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APPENDIX A DELEGATIONS OF LABOR RELATIONS AUTHORITIES IN
USDA

1 PURPOSE

This regulation contains the Department's policies and general operating procedures for Labor Relations programs within USDA, including the roles and responsibilities of key program officials and delegations of authority.

2 SPECIAL INSTRUCTIONS/CANCELLATIONS

This regulation replaces Department Personnel Manual Chapter 771, dated April 4, 1981, which is cancelled.

3 INTRODUCTION

The basis for labor relations in the Federal government, including USDA, is found in the Federal Services Labor Management Relations Statute (FSLMRS), 5 U.S.C. Sections 7101-7135 (<http://www.flra.gov/statutes/fslmrs/fslmrs.html>), regulations issued by the Federal Labor Relations Authority (<http://www.flra.gov/regs/1999/regs1999.html>) and in case law. Authority to exercise the various rights and obligations under the FSLMRS and regulations flows from the Secretary of Agriculture to the Assistant Secretary for Administration (ASA) and, in turn, is delegated to management officials within USDA. In order to ensure program consistency and integrity in the exercise of these program responsibilities, it is necessary to establish a Labor Relations policy.

4 GLOSSARY

Agency Head Review – requirement contained in the FSLMRS that negotiated collective bargaining agreements be reviewed for legal sufficiency and conformance with government wide rules and regulations by the head of the agency.

Collaborative Labor Relations Strategy – relies on interest based problem solving where Union and Management officials resolve issues that would otherwise be addressed through formal labor relations processes under the FSLMRS. It is characterized by predecisional involvement by Union representatives in issue identification and resolution process, effective communication between the Parties, and mutual trust. It does not involve co-management by the Union.

Compliance Labor Relations Strategy - relies on the enforcement of rights and obligations created by the FSLMRS and collective bargaining agreements. It is characterized by the exercise of formal labor relations dispute resolution processes, clearly defined results or decisions, and application of law and regulations. The procedures are typically adversarial.

Exception to Arbitration Award – a claim that an arbitration award is deficient on grounds similar to those applied by Federal courts in private sector labor-management relations, or because it violates law, rule or regulation.

Federal Service Labor-Management Relations Statute (FSLMRS) – Contained in Title VII of the Civil Service Reform Act of 1978, it is the law upon which the

Federal labor relations program is based, including the rights and obligations of management, Unions and employees.

Federal Labor Relations Authority (FLRA) – the independent agency responsible for administering the FSLMRS.

Full-Performance Level Labor Relations Specialist – USDA employee or contractor who possesses and has demonstrated a full range of labor relations competencies typically performed in a labor relations position classified at grade GS-12 or higher.

Level of recognition – is the organizational unit(s) of an agency and the Union certified to represent employees of that unit(s) where the collective bargaining relationship exists.

Management – managers and supervisors who exercise certain authorities on behalf of the USDA that affect conditions of employment.

Unfair Labor Practice (ULP) – a violation of any of the provisions of the FSLMRS.

Unions – organizations who in accordance with the FSLMRS and regulation, may be certified by the Federal Labor Relations Authority (FLRA) to exclusively represent employees within specified organizational units over matters pertaining to their conditions of employment.

5 SCOPE

This regulation establishes operations policies and authorities for the Labor Relations Program within USDA, to include Mission Areas and Offices.

6 POLICY

It is the policy of USDA for management officials to meet their obligations under the FSLMRS and to apply its provisions so as to promote effective and efficient Department operations.

Mission Areas and USDA Offices are encouraged to establish and maintain a labor relations strategic plan at the level of recognition that contains at a minimum: an assessment of the labor-management relationship, goals for the program, and the operating strategy to be used. Operating strategies may be compliance or collaboration oriented, or a combination of the two.

Management within USDA will carry out their labor relations responsibilities in accordance with the delegations contained in Section 7 of this regulation.

7 DELEGATIONS OF AUTHORITY

The major Federal Labor Relations program functions that occur within USDA, along with the officials who are authorized to perform those functions, are found on Appendix A. Requisite conditions associated with the exercise of these functions are also listed.

8 RESPONSIBILITIES

- a Director, Office of Human Resources Management (OHRM) -
The Director is responsible for the oversight and general administration of the Department's Labor Relations program. Ensures various authorities as delegated from the Assistant Secretary for Administration are exercised effectively. Issues labor relations policy, conducts program reviews and evaluates program effectiveness.
- b USDA Program Manager for Labor Relations -
The USDA Program Manager is responsible for overall implementation of the Department's Labor Relations program by exercising those authorities delegated from the Director of OHRM including: conducting agency head reviews of collective bargaining agreements; initiating national consultation contacts; issuing annual representation notices; and representing the USDA before the FLRA, consistent with USDA delegations of authority. Develops and recommends Departmental labor relations policy. Provides technical advice and assistance to Mission Areas and USDA Offices. Serves as the principal liaison between the Department and other Federal agencies in labor relations matters.
- c USDA General Counsel -
The General Counsel or designee will serve as the principal contact with the Department of Justice on cases for which the USDA is seeking judicial review of FLRA decisions. On request, the General Counsel may provide advice and assistance to the Director, OHRM, and USDA offices involved in third party proceedings (e.g. Unfair Labor Practice hearings, arbitrations) and on other matters of law where the Department has significant interests at issue.
- d USDA Human Resources Directors -
Human Resources Directors are responsible for labor relations program implementation within their respective agencies through the exercise and appropriate delegation of authorities, developing strategic labor relations plans, carrying out and supplementing USDA program policy, and performing

internal program oversight. They ensure adequate resources are made available to meet program requirements and meet the goals established in the agency developed strategic labor relations plans.

9 AGENCY HEAD REVIEW

In accordance with 5 U.S.C. 7114(c), Mission Areas and USDA Offices shall submit all master collective bargaining agreements and subsequent changes to those agreements to the Office of Human Resources Management for review and approval. The following procedures apply:

- a The USDA Program Manager for Labor Relations must receive executed collective bargaining agreements for review within five business days of contract execution.
- b Submission may be by e-mail, fax, express mail or hand carried. Only one copy of the executed agreement need be submitted.
- c The review will be completed according to procedures contained in the FSLMRS.

10 NEGOTIABILITY APPEALS

The USDA Program Manager for Labor Relations must be informed of any negotiability appeals filed by a Union in response to management's allegation that a bargaining proposal is non-negotiable under the FSLMRS. The following procedures apply:

- a Initial notification by the Mission Area or USDA office, along with a copy of the written allegation, must be sent to the USDA Program Manager for Labor Relations within 3 business days after issuance of the allegation of nonnegotiability.
- b Copies of all appeal documents submitted by the Union, or FLRA Orders received by the Mission Area or USDA Office, must be submitted to the USDA Program Manager for Labor Relations within 3 business days of receipt.
- c Prior to filing statements of position or responses to Union replies, Mission Area or USDA offices must consult with the USDA Program Manager for Labor Relations.
- d The USDA Program Manager for Labor Relations must be provided copies of all documents served on the FLRA.

11 JUDICIAL REVIEWS OF FLRA ORDERS; FLRA-INITIATED ENFORCEMENT/TEMPORARY RELIEF/RESTRAINING ORDERS; AND EXCEPTIONS TO ARBITRATOR AWARDS

Prior to deciding whether to pursue a review of an FLRA Decision or an exception to an Arbitration award, the Mission Area or USDA Office will contact the USDA Program Manager for Labor Relations to discuss the case and merits of seeking the action. Immediate contact is also required upon notification that the FLRA or FLRA General Counsel has initiated action to petition the U.S. District Court of Appeals or U.S. District Court for enforcement of Authority orders or temporary relief from actions giving rise to a ULP.

a Judicial Reviews of FLRA Orders.

After contacting the USDA Program Manager for Labor Relations, the Mission Area or USDA Office seeking the review must submit a written request to the USDA Director, Office of Human Resources Management (OHRM). The request must contain the reasons for the request, including legal arguments and appropriate citations. The request must be received no later than 45 days from the date the FLRA Order was issued.

The OHRM Director will brief the Assistant Secretary for Administration (ASA) and USDA General Counsel. After consultation with the ASA, the General Counsel will decide whether to pursue the review with the Department of Justice.

b Exceptions to Arbitrator Awards

After contacting the USDA Program Manager for Labor Relations, the Mission Area or USDA Office may proceed to file the exception with the FLRA in accordance with FLRA regulations.

12 RECORDS

Each Mission Area and USDA Office at the level of recognition is expected to maintain the records indicated in accordance with agency directives systems. Records listed may be maintained at agency offices below the level of recognition consistent with delegation of labor relations authorities.

a FLRA Certifications and FLRA Representation Decisions.

- b Master Collective Bargaining Agreements and current subordinate or mid-term agreements.
- c Grievance and Arbitration files, including agency and Arbitrator decisions, exceptions filed with the FLRA and FLRA decisions.
- d ULP files, including; complaints, FLRA orders, agency responses, settlement agreements, complaints issued, hearing records, and FLRA decisions, compliant compliance records (e.g. postings).
- e Impasse records, including positions presented by the Parties to the Federal Services Impasses Panel (FSIP), mediated agreements and FSIP decisions.
- f Negotiability case files, including agency allegations, petitions filed, position filings and FLRA decisions.
- g Strategic Labor Relations Plans, Partnership or Collaborative Labor-Management Agreements/Charters, and associated minutes, accomplishment reports or records of agreements as applicable.

-END-

APPENDIX A

DELEGATIONS OF LABOR RELATIONS AUTHORITIES IN USDA

X = authorized to perform listed function. Function may be further re-delegated to a line manager or designated staff within USDA.

/ = provides recommendations and substantive staff work in the completion of the listed function

O = authorized to perform the listed function, but the function may not be re-delegated.

LR Function and Authority	USDA				Conditions
	ASA	OHRM Director	Program Mgr, LR	Mission Areas / USDA Offices	
1. Establish USDA policy, direction and guidance.	X	X	/		
2. Performs national consultation (5 USC 7113)	X	X	O		
3. Represents USDA in negotiating collective bargaining agreements, including the authority to execute collective bargaining agreements (CBA).	X	X	X	X	May be delegated to USDA line managers at level of recognition and to line managers below that level if subordinate CBAs are permitted in the Master CBA provided a full performance level Labor Relations Specialist is a negotiation team member.
4. Makes allegations concerning the duty to bargain – negotiability (5 CFR 2424, Subpart A)	X	X	X	X	May be delegated to USDA line managers at the level of recognition provided: a full performance level LR Specialist concurs and the USDA Program Manager for LR is notified.
5. Represents the USDA before the FLRA in negotiability disputes (5 CFR 2424, Subpart C & D)	X	X	X	O	Mission Area asserting non-negotiability must furnish USDA Program Manager for LR a copy of its petition for review at the time of submission and consult prior to filing agency statement of position, and any responses to Union statements.

6. Represents the USDA at FSIP proceedings – impasses (5 CFR, Part 2470)	X	X	X	X	Representation team must include a full performance level LR Specialist. USDA Program Manager for LR must be notified of any requests for assistance by the FSIP.
7. Agency head review (5 CFR 7114)	X	X	O		USDA Program Manager for LR must receive executed CBA within 5 business days of contract execution. <u>1/</u>
8. Assertion of compelling need (5 USC 7117 & 5 CFR 2424.50)	X	X	O		
9. Filing exceptions to arbitration awards with the FLRA (5 USC 7122 & 5 CFR 2425)	X	X	X	X	Mission Areas must consult with USDA Program Manager for LR prior to filing exceptions.
10. Agency representation for election, unit clarification or consolidation petitions (5 CFR Part 2422)	X	X	X	X	A full performance level LR Specialist must perform function.
11. Agency Representation for Unfair Labor Practice (ULP) proceedings (5 CFR 2423)	X	X	X	X	Function to be performed by a full performance level LR Specialist, OGC attorney or qualified contract counsel.
12. Requesting judicial review of FLRA decisions (5 CFR 7123)	X	/	/		Consult with USDA Program Manager for LR prior to submitting written request to OHRM Director. USDA General Counsel, after consultation with the ASA, will decide whether Department will submit request to the Dept. of Justice.
13. Agency representative in arbitrations	X	X	X	X	Function to be performed by a full performance level LR Specialist, General Counsel attorney or qualified contract counsel.
14. Issuing annual Weingarten Notice (5 USC 7114(a)(3))	X	X	O		Mission Areas and USDA Offices responsible for distribution of notices to bargaining unit employees after notice is issued

1/ CBAs for which agency head review is requested include all term or master agreements and amendments resulting from reopened Articles in those agreements. Agency head review of supplemental agreements is optional, but available at the request of the Mission Area or USDA Office subject to terms of any controlling master CBA.