COLLECTIVE BARGAINING AGREEMENT

BETWEEN

FOOD AND DRUG ADMINISTRATION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

AND

THE NATIONAL TREASURY EMPLOYEES UNION

The effective date of this agreement is October 1, 1999.

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ARTICLE 1

CONTRACT COVERAGE

SECTION 1

This Agreement will apply to all professional and nonprofessional employees of the Food and Drug Administration (FDA) who are represented by the National Treasury Employees Union (NTEU), irrespective of the number of bargaining units placed under this Agreement, excluding management officials, supervisors, members of the PHS commissioned corps, confidential employees, all employees of the Office of Criminal Investigations and the Office of Internal Affairs, and all employees engaged in federal personnel work in other than a purely clerical capacity. The bargaining units placed under this Agreement will include, but will not be limited to, the units identified in Attachment 1-1 to this Article.

NTEU bargaining units to be covered by this Agreement currently include:

1. FDA AGENCY-WIDE PROFESSIONAL EMPLOYEES BARGAINING UNIT

Included: All professional employees employed by the U.S. Department of Health and Human Services, Food and Drug Administration, nationwide.

Excluded: All non-professional employees, members of the Public Health Service Commissioned Corps, management officials, supervisors, and employees described in 5 USC 7112(b)(2), (3), (4), (6) and (7), and employees currently represented by the National Treasury Employees Union or another labor organization.

2. FDA AGENCY-WIDE NONPROFESSIONAL EMPLOYEES BARGAINING UNIT

Included: All nonprofessional employees employed by the U.S. Department of Health and Human Services, Food and Drug Administration, nationwide.

Excluded: All professional employees, members of the Public Health Service Commissioned Corps, management officials, supervisors, and employees described in 5 USC 7112(b)(2), (3), (4), (6) and (7), and employees currently represented by the National Treasury Employees Union or another labor organization.

3. EMPLOYEES OF FDA SOUTHEAST REGION; EMPLOYEES IN FDA REGIONAL OFFICES LOCATED IN DALLAS, TX; SAN FRANCISCO, CA; OAKLAND, CA AND BROOKLYN, NY.

Included: All professional and nonprofessional employees employed by the Department of Health and Human Services, Food and Drug Administration, in the Southeast Regional Office located in Dallas, TX, in the Pacific Regional Office located in Oakland, CA and in the Southeast Regional Laboratory, and employees in the Atlanta, Florida, Nashville, New Orleans, and San Juan Districts.

Excluded: All management officials, supervisors, members of the Public Health Service Commissioned Corps, and employees described in 5 USC 7112(b)(2),(3),(4),(6) and (7).

4. EMPLOYEES OF FDA KANSAS CITY DISTRICT

Included: All professional and nonprofessional General Schedule and Wage Grade employees employed by the Regional Office and Field Offices of the U.S. Food and Drug Administration, Region VII, Kansas City, MO

Excluded: Management officials, supervisors and employees described in 5 USC. 7112(b)(2),(3), (4), (6), and (7).

5. EMPLOYEES OF FDA CINCINNATI DISTRICT

Included: All professional and nonprofessional employees of the U.S. Department of Health and Human Services, Food and Drug Administration, Office of Regulatory Affairs, Central Region, Cincinnati District, and its resident posts.

Excluded: All management officials, supervisors, and employees described in 5 USC 7112(b)(2), (3), (4), (6) and (7).

6. EMPLOYEES OF LOS ANGELES DISTRICT

Included: All professional employees of the U.S. Department of Health and Human Services, Food and Drug Administration, Investigations Branch, Los Angeles District Office, Irvine, California

Excluded: Nonprofessional employees, members of the Public Health Service Commissioned Corps, management officials, supervisors, employees described in 5 USC 7112(b)(2), (3), (4), (6) and (7).

Included: All nonprofessional employees of the U.S. Department of Health and Human Services, Food and Drug Administration, Investigations Branch, Los Angeles District Office, Irvine, California

Excluded: Professional employees, members of the Public Health Service Commissioned Corps, management officials, supervisors, and employees described in 5 USC 7112(b)(2), (3), (4), (6) and (7).

7. NON-PROFESSIONAL EMPLOYEES OF FDA DETROIT DISTRICT

Included: All nonprofessional employees of the Food and Drug Administration (FDA), DHHS, Detroit District Office, Detroit, MI and residents posts.

Excluded: Employees of the Public Health Service Commissioned Corps, professional employees, management officials, supervisors and employees described in 5 USC 7112(b)(2), (3), (4), (6) and (7).

ARTICLE 2

CONTRACT DURATION AND TERMINATION

SECTION 1

A. The execution date of this Agreement shall be the first calendar day following final agreement being reached on all individual articles. The Agreement shall be either approved or disapproved by the Employer within thirty (30) calendar days thereafter. If approved within that time period, its effective date shall be the date on which it is signed by the Employer's designated official, so long as that date is within the same thirty (30) calendar day period. If the Agreement is not approved or disapproved within thirty (30) calendar days after being executed, it shall become effective as a matter of law the following day (i.e. the thirty-first (31st) calendar day after its execution).

B. Within the 30 (thirty) calendar day review period, the Employer may, at its option, notify the Union of the Employer's anticipated disapproval of the negotiated language pursuant to 5 USC section 7114(c), identifying any portion of the language with which it has specific concerns. The Parties may thereafter attempt to negotiate an adjustment of the provision(s) at issue. If the Employer disapproves of the negotiated language pursuant to section 7114(c), the Union is free to petition the FLRA to challenge that decision.

SECTION 2

A. This Agreement shall remain in full force and effect until five (5) years from its effective date. It shall be automatically renewed from year to year thereafter unless reopened or terminated pursuant to the provisions of subsections B and C below. In addition, either Party may reopen three (3) articles of this contract during the thirty (30) calendar days surrounding the 30th month anniversary of this Agreement.

B. Either Party may give written notice to the other Party, between sixty (60) calendar days and one hundred five (105) calendar days prior to the initial expiration date and each anniversary date thereafter, of its intention to either 1) reopen and amend or modify, or 2) terminate the Agreement. Such written notice may be accompanied by proposals for ground rules or a statement of the provisions(s) in the Agreement which the Party desires to amend or modify.

C. When notice of intent to reopen is given, the Parties shall confer within fourteen (14) calendar days to set up a meeting for the purpose of negotiating ground rules for the conduct of the substantive negotiations; this meeting should occur no later than thirty (30) calendar days prior to the expiration/anniversary date. The ground rules which are negotiated shall be reduced to a Memorandum of Understanding (MOU). If neither Party gives notice to reopen, modify, or terminate the Agreement, it will automatically be renewed for yearly periods thereafter.

D. The Parties will meet to negotiate the substantive amendments or modifications consistent with the MOU on ground rules. Subject to the Parties statutory rights to terminate certain provisions or to implement government-wide regulations promulgated during the term of this Agreement, the Agreement will continue in full force and effect until a new Agreement has been approved.

SECTION 3

The Employer surrenders no rights other than those specifically governed and enunciated by this Agreement.

SECTION 4

In the event that any provisions of the Agreement shall at any time be found, declared, or made invalid by a court of competent jurisdiction or by operation of any law, regulation, or decree, or Executive Order, the entire Agreement will not be invalidated.

ARTICLE 3

MID-TERM BARGAINING

SECTION 1

These procedures cover the negotiations, which flow from changes in conditions of employment, which affect employees in the bargaining unit and which create a mandatory obligation to bargain.

SECTION 2

When the Employer wishes to implement negotiable changes in personnel policies, practices and working conditions the Employer will provide the Union advanced notice of the proposed changes in conditions of employment.

A. When the Employer notifies the Union of changes that are not national in scope, i.e., not involving more than one (1) FDA region, this notice shall be served as follows:

   1. When the proposed changes affect employees within headquarters or a single district, such notice will be served on the appropriate chapter president and any subsequent negotiations will be done in the D.C. headquarters or the district headquarters office, absent agreement to do it at some other site;

   2. When the proposed changes affect employees in districts within the jurisdiction of more than one chapter, but within only one region, each chapter president will be served notice prior to negotiations.

   Notice shall be provided within a reasonable period of time in advance of the implementation of the proposed changes, taking into consideration the nature and scope of the proposed changes and the need for timely implementation. The notice will contain a proposed implementation date. Service may be by certified return receipt mail, e-mail, or facsimile. However, if the Employer uses an electronic method of service, it will use at least two (2) of them to ensure delivery.

B. When the Employer's proposed changes are national in nature, that is, they would take place in more than one region, the notice shall be provided to the President of NTEU at least fifteen (15) calendar days in advance of the proposed changes. The notice to the Union's representatives will be deemed effective upon hand delivery, certified mail (return receipt requested) mailed to the NTEU National Office, fax, or other method (e.g., e-mail) that can confirm receipt. However, if the Employer uses an electronic method of service, it will use at least two (2) of them to ensure delivery.

C. Following receipt of the notice described in A and B above, the Union will be provided a briefing on the proposed changes, upon request. If the Union wishes to negotiate concerning the proposed changes, the Union will notify the Employer in writing of its intent to bargain within fifteen (15) calendar days. Such notice will be provided to the same Employer representative who sent the notice of proposed change to the Union and will be deemed effective upon hand delivery, certified mail (return receipt requested), fax, or other method (e.g., e-mail) that can confirm receipt. This written request to bargain will include a request for a briefing, if the Union wants a briefing. This briefing will occur within fifteen (15) calendar days of the Employer's receipt of the request to bargain. The Union will submit its proposals within seven (7) calendar days after the briefing or within fifteen (15) calendar days after receipt of the notice set forth above, if no briefing is held. The Union will send its proposals to the official designated in the Employer's notice of proposed changes. At this time, the Union will also inform the Employer of its designated representative for purposes of the mid-term bargaining. Negotiations will start shortly thereafter.

SECTION 3

A. The following will guide the procedures of negotiating mid-term matters, both local and national:

1. By mutual agreement, the Parties may use alternatives to face-to-face meetings.

2. Upon request, the Union will be provided a briefing concerning the proposed changes, as described in Section 2.

3. If mutually agreed, on a case-by-case basis, the Parties may choose to proceed with implementation, subject to the Union's right to reopen no later than the last working day of the final week of the ninth full month after the date of notice. This period may be extended by mutual agreement. Nothing herein shall be deemed to waive the Union's right to file an unfair labor practice charge in the event that such implementation occurs without mutual agreement.

4. Nothing herein shall be deemed to waive the Employer's authority as provided by law (e.g., exigencies) to implement proposed changes in conditions of employment before the completion of bargaining.

5. At all stages of the process, the Parties will communicate and bargain in a good faith effort to reach agreement in an expeditious manner.

6. The Employer shall provide a site for mid-term bargaining when face-to-face negotiations are held.

7. At the beginning of bargaining, the Parties may notify the appropriate Federal Mediation and Conciliation Service (FMCS) office in each instance of an ongoing matter subject to this process.

8. Either Party has the right to request the assistance of an FMCS mediator at the appropriate FMCS office at any time during bargaining. It is understood that a Party will not request FMCS intervention unless it has a basis to believe that bilateral efforts between the Parties will not result in an agreement in a timely manner. The requesting Party should notify the other Party of its intention to request FMCS assistance. The Employer and the Union will share equally all fees charged by FMCS.

9. When mediation has been requested, the Parties will schedule a mediation session with the mediator as soon as practical, if appropriate. The Parties will make every attempt to hold any mediation sessions, telephonically or in person, as expeditiously as possible.

10. If the mediator declares the Parties at impasse, the Parties may, upon mutual agreement, jointly contact a designated mediator/advisory arbitrator.

11. If the Parties have not reached agreement, they will then submit their dispute(s) to the Federal Service Impasses Panel (FSIP) for final resolution.

B. Following execution of this Agreement, the Parties will select, by mutual agreement, two (2) mediator/advisory arbitrators for each region, and one (1) for DC headquarters. These mediator/advisory arbitrators will be available for use by the Parties when they mutually agree to use the procedures established in Section 3.A.(10), above. Either Party can remove a mediator/advisory arbitrator from the process at any time. The removal will be effective ten (10) days after the Party seeking the removal notifies the other Party of their intent. In the event of such a removal, the mediator/advisory arbitrator will continue to fulfill her/his obligations for any cases to which he/she has been assigned by the Parties.

C. Neither Party waives any right to exercise any of its statutory rights and remedies such as unfair labor practices, negotiability appeals, or Agency head review.

D. The Parties shall share equally the cost of any mediation/advisory arbitration proceedings under this Agreement.

E. The Union will be authorized the same number of negotiators on official time as the number of Employer negotiators. However, the Union will always be entitled to have at least two (2) FDA employee representatives present for bargaining below the national level or one per involved chapter, whichever is more. At national level bargaining, the Union may have at least four (4) FDA employee representatives present.

F. The Union and the Employer will incorporate any agreement into a Memorandum of Understanding (MOU), and each party will sign the MOU. Each MOU will contain a provision indicating an effective date and an expiration date. Any MOU will be subject to re-opening upon expiration or renewal of the national collective bargaining contract (this Agreement).

G. All disputes concerning the interpretation or application of MOUs will be addressed through the Negotiated Grievance Procedure described in Article 45 of this Agreement.

SECTION 4

The Union employee representatives involved in bargaining will be reimbursed for travel and per diem expenses as follows:

A. In national bargaining, the Employer will pay all reasonable travel and per diem expenses for two (2) FDA employee representatives or, if greater, a number equal to one-half the number of management representatives on travel and per diem for the same negotiations.

B. In local bargaining where more than one district and/or chapter is involved, the Employer will pay 50% of all reasonable travel and per diem expenses for one (1) FDA employee representative per chapter.

C. In local bargaining involving only one chapter, e.g., involving only one district office, the Employer will pay for 50% of all reasonable travel and per diem expenses. However, the Parties will attempt to schedule this bargaining so that it coincides with other travel that may be reimbursed under this contract, e.g., a partnership committee meeting.

D. Local travel expenses within a commuting area will be fully reimbursed by the Employer for all forms of negotiations. The travel and per diem expenses of one (1) FDA representative traveling to any headquarters unit located outside of the Washington, D.C. metropolitan area for the purposes of negotiations will also be fully reimbursed by the Employer.

E. In order to defray the costs of the joint meetings during the first year of implementation of this Agreement, the FDA will provide a fund of $5,000 in each region to cover Union travel and per diem expenses. The Union must spend a minimum of $200 on travel and per diem expenses in each region in order to gain access to the $5,000 fund in each region. While the funds may be shared between regions (assuming that the minimum amount has been spent by the Union in each region that wishes to share its fund), any money remaining in the regional travel and per diem expense funds at the end of the first year of this Agreement will be retained by FDA.

ARTICLE 4

EFFECT OF LAW AND REGULATION

SECTION 1

As of the effective date of this Agreement, the Parties are governed by existing and future laws; government-wide rules and regulations in effect upon the effective date of this Agreement that do not conflict with this Agreement. Similarly, HHS and FDA Instructions in effect on the effective date of this Agreement govern the working conditions of the Parties, unless they are contrary to the terms of the Agreement.

SECTION 2

Any rule or regulation published after the effective date of this Agreement, over which the Employer is obligated to bargain to the extent required by law, will not be enforced for bargaining unit employees either 1) until the Parties have fulfilled their bargaining obligations in accordance with the FLMRS, or 2) if it conflicts with the specific terms of the Agreement. An exception to this provision will be if the Parties mutually agree to accept enforcement of the rule, regulation, etc. If they agree, the rule or regulation will be effective upon agreement.

ARTICLE 5

EMPLOYEE RIGHTS AND RESPONSIBILITIES

SECTION 1

As provided by 5 USC 7102, each employee shall have the right to form, join or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right, except as otherwise provided under 5 USC Chapter 71. Such rights include the right:

A. To act for a labor organization in the capacity of a representative and the right in that capacity to present the views of the labor organization to the Employer, the heads of agencies, and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and

B. To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this Agreement.

SECTION 2

A. In accordance with 5 USC 7114(a)(2)(B), the Union will be given the opportunity to be represented at any examination of an employee in the unit by a representative of the Employer in connection with an investigation if 1) the employee reasonably believes that the examination may result in disciplinary action against the employee; and 2) the employee requests the representation.

B. Employees will be informed annually of this right to representation through e-mail beginning six (6) months after the effective date of this Agreement.

C. If an employee requests Union representation under this Article and a Union representative is not available, the examination will be terminated for a period of time not to exceed one (1) workday in order to secure a Union representative in headquarters, regional or district offices. If the examination will be in a field office outside of a regional or district office, or in a headquarters office located in the field, the examination may be postponed no longer than (3) three workdays in order for the employee to secure a representative.

D. During an examination under this Article, a Union representative may elect to participate by telephone. When the Union's representative elects to participate by telephone, the Union may also designate an ad hoc representative to accompany the employee in person. The ad hoc representative must request official time pursuant to Article 10 Union Representatives/ Official Time of this Agreement.

E. The Agreement also contains provisions related to the payment of travel and per diem expenses for Union representatives who must travel in order to perform representational duties.

F. The Employer recognizes the need for these examinations to be conducted in a manner that assures that the privacy of the employee is protected.

SECTION 3

A. At the beginning of an investigatory interview, an employee will be informed in sufficient detail of the purpose and nature of the meeting so that he or she is able to determine whether there is a need for Union representation.

B. During investigatory interviews involving criminal conduct, an employee's refusal to respond to questions based on a proper invocation of the privilege against self-incrimination may not be used as the sole basis for a disciplinary or adverse action, except as provided in Subpart C, below.

C. The Employer may determine, in appropriate circumstances potentially involving criminal misconduct, that it is necessary or desirable that employees being interviewed be required to respond to questions concerning misconduct or face disciplinary action, provided that the employees are informed that their answers cannot be used to incriminate them. In such cases, the Employer shall give the following warning, orally and in writing:

> *You are here to be asked questions pertaining to your employment with FDA and the duties you perform for FDA. You have a duty to reply to these questions, and Agency disciplinary proceedings resulting in discipline up to and including discharge may be initiated as a result of your answers. However, neither your answers nor any information or evidence which is gained as a result of such answers can be used against you in any criminal proceeding, except that you may be subject to a criminal prosecution for any false answer that you may give. You may be subject to discharge if you refuse to answer or fail to respond truthfully to any relevant question.*

D. When employees are given the warning, they shall be given "Statement of Rights and Obligations" (Kalkines Rights) (See appendix.). Employees will acknowledge on the statement the receipt of the above warning. (The Employer may require the employee to sign the acknowledgment indicating receipt of the warning.) Employees should be given a copy of the executed statement for their own records. The employee's signature on the acknowledgment will indicate only that the employee actually received the warning; however, it will never constitute an admission of any wrongdoing by the employee.

E. When a Union representative represents an employee during an investigation, he/she may:

- Clarify the questions;
- Clarify the responses;

- Assist the employee in providing favorable or extenuating facts;
- Identify other employees who have knowledge of relevant facts;
- Request a caucus;
- Advise the employee during the examination or a caucus.

However, the Union representative may not disrupt the meeting and may not answer for the employee.

F. The Employer recognizes that interviews of employees by investigative officials of the Employer should be limited to matters of official interest to the Employer and, accordingly, will not address private matters outside the appropriate scope of the investigation.

SECTION 4

A. The Employer retains the right to hold counseling sessions with employees without the presence of a Union representative. A counseling session may include informal discussions between a supervisor and an individual employee regarding the employee's work performance; work; work assignments and procedures; application of established office policies and practices; leave practices and requests; and discussions of a personal nature. They may not be used to convey or develop changes in personnel policies, practices and general working conditions.

B. When a counseling session includes a representative from Employee or Labor Relations, the employee will be given an opportunity to have Union representation present. For all other counseling sessions where there is more than one management official or representative present, the employee may request Union representation provided that meeting the request does not unreasonably delay the meeting.

C. It is not intended that this paragraph will limit the Union's right to have a representative present at formal discussions under 5 USC 7114(a)(2) as addressed in Section 1 of Article 7, Union Rights.

SECTION 5

Employees will be free from any restraint, interference, coercion, discrimination, or reprisal by the Employer or the Union for presenting information concerning any matter for which remedial relief is available under this Agreement.

SECTION 6

A. The Employer recognizes and respects the dignity of employees in its formulation and implementation of personnel policies and practices and conditions of work. It is the

responsibility of all employees and supervisors to control their behavior at all times and to abide by the Standards of Conduct of the Department. The Employer, employees, and the Union will treat each other in a professional, businesslike and courteous manner. The Parties recognize the need for supervisors, management officials, Union representatives and employees to treat each other and members of the public with courtesy, consideration, and respect. However, nothing in this Section shall be construed to waive the right of the Employer and the Union to engage in robust debate.

B. In a meeting with his/her supervisor, if an employee reasonably believes that a physical confrontation or verbal abuse is imminent, the employee may request a single one-hour break in the meeting. Under such circumstances, the Parties recognize that such a break may be conducive to effective employee/supervisor relationships, and the supervisor will not arbitrarily deny such breaks.

SECTION 7

Employees will carry out the instructions of the Employer. Employees will not be subjected to disciplinary action as a result of carrying out lawful instructions of the Employer. No employee will be disciplined or retaliated against solely as a result of carrying out the lawful instructions of the Employer or any other FDA management official with real or apparent authority.

SECTION 8

The rights and protections established in 5 USC 2301(b), Merit System Principles, and 5 USC 2302(b), Prohibited Personnel Practices, are hereby incorporated into this Article. (See Attachment 5-1).

SECTION 9

Employee participation in the Combined Federal Campaign, blood drives, and other solicitations will be voluntary, and employees will not be coerced to contribute. Supervisors may solicit pledges or contributions from employees generally, however, a supervisor will not solicit pledges or contributions from an individual employee under his/her supervision. If the Employer conducts pep rallies, informational meetings, or other activities, e.g. auctions, they will in no case lessen an employee's right to take lunch and other breaks apart from attending the rallies or meetings.

SECTION 10

An employee cannot be required to tell a supervisor the specific circumstances surrounding his/her need to contact a Union representative. When an employee wishes to request permission to leave the work site to contact a Union representative, he/she must inform his/her supervisor of the general nature of the visit. The employee must receive prior approval from the supervisor to leave the work site. The amount of time spent will be reasonable. The employee's request will be granted

and may only be delayed if the employee's absence would create a severe workload problem. Examples of severe workload problems are an inability to complete specific or previously assigned work projects which must be completed during the period of time in question, or when an employee's absence would result in no office coverage. Under only the most unusual circumstances will the supervisor require the delay to exceed one (1) workday. If permission is not granted, the supervisor will identify the time period when the employee may meet his/her Union representative and any filing deadline will be postponed for a like period.

SECTION 11

A. If an employee does not receive a salary check (including direct deposit) on the designated date, the employee may contact the local administrative office for the appropriate forms necessary to request a replacement check. The Employer will process fully completed and signed forms expeditiously and in accordance with U.S. Treasury regulations. The Employer will urge the payroll office to process the information within two (2) workdays of receipt.

B. When an employee does not receive a salary check (including direct deposit) the employee may request an emergency payment to avoid financial hardship.

    1. *Electronic Fund Transfer* – An employee who receives his/her salary check via electronic fund transfer (also referred to as direct deposit) may request an emergency employee payment on the Thursday after payday, if the employee's bank did not receive a direct deposit by the close of business Wednesday.

    2. *Mail Delivery* – An employee who receives his/her salary check via mail delivery may request an emergency employee payment on the Friday after payday, if the employee has not received their paycheck at their residence by close of business on Thursday.

    3. Absent just cause, e.g., travel, sickness, etc., employees must repay the emergency payment in full immediately upon receipt of the missing salary check or replacement check.

SECTION 12

A. It is recognized that all employees are expected to pay promptly all just financial obligations. Subject to the duty to comply with the Fair Debt Collection Practices Act, the Employer may take those steps which are necessary to garnish an employee's wages to the extent mandated by the lawful application of a creditor qualified under the terms of the Act.

B. The Employer agrees that it will not otherwise disclose or discuss the employee's financial information without the explicit signed, written consent of that employee or either a court order or other mandatory operation of law. The Employer is not barred from verifying the employment status or the grade or gross salary of the employee.

C. Nothing in this Article shall prevent the Employer from complying with an order from a court of competent jurisdiction.

SECTION 13

In the event any FDA employee declines to undergo a polygraph examination, when so requested, Special Agents should advise any adjudicators that no adverse action may be taken based solely on that declination.

SECTION 14

Employees are accountable to the Employer for performance of their officially assigned duties and responsibilities. In the performance of those duties and responsibilities, employees will be governed in their conduct by the HHS Standards of Conduct Regulations and the Code of Ethics and Standards for Government Service.

SECTION 15

Nothing in this Agreement shall require an employee to become a member of the Union or to pay money except pursuant to a voluntary, written, authorization by a member for payment of dues through payroll deductions as provided in this Agreement. Except for the limitations on the timing of a revocation/termination of dues withholding established in Article 8, Dues Withholding, nothing in this Agreement shall require an employee to remain a member of the Union.

SECTION 16

Employees may decorate their offices and individual work areas, but decorations may not interfere with or violate the following:

A. The Agency's method of conducting business;

B. The rights of other employees and the public;

C. Federal property requirements and facility maintenance needs;

D. Commonly accepted standards of good taste; and

E. All employees that are certified to perform CPR may display symbols for CPR in their offices and individual work areas.

SECTION 17

A. Employees will be given two (2) hours of duty time during the first week after the effective date of the Agreement to read the Agreement. This time must be used to read the Agreement at the employee's work station. The specific time will be determined with the approval of the supervisor.

B. All new employees to the bargaining unit will also be provided two (2) hours of duty time to read the Agreement, in a manner consistent with the provisions in Subpart A, above.

SECTION 18

When a move of office space or equipment is likely to result in a significant change in working conditions, the Employer will notify the Union in advance of the change pursuant to the requirements of Article 3, Midterm Bargaining. Normally, this notice will include a proposed floor plan reflecting the changes as well as a move schedule, list of impacted employees, and reasons for the move. Any bargaining will be conducted in accordance with Article 3, however, the Union will participate in any early resolution of differences proposed by the Employer. Moreover, the Employer is authorized to negotiate at the local level to establish expedited impasse resolution procedures. Finally, while the Parties are to address how function and grade are used to assign office space, they will use Federal SCD to break any ties in competition for offices, followed by departmental, and then FDA seniority, if necessary.

SECTION 19

While the Employer has a right to search employee work sites, files, communications, computer discs and related items, employees will not be subjected to intrusive searches unless the Employer has a legitimate, work-related basis for doing so and the search is performed in a manner consistent with employee's rights. Prior to all searches of an employee's non-electronic material, e.g., desks, lockers, etc., performed by Employer representatives other than criminal investigatory personnel, the Employer will notify the employee in advance of the search and will give the employee, if requested, a reasonable amount of time to arrange to have a Union representative or other employee witness present.

SECTION 20

A. Professional differences of opinion between bargaining unit employees and the Employer will be addressed in conformance with 21 CFR 10.70 and 10.75.

B. In accordance with 21 CFR10.70, when there is a professional difference of opinion on a matter, the Employer will enter into the administrative file an explanation of the significant controversies or differences of opinion and their resolution (or lack thereof). The employee will be notified of his or her right to record his or her own individual views on the matter in a

written memorandum, which shall be placed in the file. Where the employee is in a concurrence chain (including situations where the employee would be the originator of the document), he or she will not be required to concur on any approval document with which he or she professionally disagrees.

C. In accordance with 21 CFR 10.75, an employee may request a review of any decision made by any FDA employee, other than the Commissioner. The review will be made by consultation between the employee and the supervisor or by review of the administrative file on the matter, or by both. The review will ordinarily follow the established Agency channels of supervision or review on that matter.

D. In accordance with 21 CFR 10.75, when an interested party outside the FDA requests internal Agency review of an employee's decision, including any complaint made orally or in writing, the employee will be notified of the request and will be directed to the appropriate administrative file on the matter.

E. No employee will be penalized by the Employer for exercising his or her rights under this Section.

ATTACHMENT 5-1

MERIT SYSTEM PRINCIPLES (5 USC 2301): Federal personnel management should be implemented consistent with the following system principles:

A. Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

B. All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

C. Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

D. All employees should maintain high standards of integrity, conduct, and concern for the public interest.

E. The Federal work force should be used efficiently and effectively.

F. Employees should be retained on the basis of the adequacy of their performance; inadequate performance should be corrected; and employees should be separated who cannot or will not improve their performance to meet required standards.

G. Employees should be provided effective education and training in cases in which such education and training will result in better organizational and individual performance.

H. Employees should be protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for an election.

I. Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, and abuse of authority, or a substantial and specific danger to public health and safety.

PROHIBITED PERSONNEL PRACTICES (5 USC 2302): Any employee who has the authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority:

A. Discriminate for or against any employee or applicant for employment:

1. On the basis of race, color, religion, sex, or national origin, as prohibited under Section 717 of the Civil Rights Act of 1964 (42 USC 2000e-16);

2. On the basis of age, as prohibited under Sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 USC 631, 633a);

3. On the basis of sex, as prohibited under Section 6(d) of the fair Labor Standards Act of 1938 (29 USC 206(d));

4. On the basis of handicapping condition, as prohibited under Section 501 of the Rehabilitation Act of 1973 (29 USC 791);

5. On the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation.

B. Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on personal knowledge or records of the person furnishing it and consists of an evaluation of the work, performance, ability, aptitude, or general qualifications of such individual; or an evaluation of the character, loyalty, or suitability of such individual;

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

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

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

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

G. Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative [as defined in 5 USC 3110(a)(3)] of such employee if such position is in the agency in which the employee is

serving as a public official [as defined in 5 USC 3110 (a)(2)] or over which such employee exercises jurisdiction or control as such an official;

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

1. A disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; if such disclosure is not specifically prohibited by law; if such information is not specifically required by Executive Order to be kept secret in interest of national defense or the conduct of foreign affairs; or a disclosure to the Special Counsel of the Merit Systems Protection Board, or the Inspector General of any agency or another employee designated by the head of the Agency to receive such disclosures of information which the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

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

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

4. Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule or regulation implementing or directly concerning the merit system principles contained in 5 USC 2301 or elsewhere in Title 5 of the United States Code.

ARTICLE 6

ARTICLE 6 HAS BEEN WITHDRAWN FROM THIS DOCUMENT.

ARTICLE 7

UNION RIGHTS

SECTION 1

A. It is agreed that the Union shall be given the opportunity to be represented at all formal discussions between the Employer and the employee concerning any grievance, or any personnel policy or practices or matters affecting the general working conditions of employees in the unit. In this regard, the Employer agrees to notify the Union two (2) days in advance of the meeting, except in emergency situations. Notice in each chapters shall go to the representative(s) designated by the Union. In the absence of such written description, notice shall go to the chapter president.

B. The attendance of the designated Union representative will be acknowledged by the Employer at the start of the formal meeting. The Union representative will be given the opportunity to ask relevant questions on behalf of the employees and may make a brief statement of the Union's position on the matter under discussion.

SECTION 2

All requests for data made by the Union under 5 USC 7114(b)(4) will be identified and submitted to the Employer, or the Employer's designee, and shall be processed in accordance with all applicable laws, including case law, and regulations and contractual obligations. When a request cannot be fulfilled within fifteen (15) working days, the Union will have the option of either postponing or amending any filing or other deadlines related to the information request.

SECTION 3

The Union may refuse to represent any bargaining unit employee in any statutory appeal matter, which includes the following:

- Adverse actions such as removals, demotions, etc.
- EEO complaints
- Unacceptable performance actions such as removal or demotion
- Workers compensation cases
- Allegations of prohibited personnel practices

SECTION 4

All NTEU field representatives will be provided with access identification cards for the buildings which contain bargaining unit members and will follow the appropriate local sign in procedures.

ARTICLE 8

DUES WITHHOLDING

SECTION 1

This Article is for the purpose of authorizing eligible employees who are members of the Union to pay dues through voluntary allotments from their compensation. To be eligible to make such voluntary allotment, an employee must:

- Be a member in good standing of the Union
- Be an employee of the bargaining unit covered by this Agreement
- Have voluntarily completed Standard Form 1187 (SF-1187), "Request and Authorization for a Voluntary Allotment of Compensation for Payment of Employee Organization Dues"
- Have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues

SECTION 2

The Union and Employer agree that the provisions of this Article are subject to and will be governed by applicable Federal laws, rules, and regulations, and issuances of HHS and OPM.

SECTION 3

The Union agrees to do the following:

A. Inform and educate members of voluntary nature of the system for the allotment of labor organization dues, including the conditions under which the allotment may be revoked;

B. Purchase SF-1187s and make them available to employees;

C. Complete Section A of SF-1187 and keep the official designated by the Employer informed of any changes in this information. The Union will assure that the employee's Social Security number, job title, and work location are properly annotated in the appropriate blocks on the SF-1187. The Union will promptly submit the completed SF-1187 to the Employer's designated official (EDO) after the signing by both the authorized official and the employee;

D. Inform the EDO of the name of any particular employee who has been expelled or ceases to be a member in good standing in the Union;

E. Inform the EDO of any changes in the dues amounts or the formula for membership dues. Changes in the dues amounts will begin the first full pay period designated by the Union's National Office. Changes to the dues amount will be made as soon as possible, but no later

than sixty (60) days after notification. NTEU will make no more than one (1) such change in a twelve (12) month period; and

F. Promptly advise the EDO of the names of and complete mailing addresses and changes thereto of officials who are responsible for certifying SF-1187s and to whom remittances, printouts, and other dues withholding data should be submitted.

SECTION 4

The Employer agrees to do the following:

A. Deduct and process voluntary allotments of dues and changes in dues upon certification from the NTEU National President in accordance with this Agreement;

B. Withhold authorized dues on a bi-weekly basis at no cost to the Union or the employee;

C. Upon receipt of a properly certified SF-1187, prepare the Department of Health and Human Services Form 610 for transmission within one (1) full pay period of its receipt. The SF-1187 should be entered into the payroll system, and dues withholding started, no later than the full pay period following receipt of the SF-1187 by the EDO;

D. Notify the Union when an employee, who has submitted a SF-1187, is not eligible to enroll in the automatic dues withholding program because he/she is not included under the recognition in the appropriate, exclusively recognized unit on which the Agreement is based;

E. Prepare remittances and reports as follows:

1. Transmit to the Union the total amount deducted for all employees and total amount remitted to the Union;

2. Remittance will be made directly to the Administrative Controller, National Treasury Employees Union, Suite 600, 901 E Street, NW, Washington, DC 20004, along with a printout showing the following:

a. Pay roll period number, pay period ending date, dues account number, and date the report was prepared;

b. Identification of installation;

c. Identification of the labor organization, including the Union Chapter number;

d. Name and address of Remittance Official and Employer's designated official;

e. Names of employees for whom payroll deductions are made and the amount of the deduction. All changes in deductions from the previous report will be grouped at the top of the list with an explanatory message for each change; and

f. Number of records, number of deductions, total amount deducted, total fees, and net due to Union.

F. Provide information on the printout referred to above for the purpose of notifying the Union of the following:

1. Separated employees;

2. A new allotment;

3. A revocation of an employee's dues withholding;

4. No deduction because the employee's compensation was insufficient to permit a deduction;

5. Automatic pay adjustment;

6. The employee's names in alphabetical order by last name;

7. Social security numbers, if available. (The Union has the responsibility for ensuring the confidentiality of this information.); and

8. Amount withheld.

G. Assign the appropriate Union dues withholding account number for the current level of dues; and

H. Withhold new amounts of dues upon certification from the NTEU National President so long as the amount has not been changed during the last twelve (12) months.

I. The Parties will jointly approach the Deputy Secretary of Health and Human Services, and request that he insert into the Multi-Unit Agreement the obligation to provide to NTEU via electronic file transfer or magnetic tape and on a bi-weekly basis the italicized information noted directly below. However, if Mr. Thurm does not agree to do so by the thirtieth (30th) day after the effective date of this Agreement, the Parties will refer this dispute over who should have the obligation to provide the information (as well as in what format) to Mr. Jerome Ross for resolution. The decision of Mr. Ross will be final and binding.

On a bi-weekly basis, the Employer will send to the Union a copy of the Employer's dues withholding data via magnetic media or electronic file transfer. The file format of the subject file must be:

POSITION	***LENGTH***	***TYPE***	***NAME***
01	*9*	*Numeric*	*SSN*
10	*3*	*Numeric*	*Chapter*
13	*10*	*Alpha*	*First Name*
23	*13*	*Alpha*	*Last Name*
36	*1*	*(Spaces)*	*Filler*
37	*5*	*Zone Decimal**	*Amount(++1)*
42	*3*	*Alpha or Spaces*	*WAEID*
45	*1*	*Alpha*	*D/W Code*
46	*5*	*(Spaces)*	*Filler*
51	*2*	*Numeric*	*Duty State Code*
57	*3*	*Numeric*	*Duty County Code*
60	*2*	*Numeric*	*Grade*
62	*2*	*Numeric*	*Step*
64	*2*	*Alpha*	*Pay Plan*
66	*4*	*Zone Decimal**	*National Amount D/W*
70	*4*	*Zone Decimal**	*Chapter Amount D/W*
74	*6*	*Zone Decimal**	*Bi-weekly Base Pay*
80	*1*	*Numeric or Spaces*	*Special Code*

** These are not packed decimal fields*

The Employers bi-weekly dues data file will indicate the following:

1. *Whether the employee retired or was separated;*
2. *Whether the employee is continuing to be carried in a non-duty status;*

3. *Whether the employee is full-time, part-time, seasonal, intermittent, term, temporary, or permanent;*

4. *The geographic locality of each employee that is used to determine the appropriate locality pay;*

5. *The bi-weekly base pay of the employee, his or her grade and step, pay plan (General Schedule or Wage Grade);*

6. *National portion of dues withheld;*

7. *Local chapter portion of dues withheld;*

8. *Total amount of dues withheld; and*

9. *A list of applicable dues withholding codes and their meaning shall be included in this Agreement as an Attachment 8-1.*

SECTION 5

It is agreed that allotments will be terminated:

- When an employee ceases to be a member in good standing of the Union
- If the Union loses exclusive recognition for the covered unit
- If the employee is reassigned or promoted from the unit for which the Union has been accorded exclusive recognition
- When the employee is separated from the Federal Service

SECTION 6

The effective dates for actions under this Agreement are as follows:

ACTION	**EFFECTIVE DATE**
A. Starting dues withholding	No later than one full pay period following receipt of the SF-1187 by the EDO.
B. Change in amounts of dues	Beginning the first full pay period designated by the Union's National Office. This dues change will be made as soon as possible, but not later than sixty (60) days after notification. Such changes in dues amounts will be limited to one (1) change each twelve (12) months.

C. Termination due to loss of membership in good standing	Beginning of first full pay period after the date of notification into the Employer's automated personnel and pay system.
D. Termination due to loss of recognition	Beginning of the first full pay period following the loss of exclusive recognition upon which the allotment was based.
E. Termination due to separation or movement out of the exclusive unit	Beginning of first full pay period after the date of receipt of notification into the Employer's automated personnel and pay system.
F. Revocation by employee	Revocation notices for employees who have had dues allotments in effect for more than one (1) year must be submitted to the EDO during pay period 15. Revocations will become effective during pay period 19. Revocation notices for employees who have not had dues withholding in effect for at least one (1) year must submit the revocation notice to the EDO on or before the one year anniversary date of their dues allotment. In all cases, revocations will only be effected by submission of a completed SF-1188 that has been initialed by the Chapter President or the Chapter President's designees. If the SF-1188 is not initialed, the Employer will return the SF-1188 to the employee and direct the employee to the proper Union official for initialing. Once received by the Union, the SF-1188 will be processed in a timely manner.

SECTION 7

When a bargaining unit employee submits paperwork for retirement from the Agency, the employee will be supplied with the following, which will be provided to the designated Employer locations by NTEU. The NTEU package may include the following:

- Letter from NTEU
- NTEU Retirees flyer
- OPM Dues Withholding Authorization Form/Flyer
- NTEU Cash Dues Application
- Other NTEU information

SECTION 8

The Union will promptly remit any erroneous payments it receives for which it has not provided an employee reasonable services, e.g., the payment due another Union.

SECTION 9

Each January, May and September, the Employer will provide the Union a data file which will contain the following data on all employees in the bargaining unit:

1. Names
2. Grade and Step
3. Position Title
4. OPDIV
5. Branch
6. Group
7. Unit
8. Post of Duty City
9. Post of Duty State
10. Employees Work Status (such as permanent, intermittent, seasonal, etc.)
11. Age
12. Years of HHS Service
13. Disability
14. CSRS or FERS
15. E-mail address

NTEU Codes and Translations

Codes		
003	NTEU	
022	NTEU	232
096	NTEU	250
105	NTEU	212
257	NTEU	218
332	NTEU	236
490	NTEU	215
499	NTEU	229
612	NTEU	217
880	NTEU	229
884	NTEU	235
935	NTEU	935
941	NTEU	210
965	NTEU	230
994	NTEU	219

NTEU
901 E Street, NW
Washington, DC 20004
The address is the same for all NTEU Unions.

ARTICLE 9

UNION ACCESS TO EMPLOYER SERVICES

SECTION 1

The Employer will permit reasonable use of copying equipment to reproduce material related to the FDA labor management relations program. The Employer reserves the right to insure that all materials being produced relate to the labor management relations program.

SECTION 2

The Union may use the Employer's mailing system including, where necessary, the external postage-paid mail system to transmit or receive representational correspondence concerning the FDA labor relations program. The Union is not authorized to use internal and external mail systems for internal Union business. The external mail system will be limited to first class mail, and will not be used where another system exists for transmission of mail, e.g. internal, inter-office mail system, or e-mail. No external mass mailings may be made without the prior approval of the Employer. The Employer accepts no responsibility for lost, damaged, opened or misrouted mail. In no case will the costs be more than nominal.

SECTION 3

The Employer agrees to provide the Union access to all current FDA written issuances, as well as new issuances, updates, and amendments on personnel policies, practices, and working conditions and, upon request, to furnish the Union one (1) copy of the above.

SECTION 4

A. The Employer will distribute a copy of this Agreement to each bargaining unit employee in the FDA bargaining unit and will provide one hundred (100) copies to the Washington, D.C. headquarters chapter, one hundred (100) copies to NTEU's National Office and fifty (50) copies to all other chapters. The printed Agreement will contain an alphabetized index and a table of contents. The Employer will provide the NTEU National Office with a copy of the Agreement on a disk in Microsoft Word 95.

B. A copy of this Agreement will be provided to new employees (including employees who are transferred, reassigned into the bargaining unit, etc.) in the Entrance on Duty package given to new employees at orientation.

C. The Employer will be responsible for providing copies of this Agreement in alternative formats, e.g., Braille, etc. if requested by a disabled employee.

SECTION 5

A. All Union communications will clearly identify the Union as the source of the communication.

B. The Union's usage of Employer services not addressed in this Article is limited to those matters for which official time is authorized in accordance with Article 10, Union Representatives/ Official Time, of this Agreement.

SECTION 6

A. While the Union will be permitted to use the offices provided by the multi-OP/DIV Agreement for FDA-related matters, the Employer will also provide the Union with one (1) additional office within each region. In the Washington, D.C. headquarters area, the Union will be provided with six (6) office locations which will include desks, telephone, and a lockable file cabinet. Employees will be given access to copy equipment, computers and fax machines in their local working areas and in accordance with this Article. In addition, in the Parklawn complex, the Union will be allowed to share the 18th floor office with HRSA.

B. Because of the need to conduct some business in private, the Employer will give the Union access to private space/conference rooms on an "as needed" basis.

C. The Employer will provide all of the regional offices, as well as one of the Washington, D.C. headquarters offices, with the following equipment and services:

- One (1) computer (486 or above)
- One (1) laser printer
- FDA network and Internet access
- Voice mail
- Telephone connections for the operation of the above-mentioned equipment

D. The Employer will establish separate e-mail accounts for Union representatives for labor-management representational purposes upon request. If FDA laptops are available, Union representatives may take them on travel to conduct labor-management business.

E. The Union will continue to retain all of the offices and equipment that it possessed at the time of the drafting of this Agreement (June 1999).

F. The Employer will make available to the Union for its use any extra (or surplus) equipment and furniture that becomes available during the life of this Agreement.

SECTION 7

A. The Employer will maintain a clearly titled and appropriately positioned link from its Internet site *(http:\\internet.fda.dhhs.gov)* as of the date of execution of this contract to the NTEU and NTEU FDA chapters' home pages for ease and convenience of access by employees. The Union will maintain a link from the NTEU web site to the FDA Internet site *(http:\\www.fda.dhhs.gov)* as of the date of execution of this contract.

B. The Union will be responsible for all content presented at its web site (s), *(www.nteu.org)* including any chapter-specific page(s) it may choose to create and maintain.

C. Union transmissions (including electronic mail) are subject to the same standards that apply to all users, as established by FDA system managers.

SECTION 8

A. The Employer will provide the Union with one-third (1/3) of the bulletin board space on all FDA bulletin boards. Existing local practice will continue with respect to what constitutes FDA official bulletin boards. The Parties recognize that the Union may, at its option, use "broadcast E-mail" facilities to communicate similar information.

B. The Union agrees to maintain its portion of the bulletin board in a timely, neat, and orderly condition. The posting of material on the bulletin board will be accomplished at the Union's expense, and the Union will ensure that no posting will violate the law or security of the Employer, or contain scurrilous or libelous material. All postings will clearly identify the Union as the source of the material.

C. The Employer will permit the Union to distribute Union literature in work areas during the non-duty time of the employees distributing the literature, where such distribution does not cause a disruption of the work flow of the Employer. Employees are advised not to read the material during work time.

D. The Union agrees to furnish a copy of any material posted or distributed to the Employee Labor Relations Division, normally at least one (1) workday in advance.

ARTICLE 10

UNION REPRESENTATIVES/OFFICIAL TIME

This Article governs the use of official time for bargaining unit representational functions performed by employees.

SECTION 1

The Union may designate from the FDA one (1) Union steward for every forty (40) bargaining unit employees or major fraction (51%) thereof in each district and headquarters. If any chapter has more than that number as of April 29, 1999, the excess stewards remain for the period of one (1) year. The Union may appoint an assistant steward in each laboratory or resident post presently not located in a district or regional office, solely to cover formal meetings and other activities in that site. The Union may appoint one (1) chief steward for the FDA headquarters and one (1) in each district from the above identified number. There will be at least two (2) stewards appointed in each district.

SECTION 2

A. The Union agrees to provide the Director, Office of Human Resources and Management Services (OHRMS) with a written listing of its Union representative(s) no later than two (2) weeks after the effective date of this Agreement and a written listing of current Union representatives on an updated basis. The Union will also notify the Director, OHRMS in writing of other Union representatives who may request official time, along with a description of their individual Union assignments. Changes will be submitted to the Director, OHRMS not less than two (2) workdays prior to the assumption of representational responsibilities by any new representatives. The Employer will not approve such official time until those written notices are received by the Director, OHRMS.

B. Except where explicitly provided, this Agreement shall not be interpreted in any manner which interferes with the Union's right to designate representatives of its own choosing on any particular representational matter.

SECTION 3

A. No Union representative will be disadvantaged in the assessment of his/her performance based on his/her use of documented official time when conducting labor-management business authorized by this Article. However, it is understood that performance problems unrelated to the use of official time may be addressed in accordance with other relevant provisions of this Agreement. The performance of employees serving as Union representatives will be rated on the basis of Employer-assigned work consistent with the

elements identified in the respective employee's performance plans. However, the time spent on Union duties will be considered by the supervisor during productivity considerations.

B. Upon request of the Union representative, he or she will have her position description amended by a collateral duty statement which includes a standard description of the scope of representational duties which will be attached to his or her position description. (Attachment 10-1). However, the Employer will not evaluate the Union representative's performance of representational duties described in this collateral duty statement, and the performance of these duties will not be relevant to any performance appraisal.

C. When the Union representative is initially appointed, the supervisor and the Union representative will meet to discuss workload and performance expectations. The supervisor will make necessary and appropriate adjustments to workload relative to the Union representative's representational needs.

SECTION 4

A. All official time for Union representatives must be requested and approved in advance consistent with workload requirements except when unforeseeable circumstances do not allow for advance approval. Official time requests will be granted unless they severely hinder the accomplishment of Agency work that cannot be otherwise accommodated.

B. The Union representative will request authorization for use of official time from his/her supervisor by completing the "Official Time Form" (Attachment 10-2). The Union representative will indicate to the supervisor or designee on the form the general nature of the representational activity he/she wishes to carry out and the approximate length of time he/she believes is required.

C. All advance requests for official time are understood to be estimates. If the estimate for official time is less than that actually needed, the Union representative must notify the supervisor or designee prior to exceeding the estimate. This notification may be orally or writing. Official time requests will be granted unless they severely hinder the accomplishment of Agency work that cannot be otherwise accommodated.

D. The Union representative will record the actual time used on Attachment 10-2. The entries will accurately depict actual official time used and will be completed and submitted to his/her supervisor upon return to duty.

E. All employees (e.g., grievants, representatives, witnesses, and appellants) whose presence is necessary at relevant proceedings such as hearings, meetings, arbitrations, oral replies, etc. will be authorized official and/or duty time to participate in the proceedings.

SECTION 5

A. Pursuant to the statutory right and responsibility of the Union to represent bargaining unit employees, representatives of the Union will be granted reasonable amounts of official time to investigate, prepare for, and conduct representational functions in accordance with the provisions of this Article.

B. For the purpose of this Article, "representational functions" means those authorized activities undertaken by Union representatives of the FDA on behalf of other bargaining unit employees or the Union pursuant to representational rights under the terms of this Agreement and Federal law. Examples of activities for which official time will be authorized under the terms of this Article, include:

1. Negotiations;

2. Formal discussions between Employer representatives and employees concerning personnel policies, practices, and matters affecting working conditions;

3. Any statutory appeal proceeding or other forum in which the Union is representing an employee or the Union is acting pursuant to its obligations under relevant contract provisions, regulations, or law;

4. Grievance meetings and arbitration hearings;

5. EEO complaint settlements, administrative and/or court hearings if a complaint is processed under the negotiated grievance procedure; and disciplinary or adverse action oral reply meetings, or if the Union is representing the employee;

6. Any meeting for the purpose of presenting reconsideration replies in connection with the denial of within-grade increases;

7. Attendance at an examination of an employee who reasonably believes he or she may be the subject of a disciplinary or adverse action and the employee has requested representation pursuant to 5 USC 7114(a)(2)(B);

8. Discussions of possible grievances with an employee;

9. Informal consultations between the Employer and the Union;

10. Conferring with affected employees about matters for which remedial relief is available under the terms of this Agreement;

11. Preparation of reports, forms, and documents required by law or regulation concerning the proper operation and administration of a labor organization;

12. To meet with members of Congress and their staffs on matters relating to bargaining unit conditions of employment;

13. Attendance at meetings of committees on which Union representatives are authorized membership by the Employer or an Agreement;

14. Attendance at labor-management partnership meetings or other cooperative effort activities;

15. Attendance at Employer-recognized activities to which the Union has been invited;

16. To conduct training on labor relations issues for employees not to exceed two (2) hours quarterly (non-cumulative);

17. To attend regularly scheduled Union events, i.e., National training and conventions of which the Employer is notified and provided with an agenda and a course description two (2) weeks in advance;

18. To participate in jointly sponsored training primarily to further the interest of the government by improving labor-management relationships; and

19. To prepare for, if necessary, and travel to any of the activities listed above.

SECTION 6

Union representatives may distribute NTEU literature at a time and in a manner that does not disrupt employees.

SECTION 7

Upon ratification and approval of this Agreement, the Parties will jointly conduct training concerning official time and other aspects of this Agreement for supervisors, representatives and employees.

SECTION 8

The Union will make every reasonable effort to accomplish representational activities in the most cost effective and practical ways, including use of teleconferencing, etc. Both Parties will strive to meet mutual needs in scheduling and conducting these activities.

SECTION 9

Union representative working on credit hour programs may earn credit hours as follows:

A. They must have the approval of their supervisors, consistent with the credit hour provisions in Article 25, Alternative Work Schedules; and

B. The Union representative must record these credit hours in accordance with Article 25.

SECTION 10

The Agency will pay all reasonable travel and per diem expenses for Union representatives to travel to perform representational duties in accordance with Article 3, Mid-Term Bargaining, of this Agreement.

COLLATERAL DUTY STATEMENT (NTEU REPRESENTATIVES)

1. The Union will keep management informed on timely basis of employees who should have the collateral duty statement appended to their current position description.

2. Pursuant to Article 10 of the Collective Bargaining Agreement, the following statement will be added to position descriptions when requested by an employee.

3. An employee may request removal of the following statement at any time.

MAJOR DUTIES

- The incumbent also serves as a Union representative and, as such, may perform some or all of the following duties on official time;

- Represent members of the bargaining unit concerning grievance of any personnel policy, practice or matter affecting general working conditions of bargaining unit employees;

- Attend and participate in meetings, examinations, arbitrations, negotiations, hearing and training in accordance with the Federal Service Labor Management Relations Statute and provisions governing official time as set forth in the Collective Bargaining Agreement, and conduct other activities as specified in Article 10 of the Agreement.

- Prepare for meetings, examinations, arbitrations, negotiations, hearings and training in accordance with the Federal Labor Management Relations Statute and provisions governing official time as set forth in the Collective Bargaining Agreement in Article 10, Union Representatives/Official Time

- Work in partnership with management identifying problems and crafting solutions to better serve the Agency mission and concerns.

SUPERVISION AND GUIDANCE RECEIVED

The above duties are performed either independent of or in tandem with management. All official time must be requested and approved in advance consistent with workload requirements except when circumstances do not allow for advance approval.

FOR NTEU

_____

Signature and Date

FOR THE FDA

_____

Signature and Date

NTEU/FDA OFFICIAL TIME FORM

1. Name of Union Representative: 2. FDA Operating Division: 3. Section/Unit:

_____

4. Nature of Business: (See category descriptions on reverse side. Check all that apply.)

_____ A. Negotiations

_____ B. Dispute Resolution

_____ C. General Labor-Management Relations

5. Operating Division to which business relates:_____

6. Union Representative: Complete chart and have your supervisor initial in advance.

Date	Est. Start Time	Est. End Time	Est. Total Time	Act. Start Time	Act. End Time	Act Total Time	Union Rep. Initials	Supervisor Initials[1]

[1] Requests for Official Time will be granted unless they substantially hinder the accomplishment of essential Agency work that cannot be otherwise accommodated. A supervisor who disapproves a request will, at the request of the Union representative, provide a written explanation of the action and will set the time when the Union representative may expect to have official time.

Official Time Definitions

A. **Negotiations:** Includes time used by Union representatives for, or in preparation for:

1. negotiations over the basic Agreement;

2. negotiations over the supplementation or augmentation of the Agreement or under a reopener provision in the Agreement; and

3. negotiations occurring during the term of that Agreement (mid-term bargaining). This category includes both interest based and position based negotiations.

B. **Dispute Resolution:** Official time granted for employee representation functions in connection with such things as grievances, arbitrations, adverse actions, alternative dispute resolution (ADR) and other labor relations complaint and appellate processes. This category may also include Union counseling of employees on problems, phone calls, e-mails, and meetings with management concerning employee complaints problems that are pre-grievance or pre-complaint, but not part of any formal ADR process.

C. **General Labor-Management Relations:** Official time authorized for representational functions in connection with all other activities not covered by the categories of Negotiations and Dispute Resolution. This category might include labor-management committees, partnership activities where the Union is represented, consultation, pre-decisional meetings, walk-around time for OSHA inspections, labor-relations training for Union representatives, and formal and Weingarten-type meetings under 5 USC 7114(a)(2)(A) and (8).

ARTICLE 11

PAY AND BENEFITS

SECTION 1

The Employer will exercise any discretion it has to maximize the payment of Physicians Comparability Allowance (PCA) to qualified unit employees as of the date OMB approves the HHS/FDA PCA plan. Payments will be distributed consistent with HHS policy and guidelines. Should the FDA PCA plan be modified, either Party may reopen negotiations to address how the money is distributed.

SECTION 2

The Employer will also make Physicians Special Pay (PSP) available to qualified bargaining unit physician employees as an alternative to PCA. PSP will be made available at the option of the qualified employee at the end of the tenth (10^{th}) year of FDA service. The current FDA PSP policy will be utilized to determine distribution. Should that FDA table be modified, either Party may reopen negotiations to address how the money is distributed.

ARTICLE 12

NOTICES TO EMPLOYEES

SECTION 1

When the Employer presents the employee with a written notice, as listed in Section 2, that notice shall state at the top in capital letters, "THIS NOTICE AT YOUR OWN OPTION MAY BE FURNISHED TO NTEU."

SECTION 2

The statement specified in Section 1 applies to the following material:

A. Letters of proposed disciplinary or adverse actions;
B. Letters of final decision in any disciplinary or adverse actions;
C. Letters of advance notice or decision to withhold within-grade increase;
D. Letters of advance notice or decision to impose a reduction in force;
E. Letters of advance notice and decision to downgrade an employee's classification;
F. Letters of involuntary reassignment;
G. Letters denying a waiver of overpayment; and
H. Letters denying outside employment.

SECTION 3

The decision notices will advise employees of their grievance and/or appellant rights established by law, rule or regulation and this Agreement.

ARTICLE 13

NEW EMPLOYEE ORIENTATION

SECTION 1

A. The Employer agrees to provide an FDA New Employee Orientation to new employees. The FDA New Employee Orientation will include at a minimum, a brief overview of the Agency, basic information on employee responsibilities and benefits, and distribution and discussion of the ethical rules and standards of conduct applicable to employees.

B. The Union will be notified of the FDA New Employee Orientation schedule and afforded an opportunity to make a presentation of up to 15 minutes to employees during the orientation to introduce the employees to the Union. This time will normally be just before a break period. The Union agrees that no internal Union business will be discussed during this meeting, nor will its presentation violate the law or the Employer's security. In addition, the content of any material or statements will not be libelous or slanderous. All materials will clearly identify the Union as its source and will be provided to the Employer two (2) workdays in advance. If the Employer provides less than two (2) workdays notice of the orientation meeting, the Union will provide the materials as soon a reasonably possible.

SECTION 2

The Employer will include a copy of this Agreement in the Entrance on Duty (EOD) package given to each bargaining unit employee at orientation. All new employees to the bargaining unit will be provided two (2) hours of duty time to read this Agreement. However, the specific time will be set with the approval of the supervisor. This time must be used to read the Agreement at the work site. If the Union chooses to it may substitute a one (1) hour review of the contract at the end of an FDA New Employee Orientation.

SECTION 3

Simultaneously with presenting an employee with an EOD package, the Employer will provide the employee with a package of material provided by the Union. The package may contain:

A. An introductory letter from the Union which provides information on the Union's exclusive representational right provided that the letter clearly explains the right of employees to join or not to join the Union;

B. An SF-1187, Dues Withholding Form;

C. A list of officers and stewards including the name and location (including telephone number) of the Union steward having responsibility for representation in the new employee area; and

D. Any informational brochures clearly identified as being prepared by the Union.

SECTION 4

The Union will be given up to 15 minutes to orient an employee to the site and the Union chapter when the employee is newly assigned to a different bargaining unit. This will take place during the employee's first week at the site.

SECTION 5

Whenever a local group orientation is conducted by the Employer for employees, the Union will be notified and authorized to be present. The Union will be afforded the opportunity to make a presentation of up to 15 minutes to employees during the orientation to introduce employees to the Union. The Union agrees that no internal Union business will be discussed during this meeting, nor will its presentation violate the law or the Employers security. In addition, the content of any material or statements will not be libelous, or slanderous. All material will clearly identify the Union as its source and will be provided to the Employer two (2) workdays in advance. If the Employer provides less than two (2) workdays notice of the orientation meeting, the Union will provide the materials as soon as reasonably possible.

ARTICLE 14

PERSONNEL RECORDS

SECTION 1

A. Each employee and/or a representative, designated in a written authorization bearing the employee's original signature, shall be granted access to any record(s) in a system of records pertaining to the employee with the exception of records restricted by law or government-wide regulations. Such access will take place in the presence of the individuals having official custody of the records. The employee and his or her representative is permitted to photocopy anything in his or her record.

B. Access to the records shall normally be granted within five (5) workdays of the request. If the records are not co-located with the employee, the Employer will utilize an expedient and secure means of transfer to the employee's location. The records will be sent in a sealed envelope to a temporary custodian (such as a personnel representative or supervisor where no personnel representative is present) if the personnel office is not co-located with the employee.

C. If the records are not available, the Employer will initiate prompt action to obtain the records. If the Employer is unable to provide access to the records within five (5) workdays due to unforeseen circumstances, an explanation of the delay and projected time for providing access will be given to the employee and/or the designated representative.

D. Employees should retain copies of personnel documents routinely furnished to them. However, in the event that employees fail to do so, one (1) copy of such documents will be furnished free of charge to the employee and/or representative, upon receipt of a written request.

SECTION 2

All medical documentation will be treated confidentially and the Employer will observe all requirements of the Privacy Act and other appropriate legal authorities. Medical documentation will be maintained in accordance with applicable provisions of 5 CFR 293 and 5 CFR 297.

SECTION 3

It is agreed that the Official Personnel Folders (OPF's) and other personnel records will be maintained in accordance with the applicable laws and regulations, including the Privacy Act of 1974. The Employer will purge the records in accordance with the General Records Schedule I standard and ensure that any adverse records remain in the employee's folder no longer than the minimum period required.

SECTION 4

Any system of records containing personal information about employees will meet the notice requirements of the Privacy Act.

SECTION 5

Personal notes maintained by an employee's supervisor and seen only by that supervisor are exempt from the disclosure requirements of the Privacy Act and will not be given to a succeeding supervisor.

ARTICLE 15

ANNUAL LEAVE

SECTION 1

Employees shall earn annual leave in accordance with applicable statutes and regulations.

SECTION 2

A. Annual leave will be charged in increments of one-quarter hour and requested in increments of not less than one-quarter hour.

B. The use of annual leave is subject to the approval of the Employer. An employee's request for annual leave will be approved unless the employee's absence would create a severe workload problem. Examples of severe workload problems are an inability to complete a specific or previously assigned work project that must be completed during the period of time in question, or when an employee's absence would result in no office coverage.

C. If leave is denied, the Employer will provide reasons for denial in writing to the employee, if requested.

D. It is the responsibility of the employee to request annual leave in advance. However, when an employee is unable to make the request in advance due to unforeseen circumstances, the use of leave may be approved.

SECTION 3

The Employer shall not deny the use of annual leave as a disciplinary measure. The use or non-use of annual leave will not be relied on in the employee performance appraisal or evaluation.

SECTION 4

A. Any request for annual leave for periods of five (5) or more consecutive workdays and/or for days off immediately preceding or following a holiday should be submitted in advance. Such requests for annual leave will be approved or denied by the date the leave is needed, but no later than five (5) workdays after receipt of the request.

B. Requests for short term leave will be approved or denied expeditiously after actual receipt by the supervisor or designee.

C. After determining the number and qualifications of personnel necessary to avoid a severe workload problem, the Employer will approve or disapprove any conflicting leave requests as follows:

1. Leave requests will be submitted no later than January 1 of each year for leave during the period of May through November and no later than July 1 for leave during the period of December through April. Once January 1 and July 1 have passed, the Employer will identify who may take leave on the requested dates by giving the employee with the most FDA seniority preference over others. However, an employee may exercise his or her seniority to break a conflict only one (1) time during either of these periods. Once the seniority right is exercised during a period, the person would then be at the bottom of the list to receive leave for another requested date(s). If all who request leave for a particular date have already used their seniority right once during that period, then seniority will once again be used to break that conflict.

2. Those who do not submit leave requests by these dates will be accommodated only after those who do request it by the due dates.

SECTION 5

A. An employee will be permitted to change scheduled leave he or she had requested to another time. Such a request will be considered and approved in accordance with Sections 2 and 4 above.

B. Employees will be provided with the opportunity, where practical, to use any annual leave earned that will be in excess of the maximum allowable carry-over some time during the course of the leave year so as to avoid losing annual leave. Each employee will monitor his/her annual leave account in order to make appropriate advance requests of leave for vacation and other purposes which will contribute towards avoiding the loss of annual leave.

C. Not later than mid-October of each year, the Employer will remind employees of a need to request annual leave to avoid forfeiture of such annual leave.

SECTION 6

A. The Employer agrees to authorize leave to any Union representative for attendance at Union meetings, or portions of meetings, which constitute internal Union business unless the employee's absence would create a severe workload problem as defined in Section 2.B. Union Chapters will notify the Employer as to which representatives will be attending such meetings as soon as possible, normally, at least ten (10) workdays preceding the scheduled departure.

B. Additionally, the Employer will grant the Union officers and Union representatives leave to perform other internal Union business, unless the employee's absence would create a severe workload problem as defined in Section 2B.

C. For the purpose of this Section, employees may use annual leave, leave without pay, earned credit hours, earned compensatory time, or any combination thereof.

SECTION 7

Employees, upon request, may change previously authorized leave to sick leave where sick leave is appropriate and the employee has provided acceptable evidence if required as in Article 16, Sick Leave.

SECTION 8

A. Consistent with HHS Instruction 630-1, FDA delegations of authority, and the provisions of this Article, the Employer will consider and ordinarily grant requests for advanced annual leave upon proper application and when:

   1. Non-repetitive, non-routine circumstances exist;

   2. The employee is eligible to earn annual leave and the employee is not on leave restriction;

   3. The request does not exceed the amount of annual leave that the employee would earn during the remainder of the leave year or the remainder of his/her appointment, whichever is shorter; and

   4. There is reasonable assurance that the employee will return to duty and is not contemplating a resignation or retirement.

B. Employees must repay any leave advanced and not earned at the time of separation except no repayment is necessary if the separation is due to the employee's death or disability retirement.

SECTION 9

Within the bounds of the law, if an employee made financial commitments or otherwise incurred costs based on management's approval of annual leave and then the approval is withdrawn, the Employer will reimburse the employee for all costs or commitments.

ARTICLE 16

SICK LEAVE

SECTION 1

Employees may use sick leave accrued in accordance with law and regulations in the following situations:

A. Incapacity due to illness or injury;

B. Emergency medical, dental, optical or surgical examination or treatment;

C. Prescheduled medical, dental, optical or surgical examination or treatment;

D. Incapacity due to pregnancy or birth of a child;

E. To provide for a family member who is incapacitated as a result of physical or mental illness; injury, pregnancy or childbirth; or medical, dental, or optical exam or treatment; or to make arrangement necessitated by the death of a family member or to attend the funeral of a family member,

F. When presence at the worksite would, as determined by health authorities having jurisdiction or by a health care provider, jeopardize the health of others because of exposure to a communicable disease~~;~~

G. Where they must be absent from duty for purposes related to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys, court proceedings, required travel and any other activities necessary to allow the adoption to proceed; and

H. Any other absences authorized by the Family and Medical Leave Act or the Family Friendly Leave Act.

SECTION 2

A. If the use of sick leave cannot be anticipated, the request for approval shall go to the immediate supervisor or designee within one hour after the start of the employee's normal tour. Should the employee be unable to reach the immediate supervisor or designee, the employee may leave the immediate supervisor or designee a voice mail requesting the leave. For employees on Maxiflex, the employee will contact the supervisor or designee as soon as practicable but no later than 10:30 a.m. to request approval. For employees on Any 80 tours, the request shall go to the immediate supervisor or designee by a time and by the method determined by the immediate supervisor and communicated to the employees.

B. An employee will inform her/his supervisor or designee of the anticipated duration of the absence. If the absence extends beyond the anticipated period, the employee will inform his or her supervisor of the situation promptly.

SECTION 3

When possible, sick leave for a non-emergency medical, dental or optical examination, operation or treatment should be requested when the employee becomes aware of the need to take sick leave. Such requests shall be approved unless the employee's absence would create a severe workload problem, in which event, the employee would be given advance notice in as far in advance as possible, so that other appointments can be made. Examples of severe workload problems are an inability to complete a specific or previously assigned work project that must be completed during the period of time in question, or when an employee's absence would result in no office coverage.

SECTION 4

In this section, reference to sick leave includes any of the reasons listed in Section 1 of this Article regardless of the type of leave charged.

A. An employee may be required to furnish medical certification to substantiate a request for approval of sick leave if the sick leave exceeds three (3) consecutive workdays. Medical certification means a written statement signed by a registered practicing physician or other practitioner certifying the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment. Only the Employer's medical consultant may contact an employee's health care provider to discuss an employee's sick leave and, if under FMLA, only with the employee's permission.

B. If the Employer suspects abuse of sick leave based on a pattern of usage, the Employer will discuss with the employee his/her pattern of leave usage and the reason(s) for the pattern offered by the employee will be considered. If the Employer determines that the employee's leave pattern may indicate an abuse of sick leave, the employee will be advised in writing that an acceptable medical certification as defined in 5 CFR 339 will be required for each subsequent absence for which leave for sick leave purposes is requested. This written notice is referred to as a leave restriction letter and shall explain the basis for the action. The leave usage of all employees under sick leave restriction will be reviewed every six (6) months and a written decision to continue or lift the restrictions made. If the review shows significant improvement, the supervisor will lift the restriction. If a meeting is held to discuss the results of the supervisor's decision, the employee shall have the right to have a Union representative at the meeting.

C. An employee on leave restriction must provide medical documentation in accordance with the terms of the restriction.

D. A sick leave restriction letter shall also apply to the uses of all types of leave used for sick leave purposes.

E. Unless the employee is on sick leave restriction as in Section 4 above, the employee will not be required to furnish a medical certificate on a continuing basis if the employee suffers from a chronic condition which does not necessarily require medical treatment although infrequent absence from work may be necessary and the employee has furnished valid medical certification of the chronic condition.

SECTION 5

Except for an emergency, an employee may not leave the work site to attend an appropriate health unit unless he or she has received the prior approval of the Employer. The employee who is returned to duty will not be charged with leave. Should the health unit recommend that the employee be sent home and the employee leaves the work site, sick leave will be charged beginning at the time the employee leaves to go home. Furthermore, no employee will be required to furnish a medical certificate to substantiate use of sick leave for that day only.

SECTION 6

Absences qualifying for the use of sick leave may be charged to annual, earned credit hours, earned compensatory time or LWOP if so requested by the employee and approved by the supervisor.

SECTION 7

Sick leave will be charged in quarter hour increments.

SECTION 8

A. Employees may request advanced sick leave if he or she has a serious health condition. Advanced sick leave will be approved or disapproved for periods of no more than thirty (30) days under the following circumstances:

   1. A written request with acceptable medical documentation as defined in 5 CFR 339 has been properly submitted;

   2. There is a reasonable assurance that the employee will return to duty and is not contemplating a resignation or retirement; and

   3. The employee has enough in his/her retirement account to reimburse the Employer for the advance should he or she not return.

B. An employee may liquidate a negative sick leave balance with accrued annual leave.

SECTION 9

For sick leave approved under the Family Friendly Leave Act, family member means:

- Spouse, and parents thereof;
- Children including adopted children and spouse thereof;
- Parents;
- Brothers and sisters and spouse thereof; or
- Any individual related by blood or affinity whose close association with the employee is equivalent to a family member.

ARTICLE 17

LEAVE WITHOUT PAY

SECTION 1

Leave without pay (LWOP) is a temporary non-pay status and absence from duty which may be granted upon the employee's request. Leave without pay will only be implemented: 1) at an employee's request, or 2) when imposed consistent with applicable law and regulation. Leave without pay will be administered in accordance with applicable laws and regulations.

SECTION 2

A. The Employer agrees to approve leave without pay for any employee elected to a position of a national officer of the National Treasury Employees Union for the purpose of serving full time in the elected position of National President, National Executive Vice President and National District Vice President. The period of leave without pay will be for a period concurrent with the term of office. Because the term of office for the National District Vice President is for two (2) years, as opposed to four (4) years for the two (2) other national elected officers named above, the Employer agrees to extend the period of leave without pay for the National District Vice President for an additional two (2) year term upon notification in writing that she/he has been re-elected.

   The Parties recognize that such employees are subject to all limitations upon benefits that apply to periods of extended leave without pay. This includes the election to discontinue life and health benefits or to continue coverage at the employee's cost.

B. The Employer will normally approve a request for leave without pay for an employee to serve in an appointed full time position with the National Treasury Employees Union for a period of not less than one (1) full pay period nor more than one (1) year provided that:

   1. If a request is for less than six (6) months, an employee may receive leave without pay for this purpose no more than twice in a six (6) month period. However, such leave must be for at least one (1) full pay period.

   2. Based upon the employee's particular duties and current assignments, the absence would not present a significant loss of ability to carry out a particular function. In such a case, another employee may be designated by the Union and his/her request will then be considered.

   3. The request for such leave without pay shall be made at least one (1) full pay period in advance of the proposed effective date.

4. When the request is not made earlier than one (1) full pay period prior to the proposed effective date, the Employer may postpone the effective date for (1) full pay period if it deems necessary.

5. No more than two (2) employees from a Center/OC/ District shall be on leave without pay for this same period of time.

6. When a request for extended leave without pay under this Section is granted, the period may subsequently be extended for an additional period of one (1) full pay period to one (1) year if the foregoing conditions of this subsection are met. The employee will notify the Employer as soon as possible in advance if she/he desires an extension.

SECTION 3

A. An employee may request a period of leave without pay not to exceed one (1) year to engage in full time, job related study. A program of study will be found to be job related if, on balance, it will significantly benefit the Employer and improve the employee's ability to perform his/her current job or to achieve and perform another job with the Employer to which the employee can reasonably aspire.

   Examples of some of the factors which are to be considered when reviewing an employee's request are:

   - Significant staffing requirements and workload;
   - The amount of advance notice;
   - The costs of any temporary backfill during employee absence that would exceed the costs of otherwise employing the employee on leave;
   - The likelihood of the employee remaining with the Employer;
   - The likelihood of potential employee development with and without training;
   - Any reasonable alternate sources and means of attaining training.

   These will be balanced against the value to the Employer of the additional training the employee will acquire in determining whether the leave is to be granted.

B. If the study is one which combines work and study, the work portion is subject to the outside employment requirements of the Employer.

SECTION 4

Employees may request leave without pay for reasons other than those specified above. However, before approving leave without pay, the Employer should expect the employee to return to duty and at least one (1) of the following benefits will result:

- increased job ability;
- protection or improvement of employee's health;
- retention of a desirable employee; or
- furtherance of a program of interest to the Government.

SECTION 5

Leave without pay may never be granted in the following circumstances:

- To engage in private or commercial work where experience in such work is judged to be of no value to FDA; or
- To engage in political activity prohibited by law; or
- To hold a civilian position with any other Federal department or agency.

SECTION 6

The Employer will not abuse its discretion when considering requests for LWOP. If a request for LWOP is denied, the leave approving official will provide the reason for the denial in writing to the employee, if requested.

SECTION 7

As provided by regulation, employees may elect to maintain their group insurance coverage while in LWOP status.

ARTICLE 18

FAMILY LEAVE

SECTION 1

Family Medical Leave Act

A. Employees who have completed at least twelve (12) months of service and are not employed on an intermittent basis or a temporary appointment with a time limitation of one (1) year or less have the right, as established by the Family and Medical Leave Act (FMLA) and implementing regulations (5 CFR Part 630, Subpart L), to twelve (12) work-weeks of leave without pay during any twelve (12) month period for one or more of the following:

   1. Because of the birth of a child of the employee and in order to care for such child;

   2. Because of the placement of a child with the employee for adoption or foster care;

   3. In order to care for the spouse, a child, or parent of the employee, if such spouse, child, or parent has a serious health condition;

   4. Because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

B. An employee may elect to substitute accrued or accumulated annual and/or sick leave for any part of the 12-week period of leave without pay described in Paragraph A above. However, this does not require the Employer to provide paid sick leave in any situation in which it would not normally provide such paid sick leave.

C. An employee seeking leave under this Section shall provide the Employer with not less than thirty (30) days notice before the date the leave is to begin of the employee's intention to take such leave, unless the date of such leave is not reasonably foreseeable, in which case the employee shall provide such notice as is practicable.

D. Under 5 USC 630.1207, the Employer may require that a request for leave under subsections A.3. or A.4. above, be supported by written medical certification written by a health care provider. The following procedure will be followed:

   1. The employee will provide the written documentation as provided in 5 USC 630.1207(b). The information on the medical certification shall relate only to the serious health condition for which the current need for family and medical leave exists. The Employer may not require any personal or confidential information in the written medical certification other than that required by regulations.

2. If an employee submits a completed medical certification signed by a health care provider, the Employer may not request new information. However, the Employer's medical consultant may, with the employee's permission, contact the health care provider who completed the medical certification for the purposes of clarifying the medical certification.

3. If the employee presents the medical certification in a sealed envelope marked "MEDICAL CONFIDENTIAL" and addresses it to the consulting physician in care of the servicing personnelist assisting the supervisor or employee, it will be reviewed only by the Agency's consulting physician and appropriate servicing personnelist(s), not the manager or supervisor.

4. If the Employer doubts the validity of the medical certification, the Employer may require at the Employer's expense, that the employee obtain the opinion of a second health care provider designated or approved by the Employer concerning information certified in the medical certification. Any health care provider approved by the Employer shall not be employed by the Employer or be under the administrative oversight of the Employer on a regular basis.

5. If the opinion of the second health care provider differs from the original certification provided under subsection D.2. above, the Employer may require, at the Employer's expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the Employer and the employee concerning the information certified in subsection D.2. above. The opinion of the third health care provider shall be binding on the Employer and the employee.

E. All other conditions/requirements in 5 USC 630.127 are applicable to leave used under the FMLA.

F. The employee is responsible for notifying the supervisor of his/her intention to use FMLA leave.

G. The use of FMLA leave can not be invoked retroactively.

SECTION 2

Leave for maternity or paternity purposes

A. Pregnancy shall be treated like any other medically certified temporary disability. Therefore, maternity leave may be a combination of all types of leave. There will be no minimum or maximum amount of leave for maternity reasons. The length of absence for maternity reasons will be determined by the employee and the Employer based on workload need. Pregnant employee's requests for modification of work duties or a temporary assignment will be considered in accordance with Article 38, Employees with Temporary Disabling Conditions.

B. The following conditions apply to the granting of leave to cover a period of absence for maternity reasons, regardless of whether the employee qualified under the FMLA discussed in Section 1. Length of absence for maternity reasons will be determined by the employee and her supervisor based upon the reasonable needs of each. Except in an emergency situation, she must coordinate all such leave with her supervisor, prior to her absence for maternity reasons - normally not less than thirty (30) calendar days in advance of prospective starting date; if the date of leave is not foreseeable, the employee shall provide such notice as is practicable.

C. Sick leave will be granted for the period of incapacitation due to pregnancy and confinement, consistent with medical requirements and applicable laws and regulations. The supervisor may ask for medical certification. Medical certification is defined as a written statement signed by a health care provider, as defined in 5 CFR 610.1202, to the incapacitation, examination, or treatment or to the period of disability. Additional periods of annual leave, LWOP, earned compensatory time, credit hours and/or sick leave, if appropriate, may be granted in whatever order the employee requests for the remainder of the absence.

D. The employee also may request and be granted annual leave, LWOP, earned credit hours and/or compensatory time instead of sick leave for the period of incapacitation. In considering requests for approved absences for maternity reasons, the Employer will apply pertinent laws and regulations and this Agreement in the same way they would apply them in any other case.

E. A male employee shall be permitted to be absent on partial or full days of annual leave, sick leave, LWOP, earned compensatory time, credit hours, or any combination thereof, to aid or assist in the care of his minor children or the mother of his children due to her confinement for maternity reasons. Approval of leave for these reasons will be consistent with the provisions of this Agreement and applicable statues and regulations.

SECTION 3

For purposes associated with adoption of a child, an employee may request annual leave, sick leave, LWOP, and/or earned compensatory time and/or credit hours. (See Article 16 for information about use of sick leave for adoptions). The Parties recognize that it is in the interests of both the employee and the Employer that such requests shall be made as early as possible. The employee should submit the leave request for adoption purposes as early as possible, no less than thirty (30) calendar days, in advance of the prospective starting date; if the date of leave is not foreseeable, the employee shall provide such notice as is practicable. The individual circumstances must be considered in each instance by the leave approving official; reasonable requests shall be granted unless a workload or staffing problem prevents approval. Approval will be consistent with the provisions of the Agreement and applicable statutes and regulations.

SECTION 4

Whenever a leave request under this Article is denied, upon request the Employer shall state the specific reasons in writing.

SECTION 5

Employees may be granted annual leave, LWOP, or earned compensatory time, credit hours or if appropriate, sick leave to:

A. Care for a sick child, spouse, parent, or household member;

B. Aid/assist in the care of his/her children or of a family or household member;

C. Aid/assist in the care of his/her children or of a family or household member whose day care provider is temporarily unable to provide care;

D. Stay home with a newly adopted or newly placed foster child;

E. Accompany a family member to medical appointments or personal business appointments;

F. Participate in family counseling sessions needed for a family member; and

G. Arrange elder care for a relative or household member.

SECTION 6

The provisions of this Article apply to married and unmarried employees alike, except to the extent such application would conflict with law or government-wide regulation.

ARTICLE 19

OTHER LEAVE PROVISIONS

SECTION 1

A. An employee whose religion requires the abstention from work during certain periods of time may elect to earn Religious Compensatory Time (RCT) for the purpose of taking off without charge to leave.

B. To the extent that such modifications in work schedule do not interfere with the efficient accomplishment of the Employer's mission, the Employer will in each instance afford the employee the opportunity to work RCT and will in each instance grant RCT off to an employee requesting such time off for religious observances when the employee's personal religion requires that the employee abstain from work during certain periods of the workday or workweek.

C. For the purposes stated in A. above, with approval of the Employer the employee may work such compensatory time before or after the time off from work. A grant of advanced compensatory time off must be repaid by the appropriate amount of RCT worked within four (4) pay periods from the date the compensatory time was used. RCT shall be credited to an employee on a quarter hour basis and requests for using RCT will be in increments no less than one quarter hour. Appropriate records will be kept of RCT earned and used.

SECTION 2

A. Any employee who is a member of the National Guard or a Reserve component of the Armed Forces shall be entitled to fifteen (15) calendar days of regular military leave in a fiscal year for active duty or active duty training as provided for in 5 USC 6323, as amended, and implementing regulations. For part-time employees, military leave is calculated according to 5 USC 6323. Employees who do not use the entire fifteen (15) days can carry over the time in accordance with appropriate laws and regulations. Military leave is charged in increments of one day.

   Approval of the military leave provided in the foregoing shall be based on the copy of the orders directing the employee to active duty and certification of attendance by an appropriate military authority both of which must be provided to the leave approving official.

B. In addition, employees who are called for a period of training or a period of active duty beyond those provided for in Paragraph A above may be granted annual leave or LWOP, pursuant to appropriate regulations and Agency policy.

C. Any employee contemplating the use of military leave will advise the Employer as soon as possible of the anticipated dates of such leave and provide a copy of the orders as soon as he or she has received them.

SECTION 3

A. Court Leave. An employee with a regular scheduled tour of duty is entitled to court leave in accordance with law and regulations. Court leave is appropriate for jury duty with a Federal, District of Columbia, State or Local court; witness duty on behalf of a State or Local government, and witness duty on behalf of a private party when the Federal or District of Columbia government, or a State or Local government, is a party to the judicial proceeding. An employee who is called for court service will present the court order, subpoena, or summons to the Employer. Any documentation provided by the court confirming the employee's presence will be provided to the Employer. Fees for jury duty or witness services received by an employee granted court leave must be submitted to the appropriate HHS finance office. The employee will contact the local Administrative Officer to determine the appropriate HHS finance office to forward the fees. Fees for travel and parking may be retained by the employee.

B. Court leave will be charged in one-quarter hour increments and requests for approval of these absences will be in increments no less than one-quarter hour.

SECTION 4

A. Pursuant to 5 USC 6327, each employee is entitled to a maximum of seven (7) days of absence per calendar year, without charge to leave to which the employee is otherwise entitled and without any reduction in pay, for the purpose of enabling the employee to serve as a bone-marrow or organ donor.

B. Additional leave for this purpose may be authorized in accordance with other leave provisions and charged accordingly.

SECTION 5

An employee will be granted a reasonable amount of previously earned annual leave, leave without pay, or compensatory or credit hours in accordance with applicable law, regulations, and other articles of the contract when there has been a death in the employee's immediate family. The definition of the immediate family for the purpose of this Section includes the following:

- spouse, and parents thereof;
- children, including adopted children and spouses thereof;
- parents;

- brothers and sisters, and spouses thereof;
- and any individual related by blood or affinity whose close association with the employee is the equivalent of a family member. Sick leave will be granted for this purpose, in accordance with Article 16 and applicable law and regulation.

ARTICLE 20

EXCUSED ABSENCE/ADMINISTRATIVE LEAVE

SECTION 1

Excused absence (sometimes called administrative leave) is an absence from duty administratively authorized without loss of pay to the employee and without charge to the employee's leave.

SECTION 2

Voting

When voting polls are not open at least three (3) hours before or after the employee's regular hours of work, or core time for an employee on flexitime, or the employee's alternative work schedule (AWS) is such that the employee is unable to vote before or after the workday, the Employer will normally approve an employee's written request for enough time off without charge to leave to permit the employee to report to work three (3) hours after the polls open or leave work three (3) hours before the polls close, whichever requires the lesser amount of time off. Employees on flexitime or AWS will appropriately arrange their schedules to work the maximum number of hours. Under exceptional circumstances where the above does not permit sufficient time off, the employee will normally be granted additional time to vote not to exceed one (1) full day. If an employee's polling place is beyond normal commuting distances and voting by absentee ballet is not permitted, the employee will normally be granted sufficient time to make the trip to the voting place to cast a ballot. When more than one (1) day is required to make the trip to the voting place, the Employer will observe a liberal leave policy to permit the employee to take annual leave, or LWOP for the additional time.

SECTION 3

Closing of Workplace

Occasionally, severe inclement weather or other conditions posing serious health hazards may result in the administrative closing of the workplace and the excused absence of non-emergency employees for a day or part of a day. In such cases, the following procedures will apply:

A. If a decision is made prior to the beginning of the workday to close all or part of the day, the employees will be notified through the public media, i.e., radio and television.

B. If the decision to close the workplace occurs during the workday, the notice of specific release will be communicated through supervisory channels.

C. If severe inclement weather conditions exist, but the office is not closed and the employee attempts to come to work but does not get to the duty site, the Employer will grant excused

absence for all or part of the workday if the employee provides the supervisor with acceptable written justification that a reasonable effort was made to get to work, but severe weather conditions prevented him or her from doing so.

D. If the employee has a disability, his or her disability must be taken into account in determining what constitutes a reasonable effort. If the supervisor denies a written request for excused absence, upon request, the denial will be in writing. Determining factors used by the Employer in a decision to grant excused absence due to emergency or inclement weather conditions will include: the distance between the employee's residence and place of work; mode of transportation normally used; efforts by the employee to get to work; and other success of other similarly situated employees in being able to report to work.

SECTION 4

Blood Donation

A. Employees will normally be granted four (4) hours of excused absence and a reasonable amount of time to travel on the day of donating blood during a Bloodmobile visit. Additional time may be excused if appropriate because of the location of the donation site, the type of donation process (e.g., donation of blood platelets), the effects of donation on the physical condition of the donor or other factors as determined by the leave approving official. If the employee is requested by a hospital to provide blood as a special donor, the employee will be given excused absence at a time that the supervisor and the employee mutually agree. In unusual cases, such as electrophoresis, the Employer will grant excused absence up to eight (8) hours, if needed, in the view of appropriate health officials. The employee will notify the Employer as soon as practical that an appointment for any type of blood donation is scheduled.

B. If the Employer is unable to grant the excused absence, the Employer will grant the excused absence as soon as practicable but no later than within the next five (5) workdays.

SECTION 5

Tardiness

Employees have the responsibility to arrive at work on time. However, the Employer will excuse infrequent tardiness of less than one (1) hour if:

- The employee is not on a leave restriction letter, and
- The employee's lateness is due to an understandable cause that is outside an employee's normal ability to control.

SECTION 6

Volunteer Work

Granting of excused absence for volunteer activities will be considered only when the employees absence is not specifically prohibited by law and the Employer determines that the activity satisfies one or more of the following criteria:

- The absence is directly related to the HHS or FDA mission;
- The absence is officially sponsored or sanctioned by the Secretary of HHS or the FDA Commissioner;
- The absence will clearly enhance the professional development or skills of the employee in his or her current position; or
- The absence is brief and is determined to be in the interest of the Employer.

In all cases, the employee must provide acceptable evidence that the time was used for volunteer activities.

SECTION 7

Other

An employee will be placed on excused absence (non-duty status) without loss of grade or pay in certain circumstances when it is determined by the Employer that the employee's continued presence in the workplace may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interest. Examples of situations in which this analysis may apply include, but are not limited to, the following:

- The employee has demonstrated dangerous, threatening, intimidating, or otherwise inappropriate behavior;
- The employee is the subject of an ongoing investigation;
- The employee has been named in a possible criminal prosecution which is pending collection of information and/or probable initiation of an indefinite suspension or removal action; or
- The employee has received a notice of proposed suspension, removal, or indefinite suspension.

In this situation, the employee shall receive a written notice providing the basis for the Employer's determination and the procedures to be used when exiting and/or seeking access to FDA premises and communicating with the Employer while in a non-duty status. The employee may be barred from entering any Employer facilities during this time and is restricted from doing any work for the Employer while in a non-duty status.

ARTICLE 21

VOLUNTARY LEAVE TRANSFER PROGRAM

SECTION 1

An employee without available paid leave may request to become a donated leave recipient for a specific medical emergency involving him/her self or a family member which is expected to result in an absence from duty for at least twenty-four (24) consecutive or intermittent hours during the leave year, if the medical emergency would otherwise result in a loss of pay.

Part-time employees or employees with uncommon tours of duty qualify for leave donations based on a reduced formula pursuant to OPM regulations.

Family member means the following relatives:

- spouse, and parents thereof;
- children, including adopted children and spouses thereof;
- parents;
- brothers and sisters, and spouses thereof; and
- any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

The employee must use up all of his/her accrued annual and sick leave, if appropriate, before being donated leave.

SECTION 2

The employee must submit a written request for donations of leave to his/her immediate supervisor. If the employee is unable to submit an application, using FDA instructions, a family member or co-worker may submit the application on his/her behalf. An application to become a donated leave recipient must include a brief description of the nature, severity, and anticipated duration of the personal or family medical emergency affecting the employee. The applicant must also include a statement from a physician or other qualified medical practitioner showing the nature, severity, and duration of the medical emergency. Additional information may be submitted, as appropriate, to supplement the application.

SECTION 3

A. Leave recipients are eligible to retroactively substitute transferred annual leave. The employee must apply for transferred leave within thirty (30) workdays after the end of the medical emergency to be eligible for retroactive coverage to the beginning of the medical emergency.

B. Transferred annual leave may be substituted retroactively for periods of leave without pay (LWOP) or to liquidate advanced annual or sick leave granted to an approved recipient to cover absences during a medical or family emergency. It is up to the employee to decide how transferred leave is used.

SECTION 4

An employee's completed application will be reviewed and either approved or disapproved by the management official authorized to render decisions on requests to participate in the Voluntary Leave Donation Program (VLTP) as soon as possible but no later than ten (10) workdays from the date it is received by the management official authorized to render a decision. If an application does not provide all required information when initially submitted, or if additional supporting documentation is necessary in order to act upon the application, it will not be considered complete. The employee (or person acting on his/her behalf) will be notified promptly by the Employer of what else is needed to complete the application.

SECTION 5

A. In making a decision to approve or disapprove the application, the designated official will not consider factors other than the following:

   1. Whether the employee's absence from duty without available paid leave will, or is expected to last for at least twenty-four (24) hours within the leave year; and

   2. The medical documentation that supports the request for leave.

B. If an employee's application is disapproved, the written notice of disapproval will specify the reason(s) why the designated official has determined that the employee or his/her stated medical emergency does not satisfy the requirements for participation in the VLTP. Any disapproval of a request to become a donated leave recipient may be grieved by the employee.

SECTION 6

At the approved donated leave recipient's request, or with his/her consent, the Employer will arrange to inform other employees of the medical or family emergency situation and provide them with details on the procedure for donating some of their accrued annual leave to the employee through the VLTP. The donated leave recipient will determine the amount and extent to which medical information will be provided.

SECTION 7

Leave recipients may receive leave from donors employed in other Federal agencies when the following exist:

- A family member works in another Federal agency and requests the transfer of leave to the leave recipient; and
- A sufficient number of annual leave hours is not available or forthcoming from FDA employees.

SECTION 8

Once an employee is using transferred leave, he or she continues to accrue annual and sick leave up to a maximum of forty (40) hours in each category (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours or work in the employee's weekly scheduled tour of duty), regardless of whether it is a family medical or personal medical emergency. Once forty (40) hours are accumulated, the accumulation stops, even if the medical emergency still exists.

SECTION 9

Upon termination of a medical or family emergency, unused annual leave shall be restored to the donor.

ARTICLE 22

OVERTIME, COMPENSATORY TIME, AND HOLIDAYS

SECTION 1

Work officially ordered or directed by the Employer (and performed by the employee) which is in excess of eight (8) hours in a day or forty (40) hours in a week, or eighty (80) hours in a pay period is considered overtime, except when the employee is working a compressed work schedule. Employees will be compensated for overtime or holiday work in accordance with all applicable laws, rules, and regulations.

SECTION 2

In order to ensure that employees completely understand their rights for overtime compensation, the Employer will, each time an employee undergoes a change in position assignment, notify the employee on the SF-50 as to whether he or she is exempt or non-exempt for the purposes of the Fair Labor Standards Act.

SECTION 3

A. To the extent feasible, overtime will be distributed equitably and fairly among all employees determined by management to be qualified to perform the work necessary to be completed. In determining qualified employees, management will consider the following:

   1. Knowledge, skills and ability of the bargaining unit employees (e.g., specific knowledge or experience needed to adequately perform the overtime work);

   2. The nature of the work to be performed on an overtime basis (e.g., whether the work is a standard project that could be shifted to different employees; whether a particular employee is heavily involved in the work to be done or has specific knowledge necessary for the work to be completed); and

   3. The cost-effectiveness and timeliness related to selecting bargaining unit employees for overtime work.

B. Overtime work will be assigned to employees in this qualified group in accordance with the Employer's need, the qualifications of the employees and the following procedure:

   1. The work will be assigned to a volunteer from the qualified group.

   2. If there is more than one qualified volunteer but only enough work for one person, the employees will first be asked to attempt to decide amongst themselves who gets the work.

3. If agreement is not reached between the employee's, the work will be assigned to the most senior qualified employee.

4. If there are no qualified volunteers or if there are an insufficient number of qualified volunteers, the work will be assigned to the least senior qualified employee.

C. An employee ordered to work overtime may be excused from such work if he/she can find a replacement from among other employees in the qualified group.

SECTION 4

The Employer will maintain appropriate overtime records to show who worked overtime and when.

SECTION 5

Employees will be compensated for overtime work performed under Title V of the United States Code or the Fair Labor Standards Act as may be applicable. Employees shall be compensated for any fifteen (15) minutes of overtime work approved by the Employer and worked by the employee.

SECTION 6

A. Except when an employee earns credit hours as provided for in the Article 25, Alternative Work Schedules, and consistent with applicable laws and regulations, an employee will be granted compensatory time in lieu of payment for overtime work if requested, for irregularly or occasionally scheduled overtime work in excess of eight (8) hours in a work day or in excess of forty (40) hours in a work week, or eighty (80) hours in a pay period, provided the employee has obtained the prior written or verbal approval from an authorized official.

B. Employees not entitled to time and one-half overtime under the law, e.g., those above grade 10 step 10, will normally receive compensatory time in lieu of overtime pay for occasional and irregular overtime worked except when management determines that the employee is unlikely to have the opportunity to use the compensatory time within eight (8) pay periods.

SECTION 7

A. According to Section 3 of this Article, when the Employer requires the services of employees on an established holiday, the Employer will seek to fill its needs through volunteers from the qualified group. When the Employer is unable to fill its needs through these qualified volunteers, it will assign the work to qualified employees on a rotational basis, beginning with the employee with the shortest federal service computation date.

B. Those employees involuntarily assigned to work on a holiday may be excused, except when on travel status, when they can find qualified replacements approved by the supervisor. The Employer may consider cost-effectiveness in selecting or approving employees for working on holidays.

SECTION 8

A. Irregular or occasional overtime work performed by an employee on a day when work was not scheduled for him or her, or for which he or she is required to return to his or her place of employment, is deemed at least two (2) hours in duration for the purposes of premium pay, either in money or compensatory time off.

B. The Employer will not compel any employee to provide their home telephone number to an answering service or similar organization, as a condition of employment when on call back rotation. If the Employer requests that an employee provides their home telephone number for the purpose of a call back rotation procedure, the employee may request that the Employer provide them with a beeper in lieu of their home telephone number. The Employer will not penalize an employee for deciding not to provide his or her home phone number.

ARTICLE 23

WAIVER OF OVERPAYMENT

SECTION 1

The Employer will approve, or where approval authority is outside the Department, recommend approval of a request for waiver of a claim and the refund of any money repaid when the facts show that the conditions set forth in the regulations of the Comptroller General are met in accordance with the following Department guidelines:

A. A basic presumption in the Federal Government is that an employee who receives an overpayment of pay or allowances should refund the overpayment. 5 USC 5584 permits the waiver of the Government's claim under certain limited conditions, generally when there is no reason to believe that the overpayment is the result of misrepresentation, fraud, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim; or the payment is not the subject of any other exception by the Comptroller General. Fault means that an employee knew, or should have known, that an error was made. However, the existence of this law should not lead to an assumption that employees are entitled to a waiver merely because an overpayment was due to administrative error. Rather, the ultimate decision will be based on a careful analysis of the facts and the merits of the case.

B. An overpayment because of a failure to make a deduction for a statutory benefit program may be considered for a waiver under the provisions of 5 USC 5584. Statutory benefit programs include retirement, health benefits, and life insurance.

C. Currently, each employee receives from the HHS Personnel and Pay Systems Division (PPSD) a bi-weekly Earnings and Leave Statement. Employees are responsible for reviewing their Earnings and Leave Statements and notifying their supervisors, payroll liaison, or personnel officer of any unexplained changes in their pay.

SECTION 2

A. Employees who become indebted to the Department due to a salary overpayment will be notified in writing of the overpayment amount, the date by which the overpayment must be repaid in full, that if the overpayment is not repaid in full by the due date it will be collected by salary offset, and that interest and administrative costs will be charged during the offset process.

B. Each employee will be notified of his or her right to dispute the underlying debt in accordance with the Department's procedures and 45 CFR, Part 30 and/or to request a waiver of the salary overpayment under 5 USC 5584. The employee may either pay the debt while his or her request for a hearing or waiver is pending or be liable for interest on the

uncollected debt, or any portion thereof, which is ultimately upheld. The employee will also be assessed administrative costs on the unpaid debt if the reviewing or hearing official determines in writing that the request for a waiver or hearing was based upon false information.

C. The Employer agrees to acknowledge receipt of requests for hearings or waivers in a timely manner, generally within five (5) workdays of the request in the appropriate personnel office. The Employer will make a reasonable effort to respond to a request within one hundred twenty (120) calendar days from receipt of the request in the appropriate personnel office.

D. The Employer will waive, upon request from the employee, any interest and administrative costs (not the underlying debt) if these charges resulted from the Agency's error, action or inaction and not from fault on the part of the employee.

E. Currently, employees pay an administrative fee of one dollar ($1.00) per pay period during the salary-offset process. The Employer agrees to provide reasonable notice and an opportunity to bargain prior to raising the administrative fees.

F. Waivers will not be considered for twenty-five ($25) dollars or less.

SECTION 3

Collection will begin no earlier than thirty (30) days after the employee is notified of the amount of overpayment.

SECTION 4

An overpayment that is not waived and is not repaid in full by the employee will be collected as follows:

Amount of Debt	Schedule of Payment
$ 25.00 - $650.00	$25.00 - per pay period until liquidated
$ 651.00 - and above	26 equal payments

SECTION 5

If an employee terminates his or her employment with the Employer prior to the liquidation of any overpayment, the Employer retains the right to satisfy any outstanding balance from funds due and owing the employee and /or directly from the employee.

ARTICLE 24

DISCRETIONARY ALLOTMENTS

In addition to salary direct deposit and allotments for Union dues, charity, and savings bonds, each employee may elect to have up to three (3) discretionary savings-type allotments and one (1) additional allotment for purposes other than savings. Savings-type allotments are accounts that have bank routing numbers (RTN).

ARTICLE 25

ALTERNATIVE WORK SCHEDULES

SECTION 1

The Agency is committed to employee participation in an Alternative Work Schedule (AWS) Program as one mechanism to improve the quality of work life for its employees. The Agency and the Union agree that because of the diversity of the Agency, any AWS Program must be tailored to meet local needs. The Parties also agree that achieving the goals and mission of the Agency is the primary objective of any program that is developed.

SECTION 2

The Agency's flexible work schedule is the Maxiflex Work Schedule. Maxiflex requires full-time employees to work eighty (80) hours during the pay period. However, it provides scheduling options that allow employees to vary their individual work schedules. The Agency also has Compressed Work Schedules (CWS) that allow full-time employees to complete their eighty (80) hour work requirement in less than ten (10) days during the pay period. Maxiflex and compressed schedules for part-time employees will be based on the number of hours scheduled each pay period.

SECTION 3

Work schedules established in FDA will be based on the following principles:

A. FDA's normal business hours are 8:00 a.m. – 4:30 p.m. Flexible schedules must provide for office coverage during these normal business hours.

B. The broadest flexible band that can be established for flexible schedules is 12:01 a.m. Monday – 11:59 p.m. Saturday. The broadest flexible band for compressed schedules is 6:00 a.m. – 6:00 p.m. daily except Sunday. Sundays may not be used to complete the basic work requirement in either type schedule.

C. Any schedules established will not interfere with the ability of the organization to effectively meet its workload and programmatic objectives (i.e., have an adverse agency impact).

SECTION 4

Definitions

A. *Basic Work Requirement* – The number of hours in a Maxiflex schedule, excluding overtime hours, an employee is required to work or otherwise account for by leave, credit hours, holiday hours, excused absence, compensatory time off, LWOP, or time off earned as an

award. The basic work requirement for full time employees is eighty (80) hours. The work requirement for part-time employees is the number of hours the employee must be present in a biweekly pay period.

B. *Flexible Work Schedule* – A schedule that allows employees to vary, within the limits of the local program, their time of arrival and departure, the days during the pay period they will work, or both. The flexible work schedule is the Maxiflex schedule. Maxiflex provides the opportunity for employees to earn and use credit time. FDA's flexible work schedules include the Any 8, Any 40, and the Any 80 schedules.

   1. *Any 8 Schedule* – A schedule that requires employees to work eight (8) hours daily. These hours may be varied on a daily basis.

   2. *Any 40 Schedule* – A schedule that allows employees to work forty (40) each week of the pay period. These hours may be varied on a daily basis.

   3. *Any 80 Schedule* – A schedule that permits employees, with supervisory approval, to complete their tour of duty any time within the basic work requirement. Specific bands within which employees under this schedule may complete their basic work requirement will be negotiated at the local level.

C. *Flexible Time or Flexible Bands* – The hours during the workday, work week or pay period which employees covered by flexible schedules may choose to vary times of arrival to and departure from the worksite consistent with the duties and requirement of the position, and organization policy.

D. *Core Time or Core Hours* – Core time is the time during the workday, work week or pay period in which all employees covered by a flexible or compressed schedule must be present for work or on approved absence. An employee must respect any established core hours when requesting a flexible schedule. Core hours for each location will be established in accordance with the FDA AWS Master Plan in effect on June 1, 1999.

E. *Credit Hours* – Any hours within a flexible work schedule which are in excess of an employee's basic work requirement and which the employee works, with supervisory approval, so as to vary the length of a workweek or a workday.

F. *Compressed Schedule* – Fixed schedules that allow employees to complete the work requirement in fewer than ten (10) days in a pay period. With prior supervisory approval, employees on occasion may vary their scheduled arrival and departure times. FDA's fixed schedules include the 5-4/9 and the 4-10 schedules. Compressed schedules must be within the hours of 6:00 a.m. and 6:00 p.m.

   1. *5-4/9 Plan* – A compressed schedule in which an employee fulfills the basic work requirement of eighty (80) hours in a bi-weekly period over a span of nine (9) workdays-five (5) days one week, four (4) days the other week while respecting the core hours. Starting and ending times may be different on different days, however, a fixed schedule

must be established which precludes employees from "flexing" around these starting and ending times.

2. *4/10 Schedules* – A compressed, fixed schedule that permits employees to work ten hours a day for only four (4) days a week or eight (8) days a pay period.

G. *Lunch Schedule* – Scheduled time between 11:00 a.m. and 2:00 p.m. during which employees may take the traditional lunch period. With supervisory concurrence, employees may extend or vary their lunch period outside the 11:00 a.m. – 2:00 p.m. period. Unit and non-unit employees taking additional time at lunch will be treated the same in terms of adding to the end of the workday or work period or leave must be taken. Employees on compressed schedules do not have the same flexibility and must request leave if they choose to lengthen the lunch period. At the employee's request, a supervisor may approve a work schedule with no lunch period on a regular or infrequent, occasional basis

SECTION 5

Approval of Alternate Work Schedules

A. By the sixtieth (60th) day of this Agreement, employees desiring a different CWS/AWS schedule will submit their requests for a change to their supervisors. They may request any schedule listed in this Agreement or the FDA AWS Master Plan.

B. Once these are submitted, the Employer will review the requested schedules and respond to specific schedule requests within thirty (30) days. Any schedules approved must adhere to the core hours as established according to the FDA AWS Master Plan.

C. Should the supervisor disapprove the requested schedule, he/she will explain the reasons for the denial to the employee orally, or if requested, in writing.

D. No later then thirty (30) days thereafter (one hundred twentieth (120th) day of Agreement), local union/management AWS/FWP committees, composed of one (1) person from each side (or more by mutual agreement), from within each district, center and NCHQ office, will be created. Official time will be granted to participate in committee activities. Bargaining unit members of this committee will be appointed by the National NTEU Office.

E. The committees will review any disputes and work to resolve them. If they have not resolved them by the one hundred eightieth (180th) day of the Agreement, the dispute will be referred to the Agency Partnership Office.

F. If there is no resolution of the dispute within thirty (30) days, the Agency Partnership Office will refer the dispute to a third party neutral (i.e., Mr. Jerome Ross) for resolution. Mr. Ross has the option of deciding the dispute either by oral presentation, review of written case material, or other means as appropriate. If the dispute requires live testimony, each party may bring one additional person to participate in the hearing. Mr. Ross' decision will be final and binding. The Employer will pay the cost of the third (3rd) party.

G. Once the initial disputes are resolved, the Employer will not be required to accept requests for additional changes during the first full year of the contract. Thereafter, the Parties will use the traditional grievance process, as appropriate, and will share costs as noted in those articles.

H. Should 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 between themselves. If the employees cannot solve the problem, then the Employer will schedule the employees on a fair and equitable rotating basis.

SECTION 6

Credit Hours

A. Employees on flexible work schedules will be permitted, with supervisory approval, to earn credit hours each day within established flexible bands. The number of credit hours that may be earned daily will depend on availability of work, the established flexible bands, and supervisory approval.

B. Employees may not "save" work that could otherwise be completed during the regular tour of duty in order to earn credit time. Employees may be required to report work accomplished while earning credit hours.

C. A request to work credit hours must be approved in advance; however approval may include blanket approval to earn and/or use credit hours up to a designated limit per day, week or pay period. Approval to earn or use credit hours may be granted orally. Once approved, the hours earned will be reported by an appropriate organizational form, e.g. SF-71, e-mail, or FAX and recorded on either the Time Card or in EASE.

D. Credit hours may be earned and used in increments of one-quarter hour. Credit hours may be earned by full-time employees within the morning and afternoon local flexible bands and schedules. Part-time employees may earn credit hours within the above time bands or at other time periods adjacent to their work schedule.

E. Approval to use earned credit hours will follow the same procedures as approval for annual leave in Article 15, Annual Leave, of this Agreement. Credit hours can be used in lieu of or together with approved leave and/or compensatory time to take partial or full days off.

F. For full-time employees, a maximum of twenty-four (24) credit hours can be carried forward from one pay period to the next. For part-time employees, the maximum is one-fourth (1/4) of the employee's scheduled bi-weekly tour of duty.

G. Credit hours may be used in connection with the lunch period with supervisory approval.

SECTION 7

Requests for Changes to AWS

A. Individual employees desiring to change their existing AWS will submit an application (Attachment 25-1) prior to the requested change to their immediate supervisor. Changes will be approved and implemented or disapproved as soon as practical.

B. Upon mutual agreement, an employee on a compressed work schedule may vary his/her off day. Either the Employer or the employee may initiate a discussion to vary an off day. Approval or disapproval of the change will be in accordance with Section 5.B. of this Article.

C. In the event of an emergency or workload problem, which interferes with an organization's ability to meet its workload or programmatic objectives, the Employer may temporarily change, for a specified period of time, an employee's AWS (e.g., require an employee to come off a compressed schedule, change starting and ending times of workdays for an employee, etc.) The Employer will limit this change to as short a time as necessary.

SECTION 8

Failure to Comply with AWS Requirements

An employee who fails to comply with the requirements and provisions of the FDA AWS Program and this Article may be removed from participation in an AWS in the following manner:

A. If an employee fails to comply with the AWS program requirements, a supervisor shall counsel the employee on the need to comply with all of the provisions of the program. The supervisor will document this counseling and give the employee a copy of the documentation which includes a notice that future failure to comply by the employee will result in suspension of the employee's participation in the program.

B. If the employee continues not to comply with the AWS program requirements after such written notification, the supervisor may suspend the employee from participating in the program for up to three (3) months. Following completion of the suspension period, the employee shall be allowed to resume participation in the program, unless the employee has continued to present time and attendance problems during the suspension period.

C. Employees will not normally be required to sign in or sign out, or punch in or out, to record their arrival or departure times. However, employees will be required to do so if they abuse time and attendance rules and/or the time reporting method established at the local site.

D. Falsifying time and attendance reports is cause to terminate participation in the AWS program and could be grounds for other adverse or disciplinary action.

SECTION 9

Additional Provisions

A. Implementation of this Article will in no way change current leave practices except as otherwise provided for by this Agreement.

B. Employees who work AWS, and/or earn/use credit hours will be afforded all rights and benefits provided for by law and regulations.

C. For employees on flexible schedules, work that is ordered and approved which is in excess of eight (8) hours per day, forty (40) hours per week, or eighty (80) hours per pay period is considered overtime work. For employees on compressed schedules, work that is ordered and approved which is in excess of the number of hours worked daily on the compressed schedule is considered overtime work. Compensatory time may be substituted for overtime pay in accordance with law, regulation and Article 22, Overtime, Compensatory Time, and Holidays, of this Agreement. (Nothing in this Article diminishes an employee's FLSA rights as provided for by law and regulation.)

D. To the extent possible, the Employer will generally schedule meetings during core hours, and give employees as much advance notice of these meetings as feasible.

E. An employee on a flexible work schedule is not considered tardy until the beginning of the core hours unless:

   1. The supervisor has asked the employee to arrive at a certain time to attend a regularly scheduled or special staff meeting or other special activity, e.g., training courses or conferences, and the employee arrives after that time; or

   2. The employee has been designated to cover a particular time and arrives after that time.

F. Employees in travel or training status or on detail will adhere to the tour of duty of the organizational segment to which they are temporarily assigned. The Employer will make every effort to accommodate an employee who is adversely affected by such temporary assignment (e.g., by altering their day(s) off if on alternative work schedule).

G. Unless the situation is covered by Section 8 of this Article, should factors used in approving AWS change, the Employer may alter or cancel an employee's AWS schedule, upon written determination of, or agreement to, the presence of an adverse Agency impact.

H. This Article does not prohibit an employee from applying for an uncommon tour of duty for specific personal reasons (for example, because of transportation arrangements, day care arrangements, education or training schedules, or health reasons).

I. If an employee is transferred into or otherwise becomes part of the bargaining unit he or she may apply and be considered for an AWS or other uncommon tour of duty.

J. Employees on Maxiflex or Any 80 will be granted excused absences under the same circumstances excused absence would be granted to employees covered by other schedules. In determining how much time is excused, the particular day will be treated as a regular eight (8) hour day for employees who do not have a pre-set schedule. In no case may an excused absence be granted that would cause an employee to exceed his/her basic work requirement (e.g., eighty (80) hours for full-time employees). (Refer to the FDA AWS Master Plan for additional information and examples of how to handle excused absence for non-traditional schedules.)

REQUEST FOR ALTERNATIVE WORK SCHEDULE

DATE: _____

TO: _____
(SUPERVISOR)

SUBJECT: DESIRED WORK SCHEDULE

I am requesting to work the following schedule:

_____ Regular Fixed Schedule _____a.m. to _____p.m.

OR

_____ 5-4/9 Compressed Schedule
8-1/2 day is _____of week _____of pay period
(day) (1 or 2)
Starting time - 9 1/2 hour days_____; 8-1/2 hour days _____

OR

_____ 4 - 10 Compressed Schedule
Day off is _____
Starting time is _____

OR

____ Any 8 Maxiflex Schedule - estimated daily arrival time _____a.m.
____ Any 40 Maxiflex Schedule - estimated daily arrival time _____ a.m.
____ Any 80 Maxiflex Schedule

I have read and understand the provisions of Article 25 of the Collective Bargaining Agreement between FDA and NTEU.

_____
Signature of Employee

_____ APPROVED
_____ APPROVED WITH FOLLOWING CONDITIONS/MODIFICATIONS
_____ DISAPPROVED (provide explanation/justification on reverse side)

_____
Signature of Supervisor

ARTICLE 26

FLEXIBLE WORK PLACE PROGRAM

SECTION 1

The Flexible Work Place Arrangements Program (FWAP) is a program that permits employees to work at home or at other approved locations remote to the conventional office site. For purposes of this Agreement, the terms “FWAP”, “flexiplace” and “telecommuting” are synonymous and include working at home or in satellite office sites or other approved flexiplace work sites.

SECTION 2

The Parties anticipate that this program will result in increased productivity, improvements in employee morale, job satisfaction, and reduced absenteeism. Participation in flexiplace is not an entitlement nor is it an accommodation for dependent/family care.

SECTION 3

Situations appropriate for flexiplace depend on the specific nature and content of the job, rather than just the job series and title.

A. A flexible work place arrangement may be used when there is recurring opportunity to perform work at an alternate site. For example, the work does not require interaction with customers or peers on a daily basis, it does not require specialized equipment or reference materials unavailable except at the conventional office, and the employee’s work habits are such that once an assignment is given, it can be accomplished without further oversight or supervisory consultation.

B. A flexible work place arrangement may also be used on an occasional basis, for individual days or hours within a pay period, or for a special assignment or project on a short term basis (two consecutive weeks or less). For example, such work tasks may include: data analysis, reviewing grants/cases, writing decisions or reports; telephone intensive tasks such as obtaining or collecting information, following up on participants in a study or setting up a conference; and some computer oriented tasks such as programming, data entry and word processing. Typically, such tasks require uninterrupted concentration and result in measurable work outputs or products.

C. A flexible work place arrangement may be appropriate to accommodate an employee with a temporary or permanent illness or disability, if the job can be accomplished at an alternate site, and the employee is capable of performing the job at home or at a telecommuting center but can not commute to and/or from work on a daily basis. If the request to participate in the flexible work place program is for medical reasons, the employee may be required to provide

acceptable medical documentation. If the request is based on a temporary condition, medical documentation may need to be updated every six (6) months.

SECTION 4

A. Flexible work arrangements must be consistent with maintaining adequate office coverage during normal business hours.

B. The Parties agree that specific individual participation in flexiplace must be considered on a case by case basis. The designated approving official will approve or disapprove the request, on a fair and equitable basis, consistent with the following:

1. The employee's latest rating of record is "fully successful" or better, and there is no reasonable cause to believe this level of performance will drop;

2. The employee is not on leave restriction;

3. The employee is not on a performance improvement plan (PIP);

4. The employee has not received any disciplinary or adverse action in the last twelve (12) months that would adversely impact on the integrity of the flexible work place program or the Employer;

5. The employee has demonstrated the ability to initiate his/her own work, to work without direct supervisory oversight, to recognize when supervisory or other assistance is needed on a project, and

6. The employee's fully successful performance of the work does not require:

   a. Daily and frequent use of specialized equipment or technology that is available only at the official duty station;

   b. Daily and frequent face to face contacts with co-workers, managers and/or customers;

   c. Daily and frequent access to confidential or sensitive data and/or information (not attainable from home) such as personnel and/or payroll records or proprietary information protected from unauthorized disclosure by the Privacy Act of 1974 and its implementing regulations;

7. Funds are available to provide and install necessary equipment, i.e., personal computer, telephones, etc., that is needed to perform work. Supervisors will seriously consider moving the computer in an employee's office to his/her home only if the employee works the majority of time on flexiplace and there are available computers for use on the days the employee is required to be at the official work site.

C. By the sixtieth (60th) day of this Agreement, bargaining unit employees may request to participate in a flexiplace schedule by submitting a written request and flexible work place agreement (Attachment 26-1) through the designated NTEU local chapter official to the designated authorizing official(s).

D. A request for a flexible work arrangement must be acted upon by management within thirty (30) calendar days of its receipt from NTEU, or sooner if based on a request for a reasonable accommodation. If the request is disapproved at any level, the employee will be notified in writing, if requested, stating the reasons for disapproval.

E. By the one hundred twentieth (120th) day of this Agreement, local Union-Management AWS/ FWP Teams, composed of one (1) person from each side (or more by mutual agreement), from within each district and Center/NCHQ Office, will be created (same team as mentioned in Article 25, Alternative Work Schedules). Official time will be granted to participate in committee activities. Bargaining unit members of this committee will be appointed by the National NTEU Office.

F. If the employee's flexible work arrangement request is disapproved, the request will be referred to the committee. The committees will review any disputes and work to resolve them. If they have not resolved them by the one hundred eightieth (180th) day of the Agreement, the dispute will be referred to the Agency Partnership Office.

G. If there is no resolution of the dispute within thirty (30) days, the Agency Partnership Office will refer the dispute to a third party neutral (Mr. Jerome Ross) for resolution. Mr. Ross has the option of deciding the dispute either by oral presentation, review of written case material, or other means as appropriate. If the dispute requires live testimony, each party may bring one additional person to participate in the hearing. Any decision by the third (3rd) party neutral will be final and binding. The Employer will pay the cost of the third party neutral.

H. Once the initial round of requests is resolved, the Employer will not be required to accept requests for additional changes during the first year of the contract. Thereafter, the Parties will use the traditional grievance and negotiation processes, as appropriate, and the Parties will share the costs as noted in those articles.

SECTION 5

A. Participation in the FWAP is voluntary. However, the Employer may require employees to work at an alternate site in case of emergency situations.

B. Participants in the flexible work place program shall be permitted as part of a flexiplace arrangement to continue to work any AWS schedule they may already be working.

C. The official duty station of an employee participating in the flexible work program is the conventional work site.

D. Employees on a flexible workplace arrangement are required to report to the official duty station according to the schedule determined by the Employer. Employees on continuing flexible work arrangement should expect to report to the conventional work site a minimum of one (1) day per pay period. In addition, more frequent days at the conventional work site, either planned or unplanned, may be required due to special circumstances, including, but not limited to, office assignments, meetings, absence of other employees, emergency situations, training classes, or other situations deemed appropriate by the supervisor.

E. The Employer will make reasonable efforts to provide alternative methods, such as teleconferencing, use of fax and e-mail, and/or other methods to avoid unplanned situations requiring the employee to report to the conventional work site. However, when situations occur that require the employee to return to the conventional office, travel to and from the office is normal commuting time and as such is not considered hours of duty.

F. As a minimum level of accessibility, the employees in the flexible work place program are expected to be as available to managers, co-workers and customers by telephone, E-mail, voice mail or other communications media during their scheduled daily tours of duty as when working at the official duty station.

G. Overtime and credit hours worked must be approved in advance by an authorized official. For employees on flexible schedules, work that is ordered and approved in advance which is in excess of eight (8) hours per day, forty (40) hours per week, or eighty (80) hours per pay period, is considered overtime work. For employees on compressed schedules, work that is ordered and approved in advance which is in excess of the number of hours worked daily on the compressed schedule is considered overtime work. Compensatory time may be substituted for overtime pay in accordance with law, regulation, and Article 22, Overtime, Compensatory Time, and Holidays, of this Agreement. Nothing in this Article diminishes an employee's FLSA rights as provided for by law and regulation.

H. Policies and practices for requesting and using leave remain unchanged, except as provided in the applicable articles of this Agreement.

I. For purposes of timekeeping, participants will sign a certification each pay period indicating hours worked or any exceptions to the scheduled tours of duty specified in their flexible work place program agreements. Falsifying time reports is cause to terminate participation in the flexible workplace program and could be grounds for other adverse or disciplinary action.

SECTION 6

A. With respect to the Employer's right to determine its budget outlined in 5 USC'7106, the Employer will make a good faith effort to reasonably provide the necessary equipment, supplies and services required for employees to participate in the flexible work place program. Acquiring and installing of such equipment is subject to the Employer's right to determine its budget.

B. A flexible work place arrangement may not be feasible where there is a prohibitive cost to duplicate the same level of confidentiality or security as exists in the employee's official duty station.

C. Flexiplace home sites must have adequate workspace, lighting, residential telephone service, power, smoke alarms and adequate security.

D. The Employer has the right to inspect the home work site to ensure its suitability. Reasonable advance notice will be given (not less than one (1) workday in advance of the inspection) and the inspections will be delayed up to five (5) additional days so that the employee can get a Union representative to attend as a witness if the employee so requests. Another inspection may be made if there are changes to the home worksite that necessitate another inspection.

E. Employees must comply with all security measures and disclosure provisions, including password protection and data encryption so that the Privacy Act or other security standards are not compromised.

F. Employees must protect all government records and data against unauthorized disclosure, access, mutilation, obliteration and destruction.

G. Employees must ensure that government provided equipment and property is used only for authorized purposes. Reasonable care should be used in operating all equipment. The servicing and maintenance of government owned equipment is the responsibility of the Employer.

SECTION 7

A. The Employer may terminate an employee's participation in the program for cause, such as:

1. Failure to continue to meet the criteria listed in Section 4 above;

2. Failure to adhere to the provisions of the Agreement;

3. Failure to accurately and truthfully report time worked;

4. Organizational exigencies that impact on the mission of the Employer, and require the employee to perform work at the official duty station;

5. For misconduct in connection with the employee's obligations under the flexible work place program; and

6. Verifiable information that has been shared with the employee indicating customer dissatisfaction with the employee's performance or conduct.

B. If a flexible work place agreement is cancelled or terminated, within the first one hundred twenty (120) days of the employee's return to the traditional workplace the Employer will

make reasonable efforts to return the employee to the same or a comparable work situation that he/she had prior to beginning the flexible work arrangement. After one hundred twenty (120) days, the Employer will restore the employee to the same or comparable work situation of other similarly situated employees.

SECTION 8

A. Employees participating in the flexible work place program will not be excused from work because workers at the official duty station are dismissed or not required to work due to an emergency if the emergency does not impact the work being performed at the alternative work site. If an emergency occurs at the flexiplace work site that impacts on the employee's ability to perform official duties, the employee will immediately notify the Employer. The Employer will direct the employee to another work site, grant excused absence, or allow the employee to request appropriate leave, e.g., annual leave or LWOP.

B. The Employer will not be responsible for operating costs, home maintenance, or any other incidental costs (e.g., utilities) associated with the use of the flexiplace work site, unless the costs are the result of Employer required or provided equipment or services. The employee does not relinquish any entitlement to reimbursement for appropriately authorized expenses incurred while conducting business for the Employer as provided for by law and regulations.

C. The employee is covered under the Federal Employees Compensation Act if injured in the course of performing official duties at the alternative work site.

D. The Employer will not be held liable for damages to the employee's personal or real property during the performance of official duties or while using Employer equipment in the alternative work site, except to the extent the Employer is held liable under the Federal Tort Claims Act claims or claims arising under the Military Personnel and Civilian Employees Claim Act.

REQUEST AND AGREEMENT TO PARTICIPATE IN FDA'S FLEXIBLE WORK PLACE PROGRAM

TO: Authorizing Official

THROUGH: (Name, Designated NTEU Official)

SUBJECT: Request and Agreement to Participate in the FDA Flexible Work Place Program

I wish to participate in the flexible work place program pursuant to Article 26, Flexible Work Place Program, of the Collective Bargaining Agreement between the FDA and NTEU. I have read and understand the provisions of Article 26.

Employee's Name: _____
(First) (Last) (Middle Initial)

Position Title: _____

Grade, Series, and Pay Plan: _____

NATURE OF REQUEST (Include all information necessary to evaluate the request, as applicable.)

1. If your request is for reasons of disability or illness, please attach medical documentation and/or other relevant information, and indicate the estimated duration of the illness or disability.

2. Describe what arrangements you have made for the care of young children and other dependents, if applicable.

3. Indicate the expected duration of the flexible work place agreement in weeks or months and state the days and hours per week you wish to work away from your official duty station.

4. Specify where you would like to work off site: (e.g., home or at a telecommuting center.)

5. Describe the nature and content of the work you could perform.

6. Identify any equipment or services you would need to successfully perform work at the alternative work site.

FLEXIBLE WORKPLACE AGREEMENT

The following constitutes an agreement between:
(Office/Center/District)_____and (Employee)_____
of terms and conditions of a Flexible Workplace Arrangement.

1. Employee volunteers to participate in a flexible workplace arrangement and to adhere to the applicable guidelines and policies. (Office/Center/District) concurs with employee participation and agrees to the applicable guidelines and policies.

2. Employee agrees to participate beginning _____.

3. Employee's official tour of duty will be from: _____to: _____. (including a on half-hour non-paid period if appropriate) on _____ through _____ (e.g., 8 a.m. to 4:30 p.m. on Monday through Friday). Flexible Schedule will be from: _____ to _____ (including a one-half hour non paid lunch period if appropriate) on the following days: _____.

4. Employee will report to the official duty station on the following days: _____.

5. Employee's official duty station is: _____. The alternative duty station (the location in which the employee is designated to work while not at the official duty station) is: _____. All pay, leave, and travel entitlement will be based on the employee's official duty station.

   Description if the designated work area within the alternate duty station (including the space to be used such as home, office, den, dining table, etc.; available equipment such as PC, modem, fax.; and security-related equipment such as locked file cabinet and smoke detectors): _____
   _____
   _____
   _____
   _____

6. Employee's timekeeper will have a copy of the employee's flexible workplace schedule. Employee's time and attendance will be recorded as performing official duties at the official duty station. Employee will certify each pay period the hours worked and will provide a leave slip, as appropriate, for any hours not worked under the agreement during a pay period.

7. Employee may continue working any flexitime, maxiflex, or compressed work schedule already in place in accordance with his/her organization-specific Alternative Work Schedule plan. The schedule must be consistent with the nature of the work being performed and the frequency of communication necessary with those at the official worksite or with work contacts in other locations. Employee may earn, with prior supervisory approval, credit time.

8. Employees must obtain supervisory approval before taking leave in accordance with procedures established by the supervisor. By signing this agreement, employee agrees to follow established procedures for requesting and obtaining approval of leave.

9. Employee will continue to work in pay status while working at his/her approved worksite. All overtime must be ordered and approved in advance, and will be compensated in accordance with applicable laws and regulations. By signing this agreement, employee agrees that failing to obtain proper approval for overtime work may result in his/her removal from the Flexible Workplace Arrangement Program and other action as appropriate.

10. If employee borrows Government equipment, employee will borrow and protect the Government equipment in accordance with the procedures established in FIRMR Bulletin 30, October 15, 1985. Government-owned equipment will be serviced and maintained by the Government. If employee provides his/her own equipment, he/she is responsible for servicing and maintaining it.

11. Provided the employee is given at least 24 hours advance notice, the employee agrees to permit periodic home inspections by the Government of the employee's home worksite at periodic intervals during the employee's normal working hours to ensure proper maintenance of Government-owned property and worksite conformance with safety standards and other specifications in these guidelines. This inspection may be delayed up to one (1) additional day so the employee can obtain a Union representative to attend, if desired.

12. The Government will not be liable for damages to an employee's personal or real property during the course of performance of official duties or while using Governement equipment in the employee's residence, except to the extent the Government is held liable by Federal Tort Claims Act claims arising under the Military Personnel and Civilian Employees Claim Act.

13. The government will not be responsible for operating costs, home maintenance, or any other incidental cost (e.g., utilities) associated with the use of the employee's residence if residence is approved as the alternate worksite. By participating in this program, the employee does not relinquish any entitlement to reimbursement for authorized expenses incurred while conducting business for the Government, as provided for by statue and implementing regulations.

14. Employee is covered under the Federal Employee's Compensation Act if injured in the course of actually performing official duties at the official duty station or the alternate duty station.

15. Employee will meet with the supervisor to receive assignments and to review completed work as necessary or appropriate.

16. Employee will complete all assigned work according to work procedures discussed between the employee and the supervisor and according to guidelines and standards stated in the employee's performance plan.

17. Employee's job performance will be appraised in accordance with his/her performance plan.

18. Employee's most recent performance rating of record must at least be "Meets Performance Measures" before participation in a flexible work arrangement may be approved.

19. Employee's current performance plan will contain performance standards covering work completed at the office (official duty station) as well as work completed at the employee's residence or telecommuting center (alternate duty station).

20. Employee will apply approved safeguards to protect Government/agency records from unauthorized disclosure or damage and will comply with the Privacy Act requirements set forth in the Privacy Act of 1974, Public Law 93-579, codified at Section 552a, title 5 U.S.C.

21. The Employer may terminate participation in FWAP at any time. Management may remove the employee from the program for such reasons as:

    1. Failure to continue to meet the criteria listed in Section 4 above;

    2. Failure to adhere to the provisions of the agreement;

    3. Failure to accurately and truthfully report time worked**;**

    4. Organizational exigencies that impact on the mission of the Employer, and require the employee to perform work at the official duty station;

    5. For misconduct in connection with the employee's obligations under the flexible work place program; and

    6. Verifiable information that has been shared with the employee indicating customer dissatisfaction with the employee's performance or conduct.

22. Employee agrees to limit the performance of his/her officially assigned duties to his/her official duty station or to agency-approved alternate duty stations, e.g., either home or telecommuting center. Failure to comply with this provision may result in loss of pay, termination of the flexible workplace arrangement, and/or other appropriate disciplinary action.

23. Employee is responsible for ensuring the safety and adequacy of the home workplace and for ensuring applicable building and safety codes are met. This includes but is not limited to: assuring that the home's electrical system is adequate for the use of Government equipment, safeguarding Government equipment from children and pets, and providing smoke detectors if required by the applicable building code. (Employees are encouraged to provide smoke detectors even if not required by the building code.)

24. If any government-owned computer equipment, software and/or peripherals are to be used at the home site, and/or if any government records are to be electronically accessed from the home site, an approved Off-Site Computing Request will become part of this agreement.

25. All Government-provided equipment will be used in accordance with the FDA Policy on Use of Government Electronic Equipment and Systems.

26. The standards of conduct continue to apply to employees at their alternate duty station.

27. At specified intervals, the supervisor and the employee will conduct an evaluation that summarizes the flexible workplace impact on the office, the employee, the supervisor, and other organizational elements.

_____

Employee Date

_____

Concurrence, if appropriate Date

_____

Approving Official Date

_____

Office/Center Flexible Workplace Arrangements Coordinator Date

ARTICLE 27

AWARDS

SECTION 1

General

A. Employees, both individual and groups, are eligible for awards. In granting the awards, the Employer will act in a fair and equitable manner.

B. Awards covered by this Article are cash awards and informal recognition items. This Article also establishes the Union's presence on Honor Awards committees.

C. Awards and recognition should be given as close in time as possible to the achievement being recognized.

D. Peers and supervisors may nominate employees for awards; Employees may nominate themselves for awards, however self-nominations will be limited to a maximum value of the percentage used to determine the bargaining unit awards budget applied to the individual employee. Nominators of awards for employees outside their own organization must submit the nomination to the employee's local labor/management Awards Committee.

E. The Employer will grant time-off awards.

F. The Union may have one (1) representative on each Center/OC level honor awards committee. The NTEU National Office will appoint the bargaining unit member to these committees.

G. Freedom of Information policy allows nominators to inform nominees that they have been nominated for an award. Nominators and/or approving officials may not release or publicize any information about unapproved nominations to anyone other than the nominee. However, the Freedom of Information policy does not restrict information about approved nominations.

H. Any informal recognition items used must be of an appropriate nature to be used in the Federal sector and to be purchased with Federal funds.

I. Informal recognition items may not be used to recognize birthdays, marriages, births, etc.

SECTION 2

FDA Values

The following FDA Values will form the basis for granting FDA awards:

- **Citizenship** - contributing to the well being of the community. (non-monetary recognition only)
- **Contribution to the Public Health Mission** - performing in a way that contributes to protecting and promoting the health of the American people.
- **Customer Service** - providing quality service to internal and external customers.
- **Leadership**- influencing/guiding others toward achieving organizational goals.
- **Problem Solving/Creativity** - achieving results with new approaches, novel methods or resolving issues.
- **Quality Performance** - performing consistently and/or exceptionally for the benefit of the organization.
- **Risk-Taking/Innovation** - working to improve current practices or trying new approaches or solutions.
- **Special Accomplishment** - performing with exemplary efforts outside normal job responsibilities.
- **Teamwork/Collegiality** - advancing team goals toward FDA mission. Supporting team and individual team members. Supporting organizational units.
- **Other** - contributing to organizational goals in a manner not listed.

SECTION 3

Recommendation and Approval

A. Local labor-management Awards Committees (the Committee(s)) composed of one (1) person from each party (or more by mutual agreement), at the level of delegated authority for award approval will be established. The NTEU National Office will appoint the bargaining unit members of these committees. The committees will:

   1. Determine use or non-use of informal recognition items, types used, and percentage of budget, if appropriate, for this purpose; and

   2. Review nominations and recommend approval/disapproval of awards.

B. These Committees should meet quarterly to make recommendations. Awards may not be withheld for unrelated reasons.

C. The Committees will reach recommendations by consensus. If the Committee is unable to reach consensus, the nomination will be forwarded to the management official with award approval authority who will make the final decision.

D. Consensus recommendations will be forwarded to the management official with delegated approval authority who will accept, modify, or reject them. If the recommendation is modified or rejected, the management official will inform the committee in writing, if requested. The Committee may request reconsideration of the decision by making a written request with any additional justification not previously presented.

E. During the first year of this Agreement, decisions of the approving official regarding cash awards are final and may not be grieved. Honor Awards may not be grieved for the first two (2) years of this Agreement.

SECTION 4 – BUDGET

A. Each year, the Employer will determine the amount, if any, of the bargaining unit employees' awards budget pool. The amount will be based on a percentage of bargaining unit employee's salaries as of the beginning of the fiscal year. The budget will be distributed, as a percentage of bargaining unit employee salaries, to the Region, Center and OC level for further distribution as determined by management.

B. The Parties agree that the percentage of salary for the unit awards pool will be the same percentage used for the non-unit awards pool, exclusive of SES awards. The Employer agrees to distribute the budgeted pool to unit employees each year absent just cause.

C. When informal recognition items are to be used, the Committee will determine what percentage of the bargaining unit awards budget will be used for purchasing these items. The Employer will assist in ordering these items as requested.

D. The Committees should track expenditures quarterly. The Employer will provide an annual budget divided by quarter to assist the Committees in tracking expenditures and will provide bi-annual expense reports covering dollars spent per quarter.

E. The Committee may not recommend approval of awards that would cause the bargaining unit awards budget pool to be exceeded.

F. No bargaining unit employee may receive awards totaling more than 3% of his/her salary in a year.

SECTION 5 – REPORTING

A. The Employer will provide information about the Awards Program on the OHRMS Home Page. This information will be available to all employees throughout the year.

B. In accordance with the Privacy Act, the Committees may provide additional information about the awards program, and/or awards given, to the local organization, as they deem appropriate.

C. The Employer will provide the Union with an annual report summarizing the proportion and amount of the bargaining unit awards budget pool spent on informal recognition items and cash awards.

ARTICLE 28

SUGGESTION AWARDS

SECTION 1

The Employer will continue to provide a program through which employees can submit, in accordance with HHS and FDA Instructions, suggestions concerning improvements in the Employer's operations.

SECTION 2

A. An employee has the option of submitting a suggestion to the immediate supervisor, the area suggestion program coordinator, or the FDA Suggestion Coordinator. If the employee submits the suggestion to the immediate supervisor, the supervisor will forward the suggestion to the appropriate suggestion coordinator within two (2) workdays of receipt of the suggestion. Receipt of any written suggestion submitted by an employee will be acknowledged in writing within ten (10) workdays. The acknowledgment will include whether or not the suggestion is appropriate for acceptance into the suggestion system. Those suggestions not accepted into the system will be returned to the employee with a written explanation of the reason(s) for the rejection. If there are delays beyond the established time period for review, the evaluator shall notify the suggestor of the reasons for the delay and the estimated time frames that the suggestion will be processed within.

B. Targets for processing suggestions should provide for action to be completed as follows:

   1. Within thirty (30) days for suggestions which can approved within the same organizational segment in which they originated;

   2. Within sixty (60) days for suggestions which must be sent to the next higher organizational segment for consideration of approval; or

   3. Within ninety (90) days for suggestions which must be sent to a Headquarters level official for consideration of approval.

C. If there are delays beyond the established time period for review, the evaluator shall notify the suggestion coordinator who will, in turn, notify the suggestor of the reasons for the delay and the estimated time frames that the suggestion will be processed within.

D. If it is necessary to test a suggestion for a period of time to determine whether or not to adopt it, the time limit for processing may be extended for the length of the trial period. The suggestion program coordinator at the level of evaluation has the responsibility of communicating this action to the suggestor.

SECTION 3

In the event that an employee suggestion is initially rejected but is later implemented within two (2) years following the rejection date, the original suggestion will be reconsidered for a proper award to be made to the employee.

SECTION 4

Amounts of awards for adopted suggestions will be in accordance with HHS Guidelines in effect at the time the suggestion is approved.

SECTION 5

Within ninety (90) days following the execution date of this Agreement, the Parties will create a separate group to evaluate and structure a suggestion program with the following guiding principles:

- To encourage suggestions by employees;
- A program that is simple to use;
- Establish proper time lines, and
- That offers a range of recognition's (monetary and non-monetary).

Groundrules for the establishment of this workgroup will be mutually agreed to by the Parties.

ARTICLE 29

WITHIN GRADE INCREASES

SECTION 1

A. In accordance with 5 CFR and applicable law, a within grade increase (WIGI) will be granted by the Employer when the Employer determines that the employee's performance is at an acceptable level of competence. The level of competence determination will be based on the employee's latest rating of record and any performance that has occurred since the latest Rating of Record. Acceptable level of competence means an employee's last performance rating was "meets performance measures", as defined in Article 30, Performance Management, and has remained at that level.

B. The employee must also have completed the required waiting period for a within-grade increase. The waiting period is defined as:

   1. For steps two (2), three (3), and four (4) – fifty two (52) calendar weeks of creditable service;

   2. For steps five (5), six (6), and seven (7) – one hundred four (104) calendar weeks of creditable service; and

   3. For steps eight (8), nine (9), and ten (10) – one hundred fifty six (156) calendar weeks of creditable service.

SECTION 2

A. The performance management process, including any counseling, progress reviews and the latest performance rating, will be mechanisms for warning employees that their performance is not at an acceptable level of competence.

B. The Employer will inform an employee if his/her performance is at an unacceptable level of competence which may result in the delay or denial of a WIGI. The Employer will discuss with the employee any specific performance that is deficient and will help the employee focus on actions and improvements needed to bring the performance up to an acceptable level. This discussion may be part of the normal performance management process (e.g., at the mid-year review or during any other performance discussions) or may be in addition to the performance management process. The Employer will normally have the discussion at least sixty (60) days prior to the date that the employee is eligible to receive a WIGI.

C. When the level of competency determination is negative and the discussion was held less than sixty (60) days prior to the WIGI due date, the WIGI will be denied. The reconsideration period will begin on the date the discussion referenced in Paragraph B above

is held. At the end of sixty (60) days following the reconsideration period, a reconsideration determination will be made according to Section 5. The procedure in this section applies only to those situations where the discussion did not occur at least sixty (60) days prior to the WIGI due date.

Nothing in this section precludes the supervisor from beginning a performance improvement plan at the same time the level of competency determination is made.

D. Whenever a within-grade increase is withheld, the Employer will thereafter prepare a new rating of record for the employee and grant the WIGI when the employee has demonstrated performance at an acceptable level of competence for at least the minimum appraisal period of one hundred twenty (120) days. At a minimum, this requires a determination of whether the employee's performance is at an acceptable level of competence after each fifty two (52) weeks following the original due date for the WIGI.

E. Violation of the terms of this Article which result in a changed acceptable level of competence determination will provide for retroactivity of any pay increase only to the extent authorized by applicable law and regulation.

SECTION 3

The Employer will give employees, written notification of unacceptable level of performance determinations no later than ten (10) workdays after the end of the waiting period for the WIGI. The notice will:

A. Inform the employee that his/her performance has become unacceptable since the last rating of record and a new rating of record has been prepared and is included with the notification;

B. Inform the employee about the negative determination and withholding of the WIGI, including specific instances of performance that support the determination;

C. State how the employee must improve his or her performance in order to receive a WIGI;

D. Inform the employee about his or her right to request reconsideration and identify the reconsideration official; and

E. State the employee's right to Union representation while preparing for and presenting any request for reconsideration.

SECTION 4

Where an employee chooses to make an oral presentation in connection with a request for reconsideration, this oral presentation will be held at a particular site, or telephonically, as determined by the reconsideration official. The Employer will arrange for a reporting service to transcribe the employee's oral presentation. A copy of the official transcript will be provided to

the employee. The employee and the Union will be given at least five (5) workdays to comment. The Employer will consider the Union's comments before reaching its final determination. The reconsideration official will issue his or her decision as soon as possible, but in no case later than fifteen (15) calendar days following receipt of Union comments.

SECTION 5

A. When an employee receives a negative determination, he or she shall be granted a reasonable amount of duty time to review the material relied upon to make the determination (if otherwise on pay status), prepare a request for reconsideration, and present the request.

B. If, based on the reconsideration, a negative determination is reversed by the Employer, the effective date of the increase will be the original due date.

C. Where an employee is denied a WIGI by the reconsideration official, the letter transmitting the official's decision shall include a statement which informs the employee about his or her right to appeal the decision to binding arbitration (with Union concurrence), as provided in Article 46, Arbitration, of this Agreement, and the number of days in which the employee must request such an appeal through the Union.

ARTICLE 30

PERFORMANCE MANAGEMENT PROGRAM

SECTION 1

The purpose of the Performance Management Program (PMP) is to improve employee and organizational performance. It encourages continuous communication between employees and supervisors, provides a mechanism to evaluate employee performance and identify strengths and weaknesses, and provides a mechanism to address deficient performance effectively through such activities as increased communication, coaching, training, and if necessary, through appropriate personnel actions. Feedback and ratings under the PMP system will be provided in a fair, consistent, constructive and equitable manner.

The Employer and Union agree that the effectiveness of this program will be evaluated within three (3) months from the end of the performance period by a joint labor-management workgroup.

SECTION 2

The objectives of the PMP are to:

- Improve employee and organizational performance by defining critical aspects of employee performance and assessing results achieved;
- Facilitate evaluation of employee performance;
- Encourage communication between supervisors and employees;
- Identify good employee performance for recognition;
- Address deficient performance effectively through such things as increased communication, coaching, training and if necessary, through appropriate personnel actions; and
- Provide uniform and consistent evaluation of performance for all covered employees.

SECTION 3

The PMP covers NTEU bargaining unit employees covered by this Collective Bargaining Agreement.

SECTION 4

All bargaining unit employees will receive a performance appraisal which will be based on a comparison of the employee's performance with the standards and elements established for the appraisal period. When used in this Article, the applicable terms have the following meaning:

A. **Critical Element (Element).** 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. Such elements are used to measure performance only at the individual level. Critical elements (elements) must be accomplished for a rating of "Meets Performance Measures".

B. **Element Rating Levels.** The measure of performance for each element. Each element shall be rated at one of three levels: "Exceeds Performance Measures" "Meets Performance Measures" or "Fails to Meet performance Measures".

C. **Unacceptable (Fails to Meet Performance Measures).** Unacceptable performance is the lowest level of performance. Performance is rated unacceptable when the employee has not performed acceptably on one or more elements within the employee's performance evaluation plan which results in a final rating of "Fails to Meet Performance Measures." This constitutes an "Unacceptable" rating for the purpose of personnel actions.

D. **Rating of Record (Final Rating).** The performance rating prepared at the end of an appraisal period for performance of Agency-assigned duties over the entire period and the assignment of a summary rating level within a pattern. A final rating summarizes and measures an employee's performance on each element for which there has been an opportunity to perform for the minimum rating period one hundred twenty (120) days. A final rating is the official rating of record. The final rating shall be either "Meets Performance Measures" or "Fails to Meet Performance Measures".

E. **Meets Performance Measures.** The employee has performed acceptably or above on all elements within the employee's performance evaluation plan. Performance must be at this level to earn a within-grade increase.

F. **Performance Plan (Performance Evaluation Plan (PEP).** All of the written, or otherwise recorded, performance elements that set forth expected performance. The Plan or PEP, must include all critical elements and their performance standards (measures).

G. **Performance Standards (Performance Measures).** A performance standard is a statement of the expectations or requirements established by management that must be met to be appraised at a particular level of performance. A Performance Standard (Measure) may include, but is not limited to quality, quantity, timeliness and manner of performance.

H. **Progress Review (PEP Talk).** Communicating with the employee about performance compared to the performance standards (measures) of critical elements. There shall be at least one (1) progress review during the rating period, generally near mid-year.

I. **Appraisal (Rating).** The process under which performance is reviewed and evaluated.

J. **Appraisal/Rating Period.** 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 (1) calendar year from January 1 through December 31. An employee must be under a performance evaluation plan a minimum of one hundred twenty (120) calendar days during a rating period to receive a rating.

SECTION 5

A. When the Employer creates a new performance plan for employees, the Union may make recommendations and present supporting evidence pertaining thereto. The Employer will consider the Union's presentation and upon request, advise the Union of the results of its review.

B. When substantially changing a performance plan in a way that adversely impacts on an employee(s), the Employer will notify the Union and bargain if requested and appropriate.

C. In all other cases, the supervisor and employee should discuss goals and work expectations for the rating period. Discussions may cover the employee's official duties and responsibilities; organizational goals and objectives; and, the employee's goal for the future. The supervisor will consider the views of the employee, when such views are presented, before implementing the performance plan.

D. The PEP will be given to the employee normally within thirty (30) days after the beginning of the rating period. The employee will have time, generally no longer than five (5) days to review the plan, consult his/her Union representative, if needed, and submit any questions or other information he/she feels necessary. The plan becomes effective when signed by the rating official and the employee. If the employee declines to sign, the effective date of the plan is the date the rating official attempted to obtain the employee's signature. The supervisor will note this on the plan, citing the date the employee was given a copy of the established plan.

E. The employee's signature means that the supervisor has communicated the element and performance measures to the employee and the plan has been received and is in effect. It does not mean that the employee agrees with the plan.

F. The supervisor is responsible for providing information about the elements, standards, and his/her expectations to help the employee understand the requirements of the plan. The employee is responsible for ensuring that he/she has a clear understanding of the supervisor's expectations and the standards against which performance will be measured. The employee should request clarification from the supervisor when needed.

G. An employee will not be held accountable for his/her PEP (elements/standards) until the employee receives them.

SECTION 6

A. Elements.

1. A performance evaluation plan shall contain one (1), and generally no more than five (5), elements. All elements are critical and define what is important in the job.

2. If team elements are used, employees shall be rated for their individual contributions to the success of the team.

B. Performance Measures.

1. Performance measures define what is successful performance on the element. Written performance measures shall be established at the "Meets Performance Measures" level for all elements

2. Performance measures will be based on the requirements of the employee's assigned duties and responsibilities. They may be based on:

    - Results where the final product defines the success of the employee, or
    - Manner of Performance which refers to the way an employee acts on the job in order to produce the results.

3. To the extent possible, measures should be:

    - Objective. Free from personal feelings or opinions that might bias the rating of actual performance;
    - Explicit. Clearly written and free from ambiguities;
    - Observable or measurable. Specify discernable conditions, characteristics, and allow for differentiating between levels of performance; and
    - Attainable. Commensurate with the level of the employee's job responsibilities. Measures shall be neither too easy nor too difficult, but instead state what is normally expected in order for the job element to be successfully met.

4. To simplify measuring performance, yet individualize employee goals and objectives, FDA's Performance Evaluation Plan (PEP) form provides five (5) basic employee elements and four (4) basic supervisory elements, as well as blank space for individualizing elements and measures to include specific assignments or situations. Within each element are a number of performance measures that may be chosen to measure that element. The supervisor may choose any number of elements and measures within an element, write additional measures, or define measures further. Measures may be customized or clarified if necessary. For example, the supervisor may add specific quantity, quality, timeliness, etc., factors. Employees in similar jobs may have the same elements and basic standards, however it is not inequitable for the supervisor to develop or choose different factors of the measures for different employees to focus on depending

on their particular strengths and weaknesses. (See Attachment 30-1, Performance Evaluation Plan (PEP) form with elements and standards).

SECTION 7

A. Progress Reviews and PEP Talks

1. The rating official shall provide communication regarding the employee's achievement of goals and objectives throughout the rating period. Formal face to face conversations are one way this communication can occur. Communication may include such things as comments on written products the employee has submitted, e-mail comments regarding assignments, suggestions concerning better ways of conducting business, etc. Such feedback coupled with the regular mid-year PEP Talk will be sufficient for most employees to understand expectations and measure progress toward meeting these expectations. However, if performance is below the expected level, additional steps including meetings, should be taken to provide feedback.

2. The supervisor of the employee may initiate discussions to provide feedback concerning performance. Each discussion should be candid and forthright and aimed at identifying performance strengths and weakness; barriers to success; methods for improving performance; training needed; etc.

3. The rating official shall conduct at least one (1) documented progress review (PEP Talk) in person between the establishment of the performance and the end of the rating period (generally mid-year). During any progress review, the rating official and employee may discuss the:

   - Employee's accomplishments;
   - Performance measures remaining to be accomplished and any barriers which may impede their accomplishment;
   - Revisions to the plan which may reflect changes in work assignments or program initiatives, deficiencies in performance and required improvements; and
   - Training and developmental needs.

4. During the mid-year PEP, the supervisor may identify aspects or factors within each element or performance measures that the employee should focus improvements efforts on during the remaining time in the rating period. These aspects may be marked on the form for emphasis or identification purposes. Elements or measures may also be modified, added or deleted at this time.

5. At the conclusion of the mid-year progress review, discussions may be summarized in the comment section of Part II of the PEP. The rating official and the employee shall sign and date Part II of the plan. If the employee declines to sign and date the form, the rating

official shall note that the employee declined to sign in Section II of the plan, citing the date the employee was given a copy.

B. Modifying Performance Plans.

1. Performance elements and measures may be changed as necessary during the rating period. Changes to the original performance plan shall be initialed and dated by the rating official and the employee, and a copy provided to the employee.

2. If a plan is revised to include new performance elements and measures, changes shall become effective at the time they are given to the employee. An employee may not be rated on a new element or measure or any major revisions to an existing element or measure that has been in effect less than one hundred twenty (120) days.

SECTION 8

A. Element Ratings.

1. The rating official shall review the employee's performance for the entire rating period. Ratings shall be based on an individual's performance on each element according to the performance measures. In the event that the employee has not had the opportunity to perform on an element, no rating shall be assigned and the words "Not Rated" shall be written on the form.

2. There are three (3) levels for rating performance on an element:

- **Exceeds Performance Measures.** This level surpasses the requirements specified in the "Meets Performance Measures" level in the PEP. It is reserved for exceptional contributions. Exceeds Performance Measures is valued as three (3) points.
- **Meets Performance Measures.** The level of performance needed to successfully accomplish all of the performance measures. Meets Performance Measures is valued as two (2) points.
- **Fails to Meet Performance Measures.** Performance is rated at this level when it does not meet the requirements in the "Meets Performance Measures" level. Fails to Meet Performance Measures is valued as one (1) point.

The PEP is designed so that supervisors and employees can openly and honestly identify and discuss performance deficiencies on individual aspects of the element without the final rating resulting in a "fails to meet performance measures". This is accomplished by the averaging of the measure ratings within each element. Any average with a .5 or better fraction is rounded up to the next rating.

B. Final Ratings

1. Final ratings have two rating levels. These levels are: "Meets Performance Measures" and "Unacceptable (Fails to Meet Performance Measures)."

2. The following method shall be used to translate the composite element rating into a final rating:

   a. A final rating of "Meets Performance Measures" shall be assigned if an employee receives a rating of "Meets Performance Measures" and/or "Exceeds Performance Measures" on all elements.

   b. A final rating of "Unacceptable (Fails to Meet Performance Measures)."shall be assigned if an employee receives a rating of "Fails to Meet Performance Measures" on one or more elements.

3. When the employee's proposed final rating is "Unacceptable (Fails to Meet Performance Measures)." the rating official shall provide the reviewing official with a written explanation describing the specific areas in which the employee failed. The reviewing official shall review and approve/disapprove the rating. The written explanation will not be released to the employee until the reviewing official has sustained or changed the proposed final rating.

4. The final rating shall be discussed with the employee. The final rating shall be in writing, or otherwise recorded, and given to the employee as soon as possible after the end of the rating year (normally within forty five (45) days). The rating official may include narrative comments for an individual who receives a "Meets Performance Measures" as a final rating.

5. Employees who wish to comment on their final rating may record their comments on their Performance Evaluation Plan (PEP) or as an attachment to it. An employee, who disagrees with his/her final rating and wishes to file a grievance, may do so in accordance the negotiated grievance procedure in Article 45, Grievance Procedure.

6. When submitting a rating of record for merit promotion purposes, employees are required to submit only the summary page of the performance evaluation form indicating the final rating. At their option, employees may include the entire plan.

SECTION 9

A. **Employee Not Under a Plan for at Least 120 days.** An employee is considered to be rateable if he/she has performed under a PEP for at least one hundred twenty (120) days during the rating period. If a final rating cannot be prepared at the end of the annual rating period because the employee has not been under a PEP for at least one hundred twenty (120) days, the rating period shall be extended until one hundred twenty (120) day period is

reached. A final rating shall be prepared as soon as possible after one hundred twenty (120) days is reached, normally within forty five (45) days.

B. **Permanent Position Changes.** If an employee permanently changes positions during the rating period, and has performed under a plan for at least one hundred twenty (120) days in the previous position, the employee's rating official must prepare a rating appraising the employee's performance to date in the previous position. This rating will be provided to the new rating official who will take the rating into consideration in deriving the final rating for the annual rating period.

C. **Details/Temporary Promotions.** When an employee is temporarily detailed or receives a temporary promotion to a position with FDA for one hundred twenty (120) days or more, the gaining supervisor shall prepare a PEP describing the critical elements of the temporary job and prepare a rating of the employee's performance during the temporary work assignment. This rating will be provided to the supervisor of record upon the employee's return to the original position, and will be considered by the rating official when developing the employee's final rating for the annual rating period.

D. **Temporary Assignments Outside FDA.** The rating official will make a reasonable attempt to obtain a performance assessment for any temporary work assignment by an employee performed outside the FDA. At a minimum, the rating official will contact the temporary duty supervisor and request a memorandum describing the assignments performed by the employee and an assessment of how well the employee performed the assignments. If definitive information is obtained, the rating official will consider it in developing the final rating for the annual rating period.

E. **Employees Transferring Into FDA.** When an employee moves into FDA from another Federal agency at any time during the rating period, the rating prepared at the time of the transfer and forwarded by the outside agency must be taken into consideration when preparing the final rating at the end of the FDA annual rating period.

F. **Supervisory Changes.** Whenever a supervisor leaves his/her position, he/she shall provide a written assessment about his/her employee's performance, up to the time of the change, so that the gaining supervisor will have information to consider when preparing a final rating at the end of the annual rating period, and so that the employee will be properly credited for work accomplished during the entire rating period.

SECTION 10

A. When an employee moves to a different organization within the Department or to a Federal agency outside the Department at any time during the Department's rating period, the most recent performance ratings of record must be transferred as required in 5 CFR Part 293, including the rating that must be prepared at the time of the position change if the performance plan was in effect for at least one hundred twenty (120) days.

B. When an employee moves into FDA from another Federal agency during the appraisal year, the rating prepared at the time of the transfer, and forwarded by the outside agency, must be taken into consideration when preparing the rating of record for that appraisal year. The following chart shows a conversion chart for equivalent rating levels:

Equivalent Rating Levels

Conversion Chart

Rating Levels in Original Program	Rating Levels in New FDA Program
Outstanding - Level 5	Meets Performance Measures
Excellent - Level 4	Meets Performance Measures
Fully Successful - Level 3	Meets Performance Measures
Marginally Successful - Level 2	Meets Performance Measures
Unacceptable - Level 1	Fails to Meet Performance Measures

SECTION 11

A. FDA operates under the OPM defined rating pattern "Pattern A (2 levels)". Twelve (12) years of additional retention service credit will be added for an average final rating of "Meets Performance Measures"

B. Retention Service Credit for RIF purposes will be based on the average of the three most recent actual ratings of record received during a four year "look back" period. If an employee has only two (2) ratings for the period the average values assigned to those two (2) ratings will be used. If the employee has only one (1) rating, the value assigned to that rating will be used.

C. A "Model Value" (most frequent value of ratings in a given competitive area) will be used when an employee has no ratings of record within the last four (4) years. (Ratings of record for employees currently under the two (2) level program who were under a five (5) level program prior to October 1, 1997, and employees under the five (5) level program after 10/1/97, Fully Successful = twelve (12) years, Excellent = sixteen (16) years, and Outstanding = twenty (20) years.)

SECTION 12

After a rating of record is issued, any form which identifies job elements, the performance measures for those elements, along with any changes, including appraisal information on those elements, shall be retained for four (4) years in the Employee Performance File (EPF) system established for employees covered by this program.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration

Attachment 30-1

PERFORMANCE MANAGEMENT PROGRAM (PMP)

Performance Evaluation Plan (PEP)

PART I: IDENTIFYING INFORMATION

EMPLOYEE'S NAME:	SSN:	
POSITION TITLE:	SERIES:	GRADE:
ORGANIZATION:		

PART II: PERFORMANCE PLAN

SET AND APPROVED	FOR THE PERIOD:	TO:
RATING OFFICIAL SIGNATURE:		DATE:
EMPLOYEE SIGNATURE:		DATE:

MIDYEAR PROGRESS REVIEW

DATE REVIEW CONDUCTED:	RATING OFFICIAL SIGNATURE:	EMPLOYEE SIGNATURE:

COMMENTS:

MIDYEAR PROGRESS REVIEW

PART III: FINAL RATING

FINAL RATING:

[ ] Meets Performance Measures [ ] Fails to Meet Performance Measures

RATING OFFICIAL SIGNATURE:	DATE:
EMPLOYEE SIGNATURE:	DATE:
REVIEWING OFFICIAL SIGNATURE: *(Required if Final Rating is "Fails to Meet Performance Measures.")*	DATE:

COMMENTS: *(Required if Final Rating is "Fails to Meet Performance Measures.")*

Performance Evaluation Plan (PEP)
Directions

Column 1 — The element, a brief description of the element's objective, and the final rating for that element. There is space provided in which the supervisor can add additional elements for specific tasks or goals.

Column 2 — Measures for the element. Measures are written for the "Meets Performance Measures" level.

In planning employee goals, the supervisor and employee shall discuss elements for the year and those measures appropriate for the objective of the element and for the employee. Those measures for which the employee is to be appraised are checked in the boxes to the left of the measures. The supervisor and employee discuss what is expected in each of these measures based on the individual employee's work area. There is a space below the measures beginning with the phrase "As evidenced by" in which the supervisor can add definers for the measures above. There is space provided in which the supervisor can add additional individualized measures for that rating year.

Column 3 — Midyear Progress Review notes. A "✓" is placed in this column for a specific performance measure which the supervisor perceives as an area of weakness or area he/she feels the employee needs to concentrate on for the remainder of the rating period. These "✓"s denote target areas for the rest of the year.

Column 4 — The performance measure rating.

If the employee "Exceeds Performance Measures" for a specific measure, a "3" will be placed in this column at the end of the rating period.

If the employee "Meets Performance Measures" for a specific measure, a "2" will be placed in this column at the end of the rating period.

If the employee "Fails to Meet Performance Measures" for a specific measure, a "1" will be placed in this column at the end of the rating period.

Rating Levels

Deriving Element Ratings — A "✓" is placed in the appropriate box in Part III: Final Rating." The average of the performance measures within the element, with Exceeds = "3," Meets ="2," and Fails = "1." An average of ".5" or better is rounded up to the next number. Ratings are whole numbers.

Deriving Final Ratings

Meets Performance Measures	If all **elements** are rated "Meets Performance Measures" or "Exceeds Performance Measures," the final rating level is "Meets Performance Measures."
Fails to Meet Performance Measures	If one or more **elements** is rated "Fails to Meet Performance Measures," the final rating is "Fails to Meet Performance Measures."

Performance Evaluation Plan (PEP)

ELEMENTS	PERFORMANCE MEASURES Standards for "Meets Performance Measures" 1. Check all measures for which the employee will be rated. 2. Add additional measures after the bullets, if needed. 3. Define a measure further on the "As evidenced by" line, if needed.	MID YEAR	Final Measures Ratings 3 - Exceeds 2 - Meets 1 - Fails to Meet
[ ] Individual Work *Works to accomplish tasks or provide services effectively and efficiently in support of the Agency's mission. Strives for excellence.* **Final Element Rating** [ ] Exceeds [ ] Meets [ ] Fails to Meet	**[ ] Leadership *(Examples may Include)*:** • Plans work toward set goals/results. • Communicates clearly and effectively orally. • Uses effective judgement and conduct in the performance of responsibilities. • Devises effective solutions to problems and appropriate procedures for accomplishing objectives. • As evidenced by: • As evidenced by:		
	[ ] Manner of Performance *(Examples may Include)*: • Work products are clear and well-organized. • Communicates clearly and effectively in writing. • Completes work within established deadlines. • Works independently with little need for supervision or help. • Follows management procedures, directives, regulations, or technical orders. • As evidenced by: • As evidenced by:		
	[ ] Communication *(Examples may Include)*: • Seeks other opinions, as appropriate, to produce balanced work product. • Keeps supervisor apprised of changes, progress, and barriers to progress. • Undertakes difficult assignments with a professional attitude. • Adjusts positively to changes in workload and priorities. • As evidenced by: • As evidenced by:		
[ ] Technical Competency *Knowledge skills and abilities.* **Final Element Rating** [ ] Exceeds [ ] Meets [ ] Fails to Meet	**[ ] Technical Competency *(Examples may Include)*:** • Demonstrates technical competency/expertise in area of responsibility. • Demonstrates quality and accountability in the majority of work activities. • Keeps abreast of current developments within area of responsibility. • Requires minimal supervision. • Displays understanding of how job relates to others within area. • As evidenced by: • As evidenced by:		

[ ] Teamwork *Works with others either in formal teams or ad hoc groups to accomplish tasks or provide services effectively and efficiently.* **Final Element Rating** [ ] Exceeds [ ] Meets [ ] Fails to Meet	**[ ] Cooperation *(Examples may Include)*:** • Works well with other Agency groups and organizations for the success of the group or organization. • Works with others in developing and implementing solutions to problems. • Assists others to meet objectives. • Maintains effective working relationships with team members. • Actively participates in team efforts. **[ ] Leadership *(Examples may Include)*:** • Leads or follows, as necessary, within the team. • Takes initiative to arbitrate and resolve disagreements if they arise. **[ ] Commitment to Team Effort *(Examples may Include)*:** • Shares information willingly. • Shares credit, recognition, and visibility with others. • Supports and promotes team decisions and initiatives. • As evidenced by: • As evidenced by:		
[ ] Innovation *Takes risks and seeks creative approaches in completion of work. Influences others by ideas or example.* **Final Element Rating** [ ] Exceeds [ ] Meets [ ] Fails to Meet	**[ ] Risktaking, Initiative, and Innovation *(Examples may Include)*:** • Shows initiative in starting, carrying out, and completing tasks. • Seeks alternative solutions and creative approaches to problem solving. • Takes necessary and appropriate risks. • Takes into consideration new ideas and differing professional opinions. • Treats change as an opportunity for growth and mistakes as learning opportunities. **[ ] Leadership *(Examples may Include)*:** • Exhibits collegiality. Works well with other Agency groups and organizations for the success of the Agency's mission and goals. • Supports division, center/office, and Agency goals. • Demonstrates integrity and professionalism. • Leads by example. Acts as a role model for providing quality service. • As evidenced by: • As evidenced by:		
[ ] Customer Service *(Customers as defined by the employee's supervisor)* *Provides professional and responsive service within mutually agreed upon time frames.* **Final Element Rating** [ ] Exceeds [ ] Meets [ ] Fails to Meet	**[ ] Customer Service *(Examples may Include)*:** • Delivers high quality products/services to internal/external customers. • Stays focused on customer needs through effective communication. • Projects positive attitude. • Treats everyone with courtesy and respect. • Honors commitments and agreed upon deadlines. • As evidenced by: • As evidenced by:		

[ ] Specific Task or Goal Final Element Rating [ ] Exceeds [ ] Meets [ ] Fails to Meet	• • • • • As evidenced by: • As evidenced by:		
[ ] Specific Task or Goal Final Element Rating [ ] Exceeds [ ] Meets [ ] Fails to Meet	• • • • • As evidenced by: • As evidenced by:		
[ ] Specific Task or Goal Final Element Rating [ ] Exceeds [ ] Meets [ ] Fails to Meet	• • • • • As evidenced by: • As evidenced by:		
[ ] Specific Task or Goal Final Element Rating [ ] Exceeds [ ] Meets [ ] Fails to Meet	• • • • • As evidenced by: • As evidenced by:		

[ ] Manages and Develops Employees *(Supervisors)* *Ensures effective and efficient use of human resources within a positive work environment.* **Final Element Rating** [ ] Exceeds [ ] Meets [ ] Fails to Meet	**[ ] Employee Development *(Examples may Include)*:** • Fosters teamwork, commitment, and quality service to customers. • Delegates to the lowest level. Involves employees in problem solving and decision making. • Provides encouragement, guidance, and direction to teams and individual employees . • Empowers employees to think and act on their own. • Encourages risktaking and independence. • Provides employees opportunities for growth and cross training. • Uses available resources to help employees to meet developmental needs and accomplish work objectives. • Helps employees improve work performance through effective coaching. **[ ] Employee Management *(Examples may Include)*:** • Leads by example. • Maintains appropriate balance between concern for people and concern for productivity. • Adjusts management style to fit situation. • Establishes and maintains clear and realistic employee performance measures. • Evaluates employee's performance honestly and objectively. • Recognizes and rewards good performance. • Deals effectively with deficient performance. • Resolves controversial or delicate matters skillfully. **[ ] Communication *(Examples may Include)*:** • Encourages and supports new ideas to improve work processes and services. • Communicates effectively with employees and management. • Provides frequent timely, honest, and constructive feedback. • Provides criticism in private. • Explains decisions, goals, and objectives. • Negotiates conflicts effectively. • As evidenced by: • As evidenced by:		
[ ] Manages Programs *(Supervisors)* *Achieves program goals.* **Final Element Rating** [ ] Exceeds [ ] Meets [ ] Fails to Meet	**[ ] Manages Programs *(Examples may Include)*:** • Plans and organizes unit work effectively. • Establishes appropriate program objectives linked to organizational objectives. • Coordinates work of subordinates effectively. • Allocates and/or adjusts resources in response to workload and priority changes. • Directs and coordinates activities of unit, assuring deadlines are met. • Actively supports FDA's mission and values. • Provides clear vision and direction to staff. • Develops long-range plans. • As evidenced by: • As evidenced by:		

[ ] Equal Employment Opportunity *(Supervisors)* **Final Element Rating** [ ] Exceeds [ ] Meets [ ] Fails to Meet	**[✓] Equal Employment Opportunity *(Examples may Include)*:** • Understands and applies Equal Employment principles. • Promotes diversity, mutual respect, and open communication. • As evidenced by: • As evidenced by:		
[ ] Administrative and Regulatory Responsibilities *(Supervisors)* **Final Element Rating** [ ] Exceeds [ ] Meets [ ] Fails to Meet	**[✓] Administrative and Regulatory Responsibilities *(Examples may Include)*:** • Ensures work is conducted in accordance with established laws and regulations. • Ensures effective and efficient fulfillment of reporting requirements. • Maintains effective internal management controls under FMFIA. • Handles labor-management responsibilities appropriately. • Promotes effective security practices and occupational safety and health in the work environment. • As evidenced by: • As evidenced by:		

ARTICLE 31

ACTIONS BASED ON UNACCEPTABLE PERFORMANCE

SECTION 1

This Article applies to all members of the bargaining unit who have completed a probationary or trial period. No employee will have an action, under 5 CFR 432, proposed against him or her that relies on a performance plan under which he or she has not been working for at least one hundred twenty (120) days or where performance expectations have not been communicated to the employee consistent with the requirements of law and the terms of this Agreement.

SECTION 2

When an employee requests a change to lower grade due to his or her inability to perform the duties of the current position, the Employer will consider placing the employee in a lower-grade position identified by the Employer which the Employer believes the employee can successfully perform.

SECTION 3

A. Unacceptable performance is defined as performance by an employee which fails to meet one (1) or more critical job elements. The term unacceptable performance is synonymous with “fails to meet performance measures”.

B. When implementing a Performance Improvement Plan (PIP), which should normally be for a period of sixty (60) days, the Employer will specifically identify in writing where the employee’s performance is unacceptable, examples of how the employee’s performance fails to meet standards and specific ways in which the employee must bring performance up to standards.

C. During the PIP period, the Employer will provide counseling and/or other reasonable efforts to assist the employee to bring performance up to an acceptable level prior to initiating any removal or demotion action under this Article.

SECTION 4

An employee whose reduction in grade or removal is proposed under this Article is entitled to thirty (30) calendar days advance notice of the proposed action. The notice will contain the following:

A. The action being proposed;

B. The critical elements of the employee's position on which the performance is considered unacceptable;

C. The specific instances of unacceptable performance on which the present action is based; and

D. The employee's right to be represented;

E. Information stating that the employee is entitled to respond, orally and/or in writing, within fifteen (15) calendar days;

F. The name of the individual to whom the response shall be made; and

G. Information stating that a decision as to the reduction in grade or removal will be made no sooner than thirty (30) calendar days after the receipt of the notice.

SECTION 5

A. If the employee responds in an oral reply meeting, a written summary of the oral reply may be drafted by the Employer, or the Employer may elect to hire a transcription service to provide a verbatim transcript of the oral reply. The employee may prepare a transcript for personal use if he or she wishes. The summary or transcript will be available to the employee's designated representative for comment. The representative will be given at least five (5) calendar days to respond. The representative's comments will become part of the official record and be considered by the Employer before a final Agency decision is made.

B. If the employee chooses to make an oral reply, the reply will either be made at the work site of the employee or the Employer may arrange to hear the reply by phone if the employee's representative agrees to such an arrangement. If the oral reply is to be made at a location outside of the employee's local commuting area, the Employer will pay, in accordance with law, rule, regulation and Article 3, Midterm Bargaining, of this Agreement, the travel and per diem expenses of the FDA employee and his or her representative.

SECTION 6

In reaching a final decision, the Employer may not rely on any employee performance which the employee has not been given the opportunity to reply to either orally or in writing.

SECTION 7

A written decision to retain, reduce in grade, or remove an employee will:

A. Specify directly or by reference the instances of unacceptable performance by the employee on which the reduction in grade or removal is based;

B. Unless proposed by the Head of the Agency, be concurred on by a management official who is in a higher position than the official who proposed the action; and

C. Specify the effective date, the action to be taken and the employee's right of appeal.

SECTION 8

If, due to performance improvement by the employee during the PIP period, the employee's reduction in grade or removal is not proposed, and the employee's performance continues to be acceptable for one (1) year from the date of the completion of the PIP, any entry or other notation of the PIP shall be removed from the files of the Employer.

SECTION 9

The records used by the Employer to support an action under this Article will be identified to the employee and made available to the employee and/or the designated representative of the employee upon request.

SECTION 10

Within thirty (30) calendar days of the effective date of the action, the final Employer decisions may be challenged by the employee in only one of the following ways:

A. By filing an appeal with the MSPB in accordance with applicable law and regulations (currently within thirty (30) calendar days);

B. Under this Agreement and with the Union's concurrence, by appealing directly to binding arbitration (which may include an allegation of discrimination), within the time frame set forth in Article 46, Arbitration, of this Agreement; or

C. By filing a formal complaint of discrimination filed under the administrative EEO process.

The final decision letter which is issued to the employee will contain a statement of his or her right to challenge the action in one of these three (3) ways. Once an employee has elected one of these procedures, the employee may not change thereafter to a different procedures.

SECTION 11

If at any time before a removal action is effected, an employee raises as a defense the idea that he or she is suffering from a disability and requests a "reasonable accommodation" to perform assigned duties, the employee will be entitled to a stay of up to thirty (30) calendar days upon submission of reasonable evidence supporting the claim of a handicapping condition.

SECTION 12

A. If the employee is the subject of removal for unacceptable performance, the Employer will consider the employee's request to stay the action for a reasonable period of time to allow a determination to be made concerning any pending application for disability retirement filed prior to the effective date of the action. If the Employer agrees to stay the removal action but at any subsequent time determines that the application for disability retirement has no reasonable probability of being approved, the Employer may process the adverse action.

B. If the Office of Personnel Management approves the application for disability retirement of the employee covered by Subsection A, above, the employee may elect to use his or her available sick leave prior to retiring, to the extent allowed by law, rule or regulation.

ARTICLE 32

POSITION CLASSIFICATION

SECTION 1

Each employee in the unit normally will be provided with a description of his/her duties and responsibilities in the form of a current official position description (or comparable description of responsibilities) within thirty (30) days of entrance on duty. Position descriptions normally will contain only a listing of duties necessary to determine proper classification of work. The position description may also be used to identify training, qualifications, and performance requirements of the position. Employees are encouraged to discuss the contents of the official position description with their supervisors. When significant changes in the duties and responsibilities warrant, the position description may be amended or rewritten to provide a current description of the work performed.

SECTION 2

An employee who believes that his or her position description is inaccurate or incomplete or that the official title, series, or grade of the position is incorrect should discuss this concern with the immediate supervisor. If, after the discussion, the employee desires that his or her title, series, or grade be reconsidered, he or she may take the following action:

A. Request reconsideration of the title, series, or grade, by submitting a written reconsideration request to the appropriate FDA operating personnel office, with a copy to his or her supervisor. If the employee is not satisfied with this reconsideration, he or she may appeal according to Paragraph B or C below;

B. Formally appeal the title, series, or grade to the FDA Office of Human Resources and Management Services, Classification Services Staff (CSS). The appeal should discuss the specific aspects of the position that the employee thinks were either misunderstood or not considered adequately. It should also include copies of the current classified Position Description, the Evaluation Report, and a current staffing chart. The Position Description submitted should be the one on which the evaluation is based. A classification decision from the Classification Services Staff will constitute the final classification decision within the FDA and the Department of Health and Human Services. If the employee does not agree with this decision, he or she may appeal directly to the Office of Personnel Management (OPM) as described in Paragraph C below;

C. Appeal the title, series, or grade directly to OPM following the procedures in 5 CFR 511. If the employee is not satisfied with OPM's decision, he or she has no subsequent appeal rights within the Federal Government. The OPM classification decision constitutes the final decision within the Federal Government and is binding on the Agency regardless of the favorableness of the determination.

SECTION 3

When the Employer is afforded the opportunity to review and comment on proposed position classification standards by the Department or OPM, the Union will be provided a copy and given the opportunity to comment. The Union's comments will be identified separately and forwarded with those of the Employer. If the Union's comments are not received in the time frames identified by the Employer, its comments will be forwarded separately.

SECTION 4

The Employer agrees that the position description of each position will be amended when significant changes are made in the duties and responsibilities of positions held by employees.

SECTION 5

The phrase "duties as assigned" in position descriptions is meant to include tasks of an incidental or infrequent nature which are impractical to include in the narrative portion of the position description.

SECTION 6

During any desk audit, the employee shall have the right to be accompanied by a Union representative as a silent observer. Any written evaluation statement prepared by the Employer as a result of a desk audit shall be furnished to the employee prior to the adjudication of the classification appeal. The employee shall have the right to make written comment within three (3) workdays after receipt of the evaluation statement, which shall be attached and forwarded with the written evaluation statement.

SECTION 7

The Employer, upon request agrees to provide the Union access to and copies of written classification standards and qualification standards which the Employer maintains.

SECTION 8

When the Employer proposes significant changes or creates new position descriptions for employees, the Union may make recommendations and present supporting evidence pertaining thereto. The Employer will consider the Union's presentation and upon request, advise the Union of the results of its review. Nothing in this Article shall affect the Employer's right to assign work and set deadlines for the accomplishment of work.

SECTION 9

The Employer agrees to inform the Union as soon as possible when significant changes will be made in the duties and responsibilities of positions held by employees due to reorganization or when changes in position classification standards result in changes in title, series or grade.

ARTICLE 33

ASSIGNMENT OF WORK

SECTION 1

The Employer will assign work in accordance with applicable laws, rules, and regulations.

SECTION 2

A. Assignment of work or denial of work assignments will not be made as a reward or penalty to an employee, but in accordance with the Employer needs and operational goals.

B. In assigning work, the Employer will consider such factors as employee workload, employee qualifications and experience, relationship of assignment to existing work assignments, personnel ceilings, office workload, time limits, emergencies, and any unique factors related to the task to be accomplished.

SECTION 3

A. The Employer agrees that, to the extent possible, employees will be assigned manageable workloads. Nothing will prevent the Employer from assigning new work to employees.

B. An employee may request a meeting with the Employer to discuss any request by the employee for a workload adjustment. If the Employer agrees that the work can not be accomplished within assigned criteria, i.e., quality, quantity, timeliness, or cost, he/she will make a reasonable effort to adjust work assignments, prioritize work assignments, and/or adjust time frames. The Employer will document the results of the discussion and provide a copy to the employee and maintain a copy with the employee's performance plan.

ARTICLE 34

DETAILS AND TEMPORARY PROMOTIONS

SECTION 1

A. A detail is the temporary assignment of an employee to a different position at the same grade held or at a higher or lower grade or to a set of unclassified duties for a specified period when the employee is expected to return to his or her regular duties at the end of the assignment. Selection for details with promotion or career building potential that are to last more than sixty (60) calendar days will be made in a fair and equitable manner.

B. A temporary promotion is a temporary assignment for a specified period of time to a position at a higher grade than the one the employee currently holds where the employee is expected to return to his or her regular duties at the end of the assignment. An employee must meet the qualifications for the higher grade level before he or she can be temporarily promoted.

C. The Employer agrees that an employee who is detailed to a higher grade position for a period of more than thirty (30) consecutive calendar days will be temporarily promoted to that position effective with the beginning of the first full pay period following the thirtieth (30th) day of the detail and will be paid at the higher grade for the duration of the temporary promotion, providing the employee meets the appropriate qualification standards.

D. Selection for details to higher graded positions and temporary promotions will be accomplished in accordance with the Article 36, Merit Promotion, of this Agreement, when it is reasonable to expect that the assignment to the higher graded position is to last longer than one hundred twenty (120) calendar days.

E. The Employer agrees to refrain from rotating assignments to employees solely to avoid compensation at the higher grade level.

SECTION 2

A. In order to ensure a smooth transition between positions, an employee will be given that time reasonably necessary to re-familiarize him or herself with the position to which he or she is returning.

B. The Employer will inform the employee of any changes in operating procedures which affect the manner in which the duties of the position of record are performed.

C. Employees who are detailed or temporarily promoted will normally be relieved of work required in the previous position when the detail or temporary promotion is in effect.

SECTION 3

A. Employees detailed or temporarily promoted to classified positions will be provided with a copy of the position description. Employees detailed to unclassified duties will be provided with a written "Statement of Duties". The temporary assignment supervisor will meet with the employee to discuss what is expected from the employee. This meeting/discussion will normally be held within the first two workdays of the detail or earlier, if appropriate.

B. Employees on details or temporary promotions for one hundred twenty (120) calendar days will be given a Performance Evaluation Plan (PEP).

SECTION 4

The experience that the employee obtains while on a detail or temporary promotion will be credited as experience either in the employee's current position or the position to which he or she is detailed, whichever is more advantageous to the employee. Employees agree to accurately report the experience gained while on the temporary assignment.

SECTION 5

After the end of details and temporary promotions of one hundred twenty (120) calendar days or more, the temporary assignment supervisor will prepare a summary rating of the employee's performance while on the temporary assignment. For details or temporary assignments of less than one hundred twenty (120) calendar days, the temporary assignment supervisor will provide a written report on the employee's performance to the employee's supervisor of record and will provide a copy of that report to the employee. The Employer agrees to consider the appraisal or feedback in preparing the employee's rating of record for the current appraisal year.

ARTICLE 35

REASSIGNMENTS

SECTION 1

The Employer has the right to reassign employees between positions or between work units to accomplish the Agency mission. The Employer's decision to reassign will be a bona fide determination based upon legitimate management considerations. The Employer will give reasonable consideration to assertions by the employee that the reassignment will cause undue personal hardship.

SECTION 2

A. When the Employer decides to fill a position through reassignment, the Employer will make the reassignment opportunity known to qualified employees via a three (3) day advanced notice on the e-mail system, unless it has otherwise announced the vacancy through a merit promotion announcement.

B. Employees in identical positions, e.g., same title, series, grade, and qualifying experience, may swap positions with one another so long as they do not request moving expenses from the Employer and so long as the Employer does not otherwise have just cause to bar the swap.

SECTION 3

The Employer agrees that when an employee has been reassigned due to the abolishment of his or her position, he or she will be given priority consideration if that position is reestablished within one (1) year. To receive priority consideration, the employee must make timely application for the position and clearly indicate that he or she held the position when it was abolished. Priority consideration means that the employee alone must be given bona fide consideration by the selecting official, based on legitimate job related criteria for the position to be filled, before any other candidates are referred for consideration.

SECTION 4

Workload and time permitting, the Employer agrees to give the employee who is going to be reassigned advance notice of fourteen (14) calendar days. At the request of the employee to his/her current supervisor, the Employer will confirm the reassignment in writing. Also, the Employer agrees to give the employee a form SF-50 and a copy of the existing position description.

ARTICLE 36

MERIT PROMOTIONS

SECTION 1

It is agreed that all promotions to bargaining unit positions, and all other personnel actions set forth in Section 2 below, will be made using systematic and equitable procedures on the basis of merit and from among properly ranked and certified candidates or from other appropriate sources without regard to race, color, sex, national origin, marital status, age, religion, sexual orientation, labor organization affiliation or non-affiliation, or non-disqualifying physical handicap. To the extent that the current FDA Merit Promotion Plan is not consistent with this Agreement, this Agreement takes precedence in promotions to bargaining unit positions.

SECTION 2

A. When merit promotion procedures are to be used, it is understood that this Article applies to all promotion actions to bargaining unit positions not specifically excluded in Section 2.B. below. Examples of personnel actions covered are:

   1. Filling a position by promotion;

   2. Temporary promotions in excess of 120 days;

   3. Reinstatement to a permanent or temporary position at a higher grade than the grade last held in a non-temporary position in the competitive service;

   4. Transfer to a higher-graded position or a position with known promotion potential ("a position with known promotion potential" is one in which the Employer may make promotions, without further competition, to the highest grade in the career ladder);

   5. Reassignment or demotion to a position with higher known promotion potential than the position last held;

   6. Selection for training which employees are required to take before they may become eligible for promotion to a specific higher-graded position; and

   7. Selection for a detail to a higher grade for more than 120 days.

B. The competitive procedures set forth in this Article will not apply to the following:

   1. A temporary promotion for 120 days or less;

   2. A detail to a higher-graded position or one with known promotion potential for 120 days or less;

3. Promotion resulting from upgrading of a position without significant change in duties and responsibilities due to issuance of a new classification or the correction of a classification error;

4. A position change permitted by reduction-in-force regulations;

5. Promotion within a career ladder or from a trainee position for which competition was held at an earlier date;

6. Promotion of the incumbent of a position that is reclassified at a higher grade due to the accretion of additional duties and responsibilities;

7. A career ladder promotion following the non-competitive conversion of a student participating in the Student Career Experience Program;

8. Promotion, through exercise of his/her priority consideration right, of a candidate who was not given proper consideration in a prior competitive promotion action;

9. Reassignment, demotion, reinstatement or transfer to a position having no higher promotion potential than the potential of the position the employee currently holds or previously held on a non-temporary basis;

10. Promotion of an employee to a grade previously held on a permanent basis, provided that the employee was not demoted or removed for personal cause; and

11. Selection from the re-employment priority list;

SECTION 3

A. In the initial search for qualified applicants the minimum area for consideration will be sufficiently broad enough to ensure the availability of high quality candidates, taking into account the nature and level of the position being announced.

B. The area of consideration may be restricted where circumstances necessitate the selection from a particular organizational element within the unit due to budgetary, staffing, or other constraints.

SECTION 4

A. All positions which are filled through the competitive promotion procedures of this Article will be publicized through vacancy announcements issued under the authority of the Personnel Officer. All vacancy announcements, depending upon the area of consideration, will be posted on the FDA Intranet and the Internet at (http://www.usajobs.opm.gov) via mandatory posting of vacancies through the Office of Personnel Management (OPM) Federal Job Opportunities Bulletin (FJOB). A copy of any announcement may be obtained by contacting the Servicing Personnel Office or via the fax-back by calling (301) 827-4287.

B. Vacancy announcements will be open for a minimum of ten (10) workdays for bargaining unit positions which must be filled in accordance with the competitive procedures covered in this Article.

C. At a minimum, every vacancy announcement will contain:

1. Announcement number;

2. Opening and closing dates;

3. Position title, series, grade, and the number of positions to be filled;

4. Organizational and geographic location;

5. Any known promotion/career-ladder potential;

6. Applicable area of consideration;

7. Summary of major duties, including an estimate of the amount of travel, if applicable;

8. Summary of minimum qualification standards to be applied; along with any selective placement factors;

9. Evaluation methods and criteria to the extent appropriate;

10. Procedures for applying; and

11. Statement of equal employment opportunity.

SECTION 5

A. Employees who wish to be considered for a posted vacancy must apply by submitting:

1. Information and/or documents required in the vacancy announcement, and

2. Their most recent performance rating of record. (The required "rating of record") is the most recent annual performance appraisal issued to the employee, whether or not he/she is in the process of challenging the rating through a grievance, EEO complaint, or similar process. Employees are required to submit only the summary page of the performance evaluation form indicating the final rating. At their option, they may submit the entire plan.

B. To be considered for a vacancy, candidates must submit all required application material in such a way that the information provided is complete, accurate, legible, and timely.

C. In order to be considered, an application must be postmarked and/or received in the Personnel Office indicated on the announcement by the closing date stated in the vacancy

announcement. Applications may be submitted in person, by mail, by facsimile, and by overnight courier.

D. Employees on extended periods of absence (i.e., on detail, travel, military furlough, leave) will be given automatic consideration for specific kinds of jobs during that period of extended absence provided the employee:

1. Submits written notification to the Personnel Office prior to departure which specifies the anticipated duration of the absence and specific series, grade level(s), program or office, and tour of duty for which consideration is sought; and

2. Submits a current SF-171, OF-612, or resume and performance appraisal in triplicate for Personnel Office use.

This "automatic" consideration will be granted only for the type of jobs, grade level(s), and duration specified in the employee's written notification.

SECTION 6

A. The Employer agrees that selective placement factors will only be used when they are essential to the successful performance of the position. In such cases they will constitute a part of the minimum requirements of the position and must be stated in writing. A copy of any selective placement factors will be retained in the merit promotion file.

B. Candidates will be evaluated against basic eligibility requirements, selective placement factors, and other appropriate criteria established for the position.

C. The Personnel Office will determine which applicants meet the established minimum qualifications for the position at each announced grade.

SECTION 7

A. All applicants found to be minimally-qualified will then be rated and ranked by either a Personnel Representative or by a Qualifications Review Board (QRB) that will consist of at least two individuals, one of whom may be designated as the chairperson. Insofar as practicable, QRB membership will include representation of women, minorities, and/or handicapped employees. A representative of the Personnel Office will be available to provide advice and assistance to the QRB. At least one QRB member must have knowledge of the position being filled. All QRB members will hold positions at or above the full performance level of the vacant position. Supervisors over the position, including selecting and recommending officials, will not serve as QRB members.

B. Candidates will be evaluated based upon their knowledge, skills, and abilities (KSAs) which are needed for successful job performance in the position. KSAs must be closely related to the principal duties of the position. It is understood that KSAs for every position will be

developed prior to announcing the vacancy. The Union will be notified when KSAs are developed for new positions or when a change is made.

SECTION 8

A. The QRB or the appropriate Personnel Representative will evaluate all job-related information submitted by every minimally-qualified applicant on his/her application. This review will be done to determine the candidate's potential to perform in the vacant position and to determine the best qualified candidates, by assessing the extent to which their experience, education, training, appraised performance, special achievements, awards, and outside activities, as reflected in their applications, give evidence that they possess the KSAs identified for the vacant position.

B. All candidates for promotion will be rated and ranked, regardless of the number of applicants.

C. The QRB or Personnel Office Representative will use a rating schedule or crediting plan based upon the KSAs, as developed jointly by the requesting office and the Personnel Office, to rate and rank candidates for a specific position. Only the criteria and established point values given in the rating schedule or crediting plan for the vacant position will be applied in this process. The QRB or Personnel Representative will provide a fair and objective assessment of each applicant's potential to perform in the vacant position. The Personnel Office and Management of the office in which each position is located will work to set benchmarks, weights and factors, etc., as appropriate to the position, when developing the rating schedule or crediting plan.

D. Performance appraisals of record will be used as a supporting document to demonstrate ability to perform the KSAs.

E. Candidates will be ranked according to their rating scores assigned by the QRB or Personnel Office Representative. When a QRB is used, the total scores assigned by individual QRB members will be averaged to arrive at the final rating for each candidate. Where possible, rating and ranking officials will document the basis for their various assessments, and this documentation will be maintained by the Personnel Office in the merit promotion file for the position.

F. Anyone present during QRB deliberations is prohibited from divulging to any unauthorized person, including the selecting official, any of the following: contents of rating and ranking worksheets, QRB deliberations, and the numerical scores assigned to candidates. If any QRB member violates this provision, the Employer will take appropriate action.

SECTION 9

A. If the vacancy is not filled using priority consideration procedures, the Personnel Office will furnish the selecting official with the names of candidates available for selection, as follows:

1. During the first two (2) years of this Agreement, when a Best Qualified list is developed (by a QRB or personnel specialist), the first five (5) bargaining unit employees with the highest scores that fall above the cut-off score will be forwarded to the selecting official. If more than one position is to be filled from the same announcement, an additional one (1) bargaining unit candidate name will be referred for each additional position to be filled, provided there are additional names above the cut-off score.

2. The names of the best-qualified bargaining unit candidates will be before the selecting official for ten (10) calendar days prior to forwarding non-unit applicants, including any names of non-unit candidates on the best-qualified list whose scores fall between the top score and the score of the last bargaining unit best qualified applicant that was referred.

3. Notwithstanding the above, the employees whose point score would place them in a tie for the final position on the "best qualified list" will also be referred to the selecting official.

4. Qualified applicants, not rated and ranked (non-competitive eligibles), who wish to be considered for either re-assignment, voluntary change to lower grade, or re-promotion will be referred separately from the best-qualified candidates.

5. For the last three (3) years of this Agreement, the above procedures will apply except that only the high four (4) bargaining unit applicants above the cut-off score will be initially referred.

B. When any bargaining unit candidate on the "best qualified" list is given the opportunity to be interviewed by the selecting official, then all "best qualified" candidates who are members of the bargaining unit will have an opportunity to be interviewed.

C. The selecting official will make a selection without personal favoritism, without discrimination, and without consideration of non-merit factors. An employee's balance of annual or sick leave may not be used by a selecting official as a reason for selection or non-selection of that candidate. However, this does not preclude the consideration of existing abuse of leave and its effect on the employee's ability to perform the requirements of the position.

D. The selecting official will make the decision to select or not to select as soon as possible.

E. Alternate or additional selections may be made from a properly issued "best qualified" list within ninety (90) days from the issue date of the promotion certificate if:

1. The original selectee declined or vacated the position; or

2. Additional positions are established or become vacant with the same title, series and grade, which are in the same geographic location (commuting area) as the position announced and are to be evaluated under the same rating schedule or crediting plan criteria.

SECTION 10

Selected employees within HHS will normally be released for promotion to the new position at the beginning of the first pay period that occurs two (2) full weeks after the releasing official has been notified of the selectee's official offer and acceptance of the position. Compelling reasons may delay the reporting date; in such a situation, the promotion will be effected on the earliest feasible date.

SECTION 11

A. The Employer will inform unsuccessful applicants of the results of their consideration.

B. Unsuccessful applicants may consult and/or obtain advice from, their servicing Personnel Office specialists concerning specific qualifications needed for desired positions and/or a first-line supervisor concerning ways to enhance one's qualifications for positions under his/her supervision. This does not bar the use of the HHS Work Life Center where available to employees.

C. Following completion of the selection process, and upon written request to the Personnel Office, employee-applicants will be provided the following information about a position announced under this Article for which they applied in a timely manner:

   1. Whether or not they met the minimum qualification requirements for consideration;

   2. Whether or not they ranked in the group from which final selection was made (the "best-qualified" list); and

   3. The name(s) of the selectee(s) for the position.

SECTION 12

A. If, as the result of a grievance being filed under this Agreement, either the Employer agrees or an arbitrator decides that an employee was not given proper consideration in the competitive selection process at issue but retroactive promotion is not warranted, then corrective action will be taken in accordance with the following principles:

B. If the employee was erroneously omitted from the "best-qualified" list or otherwise was not given proper consideration, he/she will receive one priority consideration for the next appropriate vacancy. Priority consideration provides for referral of the employee's name and application to the selecting official before referring other candidates.

C. In the event that two (2) or more employees are entitled to priority consideration for the same vacancy, they shall each receive priority consideration, as follows:

1. If the employees became entitled to their priority consideration as a result of separate promotion actions, the employee first entitled shall receive the first priority consideration.

2. If the two (2) or more employees entitled to priority consideration became entitled as a result of the same promotion action, the employee with the highest score will receive the first priority consideration. If there is a tie, management will give consideration to each employee.

3. If two (2) or more employees are referred for priority consideration, and one (1) is selected before the selecting official reviews the application(s) of the other(s), then the employee(s) who was/were not considered will retain the right to a single priority consideration for the next appropriate vacancy.

D. The "next appropriate vacancy" for purposes of priority consideration is the next vacant position within the same organizational component and geographic location, requiring the same or similar qualifications, at the same grade, and with comparable promotion opportunities, as the position for which the employee failed to receive proper consideration.

E. An employee who received priority consideration and is not selected will be given, upon request, a written explanation of why he/she was not selected for the position.

F. If as a result of a grievance being filed under this Agreement, either the Employer agrees, or an arbitrator decides there was an unjustified or unwarranted personnel action as defined by the Back Pay Act, 5 NSC 5596, and, but for this action, the employee would have been selected for promotion, the employee will receive a retroactive promotion, to the extent allowable by law.

SECTION 13

If an employee is promoted to a position in the bargaining unit and subsequently, within a year, is demoted for inability to perform at the higher level, the Employer agrees to make reasonable efforts to return the employee to a position equivalent to the one he/she held before the promotion occurred, whenever practical.

SECTION 14

The Employer will maintain required records in merit promotion files for at least two (2) years.

SECTION 15

A. Upon completion of the selection process and submission of a written request to the Division of Ethics and Labor Management Relations, a Union representative will be allowed to review

any necessary and relevant information concerning the promotion, (except crediting plans) including the merit promotion file, in accordance with applicable law, rule, regulation and this Agreement.

B. The Union agrees to respect the confidentiality of merit promotion action information and to divulge it only to the extent necessary to fulfill its representational duties properly. If a grievance is filed concerning a merit promotion action, the Employer will provide the Union, upon its written request, with a copy of relevant and necessary documents in the merit promotion file, in accordance with applicable law, rule, regulation, and this Agreement.

SECTION 16

A. Crediting plans and rating schedules are considered highly sensitive documents by the Federal government, release of which is likely to give candidates an unfair advantage in, and/or significantly compromise the purpose and utility of, the competitive selection process. For that reason, they are generally not released to anyone except those individuals who perform a direct role in a specific selection process.

Notwithstanding the above, the Employer agrees to make a case-by-case determination as to whether releasing a given crediting plan or rating schedule to the Union, upon its request, would be appropriate, regardless of the basic policy against releasing such documents. If the Employer decides not to provide access to a crediting plan or rating schedule upon the Union's request, that decision will be sent to the Union in writing, specifying the reasons for denying access.

B. If the Employer decides to release a crediting plan or rating schedule to the Union upon its request, the plan will be released only to a Union official at or above the full performance level of the position in question. The Union agrees not to disclose the content of the crediting plan or rating schedule to any other bargaining unit employees.

SECTION 17

Although career advancement is the intent and expectation in the career-ladder system, promotions within career ladders are neither automatic nor mandatory. However, career ladder promotions will be made when:

- An employee's performance demonstrates the potential to perform the duties at the next higher grade level;
- The current performance appraisal rating is at the "meets performance measures" level;
- The employee meets minimum time in grade and qualification requirements; and

- There is available work of the higher grade level. However, where this exception is asserted by the Employer, it will promote first those who have been waiting the longest for the promotion in that position, if the other criteria above are met, where work becomes available.

SECTION 18

A. Grade Retention

1. Employees who are downgraded as the result of a position classification review which they have not requested will be afforded consideration for repromotion in accordance with 5 CFR 536.101. Regulations provide that when an employee is placed in a lower graded position as a result of a reclassification, the employee is entitled to grade retention if the position from which he or she is placed had been classified at a higher grade for a continuous period of at least one (1) year immediately before the placement. (Grade retention may last for two (2) years).

2. When a position is being filled under merit promotion procedures, all qualified retained-grade employees are automatically rated and ranked with other applicants. If a retained-grade employee is determined to be among the qualified, in most cases he or she should be selected ahead of the other applicants on the certificate.

B. Pay Retention

1. Pay retention must be granted to an employee whose basic pay would otherwise be reduced as a result of re-classification when the employee does not meet the eligibility requirements for grade retention.

2. When positions are filled under merit promotion procedures, all qualified retained pay employees are automatically rated and ranked along with other applicants. Those retained pay employees who apply for the position will be referred to the selecting official along with all other qualified applicants. There is no requirement that retained pay employees be selected in preference to other best-qualified applicants.

3. An employee's entitlement to pay retention will not terminate if he/she does not apply for a vacancy announcement. However, in accordance with 5 CFR 536.209, if the employee declines a reasonable offer of a position, he/she will lose pay retention entitlement. The requirement for the automatic rating and ranking of retained-pay employees extends for one (1) year.

ARTICLE 37

PROBATIONARY EMPLOYEES

SECTION 1

The Parties recognize that new employees with the Federal Government may require counseling and assistance during their probationary period. Efforts will be made to provide the probationary employee with the necessary counseling/assistance to enable the employee to demonstrate his or her ability to successfully perform the duties of the position to which assigned and to maintain acceptable attendance and conduct (as identified in the HHS Standards of Conduct) for a Federal employee.

SECTION 2

A. As part of the FDA Performance Management Program, the probationary employee will receive at least one (1) performance review, typically mid-way during his/her probationary year, except if the employee is terminated for conduct prior to receiving a review. Employees are encouraged to ask for updates on there performance.

B. The Parties agree that when the Employer determines that a probationary employee is to be terminated for performance reasons, the Employer will normally give the affected employee fourteen (14) calendar days advance notice of termination except when to do so would extend the period of employment beyond the probationary period. The notice shall be in writing. The employee will receive a copy of the termination SF-50, Notification of Personnel Action form, if he/she provides a valid forwarding address.

SECTION 3

Probationary employees may elect to submit a voluntary resignation in lieu of termination at any time prior to the date of their termination. If the probationary employee voluntarily resigns, the employee's Official Personnel Folder will only reflect the voluntary resignation.

SECTION 4

When the probationary employee believes that his or her termination is based on discrimination, the employee may pursue established EEO complaint procedures.

ARTICLE 38

EMPLOYEES WITH TEMPORARY DISABLING CONDITIONS

SECTION 1

A. Employees recuperating from illness or injury who are temporarily unable to perform the full range of official duties may submit to their immediate supervisor a written request for a temporary assignment (not to exceed thirty (30) calendar days initially, additional time to be considered as appropriate) to duties commensurate with the limitations resulting from the illness or injury. Such request will be accompanied by a medical certificate which will assist in establishing the duty limits for the employee. A medical certificate means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, and to the period of disability. Upon receipt of the employee's written request, accompanied by the medical certificate, the Employer agrees to make a reasonable effort to assign duties to the employee.

B. The Employer will respond to an employee's request for a temporary assignment within five (5) workdays of the receipt of the request with the accompanying medical certificate. If additional time is necessary to respond to the request, the reasons for the delay and the approximate time frame for the response will be provided to the employee in writing, if requested. The Employer may request additional medical documentation in accordance with 5 CFR 339. The request for additional medical documentation will be made to the employee or his/her physician. However, in cases where the documentation is requested from the employee's physician, the Employer's medical consultant will make the request.

C. If the request for a temporary assignment is denied, the reason(s) for the denial will be provided to the employee in writing, if requested.

D. All medical documentation acquired under this Article, whether submitted by the employee or obtained through medical examinations, will be treated confidentially and the Employer will observe all requirements of the Privacy Act and other appropriate legal authorities. Medical documentation will be maintained in accordance with applicable provisions of 5 CFR 293 and 5 CFR 297.

SECTION 2

After thirty (30) calendar days, if the employee still requests a temporary assignment, the Employer may, in accordance with 5 CFR 339, require medical documentation to justify the extension of the temporary assignment.

SECTION 3

The provision of Section 1 above does not preclude an employee from filing an application for disability retirement or workers compensation, if appropriate, at any time.

ARTICLE 39

TEMPORARY AND TERM EMPLOYMENT

SECTION 1

The purpose of this Article is to clarify the rights of term employees and temporary employees where those rights may not be clear elsewhere in the Agreement.

SECTION 2

In accordance with 5 CFR 316, Temporary and Term Employment, for purposes of this Agreement, mean the following:

A. A temporary appointment is one for a period not to exceed one (1) year; the appointment may be extended up to a maximum of one (1) additional year, for a total of no more than twenty-four (24) months of service.

B. A term appointment is one for a period of more than one (1) year, when the needs of the service so require and the employment need will last for a limited period of four (4) years or less. The Employer may make either type of time-limited appointment in appropriate circumstances.

SECTION 3

When employees are given time-limited appointments, they will be advised on the Notice of Personnel Action form (SF-50) of the specific not to exceed duration of the appointment (referred to in this Article as the anticipated expiration date of the appointment).

SECTION 4

The Employer will provide written notice to persons hired under time-limited appointments that they do not acquire competitive status from the appointment, and that they may not be converted to either career conditional or career status without appropriate examination and competition. However, veterans having a compensable service-connected disability of thirty percent (30%) or more are eligible to be converted to career or career-conditional appointments from temporary or term appointments not limited to sixty (60) days or less. Such conversions or appointments are subject to existing laws and regulations.

SECTION 5

The Employer will give temporary and term employees whatever instruction it deems necessary on the duties assigned to them. Any out-of-office training requests by such an employee are subject to applicable budgetary constraints.

SECTION 6

Term employees will be accorded all benefits and privileges to which they are entitled under applicable laws and regulations. For example:

A. Term employees serving in positions subject to the General Schedule are eligible for within-grade increases in accordance with government-wide regulations.

B. Term employees are eligible for appropriate coverage under the Social Security Act and the Federal Employees Group Life Insurance (FEGLI) and Federal Employees Health Benefits (FEHB) programs in accordance with government-wide regulation. After completing one (1) year in their positions, they are also eligible to participate in the applicable Federal retirement plan (Civil Service Retirement System (CSRS), CSRS-offset, or Federal Employees Retirement System (FERS)).

SECTION 7

The employment of a term employee ends automatically on the anticipated expiration date of his/her term appointment (as stated on the SF-50), unless the employee was separated prior to that date. Upon completion of a one (1) year trial period, term employees in competitive appointments who are involuntarily separated prior to the anticipated expiration date of their appointments, for reasons other than completion of the project or lack of work, are entitled to the Adverse Action or Unacceptable Performance Action appeal procedures of this Agreement during the remainder of their term appointment.

SECTION 8

A. A temporary employee's appointment may be terminated before the anticipated expiration date of his/her appointment (as stated on the SF-50) due to reasons including, but not limited to, lack of funds, lack of work, or for cause.

B. Where possible, these temporary employees will be given two (2) weeks advance notice prior to the termination of their appointment. Termination for cause may be effectuated without any advance notice.

C. Any termination will be reflected in a written notice, setting forth the reasons for the action and applicable appeal rights, and notifying the temporary employee of his/her option to resign. A temporary employee may not grieve his/her termination under the Negotiated Grievance Procedure in Article 45 unless a prohibited personnel practice is alleged.

ARTICLE 40

PART TIME EMPLOYMENT

SECTION 1

The Employer and the Union recognize the principles of the Public Employees Part-Time Career Employment Act, 5 CFR Part 340 which provides for the expansion of part-time employment opportunities in the Federal Service. Accordingly, the Parties acknowledge that employees may desire to request part-time employment for personal reasons such as family responsibilities, education, retirement transition, handicap, etc.

SECTION 2

Both the Union and the Employer recognize that the operational needs of the Employer impact consideration of requests to work part-time. The Employer will grant requests to work part-time except when doing so would result in staffing and/or workload problems. Upon written request received within the first sixty (60) calendar days of the employees conversion to part-time employment, the Employer will agree to return the employee to the full-time position that he or she previously occupied immediately before converting to a part-time tour of duty. After the first sixty (60) calendar days, the Employer will seriously consider an employees request to return to a full-time tour.

SECTION 3

If a request is denied, the employee will be told reasons for the denial. The reasons will be given in writing at the employee's request.

ARTICLE 41

TRAINING

SECTION 1

The Parties agree that the training and development of employees is a matter of significant importance to fulfilling the mission of the Employer.

A. The Employer agrees to provide employees with training necessary to assist employees in the performance of official duties, subject to budgetary and workload considerations. Opportunities for such training will be provided in a fair and equitable manner, in accordance with applicable laws and regulations including the Government Employees Training Act. Employees may raise as a defense in a performance related action, when relevant, the failure by the Employer to make available training which the Employer deemed necessary for the performance of the employee's presently assigned duties.

B. Employees are encouraged to participate in professional activities of their occupation. The Employer will give consideration to requests for annual leave, leave without pay, use of earned credit hours or compensatory time, or duty time, as appropriate, to participate in training, professional meetings, professional development, conferences, or continuing education courses. The Employer will make a special effort to grant employee requests, absent workload exigencies, for duty time to take examinations, training or continuing courses related to conditions of continued employment.

C. The Employer will select employees for training based on such factors as the organization's need for the new skills to meet organizational objectives, the employee's need for the training to acquire new skills to perform the duties associated with meeting the organizational objectives, and the employee's potential for successfully completing the training and applying the new learning to the job.

D. For training courses or conferences that are not specifically related to immediate organizational or employee needs, and when one (1), or some, but not all similarly situated bargaining unit employees in a work group will be allowed to attend, the Employer will solicit volunteers via e-mail and select the most senior qualified volunteer (e.g., longest Federal Service Computation date). Examples of courses or conferences that might fall in this category are general attendance at FDLI or BIG conferences, attendance at Evidence Development Course, Drug Manufacturing Course, Quality systems Audit Course, Project Management Techniques Workshop, etc.

E. An employee may "hold" his seniority entitlement for a period of two years or until each member of the workgroup has had an opportunity to exercise his/her seniority, after which time he/she reverts into the overall workgroup seniority roster.

F. When an employee uses his or her seniority to claim a training assignment, he or she will drop to the bottom of the list for a period of two (2) years or until all volunteers in the workgroup have had a training opportunity.

SECTION 2

Within management's right to determine staffing and budget, the Employer agrees that where an employee is placed in a new job, the Employer will provide training which the Employer deems necessary for the employee to perform the duties of the new position. This provision is not applicable to employees who are not otherwise qualified to perform the basic duties of the position.

SECTION 3

As training opportunities become available, the Employer will provide training announcement information to bargaining unit employees about current training or educational programs provided by the Employer and, to the extent practicable, training available from other sources. This will normally be done via e-mail. Nomination and/or selection of employees to participate in training and career development programs and courses will be in accordance with EEO guidelines, other applicable laws and regulations, and this Agreement.

SECTION 4

A. All training and related expenses must be approved and authorized in advance of the starting date of the training. Additional unanticipated appropriate and necessary costs related to training expenses may be submitted to the Employer for approval (e.g. tuition, books, appropriate fees, etc.).

B. In order to be approved, all requests for training expenses must meet the following criteria:

1. The training will contribute to an increased ability to perform his or her current job or a job he or she has been assigned to fill or to the mission of the Agency;

2. Comparable training is not available through HHS developed courses, and it would be too costly for HHS to develop a suitable program;

3. Reasonable inquiry has failed to disclose suitable, adequate, and timely programs being offered without cost by DHHS, FDA, or other government agencies within the local area;

4. The course meets the needs of the employee and the Employer as well as or better than other courses of its nature which may also be available at that time;

5. The course is not being taken primarily for the purpose of obtaining a degree; and

6. The payment does not violate the Employer's right to determine its budget.

C. Duty time will be granted to take authorized training, provided that the employee's absence would not create a severe workload problem and the employee is unable to go to training during non-duty hours.

D. Employees who fail to satisfactorily complete training for which the costs have been approved and authorized by the Employer shall reimburse the Employer for all tuition and related expenses which it incurred for such training. If the reason for non-completion of the training is beyond the employee's control, the Employer may waive this requirement. Employees who are approved and authorized to attend other types of training are expected to maintain satisfactory attendance records and complete the course requirements.

E. An employee who is unable to attend training for which he/she has been authorized shall inform the Employer of his/her inability to complete the training as soon as possible after becoming aware of the impediment to attendance, in order to provide the maximum opportunity for the Employer to make other arrangements (e.g., obtain a refund of fees paid, substitute another employee into the course, etc.).

SECTION 5

The Employer, if requested by the employee, will discuss the employee's personal career development opportunities and goals.

SECTION 6

When training being offered will lead to the promotion of a bargaining unit employee, selection for the training must be made in accordance with merit promotion procedures outlined in the Article 36, Merit Promotion, in accordance with applicable law and regulations.

SECTION 7

When new technology or equipment is introduced in a unit and creates the need for different knowledge, skills, or abilities in that work unit, the Employer agrees, if practicable, to provide training to those employees directly affected.

SECTION 8

A. The Employer will maintain quarterly accountings of the money that has been spent versus the amount allocated to each primary subdivision of the FDA. This accounting will be further broken down to show how much money was spent versus the amount allocated for bargaining unit versus non-bargaining unit Employees per primary subdivision.

B. The Union will be provided a copy of the Annual Training Report and any supplements as they become available, and the summary Transaction Report(s) for Training Object Class.

ARTICLE 42

TRAVEL

SECTION 1

A. The Employer agrees that travel on government business should occur during an employee's normal duty hours, to the extent practical. To this end the Employer will strive to schedule travel during the normal duty hours of traveling employees. Where possible, employees may travel on their own time if they so choose. Employees will incur any additional costs resulting from travel deviations for personal reasons.

B. In accordance with 5 CFR 550 and 551, time spent in a travel status away from the official duty station of an employee is not hours of duty unless:

   1. The time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or

   2. The travel:

      a. Involves the performance of work while traveling;

      b. Is incident to travel that involves the performance of work while traveling;

      c. Is carried out under arduous conditions; or

      d. Results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such an event to his or her official duty station. (5 USC 5542).

C. If circumstances require an employees attendance on any day, at a time too early to permit travel on that day during the normal duty hours of the employee, the employee may travel during normal duty hours on the preceding day. If the preceding day is a non-workday, an employee may request to travel during the normal duty hours on the first workday preceding the day in question. The request will be granted, unless it presents a substantial operational problem. If the employee elects the above, then subsistence reimbursement will be limited to what the employee would be entitled to had the employee traveled on the non-workday preceding the day in question.

D. The Employer may require an employee to alter his/her normal duty hours on the preceding workday in order to take advantage of common carrier departures, which would otherwise require travel outside the employee's normal duty hours at the end of the day. Employees retain their right to travel on their own time.

E. If the Employer determines that travel on a non-workday is the most effective and efficient means for accomplishing the mission of the Agency and the scheduling of the meeting that the employee has to attend is outside the control of the FDA, then the employee may be

required to travel on a non-workday. If the meeting is within the control of the Employer, and it is administratively feasible, the FDA has determined that it will reschedule the meeting to avoid required travel on non-workdays. This Section does not apply to travel associated with foreign inspections and investigations or emergency travel, which may require travel on non-workdays.

F. The Employer will make a reasonable effort not to schedule an Employer-initiated event to begin at a time which would require travel outside of normal duty hours.

G. Employees at a Temporary Duty Station (TDS) who are prevented from returning during the normal duty hours may return that evening or the following day during normal duty hours.

H. The Employer will make a reasonable effort not to direct an employee to remain overnight at a TDS and travel the next day, if it is not a workday, unless the stay overnight is required by an event which cannot be scheduled or controlled administratively.

SECTION 2

A. All employees who travel for the Employer are required to apply for and use a Government travel charge card for expenses incurred in the course of official travel. Employees who do not apply for a Government travel charge card after their first official travel will not be allowed to submit an exemption order to obtain another check advance.

B. Upon receipt of a properly approved Travel Order and after submitting and receiving approval of an advance of funds application and account, employees are expected to use their Government travel charge card at an ATM to secure cash needed for their travel. Since employees are expected to use their Government travel charge card to pay for lodging, an ATM cash advance will be authorized on the Travel Order only to cover meals and incidental travel expenses not normally purchased with the charge card.

C. Requests for check advances, as an exception to this policy, will be considered on a case by case basis. To request the travel advance, the employee must submit and receive approval of an Advance of Funds Application (SF-1038), a Travel Voucher (SF-1012), and the "Travel Advance" copy of the Travel Order (HHS-1). Upon receipt of a properly approved request for travel advance, an employee will be advanced sufficient funds to cover expected out-of-pocket expenses up to the limit specified in Federal Travel Regulations. Check advances will normally be issued within five (5) to seven (7) days after receipt of the approval form. If travel is unexpected and there is not enough time to issue a check, a cash advance will be issued. Examples of exceptions which will be considered are:

1. Employees traveling for the first time who do not have a Government travel charge card;

2. Employees embarking on extended travel to a foreign destination which does not generally accept the Government travel charge card and which requires an advance

substantially in excess of the amount that can be obtained using the ATM (advances of $1,000 or less for such travel should always be obtained through the ATM Cash Advance Program); and

3. A permanent change of station.

D. Employees who have had their Government travel charge cards canceled due to misuse will be authorized check advances.

SECTION 3

The Employer agrees to reimburse employees in a travel status per diem and mileage rates incurred by them in the discharge of their official duties. Allowances for those expenses will be paid in accordance with applicable Federal Travel Regulations (FTR).

SECTION 4

Employees who are assigned to training or duty away from their regular duty station and who elect to return home during non-work days will be reimbursed for travel expenses not to exceed the amount reimbursable had employees remained at the temporary duty station.

SECTION 5

When an employee in travel status becomes ill and is expected to remain so for any significant period of time, the Employer will reimburse the employee for expense incurred in returning to the employees normal duty station. Allowances for expenses will be paid in accordance with applicable travel regulations.

SECTION 6

A copy of the FTR will be made available for employees to review upon request. A copy of the FTR is available for employee review on the OPM home page and on the Internet at *http://policyworks.gov/org/main/mt/homepage/mtt/FTR/FTRHP.shtml*.

SECTION 7

A. When an automobile is used for travel, an employee may request to use his or her Privately Owned Vehicle (POV). However, an employee may not be directed to furnish a POV for the convenience of the government.

B. The use of a POV will be authorized when the Employer determines it to be advantageous to the government. Reimbursement will be in accordance with current policy and practice.

C. Common carrier will be used whenever it is reasonably available, unless:

1. The use of common carrier would seriously interfere with the performance of official business;

2. Such use imposes an undue hardship on an employee;

3. Federal Travel regulations provide for some other mode; or

4. The employee requests and receives approval to use a POV.

D. The use of a government-owned, leased or rented vehicle is subject to applicable law, rule, and regulation.

E. When two or more employees with different normal duty hours are traveling together by POV or government-owned, leased, or rented vehicle, the employees may, with prior supervisory approval, reach agreement as to the common duty hours for the day of travel. Absent such agreement, the Employer will determine the duty hours for that day.

SECTION 8

As soon as practical, the Employer will issue a notice of disallowance to the employee for any travel claim it disallows. Such notification shall be in writing, shall clearly identify the basis for denial and shall advise the employee of applicable appeal rights.

SECTION 9

A. In accordance with FTR 301-11, employees are required to submit a travel claim normally within five (5) work days after the travel is completed or every thirty (30) calendar days if the employee is on continuous travel status. If accurately and timely submitted within five (5) work days of travel, the Employer will process the claim in sufficient time to prevent the employee from incurring credit interest.

B. Employees are required to repay any excess travel advance funds, normally within thirty (30) calendar days after the completion of the trip.

SECTION 10

The Employer will reimburse the employee for all reasonable personal services and tips given while in a travel status to the extent possible in accordance with law, rule or regulation.

SECTION 11

A. The Parties will establish by the end of the sixth month from the effective date of this Agreement a gainsharing program modeled on that offered by the GSA which gives

employees a 50% share of all savings that they achieve by staying in hotels whose costs are below the limits allowed by the GSA travel regulations. For example, if GSA allows an employee to spend up to $100 on a one night's stay in a hotel room, but the employee only spends $70, the savings would be $30 and the employees share would be $15. In order to file a claim, the employee must have achieved at least $100 of savings.

B. By the end of the sixth month from the effective date of this Agreement the Parties will also address the issue of establishing a gainsharing program based on the use of frequent flyer miles.

C. If the Parties fail to reach agreement on the above-mentioned issues, the Parties will engage the mediation/arbitration services of Mr. Jerome Ross, who will retain jurisdiction over these matters in order to settle any disputes.

ARTICLE 43

ADVERSE ACTIONS

SECTION 1

This Article applies to all bargaining unit employees who have completed the applicable probationary or trial period, as appropriate, in their current positions.

SECTION 2

A. For purposes of this Article, an adverse action is defined under 5 USC 7512 as a suspension of more than fourteen (14) calendar days, reduction in grade or pay, furlough of thirty (30) calendar days or less, and removal.

B. An adverse action will be taken only for such cause as will promote the efficiency of the service.

SECTION 3

In effecting adverse actions, the Employer shall endorse the use of like penalties for like offenses and progressive discipline, as appropriate. The Employer shall consider the existence of any mitigating and/or aggravating circumstances, the nature of the position occupied by the employee at issue, and any other factors bearing upon the incidents or acts underlying the action. The degree of discipline administered will be proportionate to the offense and will be determined on a case-by-case basis.

SECTION 4

A. Decisions of courts and the Merit Systems Protection Board (MSPB), and issuances of the Office of Personnel Management (OPM), have long recognized the "Douglas Factors" (Douglas v. Veterans Administration, 5 MSPR 280 1981) as being relevant considerations in determining the appropriateness of a penalty in an adverse action case. Without purporting to be exhaustive, the factors generally recognized at the time of execution of this Agreement as being relevant to the setting of the penalty include the following:

   1. 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 technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;

   2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;

3. The employee's past disciplinary record;

4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;

5. The effect of the offense upon the employee's ability to perform at a fully satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties;

6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;

7. Consistency of the penalty with any applicable Agency table of penalties;

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

9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

10. Potential for the employee's rehabilitation;

11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter; and

12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

B. All of the Douglas Factors may not be relevant in every case. Only those relevant factors should be considered in setting of a penalty. In determining the relevant factors, each case must be reviewed on a case-by-case basis. Factors may or may not weigh in an employee's favor. Selection of an appropriate penalty must involve a responsible balancing of the relevant factors in the individual case.

SECTION 5

A. In all cases of proposed adverse action, except as stated in Section 8 of this Article or when there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, an employee will be given at least thirty (30) calendar days advance written notice of the proposed action. This notice will state specifically and in detail the reasons for the action. It is understood that the proposal notice is not grievable upon receipt. However, disputes regarding the advance notice of proposed action may be merged in a grievance concerning the final decision of the Employer, after that final decision is issued.

B. The employee will be given a reasonable time of not less than fourteen (14) calendar days to make an oral reply and/or to submit a written reply. The employee may make an oral reply

pursuant to the provisions of 5 CFR 52.404(c). Reasonable requests for extension will be granted. The proposal notice will specify who will hear/receive the oral and/or written reply.

C. The employee will have the right to be represented in the preparation and presentation of his/her reply. The employee and his/her representative will receive reasonable time to prepare the reply in accordance with the terms of Article 10 on use of official time and Article 5 on employee rights.

D. The proposal notice shall inform the employee of his/her right to review the material which is relied upon to support the proposed adverse action. The term "material relied upon" includes all documents contained in the adverse action file, whether favorable or unfavorable to either party's positions. The Employer will make a copy of such material available for review, concurrent with the delivery of the proposal notice to the employee.

E. Where management has relied upon witnesses to support the reasons for the proposed action, the Employer will make available, as part of the material relied upon, the identity of those witnesses and any written statements taken from them. The Employer reserves the right to sanitize any material which is provided to the employee or the employee's representative, when required by law. If requested by the employee or his/her representative, the Employer will furnish a copy of such material prior to the oral reply.

F. In making a reply, the employee may set forth mitigating circumstances, refute aggravating circumstances, and give reasons as to why the proposed action should not be effected.

G. If an employee chooses to make an oral reply, the reply will either be made at the work site of the employee or the Employer may arrange to hear the reply by phone if the employee's representative agrees to such an arrangement. If the oral reply is to be made at a location outside of the employee's local commuting area, the Employer will pay, in accordance with law, rule, and regulation, the travel and per diem expenses of the FDA employee and his/her designated Union representative.

H. The Employer will make a written summary of the employee's oral reply. A copy of the summary will be included in the adverse action file, and will also be provided to the employee or the employee's representative. Within four (4) work days after receipt of the summary of the oral reply, the employee may submit an alternative version or submit comments about the written summary, which will also be included in the adverse action file.

I. The Employer agrees that the employee may use the same means as the Employer does to make notes during the oral reply.

SECTION 6

The final decision in an adverse action covered by this Article must be made by a higher level of official than the one who issued the notice of proposed action, unless the proposing official is the Commissioner of Food and Drugs. The final decision will identify the charge(s) that are sustained and the basis of the decision.

SECTION 7

A. In the event the Employer sustains the charge(s) and effects an adverse action against the employee, the employee may elect to challenge the adverse action in only one of the following ways:

- By filing an appeal with the MSPB in accordance with applicable law and regulation (currently thirty (30) calendar days); or
- Under this Agreement and with the Union's concurrence, by appealing directly to binding arbitration (which may include an allegation of discrimination), within the time set forth in Article 46, Arbitration, of this Agreement; or
- By filing a formal complaint of discrimination under the administrative EEO process.

B. The final decision letter which is issued on the adverse action to the employee will contain a statement of his/her right to challenge the action in one of these three (3) ways. Once an employee has elected one (1) of these procedures, the employee may not change thereafter to a different procedure.

SECTION 8

A. Under ordinary circumstances, an employee whose removal has been proposed shall remain in a duty status in his/her regular position during the advance notice period. In those circumstances where the Employer determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the Employer will consider whether any of the following alternatives is preferable:

1. Assigning the employee to duties where he/she is no longer a threat to safety, the Agency mission, or to Government property;
2. Placing the employee on leave with his/her consent;
3. Carrying the employee on appropriate leave (annual, sick, leave without pay, or absence without leave) if he or she is absent for reasons not originating with the Employer.

B. If none of these alternatives is selected, the Employer may place the employee in a paid, non-duty status during all or part of the advance notice period, if otherwise consistent with applicable law, rule or regulation. The Employer may also curtail the notice period when it can invoke the provisions of 5 CFR 752.404(d)(1) (the "crime provision"). This provision may be invoked even in the absence of judicial action if the Employer has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed.

SECTION 9

In case of off duty misconduct, the proposal and the decision will describe the relationship (often referred to as "nexus") between the misconduct and the employee's position.

SECTION 10

At the end of each quarter, FDA will send to the National President of NTEU sanitized copies of proposed and final disciplinary decisions and adverse action letters issued to all employees that quarter. These will be collated so that the proposal letters are matched with final decisions and so that letters issued in each region and headquarters are identifiable.

SECTION 11

The documentation supporting an adverse action will be purged/destroyed pursuant to applicable rules for the system(s) of records in which the documentation is maintained. If an adverse action is overturned, appropriate action will be taken with respect to all other records (e.g., SF 50) in accordance with the disposition of the case.

SECTION 12

Records of disciplinary and adverse actions will remain in an employee's OPF no longer than the regulatory minimum period and the Employer will protect the privacy of those records so that no one sees them who does not have authority under the regulations.

ARTICLE 44

DISCIPLINARY ACTIONS

SECTION 1

This Article applies to all employees who have completed the applicable probationary or trial period, as appropriate.

SECTION 2

A. For purposes of this Article, disciplinary actions include suspensions for fourteen (14) calendar days or less, reprimands, and reprimands reduced to writing. Disciplinary actions effected under 5 USC 7512 will be processed in accordance with the procedures contained in Article 43, Adverse Actions, of this Agreement.

B. Disciplinary actions exclude counseling/warnings, whether oral or in writing, and admonishments, whether oral or in writing. When an employee is counseled/warned in writing, the employee may respond in writing and have the response attached to the counseling document.

SECTION 3

A. In effecting disciplinary actions, the Employer shall endorse the use of like penalties for like offenses and progressive discipline. The Employer shall consider the existence of any mitigating and/or aggravating circumstances, the nature of the position occupied by the employee at issue, and any other factors bearing upon the incident(s) or act(s) underlying the action. The degree of discipline administered will be proportionate to the offense and will be determined on a case-by-case basis.

B. In determining the appropriate penalty to propose and/or impose in a disciplinary action, the Parties agree that it is appropriate for supervisors to consider and balance a variety of circumstances as pertinent to the case, which may result in mitigation or aggravation. Examples of such circumstances should include, but are not limited to the employee's past work and disciplinary records, length of service, the potential for his/her rehabilitation, the seriousness of the offense and its relation to the employee's duties and the impact on the Agency, the consistency of the penalty with those imposed on other employees in similar situations, and potential alternative sanctions to defer future misconduct, etc.

C. An effective means of maintaining appropriate conduct in the workplace is through the promotion of cooperation, sustained good working relationships, and the self-discipline and responsible performance expected of mature employees. The Union agrees to encourage employees to:

1. Actively participate in and promote programs designed to improve work methods and conditions;

2. Conscientiously perform assigned duties;

3. Comply with Government-wide, Departmental, and FDA standards of ethical conduct;

4. Cooperate and strive to maintain good working relations with their supervisors and fellow employees; and

5. Maintain satisfactory attendance records.

SECTION 4

A. No employee will be disciplined except for such cause as will promote the efficiency of the service.

B. An employee will not be disciplined for off-duty conduct unless a relationship (commonly referred to as nexus) is established between the charged conduct and the efficiency of the service.

C. Discipline is part of the daily responsibilities of supervisors and managers.

SECTION 5

When the Employer takes a suspension action against an employee, the following procedures will apply:

A. The written proposal will be delivered no less than fifteen (15) workdays prior to taking the disciplinary action and will contain the specific reasons for the proposed action, stated in detail. It is understood that the proposal notice is not grievable upon receipt. However, disputes regarding the proposal may be merged into a grievance concerning the final decision of the Employer, after that final decision is issued.

B. The employee will be given not more than ten (10) workdays from the date he/she receives the notice of proposed disciplinary action, in which to deliver an oral and/or written reply. Reasonable requests for extension will be granted. The proposal notice will specify who will hear/receive the oral and/or written reply. This official will be the person who will be making the final decision on the matter, or his/her designee.

C. The employee and his/her representative will be given reasonable time to prepare the reply, in accordance with the terms of Article 10, Official Time, and Article 5, Employee Rights, of this Agreement.

D. The proposal notice will inform the employee of his/her right to review the material relied upon to support the proposed action, and the Employer will make a copy of such material

available for review, concurrent with the delivery of the proposal notice to the employee. If requested by the employee or his/her representative, the Employer will furnish a copy of such material prior to the oral reply. The Employer reserves the right to sanitize any material which is provided to the employee, when required by law.

E. Where management has relied upon witnesses to support the reason for the proposed action, the Employer will make available as part of the material relied upon any written statements taken from them. The term "materials relied upon" includes all documents relied upon to formulate the charges and specifications contained in the disciplinary action case file. During arbitration the Employer will not be permitted to introduce documentation purportedly relied upon by the proposing official, if such documentation was not included in the documents which were made available to the employee during the reply period.

F. In making a reply, the employee may set forth mitigating circumstances, refute aggravating circumstances, and/or give reasons why the proposed action should not be effected.

G. If an employee chooses to make an oral reply, such reply will be made at the worksite of the employee unless the Parties mutually agree to alternative arrangements. If the oral reply is to be made at a location outside of the employee's local commuting area, the Employer will pay, in accordance with laws, rules, and regulations, the travel and per diem expenses of the FDA employee and his/her designated Union representative. When prudent and if the employee's representative is outside of the local commuting area, the Agency may arrange to hear the oral reply via teleconference.

H. The Employer will make a written summary of the employee's oral reply. A copy of the summary will be included in the disciplinary action case file, and will also be provided to the employee's representative (or to the employee if he/she is unrepresented). Within four (4) work days after receipt of the summary of the oral reply, the employee may submit an alternative version or comment upon the written summary, which will also be included in the disciplinary action file.

I. The final decision in a disciplinary action covered by this Article must be made by an official at a higher level than the official who issued the notice of proposed action, unless the official is the Commissioner of FDA. The final decision will identify the charges that are sustained and will state the basis of the decision.

J. In cases of off-duty misconduct, the proposal and decision letters will describe the relationship (often referred to as nexus) between the misconduct and the employee's position.

SECTION 6

An employee subject to disciplinary action may grieve the action under the negotiated grievance procedure contained in Article 47, Expedited Arbitration, of this Agreement. Grievances over suspensions will start at the final step of the grievance procedure, grievances over all other

disciplinary actions will start at the first step of the grievance procedure. After completion of the grievance procedure, the Union has the option to appeal a disciplinary decision to binding arbitration.

SECTION 7

A. Letters of reprimand will be retained in the employee's Official Personnel Folder (OPF) for the period of time specified in the letter, which may not exceed two (2) years.

B. Oral admonishments which are reduced to writing will be retained by the employee's supervisor for the period of time specified in the admonishment, which may not exceed one (1) year from the date of issuance of the document.

C. Records of oral reprimands and oral admonishments reduced to writing will be purged from the applicable system of records file in a timely manner.

SECTION 8

To the extent not prohibited by law (including the Privacy Act of 1974, as amended), the Employer agrees that upon delivery of a copy of the final decision letter for suspensions of fourteen (14) calendar days or less to the employee, it will provide the Union a sanitized copy of the letter.

ARTICLE 45

GRIEVANCE PROCEDURE

SECTION 1

The purpose of this Article is to provide a mutually acceptable and orderly method for the prompt and equitable resolution of grievances filed by employees or the Parties.

The Employer and the Union agree that every effort will be made to resolved grievances at the lowest possible level. The filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, performance, loyalty or desirability to the organization. Employees dissatisfied with the orders properly grounded in supervisory authority must follow the order first and then grieve the matter if they believe relief should be granted. However, the employee has a right to decline to perform his/her assigned tasks due to a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures.

SECTION 2

A. A grievance is defined as any complaint:

   1. By any employee in the bargaining unit concerning any matter relating to the employment of the employee;

   2. By the Union concerning any matter relating to the employment of any employee in the bargaining unit;

   3. By an employee in the bargaining unit, the Union, or the Employer concerning:

      a. The effect or interpretation, or a claim of breach, of the Agreement; or

      b. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

B. At the election of either party, grievances which involve the same issue and arise from the same or similar facts and actions, initiated by more than one employee, may be joined and processed as one.

SECTION 3

The negotiated grievance procedures contained in this Article do not cover the following:

A. Complaints concerning individual rights related to a reduction-in-force;

B. Any complaint concerning retirement, life insurance, or health insurance;

C. Any suspension or removal for national security reasons;

D. Any examination, certification, or appointment;

E. The classification of any position which does not result in the reduction in grade or pay of an employee;

F. Complaints concerning veterans preference;

G. A termination of an employee serving a probationary period; return of an employee serving a supervisory or managerial probation to a nonsupervisory or nonmanagerial position; a separation or termination of an employee during a trial period; the termination of an employee (including staff fellows or visiting scientists) serving on a temporary or time limited appointment; the termination of an employee in the Student Educational Employment Program, including STEP and SCEP; or temporary employees and/or employees serving a probationary or trial period. However, if any of the actions mentioned in this paragraph are alleged to have been taken for discriminatory reasons prohibited by statute, those issue may be grieved under this procedure;

H. A notice of proposed action or warning. However, disputes regarding a proposal may be merged into a grievance concerning the final decision of the Employer after that final decision is issued;

I. Oral and written admonishments and oral reprimands are not grievable.

J. The substance of performance standards and elements. However, if such substance is alleged to have been created for discriminatory reasons prohibited by statute, that issue may be grieved under this procedure;

K. Progress reviews, a counseling session or performance improvement plan (PIP). While the issuance of a PIP is not grievable, the Employer's final decision to remove the employee based on the PIP is grievable. Issues concerning the failure of the PIP to meet the contractual requirements regarding content (specified in Article 30, Performance Appraisals) may be merged into the grievance concerning the final decision to remove the employee after that final decision is issued;

L. All other matters made nongrievable by any provision of this Agreement; and

M. Any specific matter raised in an on-going unfair labor practice charge.

SECTION 4

A. A complaint concerning actions defined in 5 USC 4303 (removal or reduction in grade based upon unacceptable performance) and 7512 (removal, suspension for more than fourteen (14)

days, reduction in grade or pay, or furlough for thirty (30) days or less for such cause as will promote the efficiency of the service) may be raised under either one of the following procedures, but not under both procedures:

1. By invoking the arbitration procedure provided in this Agreement, with the concurrence of the Union; or

2. By filing a timely appeal with the Federal Merit Systems Protection Board (MSPB) under the applicable regulatory procedure. An employee's election of either one of these procedures is irrevocable and precludes the employee from subsequently electing the other procedure.

B. A complaint concerning discrimination on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation may be raised under this negotiated procedure or the appropriate statutory procedure enunciated at 29 CFR, but not both. An employee shall be deemed to have exercised his/her option to raise the matter under either the regulatory procedure or this procedure at such time as the employee timely files a formal complaint or timely files a grievance, in writing, under this procedure, (or the Union invokes arbitration, if applicable, as the initiating step), whichever occurs first.

C. When an employee uses the arbitration procedure for a matter that could be appealed to EEOC or MSPB and the employee's grievance is sustained on the grounds of a civil rights discrimination violation or a violation of law or government wide regulation, the Parties will equally share the costs of the arbitration process.

SECTION 5

A. Employees must use the grievance procedures set forth in this Article for filing and processing grievances concerning issues relating to this Agreement.

B. During any of the steps indicated in this Article, the Parties may by mutual agreement hold a meeting to resolve the grievance. Such meetings will occur during the regularly scheduled workday of the Parties involved. In unusual circumstances and by mutual agreement, a meeting may take place outside of the regularly scheduled workday of the grievant.

C. By mutual agreement, the Parties may also use the grievance mediation process involving the Federal Mediation and Conciliation Service (FMCS) pursuant to Section 10 of this Article. All fees charged by FMCS will be shared equally by the Parties.

D. Failure on the part of the Employer to observe the time limits for any step in the grievance procedure shall have the effect of the grievance being denied at that step, at which point the grievant may appeal to the next step. Failure on the part of the grievant or the Union to observe time limits for any step shall have the effect of the grievance being nullified and not capable of being processed further. By mutual written consent of the Parties, the time limits in this Article may be extended and/or any step of the grievance procedure may be waived.

Additional grievance steps may be added by mutual consent to accommodate organizational structure.

E. It is understood that an employee processing a grievance under this Article shall be limited to Union representation or self-representation. If an employee presents a grievance without Union representation, the Union will be given the opportunity to be present at all formal discussions of the grievance and at the resolution of the grievance.

F. The Parties agree that any resolution must be consistent with the terms and conditions of this Agreement. The Union agrees to respect and maintain the confidentiality of all information involving performance or conduct of individuals.

G. Grievances may be initiated by an employee, by the Union for itself, or on behalf of an employee, or by the Employer.

H. Grievances on behalf of employees from more than one work unit seeking substantially the same remedy(s) concerning the same issue and alleging substantially the same facts and actions for each grievant will be filed with the Director of OHRMS. As appropriate, these individual grievances may be joined and answered as a single combined grievance.

I. If the Employer alleges that a grievance is not grievable and/or not arbitrable, the Employer shall notify the grievant in writing stating the reasons for such determination(s).

J. When the Employer notifies the grievant that a grievance is not valid, the grievant may, within three (3) workdays, revise the grievance to attempt to cure the problem. Upon revision, the grievance will be resubmitted at the level at which the issue was raised and proceed as a normal grievance. The grievant will be allowed only one (1) revision attempt. The Employer reserves the right to challenge grievability, arbitrability, or the validity of the revised grievance.

K. Management agrees to provide:

1. A copy of all written decisions rendered on a grievance filed under this Article to both the grievant and the Union representative; and

2. A copy of all grievance decisions issued at the last step of the grievance process to the appropriate NTEU field representative.

SECTION 6

A grievance shall be submitted in writing and shall include the following:

- Date submitted;

- Name of grievant and his/her representative, if any, and signature of grievant, and his/her representative;

- Work organization and location of the grievant;
- Sufficient detail to identify the basis of the grievance, including reference to the Article(s) and Section(s) of the Agreement, and general reference to any practice, law, rule or regulation alleged to be violated, misinterpreted or misapplied and all known and alleged facts; and
- The specific personal relief sought by the employee and the Union, or by the Employer.

SECTION 7

A. Step 1 of the Grievance Process:

1. A grievance must be submitted in writing to the FDA HR representative within twenty (20) calendar days after the matter, issue or incident out of which the grievance arose, or twenty (20) calendar days after the date the aggrieved became aware or should have become aware of the matter, issue or incident giving rise to the grievance. The HR representative will refer the grievance to the Step 1 Deciding Official. Any grievance not submitted in writing within the time period will not be considered timely unless the Parties mutually agree in writing to waive the time limits. Issues not raised at Step 1 of the grievance may not be raised by either Party at any subsequent stage or in arbitration unless mutually agreed in writing by the Parties.

2. The Step 1 Deciding Official will, upon written request, meet with the grievant within fourteen (14) calendar days after receipt of the grievance. Those present at such a meeting may include the immediate supervisor and/or representative, the grievant and one Union representative. Within fifteen (15) calendar days after the close of the meeting, or within fifteen (15) calendar days after the submission of the grievance if no meeting is held, a written response will be provided. It will specify the reason for the decision and the identity of the Step 2 Deciding Official.

B. Step 2 of the Grievance Process:

1. If the grievant is not satisfied with the response from the Step 1 Deciding Official, the grievant may appeal to the Step 2 Deciding Official designated by the Employer within fourteen (14) calendar days of receipt of the Step 1 response or, if no response was made, within fourteen (14) calendar days of the response due date.

2. The Step 2 Deciding Official may designate another official to respond to a grievance submitted under this Article, who will then become the Step 2 Deciding Official.

3. The Step 2 Deciding Official will, upon written request, meet with the grievant within fourteen (14) calendar days after receipt of the Step 2 appeal. Those present at the meeting may include the Step 2 Deciding Official and/or representative, the grievant, and one Union representative. Within fifteen (15) calendar days after the close of the

meeting, or within fifteen (15) calendar days after receipt of the Step 2 appeal if no meeting is held, a written response will be provided. It will specify the reason for the decision.

C. By mutual agreement of the Parties, the Union may file for arbitration under the expedited arbitration procedure of Article 47, within thirty (30) calendar days of the date of receipt of the Step 2 grievance decision. Otherwise, the Union may file for arbitration under the provisions of Article 46, Arbitration, within thirty (30) calendar days of the date of receipt of the Step 2 grievance decision.

SECTION 8

A. Grievances filed by the Employer against the Union will be filed within thirty (30) calendar days with the National President of NTEU. If either Party requests, a meeting will be held within ten (10) workdays. The meeting will be held at the Union's Washington, D.C. Headquarters Office unless the Parties agree to conduct it telephonically or at a different location. The Union may have two (2) representatives from the bargaining unit present on official time in addition to Union staff members.

B. The Union will provide the Employer a written decision within thirty (30) calendar days of the meeting. This will be a final grievance decision, subject to arbitration at the election of the Employer. The Employer must invoke arbitration within thirty (30) calendar days of receipt of the Union's decision. Failure of the Union to issue a decision within thirty (30) calendar days shall have the effect of a denial of the grievance and the Employer may invoke arbitration not later than thirty (30) calendar days from the date on which the Union's decision was due.

C. Grievances against the Employer, not filed by or on behalf of an employee or group of employees, concerning the Union's institutional rights, will be filed within thirty (30) calendar days through the Division of Ethics and Labor-Management Relations, which will submit it to the proper official and provide the Union with the name of the official. If either party requests, a meeting will be held within fourteen (14) calendar days at the local office of the Employer. The Employer will provide a written decision within thirty (30) calendar days of the meeting. This will be a final grievance decision, subject to arbitration at the election of the Union.

D. The Union may file a national grievance over issues involving all bargaining unit employees in the FDA represented by NTEU by filing the grievance with the Division of Ethics and Labor-Management Relations within thirty (30) calendar days of the time the Union became aware, or should have become aware, of the matter grieved. The Division of Ethics and Labor-Management Relations will submit it to the proper official and provide the Union with the name of that official. If either party requests, a meeting will be held within fourteen (14) calendar days at headquarters offices of the Employer. The Employer will provide a written decision within thirty (30) calendar days of the meeting. This will be a final grievance decision, subject to arbitration at the election of the Union. The Union must invoke

arbitration within thirty (30) calendar days of receipt of the Employer's decision. Failure of the Employer to issue a decision within thirty (30) calendar days shall have the effect of a denial of the grievance and the Union may invoke arbitration not later than thirty (30) calendar days from the date on which the Employer's decision was due.

SECTION 9

The Union may request in writing that the Employer provide such written information as is relevant to the subject matter of the grievance and necessary to its resolution. Pursuant to 5 USC 7114(b)(4), the requesting party shall include the reasons that the information is necessary. If the Employer declines such a request it shall respond in writing and state why the information will not be provided. If a dispute arises over access to information in connection with the grievance, it may either be joined to the grievance or addressed through the filing of a ULP with the FLRA, but not both.

SECTION 10

Either before or after a grievance is filed, the following Alternative Dispute Resolution (ADR) process may be followed, by mutual agreement:

A. A meeting may be arranged by the Union representative and the appropriate employee/labor relations specialist (or their designees) to attempt to resolve the matter;

B. The meeting will include a mediator and the Parties may mutually agree to other participants such as Union and management representatives or subject matter experts;

C. The Parties may meet at mutually agreeable times to attempt to resolve the matter;

D. If the matter is resolved, the settlement agreement will be drafted in a formal written agreement and will be signed by the grievant, the Union's representative and the Employer's representative, and the grievance will be withdrawn;

E. If the matter is not resolved through ADR, the grievance will continue through the grievance process;

F. The grievant may resume the normal grievance process at any time during ADR, upon written withdrawal from the ADR process; and

G. Offers to settle and aspects of settlement discussions will not be used as evidence or referred to if the grievance is not resolved by this process.

SECTION 11

A. After one (1) year from the effective date of this Agreement, except in cases where the crime provision is invoked or in an emergency situation, the implementation of a suspension of six

(6) to fourteen (14) calendar days which is timely grieved will be stayed seven (7) calendar days from receipt of a grievance response/decision from the Step 2 official. If expedited arbitration is invoked within seventy two (72) hours of the second step decision, the grievance will be stayed until receipt of the arbitration decision.

B. No stay applies to a suspension of greater than fourteen (14) days, because any challenge to such an adverse action commences with arbitration.

ARTICLE 46

ARBITRATION

SECTION 1

A. Any unresolved grievances processed under Article 45, Grievance Procedures, may be appealed to binding arbitration upon written notification by the Union or by the Employer, as appropriate, unless otherwise provided in this Agreement. The request for arbitration must be made within thirty (30) calendar days after receipt of the final decision by the Field Representative. If no final decision is issued, the arbitration may be invoked after a reasonable time (a minimum of thirty (30) calendar days) from the date the decision should have been issued.

B. Invocations of arbitration must be served: 1) on the Employer's designated representative, if filed by the Union; or 2) on the National President of NTEU, if filed by the Employer, with a copy to the appropriate Chapter President. Arbitration is deemed to be invoked upon hand delivery or date of postmark, if mailed, to the appropriate party.

SECTION 2

A. The Parties will select a permanent panel of arbitrators for hearing arbitration appeals filed by the Union or the Employer. There will be a panel of four (4) for the Washington, D.C. metropolitan area and a panel of two (2) for each of the FDA regions. The panel of two (2) for each of the FDA regions will also service the District Offices and Resident Posts included in the respective regions. The selection will be made within thirty (30) calendar days of the effective date of this Agreement by: 1) an official designated by the Employer, and 2) the Chapter President or his/her designee.

B. If the Parties are unable to mutually agree on all arbitrators, they will submit a joint request to the Federal Mediation and Conciliation Service (FMCS) for a list of impartial persons qualified to serve as arbitrators. The number of names to be provided by the FMCS will be thirteen (13) if four (4) arbitrators must be selected, eleven (11) if three (3) must be selected in this manner, nine (9) if two (2) must be selected, and seven (7) if only one (1) arbitrator remains to be selected. The selection shall be made by alternately striking names until the requisite number of names remains on the list. A toss of the coin will determine who makes the first strike. Any fees charged by FMCS will be shared equally by the Parties.

C. An arbitrator can be removed from the designated list of arbitrators unilaterally by either party during the life of the Agreement, by giving written notice to the other party and the arbitrator. Thereafter, no additional cases will be assigned to that arbitrator; however, he/she will hear and decide any case already assigned. At times when only one arbitrator remains to hear cases, that arbitrator cannot be removed until a replacement is selected by following the procedures set forth in Section 2.A and 2.B.

D. If an arbitrator is removed, the Parties will select a replacement using the procedure described in 2.A. and 2.B. above. Any unassigned pending cases will be assigned to the remaining arbitrator(s), until a replacement arbitrator is selected.

E. Cases will be assigned to the designated arbitrators on a rotating basis, to be determined by the date arbitration is invoked.

SECTION 3

A. Within forty-five (45) calendar days following invocation of arbitration, the party invoking it will notify the arbitrator who is assigned the case and schedule the hearing to take place on a date mutually agreeable to all Parties. If the party invoking arbitration fails to contact the arbitrator within the forty-five (45) calendar day period, the grievance will be considered withdrawn and may not be refiled. If within ninety (90) calendar days after arbitration is invoked the Parties have not agreed upon a hearing date, the arbitrator has unilateral authority to schedule the hearing.

B. The arbitration hearing will be held on the Employer's premises during regular duty hours (day shift) of the basic workweek, unless the Parties agree otherwise. The arbitration will be held within the local commuting area of the grievant(s) unless the Parties mutually agree otherwise. Where appropriate, the Parties will consider the use of long-distance telephone and/or video-conferencing during the arbitration hearing for the taking of testimony of witnesses whose assigned duty station is outside the commuting area of the site selected.

C. The grievant, the grievant's representative, and all employees who are approved as witnesses and who are in an active duty status, shall be excused from other assignments to the extent necessary to participate in the arbitration proceeding without loss of pay.

D. A verbatim transcript of the arbitration shall be made (unless mutually waived). The cost of the transcript will be shared equally.

E. The arbitrator has no power to add to, subtract from, disregard, alter, or modify any terms of this Agreement or the Employer's policy and regulations.

SECTION 4

A. The procedures used to conduct the arbitration shall be determined by the arbitrator, except to the extent provided herein.

B. By mutual agreement, the Parties may arrange for a pre-hearing conference, with or without the arbitrator, to consider possible settlement and means of expediting the hearing. For example, this can be done by reducing the issue(s) to writing, stipulating the facts, outlining intended offers of proof, authenticating proposed exhibits, and/or waiving the use of a transcript.

C. If the Parties fail to agree on a joint submission of the issue for arbitration, each shall submit a separate statement of the issue(s). The arbitrator will then determine the issue(s) to be heard.

D. Normally, the Parties agree to exchange a complete list of prospective witnesses at least fifteen (15) calendar days prior to the hearing. The Parties shall attempt to mutually agree on witnesses to testify at the hearing. To the extent the Parties cannot agree on appropriate witnesses, the Parties may either submit a list of disputed witnesses to the arbitrator at the hearing for a determination or request in writing prior to the hearing that the arbitrator make a determination as to those witnesses. In determining who shall appear, the arbitrator shall approve only those persons whose testimony will be material to the matter in dispute and not repetitious of other testimony to be offered.

E. The arbitrator shall have the authority to make all arbitrability and/or grievability determinations. To the extent possible, the arbitrator shall make grievability and/or arbitrability determinations prior to addressing the merits of the original grievance. The Parties are free to decide by mutual agreement to approach the arbitrator prior to the hearing for a ruling on the arbitrability question(s).

F. Absent mutual agreement, the Parties will be entitled to submit pre-hearing and post-hearing briefs, provided that all documents given to the arbitrator are also provided to the opposing party's representative at the same time.

SECTION 5

The arbitrator's fees and expenses, and the transcript costs, shall be shared equally by the Parties, unless expressly stated otherwise elsewhere in this Agreement. It is understood that any per diem costs of the arbitrator are governed by applicable government travel rules and regulations, and will be shared equally by the Parties. In any grievance where the Parties settle the matter prior to an arbitration hearing, both Parties will share equally any fees charged by the arbitrator.

SECTION 6

A. The arbitrator will strive to issue a decision within thirty (30) days from the close of the record. His/her award or recommendation shall be limited to the issue(s) stipulated to by the Parties or determined by the arbitrator pursuant to Section 4.C. of this Article.

B. The arbitrator's written decision shall include findings of facts and an opinion containing the reasoning and basis for his/her decision on all issues which were heard.

SECTION 7

A. In any arbitration where the grievant is contesting his/her performance appraisal, the following will apply as to burden of proof. Where the employee challenges a final rating of

record of "Fails to Meet Performance Measures" the burden of proof shall be on the Employer in any arbitration to establish that the rating was proper.

B. In all cases in which an employee challenges a final rating of record in a performance appraisal, the evidentiary standard shall be substantial evidence.

C. This Section does not govern cases involving the denial of a within-grade increase.

ARTICLE 47

EXPEDITED ARBITRATION

SECTION 1

A. This expedited arbitration procedure is intended to provide prompt and efficient resolution of certain matters. Accordingly, the Union or the Employer may, at its respective option, submit grievances concerning the following matters:

- Travel Issues
- Disciplinary Actions
- Dues withholding
- Denials of annual leave, sick leave or leave without pay
- Denials of requests for official time
- Denials of requests to engage in outside activity
- Bulletin board posting and literature distribution
- Denials of requests to earn or use credit hours
- Merit promotion issues

B. Where compensatory damages are claimed in a grievance alleging discrimination or reprisal under EEO laws, this expedited arbitration process may not be used.

C. Additionally, the Employer is free during the first fifteen (15) calendar days after a case has been assigned to an arbitrator for expedited treatment to petition the arbitrator in writing for a ruling that expedited procedures will not be used because there is "just cause" for a transcript and post-hearing brief. (The Union will receive simultaneous service of the petition and an opportunity to respond.) Although it should be unusual for the arbitrator to grant this request, it may be done in his or her sole discretion. If the petition is granted, the Employer will pay all the costs of a transcript for the arbitrator and the Union.

SECTION 2

The request for expedited arbitration under this Article must be made within fourteen (14) calendar days after receipt of the final Employer decision by the Union. However, the Union may use conventional arbitration in lieu of expedited arbitration so long as it invokes the conventional procedures during the stated time period set forth provided in Article 46, Arbitration, of this Agreement.

SECTION 3

A. The same panel of arbitrators will be used for expedited arbitration as are selected under standard arbitration.

B. Arbitrators will be selected to hear a grievance under the procedure on a rotating basis. Arbitrators will be selected within seven (7) calendar days after notice of appeal to arbitration is served upon the other Party. Notice of selection will be forwarded to the arbitrator within five (5) calendar days after selection, by the Party invoking arbitration.

C. The arbitrator will conduct the hearing within thirty (30) calendar days after being notified of his or her selection.

D. If the arbitrator is unable to hear the case within this time frame, the next arbitrator on the list will be selected, unless otherwise agreed to by the Parties.

SECTION 4

A. This arbitration hearing shall be held during the regular work hours of the basic work week at a convenient site, which will normally be the Employer's premises.

B. The Parties have the right to issue opening and closing statements, and to present and cross-examine witnesses.

C. Attendance at the hearing will be limited to those determined by the arbitrator to have direct knowledge of the circumstances and factors bearing on the case. The arbitrator may exclude any testimony or evidence which he/she determines irrelevant or unduly repetitious. The arbitrator shall have sole discretion to determine who may testify.

D. Witnesses will normally be present at the hearing only while testifying and should be permitted to testify only in the presence of the aggrieved employee or his or her representatives and the Employer's representatives.

E. All employees of the Employer who are called as witnesses, and who are on active duty status, shall be excused from duty to the extent necessary to participate in the arbitration proceeding without loss of pay. If an employee must be excused from duty, the amount of time to testify will be charged to official time. The Employer will pay all reasonable travel and per diem costs for employee witnesses allowed to testify.

F. The hearing shall be informal, and strict rules of evidence will not apply. However, all testimony shall be made under oath or affirmation.

G. If either party wants a transcript of the proceedings, that party will arrange and pay for a transcript and will give a copy of the transcript to the other party free of charge. However, if the arbitrator indicates a preference for a transcript, the Parties will share its cost equally.

H. An award may not include the assessment of expenses against either party.

I. The Arbitrator shall possess the authority to make an aggrieved employee whole to the extent such remedy is consistent with pertinent laws, and to issue an order to expunge the record of all references to a disciplinary action if appropriate.

J. Expedited arbitration awards are non-precedential in nature.

SECTION 5

A. Either party may ask the Arbitrator to make a bench decision at the close of the hearing. If both Parties agree to the request, the Arbitrator will determine whether a bench decision is appropriate under the circumstances and render his/her decision accordingly.

B. The Arbitrator will issue a brief, written decision within twenty-one (21) calendar days of the close of the hearing. This decision will be final and binding on both Parties. However, either party, may file exceptions to an award with the Federal Labor Relations Authority, under regulations prescribed by the Authority. The Parties shall equally share the cost of reasonable arbitrator fees.

C. If back pay is finally awarded, the Employer will process the request for a check generally within sixty (60) calendar days of the final award, unless the Employer appeals the award of back pay. If the Employer does not appeal the award of back pay and the employee has not received payment in sixty (60) calendar days, the employee will be notified by the Employer explaining the reasons for the delay and providing an expected payment date.

SECTION 6

A. Once the date for the hearing has been established, any party that unilaterally requests that an arbitration hearing be postponed, delayed, canceled, and/or withdrawn for whatever reason, which results in any fees being charged by the arbitrator, shall pay all such fees.

B. In any grievance where the Parties mutually agree to postpone, delay, and/or cancel an arbitration proceeding, the Parties will equally share the cost of any fees being charged by the arbitrator.

C. In any grievance where the Parties settle the matter prior to an arbitration hearing and there are fees charged due to cancellation of the hearing, both Parties will equally share the cost of any fees being charged.

SECTION 7

All provisions of Article 46, Arbitration of this Agreement apply to the procedures described in this Article, if not specifically contradicted herein.

ARTICLE 48

EQUAL EMPLOYMENT OPPORTUNITY/ AFFIRMATIVE ACTION

SECTION 1

The Parties agree that discrimination against any employee on the basis of race, color, national origin, age, sex, disabling condition, sexual orientation, or religion is prohibited. Toward this end, the Employer will administer an EEO program in accordance with applicable laws and regulations.

SECTION 2

The Employer will provide to the Union a copy of the FDA Affirmative Employment Plan.

SECTION 3

The Employer will provide employees access to trained Equal Employment Opportunity Counselors to whom bargaining unit employees can go in connection with an EEO complaint.

SECTION 4

The Employer will annually provide the Union with an Affirmative Employment Accomplishment and Update Report.

ARTICLE 49

EMPLOYEE ASSISTANCE PROGRAM

SECTION 1

The Employer agrees that, to the extent possible based on funding and staffing limitations, it will operate an Employee Assistance Program (EAP) consistent with the requirements found in HHS Personnel Instruction 792-2. If this program is to be discontinued due to funding and staffing limitations, the Employer will notify the Union.

SECTION 2

The Employer and the Union will advise employees who are experiencing performance, conduct and/or attendance problems of the availability of the EAP to provide counseling and referral assistance to resolve any personal problems that may be affecting performance, conduct and/or attendance. The Employer will provide basic information on the EAP to the Union.

SECTION 3

A. Initial EAP consultation(s) will be approved by the Employer on duty time or as excused absence, provided the employee informs his/her leave-approving official that the requested time away from the office will be used for EAP consultation. The employee need not provide further details to the official. Employees may request sick leave, annual leave, leave without pay, and/or earned compensatory time, consistent with applicable provisions of this Agreement, for purposes of undergoing a treatment program resulting from a referral by an EAP Counselor. Such leave requests will be approved or denied on the same basis as for any other request which necessitates absence from work. If the employee chooses to inform his/her leave-approving official that requested leave will be used to undergo regular outside professional counseling/assistance for substance abuse or personal problems, that official will assist the employee in working out the schedule for taking any such approved leave. The leave-approving official will keep such information in strict confidence. The EAP can provide information to the Employer as to whether an employee attended a counseling session and the approximate length of the session.

B. However, those employees who do not want their supervisors to know the reason for their absence from the work area may contact an EEO Counselor who will arrange for the employee's absence on duty time, or on leave if requested by the employee, without revealing to management officials other than the EEO Officer that the absence is for EAP purposes. Employees may also arrange appointments to visit the EAP outside of duty hours or request leave to do so.

SECTION 4

A. Counseling records and information from employee visits to EAP will be kept by the EAP in a confidential manner consistent with applicable laws and regulations. Except where disclosure without consent is allowed (see below), the EAP must obtain the employee's written consent before any release of information can be made. This applies to all releases, including those to supervisors, treatment facilities, and family members, without regard to the type of problem the employee is experiencing.

B. Disclosure by the EAP without consent is only permissible in a few specific instances, such as to medical personnel in a medical emergency, under certain court orders, and to comply with Executive Order 12564 (Drug Free Federal Workplace). If the employee's absence from duty is excused when he/she uses the services of the EAP, the EAP can provide information to the Employer as to whether an employee attended a counseling session and the length of the session.

C. In certain situations, information provided to the EAP is not protected by the confidentiality regulations and policies and, due to the nature of the information, must be reported to appropriate authorities. Examples of these are:

    1. The EAP is required by law to report incidents of suspected child abuse and neglect (and in some states elder and spouse abuse and neglect) to the appropriate state and local authorities.

    2. If an employee commits or threatens to commit a crime that would physically harm someone or cause substantial property damage, disclosures may be made by the EAP to appropriate persons, such as law enforcement authorities and those persons being threatened.

    3. If the employee indicates that he/she is contemplating suicide, disclosures may be made to appropriate medical and/or law enforcement authorities.

SECTION 5

The Employer will issue an annual notice to all employees explaining the program.

ARTICLE 50

HEALTH AND SAFETY

SECTION 1

A. The Employer will provide a safe and healthy work environment for employees. As such, the Employer will comply with all applicable provisions of the General Standards of the Occupational Safety and Health Administration as well as with all other relevant health and safety codes and standards.

B. Each employee has a responsibility for his/her safety and an obligation to observe established health and safety rules and precautions as a measure of protection for him/herself and others. Employees will not engage in willful misconduct that causes or will likely cause the Employer to be in violation of any rule, regulation, order, permit or license issued by a regulatory authority.

C. The employee will become familiar with and observe health and safety-related policies and procedures and guidelines issued by the Employer, which are applicable to the employee's own actions and conduct. If the Employer provides employees with safety equipment, personal protective equipment, or any other devices and procedures that the Employer considers to be necessary for employee protection, the employees will use such equipment as directed by the Employer.

SECTION 2

A. In the course of performing their assigned work, employees will be alert to the presence of unsafe or unhealthy conditions. When such conditions are observed, it is the employee's right and responsibility to report them — with anonymity, if requested by the employee — to supervisory personnel and/or facility safety and health personnel, such as the Health and Safety Officer. Copies of all written employee reports of unsafe or unhealthy working conditions will be forwarded in writing by the Employer to the local Union chapter representative within three (3) calendar days of their receiving such a report. All other health and safety reports in the Employer's possession will be made available to the Union upon specific request. Reports will be provided in accordance with the provisions of the Privacy Act and other applicable laws.

B. In the case of imminent danger situations, employees will make reports to the Employer by the most expeditious means available. The employee has a right to decline to perform his/her assigned tasks because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures. However, in these instances, the employee must report the situation to his/her supervisor, another supervisor who is immediately available, and/or facility safety

and health personnel. The term imminent danger means any conditions or practices in any workplace which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through normal procedures (29 CFR1960.2 (u)). An employee who abuses these procedures may be subject to disciplinary action.

C. All areas and operations of each workplace, including office operations, will be inspected at least annually. The Union will be given an opportunity to designate a local representative of the Union to be present for all such inspections. When feasible, the Employer will give at least two (2) workdays advance notice of the date an inspection is scheduled. Such notice will provide the time and place where the inspection will begin. Prior to the scheduled inspection the Union will notify the Employer of either the name of its representative who will be present or its intent not to participate. When the designated Union representative is an FDA employee, the representative may participate in the inspection without charge to leave in accordance with Article 20, Excused Absence/Administrative Leave.

SECTION 3

The Employer will take steps on at least an annual basis to ensure that employees are familiar with the proper procedures for leaving their work areas during emergency situations such as suspected fire or bomb threat. When such emergencies occur, the Employer will take all steps necessary to expeditiously and safely evacuate the employees. The Union will assist in this effort by encouraging its members to follow established procedures and to serve as wardens/monitors/coordinators. Before serving as wardens/monitors/coordinators, employees will complete appropriate training.

SECTION 4

A. The Employer will provide the normal and routine services offered under existing contracts with Health Units. Where considered feasible based on the location of the Health Unit, such services will include care for employees during emergency situations and until proper outside medical authorities can reach the employee. As testing, inoculations, and special programs are offered by the Health Unit, such programs will be made available to employees subject to any limitations established on the Health Unit and budgetary restrictions imposed on the Employer. If the Health Unit is closed, the Employer will notify the Union and negotiations will take place in accordance with this Agreement. The Union will also be notified by the Employer if there are major changes in any services provided by the Health Unit. In addition, the Employer will provide employees with medical screenings and physicals that are within the bounds of its contract for these services.

B. The Employer will inform all employees of the nearest medical service facility/clinic where emergency medical services can be provided. Employees will also be informed of the procedures to use to contact the local emergency management system (e.g., paramedics, fire departments, police departments, ambulance services, etc.).

C. The Employer will offer cardiopulmonary resuscitation (CPR) training to interested employees at all facilities. The training will be offered at least semi-annually on duty time. The Union will encourage its members to take the course.

D. The Employer will provide the local Union chapter with the name of the Employer safety officer or other contact person for health and safety matters, as well as the location and availability of relevant resource materials.

SECTION 5

The Employer agrees to continue to provide periodic health and safety presentations for employees. Health and safety program information will be disseminated and posted in accordance with 29 CFR 1960.12(e).

SECTION 6

The Employer will provide advance notice to the Union when pesticides, paint, carpet glue, HVAC cleaning agents, and similar construction and maintenance chemicals are used in a large-scale application. Provisions will be made for individuals with administratively acceptable-documented special health conditions. Normally, the notice will be given at least forty-eight (48) hours before the above named chemicals are to be used. When the use of such chemicals occurs in buildings not controlled/managed by the Employer, the Employer will notify the Union Chapter President as soon as it is aware of such use. Warning statements and Material Safety Data Sheets (MSDS) given to the Employer or its agents by the organization applying such materials will be available for inspection. When the Employer determines that there is a reasonable likelihood of harm due to application of such materials, employees will be directed to move to another work area until their area is determined to be safe for use. Emergency situations may arise which require the use of such chemicals. In these instances, the Employer will respond and notify the Union as soon as possible.

SECTION 7

The Employer will comply with all government-wide regulations relating to health benefit coverage for employees and open season procedures. The Employer will furnish each FDA Center, OC, and Regional/District Office, as early as possible during the open season, its share of the OPM approved and provided FEHB Guides (RI 70-1) for the current year and any other OPM provided materials. Open Season information is available from the OPM Website at *http://www.OPM.Gov/insure/index.htm*. If an employee is unable to download from the website, he/she may contact the appropriate servicing personnel office for assistance.

SECTION 8

When it is necessary for an employee to leave work and return home because of illness or incapacitation, the Employer will, to the extent possible, facilitate in securing a means to

transport the employee home, including locating a willing employee to transport the sick employee to his/her residence. The Employer will allow a reasonable amount of time to the employee who is providing the transportation. The Parties recognize that the employees' monetary, tort, and pecuniary liability is governed by statute and decisions of the Comptroller General and the Federal Courts. The Employer assumes only that responsibility and liability allowable by law, regulation, or such decisions.

SECTION 9

A. Subject to budgetary constraints, the Employer shall provide employees who are required to use computers on the job with work stations or desks that are designed for computer monitors and which may include adjustable keyboard trays, adjustable work surfaces which are large enough to accommodate the computer workstations, e.g., printers manuals, work papers, and any other equipment required by the employee to perform the duties and responsibilities of their positions. Wrist rests will be provided if requested by individual employees.

B. As furniture is replaced, the Employer shall provide employees, at their request, with ergonomically designed furniture that meets commonly accepted industry standards, e.g. chairs that shall include arm rests, etc. If more than one (1) style of chair is available at any facility, bargaining unit employees shall be offered an opportunity to choose the chair of their choice.

SECTION 10

A. The Parties will establish a standing National Health and Safety Committee (NHSC) in accordance with 29 CFR 1960. The NHSC will consist of ten (10) representatives, five (5) from each party. Due to the varied nature of business to be considered by the Committee, subject matter experts will be made available at the request of the Committee.

B. Tasks of the NHSC will include but are not limited to the following:

1. Addressing health and safety policies in office and laboratory environments (this Committee's work will not substitute for that of any local committee(s) appointed to examine site specific health and safety issues);

2. Studying specific problems and processes and making appropriate recommendations;

3. Facilitating the implementation of new processes and procedures;

4. Coordinating crosscutting issues and other relevant activities in accordance with 29 CFR 1960; and

5. Promoting Employee Assistance and Wellness programs and services.

C. The NHSC will have the option of meeting up to four (4) times a year at the FDA headquarters or, by mutual agreement, the Committee may meet by means of video conferencing or teleconferencing. Additional meetings as well as alternative sites for regularly scheduled meetings may also be planned by mutual agreement.

D. At its initial meeting, the NHSC will establish operational ground rules necessary to conduct business.

E. Both Parties will encourage the development of local Health and Safety Committees to address health and safety issues in non-laboratory facilities, within both Headquarters and Field components, as necessary. Such local committees will be subordinate to the NHSC, will address issues within their specific organizational unit, and will consist of no more than six (6) members, with three (3) from each Party.

F. Union representatives will receive official time to attend both national and local committee meetings and other related, authorized activities. Mutually agreeable training will be provided by the Employer for all committee members. All costs for travel and per diem for all committee members will be paid as enumerated in Article 3, Mid-term Bargaining, of this contract.

ARTICLE 51

DOCUMENTATION OF MEDICAL STATUS

SECTION 1

A. Employee Initiated Requests. When an employee requests a change in duty status, assignment, or working conditions, or any other benefit, special treatment, or accommodation based on medical reasons, the employee will submit a request in writing to his/her supervisor, along with medical documentation in support of the request. The documentation shall be limited to the specific information necessary for the Employer to make a determination regarding the validity of the employee's request. Subject to Federal law, the Employer shall not require the employee to provide a statement of a specific diagnosis or medical condition or disability to the Agency. In the event the medical documentation submitted is inadequate for the Employer to make a sound and informed decision, the Employer may request that the employee provide additional medical documentation in accordance with 5 CFR 339. It is the employee's option to provide the requested information. However, if sufficient medical documentation to support the request is not provided, the Employer may not approve the request. The Employer retains responsibility for granting requests, for granting requests in modified form and for denying requests, as appropriate.

B. Employer Initiated Requests. There may be occasional circumstances in which it is in the best interests of the employee and/or the Employer to obtain medical information relevant to an employee's ability to perform his/her duties safely and efficiently, despite the fact that the employee's position does not have physical requirements or medical standards that otherwise require the collection of medical documentation. Under these circumstances, the Employer may request that the employee provide medical documentation in accordance with 5 CFR 339. It is the employee's option to provide the requested information.

SECTION 2

A. Employees who are offered or ordered to take medical examinations pursuant to this section will normally receive written notice, including the reasons for the examination(s), no less than seven (7) calendar days in advance of the initial examination appointment. In the event the employee is requested to set up an appointment for an examination, he or she will be allowed a reasonable period of time to do so. Any employee ordered to take an examination by the Employer will be allowed to do so on duty time.

B. *Continuation of Pay/Workers' Compensation* – The Employer may order any employee who has applied for, or is receiving, continuation of pay or workers' compensation resulting from an on-the-job injury or occupational disease to undergo examinations(s) at the Employer's expense in accordance with 5 CFR 339. An employee's refusal to be examined, in

accordance with a properly authorized order of the Employer under 5 CFR 339, will be grounds for appropriate disciplinary or adverse action.

C. Medical examinations under this Article must be conducted in accordance with accepted professional standards by a licensed practitioner or physician authorized to conduct such examinations. Employees directed by the Employer to take a medical examination will have an opportunity to submit to the Employer the names of three (3) physicians located in the commuting area to be considered to conduct the examination. If the Employer does not agree with any of the choices submitted by the employee, the Parties recognize that, pursuant to 5 CFR 339.303(b), the Employer retains the authority to designate the examining physician. In the event that a physician not suggested by an employee is designated to conduct the examination, any medical documentation submitted by the employee's personal physician will be reviewed and given due consideration by the Employer or its agents. The employee will be responsible for furnishing such medical documentation to the designated examining official.

D. *Employees Whose Positions Are Not Subject to Physical Requirements/Medical Standards* – If the Employer has offered the employee an opportunity to provide acceptable supporting documentation from his/her own physician(s) and the medical documentation provided is inadequate for the Employer to make an informed decision, the Employer may offer an employee a medical examination at the Employer's expense in accordance with 5 CFR 339. The Employer's designated medical consultant and the examining physician, chosen by the Employer, will consider any documentation the employee has submitted to the Employer from his/her own physician. If the employee declines to submit to the examination offered by the Employer, the Employer will base its decisions on the documentation it has received.

E. *Employees Whose Positions Are Subject to Physical Requirements/Medical Standards* – The Employer may order any employee occupying a position for which physical requirements and/or medical standards have been established to undergo examination(s) at the Employer's expense in accordance with 5 CFR 339. The Employer will provide the examining physician with a copy of the applicable standards and requirements for the position, and/or a detailed description of the duties of the position, including critical elements, physical demands, and environmental factors. An employee's refusal to be examined, in accordance with a properly authorized order of the Employer under 5 CFR 339, will be grounds for appropriate disciplinary or adverse action. This provision shall not be interpreted as granting to the Employer any right to conduct drug screening, HIV testing, or any other medical testing or procedure not specifically mandated by Federal statute.

F. Psychiatric Examinations and Psychological Assessments. Before the Employer orders an employee to undergo a psychiatric examination or psychological assessment pursuant to this Article, the Employer will attempt to eliminate the likelihood that a physical disorder is responsible for the employee's problematic behavior or actions. Accordingly, the Employer will first order the employee to undergo a physical examination. If the physical examination identifies the cause of the problematic behavior, the Employer will not order the employee to undergo a psychiatric examination or psychological assessment.

G. An examining physician's report may not be used as a basis for a reduction in grade or termination of an employee due to unacceptable performance unless the job has specific medical requirements as a condition of acceptable performance. However, if the employee asserts that medical reasons contributed to his or her performance problems, such reports or other medical evidence must be considered.

SECTION 3

An employee experiencing health-related problems potentially attributable to working at a computer and/or an associated workstation will promptly inform the Employer (either directly or through the Union) in writing of all pertinent facts. The Employer, in conjunction with the Employer's ergonomic consultant(s) or consulting physician(s), will determine whether the ergonomic adjustments by the Employer might resolve those problems, and will implement reasonable measures. If those measures do not correct the problem, the employee may submit medical documentation, in accordance with 5 CFR 339, for the Employer's further consideration. If review of the documentation by the Employer's consulting physician supports a determination that damage to the employee's health will likely result from continued work on the computer and/or on associated workstation, the Employer will attempt either to take further reasonable measures at the employee's workstation or, where reasonably practical, to reassign the employee to other appropriate work. The Employer may, at its option, offer a voluntary medical examination in such circumstances. Nothing in this Section is intended to alter either an employee's right to request, or the Employer's duty to respond to a request for reasonable accommodation of a qualified handicapped individual's documented disabling condition.

SECTION 4

All medical documentation acquired under this Article, whether submitted by the employee or obtained through medical examination, will be treated confidentially and the Employer will observe all requirements of the Privacy Act and other legal authorities. Reports produced during any such examinations will be maintained in accordance with applicable provisions of 5 CFR 293 and other legal authorities and will be available to the examined employee in accordance with applicable provisions of 5 CFR 297 and other legal authorities.

ARTICLE 52

PARKING

SECTION 1

Employee parking will continue in accordance with past practices. However, the Employer and the Union may establish joint labor-management parking committees at the local level to address concerns regarding parking. The Parties will determine the appropriate level for local negotiations i.e. whether by facility, by geographic area, by organizational component or by any other definition of local. Ground rules for these committees will be developed by the local Parties in accordance with this Agreement.

SECTION 2

The committees will make recommendations to the Employer and Chapter Presidents regarding resolving employee parking concerns. The Union reserves the right to negotiate over any concerns not resolved by this process.

ARTICLE 53

PUBLIC TRANSPORTATION SUBSIDIES

SECTION 1

A. The Employer agrees to pay a public transit subsidy to those FDA employees who use public transportation. Beginning in October of 1999, the Employer will offer a monthly subsidy of up to $65 per month for all of those employees who commute to work by public transportation or registered vanpool. The amount of the subsidy is dependent on an employee's actual commuting costs and cannot exceed the actual costs incurred. For instance, if an employee's costs are $40 a month, the employee would receive a subsidy for that amount. However if an employees costs are equal to or more than $65 a month, they would receive the full subsidy amount of $65.

B. In the event that the implementation of this transit subsidy program is delayed, the payment of subsidies will be made to the employees retroactively to October 1, 1999, as long as the employees have complied with the provisions of Section 2, below.

SECTION 2

The Employer will demand that employees who receive the subsidy relinquish any parking passes or parking subsidies that they currently retain. Furthermore, the Employer will request that employees certify their use of public transportation, as well as the actual costs of the transportation.

SECTION 3

The Parties will work together to develop the application forms and procedures to be utilized for the FDA transit subsidy program. The existing OPM Fare Subsidy Program will be reviewed to help determine the structure and procedures for the FDA program.

SECTION 4

The Union will not seek to increase the amount of this subsidy during the life of this Agreement, irrespective of changes in legislation.

SECTION 5

The Employer will make available information on transit subsidies and other alternatives through bulletin board postings and on the Employer's Internet/Intranet. This information may include:

- Public Transit and fare information

- Van pool information
- Other relevant information locally available and applicable
- Local telephone numbers of public transportation offices where additional information can be obtained

ARTICLE 54

REDUCTION-IN-FORCE

Once a decision to conduct a reduction-in-force is made, the Employer agrees to give the Union official advance notification and an opportunity to bargain impact and implementation. At a point when the Employer knows that it is likely that a RIF will occur in an affected bargaining unit, the Union will be informed of the competitive levels initially affected, the number of employees involved, the proposed effective date, and the reasons for the reduction-in-force action.

ARTICLE 55

OUTSIDE ACTIVITIES AND EMPLOYMENT

SECTION 1

A. The Employer agrees to fairly and equitably evaluate all requests for approval of outside activity, including outside employment. All requests for outside activity must be submitted in writing, no less than ten (10) calendar days in advance of the proposed start date for the outside activity. No outside activity or employment requiring advance approval may be engaged in until such participation has actually been approved by the Employer.

B. Employees wishing to engage in outside employment or other outside activities must comply with all relevant provisions of the Federal Standards of Ethical Conduct, HHS Supplemental Standards of Conduct, and other applicable laws and regulations.

SECTION 2

A. Employees may engage in outside employment or an outside activity by completing and submitting Form HHS-520, Request for Approval of Outside Activity, to the Employer or an Employer-designated office or individual. The Employer will review the request and either approve or disapprove the request within ten (10) calendar days following receipt by the Employer.

B. Outside employment or other outside activities will be approved if:

1. It will not adversely affect the performance of an employee's official duties;

2. It will not involve conduct prohibited by statute or Federal regulation;

3. It will not be prejudicial to or reflect discredit on the Government, the Department or the Agency; and

4. It does not pose a real or apparent conflict of interest.

C. The granting of approval to engage in an outside employment or other outside activities does not relieve the employee of the obligation to abide by all provisions governing an employees conduct both on and off the job.

D. Employees engaged in approved outside employment or activity are responsible for ensuring that their conduct in all situations remains consistent with the ethical standards applicable to them. In addition, employees shall endeavor to avoid any action which creates the appearance of violating any of the ethical standards and rules set forth in Federal statutes and regulations, including the Department's standards of conduct.

SECTION 3

If an employee wishes to dispute the Employer's disapproval of his/her written request to engage in outside employment or activity, the employee may, at his/her option and in lieu of the normal procedures, file a grievance directly at the Step 2 of the grievance procedure. This grievance must be filed within ten (10) calendar days of the Employer's disapproval of the request. It will be treated exactly as if it had been processed through this Agreement's grievance procedure, Article 45, and is in the final step of the procedure. If the Employer and the employee are unable to adjust the grievance satisfactorily, the Employer will forward to the employee, within the time limits prescribed for the final step of the grievance procedure, a letter containing the reasons for the disapproval of the written request. Thereafter, the Union may invoke arbitration over the disapproval decision in accordance with this Agreement's arbitration provisions.

ARTICLE 56

RETIREMENT

SECTION 1

Within available resources, the Employer agrees that those employees who are eligible to retire within five (5) years shall be given an opportunity to voluntarily participate in a retirement planning seminar. This seminar, whether established by the Employer or contracted for through another source, will include at a minimum the prescribed requirements of the Federal Retirement Plans.

SECTION 2

Counseling is available to each employee who separates voluntarily or involuntarily as to his/her rights and benefits under the applicable retirement system.

SECTION 3

After an employee has submitted a resignation or retirement application, the employee may submit, in written request to withdraw the application at any time prior to its effective date. The Employer may deny the withdrawal request only for legitimate reasons including, but not limited to, the hiring of or valid commitment to hire a replacement. The Employer will communicate in writing to the employee this denial and the reason for it.

ARTICLE 57

ARTICLE 57 HAS BEEN WITHDRAWN FROM THIS DOCUMENT.

ARTICLE 58

ARTICLE 58 HAS BEEN WITHDRAWN FROM THIS DOCUMENT.

ARTICLE 59

PEER REVIEW

SECTION 1

The following rules apply to the operation of the various FDA peer review processes:

- An employee will be allowed to nominate three (3) members of the committee and the Employer generally will select one (1) of the three (3) nominees for the committee, absent just cause, so long as they are qualified.

- A record will be kept of the proceedings which will contain a list of the factors considered, the determinations as to each factor, and an analysis of the employee level of work measured against the standard and the final decision. For example, if an employee's level of independence did not meet the grade level criteria, an explanation will be provided. Furthermore, no records in the case file will be destroyed after the meeting. Personal notes of the committee members are excluded from this provision.

- An employee will be given a peer review so long as he or she has the minimum qualifications necessary for promotion to the next grade, e.g., an employee may self-nominate for peer review.

- The employee may submit any materials within reason and they will be included in the file that is put before the review committee. However, in order for the review to go forward, the employee must submit the documents minimally required for a review by the Agency.

- Employees will be given an opportunity to appear before a peer review committee to answer any questions and make summary statements.

- An employee will be promoted in a timely manner upon successful completion of the review process, normally at the end of the next full pay period.

ARTICLE 60

ADR PROCESS FOR ULP ISSUES

SECTION 1

Before filing an unfair labor practice (ULP) charge with the FLRA, either Party to this Agreement will provide thirty (30) days advance notice to the other Party of its intent to do so. This notice will be in writing (either on paper or by electronic mail) and should contain the following:

- A statement of the conduct complained of;
- A statement concerning why it is believed the conduct constitutes a ULP;
- At the complaining Party's option, a statement of the relief it believes it is legally entitled to; and
- At the complaining Party's option, any proposal it wishes to make to resolve the matter informally.

SECTION 2

The responding Party shall respond, verbally or in writing, to this advance notice within ten (10) days of receipt of the notice. The Parties will agree to confer within one (1) week thereafter to try to resolve the matter.

SECTION 3

A. Following the discussion referenced in Section 2, the Parties may elect to continue to try to resolve the concerns informally, request the assistance of the FMCS, or the complaining Party may file the ULP charge. In addition, the complaining Party may file a charge if the responding Party fails to meet the deadlines contained in Section 2.

B. Nothing herein requires a party to continue to pursue informal ADR processes if the deadline for filing with the FLRA would pass or if the Party is seeking a temporary restraining order as relief for the alleged ULP.

SECTION 4

Notices provided by the Union under this Article shall be provided to the Employers' Labor-Management Partnership Office. Notices provided by the Employer under this Article shall be provided to the NTEU National Representative.

ARTICLE 61

STAFF FELLOWS

The Employer will employ staff fellows to do only work that may be legally given to them. They may not be used to evade the obligation to have work performed by properly appointed permanent civil service employees.

ARTICLE 62

DIVESTITURE

SECTION 1

When an employee is ordered to divest his or her financial holdings, the following provisions will apply:

A. The Employer must serve written notice on the employee of its order that he/she divest. The notice must be sent via certified mail and must include the specific reasons for the order of divestiture as well as a review of all releasable evidence that the Employer has relied upon in making the divestiture determination.

B. In order for employees to be made aware of their legal rights regarding the divestiture order, the notice must include copies of all pertinent authorities and regulations that are the basis for the divestiture order, including but not limited to copies of 5 CFR 2634, 5 CFR 2635, and 5 CFR 5501.

C. After notice is served and prior to the Employer taking any action in support of the divestiture order, the Employer will give the employee sixty (60) days to respond both orally and in writing, as provided for in 5 CFR 2635.403.

D. If after that time the Employer decides either to order the divestiture or to deny the employee a Certificate of Divestiture, the Employer must provide a final written decision to the employee via certified mail. The decision should address all of the arguments and evidence raised by the employee in his or her defense as well as a specific legal basis for the denial, including legal citations. Pursuant to applicable regulations, the entire process should be resolved within ninety (90) calendar days.

SECTION 2

The Employer will keep an updated and accurate copy of the "List of U.S. Industries" (the "Yellow Book") that the Employer utilizes in making its divestiture determinations. This "Yellow Book" will be made available to employees upon request.

SECTION 3

Within sixty (60) calendar days of the effective date of this term contract, the Employer and the Union will set up a joint national Divestiture Committee which will make recommendations to resolve problems and issues arising from the divestiture process, including working to create a set of written policies and procedures concerning the FDA divestiture process. The committee will be comprised of eight (8) individuals, four (4) from each Party and will meet at least four

times a year. The NTEU National Office will appoint bargaining unit members to this committee. Travel and per diem will be paid for as established in Article 3, Mid-term Bargaining of this Agreement.

SECTION 4

Employees should be aware of the timeframes established by the Office of Government Ethics relating to the issuing of a Certificate of Divestiture.

SIGNATURE PAGE

APPENDIX

LABOR-MANAGEMENT PARTNERSHIP

Pursuant to Executive Order 12871, the Parties formed a National Labor-Management Partnership Committee. This Appendix: Labor-Management Partnership is provided for informational purposes and is not to be construed as part of this collective bargaining agreement.

VISION AND PURPOSE

In the spirit of Executive Order 12871 on Labor Management Partnerships, the FDA, and NTEU Chapter, enter into agreement for the purpose of working together to improve the accomplishment of the mission of Food Drug Administration by:

- Effectively and efficiently engaging in the employees in the process;
- Working to evaluate the importance of the relationship between supervisors and employees;
- Seeking creative or innovative ways to address systemic problems; and
- Maintaining open lines of communications between management, employees and the Union.

Toward that end, the Parties are committed to work together over the long term, recognizing their respective roles as partners within the framework of:

- Trust
- Mutual Respect
- Acceptance
- Consensus
- Interest based problem solving
- Joint partnership Council training

NATIONAL PARTNERSHIP OFFICE

This office is being established with the commitment of both labor and management in building a relationship of trust, opening of channels of communication and establishing a positive working relationship.

This office will also serve as a focal point for resolving labor-management in building a relationship of trust, opening of channels of communication and establishing a positive working relationship.

This office will also serve as a focal point for resolving labor-management disputes prior to formal action, e.g. grievances, arbitration, and provide guidance and assistance to local partnership committees.

The Union may designate of FDA one (1) employee representative for the purpose of working together with management to create this positive labor-management relationship. The national NTEU President will designate the representative.

COMMITTEES

National Labor-Management Partnership Committee: (In accordance with Executive Order (EO) 12871)

The Labor-Management Partnership Committee (LMPC), at the national level will consist of ten (10) representatives, five (5) from each Party. Due to the varied nature of business to be considered by the Committee, subject matter experts will be made available at the request of the Committee.

A. Issues to be addressed by the LMPC will include but are not limited to the following.

   1. Exchange information, and discuss issues and make recommendations concerning personnel practices and procedures, matters affecting working conditions and other appropriate subjects (e.g., Quality of Worklife Initiative, EEO, Diversity, and non-programmatic training).

   2. Promote cooperative labor-management working relationships across the Agency.

   3. Facilitate implementation of HHS Depart Labor-Management Partnership Council initiatives.

B. The LMPC will have the option of meeting up to three (3) times a year at FDA headquarters, or, by mutual agreement, the committee may meet by means of video conferencing or teleconferencing. By mutual agreement, additional meetings may be planned, as well as alternative sites for regularly scheduled meetings.

C. At its initial meeting, the committee will establish operational ground rules necessary to conduct business.

SUBCOMMITTEES

The National Partnership Office and Council encourages the establishment of partnership(s) throughout the Agency, in all components and at all levels. Partnerships may be formal or informal but must recognize that partnerships, at any level, cannot be forced. A true partnership takes willing partners who are prepared and committed to making it work.

Labor and management partners are empowered to determine the size and composition of their partnership councils however, it is recommended that guidance on ground rules and operating procedures should come from the National Partnership Office.

A few guiding principles for identifying proposed council members are:

- People who are willing to work cooperatively to meet their respective and shared interests in an atmosphere of mutual respect and mutual gain,
- A commitment to making the organization more effective,

- Willingness to use interest-based problem-solving to encourage consensus decision-making,
- Ability to deal with differences between labor and management constructively by keeping an open mind, building trust, and avoiding posturing, and
- Thorough knowledge of work processes in the organization.

MEETINGS

Official time guidelines will apply to partnership Council Meetings

STATEMENT OF RIGHTS AND OBLIGATIONS
(KALKINES RIGHTS)

Before we ask you any questions, it is my obligation to inform you of the following:

You are here to be asked questions pertaining to your employment with FDA and the duties you perform for FDA. You have a duty to reply to these questions, and Agency disciplinary proceedings resulting in discipline up to and including discharge may be initiated as a result of your answers. However, neither your answers nor any information or evidence which is gained as a result of such answers can be used against you in any criminal proceedings, except that you may be subject to a criminal prosecution for any false answer that you may give. You may be subject to discharge if you refuse to answer or fail to respond truthfully to any relevant questions".

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Receipt by Employee

I have been given the above statement of rights and obligations at the beginning of the interview held on ______________________________.

____________________________________ ________________________

Signature of Employee Date