2020 Collective Bargaining Agreement

Office of the General Counsel

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2020
Collective Bargaining Agreement
between OGC and AFGE: Local 1106

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Article 1. TERMS AND DEFINITIONS

When used in this Agreement, the terms contained in this Article have the following meanings:

l) **Agency.** The Office of the General Counsel of the Department; when not capitalized, "Agency" has its ordinary meaning.

2) **Agreement.** The collective bargaining agreement between the Agency and the Union; when not capitalized, "Agreement" has its ordinary meaning.

3) **Associate General Counsel Area of Responsibility.** The division or divisions supervised by an Associate General Counsel of the Agency; the term also includes the area supervised by the Director of Administration and Resource Management.

4) **Day.** A calendar day; if the day an action must be completed under this Agreement falls on a non-workday, the due date shall be the next workday.

5) **Department.** The United States Department of Agriculture.

6) **Designated Agency Management Official.** The General Counsel or the Agency Management official or officials designated by the General Counsel to perform specific activities under this Agreement.

7) **Division.** A Washington office division.

8) **Field Office.** An OGC office outside of the National Capital Region.

9) **Employee.** A bargaining unit employee.

10) **Parties.** The Union and the Agency; when not capitalized, "Parties" has its ordinary meaning.

11) **Party.** The Union or the Agency; when not capitalized, "Party" has its ordinary meaning.

12) **OPM.** The Office of Personnel Management, or any successor agency including a Department exercising the authority once held by OPM.

13) **Regional Attorney Area or Responsibility.** The OGC field offices within the Region supervised by a Regional Attorney.

14) **Supervisor.** An employee's immediate supervisor.

15) **Union.** The American Federation of Government Employees (AFGE), Local 1106.

16) **Union President.** The Union President or designee.

17) **Written Communications.** Written communications under this Agreement may be hand delivered, mailed, or delivered electronically; delivery is timely if postmarked or transferred electronically no later than the final day of the designated period.

Article 2. RECOGNITION, UNIT DESIGNATION, AND COVERAGE

Section l. Recognition and Unit Designation.

a. By this Agreement, the Agency recognizes the Union as the exclusive representative of all employees in the bargaining unit as defined in this Article. In accordance with 5 U.S.C. Chapter 71, the Union represents all employees regardless of whether they are members of the Union.

b. The Parties shall not do anything by custom or practice that violates this Agreement.

Section 2. Coverage.

The bargaining unit to which this Agreement applies includes all employees of the Agency, except those employees described in 5 U.S.C. § 7112(b)(1), (2), (3), (4), (6), and (7).

Upon request of the Union President, the Agency shall supply a list of all Agency employees excluded from the Bargaining Unit.

Article 3. EFFECTIVE DATE AND DURATION OF AGREEMENT

Section 1. Effective Date. This Agreement and any revisions to it shall take effect on the 31st day after it has been executed by the Parties, provided that it has been ratified by the Union members and not disapproved by the head of the agency under 5 U.S.C. § 7114(c).

Section 2. Duration. This Agreement shall remain in effect until May 31, 2024. The Agreement shall remain in effect for additional 1-year periods after May 31, 2024 unless, during the month of May 2024 or a May of any subsequent year, the Union President or the Designated Agency Management Official provides written notice to the other Party that the Union or the Agency wishes to modify or terminate the Agreement. When negotiating a new CBA, the Parties shall use the ground rules set forth in Appendix A of this Agreement. This Agreement shall remain in effect until a successor agreement goes into effect, unless either Party provides notice that it is exercising its right to rescind any or all permissive articles.

Section 3. Renegotiations. The Union President or the Designated Agency Management Official may provide written notice to the other Party at any time that the Union or the Agency wishes to modify one or more articles of this Agreement. The Party receiving the notice is not required to agree to renegotiations. If the Parties agree to renegotiate, they shall use the ground rules set forth in Appendix A of this Agreement.

Section 4. Supplemental Agreements. A supplemental agreement between the Parties that has become a part of this Agreement shall terminate at the same time as this Agreement, unless the Parties agree otherwise in writing or the Agency has a compelling need for the regulation, rule, policy, or directive as authorized by 5 U.S.C. § 7117(b).

Article 4. GOVERNING LAW AND REGULATIONS

Section 1. Statutory Changes. If, after adoption of this Agreement, there are changes to a statute or a new statute is enacted, the new or amended statute shall govern.

Section 2. Other Changes. If provisions of this Agreement are inconsistent with later enacted government-wide regulation, Executive Order/memoranda, or Departmental Regulation, changes to those provisions will take effect upon the Agency' s notification to the Union and completion of Impact and Implementation bargaining as provided in the Mid-term Bargaining Article of this Agreement.

Article 5. EMPLOYEE RIGHTS

Section 1. General. The Agency shall provide employees the protection afforded to them by law, Department policy, and this Agreement. The Agency shall not penalize employees for exercising their rights under this Agreement. Employees shall be free from restraint, interference, coercion, discrimination, or reprisal for presenting information regarding any matter for which relief is available under this Agreement.

Section 2. Right to Union Membership. Employees shall have the right to form, join, or assist the Union, or to refrain from these activities, freely and without fear of penalty or reprisal, and employees shall be protected in the exercise of these rights. The rights of employees include the right to act as a Union representative, and to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under the Federal Service Labor-Management Relations Statute and this Agreement.

Section 3. Right to Union Representation. Employees have a right to Union representation and to meet with a Union representative during duty time in accordance with the Federal Service Labor-Management Relations Statute and this Agreement. An employee's reason for wishing to speak to a Union representative and any Union-related discussions between employees and their Union representatives are confidential unless disclosure is required by federal law.

Section 4. Weingarten Rights. The Agency or its agent shall notify employees annually of their right to representation under 5 U.S.C. § 7114(a)(2)(B), known as Weingarten rights. Under § 7114(a)(2)(B), the Union shall be given the opportunity to be represented at "any examination of an employee by a representative of the Agency" in connection with an investigation if-- (i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and (ii) the employee requests representation.

Section 5. First Amendment Rights. Employees may, either individually or collectively, petition Congress or any member of Congress, and they may present their views to Executive Branch officials.

Section 6. Access to Information and Documents. Employees, and their designated representatives who have been authorized in writing, shall have access to and may make copies of all Department and Agency records that are retrieved under their name or social security number, or any other identifier that is specific to the individual employee, in accordance with the Privacy Act, 5 U.S.C. § 552a.

Section 7. New Employees. A Union representative shall be given 30 minutes of official time to meet with each new employee to explain the Union's role and responsibilities. The Union representative may not use official time to solicit membership in the Union. The Union President will be notified during the first week of employment of any bargaining unit employee to facilitate such a meeting.

Section 8. Duty Time to Review the Collective Bargaining Agreement. During the first week

after the effective date of this Agreement, the Agency shall give each employee 2 hours of duty time to read the Agreement. New employees shall be given 2 hours of duty time during their first week of employment to read the Agreement.

Article 6. **MANAGEMENT RIGHTS**

Section 1. Agency Authority. Pursuant to 5 U.S.C. § 7106(a), and subject to 5 U.S.C. § 7106(b), nothing in this Agreement shall affect the Agency's authority:

a. To determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and

b. In accordance with applicable laws:

i. to hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against employees;

ii. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;

iii. with respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion, or from any other appropriate source; and

iv. to take whatever actions may be necessary to carry out the Agency's mission during emergencies.

Section 2. Permissive Bargaining. The Agency elects to bargain with the Union over the permissive subjects contained in 5 U.S.C. § 7106(b)(1) only as specifically provided in this Agreement. The Agency reserves the right to terminate these permissive subjects upon expiration/termination of the contract and will determine the nature and extent of negotiating on permissive subjects at the time the parties are negotiating any such agreement.

Article 7. EQUAL EMPLOYMENT OPPORTUNITY AND MERIT SYSTEMS PROTECTION BOARD APPEALS

Section 1. General. The Agency shall provide and promote equal employment opportunity for all qualified persons; shall prohibit discrimination based on age, gender, race, color, religion, marital or family status, national origin, disability, political beliefs, or sexual orientation; and shall provide a workplace that is free of harassment, including sexual harassment.

Section 2. Furnishing Information. Upon request, the Agency shall furnish the Union President with copies of any equal employment opportunity or affirmative action employment plans, reports of accomplishments, and statistical information relating to the Agency's equal opportunity programs consistent with 5 U.S.C. § 7114(b)(4).

Section 3. Counselors. The Parties agree that trained equal employment opportunity counselors are necessary to properly administer an equal employment opportunity program. The Agency shall ensure that counselors are available and accessible to employees. These counselors shall advise employees of all of their rights, in accordance with law and regulation.

Section 4. Union Right to Represent Employees. When an employee has filed a complaint under the Department's equal employment opportunity procedure or the Grievances and Arbitration Article of this Agreement, or with the Merit Systems Protection Board, the Union may represent the employee.

Section 5. Equal Employment Opportunity Complaints and Merit Systems Protection Board Appeals. The filing of a formal equal employment opportunity complaint or an appeal with the Merit Systems Protection Board by an employee or his or her representative constitutes an election to use statutory appeal procedures and precludes the filing of a grievance on the same matter under the Grievances and Arbitration Article of this Agreement.

Article 8. EMPLOYEE WELLNESS

Section 1. General. The Agency shall maintain a safe and healthy work environment for all employees. The Parties agree to cooperate in an effort to avoid accidents, injuries, and health hazards in all areas under the Agency's control.

Section 2. Work Conditions.

a. The Agency shall make reasonable efforts to promptly abate unsafe or unhealthy working conditions. Where the conditions are dangerous to life and limb, and immediate repairs cannot be made to render the area safe, employees shall not be exposed to those conditions, and the Agency shall provide alternate accommodations, a telework option under Article 32 (Telework Article) or administrative leave.

b. If there is an emergency in an office, the Agency's first concern shall be the health and safety of the employees and visitors to the facility. If it is necessary to evacuate a facility, employees shall not be readmitted into the facility until it has been determined that there is no longer a danger.

c. If abatement of an unsafe or unhealthy working condition within 30 days will not be possible, the Agency shall prepare an abatement plan and provide it to affected employees. The plan shall contain an explanation of the circumstances of the delay in abatement, a proposed timetable for the abatement, and a summary of the interim steps that will be taken to protect employees from being injured by the unsafe or unhealthy working conditions.

d. When an unsafe or unhealthy working condition cannot be abated without assistance from the General Services Administration, another Federal lessor agency, or any other lessor, the Agency shall cooperate with the lessor in its attempts to abate the condition.

Section 3. Employee Rights and Responsibilities.

a. The Parties will work together to detect unsafe and unhealthy working conditions at the earliest possible time, and to correct them at the working level closest to the problem. An employee who is assigned duties that may endanger the employee' s health or well-being shall notify the supervisor of the situation. The supervisor, upon making a determination that unsafe conditions exist, shall take appropriate action to abate the unsafe working condition in accordance with applicable law and regulation.

b. An employee may decline to perform an assigned task if the employee reasonably believes that the task poses an imminent risk of death or serious bodily harm, and there is insufficient time for normal Agency reporting and abatement procedures.

Section 4. Emergency Assistance.

a. If an employee has to leave work because of illness or injury, the Agency shall, upon request, help the employee find suitable transportation. If a co-worker provides the requested assistance, the co-worker shall not be charged leave for the time involved.

b. The Agency shall maintain reasonable first aid supplies or assistance at each office and shall provide employees access to them.

Section 5. Health Services. The Agency shall permit employees reasonable opportunity to visit on-site health service units for emergency and appropriate health maintenance care. Where approved by the supervisor, the visits shall be permitted without charge to leave.

Section 6. Smoke-Free Environment. There shall be no smoking in any Agency office or in other areas under the Agency's control.

Section 7. Workplace Environment. The Agency shall provide employees with a workplace environment that is comfortable, relatively free of distractions, and safe. In order to adequately address temporary issues with work place environment, the Agency may consider remedies including, but not limited to, temporary flexibility in local dress codes, temporary relocation of work station(s), temporary reassignment of work, temporary telework exceeding normal restrictions, and/or, in special circumstances, temporary excuse from duty.

Section 8. Workstation Furniture and Equipment. The Agency shall provide employees with available information about ergonomic issues and prevention of work-related injuries. For medical reasons, the Agency shall, whenever feasible, provide an employee with workstation furniture and equipment that meets ergonomic requirements. When purchasing workstation furniture or equipment, the Agency shall, whenever feasible, obtain furniture or equipment that meets ergonomic requirements. The Agency shall comply with all applicable regulations of the Occupational Safety and Health Administration and shall take into account guidelines issued by that agency or by the National Institute of Occupational Safety and Health.

Section 9. Maintenance and Housekeeping. The Agency shall make reasonable efforts to avoid distractions to employees when scheduling maintenance, construction, or housekeeping activities. The Agency shall make reasonable efforts to inform employees of scheduled maintenance, construction, or housekeeping activities so that they may plan their work accordingly.

Section 10. Federal Employees Compensation Act. The Agency shall prophylactically inform all employees of the procedures for filing a claim under the Federal Employees Compensation Act, and of the benefits available. The Agency shall reasonably cooperate with any employee injured in the performance of their duties in documenting and filing a claim under the Federal Employees Compensation Act.

Section 11. Fitness. The Agency recognizes that fitness activities can enhance employee wellness and morale.

a. The Agency shall attempt to make federally maintained fitness facilities available to its employees.

b. The Agency shall support employee wellness by considering employees' stated fitness activity objectives when approving employee work schedules under Article 31 (Hours of Work), including by considering elongated lunch hours or other extended breaks in the work day so long as the employees complete their work day within the allowable starting and stopping times.

Article 9. EMPLOYEE ASSISTANCE PROGRAM

Section 1. Purpose. The Parties believe in helping employees with personal or family problems that may affect their job performance. For that reason, the Parties shall work together to inform employees about the Employee Assistance Program (EAP), which is designed to help employees who are affected by alcohol, drug abuse, mental illness, and other personal or family problems that may affect job performance.

Section 2. Use of Leave Under the Employee Assistance Program. If the Agency recommends that an employee participate in the EAP, the employee shall be granted administrative leave for the first EAP counseling session. For additional counseling sessions or rehabilitation, the employee may use sick leave, annual leave, compensatory time, or leave without pay.

Section 3. Employee Rights and Responsibilities.

a. Employees may voluntarily seek counseling from, information about, and referrals to the EAP.

b. Employees may not be required to participate in the EAP; employees who decline to participate in the EAP shall not be penalized for having done so.

c. The confidentiality of medical records, counseling records, and other records of employees who participate in the EAP shall be preserved in accordance with applicable law and regulations. The Agency shall do whatever it can under applicable law and regulations to ensure that information regarding an employee's participation in the EAP is kept strictly confidential.

d. An employee's job security, appraisals, and promotion opportunities shall not be adversely affected by participation in the EAP.

e. If the Agency has grounds to remove, suspend, or downgrade an employee because of performance or disciplinary problems resulting from mental illness, alcohol or drug abuse, or some other personal or family problem, the Agency, after a consideration of the circumstances, shall generally stay the action until the employee has been given reasonable time to enter into an appropriate rehabilitation program, provided that, in the case of illegal drugs, the employee has first satisfied all applicable notice and other requirements under Executive Order 12564. Employees must provide the Agency with documentation showing that they are participating in the appropriate rehabilitation program and must make reasonable progress toward improving their conduct or job performance.

Section 4. Union Participation in Employee Assistance Program Training. A Union representative shall be invited to attend any seminars, workshops, conferences, or training sessions designed to acquaint employees with the EAP.

Section 5. Promoting the Employee Assistance Program.

a. The Agency shall post information describing the EAP in a prominent location in each division and office.

b. The Agency shall provide information about the EAP to new employees during their initial orientation.

c. When the Agency learns of any change in the EAP provider or any change in the services provided, the Agency shall timely provide that information to the employees and the Union President.

Section 6. Right to Union Representation. An employee may request Union representation at any meeting with the Agency regarding the employee's participation in the EAP.

Article 10. AGENCY AND UNION MEETINGS

By mutual agreement of the parties, the Agency and the Union may agree to discuss issues of mutual concern. To the extent any costs are associated with such meetings (*e.g.,* travel) each party is to bear their own costs.

Article 11. OFFICIAL TIME AND LEAVE WITHOUT PAY FOR FEDERAL LABOR-RELATIONS ACTIVITIES

Section 1. Definitions. For purposes of this Article, "Official time" means taxpayer-funded union time and leave without pay for the purpose of labor-relations activities, granted to an employee pursuant to 5 U.S.C. § 7131. The term "union time rate" shall mean the total number of duty hours in the fiscal year that employees used for taxpayer-funded union time and any other official time granted to Union representatives to perform non-agency business, divided by the number of employees in the bargaining unit.

Section 2. Governing Law. Federal law allows some Federal employees to represent labor organizations while being paid by American taxpayers (taxpayer-funded union time). The use of taxpayer-funded union time shall be governed by this Article and by statutes, government-wide regulations, departmental regulations, and Executive Orders in effect at the time an employee requests or uses taxpayer-funded union time.

Section 3. Use of Taxpayer-Funded Union Time for Federal Labor-Relations Activities. The Agency may authorize employees to use taxpayer-funded union time, which is limited to the time an employee would otherwise be in a duty status, only when required by law for purposes covered by 5 U.S.C. §§ 7131(a) and 7131(c), or when the Parties agree that the use of taxpayer-funded union time is otherwise reasonable, necessary, and in the public interest under 5 U.S.C. § 7131(d).

Section 4. Standards for Reasonable and Efficient Use of Taxpayer-Funded Union Time. The Agency shall not authorize the use of taxpayer-funded union time under 5 U.S.C. § 7131(d), unless the use of this time is reasonable, necessary, and in the public interest. Ordinarily, the use of taxpayer-funded union time under § 7131(d) in a manner that would cause the union time rate in the bargaining unit to exceed 1 hour shall not be considered reasonable, necessary, and in the public interest, or to satisfy the "effective and efficient" goal set forth in 5 U.S.C. § 7101(b).

Section 5. Use of Taxpayer-Funded Union Time under the Negotiated Grievance Procedure. Employees may not use taxpayer-funded union time to prepare or pursue grievances (including arbitration of grievances) brought against the Agency under the Grievances and Arbitration Article of this Agreement, except where such use is otherwise authorized by law or as follows:

a. To the extent consistent with law, an employee may use taxpayer-funded union time to prepare for, confer with an exclusive representative regarding, and present a grievance brought on the employee's own behalf, or to appear as a witness in a grievance proceeding; and

b. An employee may use taxpayer-funded union time to challenge an adverse personnel action taken against the employee in retaliation for engaging in federally protected activity, as defined by the Office of Personnel Management.

Section 6. Unauthorized Use of Taxpayer-Funded Union Time for Labor-Relations Activities. Employees shall not use taxpayer-funded union time for:

a. internal union business in violation of 5 U.S.C. § 7131(b), including internal Union business conducted during Union membership meetings;

b. lobbying activities in violation of 18 U.S.C. § 1913, except in their official capacities as an employee;

c. political activities in violation of subchapter III of chapter 73 of title 5, United States Code; or

d. any other activity that is not specified in Sections 2 to 4 of this Article.

Section 7. Annual Limitations on the Use of Taxpayer-Funded Union Time.

a. Except as provided in paragraph (b) of this section, employees shall spend at least three-quarters of their paid time, measured each fiscal year, performing Agency business or attending necessary training (as required by the Agency).

b. Employees who have spent one-quarter of their paid time in a fiscal year on non-agency business may continue to use taxpayer-funded union time in that fiscal year for purposes covered by 5 U.S.C. §§ 7131(a) and 7131(c).

c. Any time in excess of one-quarter of duty hours used to perform non-agency business in a fiscal year shall count toward the limitation set forth in paragraph (a) of this subsection in subsequent fiscal years.

Section 8. Use of Leave without Pay for Federal Labor-Relations Activities. The Agency may permit employees to take leave without pay to perform representational activities under chapter 71 of title 5, United States Code, including for purposes covered by 5 U.S.C. § 7121(b)(1)(C).

Section 9. Designation of Union Officials. The Union shall provide the Designated Agency Management Official and the Agency's Director of Administration and Resource Management with the names of all Union officers and stewards, and promptly notify the Agency of any changes in assignments.

Section 10. Taxpayer-Funded Union Time and Leave without Pay for Federal Labor-Relations Activities Reporting and Requests.

a. Employees may not use taxpayer-funded union time and/or leave without pay for federal labor-relations activities without advance written authorization from the Agency, except where obtaining prior approval is deemed impracticable pursuant to regulations or guidance adopted pursuant to statutes, government-wide regulations, departmental regulations, and Executive Orders in effect at the time an employee requests or uses such time.

b. Employees shall request taxpayer-funded union time and/or leave without pay for federal labor-relations activities from their supervisors using the form found at

Appendix B. A request for the use of official time or leave without pay for labor-relations activities must be made in advance and shall specify the number of hours to be taken and the specific purposes for which official time and/or leave without pay for labor-relations activities shall be used.

c. All use of official time and/or leave without pay for labor-relations activities must be recorded on the official time and attendance reports.

Section 11. Preventing Unlawful or Unauthorized Expenditures. Any employee using taxpayer-funded union time and/or leave without pay for labor-relations activities without the advance Agency authorization described in this Article, or for purposes not specifically authorized by the Agency, shall be considered absent without leave and subject to appropriate disciplinary action. Repeated misuse of taxpayer-funded union time and/or leave without pay for labor-relations activities may constitute serious misconduct that impairs the efficiency of the Federal service. In these instances, the Agency shall take appropriate disciplinary actions to address the misconduct.

Section 12. Conflicts. If there is a conflict between this Article and any other Article in this Agreement, the terms of this Article shall govern.

Article 12. USE OF FACILITIES AND SERVICES

Section 1. Meeting Rooms.

a. Use for Official Time Purposes. With the approval of the Agency, the Union may use (without charge) available conference rooms or similar space during duty hours for activities for which official time is authorized. The Union shall schedule use of the space through the Agency.

b. Use for Non-Official Time Purposes. With the approval of the Agency, the Union may (without charge) use available conference rooms or similar space during non-duty hours for activities for which official time is not authorized. The Union shall schedule use of the space through the Agency.

c. Fair-Market Rent. The Union agrees to pay fair-market rent, as determined by the Agency, for the use of Agency or Department space for any space devoted to union activity. The Agency will not charge the Union for use of an employee's normal workspace that may be used for Union activity consistent with and as provided in Article 11 of this Agreement. The rental amount will be calculated to include a reasonable estimate of the cost of furnishings and other resources provided by the Agency. The Agency will provide the Union with an estimate of the cost of any space permitted for Union use for the upcoming fiscal year prior to the beginning of the fiscal year, or any portion thereof where a full fiscal year is not available. The Union agrees to remit to the Agency the cost of this space at least 30 calendar days prior to the beginning of the new fiscal year or when otherwise due, if it desires to rent or continue renting the space for the upcoming fiscal year. The Union agrees to pay the rent when it is due or immediately cede access to the space. Charges will be assessed and paid before the Union occupies any space.

d. The Agency agrees to provide access to space reservations to the Union for the conduct of official business. Space reservations may be used for Union meetings with employees, including meetings conducted when employees are in a non-duty status. Union representatives will be responsible for scheduling and cancelling space as needed. The Agency may deny future reservations if the Union fails to follow the cancellation protocols.

e. If approved by the Agency, the Union may have access to the use of Video Teleconferencing and Computer Training Rooms for Union sponsored training. The Union will have the same access as other groups.

Section 2. Office Space.

For office space devoted to Union activity, the Union shall be responsible for furnishing its own equipment (laptops, mobile devices, printers, etc.) as to relieve any burden of audit accountability and internal security requirements by the Department. The Agency will provide wireless internet access to the Union, where it is otherwise available. Union members and

officers may use their government office space and equipment for Union business which should be reasonable and limited in accordance with Article 11 of this Agreement. If either the Union President and/or Secretary/Treasurer are located in a private office without a locking door, upon request the Agency shall install a lock. If either the Union President or Secretary/Treasurer do not have a private office with floor-to-ceiling hard walls, upon request the Agency shall make a private space available for such occasional utilization by such person (such private space can include conference rooms or other rooms available for use at that time).

Section 3. Equipment and Supplies.

a. Telecommunications, Electronic Equipment and Conference Calls. For Union activities for which official time is authorized, the Union and employees may be permitted reasonable use of telecommunications and electronic equipment procured by the Agency.

b. Electronic Mail. Union officials and employees may use electronic mail for Union activities for which official time is authorized. On non-duty time, Union officials and employees may use electronic mail for union activities for which official time is not authorized. The Union is subject to the standards that apply to all users of USDA's electronic mail system, including cybersecurity training requirements and audits.

c. Copy Machines. The Agency will provide public area access to copying machines for representational business. The Union's use of copiers shall be reasonable and shall not interfere with the conduct of government business.

d. Office Supplies. The Agency shall provide a reasonable amount of office supplies for Union activities for which official time is authorized.

Section 4. Information Services.

a. Bulletin Boards. The Agency shall provide and allow the use of a separate bulletin board in each division or office for the posting of Union information.

b. Official Publications. Official publications of the Union, which may include newsletters, fliers, or other notices, may be distributed on Agency property by Union representatives during non-duty time.

c. Mail.

i. For Union activities for which official time is authorized, the Agency shall provide and pay for regular mail service by the United States Postal Service when necessary for conducting labor-management activities. The Union may not use other types of mailing, such as express, overnight, registered, or certified mail, unless required to do so to participate in a procedure authorized

by the Federal Service Labor-Management Relations Statute. In such cases the Agency will pay for the required service. All Union mail shall bear the name and return address of an Executive Board member, Assistant Vice President, or steward.

ii. The Union may use mail slots, bins, or inboxes for distributing Union materials during non-duty hours. The materials shall be reasonable in size and clearly identified as Union material and shall contain nothing that identifies the material as the Agency's material or implies that the material is sponsored or endorsed by the Agency.

d. Telephone Directories. The telephone and room numbers of Executive Board members, Assistant Vice Presidents and Stewards shall be included in the Agency's internal telephone directory. The Union shall advise the Agency of changes in the names and titles of Union Officials.

e. Internet. The Agency agrees to provide space for a Union webpage linked to OGC's Intranet site. The Union shall be responsible for maintaining the content on the web page.

Section 5. Accountability. The Union shall use the Agency's facilities, services, and equipment described in this Article only for the purposes allowed by statute, regulation, and this Agreement.

Article 13. UNION DUES WITHHOLDING

Section 1. Eligibility. Employees may elect to have their Union dues withheld through payroll deduction. The Union is responsible for informing employees of the voluntary nature of dues withholding and the conditions governing the revocation of dues withholding.

No person employed in the executive branch of the Federal Government, or any agency, office, or department thereof, shall deduct, or permit the deduction of, dues of an exclusive representative from the pay of a Federal employee unless the employee has affirmatively consented to the deductions through a waiver of rights that is freely given and shown by clear and compelling evidence in accordance with the provisions of law and this Article.

Employees may pay Union dues through the authorization of voluntary allotments from their salary if they are members in good standing of the Union, and their biweekly salary is sufficient to cover the total amount of the dues allotment.

In implementing the dues deduction program, the Parties will be governed by the provisions of 5 U.S.C. § 7115 and this Article.

Section 2. Procedure.

a. The Union will be responsible for the distribution of the Standard Form 1187 for the use by an eligible member of the Union who wishes to authorize the deduction of his/her dues. The Standard Form 1188 will also be available through the Union and the Agency for employees who wish to revoke the allotment as described in Section 4.

b. The Standard Form 1187 must be completed by an employee and the Union President or Secretary/Treasurer and forwarded to the Director of Administration and Resource Management for concurrence. The Director of Administration and Resource Management or his or her designee will forward the approved dues allotment form to the Department for processing. Dues will be withheld within a reasonable period of time following the Department's receipt of the Standard Form 1187.

c. If the Union suspends or expels a Union member, it will immediately notify the Director of Administration and Resource Management by email of that determination. The Director of Administration and Resource Management will subsequently ask the Department to cease dues deductions for the employee.

Section 3. Change in the Amount of Dues.

Changes to the amount of Union dues cannot occur until 12 months have passed since the latest change. When the amount of regular dues changes, the Union President or Secretary/Treasurer will notify the Director of Administration and Resource Management of the change in writing. The Director of Administration and Resource Management will acknowledge receipt of the written request and will ask the Department to change the amount of the dues allotments.

Section 4. Union Responsibility. The Union shall:

a. inform its members of the voluntary nature of this system for allotment of Union dues;

b. provide the Standard Form 1187 to its members;

c. send properly executed and certified Standard Forms 1187 to the Agency's Director of Administration and Resource Management;

d. provide written notification to the Agency's Director of Administration and Resource Management, with a copy to the Agency's Resource Management Specialist, of the following:

    i. the Union officials authorized to certify Standard Forms 1187 (currently the Union President and the Secretary/Treasurer),

    ii. any change in the amount of dues to be deducted, and

    iii. the name of any employee who is no longer in good standing with the Union.

e. Provide the Standard Form 1188 to the Director of Administration and Resource Management whenever an employee provides this form to the Union.

Section 5. Automatic Termination of Dues Withholding.

Union dues withholding will be automatically terminated in the event of loss of exclusive recognition. Any individual allotment for dues withholding shall automatically terminate upon the separation of the employee from the Department or transfer of the employee from the bargaining unit. If an employee is on a temporary assignment to a non-bargaining unit position, the Agency will ask the Department to cease the allotment of Union dues deduction and so inform the Union President. The employee will be responsible for submitting a new Standard Form 1187 upon returning to the bargaining unit if the employee elects to pay Union dues through payroll deduction.

Section 6. Correction of Errors. Administrative errors in remittance amounts will be corrected and adjusted within a reasonable period of time.

Section 7. Procedure to Cease Deductions. A Union member may revoke his/her allotment for Union dues by submitting a completed and signed Standard Form 1188 to the Director of Administration and Resource Management. The Agency will also accept other forms of written notification of revocation.

a. Within the First Year: A revocation received by the Agency during the employee's first year of dues allotment will become effective no later than the second pay period after the first anniversary of the pay period the Union dues

deductions began.

b. After the First Year: Revocation requests must be submitted to the Director of Administration and Resource Management at least two weeks prior to the desired effective date. A revocation received after the first year of Union dues deductions will take effect as allowed under law including any Federal Labor Relations Authority opinions.

c. Upon receipt of a Standard Form 1188 or other revocation document, the Director of Administration and Resource Management will provide the Union Secretary/Treasurer with a copy of the Standard Form 1188 or other revocation document.

Section 8. Miscellaneous. Nothing in this Article prevents the Union from establishing dues amounts that are based on an employee's grade level.

Article 15. MID-TERM BARGAINING

Section 1. Introduction. Except for changes mandated by statute, the matters covered by this Agreement will not be subject to change during the term of the Agreement, absent mutual consent of the Parties. If there is a need to reopen existing articles or add new articles because of mandated changes, the Parties will follow the procedures in this Article. The procedures in this Article will also be used when the Agency wishes to make a non-mandatory change in conditions of employment and no other article in the Agreement applies. Neither the Union nor the Agency waives any statutory rights during this process.

Section 2. Notification Procedure. Before making changes to employees' conditions of employment, the Agency shall provide the Union President with written notice of the proposed change. This notice may be provided to the Union President by mail, hand delivery, e-mail or facsimile. The Union President will provide the Agency with any response in a similar manner. Specific procedures to be used pursuant to this Article are as follows:

a. The Agency will provide written notice to the Union President of the Agency's intent to make a change in conditions of employment, which are not otherwise covered by another Article in this Agreement, once the Agency has decided to implement the proposed change.

b. The Union President will have five calendar days to advise the Agency, in writing, of the Union's desire to negotiate over procedures and appropriate arrangements regarding the change pursuant to 5 U.S.C. § 7106. Thereafter, the Union will have five additional calendar days to provide the Agency with any proposals relating to the impact and implementation of the proposed change. Negotiations between the Parties shall begin within seven business days of the Agency's receipt of the Union's proposals.

c. During the course of the negotiations, the Union may request additional information regarding the proposed change and/or seek clarification of the reasons for the proposed change. This information may be provided in writing or in a discussion between the Agency and Union.

Section 3. Bargaining Procedure. Negotiations between the Parties will be conducted in accordance with applicable law and this Agreement.

a. The negotiations may be conducted by telephone or VTC, or at the Agency's Washington office.

b. The Union will be authorized the same number of bargaining representatives on official time as the Agency has representatives participating in the negotiations. The Agency will not pay for any travel expenses incurred by the Union during the negotiations.

c. Either Party may have a subject matter expert present during the negotiations who can provide information necessary for the successful completion of the negotiations. The Agency may grant official time to the Union's subject matter expert in accordance with

applicable law and the Official Time Article of this Agreement. The Agency will not pay for any travel expenses incurred by the Union's subject matter expert.

d. Negotiations shall take place as soon as practicable, but no more than seven business days after the Agency receives the Union's proposals, unless the Parties agree to extend the period. Negotiations will occur during regular duty hours, unless otherwise agreed to by the Parties. The Parties will attempt to reach agreement and conclude negotiations within 10 business days from the start of negotiations, but that period may be extended by agreement of the Parties. If the Parties do not reach agreement during the allotted negotiation period, the Agency may implement the change if it determines that the change is for the necessary functioning of the Agency. Otherwise, the Agency will permit the Union a reasonable period of time to invoke FSIP assistance. The post-implementation bargaining procedures contained in Section 3 of this Article will apply if the Parties are unable to reach agreement before the implementation date declared by the Agency.

e. The Union may raise no additional proposals or subjects of bargaining after submission of its initial proposals, except by agreement of the Parties, or under the post-implementation bargaining procedures contained in Section 3 of this Article.

Section 4. Post-Implementation Bargaining Procedures.

a. Definition. Post-implementation bargaining is the bargaining of procedures and appropriate arrangements after the Agency has implemented a change in conditions of employment. When the Agency determines that a change is necessary or appropriate in accordance with a statute, rule, regulation, or Executive Order and that the change must be implemented by a certain date, post-implementation procedures will apply if the Parties are unable to reach agreement prior to the implementation date of the change.

b. Post-Implementation Bargaining Procedure. The Union will be afforded the opportunity to submit bargaining proposals concerning the change for up to 20 business days following the date the Agency implemented the change. The Union reserves all other rights it may have pursuant to applicable laws. Once Union proposals have been submitted to the Agency, the procedures in Section 3.d. above will apply.

Section 5. Agency Head Review. Any supplemental agreement between the Parties that modifies this Agreement must be submitted for Agency Head review.

Article 16. PROVISION OF INFORMATION AND DOCUMENTS

Section 1. Policies and Directives. On its employee accessible Web page, the Agency shall include both an index and the content of all current Agency policies and directives.

Section 2. Notice of Competitive Training, Vacancy and Detail Opportunities. The Agency shall implement an Agency-wide procedure for the timely distribution of competitive training, vacancy and detail opportunities to employees. The Agency shall timely notify all employees of competitive training, vacancy, and detail opportunities.

Section 3. Organizational Charts. The Agency shall provide organizational charts for both the Washington office and field offices to employees.

Section 4. New Employee Orientation. Within 30 days after a new employee is hired, the Agency shall provide an orientation session, which may be based on training modules. The Agency shall also provide the new employee with access to copies of this Agreement, any supplemental agreement between the Parties, and current Agency policies and directives.

Section 5. Budget Information. Within 30 days of their completion and receipt by the Agency, upon request, the Agency shall provide the Union President with the Agency's:

a. OMB budget allowance;

b. congressionally approved appropriation;

c. budget allocation for each region and field office, and for each Associate General Counsel area of responsibility;

d. actual obligations by object class at the end of each fiscal year; and

e. a quarterly "Status of Funds Details" report, or equivalent information.

Section 6. Copies of Agreements. Within 30 days after this Agreement or any supplemental agreement between the Parties goes into effect, the Agency shall provide copies of them to employees.

Section 7. Employee Information. The Agency shall maintain and provide the Union with a list of all employees by name, position title, series, bargaining unit status, grade and office location. In addition, on a quarterly basis, the Agency shall provide the Union with the same information with respect to newly hired employees and employees whose status and grades have changed.

Article 17. OFFICE DRESS POLICY

Section l. Purpose. This flexible dress policy provides benefits to employees at no cost to the Agency, without inhibiting the provision of legal services or diminishing the Agency's professional image.

Section 2. Definitions.

a. Traditional business attire is neat, clean, and in good repair, and includes the following:

   i. a men's suit with a necktie, or a men's sport coat with dress pants and a necktie; and

   ii. a women's dress, a two-piece women's suit, or a women's jacket, blazer, or sweater with a skirt or dress pants.

b. Business casual attire is neat, clean, and in good repair, and more casual than traditional business attire. It includes denim but does not include athletic wear such as t-shirts, tank tops, sweatshirts, sweatpants, Jogging, or warm-up suits, and shorts.

Section 3. Traditional Business Attire. Employees shall wear traditional business attire when:

a. appearing in court or in an administrative proceeding;

b. meeting with client agency officials or others who usually wear traditional business attire; and

c. meeting with opposing parties or their attorneys in the context of litigation.

Section 4. Business Casual Attire. For situations other than those set forth in Section 3, employees may wear appropriate business casual attire.

Section 5. Special Circumstances. The provisions of this Article pertaining to traditional business attire and business casual attire shall not apply in the following circumstances:

a. Employees, who cannot reasonably comply with the provisions of this Article for medical reasons may, with approval of their supervisor, dress in a manner that accommodates the medical condition.

b For work that entails visiting sites in forests or fields, acceptable attire may include clothing that is not considered appropriate for the office but that is appropriate for the outdoors.

c. If an employee's activities on a day involve physical work. such as moving office furniture or files, acceptable attire may include clothing that would not be considered appropriate for normal office duties.

d. Employees shall comply with any court-imposed dress code whenever appearing in court.

Article 18. TRANSIT AND BICYCLE SUBSIDY

Section 1. Qualified Transportation Fringe Benefit. In furtherance of the Federal Employees Clean Air Incentive Act, 5 U.S.C. § 7905, and 26 U.S.C. § 132(f), an employee who uses qualified transit or a bicycle in commuting to or from the employee's residence or duty station may elect the following benefits:

a. Transit Pass Subsidy or Commuter Highway Vehicle Subsidy as defined by 26 U.S.C § 132(f)(5)(A) and (B) and as outlined in Section 3 of this Article: or

b. Bicycle Subsidy as defined by 26 U.S.C. § 132(f)(5)(F) and as outlined in Section 4 of this Article.

Section 2. Authority. This Article shall be administered in accordance with the provisions relating to qualified transportation fringe benefits set forth in 26 U.S.C. § 132(f). Benefits provided to employees under Section 1.a. are not subject to income tax, as allowed by law. The Agency will administer the subsidy programs referenced in Sections 1(a) and (b) of this Article consistent with the relevant USDA Departmental Regulations in effect at the time the employee seeks payment under the programs.

Section 3. Transit Subsidy. The Agency participates in a Transit Pass Subsidy and Commuter Highway Vehicle Subsidy program administered by the Department of Transportation. The Agency will continue to participate in these programs as long as the Department of Transportation administers them, provided that USDA continues to participate in the programs. If the Department of Transportation ceases to administer the programs, but any other federal Department administers substantially similar programs, the Agency shall participate in the programs, provided that USDA elects to continue to participate in the programs. Should the USDA elect to withdraw from such benefit programs, and the Agency retains the ability to participate. it will do so.

Section 4. Bicycle Subsidy. On January l, 2009, the qualified bicycle commuting subsidy was added to the list of qualified transportation fringe benefits covered in 26 U.S.C. § 132(f). The purpose of providing a bicycle subsidy option is to reduce motorized vehicular traffic, reduce air pollution. and promote employee health and wellness by encouraging employees to use non-motorized bicycles as their primary means of commuting to and from work. In furtherance of these goals, the Agency shall reimburse employees who regularly use a nonmotorized bicycle for their daily commute for a substantial portion of their travel. The subsidy shall not exceed $20 per month for qualified bicycle commuting expenses.

a. Qualified bicycle commuting expenses include the purchase of a commuter bicycle, bike lock, bike parking/storage, bike upgrades (lights, racks), Repairs, and general maintenance. These expenses may also include personal safety and protective equipment and/or bicycle-share membership. These expenses are considered reasonable so long as the bicycle is regularly used (50 percent of daily commuting days or greater) for a

substantial (50 percent or greater) portion of the distance between the employee's residence and place of employment.

b. Pursuant to 26 U.S.C. § 132(f), the employer reimbursement schedule is the 12-month period beginning the first and ending the last day of each calendar year for reasonable expenses incurred. In order to receive the benefit, employees must submit an Initial Application, and an Annual Certification and Claim for Reimbursement Form, both of which are appended to this Article. An Annual Certification and Claim for Reimbursement Form shall be submitted each January for the preceding calendar year.

c. An employee cannot claim the Bicycle Subsidy in any month in which the employee claims a qualified transit or parking subsidy.

[Form attached as Appendix C]

Article 19. BUSINESS CARDS

The Agency shall provide business cards to its employees. The Agency may use its own equipment and personnel to produce the business cards

Article 20. OUTSIDE EMPLOYMENT AND OTHER OUTSIDE ACTIVITIES

Section 1. Introduction. Employees may engage during non-duty hours in outside activities, including outside employment, which do not involve conduct prohibited by statute or federal regulation. The Standards of Ethical Conduct for Employees of the Executive Branch (Executive Branch Standards), 5 C.F.R. Part 2635, and the Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture (USDA Supplemental Regulation), 5 C.F.R. Part 8301 shall be implemented as to employees subject to the provisions of this Agreement.

Section 2. Prior Approval of Outside Employment.

a. Coverage. Except as otherwise provided in this Article, prior Agency approval for outside employment shall be obtained by covered employees, who are:

   i. any employee required to file either a public (Office of Government Ethics Form 278) or a confidential (Office of Government Ethics Form 450) financial disclosure report, if the employment falls within the definition contained in the USDA supplemental regulation; and

   ii. any bargaining unit attorney, if the outside employment involves the practice of law, whether compensated or not.

b. Procedure. A covered employee who wishes to engage in outside employment shall present a written request for approval to the head of the division or office in which the employee is located, in accordance with the procedures set forth in 5 C.F.R. § 8301.201(c). The General Counsel shall appoint one or more Agency designees to review the requests. The Agency shall respond to the employee, normally within 20 days of receipt of the request, by approving the request, seeking further information to determine whether the outside employment meets the standard for approval set out in Section 2.c. of this Article, or disapproving the request, setting out its reasons for the disapproval. If the request requires a more expeditious response, the Agency shall make all reasonable efforts to respond as soon as possible.

c. Standard for Approval. The Agency shall approve a covered employee's request to engage in outside employment, unless it determines that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 C.F.R. Parts 2635 and 8301.

d. If the Agency proposes to extend the requirement to file public or confidential financial disclosure reports to additional categories of employees, it shall notify the Union President.

Section 3. Categorical Approvals. If the outside employment does not involve conduct prohibited by law or regulation, covered employees need not provide notification to the Agency, or seek prior approval from the Agency in the following circumstances:

a. Legal Services to Family Members. A covered employee may provide occasional legal advice and services, with or without compensation, to anyone related to the employee

by blood or affinity, or whose close relationship to the employee is the equivalent of a family relationship.

b. Pro Bono Activities. A covered employee may provide legal advice and services to organizations or individuals, without compensation other than reimbursement of expenses, through a professional, educational, religious, charitable, employee, social, fraternal, recreational, or other non-profit organization.

c. Professional Associations and Other Organizations. A covered employee may participate in the activities of professional associations, such as bar associations, or of other organizations, such as educational, religious, charitable, employee, social, fraternal, recreational, or other non-profit organizations, and may serve in a personal capacity as an officer of any of these organizations, without compensation other than reimbursement of expenses.

d. Teaching, Speaking, Writing, or Editing.

i. Applicability. Covered employees may teach, speak, write, or edit with respect to topics that do not relate to their official duties, within the meaning of 5 C.F.R. § 2635.807(a)(2)(i)(B) through (E), with or without compensation, so long as the invitation to do so was not received from a prohibited source as defined in 5 C.F.R. § 2635.203(d).

ii. Disclaimer. If the covered employee is identified as an employee of the Agency in any written works or in any course catalogs or other written materials, the written works or other materials shall also contain a disclaimer stating that the views expressed are those of the employee and not necessarily those of the Department or of the Agency.

Section 4. Outside Activities Related to an Employee's Official Duties.

a. Notice. Before engaging in teaching, speaking, writing, or editing with respect to topics that relate to their official duties within the meaning of 5 C.F.R. § 2635.807(a)(2)(i)(B) through (E), covered employees shall provide notice to the Agency as follows:

i. Uncompensated Activities. Covered employees must provide their supervisors with written notice before engaging in uncompensated activity.

ii. Compensated Activities. Covered employees must provide their supervisors with written notice before engaging in compensated activity. The notice shall be given at least 20 days before engaging in the activity, unless the nature or timing of the activity requires a shorter notice period. In any case, the notice must provide the Agency with enough time to determine whether the activity is expected to involve conduct prohibited by statute or Federal regulation.

b. Disclaimer. If the covered employee is identified as an employee of the Agency in any written works or in any course catalogs or other written materials, the written works or other materials shall also contain a disclaimer stating that the views expressed are those of the employee and not necessarily those of the Department or of the Agency.

Section 5. Voluntary Submission of Requests for Approval. Covered employees may voluntarily submit requests for Agency review and approval of outside employment arrangements that are arguably exempted by Section 3 or 4 of this Article from the prior approval procedures of the USDA supplemental regulation and this Article. The Agency shall either confirm that the outside employment is exempted from the prior approval procedures, or shall inform the employee of the need to comply with Section 2 or 4 of this Article.

Section 6. Recordkeeping. The Agency shall retain notifications and requests for approval of outside employment, as well as Agency responses to them. These records shall be maintained in a confidential manner and with due regard for the privacy of employees who have sought approval or provided notification; shall not be shared with other employees who have no need to know of an employee's outside employment or other outside activities; and shall be protected from disclosure to the maximum extent provided for by the Freedom of Information Act, 5 U.S.C. § 552, the Privacy Act of 1974, 5 U.S.C. § 552a, and all other applicable law and regulation.

Section 7. Political Activities. Political activities of employees shall be governed by the Hatch Act, 5 U.S.C. §§ 7321 through 7326, and its implementing regulations, 5 C.F.R. Parts 733 and 734.

Article 21. AWARDS

Section 1. General. Incentives and employee recognition are effective elements of hiring and retaining agency talent. Recognizing employee performance through awards improves morale, efficiency, and productivity. When an employee receives an award, notice of the award shall be placed in the employee's official personnel folder.

Section 2. Types of Awards. The following is a non-exclusive list of the types of potential incentives and recognition:

a. Cash awards — rating-based and other;
b. Quality step increases;
c. Honorary and informal recognition; and
d. Time-off.

Section 3. Criteria. Awards shall be made in accordance with Departmental and OPM regulations in effect when the award is made. Some criteria that the Agency may consider when making award decisions are:

a. Quality of performance and service to clients — performing consistently and exceptionally for the benefit of the Agency and client agencies;

b. Problem-solving and innovation — working to improve current practices or trying new approaches or solutions;

c. Special accomplishments — exemplary performance beyond ordinary job responsibilities; or

d. Other contributions to organizational goals.

Section 4. Cash Awards. If the Agency in its discretion determines that: (a) funding is available for cash awards; and (b) that it will allocate funding to such awards, the Agency will give consideration to apportioning such award funding among the Agency's organizational components so that employees of each component have an opportunity for recognition.

Section 5. Time-Off Awards. The Agency may grant time-off awards to employees, which shall be made without charge to leave or loss of pay.

Section 6. Non-Monetary Awards. The Agency may recognize employee performance through honorary or informal recognition awards, including certificates of appreciation, letters of commendation, plaques, or similar items.

Section 7. Quality Step Increases. A quality step increase is an increase in the employee's rate of basic pay from one step or rate of the grade of the employee's position to the next higher step or rate within the grade. Quality step increases provide employees with incentives and recognition

for excellence in performance. The Agency may recognize the outstanding performance of an employee by granting a quality step increase. An employee who receives a quality step increase is ineligible for another performance award in that same rating year.

Section 8. Union Recommendations. The Union may recommend to the Agency that it recognize an employee by the issuance of an award. Decisions on all awards shall be made by the Agency in its discretion. The Agency is not obligated to agree with or otherwise act upon a Union recommendation.

Section 9. Annual Report. At the end of each calendar year, the Agency shall provide the Union President with an annual report summarizing the funding allocated to the employee awards program by division and office, and itemizing each award given throughout the year and amount paid, in the case of cash awards.

Article 22. TRAINING AND CAREER DEVELOPMENT

Section 1. General. The Parties recognize the value of a well-trained workforce and the need for a well-planned and well-conducted training program. For purposes of this Article, the term "training" includes, but is not limited to, continuing legal education. The program shall be designed to improve job performance, provide for career development, and meet Agency needs. The identification and selection of training is the joint responsibility of the employee and the Agency.

Section 2. Career Development.

a. Factors to be considered in making decisions regarding career development and training for employees include educational experience, relevant work experience, job performance, and relevant individual skills and potential.

b. At least annually, the employee and the supervisor shall meet to discuss training and career development. At this meeting, the employee and the supervisor shall discuss the employee's developmental needs and appropriate training courses. Typically, this meeting will occur during the employee's annual performance evaluation or when training funds are allocated for the upcoming fiscal year.

c. At any time, an employee may request a conference with the supervisor to discuss training and career development.

Section 3. Training Requests.

a. Employees may request to attend courses, seminars, meetings, or conferences that will enhance current working skills or provide training for work that may be assigned in the future. The supervisor may grant or deny a request depending on the relevance of the training, training fund priorities, demands of the office workload, and other training opportunities provided to the employee. Courses on ethics and professional responsibility are generally considered relevant.

b. The Agency may permit an employee to use duty time to attend training that is not funded by the Agency if the Agency determines that the training relates to the employee's assigned duties or would enhance its mission and the employee's performance.

c. Upon request by the employee, the Agency will provide a written explanation as to why the employee's training request was denied.

d. Upon request, the Agency shall annually provide the Union President with the following information for each Associate General Counsel area of responsibility and

for each field office: the amount of funds expended under this Article, and a list of courses and seminars approved or denied by the Agency.

Article 23. TRAVEL

Section l. Official Travel.

a. Employees shall be reimbursed for all approved expenses incurred because of official travel as required under law. This will include reasonable charges related to the voluntary use of the employee's privately-owned mobile electronic device incurred while the employee is conducting official business.

b Whenever possible, the Agency shall schedule employee travel to occur during an employee's regularly scheduled work hours. If the Agency determines that travel must be scheduled to occur outside of the employee's regularly scheduled work hours, the Agency shall notify the employee as soon as possible and the Agency shall allow the employee an opportunity to fully discuss the determination with the Agency.

c The Agency shall provide all equipment necessary for the employee to conduct official business while in travel status. Employees are responsible for the prudent care and security of Agency equipment used during official travel. Employees shall not be required to use privately owned vehicles for travel or privately owned mobile electronic equipment on official business.

d. Compensatory time off for travel shall be granted for time spent in travel status outside of regularly scheduled work hours unless overtime is required by law. Usual waiting time, as defined by law and which includes travel delays, counts as time in travel status. Usual waiting time does not include extended flight delays that allow the employee to leave the airport to rest, sleep or engage in discretionary personal activities.

Section 2. Travel Rules.

a. An employee traveling on official business for the Agency shall follow all Departmental and government-wide regulations and policies regarding government travel in effect at the time of travel, including the way travel plans must be arranged and which travel costs are incurred and reimbursed.

b. The Parties shall follow all Departmental and government-wide regulations in effect at the time of travel regarding the activities that are allowed and not allowed to take place while on travel status.

Section 3. Credit Cards. Employees who are expected to travel as a part of their official duties will be issued credit cards for the express purpose of paying for specific travel related expenses. These employees must complete an annual cardholder training course as specified by the Agency and must comply with all Department and government-wide regulations and policies related to credit cards in effect at the time of the travel.

Article 24. WORKSPACE

Issues concerning employee workspace assignments should be resolved at the office location between the affected employees and supervisor whenever possible. If the Agency determines that changes are needed in employee workspace assignments, the following shall occur:

a. The supervisor shall involve the affected employees and the Union early in the planning process of an office relocation or a workspace reassignment to obtain input regarding possible changes in employee workspace assignments.

b. The criteria for determining priorities in workspace assignments are the employee's grade level, and, for employees within the same grade level, the employee's seniority as determined by the employee's service computation date. If the Agency concludes the requirements of the position or of the Agency require it to assign workspace on a different basis, the notification provided to the Union President under paragraph (a) of this Article shall include the reasons for the Agency's determination. The promotion, separation, transfer, or hiring of an employee may provide an opportunity, but not a right to reassignment of a workspace.

c. The needs of employees entitled to reasonable accommodation shall be a priority in determining workspace assignments.

d. The Agency shall not move or remove an employee's personal property without first notify the employee, unless the personal property presents a health, safety, or legal issue and the employee is unavailable for prior notification.

e. Employees shall maintain their workspace in a reasonably neat and professional condition. The Agency shall provide employees with adequate filing and storage space. Maintaining common areas in a reasonably neat and professional condition is the responsibility of the Agency employees who use them.

Article 25. WORPLACE TECHNOLOGY

Section l. Workplace Technology. Workplace technology is electronic equipment and associated software and internet-based and computer systems that relate to an employee's methods and means of performing work.

Section 2. Outages and Disruption of Workplace Technology. If the Agency plans or anticipates a national workplace technology outage or disruption, it shall provide the Union President with reasonable notice. If the Agency plans or anticipates an office-wide outage or disruption, it shall provide affected employees with reasonable notice.

Section 3. Distribution and Installation of Workplace Technology. If the Agency plans to distribute and/or install workplace technology nationally, it shall provide the Union President with a reasonable notice.

Section 4. Training. The Agency shall train employees in the use of workplace technology on or about the time it is provided to employees. Subject to budgetary restraints, this training may include video presentations, vendor training, computer-based training, teleconferencing, and training by Agency personnel.

Article 26. DETAILS

Section l. Scope. Details have the potential to enhance the experience, skill, and knowledge of employees in a manner that benefits both the professional growth of the employees and the operations of the Agency when the employees return to their original positions. A detail may be proposed by the employee, the Agency, or other entities in accordance with 5 U.S.C. § 3341 et. seq. A proposed detail may specify the employee to be detailed or the detail may be open to any employee who meets the requirements of the detail. Details may be to another office of the Agency or of the Department, to another agency of the Federal Government, to state or local governments, or to other organizations as provided by law and regulation.

Section 2. Definition. Details are temporary assignments of employees to different positions after which the employees shall return to their regular duties, without any reduction in grade and step. Time spent on a detail shall count towards time-in-grade requirements, career-ladder promotions, and within-grade increases pursuant to law and regulation. Details within USDA must conform to the requirements of Departmental Regulations in effect at the time of the detail.

Section 3. Details. Selection for details shall be conducted in a fair and equitable manner. The Agency may designate a particular employee for detail or it may consider all qualified employees, as provided below.

a. If the Agency decides to open a detail to competitive consideration, it shall provide employees with a description of the position and duties; the geographic and organizational location, and duration of the detail; the qualifications for the position and any other criteria that will be the basis for the Agency's selection; the specifications for the application process, including the identification of the person to whom the application must be sent; the deadline for submission of applications by interested employees; and the name of the selecting official.

b. If the competitive consideration process does not produce a qualified candidate, the Agency may select the qualified employee with the latest service computation date to be assigned to the detail position.

c. If any entity specified in Section 1, other than the Agency, requests that a particular employee be detailed to the entity, the Agency may comply with the request without considering other candidates.

d. The Agency may detail employees if it determines that their involuntary detail is necessary to address emergency situations. These details shall extend no longer than the time required to address the emergency situation as determined by the Agency.

Section 4. Details Proposed by an Employee. A detail may be proposed by an employee. The employee shall submit a written proposal to the Agency that shall describe the entity to which the employee would be assigned; the position and duties to be filled; the duration of the detail; the proposed receiving entity's willingness to have the employee on detail; the benefits of the detail

to the employee and the Agency; the anticipated costs of the detail; and identification of the entity that will pay the employee's salary and any per diem or transportation costs. Within a reasonable period of time, not to exceed 60 days from receipt of the proposal, the Agency shall issue a written decision on the proposal that either consents, declines to consent, or consents with modifications to the proposal. Upon request by the employee, the Agency shall include the basis for its decision. The decision shall be based on an evaluation of the benefits to the employee and the Agency; the effect of the detail upon the operations of the office and the workload of other employees; whether the receiving entity is willing to accept the detail and its costs; the number of details previously undertaken by the employee; the effect on current staffing levels; and the proposed cost to the Agency. The Agency is under no obligation to incur or pay any cost of the detail. The Agency may deny the request for a detail based on its evaluation of the factors listed above.

Section 5. Notification. Upon selection of an employee for a detail of more than 30 days, the Agency shall notify the employee, any other applicants, and the Union President.

Article 27. TEMPORARY PROMOTIONS

Section 1. General.

a. Employees detailed to a higher-graded position for a period of more than 30 days shall be temporarily promoted to that position. An employee shall be compensated at the appropriate rate for the higher-graded position commencing on the first day of the temporary promotion.

b. Temporary promotions for more than 120 days shall be filled through competitive procedures established by law and Departmental Regulation.

c. The requirements of subsection (a) shall not be circumvented by rotating employees into a higher-graded position for 30 days or less to avoid compensating the employee at the appropriate rate for the higher-graded position.

d. If the Agency decides to use a competitive process for temporary promotions of 120 days or less:

   i. The Agency shall provide eligible and qualified employees with a description of the position and duties; specify the geographic and organizational location and duration of the temporary promotion; specify the qualifications for the position and any other criteria that will be the basis for the Agency's selection; and provide the specifications for the application process, including identification of the person to whom the application must be sent, the deadline for submission of applications by interested parties, and the name of the selecting official.

   ii. One area of consideration for a temporary promotion shall be the appropriate field office or Associate General Counsel area of responsibility.

   iii. To provide experience to more than one applicant, the Agency may rotate temporary promotions of more than 30 days among eligible and qualified applicants.

Section 2. Notification. The Agency shall notify the Union President of a potential temporary promotion.

Section 3. Documentation.

a. Temporary promotions for more than 30 days shall be documented in the employee's official personnel folder.

b. An employee who receives a temporary promotion for more than 90 days shall be provided with a copy of the position description and the performance plan.

Article 28. VACANCY ANNOUNCEMENTS

Section 1. General.

a. Vacancies shall be filled in accordance with applicable OPM and Agency policies. This includes use of flexible hiring authorities by the Agency to hire qualified candidates.

b. The Agency shall post vacancy announcements for all available vacant competitive service positions not filled by voluntary reassignments. Additionally, the Agency shall whenever possible post vacancy announcements for all available vacant excepted service positions not filled by voluntary reassignment. The Agency will provide copies of vacancy announcements to all eligible employees by electronic mail, or by posting them on the Agency's website. Vacancy announcements shall be posted for at least 14 days before the closing date, but this does not preclude the Agency from hiring a qualified person using flexible hiring authorities before the closing date.

Section 2. Contents of Vacancy Announcements. Every vacancy announcement shall clearly specify the qualifications and selection criteria for the position, and the official to whom the application should be sent.

Section 3. Vacant Positions.

a. All employees shall have a fair and equitable opportunity to compete for available vacant positions.

b. If the Agency decides to interview any best qualified applicant for an available vacant position, all best qualified applicants shall be interviewed.

c. The Agency shall notify all employees of selections made to fill vacant positions.

d. At the request of an employee who was a qualified applicant, but was not selected for a position, the Agency shall provide an explanation as to why the employee was not selected.

Section 4, Existing Employees. Whenever it intends to fill an available vacant position above the entry level, the Agency shall first give full consideration to qualified employees who apply for a lateral transfer or promotion to the position. In these circumstances the Agency is not obligated to pay relocation expenses.

Section 5. Non-Senior Executive Service and Senior Executive Service Management Positions. The Agency shall allow bargaining unit employees to compete for all supervisory positions within the Agency at GS-15 level and below that are not filled by reassignment. The Agency may fill Senior Executive Service positions without competition.

Article 29. PROFESSIONAL STAFF PROMOTIONS

Section l. General. In considering professional staff promotions, the Agency will follow applicable law, Office of Personnel Management classification standards, and Departmental Regulations in effect at the time of the Agency's determination.

Section 2. Career-Ladder Promotions. Professional staff employees with fully successful or higher performance appraisals who were hired into career-ladder positions with the Agency's expectation that they would be promoted to the next higher grade without further competition shall be promoted to the next higher grade after they have served one year in grade, provided that they have demonstrated, in the judgment of their supervisor, the ability to perform work at the next higher grade, work at the next higher grade is available, and budgetary resources are available.

Article 30. ATTORNEY PROMOTIONS

Section l. General. In considering attorney promotions, the Agency will follow applicable law, Office of Personnel Management classification standards, and Departmental Regulations in effect at the time of the Agency's determination.

Section 2. Promotions to the GS-13 Level. Attorneys with "fully successful" or higher performance appraisals shall be promoted to the next higher grade up to the GS-13 level after they have served one year in grade, provided that they have demonstrated, in the judgment of their supervisor, the ability to perform work at the next higher grade, work at the next higher grade is available, and budgetary resources are available.

Section 3. Promotions to the GS-14 Level. Attorneys with "fully successful" or higher performance appraisals shall be promoted to the GS-14 level after they have served one year as a GS-13, provided that they have demonstrated, in the judgment of their supervisor, the ability to perform work at the GS-14 grade, work at the next higher grade is available, and budgetary resources are available. GS-13 Attorneys with "fully successful" or higher performance appraisals who have not been promoted in one year, shall be re-evaluated for promotion to the GS-14 level after the passage of not more than six additional months, and shall be promoted to the GS-14 level after they have served 18 months as a GS-13, provided that after such reevaluation they have demonstrated, in the sole judgment of their supervisor, the ability to perform work at the next higher grade, work at the next higher grade is available, and budgetary resources are available.

Article 31. HOURS OF WORK

Section 1. Basic Work Requirement. The basic work requirement is the number of hours, excluding lunch time, overtime and compensatory time, which an employee is required to work or is required to account for by leave or otherwise. The basic work requirement for full-time employees is 80 hours per pay period (not including an employee's unpaid lunch periods). The basic work requirement for part-time employees is 32-64 hours per biweekly pay period (not including an employee's unpaid lunch periods). Employees may not use leave without pay to work a part-time schedule. An employee must select a work schedule set forth in this Article.

Section 2. Hours of Work.

a. The Agency's core hours are from 9:30 a.m. to 4:00 p.m. Except for employees working an alternative work schedule, all employee schedules shall have a starting time of no earlier than 7:30 a.m., and ending no earlier than 4:00 p.m. An employee with an alternative work schedule specified in Section 3(b)(i) ("5/4/9") may have a starting time that shall be no earlier than 7:00 a.m., for those days the employee is scheduled to work 9 hours and no earlier than 7:30 a.m. for the day the employee is scheduled to work 8 hours. An employee with an alternative work schedule specified in Section 3(b)(ii) ("4/10") may have a starting time that shall be no earlier than 6:30 a.m. An employee working a flexible work schedule specified in 3(b)(iii) may, with supervisory approval, vary a starting and stopping time beginning no earlier than 7:00 a.m. and ending no earlier than 4:00 p.m.

b. All schedules shall provide that a full-time employee must work between 9:30 a.m., and 4:00 p.m. The scheduled ending time for all employees for all days shall be no later than 6:30 p.m.

Section 3. Schedules:

a. Standard 40-Hour Work Week Schedule. The standard 40-hour work week schedule shall consist of five consecutive 8-hour days, excluding time permitted for lunch, Monday through Friday, with the same starting and stopping time each day.

b. Alternative Work Schedules. There are three alternative work schedules:

i. **5/4/9:** A "5/4/9 Work Schedule" is a schedule that for the pay period has 8 workdays of 9 hours each day (Monday through Friday) with the same starting and stopping times each day, and one workday of 8 hours, (Monday through Friday) and one off day (Monday through Friday); or

ii. **4/10:** A "4/10 Work Schedule" is a schedule that for the pay period has four

workdays of 10 hours each day (Monday through Friday), with the same starting and stopping times each day and one off day during each week of the pay period; and

iii. **Flexible Work Schedule:** A "Flexible Work Schedule" is a schedule that for the pay period under which an employee must work a minimum of 35 hours per week and 80 hours per pay period and may work no more than 10 hours per day, including credit hours (if the employee is eligible to earn credit hours under this Article). With approval from their supervisor, employees on a flexible work schedule may establish different starting and stopping times within the time bands set forth in Section 2 for each workday. With prior notice to the supervisor whenever possible, an employee may start the workday 30 minutes earlier or 30 minutes later than the scheduled starting time, with an equivalent adjustment within the same pay period, provided that the work schedule falls within the time bands set forth in Section 2.

c. Work schedules shall provide that:

i. An employee on an alternative work schedule may not schedule work in excess of a 10-hour day (including credit hours if the employee is eligible to earn credit hours under this Article); and

ii. A full-time employee must work at least four days per week and a minimum of 35 hours per week, unless the employee uses some form of leave. A part-time employee must work the number of hours per week and per pay period that has been approved for the part-time schedule.

Section 4. Credit Hours.

a. Credit hours are hours, in addition to the basic work requirement that employees working a Flexible Work Schedule may elect to work, accumulate, and use so as to vary the length of a workday or a work week.

b. An employee may earn credit hours only on regularly scheduled workdays, within the time bands set forth in Section 2a up to a maximum of two credit hours per day.

c. Credit hours shall be earned in increments of 15 minutes and may be used in increments of 15 minutes, except that the initial increment for earning credit hours will be 30 minutes.

d. No more than eight credit hours may be accumulated and no more than eight hours may be available for use at any time unless accumulation of more than eight credit hours is approved in advance by the employee's supervisor.

e. The maximum number of credit hours that may be carried forward from pay period to pay period is 24.

f. A supervisor shall approve an employee's use of credit hours as provided for in Article 35 (Leave) of this Agreement.

Section 5. Lunch and Break Periods.

a. Lunch. Employees must take a lunch break if they work six or more hours in a day. An employee's lunch period is unpaid, and the employee's scheduled hours are adjusted accordingly to correspond to the length of unpaid lunch time selected by the employee. The lunch-period time band shall be from 11:00 a.m. until 2:00 p.m. each workday. An Employee may not forgo a lunch period as a means of a late arrival or early departure time. Employees shall have the option of scheduling a lunch time of at least 30 minutes and no more than 90 minutes.

b. Breaks. Breaks are paid duty time. The purpose of breaks is to permit the employee a break from a continuous work effort. The Agency shall recognize one 15-minute break during each four full hours worked. In a typical workday, one break will be taken before lunch and one break will be taken after lunch. An Employee may not use breaks in conjunction with the employee's lunch period, or as a means of a late arrival or early departure time.

Section 6. Additional Provisions.

a. Within 30 days of the effective date of this Agreement, all work schedules shall comply with this Article.

b. Nothing in this Article affects the Agency's responsibility to provide reasonable accommodation to employees. Reasonable accommodation may include changes to work schedules and arrangements other than those contained in this Article. Nothing in this Article is intended to limit the range of work schedule options available as a form of reasonable accommodation.

c. A supervisor may deny an employee's request for a particular schedule if the supervisor determines that the schedule will have an adverse impact on Agency operations in carrying out its functions or cause the Agency to incur additional costs. An adverse Agency impact may include a reduction in productivity, diminished level of services furnished to the public or clients, an increase in the cost of Agency operations, or inadequate office coverage during normal business hours. If a supervisor determines that an employee's work schedule has an adverse impact on the Agency's operations, the supervisor may suspend or terminate it.

d. If more than one employee submits a request for the same regularly scheduled day off, or the same hours off during normal business hours, the supervisor shall review the proposed schedules and respond in writing within 15 calendar days. In deciding whether to approve the proposed schedules, the supervisor shall determine whether implementation of the proposed schedules will have an adverse impact on the Agency's operations. If the supervisor decides not to approve all of the proposed days or hours off, the supervisor shall notify the employees of the determination and shall meet with them to determine if they can agree on a schedule. If requested, the Union shall be given an opportunity to be present, either in person or by telephone, at the meeting. If the parties are unable to reach an agreement, the employee with the earliest service computation date shall have first choice for the scheduled day or hours off.

e. Employees may change from one kind of work schedule to another no more than once per quarter, except by agreement of the employee and the supervisor.

f. Employees in travel or training status may be required to adjust their work schedules. Employees on detail may be required to comply with the work schedule of the organization to which they are temporarily assigned.

g. If a scheduled day off falls on a federal holiday, the employee's holiday shall be the employee's preceding regularly scheduled workday.

h. Supervisors may schedule meetings or other "all in days" and employees shall be physically present at the work site to attend such meetings and participate in other work that requires their presence, even if doing so means that they cannot take advantage of the alternative work schedules provided for in this article, a scheduled telework day, or must reschedule a regular off day. If an employee is required to work on a scheduled day off, the employee shall be given the opportunity to select an alternative day off within the same pay period, or to earn compensatory time as appropriate.

Article 32. TELEWORK

Section 1. The Agency agrees that it will follow the Department's official telework policy. All telework arrangements must comply with this Agreement and the applicable Department of Agriculture telework policy. When there is a change in Departmental policy, all telework agreements may be revised to reflect the change in policy.

Section 2. Employees shall be ineligible for participation in the telework programs if the Agency determines that any one of the following circumstances is applicable to the employee:

i. The employee is on leave restriction;
ii. The employee is on a performance improvement plan;
iii. The employee's most recent performance is unsatisfactory;
iv. The Agency has taken a disciplinary action against the employee within the last 12 months;
v. The employee has worked for the Agency for less than one year;
vi. The Agency has determined that the employee has not become familiar with operations of the office and the employee's duties and responsibilities;
vii. The Agency has determined that an existing or proposed telework arrangement will create a disruption in Agency operations by reducing productivity, diminishing the level of services furnished to the public or client agencies, increasing the cost of Agency operations, or resulting in inadequate office coverage during normal business hours; or
viii. The employee has been formally disciplined for being absent without permission for 5 or more days in any calendar year.

Section 3. Employees are not eligible for telework if their supervisor determines that the nature and duties of their work are inconsistent with telework. Employees must have portable work. "Portable work" as used in this Article means work that is normally performed at the employee's conventional worksite but may be performed at the Alternative Worksite with equal effectiveness with respect to quality, quantity, timeliness, customer service, and all other aspects of mission accomplishment. Portable work is part of the employee's regular assignments and does not involve a change in duties, position descriptions, or the way assignments are handled by the participating employee or other OGC employees.

Section 4. Employee schedules not currently in compliance with the Department's official telework policy will be given thirty days after this agreement becomes effective to transition to comply with the Department's policy.

Section 5. Employees must be physically present in the office four days a week, unless the absence is authorized under the applicable leave policy. Teleworkers may participate in some flexible and compressed work schedules, or other flexible work arrangements in combination with a telework agreement. However, all employees must work from the official worksite location four days per week. Supervisors may exercise discretion to authorize employees with telework agreements to be outside of the official workstation more than one day a week in infrequent, exigent circumstances and to achieve the Agency's mission.

Article 33. PART-TIME EMPLOYMENT AND JOB-SHARING

Section l. Part-Time Employment.

a. The Parties recognize that part-time employment may provide benefits for the Agency and for employees. Part-time employment means regularly scheduled work of 16 to 32 hours per week, or 32 to 64 hours per pay period. Subject to approval of the supervisor, an employee may vary the number of hours to be worked in any week or pay period. Part-time employment arrangements shall follow all applicable OPM regulations.

b. Part-time employment of limited duration means that the employee will engage in part-time employment for not less than 3 or more than 6 pay periods. For parttime employment of limited duration, the regularly scheduled work week shall be at least 20 hours and no more than 32 hours. Employees who request to go on part time employment of limited duration shall specify the number of pay periods in which they intend to engage in part-time employment when giving notice under Section l. d. Once approved, the election of part-time employment of limited duration shall be irrevocable, except that the Agency may terminate or alter the arrangement by agreement with the employee or pursuant to Section 3 of this Article.

c. Part-time employment of unlimited duration means that the employee does not intend to limit the duration of the part-time employment. Subject to the provisions of Section 1.e., an election of part-time employment of unlimited duration does not preclude the employee from later converting to full-time employment.

d. Subject to the provisions of this Article, an employee may convert to part-time or full-time employment. The employee shall submit a written request to the supervisor at least 3 pay periods before the conversion. The employee's notice shall specify the number of hours that the employee will work during the week or during the pay period, the schedule to be worked, and whether the conversion to part-time employment will be of limited or unlimited duration. The Agency shall give due consideration to employee requests and respond in a timely manner.

e. In determining whether to allow conversion to part-time or full-time employment, the Agency shall consider the following factors: (l) the benefits to the Agency of the proposed arrangements; (2) the available budget and needs of the Agency; (3) the duties and responsibilities of the position including assignments and amount of work; (4) available space, resources, and equipment; (5) the needs of the employee; and (6) the impact on the remaining personnel in the office.

f. If the Agency approves an employee's request for conversion to part-time or fulltime employment, the Agency shall provide the employee with written notification of the approval, including the number of hours to be worked per pay period and the part time schedule approved.

g. If the Agency denies an employee's request for conversion to part-time or full- time employment, the Agency shall provide the employee with written notification of the

reasons for the denial, and, upon request of the employee, shall discuss whether alternative arrangements are feasible.

h. Whenever an employee requests conversion from full-time to part-time employment, the Agency shall inform the employee of the effect the conversion may have with respect to potential reductions-in-force, retirement, health and life insurance, eligibility for and timing of promotions, eligibility for and timing of within-grade pay increases, and accrual of leave. The Agency shall also inform the employee that the employee may be required to return to full-time status.

i. To the extent allowed by law, part-time employees shall have equal opportunity with full-time employees to participate in all employee programs and benefits.

j. Unless approved by the Agency, an employee may not convert from part-time to fulltime, or from full-time to part-time employment more than one time during any 26 consecutive pay periods.

k. An employee who is employed on a full-time basis shall not be required to accept part-time employment as a condition of continued employment.

Section 2. Job-Sharing.

a. The Parties recognize that job-sharing may offer benefits for the Agency and for employees. The Agency shall consider allowing two or more full-time employees in an office to convert to part-time employment of unlimited duration to share one job, provided that each employee qualifies for the position to be shared, and that the total number of hours to be worked by both employees shall not exceed 80 hours per pay period. Agency consideration of job-share arrangements shall include the factors identified in Section 1.e., as well as concerns inherent in job-share arrangements, such as coordination issues.

b. Employees who want to share a job shall submit a written request to the supervisor, specifying the number of hours that each employee shall work. The Agency is under no obligation to recruit for a job-share position.

Section 3. Ending or Altering a Part-Time or Job-Sharing Arrangement. The Agency may end or alter a part-time or job-share arrangement based on the needs of the Agency, by providing the employee with written notice, at least 3 pay periods in advance of the termination or alteration. In making this determination, the Agency shall consider increased work requirements, failure to meet job goals, changes in budget conditions, emergency work-related conditions, and the loss of employees or job-share partners. If it is necessary to end a job-sharing arrangement, the Agency may require one or both job-sharers to work full-time or may permit one or both to work part-time.

Article 34. ADDITIONAL TIME

Section l. Governing Law:

The Agency will follow the governing law, OPM regulations and Departmental policy on Overtime and Compensatory Time applicable in effect when the time accrues.

Section 2. Overtime.

a. Overtime is work performed more than eight hours in a day or more than 40 hours in a week, unless such work is performed in accordance with an alternative work schedule permitted by the Hours of Work Article.

b. Employees will be compensated for any overtime worked in accordance with applicable law.

Section 3. Scheduling and Approval of Overtime.

a. Overtime must be authorized in advance and approved in writing by the supervisor. An exception to the advance authorization requirement will be made when pressing organizational needs require overtime work and the supervisor agrees or has requested that the work be performed outside normal work hours.

b. Overtime will be scheduled, approved, and worked in increments of 15 minutes.

c. Overtime shall be distributed as equitably as possible among qualified employees. The Agency shall make reasonable efforts to ensure that employees are not assigned to perform an excessive amount of overtime. The Agency shall consider an employee's personal hardship when making unscheduled overtime assignments.

d. As soon as the need is known, the Agency shall notify the employees who will be assigned to work overtime on the same or the following workday. Otherwise, the Agency shall, whenever possible, provide employees with 48-hours advance notice of upcoming overtime. Employees who report for scheduled overtime on a day when work was not scheduled for them, or for which they are required to return to their place of employment, are deemed to have worked at least two hours overtime, if they were not notified of the cancellation.

Section 4. Overtime Records.

a. The Agency shall maintain appropriate overtime records to show which employees worked overtime and when the overtime was worked.

b. The Agency shall make available to the Union President, upon written request, records of overtime assignments of employees to aid in resolving individual claims of unfair or inequitable distribution of overtime. The records will be redacted to the extent required by law.

Section 5. Compensatory Time.

a. Compensatory time is an award of duty time equal to the amount of time spent in overtime.

b. Employees must request and receive approval before earning and using compensatory time. Compensatory time will be scheduled, approved, and used in increments of 15 minutes, in accordance with the Leave Article of this Agreement. For Fair Labor Standards Act (FLSA) exempt and non-exempt employees, accrued compensatory time must be used by the end of the 26th pay period following the pay period in which it was earned. If accrued compensatory time is not used by FLSA exempt employees within this time, it will be forfeited. FLSA exempt employees leaving the Department shall be paid for unused compensatory time that has not been forfeited at the pay rate at which it was earned. If accrued compensatory time is not used by an FLSA-nonexempt employee within 26 pay periods or if the FLSA-nonexempt employee transfers to another agency or separates from Federal service before the expiration of the 26 pay period time limit, the employee must be paid for the earned compensatory time at the overtime rate in effect when earned.

c. OPM regulations limit eligibility to earn compensatory time to employees whose biweekly and annual earnings do not exceed certain maximum earnings limits. Therefore, employees whose earnings exceed OPM's maximum limit are ineligible to earn compensatory time.

Article 35. LEAVE

Section 1. General. The Agency shall administer leave in accordance with law, this Article and Departmental and OPM regulations and policies in effect at the time the leave is taken. All leave charges will be in 15-minute increments. For purposes of this Article, the term "family" includes a spouse, child (including adopted and foster children), parent, sibling, grandparent, in-law (mother, father, sister, or brother), and any individual related by blood or affinity or whose close association with the employee is the equivalent of a family relationship.

Section 2. Annual Leave.

a. For purposes of this Article, annual leave includes annual leave, compensatory time, and, to the extent they are allowed under this agreement, credit hours, except that in subsection (f) of this section, annual leave does not include credit hours or compensatory time.

b. Employees are entitled to use annual leave in accordance with this Agreement. Supervisors shall grant requests for annual leave unless the requested absence would cause an adverse impact on the Agency by reducing productivity, diminishing the level of services furnished to the public, increasing the cost of Agency operations, or resulting in inadequate office coverage.

c. Requests for annual leave shall be made and approval shall be granted as far in advance as practicable. If a request for annual leave is denied, the supervisor shall, upon request by the employee, provide the employee with a written explanation of the denial and specify when the employee will be able to take the requested leave. Where two or more employees seek overlapping leave, the use of which by both or all employees will cause an unacceptable adverse impact on the Agency as determined by the supervisor, the supervisor shall meet and confer with all affected employees to determine whether an accommodation can be reached. If no accommodation is reached and acceptable to all parties affected, preference will be given to employees with the earliest service computation date.

d. Annual leave shall be granted in a manner that permits employees to take 2 consecutive weeks of annual leave per year. The Agency shall make reasonable efforts to accommodate employee requests to take longer periods of annual leave subject to paragraphs (b) and (c) of section 2 of this Article.

e. All annual leave that an employee may accrue during the leave year is available for use on the first day of the leave year, in accordance with the supervisory approval provisions of this Article. An employee may request annual leave in advance of its actual accrual provided that:

    i. the employee has served more than 90 days in the employee's current appointment;

ii. the request does not exceed the amount of annual leave that the employee will earn during the rest of the leave year; and

iii. it is anticipated that the employee will be in a duty status long enough to repay the advanced leave.

f. The Agency shall not cancel approved leave without consent of the employee, except in unusual and infrequent circumstances.

g. Annual leave that is erroneously charged or forfeited through no fault of the employee shall be restored in accordance with applicable regulations.

h. With prior notice to the supervisor, an employee may use short periods of annual leave, normally 2 hours or less, without receiving advance approval. However, the use of this leave is ultimately subject to approval by the supervisor. In the event the supervisor determines that the employee's use of a short period of annual leave without advance approval was unjustified, the employee's use of leave shall be converted to leave without pay.

Section 3. Sick Leave.

a. An employee's request to use earned sick leave shall be approved when the employee:

i. requests advance approval for medical, dental, or other examinations or treatment;

ii. is incapacitated because of sickness, injury, or pregnancy;

iii. is required to give care and attendance to a member of the employee's family who is incapacitated as the result of a physical or mental illness, injury, pregnancy, or childbirth, or who requires medical, dental, or optical examination or treatment;

iv. would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by the employee's presence on the job because of exposure to a communicable disease; or

v. makes arrangements necessitated by the death of a family member or attends the funeral of a family member.

b. Employees should notify their supervisors and request approval for medical, dental, and other appointments as far in advance of the date and time of the appointments as possible.

c. If an employee is unable to report for duty because of illness or injury, the employee shall notify the supervisor as soon as possible and normally no later than the beginning of the core hours. The employee shall keep the supervisor informed of the

need for continued use of sick leave. The Agency shall keep confidential the employee's reason for use of sick leave. This information shall be disclosed only to those with a need to know in the course of their job duties.

d. Employees shall not be required to furnish a medical certificate when requesting approval for sick leave for 4 or more consecutive workdays, unless the supervisor has reasonable grounds to question whether an employee is properly using sick leave. The supervisor may accept a self-certification in lieu of a medical certificate where the circumstances surrounding the employee's absence indicate that the services of a health care provider were not available or required.

e. Employees shall not be required to furnish a self-certification or medical certificate when requesting approval for sick leave for fewer than 4 consecutive workdays, except under the circumstances covered by subsection (f) of this section.

f. If a supervisor has reasonable grounds to question whether an employee is properly using sick leave, the supervisor may ask the employee for an explanation. For example, reasonable grounds for questioning an employee about the use of sick leave might exist if the employee has not followed the established procedures for requesting sick leave, or if the employee's use of sick leave consistently includes the days before or after holidays and weekends. If the employee is unable to provide a reasonable explanation for the use of sick leave, the supervisor may require a self-certification or medical certificate, if the employee was treated by a health care provider. If the explanation and any related documentation do not support the use of sick leave, the supervisor shall counsel the employee and discuss any procedures and requirements the employee must follow to obtain approval of sick leave. If there is a pattern of questionable sick leave use, the supervisor shall provide the employee with written notice of the problem, setting forth any restrictions regarding the use of sick leave and their duration. Sick leave restrictions shall be in place for no more than 4 months. However, if the problem continues, an employee's sick leave restriction may be extended for additional periods of 4 months or less.

g. Upon the employee's request and with the presentation of a medical certificate if requested by the Agency, the Agency may advance sick leave to permanent employees for up to 30 days, provided the employee has first exhausted accrued sick leave. However, advanced sick leave may not be granted to employees subject to sick leave restriction under subsection (f) of this section, or for whom future accrual of sick leave is improbable.

h. Sick leave that is erroneously charged shall be restored in accordance with applicable regulations.

Section 4. Maternity and Paternity Leave.

a. Reasonable amounts of maternity and paternity leave in the form of sick leave, advanced sick leave, annual leave, leave without pay, or any appropriate combination of them, shall be granted during pregnancy, delivery, and for a reasonable period after delivery, as recommended by a health-care provider.

b. Employees shall provide their supervisors with notice of intent to use maternity or paternity leave at least 30 days before the leave is to begin or as soon as is practicable. The notice shall indicate the kind of leave to be used and the approximate dates of the leave.

c. A request for temporary modification of duties shall be granted to a pregnant employee before or after maternity leave if the employee's regular duties are considered inappropriate by the health care provider. The Agency shall not establish specific time periods for prohibiting the employee from working before childbirth, or from returning to work thereafter. Normally these decisions will be made by the employee in consultation with the health-care provider.

d. An employee whose spouse or partner recently adopted or gave birth to a child may use annual leave, sick leave, leave without pay, or a combination of them, to care for the spouse or partner, the child, or other minor children in the household in accordance with Section 5 of this Article.

Section 5. Family and Medical Leave.

a. Employees are entitled to family and medical leave under the Family and Medical Leave Act of 1993 (FMLA) and 5 C.F.R. Part 630. Employees seeking family and medical leave must submit a written request to their supervisors. The Agency may request medical documentation to support the leave request as permitted under applicable statutes, regulations, and Departmental Regulations.

b. The Agency shall ensure continued employment for an employee who has been on family or medical leave and who wishes to return to work, unless, after proper notification, termination is required by the expiration of the employee's appointment, a reduction in force, for just cause, or for other reasons unrelated to the employee's extended absence. The employee shall be returned to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment within the same commuting area.

Section 6. Bereavement Leave. In accordance with law, including 5 CFR Part 630, an employee shall be granted sick leave for purposes of bereavement or funeral planning when there has been a death in the employee's family. Employees may also request, and the Agency may grant, annual leave or leave without pay for bereavement, grief, funeral planning and related circumstances.

Section 7. Religious Leave. In accordance with law, including 5 U.S.C.A. § 55550a and 5 C.F.R. Part 550, Subpart J, a supervisor shall permit an employee to earn compensatory time that the employee may use to attend religious services, or when religious beliefs do not allow the employee to work during normal duty hours. The employee may earn the necessary compensatory time either before or after using the religious leave. However, before using the religious leave, the employee and supervisor shall agree on a schedule for earning the necessary compensatory time.

Section 8. Leave Without Pay.

a. Leave without pay (LWOP) is a voluntary, temporary, non-pay status, and approved absence from duty during normal duty hours that may be granted at the request of an employee. Requests for LWOP must be submitted to the supervisor. Upon request of the employee, the Agency shall provide the employee with information regarding the effect of extended LWOP on the employee's benefits, earned leave, and creditable service.

b. Full-time employees may not use more than 8 hours of LWOP per pay period, and employees may not use LWOP as a substitute for part-time employment status. If the Agency determines that an employee is using LWOP as a substitute for part-time employment status, the Agency may deny a request for LWOP. The provisions of this subsection do not apply to employees taking LWOP under the Family and Medical Leave Act, as part of a reasonable accommodation, or for any other reason required by statute or regulation.

c. An employee may request that LWOP be approved for any reason. An employee's request for LWOP may be submitted orally or, upon request of the supervisor, in writing, and shall state the reasons for the request and the dates and duration of the period for which LWOP is sought. At the employee's request, the supervisor shall provide a written explanation if the request is denied in whole or in part.

d. An employee may request LWOP for academic opportunities, training, or occupational development that will enhance the employee's skills and benefit the Agency.

e. Notwithstanding subsection b, if, for budgetary or other reasons, the Agency determines that the use of LWOP by employees would be advantageous, the Agency shall notify all employees and solicit applications for LWOP. The notice shall state when the applications are due and shall advise employees of the effect of LWOP on employee benefits, earned leave, and creditable service. Employees who wish to request LWOP under this subsection shall submit a written request to their supervisors stating the period for which LWOP is sought. If the Agency receives more requests for LWOP under this subsection than it can accommodate, employees with the earliest service computation dates shall be given priority, unless their absence would cause an adverse impact on the Agency by reducing productivity, diminishing the level of services furnished to the public, or increasing the cost of Agency operations. After the Agency reviews all LWOP requests submitted under this subsection, it shall provide a

written response to each applicant, stating that the request has been approved, or, if approved in part or disapproved, stating the reasons for which the request was not approved.

Section 9. Absence Without Leave. Absence without leave (AWOL) is absence without approved leave and without adequate reason for failing to obtain prior approval for the absence. Employees may be charged with AWOL if they are absent without prior authorization. A charge of AWOL is not a disciplinary action but may serve as the basis for taking disciplinary action.

Section 10. Administrative and Other Leave.

a. Administrative leave is an authorized absence from duty without loss of pay or charge against leave.

b. Employees shall be granted administrative leave if it is necessary to close an office location, delay the start of work hours, or release employees early. If any of these events occurs, the Agency shall make reasonable efforts to provide timely notice to affected employees that administrative leave is in effect.

c. The Agency may approve administrative and other kinds of leave to permit employees: (l) to vote in a civil election, where polls are not open sufficiently in advance of or after normal duty hours; (2) to serve on a jury or, when permitted under Department or other applicable regulations, to attend judicial proceedings as a witness; (3) to attend the funeral of a coworker or other professional associate; (4) to take necessary bar examinations or required civil service examinations; (5) to serve in the Military Reserves or National Guard (including active duty); (6) to donate blood (up to four hours of administrative leave including necessary travel time); (7) to donate bone marrow (up to seven days of paid leave per calendar year plus annual or sick leave); (8) to serve as an organ donor (up to 30 days of paid leave plus annual or sick leave); (9) to participate in employment interviews and to prepare and distribute resumes and job applications under the circumstances described in the Reduction in Force Article of this agreement; or (10) to engage in other activities for which administrative and other kinds of leave are permitted by law.

d. The Agency may grant weather and safety leave under 5 U.S.C. § 56329c and 5 C.F.R. Part 630, Subpart P, when employees are prevented from safely traveling to or safely performing work at a location approved by the Agency.

Section 11. Leave Transfer and Leave Bank Program. To the extent the Department establishes (or has established) a leave transfer program in accordance with 5 C.F.R. § 630.901 et seq., the Agency shall maintain and participate in such a program. To the extent the Department establishes (or has established) a voluntary leave bank program in accordance with 5 C.F.R. § 630.1001 et. seq., the Agency shall maintain and participate in the program.

Article 36. POSITION DESCRIPTIONS AND CLASSIFICATIONS

Section l. Review of Position Descriptions. The Agency shall ensure that every employee has a position description that accurately reflects the employee's title, series, grade, and the major duties performed by the employee. Upon request by the employee, the employee and the supervisor shall review the employee's position description. The Agency may review the accuracy of a position description at any time. Employees who believe that they are performing duties outside the scope of their position description, or that their position description is otherwise inaccurate, may submit to their supervisors a written request that their position descriptions be reviewed. The written request should explain why the employee believes the position description is inaccurate, or specify the duties the employee is performing that are not reflected in the position description. After reviewing the employee's job duties and position description, the Agency shall issue a written decision within 30 days of the employee's request, stating whether the Agency believes that the position description is accurate. If the Agency determines that the employee's position description is not accurate, it shall revise the position description in accordance with Section 4.

Section 2. Review of Position Classifications. The Agency may review the classification of a position at any time. Employees who believe that their positions are improperly classified may request the Agency to review the classification. If an employee asks the Agency to review the position classification, the Agency or its agent will complete the review within 60 days from the date of the employee's request and will issue a written decision within 90 days of the employee's request. The decision will state whether the Agency or its agent believes that the employee's position is properly classified. The employee may appeal that decision to the Compensation and Employment Division of the Office of Human Resources Management. Before raising a classification issue with the Office of Personnel Management, the employee is encouraged to use the classification review and appeal procedures described in this section. If the Agency decides to change the classification of an employee's position as a result of a classification review, the Agency shall notify the Union President and bargain if appropriate.

Section 3. Adjustments in Classifications. If Agency review of an employee's position description or position classification shows that the position should be classified at a higher grade level, the Agency shall grant the employee a noncompetitive promotion or eliminate the grade-controlling duties of the position. If the promotion is granted, it will become effective the first full pay period after the position has been classified at a higher grade level. If the promotion is delayed, the Agency shall inform the employee of the reason for the delay and the pay period the promotion will take effect. If the Agency eliminates the grade-controlling duties of the position or delays the promotion, it shall inform the employee of the employee's rights under the applicable appellate procedure. The employee's rights to back pay and interest will be determined under the Back Pay Act, 5 U.S.C. § 5596, and applicable regulations. If Agency review of an employee's position description or position classification shows that the position should be classified at a lower grade level, the Agency shall effect an appropriate reduction in the employee's grade and pay, or, if appropriate, shall assign the employee additional duties in order to avoid a reduction in grade and pay.

Section 4. New and Revised Position Descriptions.

a. New Position Descriptions. When developing a new position description, the Agency should involve any affected existing employee, with the understanding that the Agency has the ultimate responsibility for defining the position. When a new position description has been approved and classified for an employee by the Agency or its agent, the supervisor and the employee shall review the position description together. If the employee is dissatisfied by the position description, the employee may seek review under Section 1 of this Article. If the employee is dissatisfied by the position classification, the employee may seek review under Section 2 of this Article.

b. Revised Position Descriptions. When an employee is assigned additional major duties that are not reflected in the current position description, the Agency shall revise the position description accordingly. When revising a position description, the Agency should involve any affected existing employee, with the understanding that the Agency has the ultimate responsibility for defining the position. When the revised position description has been approved and classified by the Agency or its agent, the supervisor and the employee shall review the position description together. If the employee is dissatisfied by the position description, the employee may seek review under Section 1 of this Article. If the employee is dissatisfied by the position classification, the employee may seek review under Section 2 of this Article.

Section 5. Rights of the Union.

a. The Agency shall provide the Union President with a copy of any new or revised position description upon request. The Union may make recommendations to the Agency concerning the accuracy of any position description. The Agency shall review the recommendations and provide the Union President with a written response within 30 days of receipt of the recommendations.

b. If the Agency receives proposed position descriptions or classification standards for employee positions from the Department or the Office of Personnel Management, it shall provide the Union President with copies of the proposed position descriptions and classification standards and seek the Union's comments.

c. An employee may request Union representation at any time during a position description or position classification review.

Article 37. OFFICIAL PERSONNEL RECORDS

Section 1. Official Personnel Records. The official personnel records of employees are contained in official personnel folders maintained by the Department, which also maintains copies of employee performance appraisals, and records of disciplinary and adverse actions. Official personnel folders are maintained electronically and available through the USDA website.

Section 2. Use of Official Personnel Folders. An employee's official personnel folder is the official repository of records regarding the employee's employment history. It may be used by the Agency for any purpose provided for by law and regulation. It may be reviewed by Agency personnel who, in the performance of their official duties, require access to it. An employee, or a designated representative who has been authorized in writing, shall be granted reasonable access to any records contained in the official personnel folder. The employee shall be allowed to review and copy them during normal business hours under appropriate supervision, and in accordance with law and regulation. Official personnel folders shall be purged in accordance with law and regulation.

Section 3. Supervisor's Work Site Files. Supervisors may maintain work site files regarding employees, including home addresses, telephone numbers, and other emergency contact information; time and attendance records; performance appraisals and related materials; training, award, and promotion histories; and other matters pertinent to the performance of their personnel management responsibilities. Records maintained in a supervisor’s work site file shall be made available to authorized persons for official purposes only, as provided for by law and regulation, and shall not be disclosed to any unauthorized person. Employees, and their designated representatives who have been authorized in writing, may have access to, and may make copies of, the records. At the time of an employee's annual performance evaluation, the employee and the supervisor may review the supervisor's work site file. Records, including counseling records, shall be purged in accordance with law, regulation, and this Agreement. Employees shall be allowed to initial and date counseling records before they are placed in the supervisor's work site files.

Section 4. Privacy. A record or file pertaining to an employee shall be made available only as provided for by law and regulation, including the Privacy Act of 1974, 5 U.S.C. § 552a.

Article 38. EVALUATION OF EMPLOYEE PERFORMANCE

Section 1. General. This Article provides a uniform and consistent process for evaluating employee performance. The Parties acknowledge their common goal of improving employee and organizational performance. In an effort to achieve this goal, the Agency intends to implement a performance appraisal process, consistent with the requirements of law, regulation, and this Agreement, that encourages continual communication between employees and supervisors, and provides a mechanism to evaluate employee performance, to identify strengths and weaknesses of employees, and to address deficient performance effectively through activities such as increased communication, coaching, training, and, if necessary, through appropriate personnel actions.

Section 2. Definitions.

a. Appraisal. Appraisal is the process under which an employee's performance is reviewed and evaluated.

b. Appraisal Period. The appraisal period is the established period of time for which performance will be reviewed and a rating of record will be prepared. The rating period is normally one year.

c. Critical Element. A critical element is a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. Critical elements are used to measure performance only at the individual level.

d. Non-Critical Element. A non-critical element is a work assignment or responsibility that is not of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. A non-critical element is a dimension or aspect of performance, exclusive of a critical element, that is used in assigning a summary rating level.

e. Element Rating Levels. The element rating levels are the measures of performance for each critical and non-critical element. Each element shall be rated at 1 of 3 levels: exceeds fully successful, meets fully successful, or does not meet fully successful.

f. Performance Plan. A performance plan is the written performance elements and standards that set forth expected performance. A plan shall include all critical and non-critical elements and their performance standards, and shall be reviewed annually by the employee and the supervisor at the beginning of the new rating period.

g. Progress Review. A progress review is a meeting at which the supervisor communicates with the employee about the employee's performance, including the critical and non-critical elements and applicable standards.

h. Rating of Record or Final Rating. The rating of record or final rating is the performance rating prepared at the end of an appraisal period for performance of assigned duties

over the entire period and the assignment of a summary rating level within the appraisal. The summary rating levels are outstanding, superior, fully successful, marginal, and unacceptable.

i. Performance Standards. Performance standards are performance thresholds, requirements, or expectations that must be met to be appraised at a particular level of performance.

Section 3. Uniformity of Critical and Non-Critical Elements.

a. Critical and non-critical elements define the most important aspects of an employee's official responsibilities.

b. The substance of critical and non-critical elements and the designation of critical elements shall accurately reflect the actual duties performed by the employee and their relative importance. Subject to this principle, the Agency shall, to the extent practical, ensure uniformity in critical and non-critical elements, and in the relevant standards set forth in the performance plan, for all employees similarly classified by occupational series and performing similar work.

c. Whenever the Agency proposes to change an employee's critical or non-critical elements, it shall give the employee 60 days written notice to provide input regarding the proposed change. Upon agreement between the employee and the supervisor, the change may be implemented before the 60-day period elapses.

d. If team elements are used, employees shall be rated for their individual participation in team operations, not team output or team workproduct.

e. To the maximum extent feasible, performance standards shall contain objective criteria by which to measure an employee's performance on the critical and noncritical elements of the employee's performance plan and shall be applied in a fair and valid manner. Performance standards recognize the degree of difficulty of the work performed by the employee, and reflect the importance of the work product to the Agency.

Section 4. Final Rating.

a. At the end of each appraisal period, an employee shall receive a summary rating of outstanding, superior, fully successful, marginal, or unacceptable. For an employee to obtain a summary rating of fully successful, the employee must achieve a rating of at least "meets fully successful" on all elements.

b. Employee performance ratings shall be based solely on individual merit, and not limited by any artificial quota system in any office or division or in the Agency at large. Since no summary rating level requires recognition by awards, the final rating of employees is not contingent upon the availability of awards. The Agency shall ensure

that supervisors are aware of the proper application and operation of the Agency's employee rating system in order to ensure that uniform rating policies are applied uniformly throughout the Agency.

c. Supervisors shall discuss final ratings with employees. The final rating shall be reflected in a written performance appraisal and shall be given to the employee as soon as possible after the end of the rating period, but not more than 30 days thereafter. This time limit may be extended to allow an employee to comment upon, discuss, or provide additional information with respect to the rating. Additionally, this time limit does not apply to:

   i. an employee who has not yet completed a performance improvement plan;
   ii. a new employee who has not yet met the minimum time period for a rating; or
   iii. an employee who has been reassigned or promoted to a new position, but has not yet met the minimum time period for a rating.

d. An employee who wishes to challenge or appeal a final rating may do so by following the grievance procedures set forth in the Grievances and Arbitration Article of this Agreement.

Section 5. Progress Reviews.

a. There shall be at least 1 progress review during the rating period, generally midyear. The supervisor shall communicate with an employee regarding the employee's performance during the rating period. Face-to-face meetings are one example of how this may occur. Communication may also occur in writing. Face-to-face meetings and written feedback coupled with the regular mid-year progress reviews will be sufficient for most employees to understand what is expected of them and to measure their progress toward meeting these expectations.

b. At the time of any progress review, the supervisor and employee should discuss the evaluation of the employee's actual performance for the appraisal period, including:

   i. the employee's accomplishments;
   ii. the degree to which the employee has met critical and non-critical elements and any barriers that may impede successful completion of those elements;
   iii. changes in work assignments that may require revision of performance elements;
   iv. deficiencies in work performance and required improvements;
   v. training and developmental needs; and
   vi. any areas in which the employee is exceeding expectations.

c. If an employee's performance is marginal in 1 or more performance elements at the time of a progress review, the supervisor shall assist the employee in efforts to improve performance in the elements.

d. Supervisors shall assist employees in efforts to maximize job performance in accordance with their performance plans.

Section 6. Unacceptable Performance. If, at any time during the rating period, the supervisor believes that an employee's performance would be rated as "does not meet fully successful" on any critical or non-critical element, the supervisor shall, without undue delay, hold a progress review with the employee to discuss the unacceptable performance.

Section 7. Performance Improvement Plans. A performance improvement plan (PIP) shall not be instituted for an employee unless the employee is performing at a "does not meet fully successful" level on one or more critical elements at any time during the rating period. Before the Agency places an employee on a PIP, the Agency shall meet with the employee and the employee's Union representative, if any, to discuss the contents of the PIP and to ensure that the PIP is tailored to address only those performance deficiencies for which unacceptable performance has been found by the Agency. The duration of a PIP shall be 30 days. At the Union President's request, the Parties shall discuss the potential adverse impact of a PIP on other employees, and any measures necessary to mitigate that impact.

Section 8. Reassignment, Reduction in Grade, and Removal. An employee may be reassigned, reduced in grade, or removed for unsatisfactory performance after completing a PIP, if the employee is still performing at a "does not meet fully successful" level for those critical elements that caused the PIP to be instituted. These actions are subject to law, regulation, and this Agreement.

Section 9. Measures of Performance. The number of assignments or cases handled by an employee during a rating period is not, by itself, sufficient to appropriately measure an employee's performance under any critical or non-critical element. Rather, in rating the employee, the Agency shall evaluate the employee's actual job performance for the designated appraisal period. Included among the factors that may be considered are the assignments or cases handled by the employee; the complexity of the work; the time and level of effort expended; the degree of supervision required; the importance of the work to the Agency, a client agency, the Department, or other entity; and the degree to which the employee received assistance from others. Employees will be rated on objective criteria contained in the performance plan, which shall be discussed with the employee at the beginning of each rating period and during the mid-year progress review.

Article 39. REDUCTIONS IN FORCE

Section 1. General. The Agency shall conduct reductions in force in accordance with law and this Agreement.

Section 2. Use of Reductions in Force. The Parties agree that a reduction in force, whether for budgetary or for other management reasons, should be used only in extremely limited circumstances. Consequently, the Agency shall first consider other options before proposing a reduction in force. Other options the Agency may consider include transfers of work, transfers of staff, reducing costs through attrition, requesting approval to offer early-out retirements, determining whether any full-time employees wish to convert to part-time employment of limited or unlimited duration, determining whether any employees wish to share a job, determining whether any employees wish to go on leave without pay, arranging for reimbursable work details, imposing a hiring freeze, using furloughs, or freezing nonessential expenditures.

Section 3. Union Notification and Procedures.

a. If the Agency determines that it must conduct a reduction in force, it shall comply with this Article, the Notification and Response Times Article of this Agreement, and existing law with respect to employee notification.

b. The Agency shall provide the Union President with the following information regarding any proposed reduction in force:

   i. The legal authority and reasons for the proposed reduction in force;
   ii. The competitive area to be affected by the proposed reduction in force;
   iii. The numbers, types, and grades of positions to be affected by the proposed reduction in force;
   iv. The proposed effective date; and
   v. Copies of the notices to be sent to employees.

c. Before it issues specific reduction-in-force notices to employees, the Agency shall provide the Union President with a copy of, and allow the Union to comment on, the retention registers it intends to use in conducting the reduction in force. The Agency shall also provide the Union President with a copy of, and allow the Union to comment on, any amended retention registers. The retention registers shall be made available to the Union President as soon as they are available. An employee who is subject to a proposed reduction in force, and any designated representative who has been authorized by the employee in writing, shall be allowed to review the retention registers. The employee and any authorized representative shall also be allowed to review the employee's personnel files and any other documents the Agency used to complete the retention registers.

d. If the Agency informs employees that they are subject to a reduction in force, the employees will be encouraged to review and update their official personnel folders. Employees and their designated representatives who have been authorized in writing shall be allowed to review their official personnel folders during normal business hours. The Agency shall establish a deadline of not less than 15 days for submission of requests by the employees for revision of official personnel folders.

e. The Agency shall give specific written notice to employees selected for release from their competitive level due to a reduction in force at least 60 days before the effective date of the reduction in force in compliance with 5 C.F.R. Part 351, Subpart H. The Agency shall provide the Union President with a copy of the notice.

Section 4. Notice to Employees. In addition to providing specific notice to employees selected for release from their competitive level, the Agency shall inform all employees in a competitive area of its plans for any reduction in force in that competitive area.

Section 5. Employee Use of Administrative Leave and Agency Facilities. If the Agency informs an employee that the employee will be separated as a result of a reduction in force, the employee shall be entitled to a reasonable amount of administrative leave to participate in employment interviews, and to prepare and distribute resumes and job applications. The employee shall also be entitled to use Agency telephones, computers, and office equipment to seek other suitable Federal employment. The use of administrative leave under this section is subject to prior approval from the employee's supervisor.

Section 6. Placement Services. In order to minimize the adverse effects of a reduction in force, the Agency shall conduct a placement program for employees who are subject to separation. This program shall include counseling regarding job opportunities and other alternatives available to employees affected by a reduction in force. The Agency shall provide employees with information concerning state unemployment compensation benefits. If permitted by law and regulation, the Agency shall offer to enroll employees subject to separation in a reduction in force in any Interagency Career Transition Plan administered by the Office of Personnel Management, any Career Transition Assistance Plan administered by the Department, the Department's Reemployment Priority List, and the Department of Labor Job Training Partnership Act programs. If payment is required and funds are available, the Agency may offer to enroll employees subject to separation in a reduction in force in other government programs designed to assist them.

Section 7. Details. An employee who has been temporarily detailed to another position at the time the employee is separated from employment because of a reduction in force shall be separated from the position of record held by the employee prior to the detail.

Section 8. Vacancies. The Agency shall maintain a list of available vacant positions to be filled throughout the Agency. The Agency shall offer an employee who would otherwise be separated in a reduction in force an available vacant position that is within the same competitive area and

within 3 grade intervals of the employee's present position, provided that the employee qualifies for the position. If no positions are available within the employee's competitive area, the Agency shall offer an employee who would otherwise be separated in a reduction in force an available vacant position that is outside the employee's competitive area and within 3 grade intervals of the employee's present position, provided that the employee qualifies for the position. Since the offer of a position outside the employee's competitive area is extended primarily for the benefit of the employee, the Agency shall not be obligated to pay relocation expenses. If the Agency decides to fill a position with an employee subject to separation in a reduction in force, the Agency shall make job offers to the employees in retention standing order. An employee shall have 15 days to accept or reject a job offer made under this section. If the employee rejects a job offer made under this section within the employee's competitive area, the employee shall not be entitled to further job offers under this Article. If the employee rejects a job offer made under this section outside the competitive area, the employee shall be entitled to any other rights available to employees separated in a reduction in force.

Section 9. Reemployment Rights. If an employee is separated in a reduction in force, the Agency shall offer the employee the first position in the same competitive area that the Agency decides to fill within 3 grade intervals, provided that the employee qualifies for the position, and the position shall not be offered to another employee under Section 8 of this Article. If more than 1 separated employee qualifies for a vacant position, the Agency shall make job offers to the employees in retention standing order. Employees who lose their jobs in a reduction in force shall retain reemployment rights with the Agency for a period of 2 years.

Article 40. DISCIPLINARY AND ADVERSE ACTIONS

Section 1. General.

a. The Parties acknowledge that the public interest requires the maintenance of high standards of conduct. The supervisor/employee relationship shall include early recognition and resolution of potential performance or conduct problems that could lead to disciplinary action or could adversely affect the morale or working conditions of other employees. No employee shall be subject to disciplinary or adverse action except for just and sufficient cause. This Article does not apply to the termination of probationary employees.

b. Disciplinary actions are admonishments, reprimands, and suspensions for 14 days or less.

c. An adverse action is a removal or suspension for more than 14 days, a reduction in pay or grade, or a furlough for 30 days or less.

d. Non-disciplinary adverse actions may include demotions based upon reclassification of positions, unrequested removal or loss of grade, furloughs for 30 days or less, or adverse actions resulting from unsatisfactory work performance.

Section 2. Factors for Consideration. Disciplinary actions taken by the Agency or its agent shall differentiate between simple and gross misconduct. The following factors, given their appropriate weight, shall be considered in determining the appropriate disciplinary response:

a. the nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or inadvertent, malicious or for personal gain, or frequently repeated;

b. the employee's grade level and type of employment, including fiduciary responsibilities, public contact, and prominence of the position;

c. the employee's prior disciplinary record;

d. the employee's prior work record, including length of service, job performance, dependability, and ability to get along with co-workers;

e. the effect of the offense and any proposed penalty upon the employee's ability to perform at a satisfactory level, and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;

f. the consistency of the penalty with those imposed upon other employees for the same or similar offenses in the past;

g. the consistency of the penalty with any applicable table of penalties;

h. the notoriety of the offense or its impact upon the reputation of the Agency;

i. the degree to which the employee had been notified of the rule or requirement, or had been warned about the conduct in question;

j. the potential for the employee's rehabilitation;

k. mitigating circumstances surrounding the offense, such as unusual job tensions, personality problems, mental impairment, harassment, bad faith, malice, or provocation by others involved in the matter; and

l. the adequacy and effectiveness of alternative sanctions to deter similar conduct in the future by the employee or others.

Section 3. Admonishments. Admonishments are the mildest form of disciplinary action, provided orally or in writing, and characterized by specific use of the term admonishment. Admonishments shall provide a description of the circumstances giving rise to the admonishment, an explanation of the possible consequences if the behavior continues, and inclusion of a written summary of the admonishment in the supervisor's work site file. The supervisor shall provide the employee with an opportunity to respond to the admonishment and the employee must respond orally or in writing within five days of receipt of the admonishment. The summary of the admonishment shall remain on file until the Agency deems that the behavior has been corrected, but no longer than one year from its effective date.

Section 4. Letters of Reprimand. Reprimands are more formal disciplinary actions than admonishments, are provided in writing, and are characterized by specific use of the term "reprimand." Letters of reprimand shall provide a description of the circumstances giving rise to the reprimand and an explanation of the possible consequences if the conduct continues. They shall be placed in the employee's official personnel folder and in the supervisor's work site file.

The Agency or its agent shall provide the employee with a copy of the proposed letter of reprimand, which shall inform the employee of the right to respond and the right to Union or other representation. The employee may review and be provided copies of the materials relied upon in support of the proposed reprimand. The employee's Union representative, if any, shall be given copies of the documents provided to the employee. The employee shall be allowed up to seven days to respond orally or in writing to the proposed letter of reprimand. Upon receipt of the response, or expiration of the response time, whichever occurs first, the Agency or its agent shall determine whether to proceed with the reprimand. If the decision is to proceed, the Agency or its agent shall provide the employee with the final letter of reprimand, and shall file it and any written response in the employee's official personnel folder or in any other file maintained by the Department for this purpose, and in the supervisor's work site file. The final letter of reprimand shall remain on file until the Agency deems that the behavior has been corrected, but no longer than two years from its effective date.

Section 5. Suspensions for 14 Days or Less. When the Agency or its agent proposes the suspension of an employee for 14 days or less, the following procedures shall apply:

a. The Agency or its agent shall provide the employee with not less than ten days advance written notice specifying the reasons for the proposed suspension, and informing the employee of the right to respond, the date by which the response is due, and the right to Union or other representation.

b. The employee may respond orally or in writing, or both, within ten days of receipt of the advance written notice. Upon receipt of the response, or expiration of the response time, whichever occurs first, the Agency or its agent shall issue a final written decision to the employee. If the decision is unfavorable to the employee, it shall include a statement of the employee's rights under the Grievances and Arbitration Article of this Agreement, and any applicable statutory rights. The Agency or its agent shall file the decision, supporting documents and any written response in the employee's official personnel folder or any other file maintained by the Department for this purpose, and in the supervisor's work site file. The decision and associated materials shall remain available for future Agency consideration until the Agency deems that the behavior has been corrected, but no longer than three years from the effective date of the decision.

Section 6. Adverse Action Procedures. If the Agency or its agent proposes a removal, a suspension of an employee for more than 14 days, a reduction in grade, a reduction in pay, a furlough of 30 days or less, or any non-disciplinary adverse action, the following procedures shall apply:

a. The Agency or its agent shall provide the employee with written notice at least 30 days prior to the proposed adverse action except when there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, in which case the written notice must be provided at least seven days prior to the proposed adverse action;

b. The notice shall state the reasons for the proposed adverse action and shall notify the employee of the right to respond and the right to Union or other representation;

c The employee may respond orally or in writing, or both, within 14 days from receipt of the proposed notice of adverse action, or within any longer period stated in the notice. The response may include affidavits and other documentary evidence in support of the response; and

d. Upon receipt of the response, or expiration of the response period, whichever occurs first, the Agency or its agent shall issue a final written decision. If the decision imposes an adverse action, the decision notice shall include a statement of the employee's rights under the Grievances and Arbitration Article of this Agreement and any applicable statutory rights.

Section 7. Response Deadlines. The employee's response deadlines described in this Article may be extended by the Agency or its agent in writing based upon a showing of good cause.

Section 8. Materials for Review. Upon request by the employee or the employee's representative, the Agency or its agent shall, in accordance with applicable law, provide all materials relied upon to support a proposed disciplinary action, adverse action, or non-disciplinary adverse action.

Section 9. Appeals.

a. Any appeal of a disciplinary action, adverse action, or non-disciplinary adverse action, may proceed under the Grievances and Arbitration Article of this Agreement, or, if applicable, a statutory appeal process, but not both.

b. An employee's choice between a statutory appeal process and this Agreement's grievance procedure is considered to be made by the timely submission of a grievance or a statutory appeal. Failure to perfect a timely submission in either process shall constitute acceptance of the decision and no additional review shall occur.

Section 10. Employee Representation. Employees who wish to be represented during the proposed notice stage of the disciplinary action, adverse action, or non-disciplinary adverse action process, may be represented by an attorney or other representative of their choice. The Union is not obligated to provide representation but may do so at its discretion.

Section 11. Union Notification. The Agency shall provide the Union President with copies of proposed notices of disciplinary and adverse actions, and with copies of final decisions regarding disciplinary and adverse actions. The Agency shall redact the copies to remove the names of the employees and supervisors and any other information that could be used to identify the employees.

Article 41. GRIEVANCES AND ARBITRATION

Section 1. Introduction. The purpose of this Article is to provide for a fair, simple, and expeditious method for the settlement of grievances.

Section 2. Definition of Grievance. A grievance is any complaint:

a. by any employee concerning any matter relating to the employment of the employee;

b. by the Union concerning any matter relating to the employment of an employee and may be local, group, or national in scope; or,

c. by an employee, the Union (local, group, or national in scope), or the Agency concerning:

    i. the effect or interpretation, or a claim of breach, of this Agreement or any supplemental agreement between the Parties; or,

    ii. any claimed violation, misinterpretation, or misapplication of any statute, rule, or regulation affecting conditions of employment.

Section 3. Election of Remedy. At the employee's election, the following matters may be raised under the grievance procedure or under a statutory procedure but not both:

a. adverse actions, including removals for misconduct, reductions in grade or pay for misconduct, suspensions for more than 14 days, reductions in grade or removals for unacceptable performance and furloughs for 30 days or less (except when necessitated by statute); and

b. complaints based upon discrimination, including race, color, religion, sex, national origin, age, and disability.

c. This choice of remedy shall not exist for matters excluded from the negotiated grievance procedure under Section 4. Pursuant to 5 U.S.C. § 7121(d), an employee shall be deemed to have exercised his or her option under either a statutory procedure or the negotiated grievance procedure at such time as the employee or Union timely initiates an action under the applicable statutory procedure or timely files a grievance under this Article, whichever occurs first. Similarly, an employee who believes he or she may have been affected by a prohibited personnel practice under 5 U.S.C. § 2302(b)(1) may raise the matter under a statutory procedure or this Article, but not both.

Section 4. Exclusions. The following matters are excluded from the coverage of the grievance procedure:

a. a preliminary warning or notice of potential action, such as a proposal of disciplinary or

adverse action;

b. letters of counseling, warning, and/or instruction;

c. the rating assigned by a supervisor in a performance progress review;

d. an action terminating a temporary promotion within a maximum period of 2 years and returning the employee to the position from which the employee was temporarily promoted;

e. approval or disapproval of workers' compensation claims;

f. non-selection from a group of properly ranked and certified candidates;

g. disapproval of a quality-step increase, or any other kind of honorary or discretionary award, except that allegations of improper use of procedures, or violation of law, Agency and Department policies, or this Agreement in processing awards may be grieved;

h. termination of probationary employees or excepted service employees serving a trial period;

i. reductions in force;

j. the filling of any position outside of the bargaining unit;

k. life insurance and health insurance claims;

l. retirement;

m. any examination, certification, or appointment;

n. prohibited political activity, except for discrimination based on political affiliation under 5 U.S.C. § 2302(b)(1)(E);

o. national security suspensions or removals;

p. classification of any position that does not result in the reduction in grade or pay of an employee;

q. decisions regarding incentive pay for relocation, recruitment and retention;

r. performance-based actions appealed under another statutory procedure; and

s. disciplinary or adverse actions appealed under another statutory procedure.

Section 5. Filing Requirements.

a. Employee, Union, and Agency grievances shall be initiated in writing with sufficient detail to inform the other party of the nature of the grievance, the situation which gave rise to it, the statute, regulation, or Agreement provision alleged to have been violated, and the requested relief.

b. The grievance form contained in this Article shall be used to initiate grievances. The grievant must provide sufficient information in the grievance form to put the other party on fair notice as to the matter that is being grieved.

c. For informal (Step 1) and final (Step 2) grievances, the grievant shall provide the following information:

    i. the name of the grievant;

    ii. the date the grievance is submitted;

    iii. a description of the nature of the grievance; a detailed statement of the circumstances giving rise to the grievance, including the dates of the alleged violations and, if a continuing violation, a statement as to why it is a continuing violation; the employment condition in dispute, and, if known, the specific sections of the statute, rule, regulation, or this Agreement alleged to have been violated;

    iv. the name and telephone number of the Union representative, if any;

    v. the specific relief requested; and

    vi. for Step 1 grievances, any interest in alternative dispute resolution.

d. The parties to the grievance may not raise new issues after initiating the grievance procedure. However, they may agree to join new issues to a grievance in progress.

e. A grievance concerning a continuing practice or condition may be filed at any time but must be sufficiently proximate in time to put the Agency on notice.

f. A filing is timely if hand-delivered, postmarked, or transferred via electronic mail or facsimile no later than the final day of the designated period.

Section 6. Time Limits.

a. If the day an action must be completed under this Article falls on a non-workday, the due date shall be the next regularly scheduled workday.

b. The parties to a grievance may, for good cause, extend any time limits specified in this Article.

c. If a moving party to a grievance fails to comply with the time limits in Sections 7, 8, 9, 10, and 11, without good cause, the grievance shall be terminated. If the supervisor fails to comply with the time limits in Sections 7.c.i., without good cause, the grievant may proceed to the next step.

Section 7. Employee Grievances.

a. The parties may attempt to resolve disputes informally or through alternative dispute resolution procedures. Whenever a dispute arises, the employee and the Agency may agree to use the alternative dispute resolution procedures contained in this Article at Step 1 of the grievance procedure.

b. An employee initiating a grievance under this Article shall be limited to Union representation or self-representation. If an employee initiates a grievance without Union representation, the Union shall be given an opportunity to be present at all formal discussions concerning the grievance and shall be given reasonable advance notice of the meetings. Union participation shall be by telephone if the Union representative is not present in the same location as the grievant, unless the Union pays for all transportation expenses of the Union representative.

c. Employee grievances shall proceed as follows:

i. Informal Grievance (Step 1). An informal grievance must be presented within 15 days of the event giving rise to the grievance, or within 15 days of the date the employee becomes aware, or should have become aware, of the event giving rise to the grievance, whichever is later. The employee shall seek to resolve the matter informally with the appropriate supervisor. However, if the matter cannot be resolved informally, the employees shall file an informal grievance with their second line supervisor. The second line supervisor shall issue a written decision within 15 days of receipt of the informal grievance, and shall provide a copy of the decision to the employee and the Union President. If the employee is dissatisfied with the decision, the employee may initiate a final grievance within 15 days after receipt of the decision.

ii. Final Grievance (Step 2). If the employee is dissatisfied with the informal grievance decision, the employee may, within 15 days of its receipt, present a written grievance to the Designated Agency Management Official for resolution. At the request of the employee, the Designated Agency Management Official shall meet, in person or by telephone, with the employee and the Union President (or designee), to discuss the grievance, and shall issue a written decision within 15 days of the meeting. A copy of the final grievance decision shall be provided to the employee and the Union President.

d. If the final grievance decision does not resolve the matter, the Union President may

invoke arbitration within 15 days of receipt of the Step 2 decision. Arbitration must be invoked in a writing that shall be delivered to the Designated Agency Management Official.

e. Decisions that impose a suspension of more than 14 days, a reduction in grade or pay for disciplinary or performance reasons, a removal, or a furlough, shall be considered equivalent to a Step Two decision.

Section 8. Group Grievances. The Union President may file a grievance on behalf of more than one employee. If two or more individual grievances involve the same facts, events, issues and relief, the employees may file them jointly. The Agency may provide varying, individual relief in response to a group grievance or a grievance of multiple individual employees. The deadlines for filing and processing group grievances shall be the same as those for employee grievances in Section 7 of this Article.

Section 9. Local Grievances. A grievance involving the interpretation or the application of personnel policies or practices affecting conditions of employment within a single Regional Attorney Area of Responsibility or a single Associate General Counsel area of responsibility constitutes a local grievance. The deadlines for filing and processing local grievances shall be the same as those for national grievances in Section 10 of this Article.

Section 10. National Grievances. A grievance involving the interpretation or application of personnel policies or practices that affect employees in more than one Regional Attorney Area of Responsibility or Associate General Counsel Area of Responsibility constitutes a National Grievance. Within 15 days after the events giving rise to the grievance, or within 15 days of the date the Party becomes aware, or should have become aware, of the event giving rise to the grievance, whichever is later, the Union President, or the Designated Agency Management Official, shall file a written grievance with the Designated Agency Management Official or the Union President, as appropriate. The responding Party shall issue a written decision within 15 days of receipt of the grievance. Within 15 days of receipt of the decision, the Union President or the Designated Agency Management Official may invoke arbitration. Arbitration must be invoked in a writing that shall be delivered to the Union President or Designated Agency Management Official, as appropriate.

Section 11. Agency Grievances. Within 15 days of the event giving rise to the grievance, or within 15 days of the date the Designated Agency Management Official becomes aware, or should have become aware, of the event giving rise to the grievance, whichever is later, the Designated Agency Management Official shall file a written grievance with the Union President. The Union President shall issue a written decision within 15 days of receipt of the grievance. Within 15 days of receipt of the decision, the Designated Agency Management Official may invoke arbitration. Arbitration must be invoked in a writing that shall be delivered to the Union President.

Section 12. Alternative Dispute Resolution Procedures. For the purpose of this Article, alternative dispute resolution (ADR) is a dispute resolution process that involves the introduction of a mediator into the grievance process. The Parties may establish, and share the cost of, an

alternative dispute resolution procedure within this grievance procedure. ADR procedures shall not apply to local or national grievances. Participation in the ADR process is voluntary for both the Agency officials and the employees involved in the grievance. An Agency official and an employee may agree to use the ADR process at Step 1 of the grievance procedure.

The ADR procedure will use trained mediators to help resolve a grievance. The mediator shall meet with the grievant and the Agency official to facilitate the discussion and assist the parties in resolving their differences. The mediator shall not have decision-making authority, and resolution rests with the participating Agency official and the grievant. The participants may also reach agreement on a partial resolution of the grievance. Any agreement shall be binding on the employee and the Agency and shall have the effect of permanently terminating the grievance, or that part of the grievance as to which agreement was achieved.

a. Procedure.

   i. The grievant shall indicate on the grievance form an interest in using ADR. If the Agency agrees to use mediation at the informal grievance stage (Step 1) of the grievance procedure, it shall so indicate on the grievance form and shall provide a copy to the Union President. Any mediation session constitutes a formal meeting under 5 U.S.C. § 7114(a)(2)(A), and the Agency shall give the Union President notice as soon as the session is scheduled.

   ii. A mediator acceptable to both the Agency official and the employee shall be selected. All mediation sessions shall remain confidential. Mediation shall not exceed 3 days.

   iii. If mediation produces a solution acceptable to the Agency and the employee, a written agreement shall be prepared and signed by each, and a copy shall be provided to the Union President. Upon execution of the agreement, the grievance, or that part of the grievance as to which agreement was reached, shall be considered settled, and the grievance shall be terminated in whole or in part.

   iv. If mediation does not fully resolve the grievance, the Agency official shall issue a decision within 15 days after termination of the mediation session. The employee may then pursue the grievance at the final grievance stage (Step 2) of the grievance process.

b. Applicability. The procedures in this section do not apply to any matter identified in Sections 3.a. and 4 of this Article.

Section 13. Miscellaneous.

a. Employees and their representatives involved in the presentation and pursuit of grievances shall be free from restraint, interference, coercion, discrimination or reprisal.

b. Employees shall be granted official time to the extent authorized by the Official Time

Article of this Agreement to prepare or present their grievances and shall report those hours to their supervisors and accurately report them on their time and attendance records. The employee shall remain responsible for the completion of his or her work assignments.

Section 14. Grievability and Arbitrability.

a. If a Party believes that a particular issue is not subject to the grievance or arbitration provisions of this Article, the Party shall raise this objection before or at the time of the final grievance decision.

b. All disputes of grievability or arbitrability shall be referred to arbitration as a threshold issue in the related grievance. Questions of grievability shall be decided first. If the issue is determined not to be grievable, the grievance will terminate.

c. When the Agency alleges an issue is non-grievable or non-arbitrable, the Union or employee will have five workdays to amend and refile the grievance one time. The grievance will be resubmitted at the level at which the issue was raised and proceed as a normal grievance.

Section 15. Arbitration. Grievances not settled under the provisions of this Article may be submitted to arbitration. Only the Union President may invoke arbitration concerning an employee or a Union grievance. Only the Agency may invoke arbitration concerning an Agency grievance. Unless the Parties agree otherwise in writing, exhaustion of the grievance procedure is a prerequisite to invoking arbitration. Failure to invoke arbitration within the time limits specified in Sections 7, 8, 9, 10, and 11 shall constitute acceptance of the final grievance decision, and the matter shall not be subject to further review. The arbitrator shall conduct the arbitration hearing in accordance with the provisions of this Article.

a. Selection of Arbitrators. Within 30 days of invoking arbitration, the grieving Party shall request a list of 7 impartial arbitrators from the Federal Mediation and Conciliation Service. Once the list is received, the Parties shall meet, in person or by telephone, to strike names from the list. The Parties shall toss a coin to determine who strikes the first name. The winner of the coin toss may elect to strike the first or the second name. The Parties shall take turns striking names until only one name remains. That individual shall be the arbitrator authorized to hear the grievance. The Parties shall request a list of available dates from the arbitrator to schedule the hearing. If one Party refuses to participate in the selection of an arbitrator, the other Party is authorized to select the arbitrator from the list provided by the Federal Mediation and Conciliation Service.

b. Authority of the Arbitrator.

    i. The jurisdiction and authority of the arbitrator shall be confined to the issues presented in the grievance. If there is a dispute regarding the issues, the

Arbitrator will consider the position of the Parties and define the issues prior to convening a hearing.

ii. The arbitrator shall not have the authority to add to, subtract from, or modify any of the terms of this Agreement or any supplemental agreement between the Parties.

iii. The arbitrator shall resolve any grievability or arbitrability disputes consistent with this Agreement.

c. Appeal of Arbitration Decision. Although the arbitrator's decision is binding on the Parties, they retain their rights to file exceptions to the decision with the Federal Labor Relations Authority. Any dispute over the implementation of the decision may be referred to the arbitrator by either Party. The Parties shall share any additional costs charged by the arbitrator for the referral.

d. Fees and Expenses.

i. The arbitrator's fees and expenses shall be borne equally by the Union and the Agency.

ii. The Parties recognize that transcripts are not necessary in most cases. If the Parties agree that a transcript is necessary, the Parties shall share the cost of the transcript. If there is a disagreement about the need for a transcript, the Party requesting the transcript shall pay for it.

iii. Whenever feasible, witnesses shall testify by telephone or VTC if their participation would otherwise require payment of travel and per diem expenses.

e. Recusal of Arbitrator. Arbitrators may recuse themselves from any matter that, in their judgment, would constitute a real or potential conflict, and shall notify the Parties and explain the nature of the conflict.

f. *Ex Parte* Communications. Parties may not have *ex parte* communications with the arbitrator on the merits of the case but may discuss procedural matters with the arbitrator.

g. Arbitration Procedure:

i. Arbitration must be invoked within 15 days after receipt of the final grievance decision by the Union President, or the Designated Agency Management Official. A filing is timely if hand-delivered, postmarked or transferred via electronic mail or facsimile no later than the final day of the designated period. Failure to comply with this time limit shall constitute acceptance of the final

grievance decision and the matter shall not be subject to further review.

ii. The Parties may submit a joint statement of issues for arbitration. If the Parties cannot agree on the issues to be submitted, each Party may submit its own statement of issues, and the arbitrator shall determine the issues to be heard prior to convening the arbitration hearing.

iii. The arbitration hearing shall generally be held on the Agency's premises during normal duty hours. If the grievance is an employee grievance, the arbitration hearing shall generally be held where the employee works. If the grievance is a local grievance, the arbitration hearing shall be held in the office in which the grievance originated. If the grievance is a national grievance, the arbitration hearing shall be held at the Agency's Washington office. The Parties may agree to hold the hearing at any other location.

iv. Employees participating as witnesses for the Agency shall be in a paid duty status during their normal duty hours. If necessary, tours of duty shall be changed to accommodate the arbitration process.

v. Thirty days before the hearing, the Parties shall exchange proposed witness lists and discuss the general nature of the testimony to be provided by each witness. The Parties shall exchange their final witness lists not less than 21 days before the hearing. The lists shall contain the name, business address, and business telephone number of each witness. In addition, the arbitrator may for good cause allow testimony by rebuttal witnesses. Employees who are called as witnesses at a hearing shall receive official time in accordance with the Official Time Article of this Agreement. If either Party requests sequestration of witnesses, the witnesses shall be sequestered. An arbitrator may not deny a Party's request to sequester a witness. Observers may be permitted at a hearing upon agreement of the Parties.

vi. The arbitrator's award and decision are due 30 days from the date the hearing is conducted or 30 days from the date the closing briefs are received, whichever is later. Rebuttal briefs will be permitted upon agreement of the Parties, or upon approval of the arbitrator. The arbitrator's award and decision shall be in writing and shall specifically address each point of contention between the Parties. The award and decision shall avoid lengthy paraphrasing of the Parties' briefs or positions.

vii. The arbitrator may for good cause extend any time limits in the arbitration proceedings.

viii. If the moving Party fails to comply with the time requirements of this Article without good cause, the Party shall be deemed to have abandoned the action and the arbitration proceeding shall be terminated.

ix. If a Party causes a scheduled arbitration hearing to be canceled, postponed, or delayed without good cause, that Party shall pay all fees charged by the arbitrator.

x. If either Party wishes to request a determination on the grievability or arbitrability of the grievance presented for arbitration, the requesting Party will notify the other Party and the arbitrator at least 10 days before the scheduled hearing on the merits. No hearing on the merits shall be conducted if an arbitrator has determined that a matter is not grievable or arbitrable.

GRIEVANCE FORM

Part A

1. Name_____ Telephone No. _____
2. Position_____
3. Office_____
4. Interest in alternative dispute resolution? Yes No (Circle one)
5. Name and telephone number of the Union Representative, if any:

_____

6. Respondent to whom this grievance form is submitted:

_____

Part B

1. Please provide a detailed statement of the circumstances giving rise to the grievance, including the dates of the alleged violations and, if applicable, a statement as to why it is a continuing violation:

_____
_____
_____
_____
_____
_____
_____
_____
_____

2. Please state the specific sections of the law, rule, regulation or Article of the Agreement alleged to have been violated or the employment condition in dispute:

_____
_____

3. Please describe the specific relief requested:

_____
_____

Signature of Grievant_____ Date_____

Received by_____ Date_____

Article 42. EMPLOYEE AND OFFICE SECURITY AND CONTINUITY OF OPERATIONS PLAN (COOP)

Section 1. Office Security. The Agency, in coordination with the General Services Administration or other federal agencies as appropriate, shall use its best efforts to ensure that each Agency office is in a building with security facilities that meet or exceed applicable federal government-wide standards. Employees shall access the buildings in accordance with Departmental Regulations in effect at the time.

Section 2. Evacuation Plans. Each Agency office shall be covered by an evacuation plan that sets forth procedures for safe and efficient evacuation during emergencies. The evacuation plan shall identify the employees who have volunteered, or whom the Agency has designated, to assist in the evacuation of Agency facilities. The Agency shall post a copy of the plan in each office, shall provide a copy to employees, and shall brief employees of each office in person on its contents and on any changes to it. The Agency shall provide all new employees with a copy of the evacuation plan during the first week of their employment and shall brief them on its contents during the first month of their employment. The employees in each office shall be included in all evacuation drills scheduled for their facilities. The Agency shall coordinate with the General Services Administration or other appropriate leasing agent to ensure that evacuation drills are scheduled periodically at all Agency locations. The Agency may meet these requirements by participating in building-wide plans and drills at Agency locations. The Agency and the Union shall meet upon the request of either to discuss the effectiveness of the evacuation plan for any office.

Section 3. Office Closure Without Activation of COOP Plan. The Agency shall close an office whenever it concludes that conditions at that office present extraordinary health or safety risks to employees and may grant weather and safety leave under 5 U.S.C. § 6329c and 5 C.F.R. Subpart P, or require telework ready employees to telework.

Section 4. Union Closure Request.

a. Field Offices.

i. If the Union President believes that an extraordinary health or safety risk to employees exists at any Agency field office, the Union President may ask the local supervisor to close the office. As soon as possible after receipt of the Union's request, the supervisor shall determine whether the office should be closed. If the supervisor decides to close the office, the office will be closed in accordance with the decision.

ii. If the local supervisor declines to close the office, the Union President may ask the appropriate Regional Attorney to close the office. As soon as possible after receipt of the Union's request, the Regional Attorney shall determine whether the office should be closed. If the Regional Attorney decides to close the office, the office will be closed in accordance with the decision.

iii. If the Regional Attorney declines to close the office, the Union President may ask the Director, Administration and Resource Management, to close the office. As soon as possible after receipt of the Union's request, the Director shall determine whether the office should be closed. If the Director decides to close the office, the office will be closed in accordance with the decision.

b. Washington Office. If the Union President believes that an extraordinary health or safety risk to employees exists at the Agency's Washington office, the Union President may ask the Director, Administration and Resource Management, to close the Washington office. As soon as possible after receipt of the Union's request, the Director shall determine whether the Washington office should be closed. If the Director decides to close the Washington office, the Washington office will be closed in accordance with the decision.

Section 5. Use of Annual Leave. If an extraordinary health or safety risk exists, an employee may use unscheduled annual leave. The employee shall notify the supervisor before leaving the office, but, if notice is not possible at that time, the employee shall notify the supervisor as soon as possible after leaving the office. If the Agency subsequently closes the office and grants administrative leave, the employee will not be charged with annual leave for that absence.

Section 6. Employee Notification. If the Agency evacuates or closes an office because of concerns about the health or safety of employees, the Agency shall, whenever possible, notify employees as provided in this Section.

a. Employees present at the office. The employees' supervisor shall personally attempt to notify each employee present in the office. Whenever possible, the employees' supervisor shall also notify employees using an intercom system or other available and appropriate means of communication.

b. Employees scheduled to arrive at the office. The employees' supervisor shall make every effort to inform employees scheduled to be in the office of an evacuation or office closure before their arrival at the office.

Section 7. Union Notification. The Agency shall notify the Union President of all credible threats to employee health or safety as soon as possible after it learns of the threat. Whenever possible, the Agency shall also notify the Union President of the actions that will be taken in response to the threat.

Section 8. Activation of COOP Plan.

a. All employees are encouraged to have in place an ad hoc telework agreement, at a minimum, to cover Agency activation of its COOP plan.

b. If an Agency office or building will be, or is anticipated to be, unavailable for an extended period, the Agency may activate its COOP plan to ensure continuity of performance of the Agency mission.

   i. If the COOP plan is activated, telework ready employees shall resume their regular schedules on a full-time telework basis until the office or building is again available or an Agency relocation site is established. Employees may request their supervisor to permit a modification to their regular schedule to accommodate the changed circumstances.

   ii. For employees who are not telework ready, or who are unable to telework due to unavailability of their regular alternative work site, the Agency shall grant priority to placement in an Agency relocation conventional worksite.

c. In the event OPM orders the evacuation of a local area, the Agency shall provide employees with evacuation benefits to the extent authorized by OPM and the Department.

Section 9. Emergency Contact Information. To facilitate notices in the event of office closure or relocation, employees shall provide the Agency with personal phone and email contact information in order that an emergency contact list may be maintained. Information gathered under this provision will remain confidential and be used only as authorized in this Article.

Section 10. Mail-Handling.

a. Training. Upon request, the Agency shall provide employees with training in the proper procedures for handling mail. Training may be provided in a variety of formats, including formal classroom training, Agency-sponsored seminars, and informational materials and videos.

b. Supplies. The Agency shall provide to all employees who open mail as part of their official duties, and to other employees upon request, surgical gloves, masks, plastic bags, and other materials as recommended by appropriate Federal authorities to ensure the safe handling of mail.

Article 43. ACTIVE BAR MEMBERSHIP

Section 1. Active Membership. All attorneys employed by the Agency must provide evidence that they are active members in good standing of the bar of a state, the District of Columbia, or the Commonwealth of Puerto Rico. Evidence of active membership shall also be provided at the time of the annual performance appraisal.

Section 2. Satisfactory Evidence of Active Membership. Employees may use duty time and Agency equipment and supplies to obtain evidence of active membership. Satisfactory evidence of active membership includes, but is not limited to, a photocopy of an employee's bar card showing that the employee is an active member, a photocopy of the pertinent page from the bar's website showing that the employee is an active member, and a letter or certificate from the bar stating that the employee is an active member. If there is a disagreement between an employee and the Agency regarding the provision of satisfactory evidence of active membership, the matter shall be referred to the Designated Agency Management Official and the Union President for resolution.

Article 44. VOLUNTARY RELOCATIONS AND REASSIGNMENTS

Section 1. General. The Agency may, in its sole discretion, offer voluntary relocations and voluntary reassignments to its employees.

Section 2. Voluntary Reassignments. Employees may request voluntary reassignments to other divisions, offices, or geographical areas within the Agency. The Agency shall maintain, within the immediate office of the General Counsel, a permanent, confidential list of these employees and their preferences for reassignment. Upon request, the Agency shall provide the Union President with a copy of the confidential list. Whenever a division or office of the Agency is authorized to fill an available vacant position, the immediate office of the General Counsel shall provide the division or office head with the names of employees who have expressed an interest in reassignment to that division or office. The Agency shall give those employees full consideration for reassignment in filling the available vacant position. If the available vacant position is filled by a voluntary reassignment that requires relocation, the Agency is not obligated to pay relocation expenses.

Article 45. **FURLOUGHS**

Section 1. General Provisions.

a. This Article addresses: (1) the policy and procedures for implementing (i) "shutdown furloughs", sometimes called "emergency furloughs," but herein called "emergency/shutdown furloughs" and (ii) "save money" furloughs; and (2) the adverse effects of these furloughs.

b. Circumstances beyond the control of the Agency may compel the Agency to furlough employees.

c. The Agency has complete authority and responsibility with respect to all decisions about furloughing employees, including but not limited to, the specific employees furloughed, the days, dates, and times of the furlough, and the duration of the furlough.

d. The Agency shall implement furloughs in accordance with the law and directives and guidelines issued by the Office of Management and Budget and the Office of Personnel Management at the time of the furlough.

e. Upon receiving official notice of a potential furlough, the Agency shall notify the Union as soon as practical of the following:

    i. Whether the furlough is an emergency/shutdown furlough or is a save-money furlough;

    ii. The expected beginning date of the furlough; and

    iii. The expected duration of the furlough.

f. For every furlough, the Agency will compile a list of excepted employees (that is, those employees not subject to the furlough). When the list is finalized, the Agency will provide the Union President with a copy at or about the same time it provides the information to the excepted employees.

g. The Agency will follow the applicable law governing employee pay during a furlough.

h. The Agency may adjust Performance Plans to account for the length of a furlough.

i. The running of any time period within which the Agency or Union may or must act pursuant to the terms of this Agreement shall be suspended for the duration of a furlough.

j. Employees may accept outside employment while on furlough, provided that the outside employment does not pose a conflict of interest with their official duties.

k. Employees wishing to engage in outside employment should refer to the USDA Office of Ethics website at www.usda.gov/ethics.

Section 2. Save Money Furloughs.

a. If the Agency must furlough employees as a means of addressing a budget shortfall, the Agency may solicit volunteers to be placed in extended Leave Without Pay status; or

b. If the Agency must furlough employees as a means of saving or reducing expenditures, the Agency shall:

   i. Solicit volunteers to work reduced hours in conjunction with the use of LWOP; and

   ii. Allow affected employees to choose which workdays shall serve as their furlough days, with advanced approval of a supervisor and in accordance with the Agency's leave request requirements.

c. The Agency may deny an employee's request for LWOP and, upon request by the employee, will state the reason for the denial.

d. If an insufficient number of employees volunteer for LWOP and the Agency must furlough employees, the Agency shall furlough employees by reverse seniority, where the least senior employees are the first employees furloughed. In determining an employee's seniority, the Agency shall use an employee's retirement service computation date.

Section 3. Emergency/Shutdown Furloughs.

a. Within a reasonable time period after an emergency/shutdown furlough is announced, the Agency shall provide non-excepted employees with instructions and information available to the Agency.

b. Unless the Agency directs them to do otherwise, non-excepted employees shall report to work at the beginning of the first regularly scheduled business day during the emergency/shutdown furlough for the lesser of either: (1) a period of four hours, or (2) as long as is required for them to complete the tasks necessary to implement the suspension of normal Agency business operations in an orderly manner.

c. During the period of an emergency/shutdown furlough, an employee shall be regarded

as in furlough status during the employee's normal Tour of Duty and work schedule.

d. As often as practical, the Agency shall keep employees apprised of the status of the furlough.

Excepted employees will be paid for time worked during the furlough period once a continuing resolution or appropriation is enacted. Non-excepted employees will be paid for furlough time only to the extent authorized by Congress.

Article 46. **SENIOR COUNSEL**

Section 1. Senior Counsel Positions. Non-supervisory attorneys employed at the GS-15 level will be designated as "Senior Counsel."

Section 2. At any time, a non-supervisory GS-14 attorney that believes they are performing work at a GS-15 attorney level may pursue a classification appeal (or "desk audit") with the Office of Personnel Management to seek promotion to the GS-15 level. In the event the Office of Personnel Management finds that the attorney is in fact performing work at a GS-15 level, the Agency shall promote that attorney to the GS-15 level.

Article 47. PARKING AND PUBLIC TRANSPORTATION AT AGENCY FACILITIES

The Agency shall follow all Government-wide, and Departmental policies and guidelines for location of Agency facilities including proximity to adequate parking and public transportation. The Agency shall make a good faith effort to secure an adequate number of parking spaces for employees while negotiating or renegotiating for leased office space, whether such negotiations are independent or conducted through GSA, subject to competing Agency priorities, and provided that there are no undue financial impacts to the Agency. The Agency may consider public transit availability in determining an adequate number of parking spaces.

Appendix A
"GROUND RULES"

USDA, OFFICE OF THE GENERAL COUNSEL AND
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES LOCAL 1106
GROUND RULES FOR THE NEGOTIATION OF A
NEW COLLECTIVE BARGAINING AGREEMENT AND FOR THE
RENEGOTIATIONS OF A COLLECTIVE BARGAINING AGREEMENT

These Ground Rules establish the procedures the Agency and the Union (Parties) will use to negotiate a new Collective Bargaining Agreement (new CBA) if either Party elects to negotiate a new CBA pursuant to the Effective Date and Duration of Agreement Article of the existing Collective Bargaining Agreement (CBA). The Parties will also use these procedures if they agree to renegotiate one or more articles of the CBA pursuant to the Effective Date and Duration of Agreement Article of the CBA. The Parties agree to conduct the negotiations in good faith and to foster an atmosphere of cooperation and mutual respect. In recognition of their desire to bring the negotiations to a successful conclusion, the Parties agree to the following:

Location of Negotiations
The Parties may participate in the negotiations in person, or by video teleconferencing (VTC) equipment or telephone. Either the Union or the Agency may elect to schedule two weeks of in-person negotiations. In-person negotiations, if any, will be conducted at the Agency's Washington Office, or such other location as the Chief Negotiators mutually agree.

Schedule of Negotiations
The negotiations will begin within 30 days of the date either Party elects to negotiate a new CBA or within 30 days of the date the Parties agree to renegotiate one or more articles of the CBA. At the beginning of the negotiations, the Chief Negotiators will agree to a reasonable schedule for the length of the negotiations, and if the Chief Negotiators cannot reach an agreement on the schedule and length of negotiations, by default it shall last for six continuous months. The negotiations will take place three out of five business days in a week and begin at 11:00 Eastern Time and end at 5:00 Eastern Time, unless the Parties agree in writing to different hours. During each day of the negotiations, there will be a one-hour lunch break and 15-minute breaks at times mutually agreed to by the Parties. Each week of in-person negotiations will include travel days on Monday and Friday of that week, with negotiations to take place on Tuesday, Wednesday, and Thursday. Negotiations will continue until the Parties reach an agreement on the articles being negotiated or until one Party notifies the other Party that the assistance of a mediator from the Federal Mediation and Conciliation Service (FMCS) has been requested by the filing of an FMCS Form F-7 and service on the other Party. The Parties may agree in writing to other deadlines during the negotiations.

Caucuses/Recesses
Either Party may call a caucus at any time without the consent of the other Party. However, the caucusing Party will make every effort to avoid unnecessary delays during the negotiations. Caucuses will generally last no longer than 15 minutes.

Negotiating Teams
Within 15 days of the date either Party elects to negotiate a new CBA or within 15 days of the date the Parties agree to renegotiate one or more articles of the CBA, each Party will identify not more than four persons to participate in the negotiations. One person from each negotiating team will be designated as the Chief Negotiator and will serve as the primary point of contact for the Party. The Chief Negotiators will have authority to reach agreement during the negotiation period. If a representative for either Party is unable to attend a negotiating session or sessions, the Party's Chief Negotiator may designate an alternate for the session or sessions. However, at no time will more than four representatives be present for either Party. By agreement of the Parties, subject matter experts may participate in negotiating sessions.

To the extent practicable, prior to the start of negotiations, all members of both Parties' negotiating teams shall have completed the Basic Statutory Training course on the Federal Labor Relations Act held by the U.S. Federal Labor Relations Authority, or its functional online equivalent. Members of both Parties' negotiating teams are strongly encouraged to take additional training on the FLRA prior to the start of negotiations.

Official Time
The Union's negotiators (if they are Agency employees) will be granted official time in accordance with Article 11 of the CBA while participating in the negotiations and for a reasonable number of hours preparing for the negotiations. This official time shall include travel time to and from the location of in-person negotiations for members of the Union's negotiating team whose workstation is not in the location at which the in-person negotiations are held. Subject matter experts (if they are Agency employees) will also be granted official time when participating in the negotiations and a reasonable number of hours preparing for the negotiations. Additional official time may be granted to members of the Union's negotiating team and any subject matter experts who are also Agency employees by the Agency's Chief Negotiator. However, time may not be approved in excess of 40 hours per week and overtime may not be granted for representational purposes.

Expenses
For the first two weeks of in-person negotiations, the Agency will pay the travel and per diem expenses for two Union negotiators. Otherwise, each Party will bear its own costs for participating in the negotiations. The Agency shall not charge rent to the Union for facilities and equipment used by the Union during negotiations.

Exchanging Proposals
Within 15 days of the date either Party elects to negotiate a new CBA or within 15 days of the date that the Parties agree to renegotiate one or more articles of the CBA, the Parties will exchange written proposals for consideration during the negotiations. The written proposals will contain all matters to be considered during the negotiations. After the Parties have exchanged proposals, no new issues or proposals will be submitted by either Party without the agreement of the Parties. However, proposals, counterproposals, and modifications of proposals addressing issues already raised, or related issues that arise as a result of discussions during the negotiations, will not be deemed new proposals.

Negotiating Proposals
There is no requirement that negotiations proceed in any particular order and a party shall be free to seek to negotiate articles that are of greatest importance to the party before negotiating less important articles. Generally, the Parties will alternate in selecting which article to negotiate next. Either Party may propose changes to the CBA or submit new articles not previously addressed in the CBA.

If the Parties do not reach agreement on an article, it will be tabled until the Parties have reached agreement on all the non-tabled articles. Once an agreement has been reached on all of the articles, except for the tabled articles, the Parties will make one more attempt to reach agreement on the tabled articles. Either Party can premise offers or compromises on one or more Articles considered together. If the acceptance of an initial article is contingent on agreement on other articles, the article itself shall so state. If agreement cannot be reached on a tabled article, the Parties agree that either party may request assistance from the FMCS.

Negotiability Disputes
If the Parties disagree on the negotiability of one or more proposals, the Union may file a Petition for Review with the Federal Labor Relations Authority. Within 10 days of receipt of the Union's proposals, the Agency will informally advise the Union if it believes any of the Union's proposals are not negotiable. Within seven days of the Agency's informal notice to the Union, the Parties' Chief Negotiators will meet by telephone or VTC to discuss the negotiability of the proposals identified by the Agency. This meeting will not constitute a Union request for a formal declaration of non-negotiability under 5 CFR § 2424.11(a). During the meeting, the Agency's Chief Negotiator will explain why the Agency believes one or more of the Union's proposals are not negotiable. If the Parties are unable to agree on the negotiability of one or more of the Union's proposals during the meeting, the Parties will follow 5 CFR Part 2424.

Record/Minutes
No official transcript will be made of the negotiating sessions and recording devices and photographic equipment are not permitted during the negotiations. The Parties may take their own notes.

Mediation
If agreement cannot be reached on any issue subject to negotiation consistent with the process set forth in the Negotiating Proposals section above, the Parties shall request assistance from the

FMCS. The Parties agree to participate in the mediation sessions held by the FMCS in good faith in an attempt to resolve remaining differences prior to declaring impasse.

Impasse
If the Parties are unable to reach agreement on an issue after assistance from the Federal Mediation and Conciliation Service, each Party reserves the right to submit the issue in dispute to the Federal Service Impasses Panel (FSIP) in accordance with applicable law. Before declaring an impasse on any issue, each Party must present its final office, in writing, to the other Party. If no agreement can be reached by the Parties after careful consideration of each others' final offers, each Party or both Parties may declare an impasse. The Party declaring an impasse shall request the services of the FSIP within three business days of the declaration of the impasse.

Disagreements about the Ground Rules
These Ground Rules are to be interpreted in accordance with applicable law. The Ground Rules may not address every item that may arise during the negotiation process and may be altered or modified by the written agreement of the Parties. Nothing in these Ground Rules constitutes a waiver of the Parties' rights under federal law.

The Parties will attempt to informally resolve any disagreements concerning the application and interpretation of the Ground Rules. Disagreements concerning the application and interpretation of the Ground Rules that are not resolved informally will be handled through arbitration. Either Party's Chief Negotiator may declare the Parties in disagreement by submitting its written statement of position on the issue or issues in disagreement to the other Party's Chief Negotiator. The Party declaring that there is a disagreement will ask the FMCS to furnish the Parties with a panel of arbitrators and will specify the place of arbitration to be Washington, D.C. The Parties will select an arbitrator by following the process set forth in the Grievances and Arbitration Article of the CBA. The arbitrator selected by the Parties will have the full authority to interpret the Ground Rules and any applicable laws. The arbitrator's fees and expenses will be borne equally by the Parties.

Agreement
When an agreement is reached on an article, the article shall be finalized, initialed, and dated by the Chief Negotiators. An agreement on an article may be reopened only by consent of the Parties. When agreement has been reached on all of the articles in the new or modified CBA, the Chief Negotiators will execute an agreement in principle.

Union Ratification and Agency Head Review
The Agency's agreement to the new or modified CBA is subject to Agency Head review and approval, and the new or modified CBA is subject to ratification by union members. The Union will have 30 days from the date of the executed agreement in principle to complete its ratification process. The new or modified CBA will be executed by the Parties within two business days of Union ratification. Within two business days of the execution date, the Agency will submit the new or modified CBA to the Department for Agency Head review. If the Agency Head disapproves any portion of the new or modified CBA, the remaining portions will go into effect if the Parties so agree, while the Parties negotiate a replacement provision or provisions. If the Parties do not agree, all portions of the new or modified CBA will not go into effect until the

Parties complete negotiations on any portions struck by Agency Head review. The effective date of the new or modified CBA shall be specified in the new CBA.

Completion Dates in these Ground Rules
If the day an action must be completed in these Ground Rules falls on a non-business day, the due date shall be the next business day.

Appendix B

Request for Official Time
and/or Leave Without Pay
for Labor-Relations Activities

Union Action:

Union Representative's Name and Phone Number:

Employee Name:

Employee Phone Number:

Date for Official Time:

Date for Leave Without Pay
for Labor-Relations Activities:

Start Time:

End Time:

Location of Union Activity:

Specific purpose for the request as it relates to the activities listed in Article 11 of the Collective Bargaining Agreement:

Agency Action

Approved _____

Disapproved _____

Reason for disapproval:

Agency official:

Date:

Appendix C

U.S. DEPARTMENT OF AGRICULTURE - OFFICE OF THE GENERAL COUNSEL BICYCLE COMMUTER SUBSIDY APPLICATION		
ACTION REQUESTED(CHECKONE) o New o Cancellation. NOTE: Items I through 10 must be completed in full before submitting to your designated Commuter Benefit Coordinator		
APPLICANT INFORMATION		
1. NAME OF APPLICANT (last, first, middle)	2. WORK ADDRESS (Street, Room#, City. State, Zip)	3. HOME ADDRESS (Street, City, State, Zip)
4. USDA AGENCY CODE 14 Office of the General Counsel	5. EMPLOYEE SSN (last 4)	6. WORK PHONE NUMBER

EMPLOYEE CERTIFICATION:

WARNING: This certification concerns a matter with the jurisdiction of an agency of the United States and making a false, fictitious. or fraudulent certification may render the maker subject to criminal prosecution under 18 U.S.C, § 1001; Civil Penalty Action providing for administrative recoveries of up to $10,000 per violation; and/or agency disciplinary actions up to and including removal from Federal Service.

I certify that I am employed by the U.S. Department of Agriculture Office of the General Counsel.

I understand that I must ride lily bike to and from work at least half of my commuter days per month in order to qualify for the Bicycle Commuter Subsidy benefit.

I understand that I must certify that I commuted by bicycle a minimum of 50% of my commuter days for each month that I am claiming a subsidy and submit my completed certification annually in order to receive the benefit.

I understand that I may not concurrently receive both the Bicycle Commuter Subsidy and the mass transit or the parking benefit(s).

I understand that I must submit any bike commuter-related receipts to support my claim for the subsidy.

I understand that if I am involved in an accident while commuting, the accident will not fall within the federal Tort Claims Act or the Federal Employees Compensation Act. Bicycle commuting is at my voluntary election and shall not constitute official duties of any kind. By participating in this program, I assume the risks associated with this activity both for my own injuries and risk to third parties.

7. SIGNATURE OF EMPLOYEE	8. DATE

9. NAME OF COMMUTER BENEFIT COORDINATOR	10. AGENCY MAXIMUM BENEFIT $20 per month. Up to $240 per Year.
11. SIGNATURE OF COMMUTER BENEFIT COORDINATOR	12. DATE

Privacy Statement: This information is solicited under authority Public Law 101-509. Furnishing the information on this form is voluntary, but failure to do so may result in disapproval of your request for a Bicycle Commuter Subsidy. The purpose of this information is to facilitate timely processing of your request, to ensure your eligibility and to prevent misuse of the funds involved.

Annual Certification and Claim for Reimbursement Bicycle Commuter Subsidy

Employee Information

Name:_____

Office Phone.

Office.

1 Number of qualifying bicycle commuter months this calendar year (number of months I rode at least 50% of my commuter days). The employee is responsible for tracking the number of days commuted by bike each month. A log table for this purpose is available upon request.

2 $20.00 x number of qualifying months=$_____

3 I certify that I spent equal to or in excess of $ _____this calendar year on qualifying bike commuter expenses, which are related to my use of a commuter bike. Note: Qualified bicycle commuting expenses include costs associated with the ownership and operation of a commuter bicycle, bike locks, bike parking/storage, bike upgrades (lighting systems, racks, and bags or baskets that attach to the bicycle), and repairs and general maintenance. These expenses may also include personal bicycle safety and protective equipment. I understand that I may only claim reimbursement for the calendar year of the purchase. The figure entered for this item 3 must be equal to or more than the figure entered in item 2.

My claim for a Bicycle Commuter Subsidy Benefit for calendar year is $____

SIGNATURE OF EMPLOYEE	DATE

NAME OF COMMUTER BENEFIT COORDINATOR	AMOUNT OF BICYCLE COMMUTER SUBSIDY APPROVED
SIGNATURE OF COMMUTER BENEFIT COORDINATOR	DATE

Privacy Act Statement: This information is solicited under authority of P.L.101-509. Furnishing the information on this form is voluntary, but failure to do so may result in disapproval of your request for a Bicycle Commuter Subsidy. The purpose of this information is to facilitate timely processing of your request, to ensure eligibility, and to prevent misuse of the funds involved.

Warning: This certification concerns a matter within the jurisdiction of an agency of the United States. Making a false, fictitious, or fraudulent certification may render the maker subject to criminal prosecution under 18 U.S.C. § 1001, to include fine and/or imprisonment up five years, and may provide for administrative recoveries of up to $10,000 per violation. It may also result in agency disciplinary action up to and including dismissal.