

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE FOOD AND DRUG ADMINISTRATION
AND
THE NATIONAL TREASURY EMPLOYEES UNION**

The FDA and the NTEU agree to the following provisions which describe their mutual understanding with regard to administration of the FDA/NTEU Collective Bargaining Agreement as it relates to the International Trade Data System (ITDS) pilot.

- 1) The FDA will establish a working group to analyze the results and impact of the FDA 30-day 24/7 pilot after its conclusion. The FDA will invite two representatives of the NTEU, who will be designated by the NTEU from among FDA employees in the Buffalo area, to serve as members of the working group. Any data pertaining to the pilot that is acquired by FDA during the life of the pilot or at the conclusion of the pilot and which relates to conditions of employment will be shared with NTEU.
- 2) NTEU will be provided with fifteen (15) work days of notice prior to the actual implementation of the 24 x 7 aspects of the ITDS pilot. This will not prevent the FDA from soliciting volunteers for the pilot prior to the advance notification.
- 3) Except where the agency is unable to assign the required work to other qualified employees, the FDA agrees to limit mandatory overtime shifts required of employees during the pilot period to four (4) hours (i.e., in addition to the employee's regular work day) per twenty-four (24) hour period. This establishes no precedent for FDA to do this in other events or initiatives. Further, the FDA agrees that in circumstances in which it is unable to assign required work to other qualified employees or otherwise avoid requiring an employee to work a mandatory overtime shift of more than four (4) hours within a twenty-four (24) hour period, the FDA will give serious consideration to any request by that employee for accommodations to ameliorate the effects of the assignment (for example, adjusting the employee's schedule on the following work day).
- 4) Voluntary overtime shifts covered by employees during the pilot period will be limited to sixteen (16) consecutive hours or less. This establishes no precedent for FDA to do this in other events or initiatives.
- 5) Except where the agency is unable to assign the required work to other qualified employees, subsequent to any overtime shift, employees will have a break in their work of at least eight (8) hours. Further, the FDA agrees that in circumstances in which it is unable to assign required work to other qualified employees or otherwise avoid requiring an employee to work without a break of at least eight (8) hours, the FDA will give serious consideration to any request by that employee for

accommodations to ameliorate the effects of the assignment (for example, adjusting the employee's schedule on the following work day).

- 6) The FDA will provide overtime compensation or compensatory time for ITDS assignments consistent with law, regulation and Article 22 of the FDA/NTEU Collective Bargaining Agreement. Employees who are exempt from the coverage of the Fair Labor Standards Act will be permitted to elect whether to receive overtime pay or compensatory time off for overtime assignments in connection with this pilot. This establishes no precedent for FDA to do this in other events or initiatives.
- 7) Pursuant to Article 50 of the FDA/NTEU Collective Bargaining Agreement, a safe and healthy work environment will be provided for all shifts and all employees. For bridge duty at the Buffalo port of entry, the FDA employees will be located in shared space in the secondary inspections area of the port with Customs Service employees, importers, brokers, carriers, etc.
- 8) It is not the intention of the FDA to cancel previously approved annual leave as a result of the ITDS pilot. Pursuant to Article 15 of the FDA/NTEU Collective Bargaining Agreement, the FDA will not cancel any annual leave that was pre-approved prior to the effective date of this Memorandum of Understanding (MOU) in order to staff the pilot unless the criteria of Article 15, Section 2B are met.
- 9) While it is not anticipated that stand-by duty assignments will be required for the pilot, employees who are required to be in a stand-by status within the meaning of 5 CFR § 551.431 will be compensated consistent with law and regulation. Employees are in a stand-by status when all of the following criteria are met: a) they are restricted to their living quarters or post of duty, and b) their activities are substantially limited, and c) they are required to remain in a state of readiness to perform work.
- 10) The parties agree to establish a joint committee in the Buffalo District Office to discuss local aspects of the administration of the ITDS pilot under the FDA/NTEU Collective Bargaining Agreement. This committee will comprise two representatives of the NTEU and two representatives of District Office management. Additionally, the committee will be augmented as necessary by two representatives of management from the Headquarters, Office of Regulatory Affairs (expected to be Richard Baldwin and Max Castillo) and two representatives of the NTEU (expected to be Peter Gimbrere and John Ziv). The committee will commence discussions as soon as possible after execution of this MOU. If the committee is unable to resolve any issues, either party may refer those issues to the national level for further discussions between the NTEU National Office and the FDA. Both parties reserve their contractual and legal rights with regard to any unresolved issues.
- 11) Should it be necessary to assign employees to the Buffalo area on official travel to staff extended-hour operations during the pilot and qualified employees are not available within the Northeast Region, the FDA agrees to solicit interest in such

assignments on a nation-wide basis. The FDA reserves the right to make selections for such assignments consistent with sound management practice.

- 12) NTEU reserves the right to negotiate any and all aspects of any continuation of ITDS, to the extent required by law and the CBA, at any location once the Buffalo pilot has been completed.

For the NTEU:



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