

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**FOOD AND DRUG ADMINISTRATION**

**AND**

**NATIONAL TREASURY EMPLOYEES UNION**

In January 2023, FDA Commissioner Dr. Robert Califf announced a new proposal for the way the FDA oversees the U.S. human food supply after carefully reviewing the findings and recommendations of the Reagan-Udall Foundation evaluation, an internal review of the agency's infant formula supply chain response and feedback from internal and external stakeholders during events such as listening sessions with FDA employees. This includes a restructuring of the Office of Regulatory Affairs (ORA) to further enhance their operations in support of the entire agency. Additionally, FDA included the consolidation of certain agency functions to further support efficient business operations in the proposed reorganization. Ever-changing global food supply chain and continually evolving technology, requires an adaptable agency organization with a single, accountable Human Foods Program (HFP) leader to ensure the safety and quality of the U.S. food supply. The proposed structure will have clear priorities focused on protecting and promoting public health through a safe, nutritious U.S. food supply.

This memorandum of understanding (MOU) between the Department of Health and Human Services, the Food and Drug Administration (FDA) and the National Treasury Employees Union (NTEU or Union) (the "parties") addresses the Agency's decision to reorganize existing organizations doing human foods related work into a newly created organization known as the Human Foods Program, create a new model for the Office of Regulatory Affairs, and make other structural changes to further support agency efficiency. The parties agree that this MOU will govern the procedures for implementing the reorganization at FDA. The parties agree that the implementation of the reorganization will be in accordance with this MOU and the procedures set forth in the 2023 National Agreement (NA) between the Department of Health and Human Services and the National Treasury Employees Union.

The parties agree to the following provisions:

**Section 1 - Preliminary Assurances**

The Agency and the Union recognize that a reorganization of this scale presents multiple challenges. To that end, the Agency assures:

- a. In most instances, employees will remain on their current position descriptions with only minor changes made to update their organizational structure, as necessary. Employees and NTEU will be notified at least ten (10) workdays prior to changes being made to the job duties within their position description, including the addition of job

duties that differ significantly from their current work, or changes made to job duties that have a significant impact on how the job duties are performed.

b. In most instances, this reorganization will not affect employees' current pay grade and step.

c. While employees may be realigned to an organizational unit based in a different geographic location, they will not be required to relocate as a result of this reorganization.

d. Employees will continue to be represented by the NTEU bargaining unit chapter in the geographic location in which they work.

e. Employees will continue to receive the locality pay, if locality pay is included as a part of their pay, applicable to the geographic location in which they work.

f. For all bargaining unit employees who are realigned to another organizational unit the Agency will provide to the Union that employee's old and new alignment information. FDA agrees to provide NTEU an updated bargaining unit crosswalk as soon as the agency has finalized.

## **Section 2 - Formal Meetings**

- a. At least ten (10) workdays prior to the implementation of this reorganization, the Employer will conduct a formal meeting(s) to include impacted bargaining unit employees and local NTEU chapter representatives consistent with Article 7 of the parties' NA. At the meeting(s), the Employer will explain the reasons for implementation of this initiative and answer questions. Unanswered questions can be submitted to the [fda-comments@fda.hhs.gov](mailto:fda-comments@fda.hhs.gov) mailbox. Unanswered questions that are not specific to only one employee and are not marked confidential will be shared with NTEU for review to identify additional questions and answers to be posted online. FDA agrees to answer these identified questions in writing and post to the intranet as soon as possible. FDA will discuss concerns with posting answers to any specific question with NTEU. A link to this MOU will be posted on inside FDA and any related guidance will be included in the formal meeting calendar invite distributed to all impacted employees in advance of the meeting. Employees will be given a reasonable amount of time up to one (1) hour to review the MOU and related materials prior to the formal meeting.

## **Section 3 – Implementation of the Changes**

- a. **Information to Impacted Employees.** The FDA will provide transition information for realigned/reassigned employees regarding this management-initiated change. This information will be sent in one email and will include the employee's new organization and links to organizational charts and information about the employees' new organization, including links to organizational charts that will be broken down and specific to the division and branch, additional information, and the employees' supervisor of record. If that supervisor position has not been filled, then it should be

designated as currently vacant. The information will also include a point of contact for additional information and made available as soon as practicable and not less than ten (10) calendar days in advance of the implementation of the reorganization.

- b. **Employee Requests for Reassignment.** The Agency will acknowledge and review any requests for reassignment from bargaining unit employees who were assigned to positions that include new or substantively different duties and responsibilities from their previous positions, or who were assigned to a new organization. Any such requests for reassignment to a different office or work unit shall be forwarded, by the impacted employee, via email, to the supervisor over the new assignment within fifteen (15) workdays following implementation of this agreement and should reference related concerns with the new assignment if any. The search for a possible reassignment opportunity will be conducted by management. The Agency will provide a decision on all such requests for reassignment within thirty (30) calendar days of the date of the request. Requests for reassignment will not be denied arbitrarily. In cases where reassignment requests are denied, supervisors will engage with the employee to discuss strategies that may help address employee concerns regarding their new assignment. The Agency will provide a list of all bargaining unit employees who have requested a reassignment within the timeframe and the decision to all Chapter Presidents. This process is intended to cover employee requests for reassignment related to notification of an employee's new assignment to be effective at the time of implementation. Other requests for reassignment made after the initial notification of new assignments would be handled in keeping with Article 35 of the parties' NA.
- c. **Travel Assignments.** Travel assignments will be made in accordance with Article 42 of the parties' NA. The agency does not expect bargaining unit employees to experience an increase in travel as a direct result of the reorganization.
- d. **Updated Boundary Maps.** Updated ORA boundary maps that align with the Office of Inspections and Investigations (OII) divisions established as part of the reorganization will be effective at the time the reorganization is implemented. The updated OII boundary maps will continue to be used within OII in the same way they have been used within ORA. See MOU Appendix A for document outlining current ORA and revised OII boundary maps for reference. The agency does not expect bargaining unit employees to experience an increase in travel beyond what is in their existing position descriptions as a direct result of the updated boundary maps. If the reporting structure for an employee is changed as a result of the updated boundary maps, the FDA will provide the information to the employee of all changes. The information will also include a point of contact for additional information and made available as soon as practicable and not less than ten (10) calendar days in advance of the implementation of the updated boundary maps.

OII will continue to use the current ORA process, managed informally at the division level, to solicit volunteers to conduct inspections across boundary lines when necessary. This provision is not intended to limit the ability of either party to initiate future negotiations related to the current process or a new process.

- e. **Employee Requests for Reasonable Accommodation.** Any impacted bargaining unit employees' requests for reasonable accommodations will not be delayed or cancelled solely on the basis of the reorganization. Requests for reasonable accommodation shall be granted in the interim, so long as the employee can complete the essential functions of the position held, while the request is being fully evaluated. If the request is for full-time remote work status, if the employee's job duties can be performed remotely, the employee will not be required to report on-site until a decision is made on the request if the employee and the position are telework eligible. Supervisors and employees will be expected to engage in the interactive process when a request for reasonable accommodation is made and under review.
  
- f. **Supervisory Changes.** During the roll out, employees will be provided with notice if there will be changes to their reporting structure (whether they will be reporting to a different supervisor or manager). In the event that there is a change in supervisors, supervisors will meet with their employees to discuss existing and new expectations and answer any questions an employee may have concerning this change. These meetings can occur as a group meeting, or as a one-on-one session between an employee and the supervisor. Career ladder promotions and within grade increases will not be affected by this reorganization particularly for employees with supervisory changes. Employees will not be required to report to more than one (1) direct supervisor.
  - a. If an employee and supervisor were previously separated due to an administrative action, and that separation was an agreed to term documented in a settlement agreement or other official signed document, the agency will not reestablish the employee-supervisor relationship in conflict with the documented terms. If an assignment is made contrary to this provision, NTEU should bring the matter to management's attention to be remedied.
  
- g. **Telework and Alternative Work Schedules.** All approved telework and remote work agreements, and work schedules, in effect prior to the reorganization will remain in effect after the reorganization, unless an employee requests and is approved for a change, or a change is necessary and appropriate in accordance with the Telework and Remote Work MOU and/or NA. The reorganization will not serve to delay any responses to any telework, remote work or scheduling requests, and employees will not be required to reapply for any such matters, unless reapplication is necessary and appropriate in accordance with Telework and Remote Work MOU and/or NA. All previously approved requests for flexibilities will remain in effect, provided that they remain consistent with the terms of the Telework and Remote Work MOU and/or NA. Any pending requests filed two weeks or less prior to reorganization, will be reviewed and approved by the employee's new supervisor and may require resubmission through the FDA's Workplace Thrives Tool (FDA-WTT) to ensure correct routing to the new supervisor for review. Previously approved telework and remote work agreements in place for bargaining unit employees who are realigned to new organizations will be honored recognizing that in some cases those agreements may not align with workplace flexibility agreements approved for other bargaining unit employees in the new

organization. Changes to these agreements will only be made under circumstances described and in keeping with the procedures outlined in the parties' NA. Honored telework and remote work agreements will not result in the automatic approval of increased telework or the approval of remote work for other bargaining unit positions in the organization, rather every request will follow Article 26 in the parties' NA and be considered and approved on a case-by-case basis.

- h. **Leave Requests.** Any leave requests approved prior to the reorganization of two (2) weeks or less will be honored. Employees should plan to discuss any longer-term leave requests, with their new supervisor. Any matters pertaining to leave will be handled in accordance with the parties' NA.
- i. **Changes in Position Description and PMAP.** If there is a change in an employee's position description impacting major job duties, including the addition of job duties that differ significantly from their current work, or changes made to job duties that have a significant impact on how the job duties are performed, NTEU National will be given an opportunity to submit comments and make recommendations on the position descriptions pursuant to Article 32, Sections 4 and 8 of the parties' NA. Additionally, if there is a creation of new performance plans (PMAPs) for employees, NTEU will be provided notice and opportunity to make recommendations. Pursuant to Article 30, should the Employer make changes to an employees' PMAP that are more than *de minimis*, including but not limited to a policy change and a new enterprise critical element, notice will be provided to the Union in accordance with Article 3 and the parties will bargain the changes consistent with law and this Agreement. Pursuant to Article 41, employee requests for training needs specific to new job duties, responsibilities, or standards and elements added to an employee's PMAP deemed necessary by the Employer will be supported.
- j. **Adjustment Period.** Where there are changes to a bargaining unit employee's position description and PMAP described in section h, following reassignment into a new position as a result of this reorganization, the employee will be permitted a ninety (90) calendar day adjustment period, to begin on the date of implementation of this reorganization, during which the supervisor will consider an employee's lack of experience with the new duties and responsibilities as a mitigating factor when evaluating employee performance.
- k. **Performance Plan Closeout.** This reorganization is targeted for implementation at the beginning of Fiscal Year 2025 on October 1. Due to the reorganization, bargaining unit employees may be assigned to a new supervisor, or may be assigned new job duties and responsibilities that result in a new or revised PMAP; or both.
  - a. Supervisors of employees who are being reassigned to a new supervisor as a result of this reorganization and are not being placed on a new or revised PMAP will be responsible for providing a written narrative to the new supervisor pursuant to Article 30 Section 9(E). Pursuant to the parties' NA, the supervisor will be responsible for providing a written assessment about their employees'

performance for the period beginning on the PMAP plan establishment date through September 30, 2024. The assessment shall be used so that the gaining supervisor will have information to consider when preparing a final rating at the end of the annual rating period.

- b. Supervisors of employees who are being assigned new job duties and responsibilities due the reorganization and receiving a revised/modified PMAP as a result, will provide the modified PMAP to the employee thirty (30) days from September 30, 2024. Pursuant to Article 30 Section 7(B)(2), an employee may not be rated on a new element or performance standard or any major revisions to an existing element or performance standard that has been in effect less than ninety (90) days. The employees will receive a final rating of record based on the ratings received for the elements and performance standards in existence prior to September 30, 2024.
  - c. Supervisors of employees who are being assigned new job duties and responsibilities; and, if applicable, being reassigned to a new supervisor due to the reorganization and receiving a new PMAP as a result, will provide a closeout rating for the employee encompassing the period beginning on the PMAP plan establishment date through September 30, 2024. In this case, a new PMAP will be provided to the employee within thirty (30) days of October 1, 2024. The rating period for these affected employees will be extended to ensure the plan is in effect for the required ninety (90) days so they can receive a final rating pursuant to Article 30 Section 9(A). The final rating for this plan will be considered the employee's annual rating of record. The final rating will be the weighted average of the rating the employee received from the period through September 30, 2024, and the rating of record provided during the new rating period. A final rating shall be prepared as soon as possible after the required ninety (90) days is reached, normally within thirty (30) days.
  - d. Reconsideration and Grievances in connection with a rating provided for the period of January 1, 2024, to September 30, 2024, should be filed and processed with the supervisor who provided the rating at issue to the employee. Stage 2 and 3 Grievances would be considered by higher level managers of the supervisor who provided the rating.
1. **Awards.** In keeping with Article 27 Section 1(F), FDA awards pools will be established at the Center level. As a result of the reorganization, the following changes will occur: 1) establishing an awards pool for the Human Foods Program (HFP) in lieu of the Center for Food Safety and Applied Nutrition (CFSAN) and the Office of Food Policy and Response (OFPR), 2) establishing an awards pool for the Office of Inspections and Investigations (OII) in lieu of the Office of Regulatory Affairs (ORA). The FDA Office of the Commissioner (OC) will have awards pools established at the Office level for the existing OC offices as referenced in the parties' NA. As a result of the reorganization, the following changes will occur: 1) establishing an awards pool for the Office of the Chief Medical Officer (OCMO) in lieu of the Office of Clinical Policy and Programs

(OCP), and 2) no separate awards pool will be established for OFPR as the organization is being abolished.

FDA requests that a separate awards pool no longer be established for the National Center for Toxicological Research (NCTR) as outlined in the parties' NA, and that moving forward NCTR be included in the awards pool established for the Office of the Chief Scientist (OCS). While NCTR has been treated like a Center in the past, NCTR reports to OCS.

Following the implementation of the reorganization, awards pools will be established for each organization no later than January 15, 2025. Pursuant to Article 27 Section 1(G) of the parties' NA, award pool amounts will be based on a percentage of the total annual salaries in effect at the end of Fiscal Year 2024 of all bargaining unit employees. Following the implementation of the reorganization, the parties agree to reaching an agreement on the number of committees and representatives within the new FDA framework. Incentive award nominations will be considered by the awards committee serving the employee's assigned organization following implementation of the reorganization. Committees will consider nominations based on the merits of the contribution described within the justification and not whether the work was performed in the current organization.

- m. **Workload.** Pursuant to Article 33, Section 3(a) management agrees to provide employees with manageable workloads. Additionally, if duties require a change in an employee's PMAP, management shall follow Article 30 of the parties' NA. The Employer does not anticipate that the changes described in this MOU will result in adverse impact to the impacted bargaining unit employees' workload. Employees are encouraged to discuss unmanageable increases in workload as a result of this reorganization with their supervisors at any time. During such discussions, employees are also encouraged to suggest ways that their workload could be adjusted that would increase efficiency. If the matter remains unresolved, employees or the Union may submit their concerns in writing to a management official within the employees' direct chain of command. If requested by the employee, the Employer will provide a written response addressing the concerns submitted by the employee. The employee may elect to attach their concerns to their annual appraisal.
- n. **Employee Resource Committees and Groups.** Employees may be permitted to attend and/or join any collateral duty programs meant for the smooth transition of the reorganizations/realignments with supervisory concurrence. When processing requests, the supervisor should not arbitrarily deny an employee's request.
- o. **Survey of Affected Employees.** The agency agrees to conduct a survey of bargaining unit employees six (6) months, and one (1) year after the reorganization to determine what challenges the employees are facing as a result of the reorganization. The survey shall include a section that solicits from employees the identification of areas of concern or areas needing improvement and recommendations for changes. Survey results will be provided to NTEU within fourteen (14) days of completion of the survey. The parties

agree to a virtual (e.g., Microsoft Teams) meeting after the survey results are gathered, to review the results of the survey and steps, if any, that management plans to take.

- p. **Continued Engagement.** Upon implementation of the reorganization, the agency will host quarterly meetings with NTEU for a period of one (1) year following the date of implementation to discuss issues and concerns related to and resulting from the implementation of the reorganization. These meetings will be virtual and conducted by the Deputy Commissioner for Operations/Chief Operating Officer or his designee. NTEU will be permitted to appoint an equal number of bargaining unit employees as management officials selected to participate in the quarterly meetings. At the conclusion of the one (1) year period, the parties can mutually agree to extend the meetings past the one-year mark or agree that issues or concerns should be discussed at regularly scheduled FDA Labor Management Cooperation Council (LMCC) meetings.

#### **Section 4 – Training**

- a. In cases where an employee is assigned to a new position as a result of this reorganization that includes new or different duties and responsibilities from their previous position, the Employer agrees to provide employees with training it deems necessary to assist them in the performance of official duties, subject to budgetary and workload considerations. The Employer agrees that where an employee is placed in a new job, the Employer will provide training that it deems necessary for the employee to perform the duties of the new position. All training will be on duty time. In the event an employee's job duties change to the extent their performance elements/expectations are updated, the Employer will provide additional resources it deems necessary, which may include on-the-job instruction, monitoring, mentoring, supplemental training, and/or guidance material (e.g., SOPs, checklists, etc.) within forty-five (45) calendar days of the implementation of the reorganization.

#### **Section 5 – Adverse Impact**

- a. The Employer does not anticipate any adverse impact on terms and conditions of employment of impacted bargaining unit employees as a direct result of this reorganization, aside from that which is addressed herein. However, if either party identifies adverse impacts on terms and conditions of employment of covered bargaining unit employees, deemed to be a direct result of the reorganization, which is not covered in this MOU, that party will inform the other and the parties will meet to discuss the resolution of such issues as soon as possible and bargain to the extent required by law and the parties' NA.



**Section 6 – Duration and Approval**

- a. This agreement will become effective upon Agency head review or on the thirty-first (31st) calendar day after execution, whichever is first. This MOU will run concurrently with the parties' NA.

**FOR FDA:**

**FOR NTEU:**

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James M. Sigg  
Deputy Commissioner for Operations/  
Chief Operating Officer  
Food and Drug Administration

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Rocio P. Topete  
National Negotiator  
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