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

PREAMBLE

This agreement has been negotiated as a pilot to determine whether the Food and Drug Administration (FDA) can meet its weekend staffing requirements for current Office of Regulatory Affairs (ORA) employees through voluntary staffing arrangements. Effective accomplishment of the FDA's public health mission poses an ever growing challenge as changes in the global marketplace call for improved responsiveness and coverage. The challenge concerning importation of FDA-regulated products into the United States is to facilitate the free flow of a dramatically growing volume of imports while ensuring that regulated products are safe and healthful. Although the FDA continues to request additional resources, responding to this challenge increasingly means finding ways to leverage existing agency resources. One way to do this is to extend selected FDA operations over a longer period of time each week. This does not necessarily result in accomplishment of more work, but it makes the work that is accomplished more effective. It permits more sampling and analysis to occur sooner after arrival of products at the port of entry and, consequently, results in a lesser burden on commerce without restricting FDA scrutiny of regulated products. Accordingly, the Agency finds it necessary to move toward extended hours of operation..

The parties to this agreement recognize that the Agency must improve the responsiveness and coverage necessary to accomplish its public health mission while promoting a family-friendly work environment that allows employees the maximum possible flexibility and choice. Consequently, they agree that it is critically important for management, employees and the Union to work together to achieve the necessary operational coverage in a manner that preserves as much employee choice as possible. To that end, the parties will encourage employees to cooperate actively in making the procedures set forth in this agreement work for all concerned. Moreover, they agree to continue to engage in dialogue aimed at furthering their common objectives in this area. The FDA agrees that, during the six-month pilot period of this agreement, absent emergency circumstances, it will not exercise its right to schedule mandatory, non-overtime work on weekends in any situation in which such schedules are not already the practice

CBA INTERPRETATION

The parties agree that the FDA is free to use any and all of the means specified in the CBA to staff weekend operations and that the CBA does not require management to offer

overtime before exploring other voluntary alternatives for meeting weekend staffing needs. For example, the Agency may encourage employees to use the Alternative Work Schedule program set forth in Article 25 of the CBA to shift their working hours (either through varying the times during which they satisfy their basic work requirements or by working credit hours). Such arrangements must be consistent with local agreements on flexible bands. The Union agrees that such voluntary arrangements are in the best interest of the parties and that it will encourage employees to work with the Agency to satisfy weekend staffing requirements.

The parties further agree that Article 22 of the CBA is properly interpreted to mean that an employee who has received an assignment to be available for any given overtime assignment will move to the bottom of the mandatory overtime assignment rotation list if management cancels the assignment regardless of whether or not the employee actually works that assignment.

INCENTIVES

The parties agree that staffing weekend operations through voluntary arrangements wherever feasible is preferable. Management, therefore, intends to make use of the following incentives, provided for in the CBA, to encourage voluntary weekend coverage:

1 Overtime. To the extent consistent with budgetary constraints and good management practice, management will offer overtime as an incentive to voluntary Saturday work. This language will not be construed to require the Agency to offer overtime in any specific situation.

2 Credit Time. Consistent with workload requirements and the provisions of Article 25 of the CBA, the Agency intends to permit employees to work credit hours during hours of weekend operation.

3 Flexible Work Place Program. To the extent feasible and consistent with the discretion reserved to it pursuant to Article 26 of the CBA, the Agency will permit employees to perform weekend work at home or other approved flexiplace work sites. To this end, the FDA will encourage local management to approve such arrangements whenever they are compatible with effective and efficient mission accomplishment.

4 Priority Alternative Work Schedules. The Agency will give preference to employees who voluntarily work on weekends when it establishes rotational schedules for employees pursuant to Article 25, Section 5H. Specifically, when two (2) or more similarly situated and qualified employees request the same AWS and the Employer cannot accommodate all the requests, the employees will be asked to resolve the scheduling problem among themselves. If the employees cannot solve the problem, then the Employer will schedule the employees on a fair and equitable rotating basis, using

voluntary weekend work as a tie-breaker (i.e., giving employees who have performed voluntary weekend work the first opportunity to work their preferred schedules).

4 Cross Training. The Agency will, at its discretion and to the extent consistent with available resources and good management practice, cross train employees to maximize the pool of qualified employees available to perform weekend work. To this end, the FDA will encourage local management to provide such training to the maximum extent consistent with sound management practice.

5 Time Off Awards. In order to encourage employees to volunteer for weekend work, for the duration of this pilot agreement, the FDA will provide time-off awards (1 hour for every 4 hours worked) to all employees who volunteer to work 40 hours or more on weekends (including credit hours) as part of their non-overtime tour of duty (cumulative during the 6-month pilot period). Awards will be presented at the end of the pilot. Employees may not receive time off awards for more than 100 hours of weekend work performed during the duration of the 6-month pilot period.

NEW HIRES

The parties agree that the FDA will inform new hires (employees hired after April 12, 2001) that they may be required to work on weekends as a regular part of their basic work schedules. They further agree that FDA management may begin to require such employees to work on weekends as a part of their regular, non-overtime work schedules as soon as FDA management determines that such employees are qualified to perform the assignments in question.

SELECTION OF STAFF TO WORK WEEKEND SCHEDULES

Management retains the right to determine the qualifications necessary to perform specific weekend work assignments. Management will consider such factors as the particular knowledge, skills, and abilities possessed by employees (e.g., specific knowledge or experience needed to perform the particular assignments in question) and the nature of the specific weekend assignments in determining the pool of employees qualified for weekend work assignments.

COVERAGE, EFFECTIVE DATE AND DURATION

This memorandum of understanding applies to all National Treasury Employees Union (NTEU) bargaining unit employees of the ORA, FDA. It will be effective thirty (30) days after execution by the parties' authorized representatives. The agreement supersedes any inconsistent provisions of locally negotiated agreements concerning work scheduling and shall be interpreted in conjunction with the applicable articles of the FDA/NTEU Collective Bargaining Agreement (CBA).

The parties agree that they will assess the effectiveness of this agreement after it has been in effect for a six-month pilot period and that the agreement may be reopened at the request of either party at that time. The provisions of the agreement will remain in effect to the extent required by law until the parties have completed any negotiations in connection with its reopening. The Questions and Answers (Q&A) attached to this agreement have been agreed upon by the parties as a means of explaining and interpreting this agreement. While it is the FDA's intention to continue the pilot for the agreed-upon period, pursuant to 5 U.S.C. § 7106(a)(2)(B), it must reserve the right to terminate the pilot prior to the end of the six-month period. Should it be necessary to do so, the FDA shall satisfy collective bargaining obligations under the law and the CBA prior to effecting changes in conditions of employment.

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