Boards: The Boards will be given a list of career members and career candidates and a list of Administrative Assistants to rank order for all the purposes to which this article refers.

25.16 The SPO will publicly invite all eligible FAS Foreign Service Officers to apply to serve on Selection Boards, but may select Board members from any appropriate source. The SPO will provide AFSA a list of recommended Board members for review. AFSA will have two business days to provide comment before the list is announced.

25.17 An individual may not serve on the same panel nor on a panel one level up in consecutive years, unless there are no other qualified individuals available to serve. For example, an individual who serves on Panel B one year, may not serve on Panel B or Panel A the following year, if there are other qualified individuals available to serve.

25.18 Oath of Office: Board members will sign and heed the following oath of office and adhere to the Precepts. Failure to observe these instructions may result in disciplinary action or penalties as prescribed by the Privacy Act. Board members should report to the SPO any attempt to provide them information not authorized by the Precepts.

> "I, _____, do solemnly swear or affirm that I will, without prejudice or partiality, perform faithfully and to the best of my ability the duties of a member of a Selection Board; that I will preserve the confidential character of the personnel records used by the Board; that I will adhere to the Precepts; and that I will not reveal to unauthorized persons any information concerning the personnel records used or the deliberations and recommendations of the Board."

GENERAL DIRECTIVES: The Intermediate and Senior Selection Boards (hereinafter referred to as "the Boards") are regulated by the General Directives listed below.

25.19 The major responsibilities of the Boards are:

a. To identify individuals who, by their demonstrated performance and evidence of potential for higher levels of responsibility, merit recommendation for promotion, performance awards and SFS pay level adjustments.

b. To identify individuals who, on the basis of performance and growth potential, are least competitive within their class.

c. To identify from among those whom the Boards have low-ranked any individuals who have not maintained the standards of performance for their class (see Article 25.38).

d. To identify individuals whose performance during the last performance appraisal period warrants denial of their next within-class salary increase (see Article 25.35)

e. To make recommendations for the improvement of agency policies and procedures for performance appraisals and Selection Board operations.

FOREIGN SERVICE PERFORMANCE EVALUATION

25.20 When determining an individual's qualifications for performance recognition, the Boards will look at the rated individual's accomplishment statement, the supervisor's (rating official's) assessment, the reviewing official's comments and other appropriate material contained in an individual's official performance folder. Prior to convening, Board members will be briefed by the Servicing Personnel Office (SPO) to ensure all members are familiar with FAS Foreign Service performance evaluation procedures and precepts. AFSA representatives will be invited to attend the general briefing of all Board members.

25.21 Composition of the Evaluation: FS performance evaluation procedures were changed starting with the 1995/96 evaluation review period.

a. Since 1996, a performance evaluation consists of:

1. A one page accomplishment statement from the rated individual;

2. A one page supervisory assessment, called the Rating Official's Assessment, of the individual's capabilities as indicated by his/her performance during the rating year;

3. The rated individual's response to the rating official's assessment;

4. Comments from the reviewing official attesting to the rating official's assessment;

5. The rated individual's assignment letter and/or performance standards and elements, as appropriate; and

6. For the Senior Officer at Post, a Chief of Mission's (COM) evaluation. The COM evaluation will be no more than two pages in length and will consist of comments regarding work performance in two areas of responsibility: 1) Post Program and Resource Management; and 2) Policy Coordination and Representation.

25.22 Career Candidates: Regardless of the date of lateral entry, an individual's first performance evaluation as an FS career candidate will cover the period October 1 through March 31 of the following year. It will be submitted using the CS evaluation format for review by the next FS Selection Board. A career candidate's second performance evaluation will cover an entire FS evaluation period (April 1-March 31). It will be submitted using the FS evaluation format, regardless of the actual date of lateral entry. Thus, regardless of a candidate's actual lateral entry date, the first two appraisals submitted to FS Selection Boards by an individual will be, for example:

	Appraisal Period	Appraisal Format	Board Date
1st	10/01/02 - 03/31/03	Civil Service	September '03
2nd	04/01/03 - 03/31/04	Foreign Service	September '04

a. To ensure that all career candidates are treated equally, no individual will be lateraled into the Foreign Service between the date a Selection Board convenes and December 31 of the same year, unless Management determines that a candidate must be converted to expedite a foreign assignment determined necessary to the Agency's mission. In such cases, AFSA will be informed of the agency need requiring the emergency assignment.

b. Either Party may open any section of Article 25 pertaining to career candidate performance evaluations if either CS or FS evaluation dates change or if other changes occur which significantly impact evaluations of recently appointed career candidates.

25.23 Multiple Positions: If an individual has held more than one position during a rating cycle, each position being under a performance plan for at least 90 days, the individual is entitled to complete only one accomplishment statement covering all of

the positions held.

25.24 Multiple Supervisors: If an individual's supervisor changes after the individual has been under a performance plan for at least 90 days, the departing supervisor must complete an interim supervisory assessment of the individual's performance during the rating period and, if possible, provide this assessment directly to the new supervisor. The rated individual should receive a copy. At the end of the performance review period, the new supervisor's assessment of the individual's performance will cover the entire review period and include comments from the previous supervisor's interim assessment. Thus, a rated individual will receive only one supervisory assessment for a performance review period.

25.25 Rating Official's Comments: Supervisors should provide both an overall assessment of the rated individual's capabilities as well as specific comments, as appropriate, about the individual's performance in each of the following general competency areas:

a. Communications - Precision, clarity, and force of oral and written expression; use of foreign language in working situations; skill in communicating with a variety of audiences, particularly in cross-cultural contexts.

b. Management and Supervision - Ability to organize and utilize his/her own time and that of subordinates; effective supervision of work units and/or programs and policies; skill in establishing work goals and successfully accomplishing established goals or, if warranted, modifying goals; skill in maintaining work morale and productivity.

c. Leadership - Ability to define policy and program directions and get peers and superiors to buy into those directions; personal credibility with other elements of the U.S. government, industry, and foreign governments.

d. Initiative - Ability to identify emerging and/or potential issues which could impact U.S. agriculture and provide succinct background and suggest action plans to address these issues. Persistence and creativity in accomplishing non-routine activities which significantly contribute to the Agency's mission.

e. Technical - Command of agricultural trade principles and application of international trade rules and U.S. trade law; skill in applied economic analysis; skill in effectively using current communications technology and the full range of available software applications relevant to the individual's current assignment.

NOTE: Management reserves the right to add, modify or delete from these competencies

based on Agency needs, in consultation with AFSA. Further, management acknowledges its obligation to notify and, if requested, to bargain over the procedures and arrangements to mitigate any adverse effect such changes may bring about prior to implementation in accordance with Article 11.

25.26 Performance Plans

a. Domestic Assignments: Individuals serving in Washington, D.C. or other domestic assignments will have elements and standards specific to the assignment/position.

b. Foreign Assignments: Individuals serving abroad, including ATO Miami, will receive their performance plans in their assignment letters. In general, each letter will be signed by the employee prior to departure for post and will identify general job responsibilities and expectations and the length of the assignment. Performance elements specified in the assignment letter will be included in each individual's performance appraisal. These are (in alphabetical order) as follows:

1. Agricultural and Market Intelligence: Preparation and dissemination to appropriate audiences of detailed information on which the U.S. Government can make sound trade and promotional policy decisions, and which U.S. private export interests can use in their business planning.

2. Agricultural Trade Promotion: Management and oversight regarding public sector activities, including credit and credit guarantee programs, economic development and market promotion programs.

3. Diplomacy: Development and maintenance of close working relations with public and private sector officials in the region for which the career member or career candidate is responsible, in order to enable them to accomplish the promotional, market access, and intelligence functions of their position in an efficient and timely manner.

4. Equal Opportunity/Civil Rights: Annual performance plans are developed, implemented, and modified to ensure full compliance with the Government Performance and Results Act (GPRA), the Secretary's Civil Rights Implementation Team (CRIT) report, and applicable policies and regulations; planning, evaluation, and tracking systems for performance indicators are developed and maintained that successfully ensure accountability for actions and activities that are defined in annual performance plans, including CRIT; and quarterly performance reports which account for measurement of goals

and objectives are submitted to immediate supervisor and reviewing official to comply with legislative requirements of GPRA and CRIT, and applicable policies and regulations.

5. Management and Supervision: Effective utilization of program and staff resources, giving due attention to the need for internal controls, applicable U.S. and foreign laws and regulations, and departmental and FAS management policies.

6. Market Access: Identification of tariff and non-tariff barriers to U.S. agricultural exports, active participation in measures leading to their reduction and eventual removal, and active monitoring of compliance with bilateral and multilateral trade agreements.

c. The following performance elements (in alphabetical order) shall be the basis for the evaluation of Foreign Service Administrative Assistants:

1. Administrative Support: Prepare management reports; handle routine interactions with various embassy sections and, as required, with outside service personnel, contractors and vendors.

2. Confidential Assistant to the Ranking Agricultural Officer: Maintain the officer's schedule and handle travel arrangements; provide typing and other communications support for the officer and, as needed, other staff members; perform other tasks related to managing staff schedules and the office work flow.

3. Equal Opportunity/Civil Rights: Perform all duties in a manner which consistently demonstrates fairness, cooperation, and respect toward co-workers, office visitors and all others in the performance of official business. Demonstrate awareness of EO/CR policies and responsibilities.

4. Office Management: Manage controlled correspondence, cables, and electronic messages; maintain the office filing and communications systems; document and, as necessary, revise office procedures in consultation with the office head; keep necessary logs and record systems; provide direction and training for other support staff, as required.

5. Program Activities: If required, assist with or, with minimal supervision, manage specific activities or programs in areas, such as marketing, trade policy, food aid, technical assistance and budget.

NOTE: Management reserves the right to add, modify or delete from these performance

elements and standards based on Agency needs, in consultation with AFSA. Further, management acknowledges its obligation to notify and, if requested, to bargain over the procedures and arrangements to mitigate any adverse effect such changes may bring about prior to implementation in accordance with Article 11.

BOARD CONSIDERATIONS

25.27 Equality of Consideration

a. The Boards will compare all individuals solely on merit with absolute fairness and justice. In particular, the Boards will not disadvantage any individual, directly or indirectly, for reasons of race, color, religion, sex, age, national origin, marital status, sexual orientation, disabling condition, or other non-merit factors.

b. The Boards will not consider any inadmissible comments discovered in an individual's performance appraisal or in other evaluation materials, such as training reports or letters of commendation (see Appendix F of this Article).

c. To assure equity of consideration, the following guidance is provided to the Boards:

1. Seniority in Class: The length of time an individual has been in the same or comparable class should be a neutral factor in recommending promotion. It is the quality of experience that should be thoroughly considered.

2. Details to Outside Organizations: To advance its mission goals and broaden an individual's experience, the Agency may approve details to private institutions and other agencies and departments. Such assignments should be considered the same as assignments to positions within the Agency.

3. Training: The selection of an individual for training represents an investment in the future of the Foreign Service and constitutes an endorsement of the individual's potential for development. The Boards also should be aware that all individuals assigned to long-term training, particularly senior executive training, are selected on a competitive basis. Therefore, Boards should ensure that individuals in extended training are given the same consideration as individuals elsewhere. In addition, independent efforts at academic, cultural, and professional self-improvement, particularly when undertaken on an individual's own time, should be given due consideration when there is a direct and documented relationship to the Agency's mission.

4. Short-Term Assignments: Performance effectiveness during short-term and

long-term assignments must be evaluated on the same basis. The Boards should not penalize an individual for holding a series of short-term assignments during a review period. Supervisory assessments for multiple assignments during a single review period should be incorporated into the final rating official's assessment, if requested by the employee.

5. Hardship Assignments: Service in hardship assignments can demonstrate a dedicated and disciplined attitude toward the Service. The Board should give due recognition to those who have successfully coped with difficult and sometimes dangerous environments and who have used such experience to enhance their contribution to the Service and to develop their own performance potential. The Board should understand, however, that the needs of the Agency and career paths may not permit all individuals to serve in hardship assignments.

6. Foreign Language Qualification Requirement: Career candidates may receive only one promotion prior to achieving proficiency in a foreign language. If a candidate is recommended for another promotion by a subsequent Board, the promotion cannot be effected until the career candidate has achieved proficiency in a foreign language. If the career candidate has not achieved proficiency prior to the convening of the next Board, the candidate must re-compete for promotion.

25.28 Leave Without Pay (LWOP): Individuals may be granted LWOP to broaden their skills through academic programs, temporary jobs in the private sector, cultural activities which are relevant to the Agency's mission or for other reasons.

a. An individual who has been on LWOP for 180 days or longer during a performance review period will be considered non-ratable and will not be reviewed by the Boards for that period, unless the individual so requests. An individual who has been on LWOP for less than 180 days during a performance review period will be considered ratable and will be reviewed by the Boards for that period, unless classified non-ratable for other reasons. If the individual is:

1. Non-Ratable: The SPO will confirm an individual may be non-ratable and the Boards will document the individual's non-ratable status. An individual classified as non-ratable will receive a one (1) year TIC/TIS extension, regardless of the actual time over 180 days the individual was on LWOP during the rating period. In addition, the individual's non-ratable status will be recorded in his/her performance folder.

2. Ratable: An individual who is reviewed by the Boards will not receive a

TIC/TIS extension for any time on LWOP during the rating period.

b. Performance Evaluation Qualifications: An individual on LWOP who has also worked in FAS/W during the rating period may qualify to submit FAS performance evaluation forms. An individual qualifies to use FAS performance evaluation forms, if s/he has worked in FAS/W for 90 days or longer during the rating period. An individual who does not meet the 90 day requirement, cannot use FAS evaluation forms and, therefore, may not submit accomplishments related to work performed in FAS during the period. Instead, the individual's next rating period will be amended to include any time worked (i.e., less than 90 days) but excluded from the individual's last rating period. The purpose of this provision is to ensure that all time worked in FAS/W during a rating period for which no TIC/TIS extension is granted is reviewed by the Boards. If an individual:

1. Qualifies to Use FAS Evaluation Forms: In the accomplishments statement, the individual can include accomplishments from work performed while on LWOP and work performed while in pay status. In addition, comments from the individual's LWOP supervisor can be included in the FAS supervisory (Rating Official's) assessment. FAA and the SPO must approve all references to accomplishments related to work performed while on LWOP, to ensure that they are germane to the Agency's mission.

2. Does Not Qualify to Use FAS Evaluation Forms: The individual may submit a one page accomplishment statement based on work performed while on LWOP and a one page statement from his/her LWOP supervisor. Both statements must adhere to the rules governing FS performance evaluations (e.g., length, format, etc). FAA and the SPO must approve the statements to ensure that the work described is germane to the Agency's mission.

c. An individual on LWOP at the time this contract is ratified may choose to be grandfathered under the terms of the previous contract for the entire period of LWOP or to be covered under the terms of this contract for the entire period of LWOP, but may not be covered by both. If the individual chooses to be covered under the terms of this contract and was required to be reviewed by the Boards under the previous contract during the period of LWOP, s/he will be considered as not having been reviewed for the purposes of section 25.28a above.

25.29 Other Factors

a. FAS encourages and seeks candid and constructive criticism in evaluation

reports. Such criticisms should be weighed carefully by the Boards against the individual's overall performance and efforts to improve previously identified skill deficiencies and should not alone, prevent Boards from recommending an individual for promotion.

b. Personal issues such as medical problems, or physical or personality characteristics should be considered only to the extent that they have impacted an individual's performance.

c. All comments about an individual's family, including comments about the participation of a spouse or dependents in diplomatic, social, or community activities are inadmissible and must be ignored by the Boards. (see Appendix F of this Article).

d. Except in connection with specific charges leading to disciplinary actions or separation from the FS, the Boards should not consider references to alcoholism or drug abuse, or efforts at rehabilitation.

e. Any reference to low ranking by previous Boards or to administrative action taken to deny an individual a within-class salary increase must be disregarded, except when the individual, in writing, specifically consents to the inclusion of such reference.

f. If the Board discerns an indication of unfairness in a performance folder for any reason, it will discount the statement or implications and refer the matter to the SPO for correction, as appropriate.

g. Whenever possible, performance appraisals should be typed. An individual should not be penalized, however, if any part of the appraisal is handwritten.

FOREIGN SERVICE PROMOTIONS

25.30 Basis for Promotion

a. Promotion is recognition that an individual has the experience and demonstrated capability to perform the duties and responsibilities required at a higher class. It is not a reward for prior service, although the performance of present and past duties usually indicates the degree to which an individual has developed or is developing the qualities needed for successful performance at a higher class. A willingness to risk criticism in order to voice sensible dissent and to engage in constructive advocacy of policy alternatives is particularly relevant, as is performance under unusually difficult and dangerous circumstances. When considering individuals for promotion into

and within the Senior Foreign Service (SFS), the Boards should take special care to give due consideration to demonstrated achievement and competence in the aforementioned areas.

b. Career members of the SFS occupy the most demanding and sensitive positions within FAS. They are responsible for the formulation, implementation, direction, coordination, and attainment of the foreign agricultural policies of the United States. Therefore, in ranking career members for promotion into or within the SFS, additional emphasis should be placed on the degree of an individual's demonstrated leadership and competence in positions that require the ability to plan, organize, and administer programs; to represent U.S. interests internationally; to administer and allocate resources; and to supervise, motivate, and develop personnel. Individuals who have demonstrated that they are particularly effective supervisors and managers should be credited with higher quality experience in the ranking process.

c. When considering individuals for promotion to Class 1 and into or within the SFS, the Boards should remember that in creating the SFS, the Government stated in the Foreign Service Act that it intended to establish a Service, "characterized by strong policy formulation capabilities, outstanding leadership qualities, and highly developed functional, foreign language, and area expertise."

29.31 Factors to be Considered

a. The Boards should consider for promotion those individuals whose records indicate the experience and ability to perform at the higher level at the present time and who have displayed superior long-range potential. This is one of the Boards' most important functions and must be exercised with care and discernment.

b. The Boards are required to review an individual's most recent five years of service or the period the individual has been in his/her present class, whichever is longer. A Board should not give undue weight to any single performance appraisal, but should note that a Meritorious Service Increase (MSI) awarded by a previous board, especially multiple MSIs awarded in an individual's current class, is an indication that an individual has been previously judged ready for promotion. Each Board should ensure that all individuals ranked promotable have made significant accomplishments while in their current class.

c. The Boards should identify for promotion those individuals who have

demonstrated superior performance and potential by their ability to meet work goals or requirements. Boards should not penalize those individuals whose records indicate that mitigating circumstances, i.e., circumstances outside the authority delegated to the position, prevented the setting or attainment of goals or work requirements.

d. The Boards should evaluate the extent and quality of an individual's supervisory and managerial performance, including performance related to special assignments or projects which may or may not entail direct supervision of individuals. Individuals demonstrating a higher degree of supervisory and managerial ability should be credited higher in the ranking process than individuals who do not. Supervisory and managerial skills are particularly important when considering career members for promotion to Class 1, or into or within the SFS.

e. The Boards should disregard the fact that an individual has occupied a position below their class when evaluating performance.

f. The Boards should assess an individual's accomplishment statement and the supervisory assessment against position requirements in evaluating and assigning relative performance levels within a class.

g. The Boards shall consider foreign language proficiencies. Proficiency in a foreign language should be reflected in an individual's accomplishments. In addition, language proficiency, when applicable, should be documented in the supervisory assessment.

25.32 Tied Scores: In the initial ranking, if two or more individuals are tied, Boards shall break the tie using the following procedures:

a. First Tie Breaker - Assign points giving precedence to individuals who have displayed the greatest overall superior performance as demonstrated by previous MSI awards.

b. Second Tie Breaker - Assign points giving precedence to individuals who have achieved higher speaking proficiency in one or more foreign languages.

c. Third Tie Breaker - Use the Board chairperson's score.

25.33 Promotion Recommendations and Opportunities: The Boards will consider individuals for promotion without regard to the number of promotion opportunities that may be available. The number of promotion opportunities in each class will be recommended by the SPO and approved by the Administrator/FAS.

Recommendations shall be based upon a systematic long-term projection of personnel flows and needs designed to provide:

a. A regular, predictable flow of recruitment into the Foreign Service;

b. Effective career development patterns to meet the needs of the Foreign Service; and,

c. A regular, predictable flow of talent upward through the ranks and into the Senior Foreign Service.

25.34 Safeguard Provision

a. Prior to convening the Boards, the Administrator/FAS will determine the expected number of promotions by class required by the Agency and provide AFSA/FAS with a sealed envelope containing a copy of the memorandum establishing these numbers. Board members will not be informed of the numbers.

b. At the conclusion of their work, Board Panels will seal their findings in an envelope. As soon as possible thereafter, the Panels' and Management's sealed envelopes will be opened by the Administrator/FAS in the presence of an AFSA/FAS representative. The Administrator will confirm that the Panels have recommended a sufficient number of promotable officers to meet Management's predetermined promotion requirements. If not, AFSA will be immediately informed.

c. As expeditiously as possible thereafter, Management will announce the actual number of promotions by class as well as MSI recipients and recommendations for promotion into the Senior Foreign Service.

d. If the actual number of promotions is lower than the predetermined number, Management will provide AFSA/FAS a confidential briefing during which the discrepancy will be explained.

e. If the Administrator/FAS extends the provisions of this Article to employees serving on limited, non-career appointments to the Foreign Service, the number of promotions by class, established under (a) above will be increased by the number of limited, non-career appointee promotions for each class. In addition, such promotions will not be considered in future FS flow through calculations.

OTHER BOARD FUNCTIONS

25.35 Within-Class Salary Denials

a. Section 406 of the Act provides for within-class salary increases for eligible individuals in Class 1 and below who have met the standards of performance for their salary class.

b. Denial of a within-class salary increase for individuals in Class 1 and below is based upon a Board finding that the individual's performance during the review period did not meet the standards required for the efficient conduct of the work of the Foreign Service. Among the reasons for such a finding are:

1. a low rate of productivity;

2. lack of initiative or resourcefulness in carrying out assigned duties;

3. consistent ineptitude or poor judgment;

4. serious weakness in meeting supervisory or managerial responsibilities during the last performance appraisal period;

5. documented finding by FAS of prejudiced or discriminatory conduct; or

6. failure to conform conduct to Foreign Service requirements or to abide by official responsibilities as documented by disciplinary action(s) in the individual's file.

c. Serious consideration should be given to denial of a within-class salary increase when an individual is low ranked (see section 25.38).

d. If an individual is recommended for denial of a within-class salary increase, a separate statement of reasons shall be prepared by the Board and furnished to the Associate Administrator/FAS, for determination as to whether the recommendation should be sustained.

25.36 Meritorious Service Within-Class Increase (MSI): Individuals in Class 1 and below will automatically be considered for an MSI if they are recommended for promotion by the Boards but are not promoted.

25.37 Monetary Performance Awards: Individuals not recommended for promotion by the Boards are eligible for monetary awards from the FS performance awards pool. The Boards will identify those individuals not ranked as promotable, who demonstrated

the greatest accomplishments during the most recent annual performance review period and, starting with the highest achieving individuals, create rank-ordered lists, as follows:

a. For FS employees, excluding Senior Foreign Service Officers and FS Administrative Assistants, the Selection Boards will create a rank-ordered performance awards list for each class, comprised of all individuals not ranked as promotable.

b. For FS Administrative Assistants, the Selection Boards will consider Administrative Assistants as a single class and create a rank-ordered performance awards list comprised of all Administrative Assistants not ranked as promotable.

c. Senior Foreign Service Officers are ineligible for cash awards from the FS awards share pool. See Appendix B of this Article for information on Senior Foreign Service performance awards.

25.38 Low Ranking and Selection Out

a. Low Ranking: The Boards should identify those individuals in each class who are least competitive in terms of performance or potential, including SFS career members recommended for conditional recertification, when applicable. Based on these results, the Boards will select those individuals who should be low-ranked and these individuals will be advised of their standing. When determining low rankings, Boards should be guided by the extent to which placement in the rank-order reflects relative weakness in performance or potential.

b. Selection Out: All career members are subject to selection out under Section 608 of the FS Act. Selection out is prescribed when a career member or FS Administrative Assistant fails to maintain the standards of performance for his/her class, when compared against the performance of colleagues in the same class.

1. After completing the low ranking process, the Boards will again review the performance files to identify individuals who may not have met the standards of performance for their class. The file of each individual so identified will be sent to the Performance Standards Board (PSB) along with a statement prepared by the Selection Boards, a copy of which will be sent to the individual. The statement will justify the Boards' referral through a balanced presentation of the individual's strengths and weaknesses, citing examples, and, as appropriate, quoting from performance records. The statement shall

draw on material from more than one rating period within the last five years and, to the extent possible, from more than one rating official and more than one reviewing official.

2. Based on the Boards' referral and statement, the PSB will independently identify individuals to be selected out.

SENIOR SELECTION BOARD

25.39 General Guidance: The Senior Selection Board is responsible for assuring that the records of all individuals under its review are considered fully and fairly. In comparing individuals' relative capabilities, the Board should understand that assignment patterns may vary widely for several reasons. Therefore, the Board should base its judgments on the record of an individual's demonstrated competencies and actual accomplishments and not on the position description or title. The Board should not penalize an individual who may have completed less traditional assignments. Rather, the Board should thoroughly consider the full record of an individual's performance and not give undue weight to any single assignment or performance rating. The Board should give full credit for demonstrated competencies, fulfilled responsibilities, and documented achievements. Should a period of performance not be covered by a performance appraisal, the Senior Selection Board should not discount the individual's overall standing in any way, but should assume that the individual would have received a rating fully comparable to those already in the performance file.

25.40 Policy, Procedures, and Criteria Governing LCE's

a. General Policy

1. An LCE will rarely be granted and only for compelling Agency needs. A career member should not expect to receive an LCE. Only career members of the Senior Foreign Service and Class 1 who are in their last year of TIC/TIS and who are not selected for promotion are eligible for consideration for an LCE.

2. The Secretary of Agriculture delegates to the Administrator/FAS the authority to grant LCE's. Under this authority, the Administrator/FAS determines the Agency's need for each LCE and selects, in rank order from the list provided by the Selection Board, each individual who will be granted an LCE. The Administrator will weigh the following criteria when deciding to grant an LCE:

(a) the importance to the Agency of retaining a specific skill(s),

determined prior to paneling the Selection Board;

(b) the impact of an LCE on promotional opportunities in the SFS and Class 1; and

(c) the need to provide a regular and predictable flow through the ranks of the Foreign Service.

3. The number of LCEs the Agency may require and a written description of the associated skill(s) will be included in the Safeguard Envelope provided by the Administrator/FAS to AFSA prior to the convening of the Boards.

4. Each LCE will be for no more than two (2) years in duration. No LCE recipient is eligible for promotion but a recipient is eligible for performance pay and awards. No career member may serve under any combination of LCE's that exceeds five (5) years.

5. Career members who are not granted an LCE will be retired under the provisions of Section 609 of the Act. The SPO establishes the retirement date. For career members serving in Presidential appointments, the date of retirement is effected upon completion of service in such appointments. The Administrator/FAS may, in compelling circumstances, postpone the date of retirement due to TIC/TIS limits for a period not to exceed one (1) year from the original TIC/TIS date.

b. Procedures

1. Panel A of the Selection Board will review, by class, all SFS career members and Panel B, all Class 1 members eligible for consideration for an LCE.

2. LCE deliberations will commence after the Board has completed its deliberations for promotion, low ranking and selection out. No special Selection Board will be convened to specifically review performance records for LCE consideration. Prior to LCE deliberations, the Board will be briefed on the policy, criteria, and procedures governing LCE's.

3. The SPO will provide the Board with the names of all career members eligible for consideration who have not formally notified the SPO that they do not wish to be considered for an LCE.

4. The Board will review the performance folders of all eligible individuals and, using the criteria provided below, rank order by class, those individuals it deems qualified for an LCE, starting with the most qualified.

5. The Administrator/FAS or, if appropriate, an official higher in the chain of command, will review the Board's recommendations. This official may grant an LCE only to those career members recommended by the Board and only in the rank order established by the Board. Names may be removed from the LCE list only under the conditions established in Section 25.56 below, governing the removal of names from promotion lists.

c. Criteria

1. The Board will apply the same criteria used for promotions. However, recognizing that members granted an LCE will serve only in their present class, the Board will give considerably less weight to evidence of potential to perform at the next higher class and considerably more weight to the quality of performance and potential for continued outstanding service in the class in which the member is being considered for an LCE.

2. The Board will also consider, in particular, the following criteria:

(a) Extent to which the career member has demonstrated expertise in the skill(s) associated with an LCE;

(b) Extent to which the career member has served in a variety of positions within FAS, both in the United States and abroad, where leadership, executive, and managerial skills were effectively developed/applied, and the need of the Agency to retain those skills; and

(c) Extent to which the career member has developed language expertise in one or more foreign languages and has applied those skills in foreign assignments.

25.41 Recertification: The Board will review and evaluate for recertification the performance of SFS career members who have been continuously employed in the SFS for 156 weeks preceding the end of the appraisal cycle. Recertification will be based on 3 years' performance, as intended by the Ethics Reform Act (see Appendix D of this Article).

25.42 Pay Level Adjustments: Pay level adjustments are not automatic. In reviewing career members for pay level adjustments, the Board will consider the quality of continued performance, difficulty of assignments, and the value of the career member's achievements relative to the FAS mission.

25.43 Performance Pay: The Board will determine performance pay in accordance with

procedures outlined in Appendix B of this Article.

ADDITIONAL AUTHORITIES AND RESPONSIBILITIES OF ALL SELECTION BOARDS

25.44 Non-Ratable Individuals

a. In General, Boards must rate an individual when all periods of the individual's service are covered by performance evaluations and/or long term training reports. The SPO may recommend to the Boards that an individual be deemed non-ratable due to insufficient documentation. Insufficient documentation may include the lack of a current performance appraisal due to LWOP, service as the FAS AFSA VP, or special or medical circumstances which would make it inappropriate for the individual to be rated. It may not include employee failure to submit an appraisal.

b. When an individual is deemed non-ratable, the individual will receive a one (1) year TIC/TIS extension. In addition, the Boards will provide a written justification for not rating an individual, a copy of which will be transmitted to the individual, in a timely manner.

c. When a period of performance is not covered by a performance appraisal, the Boards should not discount the individual's overall standing in any way, but should assume that the individual would have received a rating comparable to those already recorded in his/her performance file.

25.45 Board Criticisms and Commendations: The Boards will identify rating and reviewing officials (both Civil Service and Foreign Service) who merit commendation or criticism for the quality of appraisals they prepared in the most recent rating period. The Boards should take special care to identify evaluations where a reviewing official has failed to review adequately the ratings for thoroughness, objectivity, soundness, and compliance with evaluation instructions. In each case where an official is commended or criticized, the Boards will prepare a written statement supporting their determination. Such statements will be sent to the official's supervisor to be used in assessing the performance of the official in carrying out his/her supervisory responsibility. A copy of the statement signed by the Board chair will be sent to the official.

25.46 Special Recommendations: The Boards may make recommendations considered appropriate concerning the individuals under consideration, the materials used in the evaluation process, or improvements to the evaluation and Selection Board process, to the SPO.

BRIEFINGS AND MATERIALS FOR THE BOARDS

25.47 Representatives of the SPO will guide the Boards on technical procedures to be followed. The Boards will address all queries regarding their work only to a designated SPO representative.

25.48 An AFSA representative will be invited to attend the general briefing session for all Board members.

25.49 Board members will be provided the following:

a. a set of Precepts;

b. the performance folder of each individual to be reviewed;

c. instructions relating to the scoring procedures of the Board;

d. an alphabetical list by class of all individuals to be reviewed by the Board;

e. a biographical sketch of each individual to be reviewed; and

f. an organizational chart and functional statement of FAS.

25.50 The Boards' recommendations will be based solely on material officially part of the individual's performance folder. It should not give undue weight to any single performance appraisal. A Board member may not bring to the Board's attention personal knowledge of an individual except for information relevant to the individual's performance or potential and then only by means of a signed memorandum. A copy of the memorandum shall be forwarded promptly to permit the individual to comment on it before the Board completes its deliberations, but such completion will not be delayed pending the receipt of comment. A copy of the memorandum and the individual's comments, if any, will be placed in the performance folder but, only for the current Board session. After the session, it will be removed and made part of the Board's official findings.

25.51 Folders of some individuals who entered the Foreign Service after prior service in another Foreign Affairs Agency or whose service was interrupted, may in some instances contain information from previous periods of Government employment or may in other cases be relatively lacking in evidence of extended past performance. Individuals should not be disadvantaged because of such variations in their performance folders or because information concerning earlier work experience may be lacking.

25.52 Board members shall neither seek nor receive any information on individuals other than that which has been properly included in the performance folder.

BOARD SUBMISSIONS

25.53 Submission of Findings: Each Board's findings will be forwarded to the SPO under cover of a transmittal letter signed by Board members. The SPO may accept the Boards' findings or return them for reconsideration if there are any questions regarding procedures used by the Boards or conformity with Foreign Service Precepts. If returned, the SPO will state to the Board Chairperson the reasons reconsideration is required and make recommendations as appropriate.

25.54 Submission of Recommendations Concerning Board Policies, Procedures, and Materials: Each Panel Chairperson will submit such recommendations, as appropriate, in writing to the SPO. Management will implement those recommendations it approves and provide the Chairperson a written document, with a copy to AFSA, of all modified policies, procedures, and materials. If the Chairperson so requests, Management will discuss its reasons for rejecting any recommendation.

OTHER

25.55 Disclosure of Rank Order: To assist individuals with career planning and training, individuals who so request from the SPO will be provided their class ranking within one of the following percentiles: upper third; middle third; or lower third.

25.56 Temporary or Permanent Removal of Names from Promotion Lists: The procedures governing the removal of names from promotion lists, as authorized by Section 605 of the FS Act, are as follows:

a. At any time prior to the forwarding to the President of a promotion list of career members in class 1 and of the Senior Foreign Service, or at any time prior to the effective date of a promotion list of other individuals, the SPO may recommend to the Administrator/FAS the temporary exclusion from such a list of any individuals, if the SPO determines on the basis of notification by an appropriate office that reason exists to believe such promotion would be inconsistent with the national interest or the efficiency of the Foreign Service. Such reasons must be based upon written documentation of either:

1. Issues of loyalty, security, misconduct, suitability, or malfeasance; or

2. Indications that documentation available to the Board regarding the individual's performance may have been significantly inaccurate or incomplete.

b. The SPO will inform the individual concerned, in writing, of the action taken and will initiate, pursue, or monitor such inquiry, investigation, or proceedings as is appropriate to the issue giving rise to the removal. The individual will be given the opportunity to submit whatever information or documents he/she believes are pertinent to the case. Upon disposition or resolution of the issue, the SPO will take one of the following actions:

1. Order the inclusion of the name on the promotion list, with retroactive effective date; or,

2. Make permanent the exclusion from the promotion list and inform the concerned individual in writing of the final action.

SPECIAL DIRECTIVES FOR INTERMEDIATE AND SENIOR FOREIGN SERVICE BOARDS

APPENDIX A

INTERMEDIATE FOREIGN SERVICE SELECTION BOARD

A. General: The Intermediate Foreign Service Selection Board will rank order all eligible individuals indicated under Article 25.5. The rank order will determine the following, as appropriate to the Class: individuals recommended for promotion, scheduled within-class salary increases, low ranking and selection out, as well as, performance award shares based on the most recent annual performance reviews and other related actions.

B. Eligibility Requirements for Promotion: All individuals are eligible for promotion if appointed or promoted to their current class or equivalent General Schedule (GS) grade prior to October 1 of the year preceding the convening of the Boards. Promotions recommended and approved will be effective as soon as possible after dismissal of the Boards. If it is financially advantageous, promotions will be delayed for individuals whose scheduled within-class salary increase is due on or before December 31 of the same year.

C. Submission of Findings: The Board will prepare the following reports (negative reports are required):

1. Separate rank-ordered lists, by class, of individuals the Board recommends for promotion to the next higher class.

2. Separate rank-ordered lists, by class, of individuals low ranked with a statement for each individual so ranked who is not referred to a Performance Standards Board (PSB).

3. Separate alphabetical lists, by class, of career members the Board has identified for referral to a PSB for possible selection out. A statement explaining the referral to a PSB must be prepared for each individual so identified. Such statements shall cite specific examples of failure to meet standards within the last five years or since an individual's last promotion, whichever is longer.

4. Separate alphabetical lists, by class, of all other individuals reviewed but not listed in the above reports.

5. Separate rank-ordered lists, by class as per Article 25.37 of individuals to be considered for monetary performance awards. The rank order for these awards is

based solely on performance during the most recent annual performance review period.

D. In addition to the above, the Board will prepare, as appropriate, the following reports and recommendations:

1. An alphabetical list of individuals who should be denied their next scheduled within-class salary increase with a written justification for each case.

2. A list of individuals who could not be rated with a written justification for each case.

3. A list of rating and reviewing officials who merit commendation or criticism for the quality of the performance appraisals they prepared in the most recent rating period with a written justification for each case where an official is commended or criticized.

4. Recommendations on the training, assignment, counseling or related personnel considerations with respect to any individual or group of individuals.

5. Recommendations concerning policies and procedures for subsequent Boards and improvements to the FAS Foreign Service performance evaluation system. Each Panel Chairperson will submit such recommendations, as appropriate, in writing to the SPO. Management will implement those recommendations it approves and provide the Chairperson a written document, with a copy to AFSA, of all modified policies, procedures, and materials. If the Chairperson so requests, Management will discuss its reasons for rejecting any recommendation.

APPENDIX B

SENIOR FOREIGN SERVICE SELECTION BOARD - PERFORMANCE PAY

A. General: After reviewing the folders of all eligible career members of the SFS for promotion recommendations, the Board will make recommendations for performance awards and Presidential Rank Awards. This appendix establishes the procedures and criteria for recommending awards of performance pay and pay level adjustments.

B. Authority: Section 405 of the Act authorizes the award of performance pay to career members of the SFS. Sections 602 and 2103 of the Act provide for eligibility, competition, and the awarding of performance pay. Paragraph 8b of FAM Circular No. 9 of March 6, 1981 (as extended), establishes the basic SFS performance pay regulations; and Public Law 97-377 sets the ceiling on the number of awards and the salary ceiling on individual awards.

C. Types of Awards

1. Agency Performance Awards: Performance awards are conferred by the Agency on the basis of performance during the most recent rating period. These individual performance awards may not exceed 20 percent of base salary and are subject to the limits on the total number of awards established by law and by the Office of Personnel Management regarding the Agency performance bonuses for members of the Senior Executive Service (SES).

2. Presidential Rank Awards: Presidential awards are conferred on the basis of recommendations by an Interagency Selection Board reviewing SFS career members nominated by the Foreign Affairs Agencies. Presidential Rank Awards include the Distinguished Service Award for sustained extraordinary accomplishment and the Meritorious Service Award for sustained superior accomplishment. The cash payment amount of these awards is governed by 22 USC Section 3965(b)(3), as amended and, by 5 USC, Section 5307 (a) and (b) or by any legislation which supercedes these provisions. Presidential Rank Awards may be conferred on no more than five percent of the members of the SFS, with no more than one percent receiving the Distinguished Service Award. SFS career members may not receive a performance award and a Presidential Rank Award for performance in the same rating year.

D. Eligibility for Performance Pay

1. General: Career members who are in the SFS at the end of the most recent performance rating period under career appointments are eligible to compete for performance pay.

2. Eligibility for Agency Performance Pay Awards: To be eligible for an Agency award based on performance during the most recently concluded rating period, a SFS career member must have been evaluated for a minimum of 90 days during the rating period.

3. Eligibility for Nomination for Presidential Rank Awards: To be eligible for nomination to the Interagency Selection Board for consideration for a Presidential Rank Award, an SFS career member must have appraisal reports in the performance folder covering performance of one year or more while in the SFS as of the end of the most recently concluded rating period.

   a. An SFS career member may be nominated and receive a Presidential Rank Award for Distinguished Service no more than once within five consecutive fiscal years.

   b. An SFS career member may be nominated and receive a Presidential Rank Award for Meritorious Service no more than once within five consecutive fiscal years.

   c. EXAMPLE: An SFS career member receives the Meritorious Service Award in January 1992, and the Distinguished Service Award in January 1994. That career member will not be eligible again for nomination for the Meritorious Service Award until January 1997, or for the Distinguished Service Award until January 1999.

   d. The Board will be advised of an SFS career member's eligibility prior to nominating individuals for the current fiscal year.

E. Selection Criteria

1. Agency Performance Awards: In considering and recommending SFS career members for Agency performance awards, the Board will be guided by the following criteria:

   a. The relative value of the SFS career member's achievement to the accomplishment of the FAS mission;

   b. The degree of difficulty inherent in successful achievement by the SFS career member;

   c. The extent to which achievement was characterized by strong executive leadership and significant contributions in the formulation and implementation of FAS policies;

   d. The extent of demonstrated highly developed, functional foreign language and

area expertise;

e. Effective supervision and development of subordinates;

f. Achievements in the areas of cost reduction, efficiency, quality of work, productivity, timeliness, and in improving managerial flexibility and effectiveness;

g. Meeting affirmative action goals and achievement of equal opportunity and civil rights requirements;

h. Achievements in the identification, correction, and control of waste, fraud, and mismanagement; and,

i. The degree of difficulty of working conditions.

2. Presidential Rank Award Nominations: SFS career members under review for nomination for Presidential Rank Awards, in addition to being judged by the criteria above, must consistently have demonstrated sustained accomplishment at a superior or extraordinary level as a member of the SFS for one or more annual performance rating cycles, as well as qualities of integrity and creativity, and have maintained a high degree of public trust. Evidence of significant, sustained accomplishment may be found in such areas as the following:

a. Significant contributions to the national interest in the field of foreign affairs;

b. Managerial accomplishments in cooperative efforts with other Foreign Affairs Agencies, with other federal agencies, other government entities and/or the private sector; and,

c. Achievements of Agency-wide importance in policy, technical, program and/or human resource terms.

F. Conferral of Agency Performance Pay Awards

1. The Board will review and rank in order of merit, on the basis of their performance appraisal for the most recent rating period, the SFS career members eligible for performance pay. There is no limit on the number of SFS career members the Board may recommend, but the number of performance awards conferred cannot exceed the totals determined by Management.

2. In making recommendations, the Board will be guided entirely by the criteria listed above. In applying these criteria, the Board should recognize that not all SFS career

members under consideration will have had the opportunity to demonstrate achievement in all of the areas cited. Board members should not assess performance on the basis of the number of criteria met, but rather in terms of the demonstrated contributions and accomplishments achieved. Board members must apply the relevant criteria as realistically and fairly as possible, discuss their views where meaningful differences exist, and exercise their judgment to the fullest extent of their wisdom and experience.

G. Nominations for Presidential Rank Awards

1. The Board will be advised of the number of nominations authorized for each type of Presidential Rank Award prior to nominating SFS career members for the current fiscal year. The Board will not nominate more SFS career members than the number authorized.

2. The Board will review those SFS career members ranked at or near the top of the Agency performance awards rank-ordered list and identify those who, on the basis of their performance record for one or more years, should be nominated for a Presidential Rank Award.

3. The Board will prepare a brief statement of justification in support of its recommendation for each SFS career member nominated for a Presidential Rank Award. The statements will be sent to the Interagency Selection Board, together with pertinent evaluation material for use by that Board in making SFS-wide award recommendations.

H. Payment of Performance Pay

1. An SFS career member may be nominated both for an Agency award and for a Presidential Rank Award. However, s/he may not receive both awards in the same competition year. Agency awards will be paid to the SFS career members recommended by the Selection Board in accordance with:

   a. The Board's rank order;

   b. USDA's SES percentage awards; and,

   c. the amounts and numbers authorized by Management.

2. Payment will be made as soon as practicable without regard to possible subsequent conferral of Presidential Rank Awards.

3. Presidential Rank Awards will be paid, as soon as feasible, to all recipients named by

the President in the amounts indicated, subject to the applicable legal limitations.

4. An SFS career member named by the President to receive a Meritorious or Distinguished Service Award, who has already received an Agency Performance Pay Award, will have the Agency award canceled and will receive the Presidential Rank Award. The amount of the Presidential Rank Award stipend will be reduced by the amount already paid as an Agency award. Where the Selection Board has identified more SFS career members for Agency awards than the number authorized, each Presidential Rank Award recipient deleted from the list will be replaced by an SFS career member added in rank order starting with the top ranked career member below the cut-off point for Agency awards. Such SFS career members will receive awards in the amount authorized.

I. Submission of Findings: The Board will prepare the following reports:

1. A rank-ordered list of SFS career members recommended for Distinguished and Meritorious Service Presidential Rank Awards.

2. A rank-ordered list of all SFS career members recommended for Agency Performance Pay Awards.

3. An alphabetical list of all SFS career members reviewed who are not in categories 1 or 2 above.

4. An alphabetical list of all SFS career members recommended for pay level adjustments.

5. An alphabetical list of all SFS career members reviewed who are not recommended for pay level adjustments. The Board will prepare a written justification for each.

6. Recommendations concerning policies and procedures for subsequent Boards and improvements to the performance pay process. See Appendix A, Section D.5, of this article for procedures on how to submit such recommendations.

J. Removal of a Name Recommended for Performance Awards: The SPO may recommend to the Administrator/FAS the removal of a name from the list of SFS career members recommended for performance awards or pay level adjustments under the same circumstances and requirements as apply to removal of names from promotion lists as set forth in Article 25.56.

APPENDIX C

SENIOR FOREIGN SERVICE SELECTION BOARD - PROMOTION

A. General: The Board will rank order all eligible career members in the classes of Career Minister, Minister Counselor, Counselor, and Class 1. All career members certified to the Board for LCE consideration will be reviewed under the precepts and procedures outlined in Article 25.40. Prior to this review, and following the recommendation of career members for promotion, the Boards will have received a briefing on the criteria and procedures for review.

B. Eligibility Requirements for Promotion

1. For promotion to the class of Career-Minister, a career member, on the date the Board convenes, must have been in the class of Minister-Counselor for a minimum of one year.

2. For promotion to the class of Minister-Counselor, a career member, on the date the Board convenes, must have been in the class of Counselor for a minimum of one year.

3. For promotion into the SFS Class of Counselor, on the date the Board convenes, a career member must have:

   a. served in Class 1 for a minimum of one year;

   b. been assigned and served as the senior agricultural officer at a U.S. Embassy, Mission or Agricultural Trade Office;

   c. been assigned and served in FAS/W as a supervisor or management official; and

   d. made application for entry into the Senior Foreign Service in accordance with procedures outlined in Appendix E.

4. Career members serving under an LCE are not be eligible for promotion.

C. Special Instructions

1. Panel A will consider for promotion all eligible career members in the Class of Minister Counselor. Panel A should be aware that few career members demonstrate the qualifications warranting advancement to the Class of Career Minister. This class requires career members whose records emphasize performance which demonstrates

strong policy formulation capabilities, executive leadership qualities, and highly developed foreign agricultural affairs expertise.

2. Panel A will consider for promotion all eligible career members in the Class of Counselor. The Panel should be aware that few career members demonstrate the qualifications warranting advancement to the class of Minister Counselor. This class requires career members who have consistently demonstrated outstanding ability in discharging the highly responsible and difficult duties connected with the conduct of foreign agricultural affairs.

3. Panel B will consider for promotion all eligible career members in Class 1. The Panel should be aware that promotion into the SFS represents a determination that the career members promoted are capable of carrying out the very demanding and responsible duties of senior level positions. Some career members under review may not have this additional potential and should more appropriately complete their careers in Class 1. Requirements at the SFS level, the top of the Foreign Service Schedule, reflect a superior level of achievement.

D. Submission of Findings (Class Specific): Panels A and B will prepare the following reports (negative reports are required):

1. Career Minister

   a. A rank-ordered list of career members recommended for LCE.

   b. A rank-ordered list of career members low ranked, with a counseling statement for each career member so ranked who was not referred to a Performance Standards Board (PSB).

   c. An alphabetical list of career members recommended for referral to a PSB for possible selection out. A written justification explaining referral to a PSB must be prepared for each career member. Each statement shall cite specific examples of failure to meet standards within the last five years or since the last promotion, whichever is longer.

   d. An alphabetical list of career members reviewed who are not in categories b or c above.

2. Minister Counselor

   a. A rank-ordered list of career members recommended for promotion.

   b. A rank-ordered list of career members recommended for an LCE.

c. A rank-ordered list of career members low ranked with a written justification for each individual not referred to a PSB.

d. An alphabetical list of career members identified for referral to a PSB for possible selection out. Statements explaining referral to a PSB must be prepared for each career member. Such statements shall cite specific examples of failure to meet standards within the last five years or since the last promotion, whichever is longer.

e. An alphabetical list of career members reviewed who are not in categories a, c, or d above.

3. Counselor

a. A rank-ordered list of career members recommended for promotion .

b. A rank-ordered list of career members recommended for an LCE.

c. A rank-ordered list of career members low ranked with a written justification for each individual not referred to a PSB.

d. An alphabetical list of career members identified for referral to a PSB for possible selection out. Statements explaining referral to a PSB must be prepared for each career member. Such statements shall cite specific examples of failure to meet standards within the last five years or since the last promotion, whichever is longer.

e. An alphabetical list of career members reviewed who are not in categories a, c, or d above.

4. Class 1

a. A rank-ordered list of career members recommended for promotion .

b. A rank-ordered list of career members recommended for an LCE.

c. A rank-ordered list of career members low ranked with a written justification for each individual not referred to a PSB.

d. An alphabetical list of career members identified for referral to a PSB for possible selection out. Statements explaining referral to a PSB must be prepared for each career member. Such statements shall cite specific examples of failure to meet standards within the last five years.

e. An alphabetical list of career members reviewed who are not in categories a, c, or d above.

f. An alphabetical list of career members recommended for denial of their next scheduled within-class increase with a written justification for each recommendation.

E. Submission of Findings (General): Panels A and B will prepare the following reports on all classes:

1. A list of career members who could not be rated with a written justification for each case.

2. A list of rating and reviewing officials who merit commendation or criticism for the quality of the evaluation reports they prepared in the most recent rating period with a written justification in each case where an official is commended or criticized.

3. Recommendations on the training, assignment, counseling or related personnel considerations with respect to any career member reviewed.

4. Recommendations concerning policies and procedures for subsequent Boards and improvements to the FAS Foreign Service performance evaluation system. See Appendix A, Section D.5, of this article for procedures on how to submit such recommendations.

APPENDIX D

SENIOR FOREIGN SERVICE SELECTION BOARD - RECERTIFICATION

A. Authority: SFS career members in the Department of Agriculture are subject to recertification, pursuant to Section 305 of the Act, as amended by Section 506 of the Ethics Reform Act of 1989 (Public Law 101-194, November 30, 1989).

B. Objective

1. Recertification is a vehicle for ensuring that the performance of SFS career members demonstrates the excellence needed to meet the objectives set by the Act; that is, "a Senior Foreign Service which is characterized by strong policy formulation capabilities, outstanding executive leadership qualities, and highly developed functional, foreign language, and area expertise."

2. To the extent possible, recertification procedures will parallel those for other SFS personnel actions.

C. Coverage

1. SFS career members who have been continuously employed in the SFS for 156 weeks preceding the end of the recertification period (see E1 of this Appendix) are subject to recertification. This period includes any service as an SFS non-career or limited appointee as well as SFS service in another agency or department.

2. One or more breaks in SFS service totaling 6 months or less does not interrupt the 156 weeks of continuous employment. For this purpose, "breaks in service" would include periods when the SFS career member was: separated from the SFS (including Presidential appointments at Executive Level V or higher); or sent to an international agency or department with re-employment rights in the SFS.

3. Periods which would not be considered a break in SFS service include but are not limited to: sabbaticals, training (including senior seminar), details to other Federal agencies or departments, details to state and local governments or private organizations while still remaining on the Federal payroll, service with the American Institute in Taiwan, a Multinational Force, and observers to Multinational Forces.

4. SFS career members who are on extended detail or extended absence from their positions at the time of recertification, will generally be subject to recertification, so long as they were in career SFS status at the end of the recertification period and meet the 156-week service requirement.

5. This recertification plan does not apply to SFS non-career, SFS limited appointees, or former SFS career members who are on Presidential appointments with Senate confirmation at Executive Level V or higher, regardless of whether they elected to retain SFS benefits. However, career members who have returned to career SFS status after holding Presidential appointments may have their performance while serving on such appointments taken into consideration in recertification.

D. Recertification Period

1. Recertification shall take place every third calendar year after the initial recertification (June 30, 1991) or the date of entry into the SFS, whichever is later. The end of the annual performance appraisal period will serve as the end of the 156-week employment period for calculating recertification eligibility.

2. A SFS career member who transfers to the Department of Agriculture after having been recertified as an SFS career member by another Department within the same calendar year, is not subject to recertification until the end of the 156 week period after their prior certification.

3. An individual, who transfers from another Department without having been re-certified as a SFS career member in the same calendar year, is subject to recertification in the Department of Agriculture after 156 weeks after their prior certification. The SPO will request the required performance appraisals and other relevant information from the previous Department.

E. Standards for Re-certification

1. To be recertified, SFS career members must have performed at the level of excellence expected of a senior executive during the recertification period in the following areas:

   a. Planning for, substantially advancing, and attaining Presidential, Departmental, or organizational goals and objectives that required a sustained superior effort;

   b. Taking specific initiatives that advanced a major policy and/or significantly improved delivery of services;

   c. Taking the necessary actions to ensure the achievement of a quality product in a timely manner; and,

   d. Making significant technical, scientific, or professional contributions.

2. Also, if applicable to the responsibilities of the SFS career member, excellence is

demonstrated by:

a. Achieving substantial savings in the execution of programs under his/her direction;

b. Maintaining the high quality and effectiveness of a program under his/her direction with reduced resources;

c. Providing strong leadership to enhance the development, utilization, and achievements of subordinate personnel, including achievement of equal employment opportunity and civil rights goals; or,

d. Superior accomplishment during long-term training.

F. Procedures for Recommending Recertification

1. Because of the mobility of the SFS, few supervisors are able to recommend recertification based on three years' performance, as intended by the Ethics Reform Act. Thus, the Panel A meeting in the year of recertification will make this recommendation. The Board considering each class within the SFS will base its recommendation on all material in the SFS career member's official performance folder (including the annual recommendations of the supervisor(s)), related to performance during the previous three rating years and whatever additional materials submitted by the SFS career member that is included in the folder by the SPO. These procedures will be used in conjunction with the Foreign Service Selection Board Precepts, and will be subject to the general principles governing the Board. There will not be a prescribed distribution of how many or what percentage of SFS career members will be recertified, conditionally recertified, or not recertified.

2. A SFS career member who has been recertified remains subject to retirement for expiration of TIC. Recertification does not preclude any personnel action based on the recommendations of Panel A.

3. After completing its deliberations on recertification, Panel A will forward the following to the Administrator/FAS:

a. a list of those SFS career members it recommends for recertification;

b. a list of those SFS career members it recommends for conditional recertification;

c. a list of those SFS career members it recommends not be recertified;

d. a recertification list for SFS career members, indicating the action recommended, signed by the Panel A Chairperson and each Panel member; and,

e. a written justification for each SFS career member in b and c above, specifying those aspects of the standards for recertification that have not been met, citing examples, and, as appropriate, quoting from the performance record. This justification will not only provide a basis for the SFS career member's response and the Agency's final decision but will serve as a guide to performance improvement for those conditionally recertified.

G. Impact on Other Panel A Recommendations: A Panel A which recommends that an SFS career member be conditionally recertified, may not recommend that SFS career member for promotion, performance pay, or Presidential Rank Award, and should consider low-ranking him/her. Normally, Panel A should also recommend either that the career member's next ES pay level increase be denied, or that the career member's pay be reduced by one level, e.g., FE-03/03 to FE-03/02.

H. Decisions on Panel A Recommendations

1. The Administrator/FAS, shall make final decisions for SFS career members on behalf of the Department. Hereafter, the Administrator/FAS, is referred to as the Deciding Official for SFS career members.

2. Decisions to Recertify: The Deciding Official will normally accept and implement Panel A's recommendation to recertify an SFS career member. The Deciding Official will sign the recertification form, and the career member will remain in the SFS. However, the Deciding Official may return a recommendation to Panel A and defer a final decision pending resolution of any questions on conformity with regulations or Precepts. The Deciding Official may also defer a final decision if the career member is subject to an ongoing investigation or adverse action involving issues of loyalty, security, misconduct, or malfeasance. If the reason for any deferral is resolved in favor of the SFS career member, or if any disciplinary action taken falls short of removal, the Deciding Official will make the final decision to recertify or not recertify. The effective date of that decision will be the date of the list from which the career member's name was initially excluded.

I. Decisions to Conditionally Recertify or Not Recertify

1. The Deciding Official will first conduct an administrative review of each case to ensure conformity with regulations and the Precepts. The Deciding Official may return any or all of the recommendations to Panel A and defer further action until questions are resolved.

2. The records of SFS career members not recommended for recertification will be reviewed by the FAS Associate Administrator(s) before Panel A's non-recertification recommendations are implemented. The Deciding Official may, on the basis of the FAS Associate Administrator(s)'s recommendations, determine that for compelling reasons, a career member should be recertified or conditionally recertified.

3. In the case of recommendations for conditional recertification, the Deciding Official will send a letter notifying the affected SFS career member of Panel A's recommendation. The letter shall include:

   a. Copies of the completed recertification determination form and Panel A's justification for the recommendation;

   b. An explanation of the terms of conditional recertification:

   (1) that the SFS career member is responsible for undertaking an intensive, 12-month program to correct the deficiencies cited in Panel A's justification memorandum and starting on the date that the Deciding Official signs the conditional recertification;

   (2) that the Deciding Official will make a final decision on whether to recertify or to remove the career member from the SFS based on the recommendation of a special SFS Selection Board convened to review the case after the 12-month conditional recertification has expired;

   (3) that the SFS career member shall be retained in the SFS if recertified and shall have any reduction in ES pay level made under subsection G restored as of the beginning of the first pay period following recertification when 12 months have elapsed since the pay reduction;

   (4) that the Selection Board described in (2) above will make a recommendation on whether to recertify after reviewing: the 3 years' performance record on which the conditional recertification recommendation was made; the justification for conditional recertification; and the SFS career member's success in overcoming the cited deficiencies as evidenced in subsequent performance appraisals and any written statement s/he might wish to make; and,

   (5) that the decision to conditionally recertify may not be grieved or appealed, though a subsequent decision not to recertify could be appealed either to the Foreign Service Grievance Board or a Special Review Board.

4. In the case of recommendations for non-recertification, the Deciding Official will

send a letter notifying the affected SFS career member of the Selection Board's recommendation. The letter shall include:

a. Copies of the completed recertification determination form and Panel A's justification for the recommendation;

b. Notice that the SFS career member is entitled to a maximum of 15 calendar days to respond, either in a personal appearance before the Deciding Official or in writing, or both, to show cause why the recommendation should not be implemented.

c. Notice that the SFS career member is entitled to a reasonable amount of time without charge to leave to prepare and present his/her response. The notice will include the amount of time deemed reasonable, and the name of the person the SFS career member must contact about using the time granted or to request more time; and,

d. Notice that the SFS career member has the right to be represented by counsel or by any other representative of his/her own choosing at any stage of the process, but that a personal appearance before the Deciding Official is not a formal hearing which is adverse in nature.

5. The Deciding Official will consider any response by the SFS career member in making a final decision on Panel A's recommendation not to recertify and will provide him/her with written notice of the decision within 45 calendar days after receipt of his/her response.

6. The Deciding Official's notification of a decision not to recertify an SFS career member will include the following:

a. A copy of the completed recertification determination form and supporting documentation;

b. Notification that the SFS career member will be retired involuntarily for failure to be recertified;

c. The SFS career member so retired shall be entitled to the same benefits as personnel retired under Section 608 of the Act and implementing regulations issued thereunder;

d. The date on which the SFS career member will be retired;

e. The SFS career member's rights to appeal the decision to the Foreign Service Grievance Board, 3 FAM 4400, and copies of the regulations governing the procedures;

f. The time limit 30 working days from date of receipt for filing an appeal and warning that failure to appeal the decision within the prescribed time limits will remove the SFS career member's case from the jurisdiction of both the Foreign Service Grievance Board and the Special Review Board;

g. That the SFS career member's appeal of involuntary retirement does not waive any existing right to retire voluntarily at any time prior to the effective date of involuntary retirement.

7. The effective date for involuntary retirement due to failure to be recertified will be within 90 calendar days of the date of official notification of the final decision by the Deciding Official. The date may be temporarily postponed, however, by the Deciding Official, where the interests of the Foreign Service so require, but in no case may such postponement exceed one year.

APPENDIX E

PROMOTION INTO THE SENIOR FOREIGN SERVICE
FOR FOREIGN SERVICE CAREER MEMBERS IN CLASS 1

A. The Act contains the specific provisions concerning promotion into the SFS:

"Promotions into the Senior Foreign Service shall be recommended by Selection Boards from among career members of the Service assigned to Class 1 in the Foreign Service Schedule who request that they be considered for promotion into the Senior Foreign Service. The Secretary shall prescribe the length of the period after such request is made during which members may be considered by Selection Boards for entry into the Senior Foreign Service. A request by a member for consideration for promotion into the Senior Foreign Service under this subsection may be withdrawn by a member, but if it is withdrawn, that member may not thereafter request consideration for promotion into the Senior Foreign Service". (See Section 601(c)(1), P.L. 96-465.)

B. To implement these provisions, FAS has established the following procedures:

1. Conditions of Application: Panel B will consider for promotion those career members of Class 1 who have submitted in writing an application for entry into the SFS. To be considered by Panel B, applications must be received in the SPO by September 1 of the year in which Panel B convenes. Applications received after that date will be considered by Panel B the following year.

2. Eligibility: To be eligible to apply for the SFS, an individual must:

   a. be a career member of the Foreign Service;

   b. have served in Class 1 for a minimum of one year;

   c. have been assigned and served as the senior agricultural officer of a U.S. Embassy, Mission, or Agricultural Trade Office; and

   d. have been assigned and served in FAS/W as a supervisor or management official.

3. Employee Status: Once a career member submits an application for the SFS, s/he will be considered by twelve consecutive Panels. If not promoted by one of these Panels, s/he will be required to leave the Foreign Service. The date of retirement will be determined by the SPO, but the date will not be later than six months after the twelfth Panel concludes its business. In all cases, members to be retired under these

provisions would be given sufficient advance notice to allow the member at least 60 days in the United States prior to the date of retirement. The Act permits the Secretary to temporarily extend career appointments by one year when in the public interest. Such extensions may be granted only in special circumstances, and the provision is expected to be used rarely. Career members required to leave the Foreign Service because of failure to be promoted under the conditions outlined above, will be eligible for an immediate annuity whether or not they have reached 50 years of age and have 20 years of creditable service.

4. Impact on Class 1 TIC: Career members in classes 4 through 1 have a TIC limit of 22 years in any combination of those classes, but not more than 15 years in any one of the classes. These limits are calculated from time of career appointment or promotion into class as a career member of the Foreign Service (pay plan FO), and exclude any time served in limited appointments (pay plan FP). When promotion into the SFS is achieved, all previous TIC limits are replaced by those of the SFS classes. Class 1 career members and SFS career members are also eligible for LCE upon expiration of the initial TIC period.

5. Decisions to Defer or Decline Applications and Withdrawals

   a. A Class 1 career member may defer or decline to submit an application for the SFS as long as s/he desires. However, the performance of such career members will continue to be reviewed and ranked by Panel B with other Class 1 career members, for the purpose of merit service increase, low rank, and selection out recommendations.

   b. A career member, after applying for the SFS, may withdraw his/her application, but s/he will not be eligible to request consideration for promotion into the SFS at any time after withdrawal. Career members who withdraw their application continue to be subject to mandatory retirement for age and expiration of maximum TIC.

6. Option Statement - Example

   Subject: Request for Consideration for Promotion into the Senior Foreign Service

   As a career member of Class 1 of the Foreign Service promoted or appointed to my present class prior to October 1, [year preceding the Panel's consideration], and having been assigned and having served as the senior agricultural officer of a U.S. Embassy or Agricultural Trade Office and as a supervisor or management official in FAS/W, I request consideration by the [year] Senior Selection Boards for promotion into the Senior Foreign Service.

I recognize this request entitles me to consideration for promotion by twelve Senior Selection Boards and that this request will not extend my time-in-class or time-in-service limits if they expire before twelve consecutive reviews by Panel B.

I understand that if not promoted into the Senior Foreign Service, I am subject to mandatory retirement at age 65, expiration of time-in-class and time-in-service, or within six months after the twelfth Senior Selection Board with my mandatory retirement date set by the SPO, whichever occurs first.

SIGNATURE_____ DATE_____

APPENDIX F

INADMISSIBLE COMMENTS

A. Inadmissible comments may not be included in any section of the performance appraisal (including the rated individual's comments), nor in other forms of evaluative material, such as inspector's reports, training reports, and letters of commendation. Rating and reviewing officials and SPO review panels should exercise care to avoid the submission of reports containing inadmissible comments.

B. If the SPO discovers inadmissible comments in a performance evaluation report, s/he will so inform and work with the individual and, if necessary, the rating official, to correct or remove the inadmissible comments. The SPO may not change an evaluation report without first making every effort (i.e., multiple attempts via email, phone and/or facsimile) to notify the individual and, if necessary, the rating official, in a timely manner. If the SPO does not receive a reply from the individual, no changes to the individual's evaluation report can be made until three working days before the report must be forwarded to the Selection Boards. At this time, the SPO may remove clearly inadmissible comments. The SPO must provide written notification of such changes to the individual and rating official.

C. The following subjects are inadmissible in any part of the report either as direct or indirect comments:

1. Reference to race, color, religion, sex (does not extend to the use of Mr., Mrs., Miss, Ms., or first names or personal pronouns), national origin and age;

2. Ranking by former Selection Boards or impending selection-out;

3. Physical characteristics and personal qualities that do not affect performance or potential;

4. Marital status or plans; references to spouse or family, including those relating to social activities or the ability of a member of the family to represent the United States;

5. Retirement, resignation, or other separation plans;

6. Grievance, equal employment opportunity, Civil Rights, or Merit Systems Protection Board proceedings;

7. Method of entry into the Foreign Service;

8. References to private U.S. citizens by name;

9. Participation or nonparticipation in any organization composed of Foreign Service members which exists for the purpose, in whole or in part, of dealing with Foreign Affairs Agencies concerning grievances, personnel policies and practices;

10. Ratings for earlier periods prepared by other supervisors;

11. Reluctance to work beyond the normal tour of duty;

12. Official leave record, except in the case of unauthorized absences;

13. Negative reference to use of the dissent channel or direct or indirect reference to, or consideration of, judgments in dissent channel messages as a basis for an adverse evaluation of performance or potential. When the rated individual's expression of dissenting views on policy, outside of the dissent channel, raises substantial questions of judgment or obstructionism relevant to the individual's performance, it may be the subject of comment. However, general comment may not be used to get around the proscription of this section. Specific instances must be cited.

14. Negative or pejorative comments regarding the performance of another identifiable employee. (Rating and reviewing officials cannot state "the individual quickly brought order out of the chaos left by his/her predecessor." On the other hand, the description "the individual is the best administrative officer I have supervised in the past 10 years" is acceptable.); and,

15. Specific identification by rating or reviewing officials of physical disability or medical problem (including alcoholism, drug abuse, or rehabilitation efforts).

D. Although the details or specific identification of a medical problem are inadmissible in the evaluation report, general reference may be made to confirmed knowledge of a medical problem to the extent it affects job performance.

E. Rated individuals may discuss their own health problems in specific terms only if rating or reviewing officials have made general references to such problems, or if such discussion is necessary to explain or clarify adverse comments in a report.

F. Significant instances of superior or exceptional performance in difficult circumstances or of undependableness, inefficiency, discredit brought on the Foreign Service, and general poor performance should be documented in the performance appraisal even if reference to the cause itself is inadmissible.

G. Work done in a representational capacity, such as representing employees in

grievances, negotiations, or managing the internal business of the Union, must not be considered either positively or negatively in arriving at an individual's performance rating.

ARTICLE 26: TIME-IN-CLASS AND TIME-IN-SERVICE

PURPOSE

26.1 The purpose of Time-In-Class (TIC) and Time-In-Service (TIS) is to ensure a steady flow through the Foreign Service (FS) of highly skilled career members who display maximum effectiveness in furthering the mission of the Agency and the Foreign Service. This flow through should allow for progressive advancement through the ranks, while retaining the expertise and experience of the most capable career members. The Departmental goal relative to mandatory retirement of career members, due to expiration of TIC and/or TIS, is three-fold: to reward with rapid advancement those identified as exceptional performers; to afford a suitable career to those performing acceptably; and to retire those failing to demonstrate progress in their careers.

MAXIMUM TIME-IN-CLASS

26.2 Unless granted a Limited Career Extension (LCE) or a postponement in the retirement date, career members will be retired under Section 607 of the Act for exceeding the following TIC or TIS limits:

a. For Senior Foreign Service (SFS) Officers , the following maximum TIC limits apply:

Class	Time-In-Class Limit
Career Minister	16 years combined Career Minister, Minister-Counselor and Counselor
Minister-Counselor	12 years combined Minister-Counselor and Counselor
Counselor	7 years

b. For SFS Officers, TIC limits commence on the date of promotion into the SFS and at each subsequent date of promotion. If TIC limits are lengthened while an individual still has time remaining in a particular class, the new, longer TIC limits will apply.

c. For career members in Classes 4 through 1, the following TIC/TIS limits apply:

Class	Time-In-Class	Time-In-Service
4-1	15 years	22 years

These limits are subject to Article 26.2.d below and Article 26.7, the Annuity Exception.

d. For career officers appointed on or before November 1, 1984, TIC/TIS limits commenced on November 1, 1984. For all other career officers, TIC/TIS limits commence on the date of career appointment. (Note: The date of career appointment is usually within two weeks of the date of commissioning.)

e. Career members transferred/reassigned from other Foreign Affairs Agencies to FAS will have TIC/TIS limits determined and communicated by the Servicing Personnel Office (SPO) in writing prior to transfer or reassignment.

f. Members of the Foreign Service not subject to TIC/TIS limits are Administrative Assistants and those serving under limited appointments.

g. Career members at Class 1 who have requested, in writing, consideration for promotion into the SFS and who meet the eligibility requirements will be reviewed for promotion by Panel B of the Senior Selection Board until their TIC or TIS limit expires or until they receive twelve (12) consecutive reviews by Panel B, whichever occurs first. Career members not promoted after consideration by twelve Panel B's will no longer be considered for promotion and will be mandatorily retired under the provisions of Section 608 of the FS Act. Such individuals will be eligible to receive benefits under Section 609 of the Act.

h. A career member may withdraw his/her request for consideration for promotion into the SFS at any time. If a request is withdrawn, the career member will no longer be eligible for promotion into the SFS, no future requests for consideration may be submitted and the member will return to his/her original TIC/TIS limits.

TIC/TIS CALCULATIONS

26.3 The calculation of maximum TIC/TIS includes periods of service with the American Institute in Taiwan, details under which the career member remains on the FAS payroll, and all periods of performance in the relevant class except:

a. Periods of separation from the FS for more than 3 days;

b. Periods of Leave Without Pay as governed by Article 25.28;

c. Periods of assignment to international organizations with re-employment rights to FAS;

d. Periods for which a Selection Board has non-rated a career member due to insufficient performance data;

e. Periods for which the SPO determines that a career member should be non-rated, for example, to correct denial of opportunity for promotional consideration, resulting from inadequate or incorrect performance data or administrative error;

f. Any time spent in FS limited appointments;

g. Periods which are non-rated by direction of the Foreign Service Grievance Board, the Merit Systems Protection Board, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission, or a court;

h. Periods when career members are called to active military service. (This does not include the required annual active service as a reservist or member of the National Guard.); and

i. Periods when a career member serves full-time as the AFSA/FAS Vice President and, elects not to be reviewed by the Selection Board, as governed by Article 8.

LIMITED CAREER EXTENSIONS

26.4 LCEs and LCE extensions are governed by Article 25.40. LCEs may only be granted to SFS and Class 1 career members who are in their last year of TIC or TIS.

26.5 LCEs will be granted rarely and only for compelling Agency need.

26.6 Career members in their last year of TIC/TIS not granted LCEs will be retired in accordance with Section 609 of the FS Act.

ANNUITY EXCEPTION

26.7 Career members in Class 2 and below who have reached their TIC or TIS limit but, who are ineligible for voluntary retirement under Section 811 of the FS Act or do not qualify to receive an immediate annuity under Section 609 of the Act, will not be separated from the Service until they are eligible for an immediate annuity. Such

members, however, will be ineligible for review by subsequent Selection Boards. Their TIC or TIS limit, whichever is earlier, will be extended until the end of the month in which they qualify for an immediate annuity, unless retirement is postponed, as provided for in later sections of this Article.

EFFECTIVE DATE OF RETIREMENT FOR TIC/TIS

26.8 The SPO will notify career members that they are subject to TIC/TIS expiration two years prior to the earliest of these dates.

26.9 A career member who is eligible for an immediate annuity, may elect an effective date not to exceed six months after the expiration of his/her TIC/TIS limits. For career members not eligible for an immediate annuity, the effective date of retirement shall be no later than the last day of the month during which the career member becomes eligible for an immediate annuity.

26.10 The SPO will notify career members in writing as soon as the effective date of their retirement has been set. An employee can file a grievance challenging any and all aspects, (i.e. procedures, substance, impact, implementation) related to his/her TIC/TIS, only within 90 calendar days of receipt of notice of the effective retirement date.

26.11 Career members reaching maximum TIC/TIS while serving in a position to which appointment was made by the President will be retired effective upon completion of service in such a position.

26.12 The date of retirement due to expiration of TIC/TIS may be postponed by the Administrator/FAS for compelling circumstances for a period not to exceed one year from the original TIC or TIS date, whichever is earlier.

NOTIFICATION OF PROPOSED RETIREMENT FOR EXPIRATION OF TIME-IN-CLASS

26.13 The SPO will notify career members subject to retirement for expiration of TIC/TIS of the following information:

a. The retirement for expiration of TIC/TIS is in accordance with Section 607 of the FS Act;

b. The effective date of retirement;

c. The right to file a grievance, per Article 19 (Disputes and Grievances), with

the Foreign Service Grievance Board for reasons stated in Article 26.14, and that failure to grieve the decision within the prescribed time limits will remove the case from the jurisdiction of the Foreign Service Grievance Board;

d. An explanation of the procedures for filing a grievance with the Foreign Service Grievance Board;

e. That the effective date of retirement may be postponed for up to one year in rare instances of personal circumstances or critical Agency need, but that even in such rare cases, extensions will be limited to no more than one year;

f. That for career members seeking relief from proposed retirement, by initiating action under Article 19 (Disputes and Grievances) prior to retirement, the effective date of retirement will be postponed pending a final decision on the grievance under Section 1106(8) of the FS Act if the Foreign Service Grievance Board so recommends; and,

g. That records of career members designated for retirement by the SPO whose effective date of retirement is postponed, will not be reviewed by Selection Boards convened during any intervening period, nor will such career members receive within-class salary increases or pay level adjustments during any such period.

GRIEVANCE FOR RETIREMENT FOR EXPIRATION OF TIME-IN-CLASS

26.14 Career members may grieve retirement for expiration of TIC/TIS to the Foreign Service Grievance Board only if the retirement is alleged to be contrary to laws or regulations or predicated upon an inaccuracy, an omission, an error or falsely prejudicial information in any part of a career member's official personnel file.

ARTICLE 27: ASSIGNMENT POLICY

STATEMENT OF PURPOSE

27.1 This Article prescribes Agency policy, operations, and procedures for assigning FAS Foreign Service (FS) employees to positions in the United States and abroad.

SOURCES OF AUTHORITY

27.2 The provisions of this policy are authorized under the FS Act, the Agricultural Trade Act of 1978, and the Foreign Affairs Manual, Volume 3.

POLICY OBJECTIVE AND CONSIDERATIONS

27.3 The objective of this policy is to maintain the most effective staffing of positions possible consistent with:

a. The principles and requirements of the FS Act;

b. The Agency's mission, budget, and staff-year limitations; and

c. Career interests and aspirations of FS employees.

27.4 Consistent with the stated policy objective, the Agency selects and assigns individuals to domestic and international positions based on the following considerations:

a. Fulfilling current and long-range staffing needs of the Agency;

b. Matching FAS domestic and international staffing needs with the expertise, career development goals, and assignment preferences of individuals;

c. Ensuring a reasonable sharing of assignments to hardship (differential) posts;

d. Engaging individuals in the process by providing information on projected position vacancies and the opportunity to indicate preferences which will be carefully considered;

e. Effectively utilizing individual abilities and providing potential for progressive career development;

f. Ensuring that individuals serve in a variety of domestic and international positions in order to foster diversity of experience and development of

specialized competencies, such as functional expertise and language proficiencies;

g. Fulfilling individual preferences by taking into account:

1. specific area, post, and assignment requests;

2. training and long-range career interests and aspirations;

3. family status, including educational needs of dependents and the availability of spousal employment;

4. limitations to worldwide availability due to health issues affecting the individual and/or dependents;

5. personal issues, including those of a compassionate nature;

6. prior service, particularly at hardship (differential) posts;

7. statutory requirements governing domestic and international service; and

h. Effectively utilizing the abilities and skills of individuals to the mutual advantage of the individual and the Agency by providing appropriate orientations and on-the-job training and encouraging individuals to expand their qualifications and capabilities through self-improvement.

DOMESTIC ASSIGNMENTS

27.5 Both parties recognize that:

a. A Washington Placement Plan (WPP) is the primary vehicle by which employees returning from international and other assignments outside FAS/W will be placed in domestic assignments;

b. A primary objective of a WPP is the placement of FAS employees in positions best suited to advance the Agency's mission; and

c. While Foreign Service employees may be placed in positions below their grade, such placements made without the consent of the individual should be minimized.

27.6 The SPO will monitor and coordinate assignments of FS employees to domestic positions. Available positions will be announced in a WPP. Prior to announcing a

WPP, management will provide AFSA sufficient time to review the announcement, if there is a change from the previous plan.

27.7 Management will strive to make as many position vacancies available under a WPP as possible in order to avoid placing individuals in positions below their grade against their consent. To this end, the SPO will closely monitor the balance between position vacancies and FS employees returning to domestic assignments.

27.8 FS employees may be assigned to domestic positions announced under a WPP or to other domestic positions announced concurrently with a WPP. Individuals are eligible to apply for any announced position, including stretch assignments within one grade of their personal rank and rotation assignments at grade.

27.9 Individuals may also be reassigned from one position to another outside a WPP, based on the needs of the Agency and the Foreign Service, and consideration of individual assignment preferences.

27.10 If members of the Foreign Service are assigned under Section 503 of the FS Act, the provisions of Section 503 will apply to all members as appropriate.

SELECTION CRITERIA AND PROCEDURES

27.11 In general, domestic assignments will be determined based on the following criteria:

a. The position description and requirements; and,

b. The rank, experience, skills, and stated preferences of the individual.

27.12 The SPO will prepare and submit to the Executive Advisory Group (EAG) a matrix of individual bids and selecting official recommendations. The EAG will assess and recommend placements based primarily on the matrix submitted by the SPO. The Administrator/FAS will review EAG recommendations and make final placement decisions.

MAXIMUM LENGTH OF DOMESTIC ASSIGNMENTS

27.13 While U.S. tours of duty are for an indeterminate period, an individual may not be assigned to such duty for a period of continuous service exceeding eight (8) years, unless an extension is approved by the Administrator/FAS. All extension decisions will be subject to the guidelines, criteria and procedures contained in Article 28 of this Agreement.

27.14 Individuals may be reassigned from one position to another position during a tour of

duty in the United States, based on the needs of the Agency and the Foreign Service, and consideration of individual assignment preferences.

INTERNATIONAL ASSIGNMENTS

27.15 Agricultural Trade Officer positions located in the United States are considered international assignments.

27.16 Consistent with Section 502 (b) of the FS Act, positions designated as Foreign Service positions, including ATO positions, normally will be filled by assigning Foreign Service employees to these positions. Foreign Service positions will be filled to best match the talents, expertise and interest of the Foreign Service with the Agency's mission requirements.

27.17 The Foreign Agricultural Affairs Office (FAA) will maintain an updated list of international vacancies and expected vacancies.

ASSIGNMENT PROCESS

27.18 Individuals serving in domestic assignments four (4) years or longer as of November 1, individuals completing the final year of an international tour of duty the following summer (excluding individuals completing consecutive tours), and potential career candidates are automatically in the mandatory assignment pool and are expected to bid on announced positions. All individuals interested in field assignments should bid. Management will notify AFSA in a timely manner of any change to the assignment process.

27.19 Generally, the assignment process is as follows:

a. As soon as possible after the announcement of FS Selection Board results, FAA will announce first round bidding instructions for all international positions expected to be available for assignment the following summer, including positions at hard language posts for which long-term language training is required. Additional positions will be announced as they are identified. AFSA will be provided an opportunity to review bidding instructions at least two days prior to their release.

b. All bids must be received by the DA/FAA by the bid closing date stated in the announcement, barring circumstances beyond the control of those bidding.

c. The EAG and DA/FAA will provide recommendations to the Administrator as explained under selection procedures below.

d. The Administrator will determine final post assignments and inform the

DA/FAA.

e. If necessary, subsequent bid rounds will be conducted following the same procedures. As part of subsequent bid announcements, the DA/FAA will provide the number of bids, by grade, received for each position announced during the prior round. AFSA will be informed in a timely manner of delays in implementing a bid round.

f. As soon as possible after final assignments are determined, the DA/FAA will inform each selected individual of his/her assignment and tour of duty details, including the duration of the assignment.

27.20 Both parties expect that the assignment process will normally be completed in a timely manner. This means that barring circumstances outside management's control, the process will be completed by the second week of December. AFSA will be informed in a timely manner of any delays.

27.21 Agricultural Affairs Office positions will be assigned as follows:

a. Only FS career members and candidates may bid for positions announced for the first or second time. All bids must be submitted to the DA/FAA using form FAS-193 "Foreign Service Assignment Bids" with a copy provided to SPO. Individuals may include the one page supplemental statement to FAS-193, to highlight their qualifications for each position for which they apply.

b. Positions not filled after one announcement will be announced a second time. If a position is not filled after a second announcement, the Administrator will normally invoke worldwide availability to fill the position. The Administrator may, however, consider other options to fill the position.

27.22 ATO positions will be assigned as follows:

a. All bids must be submitted to the DA/FAA using form FAS-193 "Foreign Service Assignment Bids" with a copy provided to SPO. Individuals applying for a stretch ATO position must submit the one page supplemental statement to form FAS-193 for each such position. The supplemental statement is optional for individuals applying for a position at grade.

b. Positions not filled after one announcement will be announced a second time. If a position is not filled after a second announcement, the Administrator will either invoke worldwide availability or consider other options to fill the position.

27.23 Temporary duty to international positions will be advertised for competitive bidding consistent with the established practice of the Agency.

SELECTION CRITERIA

27.24 When selecting individuals for international assignments, management will consider the following criteria:

a. Needs of the Agency and the Foreign Service;

b. Managerial and supervisory training and experience;

c. The number of years of continuous domestic service;

d. Demonstrated language skills;

e. Individual rank relative to the assignment;

f. Professional experience relative to the needs of the position;

g. Stated assignment preferences;

h. Career development considerations;

i. Prior service in difficult or hardship assignments; and

j. The individual's TIC/TIS situation.

SELECTION PROCEDURES

27.25 The DA/FAA, will identify candidates for international assignments and prepare a list of candidates and selection recommendations for each position using the criteria provided above. The DA/FAA will consult with an individual to the extent possible, before recommending an individual for consideration for a post not listed on his/her form FAS-193.

27.26 The EAG will propose assignment recommendations for Heads of Office and ATO Directors. The DA/FAA will propose recommendations for all other assignments.

27.27 The Administrator will make all final assignment decisions based on the recommendations from the EAG and DA/FAA.

APPEAL OF ASSIGNMENTS

27.28 The following procedures govern international assignment appeals:

a. The individual must state in writing to the Administrator/FAS, the reasons for the appeal;

b. The EAG will review the request and recommend a decision to the Administrator/FAS; and

c. The Administrator/FAS will decide all appeal requests.

27.29 If an individual refuses to accept the Administrator's decision, disciplinary action will be taken in accordance with applicable statutes and regulations. Since Foreign Service members must be available for worldwide assignment, refusal to accept an international assignment could result in removal from the Foreign Service.

27.30 The DA/FAA will promptly announce all changes to original assignments. Positions available as a result of an appeal will be filled in an expeditious manner, normally following the assignment process outlined above.

INTERNATIONAL TOURS OF DUTY

27.31 Commissioned Officers and Career Candidates: A normal tour of duty for commissioned officers and career candidates is three (3) years with an automatic one (1) year extension, subject to proper notification by the officer and satisfactory work performance. A request for a second one (1) year extension based on compassionate reasons will normally be considered during the annual assignment process, but may be submitted at any time for management consideration.

27.32 Administrative Assistants: A normal tour of duty for Administrative Assistants is three (3) years, with the option of one (1) year extensions, if jointly requested by all Administrative Assistants. Administrative Assistants normally are assigned to duty aboard: domestic assignments are primarily for career development purposes.

27.33 Limited Appointments: A normal tour of duty for individuals serving under a limited appointment, other than career candidates, is the same as those for commissioned officers, subject to the statutory five (5) year limit for such appointments. Specifically, consistent with the FS Act, Section 309 (a), a limited appointment in the Foreign Service, including an appointment of an individual who is an employee of another agency, cannot exceed five (5) years in duration and cannot be extended or granted more than once to an individual.

CHANGES IN INTERNATIONAL TOURS OF DUTY

27.34 All tour-of-duty change requests must be submitted in writing to the DA/FAA. The Administrator/FAS will decide all requests. When considering tour changes, the Administrator will give careful consideration to the potential impact on the employee's family, career, future entitlements, and leave already taken.

27.35 While requests for tours of duty beyond four years for commissioned officers for career candidates may be made at any time for compassionate reasons, such requests will normally be considered during the annual assignment process and primarily determined based on the needs of the Agency.

27.36 If an involuntary curtailment or extension is being considered, the affected individual will be notified of the reasons and provided an opportunity to comment to the DA/FAA before a final decision is rendered.

27.37 If an individual refuses to accept the Administrator's decision, disciplinary action will be taken in accordance with applicable statutes and regulations. Since Foreign Service members must be available for worldwide assignment, refusal to accept an international assignment could result in removal from the Foreign Service.

27.38 When tours are adjusted, all entitlements must be amended accordingly and the individual provided with a revised assignment letter containing the new tour of duty end date. All tour of duty adjustments, including curtailments, will be publically announced in a timely manner.

27.39 Curtailments: The DA/FAA will forward all curtailment requests to the EAG which will provide recommendations to the Administrator/FAS.

27.40 Extensions: Notification to extend a tour of duty to four years must be submitted by September 15 of the year following arrival at post. In cases when arrival is during the first half of the calendar year, notification must be submitted at the discretion of the DA/FAA. Late notifications will normally be rejected. Notification from a commissioned officer or a career candidate will usually be automatically processed, assuming satisfactory work performance, as will requests from Administrative Assistants, if all Administrative Assistants jointly request an extension.

MISCELLANEOUS

27.41 Tours of duty will be officially defined in an assignment letter. Assignment letters will be signed by the individual and a copy provided to the individual prior to departure for post.

27.42 For international assignments of six months or more, the individual will be entitled to all allowances provided to other individuals at post, as authorized in 3 FAM 3200 and

5 U.S.C. 5924.

27.43 Policies on home leave and R&R will follow 3 FAM 3430 and 3720, respectively.

27.44 With the exception of Administrative Assistants, no employee should serve more than 15 consecutive years abroad, unless the Administrator/FAS determines that compelling agency needs require a longer period and the individual agrees.

ARTICLE 28: LIMITATIONS AND WAIVERS FOR U.S. TOURS (8-YEAR RULE)

STATEMENT OF PURPOSE

28.1 This article sets forth the procedures and criteria to be used by Foreign Service career members to request extension of a U.S. assignment beyond the 8-year maximum statutory limit for continuous service in the United States. For the purpose of this article, an assignment is a personnel action of 365 days or more.

BACKGROUND

28.2 The duration of tours of duty in the United States for career members is subject to the limitations as defined in Article 27 (Assignment Policy) and the statutory requirement as defined in Section 504 of the Foreign Service Act. The Act states that continuous service in the United States is not to exceed eight years, but may be extended beyond that period due to special circumstances.

28.3 Management officials may extend assignments beyond eight years in compelling circumstances to meet the needs of the Agency. Extensions may also be requested by employees. The date by which personnel actions related to the 8-year rule must be implemented is the last day of the calendar year, which includes the eighth anniversary of the career member's return to the United States.

PROCEDURES

28.4 The Servicing Personnel Office (SPO) is responsible for identifying career members who are approaching the 8-year limit. Career members will be notified in writing by the SPO at least two years before the end of their 8-year limit.

28.5 Career members who are in their seventh year of continuous service in a position or combination of positions in the U.S. and want an extension of the 8-year limit, must submit a written request fully stating the reason(s) for the extension to the SPO and DA/FAA by June 15 of the seventh year. For example, a career member who returned to the U.S. on July 1, 2002, will have eight years of continuous domestic service on June 30, 2010. If the career member wants to request an extension to the 8-year limit, s/he must do so by June 15, 2009.

28.6 The SPO will review each request for completeness and forward it to the Executive Advisory Group (EAG).

28.7 The EAG will review each request on a case-by-case basis and, applying the criteria

listed in later sections of this article, make a recommendation to the Administrator/FAS. The EAG's recommendation will be documented in the EAG meeting minutes.

28.8 The Administrator/FAS decides all extension requests.

28.9 The career member will be notified in writing by the SPO of the Administrator's decision.

CRITERIA

28.10 The EAG will recommend approval of a request for a waiver of the 8-year limit only on an exceptional basis, and will apply one or more of the following criteria to support its recommendation:

a. Do the Agency's needs require the employee's service in the position? Extension requests under this criterion will be initiated by management and must state why another qualified employee, not subject to the 8-year limit, could not be selected for the position. The request should describe unique circumstances involving specialized qualifications. In arriving at its recommendation, the EAG will take into account the rotational nature of most Foreign Service positions. Knowledge and/or experience gained while occupying a position will not be the primary criterion for recommending an extension.

b. Has the officer or a family member been denied medical clearance for assignment abroad? The career member must authorize the disclosure of medical information to the SPO. Extensions on medical grounds can only be made on the basis of a current determination by the State Department Medical Division.

1. Extensions for medical reasons will be granted in increments of one year. The EAG may, however, recommend that a waiver be granted for two years, if State Department Medical Division certifies that:

(a) the employee has a Class 5 medical clearance; and

(b) the employee would be able to receive a Class 2 or Class 1 clearance within the next two years.

2. In those instances where a family member has received a Class 5 clearance, the one-year limit for an extension is applicable. In lieu of a second year being approved, the employee will be offered the opportunity of assignment

abroad under Separate Maintenance Allowance.

c. Do the career member's TIC/TIS limits permit a two-year foreign assignment if the member is not promoted or granted a Limited Career Extension (LCE)?

d. Is the career member the AFSA/FAS VP or Representative? The EAG will recommend a waiver sufficient for the member to complete his/her current term of office and a second term, if re-elected.

e. Are there compassionate reasons for an extension? In such cases, the career member must submit a request to the Deputy Administrator/FAA. If at all possible, this request should be submitted prior to the due date for Form 193 for assignment in the eighth year. After conferring with AFSA/FAS, the Deputy Administrator/FAA will forward a recommendation to the Administrator/FAS for decision. Information pertaining to such cases will be considered confidential.

DENIAL OF AN EXTENSION REQUEST

28.11 Career members must be available for worldwide assignment. Therefore, if an extension request is denied , the career member will be assigned abroad as soon as possible. If the individual refuses the assignment, procedures in Article 27 (Assignment Policy) govern.

GENERAL INFORMATION

28.12 A career member's 8-year period of continuous service commences on the effective date the member is assigned to a position in the United States. This date will be documented on form SF-50, Notification of Personnel Action. Foreign assignments of less than 365 days will not establish a new start date for the 8-year rule, unless the assignment is curtailed for the convenience of the Agency. For example, a career member returns to the United States on August 1, 2002, serves in FAS/W for several years and is assigned to a 4-year foreign tour, arriving at post on July 7, 2008. Due to unforeseen circumstances, the member requests assignment back to FAS/W and arrives on June 7, 2009. Since the foreign assignment lasted less than 365 days, the career member's start date for the 8-year rule remains August 1, 2002.

28.13 Since Foreign Service Officers are responsible for managing their careers, if an extension is requested, the officer must state when s/he will be able to accept a foreign assignment.

28.14 Career members will be consulted in advance and informed in writing of the reasons for any management-initiated decision to extend their assignment in the U.S. beyond

the 8-year limit.

28.15 Pending a decision for an extension request, the career member is expected to bid for foreign assignments.

28.16 Extension requests will not be approved automatically. For those requests that are approved, extensions will be granted only in increments of one year, other than the exception for medical reasons cited above. Extension requests will not be considered until the career member is in the seventh year of continuous service in a position or combination of positions in the U.S.

28.17 The 8-year limit will be extended for all periods a career member is actually in Leave Without Pay (LWOP) status. For example, an individual granted a one year TIC/TIS extension because s/he was on LWOP for 200 days during a performance review period will only receive a 200 day extension to his/her 8-year limit.

RETIREMENT ELIGIBILITY

28.18 If a career member is eligible to retire during the year of expiration of his/her 8-year limit and plans to retire during that year, s/he is not required to bid for an international assignment that year. The career member must, however, submit written notice of intent to retire to the SPO prior to the start of that year's bidding process.

ARTICLE 29: AWARDS

29.1 The Parties agree that an incentive awards program is an important and effective means by which to recognize and motivate Foreign Service employees and that such a program has a positive impact on the agency's mission, especially given the importance of the Government Performance and Results Act (GPRA). Thus, management will, to the best of its abilities, provide sufficient resources for such a program. In addition, managers are strongly encouraged to actively participate in the program by recognizing and rewarding employee contributions which increase productivity, empower employees, and promote team building.

29.2 The Administrator/FAS will determine the amount of annual funding available for agency-wide administered monetary awards. Nothing shall preclude the Administrator/FAS from establishing a supplemental awards fund to recognize units and teams which meet and/or exceed their GPRA targets.

29.3 The amount of funding allocated to the Foreign Service performance awards pool will be based on the total Agency-Wide Administered Monetary Awards Pool from which Foreign Service Performance Shares are disbursed and the number of FS employees as a percent of total agency employees. The number of FS employees is defined as all FS employees, including career candidates and other employees under limited appointments, but excluding Senior Foreign Service Officers. The number will be determined no later than the end of the fiscal year.

29.4 As soon as possible thereafter, AFSA will be informed of this number as well as the total number of agency employees and the total amount of funding available under the Agency-wide Administered Monetary Awards Pool from which Foreign Service Performance Shares are disbursed.

29.5 Incentive awards are granted in the form of monetary and non-monetary recognition based on tangible and intangible benefits realized by the Government. The FAS Awards System consists of the following categories of awards:

a. Division/Unit Level Administered Awards

1. Non-Monetary: Time Off and Certificates

2. Monetary: Extra Effort and Quick Track

b. Agency-wide Administered Awards

1. Non-Monetary: Honorary and Career Service

2. Monetary: Individual performance (i.e., FS performance award shares) and Meritorious Service Increase (MSI)

DIVISION/UNIT LEVEL ADMINISTERED AWARDS

29.6 These awards are to be used to provide timely recognition for extra effort and exemplary employee performance. Managers are strongly encouraged to use the full range of awards available at the division/unit level to recognize both individual and team efforts.

29.7 Management will notify division/unit heads at the beginning of the fiscal year, or as soon as possible thereafter, of the total amount of funding available for division/unit administered monetary awards and will inform AFSA of the funding available for these awards for the agency as a whole as well as the general per capita amount on which it is based. Management will notify AFSA of the amount of unused division/unit award funding as soon as possible, after the end of the fiscal year. Management will strongly consider allocating unused funding to the agency-wide monetary award budget prior to the conclusion of each fiscal year.

AGENCY-WIDE ADMINISTERED AWARDS

29.8 Non-Monetary Awards: These awards shall be administered in accordance with current practice.

29.9 Monetary Awards: Meritorious Service Increase (MSI) awards will be administered in accordance with current regulations and practice. Monetary awards from the Foreign Service performance awards pool will be administered as follows:

a. As described in Article 25, the Selection Boards will create performance awards lists for each class of FS Officers and a single list for all FS Administrative Assistants, by rank ordering all individuals reviewed by the Boards, excluding individuals ranked as promotable. The rank order will be based exclusively on work performance during the most recent performance review period.

b. HRD will divide the performance awards list for each class into four groups: three groups of equal size and one group containing all other class members. The three groups of equal size will be determined as follows:

1. Calculate the number of individuals within the top 12 percent of each list. For example, if there are 20 individuals on a performance awards list, there would be 2.4 individuals in the top 12 percent (12% of 20);

2. Round all fractions up to the next whole number. In the above example, 2.4 would be rounded up to 3 individuals. This is the first of the three equal groups. (For share calculation purposes this group is labeled Group A.)

3. Create the second and third groups from each list. The number of individuals in each of the second and third groups is equal to the number in the first group. Using the above example, there would be 3 individuals in the second group (labeled Group B) and 3 in the third group (labeled Group C).

4. Create the final group. All individuals not placed in Groups A, B or C, are placed in the forth group, Group D.

c. Shares will be awarded as follows:

1. Group A: each individual will receive three (3) shares;

2. Group B: each individual will receive two (2) shares;

3. Group C: each individual will receive one (1) share;

4. Group D: these individuals are ineligible for shares.

e. Other Eligible Individuals: An individual who has earned an MSI, but will receive no financial benefit from the MSI, may elect to accept three shares from the awards pool. By choosing to receive three shares, the individual forfeits the step increase, but will still receive recognition for the MSI in his/her performance folder. MSI recipients eligible for shares must notify HRD of their decision within two weeks of the date Selection Board results are published or risk forfeiting participating in the FS awards share pool.

f. Ineligible individuals: It is the intent of the agency to grant monetary awards only to deserving individuals who would not otherwise receive any monetary compensation for exemplary work performance. Therefore, individuals who are promoted or accept an MSI are ineligible to receive award shares. In addition, individuals recommended for promotion into the Senior Foreign Service are ineligible to receive award shares. If the promotion is denied, the individual will be eligible to compete in future share pools.

g. HRD will determine the value of a FS awards pool share as follows: divide the total funding in the FS awards pool by the total number of shares to be awarded. These calculations will be completed within one week of receiving all necessary information.

h. AFSA will be permitted to review all data used to calculate the value and number of award shares prior to the distribution of any shares. HRD will ensure that only eligible individuals receive shares from the FS awards pool.

i. All monetary awards from the FS performance awards pool should be distributed no later than December 1 of the year in which they are awarded.

REPRESENTATION AND REVIEW

29.10 AFSA/FAS will have one (1) member on the agency's awards committee. AFSA/FAS's participation in the awards committee will be limited to the following:

a. Assess/review the operation of both the agency-wide and the division/unit level award systems to ensure all program objectives outlined in this Article are met; and,

b. Prepare written analyses, findings, and recommendations to the Administrator or his/her designee on the operation of the FAS Awards Program.

FAIRNESS

29.11 The FAS Awards System shall be administered in a manner that is fair and equitable, and which does not favor one group over another, such as by organization, by personnel system (e.g., Foreign Service/Civil Service), by grade, by job series, or by prohibited category.

ARTICLE 30: LANGUAGE INCENTIVES

PURPOSE AND POLICY

30.1 The provisions of this article outline the incentives available to individuals for acquiring and using languages in the field.

30.2 The authority for the FAS Language Incentive Policy is in Section 704(b)(3) of the FS Act.

30.3 It is FAS policy to use monetary incentives to encourage language study to enhance proficiency levels and use at post of language skills required for specific field assignments.

DEFINITIONS

30.4 Incentive Pay: Pay based on performance in language, computed as a percentage of base salary, prorated over a year, and paid biweekly, during the tour at post.

30.5 Language Proficiency: Skill level assigned to a person through an authorized language examination.

CRITERIA

30.6 To be eligible for language incentives, individuals must be:

a. members of the Foreign Service (FS);

b. on assignment in a country where an incentive language is the primary language.

LANGUAGE PROFICIENCY TESTS

30.7 Language proficiency tests are required proof of language proficiency. All official tests must be arranged through the Servicing Personnel Office (SPO) and administered by the National Foreign Affairs Training Center (NFATC) or other testing facility approved by management. All test results are:

a. valid for five years, except:

1. a member who previously has tested at the S-4/R-4 level of proficiency is deemed to have at least an S-3/R-3 proficiency level indefinitely unless his or her supervisor requests that the proficiency level be re-certified; and,

2. a member receiving two test scores of S-4/R-4 at least four years apart, or one test score of S-5/R-5 is deemed to have at least S-4/R-4 proficiency indefinitely unless his or her supervisor requests that the proficiency be re-certified.

b. filed in the employee's performance folder; and,

c. comprised of a speaking (S) score and a reading (R) score.

EMPLOYEE RESPONSIBILITIES

30.8 Employees shall:

a. raise their language proficiency to meet qualifying proficiency levels;

b. request language testing to certify proficiency;

c. ensure that their language proficiency test scores remain valid;

d. ensure that the SPO has an accurate record of their language proficiency test scores;

e. initiate and complete the language incentive application package;

f. notify the SPO by cable (Travel Message) of arrival at post; and,

g. notify the SPO by cable (Travel Message) of departure from post.

SPO RESPONSIBILITIES

30.9 The SPO shall:

a. provide the application form for language incentive pay, upon request;

b. review requests for language incentive pay;

c. process language incentive pay;

d. review the list of incentive languages at least annually with the Deputy Administrator/FAA; and,

e. forward to the Deputy Administrator/FAA all current and accurate records of

tested employees.

LANGUAGE INCENTIVE PAY

30.10 The following table contains the languages, by category, approved for incentive pay and the percentage of base pay awarded for each qualifying language proficiency level as of the effective date of this agreement. Management reserves the right to add to or delete from the languages listed under each category based on agency needs, in consultation with AFSA. An up-to-date list of the languages can be found in FAS Notice, "Language Proficiency Requirements for Commissioning of Foreign Service Officers and for Incentive Pay." The notice can be found in the Overseas Administrative Handbook on the FASTNET and currently on the FAA Homepage.

Language Categories
(As of the effective date of this agreement)

HARD	INTERMEDIATE	BASIC	ADDITIONAL
Arabic	Bulgarian	French	Czech
Chinese (Mandarin)	Indonesian 1/	German	Chinese (Cantonese)
Japanese	Polish	Italian	Croatian
Korean	Russian	Portuguese	Danish
	Serbian	Spanish	Dutch/Afrikaans
	Thai		Greek
	Turkish		Hindi
	Ukrainian		Hungarian
	Vietnamese		Malay
			Romanian
			Swahili
			Swedish
			Tagalog
			Urdu

Incentive Pay

S-2/R-1	3%	S-2/R-2	2%	S-3/R-3	2%	S-3/R-3	1%
S-2+/R-1+	6%	S-2+/R-2+	4%	S-3+/R-3+	4%	S-3+/R-3+	2%
S-3/R-2	9%	S-3/R-3	6%	S-4/R-4	6%		
S-3+/R-3	12%	S-3+/R-3+	8%				
S-4/R-3+	15%	S-4/R-4	10%				

1/ For Indonesian, incentive pay is: S-3/R-3 4%; S-3+/R-3+ 6%; and S-4/R-4 8%.

30.11 Total annual language incentive pay per individual for all languages will not exceed: for hard languages, $9,325; for all other languages, $7,250. These amounts will be adjusted to match any increases from base pay rates as of December 31, 2002.

PAYMENT SCHEDULE

30.12 Eligibility for payments will be effective as follows:

a. at the beginning of the first full pay period after arrival at post, for individuals who have achieved the required proficiency for incentive payments prior to arrival at post;

b. at the beginning of the first full pay period after the date of the language proficiency test, for individuals qualifying for incentive payments after arrival at post;

c. at the beginning of the first full pay period after a language is added to the list.

30.13 No incentive payments will be authorized until the SPO receives certification of the individual's test score from the NFATC or other management-approved facility and the completed application form for incentive pay. The completed application form must be received by the SPO within 90 days of the payment eligibility effective date for pay to be retroactive to that date, unless the SPO fails to provide the requested form in a timely manner. Otherwise, payment will begin as of the first full pay period after receipt of the application form.

30.14 When a language is removed from the incentive language list, payment for eligible individuals will terminate at the end of their current tour.

30.15 When a change in the language category occurs which lowers the level of incentive pay for that language, payment for eligible individuals will continue at the level of the prior category until the end of their current tour.

30.16 Language incentive payments terminate on the last day of the pay period during which the individual departs from post.

30.17 An individual may receive incentive pay for more than one language, if the individual:

a. is assigned to a country/region which has more than one principal or official language defined as an incentive language; and

b. qualifies for incentive pay in more than one of these languages, in accordance with Articles 30.10 and 30.11.

REASSESSMENT AND TERMINATION OF LANGUAGE INCENTIVE PROGRAM

30.18 The Parties recognize that continuation of the language incentive program is dependent on available funding. Management will review the availability of funding as part of its annual budget process and notify AFSA in a timely manner if the funding level will not permit the payment of language incentives to all individuals expected to qualify for such incentives. Management recognizes the importance of the language incentive program to the agency's overseas mission and, consequently, will fund the program to the maximum extent possible.

30.19 Should management believe any changes to the language incentive program qualifications are warranted, it will so inform AFSA/FAS and, if requested, negotiate the changes. Program qualifications include, but are not limited to: language categories, performance benchmarks, and incentive levels.

30.20 Management reserves the right to terminate the language incentive program upon the announcement of reduction in force and/or furlough actions that may be necessitated by budget or ceiling constraints beyond the control of management.

ARTICLE 31: CAREER DEVELOPMENT AND TRAINING

PURPOSE AND POLICY

31.1 The provisions of this Article are intended to create and foster a work environment conducive to the career development and training of bargaining unit members. The Parties agree to support and encourage individuals in developing their knowledge, skills, and abilities, and in contributing to the more effective utilization of available human and material resources in service to the Agency.

31.2 The Parties will encourage individuals to take advantage of educational opportunities and training that enhance work efficiency and provide skills needed for advancement based on Agency priorities and the availability of training funds. While stationed in Washington, FS Officers are encouraged to seek out training to develop management, leadership, and other skills necessary to the Agency's mission.

31.3 At each stage of their career, FS Officers should use the assessment tools available on the Agency's Intranet (FASTnet) and discussions with their supervisors to identify key skills they need to develop/improve and to craft an Individual Development Plan (IDP) to accomplish this task (see sections below). For example: career candidates and junior officers should strengthen basic supervisory and cross-cultural communications skills and become familiar with post budget planning and oversight and Embassy structure and functions; mid-career officers should improve office and personnel management and communications skills such as public speaking; Senior Foreign Service Officers should enhance all facets of their management and leadership skills and knowledge of U.S. governmental processes which impact agriculture. Throughout their careers, all FS Officers should continuously work to improve their foreign language skills.

31.4 Prior to or soon after return to a Washington assignment, individuals should familiarize themselves with available training and fellowships in topics such as management, leadership, presentation and communication skills, and Congressional Relations at various levels, by consulting the Training Handbook on FASTnet. They should use the IDP process (see sections below) to identify their development needs and accomplish as much of the relevant training as possible, while in Washington. To develop the skills specific to assignments abroad , individuals should refer to the appropriate sections on the Training Handbook on FASTnet and accomplish as much of this training as possible prior to onward assignment.

31.5 Training opportunities shall be given fairly, equitably, and consistent with affirmative action and other broad staff development goals and will be founded upon conformance with and subject to the following:

a. The Government Employee Training Act and regulations issued pursuant thereto;

b. the Equal Employment Opportunity Act, as amended;

c. the Affirmative Action Plan;

d. the Foreign Service Act of 1980, as amended;

e. available resources allocated for training purposes;

f. the applicable provisions of the settlement of the EEO Class Complaint 890216, EEO Docket Number 033-89-9279; and,

g. any other applicable statutory or regulatory provisions.

31.6 The Agency agrees to assist individuals in planning and completing a plan of career development and training.

31.7 The Agency agrees to notify individuals of selection, and an attempt will be made to notify individuals of non-selection, for an Agency-controlled training or educational opportunity for which they applied. In cases of non-selection, the individual may request in writing and receive a written explanation for the denial.

31.8 Where an institution of higher learning requires verification of on-the-job experience, the Agency shall verify that the individual does work for the Agency, the position description, series, job title, years worked for the Agency, and training history for the immediately prior five (5) year period. The Agency shall verify this information within 10 work days of the individual's written request. The Agency's response shall be in the form (e.g., letter, fax, e-mail, memorandum, telephone call) requested by the individual.

31.9 The Agency shall make payment for all authorized expenses in connection with approved training. Authorized training expenses include tuition, registration fees, books, transportation and parking for day-time courses only, and miscellaneous expenses approved in advance by the SPO, such as tapes and dictionaries. School supplies, such as pencils, notebooks, and backpacks, student fees related to college or university courses, and late fees will not be reimbursed.

DEFINITIONS

31.10 Training: An activity undertaken to increase the knowledge, competency, ability, and skills of individuals, which are related to their current duties and responsibilities and/or mission related developmental training.

31.11 Career Development: An activity undertaken to increase the knowledge, competency, ability, and skill of individuals in the performance of those duties which support the Agency mission and performance goals. These include potential duties in a different job or occupation at the same or higher level than the one currently held.

TRAINING

31.12 It shall be a major goal to improve, in general, the job performance of all individuals through the establishment of fair and equitable opportunities for training within clearly defined career fields.

31.13 The following approaches to individual training will be utilized, as appropriate:

a. In-house, external, or on-the-job training to improve individual capabilities to perform their current duties;

b. training and detail assignments in complementary positions;

c. enrollment of individuals in part-time educational programs at local educational institutions and/or in correspondence courses; and,

d. competitive, long-term training in Federal and non-Federal educational institutions, training which, because of its duration and/or scope, provides development beyond the needs of an individual's position.

31.14 Normally at the time of the interim review, as well as immediately subsequent to performance evaluation, or at any other time necessary, supervisors shall discuss with individuals training needs and opportunities that would help the individual to improve performance in his/her current position. Unscheduled discussions concerning an individual's training needs and performance improvement opportunities may be initiated by the individual or the supervisor.

31.15 Individuals shall receive training and/or orientation appropriate for any job in which they are placed or to which they are reassigned.

31.16 When training is requested primarily to prepare individuals for advancement or if the requested training would fulfill specific qualification requirements for a position with

known promotion potential, selection for such training will be made under competitive procedures.

31.17 Job-related training shall be provided on an equitable basis among work unit individuals who require such training.

31.18 When membership in a professional organization is not a trainer-determined or vendor- determined prerequisite for attendance at a training session, the Agency shall not consider membership as the sole factor in determining which individuals will receive the training.

NEW PROCESSES AND TRAINING

31.19 The Agency agrees to meet, consult, and bargain, if requested, with AFSA/FAS when new skills are necessary, as a result of the introduction of new equipment and/or new processes which affect or impact the working conditions of the involved individuals.

31.20 The Agency agrees to notify AFSA/FAS, as soon as practicable, of proposed installation of any new equipment, machinery, or processes, which would result in changes in work assignments or require additional training of bargaining unit members, and to bargain, if requested, said changes.

31.21 The Parties agree, upon request by either Party, to meet and discuss, in good faith, the possibility of instituting programs to train or retrain individuals in new skills, so as to assure an adequate supply of available individuals trained in these new skills. Written requests for such a meeting shall identify the purpose thereof.

31.22 In order to affect a smoother transition to automated processes, the Agency will include AFSA/FAS in the planning process for training courses or on-the-job training to effectively enable affected individuals to perform job duties, as well as provide for requisite staff development. The Agency will inform AFSA/FAS of planned changes and schedule the training through the IRM coordinating process or other appropriate means.

CAREER DEVELOPMENT

31.23 Individuals shall be given reasonable opportunity and reasonable time necessary to discuss their career development with their supervisors and the SPO staff.

31.24 The Agency agrees to play an active role in notifying and nominating bargaining unit members for various specialized career development programs.

31.25 Both parties recognize that an individual may become dissatisfied with his/her job

because of limited advancement possibilities or changing career goals. In such cases, the Agency agrees that an individual may request a meeting with the appropriate Agency representative for the purpose of career counseling.

31.26 Training while on foreign assignment to improve job-related skills shall be offered, subject to the availability of funds, as appropriate to meet office needs. Individuals on foreign assignments are encouraged to seek out significant career development training opportunities, especially in the areas of marketing, strategic planning, management, and supervisory training. Travel to the United States to attend these training courses will be provided, when approved at post and by the Area Officer.

CAREER DEVELOPMENT FACILITIES

31.27 The Farm and Foreign Agricultural Services (FFAS) Career Development Center (CDC) is intended to be a one-stop, comprehensive development facility to provide a variety of activities and services to individuals at all stages of their careers. The emphasis is on career enhancement through self assessment, self-paced learning, confidential career counseling, and referral services.

31.28 The services and activities of the CDC will consist of, but are not limited to:

a. providing confidential career counseling/development advice to help individuals identify training and professional development opportunities,

b. providing training resources;

c. providing referral services;

d. providing information to individuals on career-related topics, i.e., Individual Development Plans, resume preparation, and interviewing techniques;

e. administering tools for assessing and/or diagnosing skills and career interests;

f. facilitating mentoring programs;

g. supporting the Agency's cross training and retraining efforts; and,

h. supporting workshops.

31.29 To the extent that available resources permit, the Agency agrees to continue to provide these services and activities through the CDC.

31.30 Changes made in the location of the CDC, individual access, services offered by the CDC, hours of accessibility, and any other changes in the method which CDC provides services and activities will require advance bargaining with AFSA/FAS in accordance with applicable law, Executive Order, and this Agreement.

31.31 Individuals located in the same duty station but not the same building as the CDC may request approval from their supervisors to commute from their work units to utilize the services and activities provided. When assigned to field offices, individuals may request assistance from these centers via internal or external methods of communication.

31.32 The Agency supports the use of the Family Liaison Office, Overseas Briefing Center (OBC), and the Language Lab at the Department of State, and the Community Liaison Office at post for both individuals and their families.

31.33 The Agency will pay for the State Department's 5-day Retirement Planning Seminar for all bargaining unit members. The following restrictions apply:

a. Members must be within five years of retirement age (i.e., 45 years of age) to be eligible.

b. Members who have taken the Seminar may not repeat it in less than 5 years.

c. The Agency will not pay travel or per diem costs for the sole purpose of attending the Seminar to members not based in Washington. Members overseas who have announced their retirement and are returning to the United States may receive 5 days per diem providing their travel orders contain a stop in Washington D.C. for other purposes.

INDIVIDUAL DEVELOPMENT PLAN (IDP)

31.34 Supervisors and their employees shall discuss and complete a skills checklist to identify short and medium-term training needs for individuals serving in Washington. The results of the skills checklist will provide the framework for the IDP. Training needs for both the duties the individual currently performs and career development will be considered with priority given to the former.

31.35 The IDP is a tool by which the individual and Agency identify desired training for the upcoming training year and will, to the extent possible, be adhered to by the Agency, recognizing that receipt of identified training is contingent on Agency priorities and the availability of training funds.

31.36 If the supervisor agrees that skills under the core competencies as listed in the

appropriate skills checklist have been mastered, that no formal job-related training is needed, and the employee seeks no other training, then the employee's IDP need only reflect any ad hoc informational sessions related to the job.

31.37 The employee will participate in those training activities mandated for all employees in the ethics, civil rights, employee and human relations areas (or other areas mandated by the Agency, the Department, regulation or law).

31.38 The IDP may be revisited at any time should the supervisor's assessment change or the employee seek training later in the year. Such training at the employee's request will be made available to the extent funds are available.

31.39 If at any stage of the IDP review process requested training and/or opportunity for career development is not approved, the individual shall be advised.

31.40 After an employee has satisfactorily completed a training course, a record of the completed training will be filed electronically in a training database. Employees may request a copy of their individual training records by contacting the Human Resources Division, Training and Development Branch (TDB). TDB will have six (6) working days to honor employee requests.

LANGUAGE TRAINING POLICY

WASHINGTON BASED INDIVIDUALS

31.41 Management supports the development of foreign language proficiency of individuals, with an emphasis on the preparation of individuals for assignments where language skills are necessary to carry out the mission of the Agency. Supervisors shall encourage individuals to develop language skills and are encouraged to use the Agency Employee Recognition Program (e.g., quick track awards and other available forms of recognition) to acknowledge the skillful use of foreign language on the job.

31.42 The languages listed below are considered priority languages for career enrichment language training in Washington, because they are the principal working languages of countries in which the Agency has substantial program interests. The Agency will support training in these languages, in keeping with its language training policy. Training in other languages may be considered with appropriate justification from the employee.

Arabic	Italian	Serbian
Bulgarian	Japanese	Spanish
Chinese (Mandarin)	Korean	Thai
French	Polish	Turkish

German	Portuguese	Ukrainian
Indonesian	Russian	Vietnamese

31.43 Support for language learning by Washington-based individuals will be available as follows:

a. In-House Language Training: The Agency will continue to pay in full the cost of in-house language training for Arabic, Chinese Mandarin, French, Japanese, Russian and Spanish, or other priority languages for which there is both an Agency need and sufficient demand, and will endeavor to set up early morning or late-afternoon classes when sufficient numbers of individuals at similar ability levels are available to justify organizing these classes. In-house classes will normally be held between the hours of 7:00 to 9:00 a.m. and 5:00 to 7:00 p.m.

b. Early-morning language training at the NFATC or other outside facilities approved by management:

1. Early-morning language training at the National Foreign Affairs Training Center (NFATC), Department of State, or other management approved facilities is to be used for maintenance and improvement of a pre-existing language competency. Management will continue to pay, in full, the cost of language maintenance/improvement training at NFATC or other approved facilities (provided that the cost and time expended do not exceed that required by NFATC) for any individual with a minimum proficiency level of S-2/R-2 in basic languages and a S-1/R-1 in intermediate and hard languages. As proof of meeting the requirements stated above, an individual must have a language test score on file with the SPO, issued within the past five years by an approved testing facility.

2. Reimbursement for travel costs related to this training will be governed by current Federal travel regulations.

3. Management will not charge individuals leave to attend in house or early-morning language classes as described in 31.43b 1 and 2 above. However, individuals enrolled in these language classes must establish tours of duty such that they are not absent from work for more than a total of 5 hours per week, as a result of this language training.

c. Language training outside of duty hours: All individuals are encouraged to undertake language study in any of the languages listed in this section at the USDA Graduate School, private universities or colleges, or other agencies.

The Agency will pay the cost of formal classes taken in any language that is directly related to the work of the Agency, up to a maximum outlay per individual of $500 per year. Upon completion of the course, the individual must provide the SPO with a transcript indicating the final grade earned in the course. Any individual who does not receive a passing grade, must reimburse the Agency for the full cost of the course and materials.

d. Self-study programs: Language materials for self-study will be provided to individuals by the SPO upon request. However, such materials remain the property of the Agency and must be returned to the SPO. Enrollment in these programs may be processed through the SPO.

e. Tutorial language training programs: Proposals for tutorial language training programs will be evaluated by the Agency on a case-by-case basis.

f. Language books and materials: Normally, the cost of books and/or materials for language training courses will be covered in full by the Agency. However, items such as dictionaries and miscellaneous reference materials will not be covered, unless approved in advance by the SPO.

TRAINING FOR INDIVIDUALS WITH FOREIGN ASSIGNMENTS

31.44 Policies pertaining to foreign language training for foreign assignments are based upon evolving needs. Management may authorize language training in foreign countries in cases where the individual's personal situation and the availability of adequate foreign training facilities and funding make this a viable option to meet the Agency's needs.

LENGTH OF LANGUAGE TRAINING

31.45 Management will provide up to the following lengths of training per language category:

Basic	24 weeks
Intermediate	44 weeks
Hard	52 weeks
Additional	8 weeks

31.46 Languages, by category, approved for training as of the effective date of this agreement can be found in Article 24. Management reserves the right to add to or delete from the languages under each category based on Agency needs, in consultation with AFSA. An up-to-date list of the languages can be found in FAS Notice, "Language Proficiency Requirements for Commissioning of Foreign Service

Officers and for Incentive Pay." This notice can be found in the Overseas Administrative Handbook on the FASTnet and currently on the FAA Home page.

GUIDELINES

31.47 Time and funding permitting, the standard lengths of training indicated above will be applied to training at NFATC and other management-approved facilities, and for tutoring, immersion courses overseas, or other appropriate training. The decision will be made on the basis of both the funds available and the efficacy of the training. The length of training may be extended for individuals who are highly motivated to achieve higher than the minimum levels of competence, and who have demonstrated the ability to master difficult languages.

LANGUAGE TRAINING WHILE ON FOREIGN ASSIGNMENTS

31.48 The Agency will continue to routinely approve language training for individuals on foreign assignments. Such training should impinge as little as possible on the office schedule. Office heads who are considering scheduling extensive language training for themselves or their American employees during office hours must consult with their Area Officers.

31.49 Where appropriate, the Agency will support intensive language training for individuals on foreign assignments, consisting of 30 to 60 days of full-time language training. It is the responsibility of the individual to develop an appropriate and effective training program, which must be approved at post and by the appropriate Area Officer.

31.50 Office heads shall normally request training in the post's General Authorization (GA) plan, which is approved by the appropriate Area Officer. Other training not included in the original GA, must also be approved by the appropriate Area Officer.

TRAINING PRIOR TO FOREIGN ASSIGNMENT

31.51 As preparation for a foreign assignment, each individual, coordinating with his/her FAA Area Director, shall develop a schedule of training which will normally include:

a. Preparing for assignment abroad orientation;

b. Management or career development training, as appropriate and required;

c. Security orientation;

d. Area Studies;

e. Consular Training, if necessary; and,

f. Language Training, if necessary.

31.52 Career candidates should strive to be language qualified before their first assignment abroad. When this is not possible, management will provide the language training and testing opportunities, including training at post, identified as necessary for the candidate to successfully prepare for the language qualification exam.

31.53 Career candidates may be language qualified in any language described in FAS Notice, "Language Proficiency Requirements for Commissioning of Foreign Service Officers and for Incentive Pay." The notice can be found at in the Overseas Administrative Handbook on the FASTnet and currently on the FAA Home page. Management will normally only pay for training for commissioning in languages under the conditions listed in the FAS notice.

FAMILY MEMBER TRAINING

31.54 The Agency supports training for spouses only in the following areas (subject to funding availability) when accompanying individuals overseas:

a. Language - the funding authorized for language training will normally be equivalent to State Department's FAST course, except for hard languages where it normally will be equivalent to twice the length of the FAST course or to that provided to the employee, funding permitting. The training may take place either in Washington or at post;

b. Area Studies (full or part-time);

c. Functional Training - spouses who are U. S. citizens may receive functional training, when appropriate and subject to available funding, to prepare them for anticipated employment in the Family Member Appointment Program; and,

d. "Preparing for Your Overseas Assignment" orientation.

31.55 All dependents are eligible to participate in the Security Overseas Seminar and other programs of the Overseas Briefing Center.

DEPENDENT CARE

31.56 Dependent care reimbursements ("reimbursements") are subject to the availability of funds.

31.57 Reimbursements are calculated based on actual attendance in authorized training and for a reasonable time before and after the scheduled hours of the training to provide for travel time to and from the training facility. No reimbursements will be made for days the individual is absent from class or days when the class is not held.

31.58 Reimbursements are paid only to allow participation in training by spouses normally responsible for the care of dependent(s).

OVERSEAS TRAINING

31.59 The Agency will assist individuals in obtaining information on overseas study and training, in obtaining training materials, and in processing requests for training.

VARIANCE IN WORK HOURS

31.60 Requests for a variance in regular working hours and/or appropriate leave for training purposes will be granted unless it would interfere with the performance of the critical day-to-day mission of the Agency.

ARTICLE 32: WORK SCHEDULES AND TOURS OF DUTY

PURPOSE AND POLICY

32.1 Foreign Service career members, career candidates, and administrative assistants (hereinafter referred to as employees) and supervisors work to carry out the overall mission of the Agency by providing professional, technical, and clerical services to internal and external customers. This Article has been developed to give recognition to the mutual need for coverage and flexibility, and to address issues and concerns that have arisen and, to the extent foreseeable, will arise as employees and supervisors continue working together to accomplish the work of the Agency.

32.2 This Article is applicable to employees working in the United States and conforms to USDA's Family-Friendly Workplace Guide and the Fair Labor Standards Act. Subject to approval by the immediate supervisor, or if the requestor is the head of post, the Chief of Mission, employees on foreign assignment also may work Alternative Work Schedules (AWS) outlined in this Article.

32.3 The parties recognize that this Article increases work schedule flexibility by conforming to USDA's Family-Friendly Workplace Guide. In order to make any work schedule system successful, employees and supervisors have a responsibility to inform each other in a timely fashion of any significant events that may affect the work schedule.

DEFINITIONS

32.4 Basic Work Requirement: The number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time-off, or time-off as an award. (80 hours a pay period for a full-time (FT) employee.)

32.5 Tour of Duty: Under a flexible work schedule the limits established within which an employee must complete his/her basic work requirement. Under a compressed work schedule or other fixed schedule, tour of duty is synonymous with basic work requirement.

32.6 Biweekly Pay Period: The 2-week period for which an employee is scheduled to perform work.

32.7 Core Hours: The time period on a scheduled workday when an employee must be present for work or on leave. For the purposes of this Article, core hours are between 9:30 AM and 3:30 PM each day worked.

32.8 Credit Hours: Those hours within a flexible work schedule that an employee elects to work in excess of his/her basic work requirements, so as to vary the length of a workweek or workday. Credit hours may be worked and earned between 6:30 AM and 7:30 PM, Monday through Friday, with a 2 hour maximum per day. Credit hours are not overtime or compensatory time.

32.9 Alternative Work Schedule (AWS): Jointly refers to both flexible and fixed work schedules.

32.10 Fixed Work Schedule: A work schedule under which an employee has a fixed arrival and departure time each workday. This includes the fixed 8-hour day and compressed work schedules. Employees on a fixed work schedule are not eligible for credit hours.

32.11 Flexible Work Schedule: Work under Maxiflex or Flexitime, both eligible for credit hours, that:

a. In the case of a full-time employee, has an 80-hour bi-weekly basic work requirement that allows him/her to request his/her own schedule consistent with the procedures in this Article; and,

b. In the case of a part-time (PT) employee, has a bi-weekly work requirement of less than 80 hours that allows him/her to request his/her own schedule consistent with the procedures in this Article.

32.12 Maxiflex: A type of flexible work schedule where an employee may elect to work 10 or fewer workdays in the bi-weekly pay period. A full-time employee has a basic work requirement of 80 hours for the bi-weekly pay period, but the employee may vary the number of hours worked on a given work day or the number of hours worked each week consistent with the procedures in this Article. Employees may vary their arrival and departure times each work day, during the flexible time bands of 6:30 AM and 9:30 AM, and 3:30 PM and 7:30 PM, respectively. Core hours apply (32.7) and employees are eligible for credit hours.

32.13 Flexitime: A flexible work schedule under which an employee is allowed to vary his/her arrival and departure times within the flexible time bands (32.12) and has a basic work requirement of 8 hours per day. Core hours apply (32.7) and employees are eligible for credit hours.

32.14 Compressed Work Schedule (CWS): Work performed by an employee under a fixed work schedule with fixed arrival and departure times each work day that has:

a. In the case of a full-time employee, an 80-hour biweekly basic work requirement that is scheduled for fewer than 10 work days; and,

b. In the case of a part-time employee, a biweekly basic work requirement of less than 80 hours that is scheduled for less than 10 work days and that may require him/her to work more than 8 hours in a day.

c. Employees working a CWS are not eligible to earn credit hours.

32.15 8-Hour Day: A fixed work schedule under which an employee has a basic work requirement of 8 hours per day, 5 days a week with a fixed arrival and departure time. Ineligible for credit hours.

32.16 Flexiplace: also known as telework or tele-commuting, refers to paid employment performed away from the office, either at home or at a satellite work site, for an agreed upon portion of the workweek.

32.17 Flexilunch - Employees working a Flexitime or Maxiflex schedule may, with advance supervisory approval, expand their lunch break within the lunch band on any given day, provided arrival and/or departure times are adjusted by an equivalent amount on that day. Employees on a fixed work schedule (compressed (CWS) or a fixed 8-hour day) are required to request leave.

32.18 Lunch Band - the period of time between 11:00 a.m. and 2:00 p.m. when an employee may take his/her lunch break. An employee may not be required to work more than six (6) hours without a lunch break.

WORK SCHEDULE OPTIONS

32.19 The following work scheduling options will be available, in accordance with the OPM Handbook on AWS, whenever possible:

a. Fixed Work Schedule: An 8-hour day or Compressed Work Schedule (CWS).

b. Flexible Work Schedule: Flexitime or Maxiflex.

32.20 A supervisor may deny, suspend, or remove an employee from an alternative work schedule if:

a. the employee would be unable to complete the requirements of his/her position;

b. the office would have inadequate coverage during established Agency business hours; or,

c. a critical mission of the Agency would not be accomplished or would be unduly delayed or interrupted.

32.21 Consistent with past practice, and until a new NFC Time and Attendance (T&A) system is implemented, employees must sign in and out daily. Within 30 days of receipt of new Departmental T&A regulations, the parties agree to meet and negotiate their impact and implementation.

32.22 All requests for a change in work schedule, if approved, will become effective on the first day of the following pay period.

8-HOUR DAY SCHEDULE

32.23 Employees who have not requested and/or not had their request for an AWS approved will be on an 8-hour day schedule.

32.24 Employees on an 8-hour day will be scheduled to work Monday through Friday of each week.

32.25 Employees on an 8-hour day may request a work schedule which begins no earlier than 7:00 AM and no later than 9:30 AM

32.26 Employees on an 8-hour day receive, and must use, a 30-minute unpaid lunch break. Therefore, the departure time for an employee on an 8-hour day must be eight (8) and one half hours after his/her fixed arrival time.

32.27 Employees on an 8-hour day will select a fixed arrival and departure time with supervisory approval. They are not eligible to earn credit hours or retain previously earned credit hours. See sections 32.47 - 53 for more information on credit hours.

COMPRESSED WORK SCHEDULE

32.28 Consistent with section 32.19, an employee may request to work a CWS. The employee will submit a proposed work schedule, selecting his/her fixed arrival and departure times. The tour of duty for employees on CWS must end no later than 6:00 PM. Employees on a CWS are not eligible for credit hours.

32.29 The basic work requirement for an employee on CWS is 80 hours per pay period in fewer than 10 work days. Employees on CWS may request to work one of the following schedule options:

a. 5/4-9 Compressed Plan - an employee works eight 9-hour days and one 8-hour day, with one non-work day each pay period, for a total of 80 hours in a pay period.

b. Four-Day Workweek (4-10 plan) - an employee must work four 10-hour days, i.e. 40 hours a week, and 80 hours in a pay period.

32.30 Core hours for Employees on CWS are between 9:30 AM and 3:30 PM each day worked. Employees on CWS must be on duty during those hours, except for scheduled and approved use of leave or during the 30 minute unpaid lunch period.

32.31 If employees on CWS within the same work unit or under the same supervisor request the same day(s) off, so that approval of both/all of the requests would result in inadequate office coverage during the workday or the failure, delay, or interruption in completing a critical mission of the Agency, the supervisor will decide which request(s) to approve based on work needs. If the employees requesting the same day off are equally capable of performing the required work, the supervisor will request that the employees reach agreement among themselves. If the employees cannot reach agreement, the most senior employee, based on service computation date for leave, will be granted his/her request.

FLEXITIME

32.32 Consistent with section 32.19, an employee may request to work Flexitime. The basic work requirement is 40 hours per week.

32.33 Employees on Flexitime must work an 8-hour day, 5 days a week, Monday through Friday. They may vary the arrival time each workday, between 7:00 AM and 9:30 AM, and their departure time between 3:30 PM and 6:00 PM, on a daily basis.

32.34 Core hours for employees on Flexitime are between 9:30 AM and 3:30 PM each day. Employees on Flexitime must be on duty during core hours, except for scheduled and approved use of leave or credit hours or during the 30 minute unpaid lunch period.

32.35 Employees on Flexitime may earn and use credit hours between 6:30 AM and 7:30 PM on Monday through Friday. See section 32.47 - 53 for more information on credit hours.

MAXIFLEX

32.36 Consistent with section 32.19, an employee may request to work Maxiflex.

32.37 The basic work requirement for employees on Maxiflex is 80 hours per pay period. Employees on Maxiflex may work up to 10 hours a day, Monday through Friday, in meeting their basic work requirement. They may vary the arrival time each work day, between 6:30 AM and 9:30 AM, and their departure time between 3:30 PM and 7:30 PM, on a daily basis. While employees have the right to change their arrival and departure times, they also have a responsibility to inform their supervisors in a timely fashion of any significant time variation in their expected work schedule.

32.38 Core hours for employees on Maxiflex are between 9:30 AM and 3:30 PM, each day worked. Employees on Maxiflex must be on duty during core hours except for scheduled and approved use of leave or credit hours or during the 30 minute unpaid lunch period.

32.39 Employees on Maxiflex may earn and use credit hours between 6:30 AM and 7:30 PM, on Monday through Friday, with a 2 hour maximum per day. See sections 32.47 - 53 below for more information on credit hours.

32.40 An employee on Maxiflex will fill out a projected work schedule and submit it to his/her supervisor not later than the close of business on the Monday prior to the pay period it will go into effect.

32.41 If employees on Maxiflex within the same work unit or under the same supervisor request the same day(s) off, so that to approve both/all of the requests would result in inadequate office coverage during the workday, or the failure, delay, or interruption in completing a critical mission of the Agency, the supervisor will decide which request(s) to approve based on work priorities and due dates. If the employees requesting the same day off are equally capable of performing the required work, the supervisor will request that they reach agreement among themselves. If they cannot reach agreement, the most senior employee, based on service computation date for leave, will be granted his/her request.

PROCEDURES FOR REQUESTING AWS

32.42 Employees serving on a domestic assignment who desire to work AWS must submit a written request to their supervisor. Employees serving on a foreign assignment who desire to work AWS must submit a written request to their immediate supervisor at post (requests from the head of post should be submitted to the Chief of Mission). Consistent with section 32.19, employees may request a change in their current work schedule at any time by making a written request to their supervisor. After an initial work schedule is established, employees may change between flexible and fixed work schedules only once during a 12-month period. This will not preclude changes due to good cause shown.

32.43 Employees who have not specifically requested to work AWS will be on a fixed 8-hour day schedule. Supervisors must work with those employees to establish their work schedules in accordance with section 32.23 - 27.

32.44 A Supervisor may, after giving timely notice to affected employees, make a temporary or permanent change to an employee's work schedule (including scheduled days off) for any work-related reason.

32.45 Any approved work schedule option or work schedule change will become effective at the beginning of the pay period after approval, or as agreed between the supervisor and the employee. Retroactive changes to work schedule options will not be permitted.

32.46 Normally, a supervisor or manager will approve or disapprove a work schedule option request within 5 work days of actual receipt. It is the employee's responsibility to ensure the supervisor's actual receipt of the request. Consistent with section 32.19 supervisors will approve the requested schedule and any amendments to it unless doing so would have an adverse impact on the Agency's ability to meet its mission requirements as determined by the supervisor. If the work schedule option requested is disapproved, the reasons for such disapproval must be provided in writing to the employee.

CREDIT HOURS

32.47 Credit hours may be earned and used only by employees approved to work Flexitime or Maxiflex.

32.48 Credit hours are earned at the option of the employee. An employee will normally notify his/her supervisor prior to working credit hours. Absent good cause, the supervisor will not object, but reserves the right to determine that appropriate work is available

32.49 Credit hours may only be earned between 6:30 AM to 7:30 PM on Monday through Friday, with a 2 hour per day maximum. Credit hours may not be earned on Saturday, Sunday, non-workdays and/or holidays. They may not be earned for working during the lunch period.

32.50 For a full-time employee, the number of credit hours that he/she may carry over from one bi-weekly pay period to the next bi-weekly pay period cannot exceed 24 credit hours. For a part-time employee, the number of credit hours that may be carried over from a bi-weekly pay period to a succeeding bi-weekly pay period will not exceed one-fourth of his/her bi-weekly work requirement.

32.51 An employee's right to use earned credit hours is subject to supervisory approval. The same procedures used to request annual leave will be used to request the use of credit hours (See Article 33) of this Agreement. Normally, supervisors will approve the requested use of credit hours unless doing so would have an adverse impact on the Agency's ability to meet its mission requirements as determined by the supervisor. If the request to use credit hours is disapproved, the reasons for such disapproval must be provided in writing to the employee.

32.52 When an employee is no longer subject to a flexible work schedule, the employee must be paid for his/her accumulated credit hours at his/her current rate of pay. Employees may not be compensated for excess or unused credit hours that cannot be carried forward into the next pay period.

32.53 Employees may not be paid overtime pay, Sunday premium pay, or holiday premium pay for credit hours.

HOLIDAYS UNDER CWS

32.54 For FT employees working a CWS work schedule, when a holiday falls on their scheduled non-work day, the employee may, consistent with the need to maintain adequate office coverage and provide services to our customers, take their "in lieu of" holiday on the work day immediately prior to the holiday or the day after the holiday.

32.55 Employees working a CWS work schedule are entitled to holiday pay (their rate of basic pay) for the number of hours scheduled to be worked on the day of the holiday or the day selected as their in-lieu-of holiday. Holidays are established by Federal statute or Executive Order.

HOLIDAYS UNDER FLEXIBLE WORK SCHEDULES

32.56 FT employees working a Maxiflex work schedule may, when a holiday falls on their scheduled non-work day, consistent with the need to maintain adequate office coverage and provide services to our customers, take their "in lieu of" holiday on the work day immediately prior to or the day after the holiday. Holiday pay cannot exceed 8 hours for employees working a Maxiflex Work Schedule, regardless of the number of hours they scheduled to work on a day designated a Holiday or "in lieu of" holiday.

32.57 FT employees working a Flexitime work schedule are entitled to holiday pay for eight (8) hours.

HOLIDAYS FOR PART-TIME EMPLOYEES

32.58 When a holiday falls on a part-time employee's scheduled non-work day, there is no holiday pay entitlement, regardless of the type of work schedule the PT employee is working.

32.59 If a holiday falls on a part-time employee's scheduled workday and the employee is approved to work a fixed work schedule (CWS), then the employee is entitled to holiday pay for the number of hours they are scheduled to work on that day.

32.60 If the part-time employee is approved to work a flexible work schedule (Maxiflex or Flexitime) and the holiday falls on a day they normally work, then the PT employee is entitled to holiday pay for their established, typical, or average hours claimed, not to exceed eight (8) hours of pay.

SICK AND ANNUAL LEAVE UNDER FLEXIBLE WORK SCHEDULES

32.61 See Article 33 (Leave)

EXCUSED ABSENCES UNDER FLEXIBLE WORK SCHEDULES

32.62 The Employer may grant excused absence with pay to employees covered by a flexible work schedule under the same circumstances as excused absence would be granted to employees covered by other work schedules.

32.63 For employees on flexible work schedules, the amount of excused absence to be granted shall be based on the employee's established, typical, or average daily work requirement in effect for the period covered by the excused absence.

TEMPORARY DUTY UNDER FLEXIBLE WORK SCHEDULES

32.64 An employee on a flexible work schedule assigned to temporary duty (including attending training) away from his/her official duty station, must adjust his/her work schedule to the work or training schedule at the temporary duty site and must meet his/her basic work requirement.

32.65 An employee on a flexible work schedule who is scheduled to attend a full day of training away from his/her official duty station may not be credited with more than 8 hours of work toward meeting his/her basic work requirement for the time spent in training. If the scheduled training is for less than 8 hours and the employee can reasonably return to his/her official duty station, reasonable travel time to return to the official duty station will be considered hours worked in meeting the employee's basic work requirement.

FLEXIPLACE

32.66 The agency supports a flexible workplace policy for employees who desire to work off-sites for part of the pay period and whose work is appropriate to such an arrangement and where such an arrangement will benefit the government.

a. The National Office Flexiplace Program policies and procedures will be documented and managed through the agency Notice publications. This method of managing the program will allow for changes and adjustments, as agreed to by management and the union, when issues or problems are identified. This does not prevent the union from requesting formal negotiations if agreement on changes cannot be reached.

b. Members at overseas posts shall only be eligible for intermittent Flexiplace as defined in the agency Notice publications.

REASONABLE ACCOMMODATION

32.67 By mutual consent of the supervisor, employee, and the Disability Employment Program Manager, core hours and/or tour of duty restrictions may be waived for a disabled employee requiring a permanent schedule change to enable the Agency to provide ongoing reasonable accommodation for a disability. A full time employee must still meet the 80-hour biweekly basic work requirement.

ARTICLE 33: LEAVE

GENERAL RULES

33.1 Individuals will earn annual and sick leave in accordance with applicable laws and regulations.

33.2 Denial of leave requests will not be used in lieu of disciplinary or adverse actions.

33.3 Leave will be charged in fifteen (15) minute increments.

33.4 Requests and approval or disapproval of leave will be documented on the agency's standard leave form, "Request for Leave or Approved Absences". It is the individual's responsibility to ensure requests are submitted to, and received by, the approving official and, when practicable, approved prior to taking leave. Approving officials will consider requests for leave in a timely manner and ensure a response is promptly received by the individual. Each work unit shall establish its own procedures concerning delivery and receipt of the agency's standard leave form.

33.5 If the needs of the Employer do not permit the approval of leave requested in advance, the supervisor will write the reason for the disapproval on the agency's standard leave form submitted by the individual and return the form to him/her. On these rare occasions, the individual and the supervisor will work together to schedule leave at an agreed upon time.

33.6 When unscheduled leave is necessary, the individual shall contact the first-level supervisor, and, if not available, the second level supervisor, to request leave. If neither is available, the individual shall leave a telephone or email message for his/her supervisor, recognizing that supervisory approval is required. In emergency situations, the supervisor shall accept notification from a third party acting as the individual's agent for purposes of this article. The individual has the responsibility for contacting the supervisor as soon as is reasonably possible to provide any required information or documentation in accordance with this article.

33.7 It is the intention of the parties to respect the privacy of individuals in dealing with purely personal matters. However, where appropriate, a supervisor may request sufficient information concerning the circumstances and the duration of the absence, if known, to permit the supervisor to evaluate the appropriateness of approving or disapproving leave. When it appears that an absence will extend beyond the original date of anticipated return to duty, the individual shall promptly notify the supervisor and request approval for the new anticipated date of return.

33.8 When leave scheduling conflicts arise and the individuals are unable to reach

agreement among themselves, the supervisor will make the final determination by giving consideration to circumstances such as, but not limited to, the nature of the leave requested, the date of request, and seniority based on service computation date for leave.

33.9 Substitution of leave without pay (LWOP), compensatory time, credit hours, or sick leave for annual leave must be made within the first pay period in which the employee returns to duty, or, if medical documentation is required, by the close of the following pay period after the illness occurs. Employees may change previously authorized annual leave to compensatory time or credit hours. Employees may change previously authorized annual leave to LWOP or sick leave, if appropriate, subject to approval by the supervisor. An approved absence which would otherwise be charged to sick leave may be charged to annual leave, compensatory time, credit hours, or LWOP when requested by the employee. Further, substitution of annual leave, credit hours, or LWOP for earned sick leave previously granted and charged may be permitted under rules for amending leave records, but annual leave cannot be substituted for sick leave already granted in order to avoid forfeiture of annual leave at the end of the leave year.

33.10 Individuals may request sick or annual leave, or LWOP, to attend and participate in a substance abuse treatment program. The supervisor shall grant sick or annual leave, or LWOP, to the requesting individual, in accordance with procedures in this article. The utmost confidentiality should be exercised in these instances.

33.11 Employees in a "use-or-lose" annual leave situation (i.e., there is a possibility that some annual leave hours will be lost at the end of the leave year if adequate plans are not made to schedule and use that leave) must request use of their excess annual leave no later than the end of pay period 23. If, after receiving approval to use the excess annual leave, an exigency of public business occurs that prevents use of such leave prior to the end of the leave year, the employee may request to have his/her forfeited annual leave restored during the next leave year. Any restored annual leave must be used during the new leave year or the leave year following the new leave year.

MEDICAL CERTIFICATION

33.12 Medical certification means a written statement signed by a registered physician or other medical practitioner certifying incapacitation and addressing the necessary period of absence from work. For sick leave requested because of exposure to a contagious disease, the medical certification should additionally indicate the name of the disease and state that the disease is contagious and the period of confinement and/or quarantine, if quarantine is required by ordinance or statute. However, if a medical practitioner certifies incapacity for other than a contagious disease, the medical certification need not disclose the details of the individual's medical

condition. Medical certification must be submitted to the supervisor by the close of the following pay period after the individual returns to duty.

33.13 The employee may be required to provide his/her supervisor with medical certification:

a. for an unscheduled absence in excess of three (3) consecutive workdays;

b. for any use of sick leave if the individual is officially on leave restriction;

c. for a chronic condition which does not necessarily require medical treatment although absence from work may be necessary. If the individual has previously furnished a medical certificate of the chronic condition, s/he may not be required to furnish a medical certificate on a continuing basis. The supervisor may require reasonable updates to the medical certificate;

d. to consider an individual's request for leave for medical reasons, including treatment and convalescence related to childbirth, and care for a spouse, son, daughter, parent, or legal ward with a serious health condition;

e. to consider an individual's request for special consideration such as reassignment or other reasonable accommodation and there is a question as to the medical need for such accommodation;

f. to consider requests for advanced sick leave under Section 33.19 below;

g. to support requests for Sick Leave for Family Care (see sections 33.59-63 below for required certifications); or

h. from the appropriate physician stating that the individual can return to work, and noting any applicable limitations.

33.14 Medical documentation is required to support requests for "family leave" under Section 33.38, Family and Medical Leave or an application to become a leave recipient in the voluntary leave transfer programs.

ADVANCED ANNUAL LEAVE

33.15 A permanent employee who expects to remain in service through the end of the leave year may request advancement of annual leave in an amount not to exceed that which s/he will accrue for the remainder of the leave year.

33.16 An individual who wishes to request advancement of annual leave shall complete the agency's standard leave form and provide a written explanation of the reason for the request.

SICK LEAVE

33.17 Sick leave may be granted for absences required by illness, injury, medical or psychological appointments and/or treatment, adoption of a child, or certain circumstances involving contagious diseases in accordance with applicable laws and/or regulations. Sick leave also may be applied and granted for purposes set forth and followed in Section 33.38, Family and Medical Leave Act and Section 33.59, Sick Leave for Family Care.

33.18 When an individual knows in advance that sick leave will be required for a reason set forth in the above Section, s/he will request sick leave at the time the necessity for the leave is determined. In evaluating requests for sick leave, in those circumstances in which the individual has substantial control over the need, the supervisor and the individual will work together to schedule leave at an agreed upon time.

ADVANCED SICK LEAVE

33.19 The Employer may approve requests for advanced sick leave after considering the following factors:

a. leave is properly applied for in accordance with this article;

b. repayment can reasonably be expected through leave accruals taking into account the individual's leave record, his/her length of service, and the nature of the incapacitation;

c. accommodations can be made within the work unit to cover the work unit's critical functions. This factor may only be considered in situations in which the individual has substantial control over the circumstances and can reschedule the requested leave, such as elective surgery;

d. the individual has a serious illness or injury;

e. medical documentation required by 3 FAM 3424; and,

f. any other relevant factors.

33.20 As a maximum, a permanent employee may be advanced up to 240 hours of sick leave. Advanced sick leave may not exceed 240 hours at any one time.

33.21 There is no limit on the number of times an individual may request advanced sick leave. The Employer will consider each request for advanced sick leave on its individual merits and in accordance with the criteria described above.

ABUSE OF SICK LEAVE

33.22 When a supervisor has reasonable grounds to suspect an individual of sick leave abuse, the supervisor shall notify him/her of the suspected sick leave abuse, and counsel him/her. The Employer may notify the individual in writing that, for a stated period not to exceed six (6) months for the first offense, the individual will be on sick leave restriction, and requests for sick leave will not be approved unless supported by medical certification.

33.23 Individuals on leave restriction will be required to furnish medical certification upon return to duty, not later than three (3) business days from his/her return to duty.

HEALTH UNIT VISITS

33.24 Individuals may leave the work site to visit an on-site health unit. Except in cases of emergency, the individual shall obtain approval of the supervisor prior to leaving the work site.

33.25 The individual may remain in the health unit as long as permitted by the health unit. If the individual is unable to return to work after two (2) hours, s/he will request appropriate leave (annual leave, sick leave, LWOP and, if available, credit hours or compensatory time) for the remainder of his/her tour of duty. This Section applies only to individuals who are ill while in duty status.

33.26 Individuals who are injured on the job will not be charged sick leave but shall be granted administrative leave to visit the health unit at the time or on the day of the on-the-job injury, in accordance with applicable worker's compensation procedures.

ADMINISTRATIVE LEAVE

33.27 Administrative leave is an excused absence from duty administratively authorized without loss of pay and without charge to other types of leave. The Employer will grant administrative leave in accordance with applicable guidelines and this contract.

33.28 For inclement weather or other emergency situations in the Washington, D.C. metropolitan area, the Employer will follow the OPM-issued Washington, D.C. Area Emergency Dismissal or Closure Procedures developed in consultation with the Metropolitan Washington Council of Governments (COG). The annually updated procedures can be viewed on the OPM website at www.opm.gov.

33.29 For inclement weather or other emergency situations outside of the Washington, D.C. metropolitan area, the Employer will follow the lead of local Federal Executive Boards or the post.

33.30 Employees may be granted up to 59 minutes of administrative leave for good cause shown.

BLOOD DONATION

33.31 Upon advance request by the individual to the approving official, an individual donating blood, without compensation, will be granted administrative leave of up to four (4) hours for rest and recuperation at the donation site. In addition, time necessary to travel to the donation site, donate blood, and return to work is allowable. The employee is not permitted to go home after the donation unless they feel sick and request leave (sick, annual, credit, compensatory, or LWOP).

33.32 An individual who is not accepted for donating blood is only entitled to time necessary to travel to and from the donation site and the time needed to make the determination.

33.33 Appropriate documentation from the donation site may be required by the supervisor.

33.34 Administrative leave for blood donation at overseas posts will be in accordance with post policy.

VOTING

33.35 Individuals shall be excused from duty for a reasonable period of time for the purpose of voting. Generally, individuals in the United States may be excused from reporting to work for up to three (3) hours after the polls open or for leaving work up to three (3) hours before the polls close in their voting jurisdiction, whichever requires the lesser amount of time excused from duty. Exceptions to the 3-hour limits shall be considered for those commuting long distances, for heavy voter turnout, or other factors, such as work schedules or day care limitations, that would impair the ability to vote. Individuals at overseas posts are not entitled to administrative time off to vote.

OTHER EXCUSED ABSENCE

33.36 An excused absence may be given under the following circumstances:

a. Employees will be granted an excused absence for bone marrow and/or organ donations in accordance with applicable law and regulation.

b. Employees with limited sick leave availability will be granted up to four (4) hours of excused absence each year for preventative health screening such as mammography, blood pressure and cholesterol checks. Limited available sick leave is understood to be 80 hours or less at the time the request is made.

c. Employees may be excused for up to four (4) hours per calendar year to participate in a USDA-sanctioned health care screening.

d. Supervisors will permit employees who are breast feeding to express/pump milk for their child and permit a reasonable and flexible time period to conduct this activity. Reasonable time will be permitted to go to and return from an adequate on-site location. No adverse action or recourse will be based on an employee's desire to breast feed.

FAMILY AND MEDICAL LEAVE ACT

LEAVE ENTITLEMENT

33.37 Permanent full- and part-time employees, and employees serving on a time-limited temporary appointment of greater than 1 year are eligible for Family and Medical Leave provided they have completed at least 12 months of Federal service (not required to be 12 consecutive months).

33.38 An eligible employee is entitled to request up to twelve (12) work weeks or 480 hours of unpaid leave during a 12-month period for the purposes of:

a. the birth of a son or daughter of the employee and the care of such son or daughter;

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

c. care of a spouse, son, daughter, parent, or legal ward who has a serious health condition; or,

d. a serious health condition of the employee that makes the employee unable to perform the essential functions of the employee's job.

33.39 For the purposes of Sections 33.38 a and b above:

a. The family and medical leave may begin on or before the actual date of birth or placement of the child, and must be for a continuous period of time, unless the employee and supervisor agree otherwise; and,

b. Entitlement for use of family and medical leave shall expire no later than twelve (12) months from the date the employee invokes the right to use such leave (the date the employee begins the use of such leave).

33.40 For the purposes of Sections 33.38 c and d above:

a. Family and medical leave may be taken continuously, intermittently, or as part of a reduced work schedule; and,

b. Entitlement for use of family and medical leave shall expire twelve (12) months from the date the employee invokes the right to use such leave (the date the employee begins the use of such leave).

c. Leave under Section 33.38 (above) will be made available for a full-time or part-time employee in direct proportion to the number of hours in the employee's regularly scheduled administrative workweek.

33.41 Consistent with law and regulation, an employee may substitute the following paid leave for any or all of the unpaid leave taken for FMLA purposes:

a. accrued or advanced annual leave;

b. accrued or advanced sick leave, if applicable by law;

c. donated leave made available through the Voluntary Leave Transfer or Leave Bank programs; and/or,

d. cumulated compensatory time or credit hours.

33.42 Supervisors may not require an employee to use accrued leave in lieu of LWOP. An employee cannot retroactively substitute paid leave for LWOP already taken during a period when family and medical leave was used.

REQUESTS

33.43 When the need for leave is foreseeable, an employee shall request family and medical leave in writing, on the agency's standard leave form, "Request for Leave or Approved Absences," under the provisions of this Section, at least thirty (30) days in advance to allow the supervisor time to prepare for any staffing adjustments necessary

to compensate for the employee's anticipated absence. However, the Parties recognize that circumstances beyond the employee's control may arise and, adjustments in the requested leave may be necessary.

MEDICAL CERTIFICATION

33.44 By Law, administratively acceptable child placement or medical documentation must be provided when an employee invokes his/her right to family and medical leave for purposes under Section 33.38 above.

33.45 The supervisor may require, at the Agency's expense and by a health care provider designated or approved by the Agency, a second medical opinion. If the second opinion differs from the original certification, the supervisor may require, at the Agency's expense, certification from a third health care provider selected jointly by the Agency and employee.

APPROVALS

33.46 All eligible individuals will be treated fairly and equitably in determining whether or not to approve requested family and medical leave.

33.47 Requests for use of family and medical leave will be approved when acceptable medical or placement documentation is provided, unless highly unusual workplace circumstances prevail.

33.48 The approving official for requests to use leave under the FMLA will be the immediate supervisor.

33.49 Denial of family and medical leave will not be used in lieu of disciplinary or adverse actions.

33.50 Denials of family and medical leave may be appealed immediately to more senior agency officials, following the chain of command.

RECORD KEEPING

33.51 The Employer shall make, keep, and preserve records pertaining to an individual's use of family and medical leave.

33.52 Individuals using family and medical leave shall cooperate with management by providing information in a timely manner needed to maintain the necessary records.

33.53 The SPO will maintain copies of all general and specific notices provided to individuals regarding FMLA.

33.54 All medical certifications and placement documentation submitted by individuals in support of FMLA leave taken for medical reasons will be retained in the individual's time and attendance folder.

PROTECTION OF EMPLOYMENT AND BENEFITS UPON RETURN TO DUTY

33.55 An employee who invokes his/her rights and is approved for family and medical leave shall be entitled to return to the same or equivalent position, with equivalent benefits, pay, status, and other terms and conditions of employment, unless termination of employment is otherwise required by reduction-in-force, for cause, or for similar reasons unrelated to the use of leave under the FMLA.

33.56 The Agency understands that there may be a transitional period upon returning to the workforce and supervisors will work with employees to arrive at an appropriate work schedule during this transitional period.

33.57 An employee who invokes his/her right to LWOP under the FMLA may elect to continue health benefits coverage provided the employee pays his/her share of the cost. Employees may pay their share of the cost on a current basis or may pay upon return to work.

33.58 A Federal employee cannot be denied or removed from consideration for promotion, training, or other opportunities due to requests for family and medical leave. Entitlements and benefits accruing to individuals using family and medical leave will be determined in accordance with applicable laws and regulations.

SICK LEAVE FOR FAMILY CARE (SLFC)

33.59 Sick leave may be granted for family care purposes:

a. When an employee is required to provide care for a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving medical, dental, or optical examination or treatment.

b. To make arrangements necessitated by the death of a family member or to attend the funeral of a family member, or both.

c. To provide care for a family member with a serious health condition.

33.60 Approval of sick leave for family care must comply with the requirements and conditions specified in the summary table below:

	SLFC Regulations	Definition of Medical Condition	Hours / Coverage
A	A Full-Time leave-earning employee, with less than 80 hours of earned sick leave	To provide care for an incapacitated family member experiencing: - a physical or mental medical condition including injury, illness, and disability; - pregnancy; - childbirth; - a communicable disease; To accompany a family member to a medical, psychiatric, dental, or optical examination, treatment, or therapy; To make arrangements for the death of a family member or attend the funeral, or both.	Up to 40 hours earned or advanced sick leave per leave year
B	A Full-Time leave-earning employee, with more than 80 hours of sick leave	For the same purposes, as above.	Up to 104 hours of earned sick leave each leave year, as long as the employee's sick leave balance does not fall below 80 hours.

	SLFC Regulations	Definition of Medical Condition	Hours / Coverage
C	A Full-Time leave-earning employee may use earned sick leave	To care for a family member with a serious health condition (illness, injury, surgery, impairment, or physical or mental condition) that involves for example, but is not limited to, heart attacks, heart conditions, cancers, back conditions requiring therapy and/or surgery, kidney dialysis, physical therapy, strokes, severe nervous disorders, injuries caused by serious accidents on or off the job, clinical depression, recovery from major surgery, final stages of a terminal illness, Alzheimer's disease, and includes incapacitation due to pregnancy, childbirth, miscarriages, complications or illness related to pregnancy.	Up to 480 Hours earned sick leave, as long as the employee's sick leave balance does not fall below 80 hours

33.61 Hours and limitations for authorized use of sick leave for family care for part-time employees are subject to OPM established limitations.

33.62 The following are considered to be family members under SLFC :

a. The individual's spouse and spouse's parents;

b. The individual's children, including adopted children, and children's spouses;

c. The individual's parents;

d. The individual's brothers, sisters, and their spouses, and,

e. Any person related by blood or affinity whose close association with the individual is the equivalent of a family relationship.

REQUESTING LEAVE UNDER SLFC

33.63 Employees requesting the use of sick leave under SLFC shall:

a. Annotate the remarks section of the agency's standard leave form to show that leave is being requested under SLFC;

b. Request the leave in advance, when possible;

c. Provide medical documentation or death notification if advanced sick leave is requested; and,

d. Provide medical documentation when requesting expanded leave under SLFC (33.59c, above).

LEAVE WITHOUT PAY (LWOP)

POLICY

33.64 These provisions, also described in FAS Handbook 17-PM, were developed to provide additional consistency and transparency to the FAS LWOP policy and to add discretion for supervisory approval below the level of the Administrator (based on FAS Executive Advisory Group (EAG) recommendation).

33.65 Approval of LWOP, when not mandated by law or contract, is contingent upon the Agency's budget situation at the time LWOP or extension of LWOP is requested.

33.66 This policy applies equally to FS employees in the United States and assigned abroad. In considering whether to grant LWOP, heads of overseas offices are required to coordinate closely with FAA/W to ensure adequate office coverage and to keep their Deputy Chief of Mission (DCM) fully apprized of the situation.

33.67 Article 25.28 governs TIC/TIS extensions which may result from LWOP.

REASONS FOR LWOP

Mandatory

33.68 These entitlements are by law or contract: leave of absence for military training for Reservists and National Guardsman for required military training under 38 USC 2024(d); for Family Medical Leave Act (FMLA) eligible employees; for disabled veterans receiving medical treatment under EO 5396 (dated July 17,1960); and for employees receiving worker's compensation, unless permanently disabled.

Recommended

33.69 In general it is the policy of the agency to approve LWOP for the following reasons: Peace Corps Service; transfer to international organizations whose mission is similar to the FAS mission (In this case, re-employment rights may be granted in lieu of LWOP); Intergovernmental Personnel Agreements (IPA) or training opportunities in

support of the FAS mission; accompanying a spouse or partner assigned overseas by the US government; accompanying an FAS spouse assigned within the United States; and to an employee awaiting approval of disability retirement.

Discretionary

33.70 LWOP may usually be approved for: accompanying a non-FAS spouse or partner out of the commuting area; receiving education in support of the FAS mission; for a physician- certified medical condition*; and for a hardship related to a serious physician-certified medical condition of the employee's immediate family member*. It is anticipated that after two years the LWOP will be terminated. (* Beyond entitlement under FMLA)

Other Reasons

33.71 LWOP may be granted for other reasons when workload permits. It is anticipated that after one year the LWOP will be terminated.

REQUESTING LWOP

33.72 Requests for LWOP should be initiated by the employee, signed by the supervisor, and explain how the employee's work will be accomplished during the employee's absence.

33.73 In deciding whether or not to backfill behind the employee on LWOP, Deputy Administrators should assess how the work is to be accomplished and whether an undue burden will be placed upon other employees.

APPROVALS FOR LWOP

33.74 Approvals of LWOP are handled at appropriate supervisory levels as follows:

a An immediate supervisor may approve up to four (4) weeks of LWOP and, in the case of LWOP authorized under the Family and Medical Leave Act, up to 12 weeks.

b. The program area Deputy Administrator may approve up to one (1) year of LWOP for any of the purposes provided above and up to two (2) years for purposes listed as mandatory or recommended.

c. The Administrator, based on EAG recommendation, is the approving body for LWOP which exceeds two (2) years, or which is for purposes deemed discretionary or not listed (Other Reasons) and exceeds one (1) year.

33.75 Denial of a request is appealable to one level above the level of the initial decision, in the following situations:

a. to the Deputy Administrator if the request is denied by the supervisor,

b. to the Administrator, based on EAG recommendation, if the request is denied by the Deputy Administrator

EFFECT OF LWOP ON CEILING

33.76 In general,

a. employees on LWOP for reasons listed above as mandatory, shall be placed on the agency target ceiling after 90 days.

b. employees on LWOP for reasons listed above as recommended, shall be placed on the agency target ceiling at the time of approval if the LWOP is anticipated to be more than one year.

c. employees on LWOP for reasons listed above as discretionary, shall be placed on the agency target ceiling after the LWOP exceeds two years.

d. employees on LWOP for other reasons will be placed on the agency target ceiling only in exceptional cases, where such LWOP is granted for more than one year, with the approval of the Administrator, based on EAG recommendation.

33.77 In situations when the LWOP is not anticipated to exceed 4 weeks, the position should not be backfilled on a permanent basis.

RETURN FROM EXTENDED LWOP

33.78 FAS employees who remain on their program area ceiling during the period of their LWOP shall be placed within their program area upon their return to duty.

33.79 FAS employees who were placed on the agency target ceiling during the period of LWOP shall be placed by the Administrator, based on EAG recommendation, or through the Washington Placement Plan upon their return to duty.

33.80 All placements will be in accordance with applicable Foreign Service regulations. While the return rights of a Foreign Service employee are to a position in the agency, management will to the maximum extent possible return FS employees to positions at grade.

33.81 FS employees may not bid on overseas assignments while on LWOP, unless their return to duty date provides sufficient time to prepare for the assignment.

33.82 In situations when the employee is not placed on the agency target ceiling, the Deputy Administrator is responsible for ensuring appropriate placement of the employee at any time, should the employee request to terminate LWOP.

FAMILY RELATED LWOP

33.83 Approving officials may, upon request by an employee and in accordance with the Presidential memorandum dated April 11, 1997, grant up to 24 hours of LWOP per calendar year for the activities listed below. (These 24 hours are separate from, and should not be confused with, FMLA entitlements.)

a. School and early childhood educational activities: allows employees (including those who do not have children) to support a child's educational development and advancement by attending parent-teacher conferences, meeting with the child-care providers, interviewing for a new school or child-care facility, or participating in volunteer activities such as tutoring, coaching, etc. "School" is defined as an elementary or secondary school, Head Start Program, or a child-care facility.

b. Routine family medical purposes: allows parents to accompany children to routine medical or dental appointments, such as annual check-ups or vaccinations.

c. Elderly relatives' health or care needs: allows employees to accompany elderly relatives to routine medical or dental appointments or other professional services related to their care, such as making arrangements for housing, meals, phones, banking services, and other similar activities.

LWOP FOR UNION ORGANIZING

33.84 Upon request of the appropriate Union officer or staff, an individual normally shall be granted LWOP to engage in Union activity or to work in Union sponsored programs at the national level. LWOP for this purpose is limited to one year, but may be extended or renewed upon proper application and an assessment of the needs of the Agency.

33.85 An individual returning from LWOP for Union purposes will be placed in the same position that he/she previously held, if available. If that position is not available, the individual may be placed in a comparable position.

33.86 Retroactive Substitutions of Paid Leave for LWOP

a. LWOP may be retroactively changed to paid leave if:

1. Due to an administrative error or misunderstanding the employee was not aware that s/he had a leave balance or that paid leave could have been used, and the change is made within a reasonable period after return to duty; or,

2. The employee is accepted into the Voluntary Leave Transfer Program and/or the Voluntary Leave Bank and donated leave is available.

b. Paid leave cannot be substituted for LWOP granted under FMLA.

OTHER SPECIAL LEAVE CATEGORIES

MILITARY LEAVE

33.87 Effective December 21, 2000, any full-time permanent employee (working 80 hours per pay period) who is a member of the National Guard or other reserve unit of the Armed Forces shall be entitled to use up to 120 hours (or fifteen (15) days times eight (8) hours) of military leave per fiscal year for active duty or inactive or active duty training. Military leave will be prorated for part-time employees based on the number of hours in their regularly scheduled biweekly pay period. Individuals who are entitled to regular military leave but who do not use the entire 120 hours may carry over the unused hours from one fiscal year to the next fiscal year for a maximum cumulative total not to exceed 240 hours.

33.88 Charges for military leave will be in one (1) hour increments and military leave will not be charged for military service on non-duty days (typically weekends and holidays). An employee may be charged military leave only for hours during which the employee would otherwise have worked and received pay. Employees requesting military leave for inactive duty training (generally two (2), four (4), or six (6) hours in length) will be charged only the amount of military leave necessary to cover the period of training and necessary travel. Hours in the civilian workday not chargeable to military leave must be worked or charged to another leave category, as appropriate.

33.89 Approval of the military leave provided in the foregoing shall be based on the copy of the orders directing the individual to report.

COURT LEAVE

33.90 An individual in the United States is entitled to court leave to the extent necessary to serve on a jury or to participate in judicial proceedings in an unofficial capacity or in

an official capacity as a Federal employee as a witness on behalf of any party in a judicial proceeding to which the U.S., the District of Columbia, a State, a U.S. territory or possession, or a local government is a party to the proceedings. The employee must request use of his/her own accrued leave or LWOP when the summons or subpoena does not name the U.S., the District of Columbia, a State, a U.S. territory or possession, or a local government as a party to the proceedings.

33.91 Court leave will be granted from the report date stated in the summons through the date discharged from court; court leave will not be granted on days when the individual is excused from jury and can reasonably be expected to return to his/her duty station, including time allowed for transportation. In such cases, he/she must return to duty or request annual leave, credit hours, compensatory leave or LWOP. If the individual fails to return to duty, absence without leave may be charged.

33.92 The individual must notify the supervisor at least two (2) weeks in advance or upon receipt of the summons or jury notification from the court. Court leave must be requested on the agency's standard leave form with a copy of the jury duty notification or court summons submitted with the request. If jury service or witness service lasts for more than 2 workdays, present to the supervisor evidence of court attendance, e.g. a jury duty certificate or written statement signed by an officer of the court. Upon return to duty, the individual must present to the supervisor a jury duty certificate or written statement signed by an officer of the court.

33.93 In every instance, individuals may fulfill the citizenship responsibilities of jury duty. The Employer may petition the court to excuse the individual if jury duty will substantially interfere with the program of work.

RELIGIOUS OBSERVANCES

33.94 In accordance with law and government-wide rules and regulations, individuals wishing to attend or participate in the observance of a religious holiday will be permitted to be absent on annual leave, credit hours, LWOP, compensatory time, or religious compensatory time, so long as the individual requests such leave at least three (3) days in advance, and his/her absence will not cause an undue workload problem.

33.95 For the purpose stated in this Section, individuals may work compensatory time either before or after the grant of compensatory time off. A grant of advanced compensatory time off for these purposes shall be repaid by the appropriate amount of compensatory work within the earlier of six (6) pay periods of its use, or the end of the leave year.

33.96 An individual's request for compensatory time off for religious observances must contain the date(s) and time(s) when he/she intends to be absent and a projected work

schedule that accounts for the time necessary to pay back the grant of compensatory time.

33.97 Failure to work the required amount of time to repay advanced compensatory time off will result in annual leave, if the individual so elects, or LWOP being charged.

33.98 The earning and use of compensatory time off for religious purposes at overseas posts will be handled in accordance with post procedures.

HOME LEAVE

33.99 Home leave will be authorized in accordance with the provisions in 3 FAM 3430 and 3700.

33.100 Employees will coordinate home leave through their Area Directors and will obtain the required travel authorization from the International Services Branch.

LEAVE TRANSFER PROGRAM

33.101 The Employer agrees to continue voluntary leave transfer programs in accordance with law and government-wide regulation.

ARTICLE 34: TRAVEL

OFFICIAL TRAVEL

34.1 All official travel must be approved in advance. Every effort will be made to schedule official travel during normal working hours. In those cases where this cannot be accomplished, the affected employee will be compensated for travel time consistent with applicable pay laws, government-wide regulations, and this agreement.

34.2 Travel, Transportation and Storage: Travel, transportation and storage for Foreign Service employees will be determined and paid in accordance with 6 FAM 100.

34.3 During a foreign assignment, FS officers will be responsible for their own and family members' diplomatic passports, including ensuring that the passports and all necessary visas are kept current. While visiting the United States, officers may keep their own and family members' diplomatic passports in their possession and use the services of the FAS International Travel Section for official business.

OTHER TRAVEL AT POST

34.4 Other travel at post for Foreign Service employees will be determined and paid in accordance with 3 FAM 3700. Such travel includes: medical, rest and recuperation, visitation, emergency visitation, including travel to care for incapacitated parents (Elder care Travel), and travel of children of separated families. (Note: FAM regulations can be viewed at the following website: http://foia.state.gov/fam/)

OVERTIME AND COMPENSATORY TIME

34.5 See Article 36, Premium Compensation

CHANGES AND AMENDMENTS

34.6 As it is informed, Management will notify AFSA of any mandatory changes to the FAM governing travel and transportation expenses. AFSA may request to negotiate, if appropriate. Discretionary changes made by other Foreign Affairs Agencies will not automatically apply to FAS FS employees. Rather, Management will consider whether to implement such changes in light of the agency's budget, current contract language, working conditions, and the general desirability to maintain uniform travel and transportation provisions among FS Agencies. Management will notify AFSA of its final decision regarding such changes and AFSA may request to negotiate, if appropriate. Both parties will inform the other of all proposed changes to the FAM as soon as they are known.

ARTICLE 35: ALLOWANCES AND DIFFERENTIALS AT POST

GENERAL

35.1 Allowances and differentials for Foreign Service employees at post will be determined and paid in accordance with 3 FAM 3200, Allowances.

35.2 The Parties agree that changes and amendments made to 3 FAM 3200, to which the Agency is a party, during the term of this agreement, will control the payment of allowances and differentials.

SERVICE NEED DIFFERENTIAL

35.3 A Service Need Differential (SND) may be used to recruit for posts which are difficult to staff.

35.4 Management may classify a post as difficult to staff at any time. Management may determine the length of assignment required to qualify for an SND payment, but the minimum length may not exceed three years.

ARTICLE 36: PREMIUM COMPENSATION

DEFINITIONS

(See also Article 32, Work Schedules and Tours of Duty)

36.1 Basic work requirement: The number of hours, excluding overtime hours, an individual is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award (80 hours a pay period for full time employees).

36.2 Compensatory time off: Generally, the granting of time off instead of payment for an equal amount of time spent performing irregular or occasional overtime work. Under this Article, there are three kinds of compensatory time off:

a. Regular compensatory time off;

b. Special compensatory time off for Foreign Service Officers; and

c. Special compensatory time off for religious observation.

36.3 FLSA: The Fair Labor Standards Act of 1938, as amended (20 USC 201, et seq.). FLSA applies to overtime work performed in the United States and in certain non-foreign areas only. A nonexempt employee is covered by the FLSA while an exempt employee is not covered by the FLSA. Nonexempt employees are usually covered by Title 5 premium pay and if so, must be paid the greater of the two overtime benefits. Under the FLSA, positions are designated on the SF-50, "Notification of Personnel Action" as either "exempt" or "nonexempt".

36.4 Overtime: Work performed beyond the basic work requirement that has been officially ordered and approved by an authorizing official.

a. For an individual on a fixed work schedule, the work must be in excess of the individual's established number of hours on the day the overtime is performed.

b. For an individual on a flexible work schedule, the work must be in excess of the individual's scheduled work hours on the day the overtime is performed. Maxiflex and flexitime are flexible work schedules.

36.5 Irregular or occasional overtime: Overtime work that is not scheduled in advance as a part of an employee's regularly scheduled administrative workweek.

36.6 Regularly scheduled overtime: Overtime work that is scheduled in advance as part of an employee's regularly scheduled administrative workweek.

36.7 Premium pay: Additional pay authorized under chapter 55 of Title 5 of the United States Code, for overtime, night, holiday, or Sunday work, and for standby duty, or administratively uncontrollable work.

36.8 Special compensatory time off: Compensatory time off under section 412 of the Foreign Service Act for commissioned Foreign Service Officers in exchange for performing an equal amount of overtime work or holiday work which is officially ordered and approved. Special compensatory time off for Foreign Service Offices must be used within 26 weeks following the pay period in which it is earned. Special compensatory time will be used before annual leave unless the forfeiture of annual leave will occur.

36.9 Title 5: Unless otherwise specified, means the premium pay benefits provided by chapter 55 of Title 5 of the United States Code as opposed to the overtime benefits provided by the Fair Labor Standards Act.

AUTHORITY

36.10 Compensation for overtime work for Foreign Service administrative assistants and untenured Foreign Service Officers is provided under two statutes: Title 5 and the Fair Labor Standards Act. Some individuals may be covered by both, one, or none of these statutes. The definition and calculation of overtime work and pay are different under each statute as discussed in this Article.

36.11 Commissioned Foreign Service Officers are eligible for special compensatory time off for overtime work under section 412 of the Foreign Service Act. They are generally not entitled to overtime pay.

36.12 An individual's supervisor determines the need for, orders, and assigns all overtime, and determines the required qualifications of the individuals to perform the overtime.

36.13 The assignment or denial of overtime will not be made as a reward or penalty to an individual, but will be solely based on Agency needs and in accordance with the terms of this Agreement.

36.14 Overtime will be earned in increments of 15 minutes.

36.15 The Employer shall reimburse eligible individuals for parking and/or transportation

expenses that are in addition to costs normally incurred to commute to and from work and are incurred as a direct result of overtime.

MAXIMUM LIMITATION - INDIVIDUALS COVERED BY TITLE 5

36.16 An individual may receive premium pay under Title 5 only to the extent that the premium pay does not cause the employee's aggregate rate of pay (basic rate of pay plus premium pay) for any biweekly pay period to exceed the biweekly maximum payable basic rate of pay for a GS-15.

MAXIMUM LIMITATION - FLSA NONEXEMPT INDIVIDUALS

36.17 The Title 5 maximum limitation does not apply to overtime pay earned by a nonexempt employee under the FLSA. An employee who is covered by both Title 5 and the FLSA must be paid under the law that provides the greatest amount of compensation.

COMMISSIONED FOREIGN SERVICE OFFICERS

36.18 Special compensatory time off for commissioned Foreign Service Officers under section 412 of the Act may be earned only to the extent that if the work performed were compensable under Title 5, the additional overtime payment would not cause the officer's aggregate rate of pay for any two week pay period to exceed the maximum payable rate of basic pay for GS-15.

ELIGIBILITY FOR OVERTIME PAY AND/OR COMPENSATORY TIME OFF

36.19 Individuals Occupying Positions Within the United States

a. Foreign Service administrative assistants are FLSA nonexempt when assigned in the United States. Refer to 32-PM for guidance on determination of pay.

b. Generally, untenured Foreign Service Officers are FLSA exempt and are therefore only eligible for overtime pay and/or compensatory time off under Title 5 (see section 36.19c).

c. Under Title 5, whether an individual is entitled to overtime pay or compensatory time off for overtime work depends upon whether the overtime work was "regularly" scheduled or "irregular or occasional" and the salary of the individual.

1. If the overtime is regularly scheduled (see Definitions, section 36.6), the

agency must pay the individual overtime pay.

2. If the overtime is irregular or occasional (see Definitions, section 36.5), and the individual's basic pay is at or below the maximum rate for GS-10, the individual may choose overtime pay or compensatory time off.

3. If the overtime is irregular or occasional, and the individual's basic pay is greater than the maximum rate for GS-10, the individual will only be granted compensatory time off.

d. Commissioned Foreign Service Officers are eligible for compensatory time off in exchange for performing an equal amount of overtime work or holiday work which is officially ordered and approved under Section 412 of the Act. Commissioned Foreign Service Officers generally may not earn overtime pay. Special compensatory time off for commissioned Foreign Service Officers under section 412 of the Act may be earned only to the extent that if the work performed were compensable under Title 5, the additional overtime payment would not cause the officer's aggregate rate of pay for any two week pay period to exceed the maximum payable rate of basic pay for GS-15.

36.20 Individuals Occupying Positions Overseas

a. Foreign Service administrative assistants posted abroad are Exempt under FLSA but may earn overtime pay or compensatory time off for the overtime that is officially ordered and approved. Whether an individual is entitled to overtime compensation or compensatory time off for the overtime work depends upon whether the overtime work was regularly scheduled or irregular or occasional and the salary of the individual (see section 36.19c). No premium pay or compensatory time will be earned for time spent at dinners, receptions, or parties, unless the supervisor ordered and approved the attendance at the function to perform work.

b. Untenured Foreign Service Officers posted abroad are Exempt under FLSA but may earn overtime pay or compensatory time off for the overtime that is officially ordered and approved. Whether an individual is entitled to overtime pay or compensatory time off for the overtime work depends upon whether the overtime work was regularly scheduled or irregular or occasional and the salary of the individual (see section 36.19 c). No premium pay or compensatory time will be earned for time spent at dinners, receptions, or parties, unless the supervisor ordered and approved the attendance at the function to perform work.

c. Commissioned Foreign Service Officers may earn special compensatory time

off for overtime work that is officially ordered and approved. Commissioned Foreign Service Officers generally may not earn overtime pay. Special compensatory time off for commissioned Foreign Service Officers under section 412 of the Act may be earned only to the extent that if the work performed were compensable under Title 5, the additional overtime payment would not cause the officer's aggregate rate of pay for any two week pay period to exceed the maximum payable rate of basic pay for GS-15. No premium pay or compensatory time may be earned for time spent at dinners, receptions, or parties.

SPECIAL COMPENSATORY TIME OFF FOR RELIGIOUS OBSERVANCES

36.21 Special compensatory time off for religious observances is time off from work during the individual's basic workweek for religious reasons in exchange for performing an equal amount of irregular or occasional overtime work. All Foreign Service employees are eligible for special compensatory time off for religious observances.

TIME IN TRAVEL STATUS

36.22 Whenever possible, travel should be scheduled within an individual's regular work hours. However, situations may develop when travel away from the official duty station will be required outside of an individual's regular work hours.

36.23 Employees who are covered by Title 5, (administrative assistants posted abroad and untenured Foreign Service Officers), may earn overtime pay and/or compensatory time off under Title 5 for time spent in a travel status outside the employee's regular work hours if the hours of work have been ordered and approved and one of the following conditions is met:

a. The individual is required to perform work while traveling.

b. The travel immediately precedes or follows travel that requires the performance of work while traveling.

c. The travel is carried out under arduous and unusual conditions.

d. The travel results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such event to his or her official duty station.

36.24 Commissioned Foreign Service Officers may earn special compensatory time off under section 412 of the Act for time spent while in a travel status outside the

employee's regular work hours if the hours of work have been ordered and approved and one of the conditions discussed above has been met. Special compensatory time off for commissioned Foreign Service Officers under section 412 of the Act may be earned only to the extent that if the work performed were compensable under Title 5, the additional overtime payment would not cause the officer's aggregate rate of pay for any two week pay period to exceed the maximum payable rate of basic pay for GS-15.

HOLIDAY PAY

36.25 Foreign Service administrative assistants and untenured Foreign Service Officers who perform work which is officially ordered and approved on a U.S. holiday are eligible for holiday pay under Title 5. Commissioned Foreign Service Officers who perform work which is officially ordered and approved on a U.S. holiday are eligible for an equal amount of special compensatory time off under section 412 of the Act.

HOLIDAY PAY UNDER A FIXED WORK SCHEDULED

36.26 A full-time employee who is relieved or prevented from working on a day designated as a holiday (or an "in lieu of" holiday) by Federal statute or executive order is entitled to his/her rate of basic pay for the number of hours in the employee's compressed work schedule on that day.

36.27 If a holiday falls on a day during a part-time employee's scheduled tour of duty and he/ she is relieved or prevented from working on that day, the individual is entitled to his/her rate of basic pay for the number of hours he/she normally would have been scheduled to work that day.

HOLIDAY PAY UNDER FLEXIBLE WORK SCHEDULES (FLEXITIME OR MAXIFLEX)

36.28 Under a flexible work schedule, a full-time employee who is relieved or prevented from working on a day designated as a holiday or an "in lieu of holiday" by Federal statute or executive order is entitled to his/her rate of basic pay on that day for eight (8) hours.

36.29 If a holiday falls on a day during the tour of duty of an individual on a part-time flexible work schedule and the individual is relieved or prevented from working on that day, he/she is entitled to his/her basic rate of pay for the typical, average, or scheduled number of hours of work normally credited toward his/her basic work requirement. This may not exceed eight hours of pay.

NIGHT PAY

36.30 A Foreign Service administrative assistant or untenured Foreign Service Officer is entitled to night pay for regularly scheduled night work performed between the hours of 6:00 PM and 6:00 AM under Title 5. Commissioned Foreign Service Officers are not entitled to night pay. Employees covered by Title 5 on maxiflex who voluntarily schedule to work after 6:00 PM and prior to 6:00 AM are not normally entitled to night pay.

36.31 The supervisor must authorize night pay for any regularly scheduled overtime work ordered and approved in advance of the administrative workweek and performed between the hours of 6:00 PM and 6:00 AM.

PROCEDURES FOR ASSIGNMENT OF OVERTIME WORK

36.32 The supervisor will give an individual as much advance notice as possible in making overtime assignments, but the parties acknowledge that emergencies, operational exigencies, and unanticipated workload requirements may result in the supervisor's inability to give advance notice. However, individuals will be allowed reasonable time under the circumstances to make arrangements necessary to minimize personal hardship.

36.33 The supervisor will observe the following procedures when assigning overtime:

a. Whenever possible, overtime will be assigned by seeking qualified volunteers within the work unit normally responsible for the task at hand.

b. If there are more than enough qualified volunteers, the individual with the greatest seniority, as determined by current continuous service in the Agency, is entitled to work the overtime.

c. In the event of a tie, then the volunteer with the greatest seniority in Federal service using the service computation date for leave is entitled to work the overtime.

36.34 In the absence of sufficient qualified volunteers within the work unit, the individual (among qualified individuals within the work unit) with the least seniority (as determined by the service computation date for leave) shall be selected.

36.35 Fully qualified individuals in training or on details may be considered for overtime in their regular work unit if they are reasonably available as to time, workload, and location.

36.36 The availability of other equally qualified individuals in the work unit will be considered if a selected individual claims hardship in a particular instance.

ARTICLE 37: PUBLIC TRANSPORTATION AND PARKING

PURPOSE

37.1 In the interest of relieving traffic congestion, reducing air pollution, and conserving energy, the Parties agree to encourage employees to use mass transit, car pools, or van pools by participating in the Transit Promotion Program (TPP).

ELIGIBILITY

37.2 All bargaining unit members based in the United States using mass transit or qualified car pools or van pools in commuting to and from work are eligible for the program and will comply with existing regulations, guidelines, and procedures governing operation of the program.

37.3 Program polices and procedures will be documented and managed through routine Agency notices. This method of managing the program will allow for timely changes and adjustments, as required, when issues or problems are identified. This does not prevent the union from requesting formal negotiations in response to announced changes.

PROCEDURE

37.4 The parties recognize that continuation of program benefits is dependent upon the availability of funding. The Agency will review the availability of funds as a part of its annual budget process and determine maximum benefit payments. Should the Agency believe that a change in the program is warranted, it will so inform AFSA in writing and agree to negotiations, if requested. The Agency reserves the right to terminate the program upon announcement of reduction in force and/or furlough actions that may be necessitated by budget or ceiling constraints or other constraints beyond its control.

ARTICLE 38: EMPLOYEE ASSISTANCE PROGRAM (EAP)

POLICY

38.1 The Employer and the Union support the objective of assisting employees whose job performance is adversely affected by problems including, but not limited to, alcoholism, drug abuse, duress, financial or legal concerns, marriage or family concerns, or other personal problems. Given this common objective, the Employer agrees to continue to support the Departmental Employee Assistance Program (EAP).

38.2 The Union agrees to cooperate fully with the Employer in an attempt to rehabilitate affected employees who accept assistance made available under the provisions of the Program.

CONFIDENTIALITY

38.3 Employee participation in the EAP will be strictly confidential. The Employer may request an employee to sign release forms. However, this does not obligate the employee to do so.

ANNUAL NOTIFICATION TO EMPLOYEES

38.4 The Employer will continue to issue an annual notice to employees explaining the Program and the services it provides.

PROGRAM PARTICIPATION

38.5 The parties recognize that the Program is designed to deal with problems at an early stage when the situation may be more likely to be correctable. If an employee participates in the EAP, the responsible supervisory official will give consideration to this fact in determining any appropriate disciplinary and/or adverse action, if applicable.

38.6 The Employer will not take any action against an employee for seeking assistance through the EAP. Participation in the Program will not prevent the Employer from proposing and taking conduct and performance-based actions.

38.7 EAP services will be made available to those employees who request and need them. The Employer agrees to assist employees by providing information and encouragement to use counseling services as needed. Should counseling appointments require absence from the workplace, employees will make the appropriate advance arrangements with their supervisors.

38.8 When the Employer determines that a conduct or performance problem exists which may be drug or alcohol related and refers the employee to EAP, the Employer may take appropriate disciplinary or adverse action, consistent with fairness and the obligation to provide reasonable accommodation.

LEAVE DURING DUTY HOURS

38.9 With supervisory approval, employees may be allowed up to one hour (or more if required because of travel time) of excused absence for each counseling session during the assessment and referral stage of rehabilitation. Thereafter, absences during duty hours for rehabilitation or treatment must be charged to the appropriate leave category, in accordance with existing law and leave regulations. Supervisors have the right to verify the employee's attendance with an EAP counselor.

NEW HIRE ORIENTATION

38.10 Newly hired employees will receive appropriate EAP information and materials during orientation.

ARTICLE 39: HEALTH AND SAFETY

POLICY

39.1 Consistent with applicable law, Executive Order 12196, Occupational, Safety, Health Administration requirements, as well as other applicable health and safety codes, the Employer will support the maintenance of safe and healthful working conditions for all employees. If an appropriate authority determines there is a significant health or safety problem and the Department does not take timely action on the problem, the Employer, to the extent of it's authority, will provide an appropriate remedy to address the needs of employees. The Employer and the Union will cooperate to that end and will encourage employees to work in a safe manner.

39.2 Pursuant to applicable law and regulation, no employee shall be subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthful working condition, or other participation in Agency occupational safety and health program activities, or because of the exercise by such employee on their behalf or another's of any right afforded by Section 19 of the Occupational Safety and Health Act, Executive Order 12196, or 29 CFR 1960. These rights include, among others, the right of an employee to decline to perform their assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting.

EMPLOYER

39.3 The Employer will work with all person, entities, or organizations which own and/or control work space to which bargaining unit members are assigned to ensure that healthy and safe working conditions are maintained and to ensure compliance with applicable laws, rules, and regulations, and this Agreement. The Employer will provide feedback to employees and the Union regarding the results of any action taken. The Employer agrees:

a. to provide information concerning Federal Employee Health Benefit and Life Insurance Programs, pre-retirement planning, retirement benefits information, the USDA's TARGET center, and the Employee Assistance Program;

b. to make information available to employees on health benefits open season activities and maintain copies of offered health plans for review upon request;

c. to work with the building manager, the Department, General Services

Administration (GSA), and private lessors, as applicable, to have safe electrical equipment, and adequate light and ventilation in all work areas;

d. to provide information available through the Department about ergonomic hazards and how to prevent ergonomic related injuries;

e. to grant periodic relief to employees using VDTs (video display terminals) for extended periods during the course of a day, by interspersing other work tasks requiring less visual concentration;

f. to provide, to the extent possible, safety devices, such as anti-glare screens and wrist props, which will promote greater safety and comfort for VDT operators;

g. to follow the Americans With Disabilities Act and GSA regulations in providing facilities appropriate and adequate to accommodate the needs of disabled employees;

h. to inform the AFSA/FAS of any decision to introduce new office equipment into the work place so that the AFSA/FAS may, thereafter, request bargaining concerning any appropriate arrangements required because of the new equipment;

i. to obtain and provide to AFSA/FAS copies of applicable regulations;

j. to make available for review by AFSA/FAS all safety reports generated by or available to FAS that are required by law, regulation, and/or this Agreement; and,

k. to assure the provision of safe, potable, drinking water to all bargaining unit members within ready access of working areas. Ready access is defined as a distance no more than the location of the nearest gender appropriate restroom.

AFSA/FAS

39.4 The AFSA/FAS will encourage all bargaining unit members to work safely with due consideration for the safety, health, and comfort of all fellow employees. To avoid preventable unhealthy or unsafe working conditions, the AFSA/FAS will encourage respect and care by bargaining unit members for the Employer's facilities and equipment and their own work environment.

REPORTS

39.5 Employee Reports of Unsafe or Unhealthy Working Conditions

a. Each bargaining unit member is encouraged to report any unsafe or unhealthy working conditions to his or her immediate supervisor as soon as any such conditions come to his or her attention.

b. The Employer will investigate the reported condition as soon as is practicable, and may refer the situation to: (a) the appropriate FSA or USDA office; (b) GSA; (c) the OSHA of the Department of Labor; (d) the Public Health Service (PHS) Health Unit; or (e) other appropriate officials(s) for further investigation. To the extent possible, the AFSA/FAS will be given an opportunity to accompany any inspector who responds on such a complaint during the inspector's physical inspection of the workplace unless it would be hazardous to accompany the inspector. The AFSA/FAS representative will be granted official time for this purpose.

c. The Employer will ensure a timely response to an employee's report of hazardous conditions. No employee will be unreasonably required to continue working in a situation determined to pose the threat of imminent danger or significant health hazard as determined by the appropriate authorities.

d. If an employee is assigned duties which he/she reasonably believes could possibly endanger his/her health or well-being, the employee will immediately notify his/her immediate or second-line supervisor of the situation. If the supervisor cannot solve the problem and agrees with the employee, the supervisor will, under normal circumstances, delay the assignment and refer the matter through the proper channels for appropriate action, unless the delay would unduly interfere with the Employer's operation. When the supervisor does not agree with the employee's concerns, the employee has the right to consult the AFSA/FAS and the right to file a report in accordance with the applicable agency or departmental regulations.

OCCUPATIONAL INJURY OR ILLNESS

39.6 Employees who become injured or occupationally ill in the performance of duties shall report the injury or illness to their supervisor immediately. The supervisor will refer the employee to the Human Resources Division (HRD), the Health Unit, or other medical service as appropriate and as permitted by applicable law, rule, or regulation. The supervisor shall also advise the employee to contact HRD/FSA to obtain information on benefits under the Federal Employees' Compensation Act. The Employer and employee shall cooperate in promptly processing all paperwork in connection with compensation claims.

OCCUPANT EMERGENCY PLAN

39.7 Each building in which bargaining unit members are stationed within the United States will have an Occupant Emergency Plan. The Employer will issue an annual reminder of the Occupant Emergency Program Plan.

FIRST-AID

39.8 The Employer will provide first-aid kits at FAS building locations for use when Health Unit facilities are not available.

39.9 The Employer may provide for training to interested employees for cardiopulmonary resuscitation (CPR) during duty or non-duty hours. If during duty hours, official time will be given to those approved in advance for participation.

HEALTH UNIT

39.10 The Employer currently participates in the Federal Employee Occupational Health program administered by the Public Health Service, U.S. Department of Health and Human Services. The Employer and AFSA/FAS will work cooperatively to ensure that the Department maintains a health unit at the site where the majority of FAS employees are located.

39.11 In the event an employee becomes incapacitated on the job, the Employer will notify Health Unit personnel who may call for emergency transportation if deemed appropriate.

ARTICLE 40: DAY CARE

POLICY

40.1 Management and AFSA/FAS agree that healthful and adequate child/day care facilities are conducive to a family-friendly work environment and are in the best interests of the Agency.

40.2 Management agrees to continue to support the Department's efforts to provide employees with affordable and accessible child/day care facilities. If the Department terminates its day care facility, AFSA/FAS and the Employer agree to negotiate day care to the extent permitted by law and government-wide regulation.

40.3 Management agrees to implement a pilot Day Care Assistance Program for eligible employees in accordance with existing laws and regulations (Treasury and General Government Appropriation Act of 2002 (Public Law 107-67) and Office of Personnel Management regulation 5 CFR Part 792) and the terms of the Memorandum of Understanding regarding a child day care assistance program signed by Management and AFSA on May 23, 2001.

CHANGES

40.4 The Employer agrees that, prior to relocating a division, office, or other portion of FAS to a location outside of the South Building, a survey of employees will be conducted jointly by AFSA/FAS and the Employer to determine the need for and the availability of child/day care facilities at the proposed location. The results of the survey will be presented to the Department for its use in developing a child/day care plan for the new location. If the Department does not act upon the survey results, the parties agree to jointly present their concerns to the Department.

40.5 Management agrees to notify AFSA/FAS of changes or requests for change in contracts for on-site care facilities.

40.6 AFSA/FAS reserves the right to bargain to the fullest extent permitted by law and executive order over day care benefits for overseas officers.

ARTICLE 41: PROFESSIONAL LIABILITY INSURANCE

POLICY

41.1 The Parties agree that accessibility to affordable and adequate professional liability insurance is a concern for Agency employees. Accordingly, pursuant to Section 636 of the Treasury, Postal Service and General Appropriations Act, 1997 (contained in Public Law 104-208), the Agency will implement a Professional Liability Insurance Premium Reimbursement Program for management officials and supervisors. Reimbursement is limited to 50 percent of the cost of the eligible employee's annual Professional Liability Insurance premium.

DEFINITIONS

41.2 Professional Liability Insurance is defined as insurance which provides coverage for the following:

a. legal liability for damages because of injuries to other persons, damage to their property, or other damage or loss to other persons, including the expenses of litigation and settlement, resulting from or arising out of any tortuous act, error, or omission of the covered individual (whether common law, statutory, or constitutional) while in the performance of the individual's official duties as a qualified employee; and,

b. the cost of legal representation for the covered individual in connection with any administrative or judicial proceeding, including any investigation or disciplinary proceeding, relating to any act, error, or omission of the covered individual while in the performance of the individual's official duties as a qualified employee, and other legal costs and fees relating to any administrative or judicial proceeding.

41.3 Supervisor: An individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority.

41.4 Management official: An individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency.

ELIGIBILITY

41.5 Foreign Service Officers who are overseas as heads of post or serving as the Director of an Agricultural Trade Office and other FSO's so determined by the SPO are eligible to participate in this reimbursement program.

PROCEDURE

41.6 Eligible employees may apply for reimbursement by submitting a completed SF-1164: "Claim for Reimbursement for Expenditures on Official Business" and attaching the Insurance Premium Statement with acceptable proof of payment, such as a canceled check, insurance statement/receipt, or Federal payslip showing payments made in full to:

The Performance Management, Benefits, and Awards Branch
HRD/FSA/USDA
Stop 0595
1400 Independence Avenue, SW
Washington, DC 20250-0595

IRS

41.7 The Internal Revenue Service has advised that employee reimbursement made under a properly administered Professional Liability Insurance program may be excluded from gross income under section 132(d) of the Tax Code and exempt from the withholding and payment of employment taxes. However, employees should consult their individual tax advisors if they need additional specific information.

PROGRAM TERMINATION

41.8 The Parties recognize that continuation of this program is dependent upon available funds within the FAS budget. The Employer will review the availability of funds as part of its annual budget process. Should the Employer believe a change in the program is warranted, the Employer will provide AFSA/FAS with a written statement describing the change, and negotiate if requested.

41.9 FAS reserves the right to terminate the program upon the announcement of reduction in force and/or furlough actions that may be necessitated by budget or ceiling constraints or other constraints beyond the control of FAS.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. DEPARTMENT OF AGRICULTURE
AND
THE AMERICAN FOREIGN SERVICE ASSOCIATION

The parties to this memorandum, the American Foreign Service Association, herein after referred to as AFSA, and the U.S. Department of Agriculture, hereinafter referred to as USDA, enter into this agreement for the purpose of establishing a mutually beneficial dues withholding agreement.

1. This Memorandum of Understanding is subject to and governed by 5 USC 7115, by regulations issued by the Office of Personnel Management (5 CFR 550.301, 550.311, 550.312, 550.3321 and 550.322), and will be modified as necessary by any future amendments to said rules, regulations and law. Reference is also made to DPM 550, Subchapter 3 for procedural guidance.

2. The USDA will permit any employee of the USDA who is a member of AFSA and included within a bargaining unit for which AFSA has exclusive recognition to make a voluntary allotment for the payment of dues to AFSA. Such deductions shall begin after certification of AFSA by the Federal Labor Relations Authority, and upon request by the appropriate union official and shall be at no cost to AFSA. This Memorandum of Understanding shall be made part of every future framework agreement and shall be the only authorized method for obtaining dues withholding.

3. The employee shall obtain a SF-1187, "Request for Payroll Deductions for labor Organization Dues," from AFSA and shall file the completed SF-1187 with the designated AFSA representative. The employee shall be instructed by AFSA to complete the top portion and Part B of the form. No number shall appear in block 2 of the form except the employee's Social Security number.

4. The AFSA authorized official will certify on each SF-1187 that the employee is a member in good standing of AFSA; insert the amount to be withheld, and the appropriate Local number, and submit the completed SF-1187(s) and a covering memo to the Servicing Personnel Office (SPO) of the USDA Agency involved. The SPO shall certify the employee eligibility for dues withholding, insert the AFSA code (40) and, process the form(s) through the automated Payroll/Personnel Processing System. An employee's initial dues deduction will become effective the first full pay period after the receipt by the SPO of the employee's certified SF-1187 or as soon as practicable thereafter. After the processing the form(s), the SPO will promptly sign and note the effective pay period on the cover memo and return a copy to AFSA. When the SPO determines that a SF-1187 cannot be processed, the SPO shall promptly return the form to the Union, annotated with the reason for its return. In most cases, this annotation will be one word, such as "confidential" or "supervisor." Dues

deduction will not be made for an employee who does not receive compensation sufficient to cover the total amount of the allotment.

5. Deductions will be made each pay period and remittance will be made on the Department's pay day to the payee designated by the Union. A grace period of seven days will be permitted in unusual circumstances. The NFC shall also promptly forward to AFSA, a listing of dues withheld. The listing shall show the name of each member employee from whose pay dues were withheld, the employee's Social Security number, the amount withheld, the code of the employing agency, and the number of the Local to which each employee belongs. The listing will be in alphabetical order by the employee's last name. Each Local listing shall be summarized to show the total number of members for whom dues were withheld, the total number of dues withheld in each pay category, the total amount withheld, and amount due to the Local. The list will also include the name of each employee member for that Local who previously made an allotment for whom no deduction was made that pay period, whether due to leave without pay or other cause. Such employees shall be designated with and appropriate explanatory term.

6. In lieu of the listings provided for in Section 5 of this Memorandum of Understanding, USDA agrees to provide AFSA a computer diskette in a format to be agreed upon at such time as AFSA has the facilities to process diskettes. USDA will be given two (2) months notice to implement this change.

7. The amount of dues certified on the SF-1187 by the authorized Union official (see Section 4) shall be the amount of regular dues, exclusive of initiation fees, assessment, back dues, fines, and similar charges and fees. One standard amount for all employees or different amounts of dues for different employees may be specified. If there should be a change in the dues structure or amount, the authorized Union official shall notify the appropriate SPO. If the change is the same for all members of the Local, a blanket authorization may be used which includes only the Local number and the new amount of dues to be withheld. If the change involves a varying dues structure, then a revised rate schedule will be provided to the SPO. The SPO shall add the AFSA code (40) and promptly forward the certification to the NFC. The change shall be effected at the beginning of the first full pay period after the certification is received by the NFC which shall be no later than 30 days after the Union provides written notification to the SPO of the change in dues. Only one such change to the dues structure may be made in any 12 month period.

8. An employee may voluntarily revoke an allotment for the payment of dues by completing a SF-1188, "Cancellation of Payroll Deductions for Labor Organization Dues" or by memorandum in duplicate, and submitting it to the appropriate SPO. If the employee uses a written request, it must contain all the information required by the SF-1188. The SPO shall process the revocation effective as of the first full pay period after September 1 of each year provided that the revocation was received by the SPO on or before August 29 of each year, and provided the employee has had AFSA dues withheld for more than 1 year and certifies to

that fact. The SPO shall verify the information and forward to the designated Union official a copy of each revocation received as appropriate notification of the revocation.

9. The USDA will terminate an allotment:

(a) as of the beginning of the first full pay period following receipt of notice that exclusive recognition has been withdrawn;

(b) at the end of the pay period during which an employee member is separated or assigned to a position not included in an AFSA bargaining unit;

(c) at the end of the pay period during which the SPO received a notice from the AFSA that an employee member has ceased to be a member in good standing;

(d) annually during the first full pay period after September 1, after receipt of the employee member's written revocation of allotment (SF-1188 or memorandum in duplicate), provided that the revocation is received by the SPO on or before August 29, of each year, and provided the employee verifies that he/she has had AFSA dues withheld for more than one year.

10. The SPO and the employee members have a mutual responsibility to assure timely revocation of an employee's allotment for AFSA dues when the employee is promoted or assigned to a position not included in a bargaining unit represented by AFSA. If the dues allotments continue and the employee fails to notify his/her SPO, the retroactive recovery of dues withheld from AFSA shall not be made, nor shall a refund be made to the employee.

11. The parties to this agreement recognize that problems may occur in the administration of this agreement and the dues withholding program. The parties agree to exchange names, addresses, and telephone numbers of responsible officials and/or technicians of AFSA and USDA to facilitate resolution of problems. These individuals shall cooperate fully in an effort to resolve any issue relating to dues withholding under the terms of the Memorandum of Understanding. This does not constitute a waiver of any legal, regulatory, or contractual right. Grievances or other appeals concerning this Memorandum of Understanding will be filed with or against the parties at the level of recognition.

12. This Memorandum of Understanding shall remain in effect for as long as AFSA holds exclusive recognition in USDA, except that either party may propose amendments annually, before the anniversary date of the signing of this agreement.

13. The initial dues for the American Foreign Service Association will be withheld no later than 6 weeks from the date that this Memorandum of Understanding is signed. For any

other unit certified in USDA, initial dues will be withheld in accordance with Section 2.

Agreed to, signed at Washington, DC on July 20, 1994

Evelyn M. White /s/
Director of Personnel
Department of Agriculture

Susan Reardon /s/
Executive Director
American Foreign Service Association