

**COLLECTIVE BARGAINING AGREEMENT**

between

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

and

**THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES**

**The effective date of this agreement is \_\_\_\_\_, 2021.**

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## **Article 1: Recognition and Unit Description**

### **Section 1. Parties to the Agreement**

This Agreement is entered into between the American Federation of Government Employees, Council 238 (hereafter referred to as “the Union” or “AFGE”) and the Environmental Protection Agency (hereafter referred to as “the Agency” or “EPA”), and collectively referred to as “the Parties”. This Agreement shall be clearly identified as an Agreement between the Parties.

### **Section 2. Applicability**

The provisions of this Agreement are applicable solely to employees and positions in the units of exclusive recognition by AFGE as certified by the Federal Labor Relations Authority in case numbers 22-09130(UC)-001 (non-professional) and 22-09130(UC)-002 (professional), dated January 8, 1980, as amended, and all subsequent FLRA certifications and/or clarifications, which are included herein by reference.

### **Section 3.**

The Parties shall maintain copies of current applicable Federal Labor Relations Authority AFGE/EPA bargaining unit certifications.

### **Section 4.**

EPA shall post a current list of AFGE Council 238 national bargaining units as certified by the FLRA on the Agency’s intranet site.

## **Article 2: Definitions**

### **Section 1.**

The following words and terms have the meanings given to them for the purposes of this Agreement:

- A. “Employer”, “Agency”, or “Management” means the United States Environmental Protection Agency and its authorized representatives including supervisors and management officials.
- B. “Union” means the American Federation of Government Employees, AFL-CIO, Council 238 or Local and its designated representatives and agents.
- C. “Government” means the Government of the United States of America.
- D. “Unit” means the consolidated bargaining unit for which the Union is the exclusive representative within the Agency.
- E. “Local Level” means the location at which an election was conducted to determine whether the Union should become the exclusive representative (e.g. a Regional Office is a local level). For the purposes of this Agreement, the part of the Union located at the Agency’s headquarters is a local level.
- F. “Representative”, “Agent”, or “Spokesperson” means an individual expressly designated and authorized by one of the Parties to speak for an make commitments on behalf of that Party.
- G. “Agreement” means this collective bargaining agreement.
- H. “Official time” means paid time when an employee would otherwise be in a duty status. It is an excusal from an employee’s regular duties under the circumstances and conditions set forth in this Agreement.
- I. “Laws” and “Statutes” means the Federal laws and Statutes of the United States.
- J. “Regulations” means the written official policy of EPA and applicable Government-Wide rule or regulation.
- K. “The Statute” means the Federal Service Labor-Management Relations Statute, Public Law 95-454.

### **Section 2.**

Other words and terms used in this Agreement:

- A. Where other words or terms are defined in an applicable law or regulation they shall have that meaning.
- B. Where words or terms are not defined in this Agreement, by applicable law or regulation, they shall have their dictionary meaning (Webster's Unabridged).

## **Article 3: Union Rights and Duties**

### **Section 1.**

Employees shall be protected from restraint, interference, coercion, or discrimination in the legitimate exercise of their rights and responsibilities as designated representatives of the Union. Within the confines of laws, rules, and this Agreement, the Union has the right to designate representatives of its own choosing.

### **Section 2.**

The Parties agree to strive to improve communications between Employees and the Agency; to promote and improve Agency efficiency; and to improve the morale of the Employees.

### **Section 3.**

Bargaining unit employees have the right to participate, through the Union, in the formulation and implementation of policies and practices affecting conditions of their employment.

### **Section 4.**

The Agency will provide the Union with one copy of all changes to EPA Orders, Directives, Manuals and issuances relating to personnel policies, practices, procedures and matters affecting working conditions of the bargaining units.

### **Section 5.**

The Agency will furnish to the Union, or its authorized representatives, upon request, and to the extent not prohibited by law, data concerning the Bargaining Unit(s) which:

- A. Is normally maintained by Management in the regular course of business;
- B. Is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and
- C. Does not constitute guidance, advice, counsel or training provided for management officials or supervisors related to collective bargaining.

Information requested will be provided within a reasonable time.

### **Section 6.**

The Union is responsible for representing the interests of all Bargaining Unit(s) employees without discrimination and without regard to labor union membership.

**Section 7.**

The Union shall have the right and responsibility to present its views to the Employer either orally or in writing.

**Section 8.**

The Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the Agency and one or more employees in the unit of their representation concerning any grievance or any personnel policy or practices or other general conditions of employment.

**Section 9.**

If prior to or during any examination of an employee in the unit by a representative of the Agency in connection with an investigation there is reasonable belief by the employee that the examination may result in disciplinary action against the employee, and the employee requests Union representation, the employee has the right to Union representation.

**Section 10.**

The Union will be afforded the opportunity to participate in the orientation process for bargaining unit employees. Due to the differences in numbers of employees, size and physical locations at various facilities, the local parties are authorized to negotiate arrangements to implement this section.

**Section 11.**

The Union shall have the right to communicate with Bargaining Unit(s) employees. Methods and vehicles used by the Union to communicate with Bargaining Unit(s) employees is a proper subject for local negotiations.

**Section 12.**

The Agency shall annually inform the employees of their right to Union representation.

**Section 13.**

Nothing in this Agreement shall be interpreted in a manner that will waive employee rights under 5 U.S.C. 7102 of the Statute.



## **Article 4: Union Activities**

### **Section 1.**

Bargaining unit employees expressly designated by the Union shall be allowed official time as Union representatives in accordance with applicable law, rules and regulations. All official time will be used when an employee would otherwise be in a duty status.

### **Section 2.**

The use of official time including attending union-sponsored training by bargaining unit employees who are Union representatives at the local level is an appropriate matter for local level bargaining.

### **Section 3.**

The National level representative of the Union will be granted necessary, reasonable amounts of official time for National level matters.

### **Section 4.**

When it is necessary for a Union representative to leave his/her work station for representational purposes, the employee will inform his/her immediate supervisor when and where he/she needs to go, and provide the supervisor with a telephone number where he/she may be reached when practicable. In the event that a pressing job-related need precludes the immediate excusal of the Union representative, the supervisor will inform the employee of the earliest time he/she will be permitted to leave the work site. The employee will report to the supervisor upon his/her return to the work site.

### **Section 5.**

At the end of each pay period each Union representative will submit a report of his/her official time to the official timekeeper. The report will include the amount of time used each workday with the time characterized by OPM reporting categories for use of official time. When a complete report is not possible at due time of submission, the Union representative will submit one as soon as possible.

### **Section 6.**

Union representatives will not use official time for internal union business including solicitation for membership or collection of dues.

### **Section 7.**

Employees may request leave without pay to serve as an AFGE representative or officer or to participate in other union related activities. Approved leave without pay is limited to one year and may be extended for only one additional year.

**Section 8.**

Official time shall be granted in reasonable and necessary amounts to Union representatives for representational purposes, except for the following:

The Council President and the Executive Vice President shall be granted up to 100% use of official time.

## **Article 5: Labor/Management Relations**

### **Section 1.**

The Parties agree to approach dealings with each other in an atmosphere of mutual respect and cooperation. Nothing in this Agreement is intended to prevent or discourage the Parties from communicating with each other through their duly appointed representatives at all levels. To the contrary, the Parties expressly encourage a continuing dialogue by their representatives in the belief that communication prevents and resolves difficulties which may arise.

### **Section 2.**

Local levels may establish labor relations committees or provisions for periodic meeting between the Parties. The procedures and processes for such activities are a matter for local level agreement.

### **Section 3.**

At the National and Local levels, the designated representatives will maintain open lines of communication in the day to day activities involving the Parties' relationship. Where the Parties believe face to face meetings would be appropriate, they may meet to discuss issues of mutual concern. The mechanics and procedures for such meetings will be decided by the representatives based on the circumstances at the time.

### **Section 4.**

Union participation on committees which are not management decision process orientated will be as described in the appropriate subject matter article.

### **Section 5.**

The Agency agrees to provide for reasonable accommodation(s) to qualified disabled employees who participate in labor-management relations activities, either as employees or Union representatives. This is not intended to apply to internal union business or off-site union-sponsored training

## **Article 6: Use of Agency Facilities**

### **Section 1.**

The provision of any Agency controlled facilities is a matter for local level negotiations, to the extent they are within the control of local management and not within a secured or restricted area. Such facilities include office space, fax machines, electronic mail boxes, telephones, bulletin boards, meeting rooms, office equipment, and access to review laws, rules and regulations as the Agency maintains.

### **Section 2.**

The national level Union representative may use the same facilities and space provided to the local Union by Agreement solely between the Union representatives.

### **Section 3.**

Use of facilities as stated in Section 1 for national representatives at their duty locations is a matter for local negotiations.

### **Section 4.**

When national level Union representatives visit, the Agency agrees to furnish, when available, the use of Agency facilities as described in Section 1.

### **Section 5.**

The Parties agree that office space for the Union could be useful in facilitating effective representation of unit employees. In the event that office space cannot be provided, the Agency may bargain with the Union over alternative arrangements, in lieu of office space. This is a matter for local negotiations.

### **Section 6.**

Facilities for membership drives during break and lunch periods is a matter for local negotiations.

### **Section 7.**

Official publications of the Union may not be distributed by designated Union representatives during duty time.

## **Article 7: Employee Counseling and Assistance Program**

### **Section 1.**

The Agency and the Union recognize the importance of an Employee Assistance Program for employees whose job performance is affected by the abuse of alcohol or other drugs, emotional or mental illness or other personal problems. The success of such a program is dependent upon participation by both the Agency and the Union. Employee participation in the program shall be voluntary.

### **Section 2.**

It is understood that the employee has the responsibility to maintain acceptable performance while he/she is on the job. The Agency agrees to consider the employee's personal problems that are brought to the Agency's attention by the employee when evaluating the employee's performance or when making assignments of work.

### **Section 3.**

Employee counseling may include services provided by a service contracted for by the Agency, at no charge to the employee, or referral to outside professional treatment and assistance sources in the local community.

### **Section 4.**

The Union shall inform unit members of the existence and operation of the program and refer those seeking assistance to the Program Coordinator. The Agency will keep the Union informed concerning the correct telephone numbers and contacts for the Program.

### **Section 5.**

On a periodic basis, the Parties shall publicize the Program, including the name of the Program Coordinator to employees. The Parties hereby give their assurances of confidentiality for employee participants.

### **Section 6.**

The Agency agrees to arrange periodic briefings from staff of the Program for Union representatives. These briefings will include information about the services provided by the Program, procedures for obtaining services, and guidance on how to make referrals in an effective and sensitive way.

## **Article 8: Worker's Compensation**

### **Section 1.**

The Parties agree that employee(s) or witness(es) should report any occupational on the job injury, disease or death immediately or as soon as possible to the Agency.

### **Section 2.**

The Agency will provide the employee and/or another person, including the Agency on the employee's behalf, the following information regarding the Department of Labor, Office of Worker's Compensation Program as cited in 20 C.F.R. Part 10:

- A. Information on the right to file claims, including the right to use compensation benefits in lieu of sick or annual leave;
- B. Information on the types of benefits available, including the receipt of forty-five (45) days of continuation of pay following a traumatic injury;
- C. The procedures and correct forms for filing claims.

### **Section 3.**

When an on the job injury is reported, the Agency will provide emergency or appropriate medical treatment for any such injury or illness suffered by an employee while on the job.

### **Section 4.**

The Agency will counsel an injured employee, and/or another person on the employee's behalf, on options, compensation benefits, and/or types of leave when the injury or illness causes an absence of more than three (3) days.

### **Section 5.**

The Agency will counsel a disabled employee on all aspects of disability retirement, if appropriate, when a compensation claim is pending. Before removing an employee who has been on Worker's Compensation benefits (LWOP) for over a year, with no anticipated return to full duty, the Agency will provide him/her with possible job options, such as continued long-term worker's compensation, disability retirement, resignation. There will be no effort to urge the employee to choose on option over another regarding claims for benefits.

## **Article 9: Medical Examinations**

### **Section 1.**

In directing employees to undergo medical examinations, the Agency agrees to follow 5 C.F.R. Part 339, Medical Qualification Determinations.

### **Section 2.**

All records pertaining to the employee's examination and, as applicable, any subsequent personal information included with an application for disability retirement are confidential and may be disclosed only to those with an administrative need to know or as specifically authorized by the subject employee in writing.

## **Article 10: Employee Pantry/Kitchenette Facilities**

### **Section 1.**

The Parties agree that the Agency shall provide pantry/kitchenette facilities for employees that are safe and well lighted. These areas shall be equipped with a microwave oven and refrigerator. Where possible, a table and chairs will be provided. The Agency will provide vending machines with foods and beverages where possible.

### **Section 2.**

Vending machines will display a telephone number for obtaining reimbursement for money lost and for reporting malfunctions during work hours.

### **Section 3.**

Local Parties are authorized to negotiate for additional provisions beyond these minimum requirements.



## **Article 11: Overtime**

### **Section 1.**

When the Agency decides to assign overtime to employee(s) who possess the requisite skills and abilities for the assignment, in the same organizational unit performing the same type of duties, the assignment(s) will be fair and equitable among qualified employees.

### **Section 2.**

Overtime shall not be worked unless authorized by the Agency. The Parties agree that assignment of overtime will neither be distributed nor withheld as a penalty or reward.

### **Section 3.**

The Agency will consider its need versus the needs of the employee(s) when requests are made to be excused from overtime and may seek qualified substitutes for the assignment(s).

### **Section 4.**

If practicable, the Agency will provide at least forty-eight hours advance notice to employees when a decision is made to assign overtime, or as much notice as the Supervisor is given, minus time to contact the employee.

### **Section 5.**

Qualified employees assigned to a particular task during regular working hours normally will be given the opportunity to complete the assignment.

### **Section 6.**

Compensation for overtime work will be made in accordance with applicable laws and regulations. When allowable under controlling laws, regulations, and Agency policies employees may request compensatory time in lieu of overtime pay.

### **Section 7.**

Unless flexitime or compressed work schedules apply, the basic workday for full-time employees shall be eight (8) hours each day.

### **Section 8.**

Travel by bargaining unit employee(s) outside regularly scheduled duty hours is not compensable through overtime or compensatory time unless such travel has been officially ordered and approved and meets one of the criteria cited below:

- A. It involves the performance of work while traveling;
- B. It is incident to travel that involves the performance of work while traveling;
- C. It is carried out under arduous conditions; or
- D. It results from an event which could not be scheduled or controlled administratively.

To the maximum extent practicable, time spent in travel status away from the employee's official duty station will be scheduled by the Agency within the normal working hours.

**Section 9.**

Overtime work performed by employees called back to work outside of and unconnected with their regular work hours is deemed at least two (2) hours in duration for the purpose of overtime compensation, regardless of what portion of the two (2) hours work is performed.

**Section 10.**

Employees required to remain in standby status will be paid in accordance with applicable law or regulation.

## **Article 12: Leave**

### **Section 1.**

Annual Leave as provided for by law is an employee right and accrues automatically, in accordance with applicable statutes, OPM Regulations, Agency-wide regulations and this Agreement. Employees will be given the opportunity to use their annual leave during the leave year of accrual, subject to approval by management and based on exigencies of the Agency's work. In granting the use of all categories of leave, the Agency will consider its needs versus the needs of the employee.

Subject to applicable law, rule and/or regulations, the Agency shall protect the privacy of an employee's leave record, and divulge their contents on the employee's request or on a need to know basis.

Annual leave and sick leave may be requested and used in fifteen (15) minute increments.

### **Section 2.**

Leave Approval: Except in emergency or unanticipated circumstances, all leave must be requested, approved and scheduled before the employee is absent from work. If not requested and approved in advance, the employee must notify the supervisor, or supervisor's designee, of the request by telephone/voicemail, email or text (as designated by the supervisor) as soon as practicable, but not later than the start of the employee's scheduled tour of duty, unless there are extenuating circumstances. Examples of extenuating circumstances include, but are not limited to: hospitalization, incapacitation, inability to communicate, immobilization and/or major transportation or major weather-related issues. In an extenuating circumstance, the employee will contact the supervisor as soon as practicable.

If the employee receives an 'out of office' message from the supervisor, the employee will notify the supervisor's designee of any request for leave that has not been approved.

When an employee becomes aware that a situation will require the employee to be absent longer than one day, the employee will indicate the expected return to duty date.

These communications are not substitutes for other time accounting or payroll systems which are still required to show schedules or certify time.

### **Section 3.**

When it is impractical to grant all requests for annual leave for a given period, the supervisor shall give consideration to all the following factors:

- A. The needs of the Agency to accomplish the Agency's mission;
- B. Whether the employee has sufficient annual leave on record;

- C. Possibility of the employee having to forfeit leave;
- D. Seniority (SCD);
- E. Mitigating circumstances.

**Section 4.**

Jury duty or witness appearances shall be administered in accordance with applicable law, rules and regulations.

**Section 5.**

The parties will follow relevant statute, regulation, and policy on religious compensatory time.

**Section 6.**

Advanced annual leave may be granted to the extent of applicable law and regulations that apply; however, an employee may not be advanced annual leave beyond the amount he/she will earn in the current leave year.

**Section 7.**

Tardiness of less than one (1) hour may be excused at the discretion of the supervisor. However, if annual leave is charged, the employee will not be required to perform work until leave time charged has expired.

**Section 8.**

When administrative excusal is granted in the case of inclement weather or other conditions, the Agency will make a reasonable effort to notify the Union, then the employees on duty as soon as possible. Employees in an approved leave status or participating in Telework will not be affected. Essential employees may be required to remain on duty.

**Section 9.**

An employee will be granted annual leave or leave without pay to attend the funeral of a member of his/her family. An employee will be granted “funeral leave” to attend the memorial services of a relative who is a veteran as covered by 5 C.F.R. Chapter 1, Subpart H.

**Section 10.**

Employees who volunteer to serve as blood donors without compensation may be excused for up to four (4) hours to recuperate. If the donor location is not the work site, the excused time for donation and recuperation will not include transit time. It is understood that excusal

applies only to the day of donation.

**Section 11.**

As a general rule, where the polls are not open at least three (3) hours either before or after an employee's regular hours of work, he/she may be granted an amount of excused leave which will permit him/her 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. Under exceptional circumstances where the general rule does not permit sufficient time, an employee may be excused for such additional time as may be needed to enable him/her to vote, depending on the particular circumstances in his/her individual case, but not to exceed a full day.

Employees requesting more than the general rule will do it in writing. Each request shall state fully the reasons for additional time needed. Additional time may be approved, if determined to be reasonable, up to a total of eight (8) hours. Voting arrangements requiring excused time will be made with the employee's supervisor prior to Election Day to prevent undue interruption of work operations.

**Section 12.**

Other types of Leave: All additional types of leave shall be administered consistent with applicable laws, rules, regulations and Agency policy, including Leave Without Pay (LWOP), Advanced Annual or Sick Leave, Family Medical Leave Act (FMLA), Federal Employees Family Friendly Leave Act (FEFFLA), Leave Bank, Leave Transfer, Administrative Leave, Weather and Safety Leave, Military Leave, Court Leave, Funeral Leave, and Compensatory Time.

**Section 13.**

Leave without pay may be granted to employees, subject to management's approval, and in accordance with applicable law, policies, rules and regulations.

**Section 14.**

Leave without pay may be granted to employees, subject to management's approval, and in accordance with applicable policies, law, rules and regulation, in lieu of sick leave or annual leave for employees who have filed a claim for worker's compensation or disability retirement.

**Section 15.**

Accrued sick leave shall be granted to employees when they are incapacitated for the performance of their duties by sickness or injury; for medical, dental, or optical examination or treatment; when a member of the immediate family of the employee is afflicted with a contagious disease (as prescribed by public health authorities having jurisdiction) that requires the care and attendance of the employee; or when in the opinion of the above public health

authorities, the presence of the employee at his/her post of duty would unduly jeopardize the health of other employees.

- A. For sick leave periods of not more than three (3) consecutive days, the employee shall not be required to submit a physician's statement of incapacitation or other acceptable evidence unless there is reasonable evidence of abuse.
- B. In the event of suspected sick leave abuse, a determination will be made based on the facts.
- C. An employee will be counseled prior to receiving a sick leave letter of requirement. If improvement does not occur within a reasonable period of time, an employee who is found abusing sick leave may be issued a "sick leave letter of requirement." The Agency will review a sick leave letter of requirement not later than six (6) months after issuance. If sufficient improvement occurs, the letter will not extend beyond one (1) year; however, the letter may be withdrawn at any time.

#### **Section 16.**

Subject to applicable law, rule, and/or regulation, and management's approval, advance sick leave may be granted to an employee. Employees should be aware that sick leave cannot be advanced in excess of thirty (30) days, or the amount of leave the employee would otherwise earn during the remaining term of his/her appointment, whichever is less.

#### **Section 17.**

##### Military Leave

- A. In accordance with law and regulation, full time, permanent or temporary indefinite employees who are members of the National Guard or the Armed Forces Reserves are entitled to fifteen (15) calendar days of regular military leave in a fiscal year for active duty training.
- B. For part time career employees, the rate at which military leave accrues shall be a percentage of the rate determined by dividing forty (40) into the number of hours in the regularly scheduled work week of the employee during that fiscal year.
- C. Employees who do not use the entire fifteen (15) days can carry any unused military leave (not to exceed fifteen (15) days) over to the next fiscal year. Military leave may never exceed thirty (30) calendar days in any one fiscal year.
- D. Military leave is charged in increments of one (1) hour and is charged only for those hours in which the employee would otherwise be in duty status.

- E. When possible, management will arrange schedules to allow such employees to have scheduled days off immediately preceding and following the required military leave if so requested by the employee.

## **Article 13: Career Ladder Promotions**

### **Section 1.**

It is the policy of the Agency to provide appropriate opportunities for bargaining unit employees to develop and advance in their careers.

### **Section 2.**

Employees in career ladder positions will be given maximum opportunity to reach the full potential of their assigned career ladders. Upon placing an employee in a career ladder position, the supervisor will discuss the job requirements and expectations for the employee to reach the next higher level. The supervisor will hold these discussions at each level of the employee's progression within the career ladder.

### **Section 3.**

Career ladders are not automatic; an acceptable level of performance must be demonstrated for progression. Employees in career ladders will clearly demonstrate the ability to perform at the next higher grade level before being promoted to the next grade in the career ladder. Once the promotion has been made, supervisors will assign work at the new grade level.

### **Section 4.**

At the time an employee meets time-in-grade and any other legal promotion requirements, the supervisor will make a decision to promote or not to promote. This decision will be made in a timely manner.

### **Section 5.**

The supervisor will periodically provide feedback to the employee about their performance in the career ladder position.

### **Section 6.**

Employees not meeting the criteria for promotion will be counseled by their supervisor regarding areas needing improvement before the promotion can be effected in accordance with applicable law, rules, or regulation.



## **Article 14: Reassignment**

### **Section 1.**

The provisions of the Article apply solely to reassignments within the bargaining unit(s).

### **Section 2.**

An employee who is reassigned will be given a reasonable period of time to learn and satisfactorily perform the functions of his/her new position in accordance with the Agency's approved Performance Management System as incorporated into this Agreement.

### **Section 3.**

Reassignments to positions with promotion potential higher than the employee's current position are processed under the provisions of the Merit Promotion Article of this Agreement.

## **Article 15: Details**

### **Section 1.**

The provisions of this article apply solely to the assignment of bargaining unit employees within the unit. A detail is the temporary assignment of an employee to a different position or set of duties for a specified period of time. There is no formal position change, officially, the employee continues to hold the position from which detailed and keeps the same status and pay; with the employee normally returning to his/her regular duties at the end of the detail.

### **Section 2.**

Details shall be rotated equitably among those employees who have been determined by management to have the capacity and requisite skills for assuming the responsibilities of the assignment unless competitive procedures are used.

### **Section 3.**

The Agency will provide a memorandum to the employee documenting official details to higher level classified positions of more than ten (10) consecutive work days. Official details in excess of thirty (30) calendar days will be recorded on an SF-52 "Request for Personnel Action."

### **Section 4.**

An employee temporarily assigned to a classified position at a higher level for more than thirty (30) calendar days will receive a temporary promotion as soon as practicable, but no later than the 31<sup>st</sup> day of the assignment. The employee must meet any qualification and eligibility requirements to be promoted.

Temporary promotions in excess of 120 calendar days shall be filled through competitive procedures. Temporary promotions of less than 120 calendar days may be rotated equitably among those employees who have been determined by management to have the capacity and requisite skills for assuming the responsibilities of the assignment unless competitive procedures are used.

### **Section 5.**

Details to a lower classified position shall not affect the employee's classification or salary.

### **Section 6.**

Details to less physical, stressful or other demanding positions may be used for employees undergoing or completing medical treatment.

### **Section 7.**

Length of details will be in accordance with OPM regulations.

**Section 8.**

Management will keep details within the shortest practicable time so that they will not promote any compromise of the open competitive principles of the Merit Promotion System.

## **Article 16: Selective Placement Programs**

### **Section 1.**

The Parties hereby agree to support the Agency's Selective Placement Programs established under the provisions of the Rehabilitation Act of 1979 (P.L. 93-112), as amended by P.L. 93-516, and the Veteran's Readjustment Act of 1974 (P.L. 93-508) and in accordance with regulations and policies.

### **Section 2.**

The Parties will work together in an effort to find and make reasonable accommodations to known physical and mental limitations of qualified employees.

### **Section 3.**

The Agency will work with Reasonable Accommodation Coordinators in considering accommodations for known disabled employees; such as making facilities accessible; possible job restructuring; appropriate work equipment or devices; or obtaining the services of readers or sign language interpreters where appropriate.

## **Article 17: Employee Performance Evaluation**

Both parties to this agreement endorse these principles:

1. In its entirety and application, the Performance Appraisal and Recognition System (PARS) must be fair, equitable, and solely related to job performance.
2. The parties agree that management will establish and communicate to employees performance elements, critical elements, non-critical elements, and performance standards subject to law and regulations, and this Article. Employee participation or input into the establishment of performance standards will be made in collaborative manner.
3. Performance elements, critical elements, non-critical elements, and performance standards that assess an employee's performance must be job-related, documented and measurable. There must be a nexus between the expected manner of performance and the expected job results.
4. Supervisors have the responsibility for helping employees maximize their performance, which can best be accomplished through constructive and positive performance management. Performance management is an inherent and significant element of supervision.

### **Section 1. Introduction**

The Agency-wide performance management system is PARS; Performance Appraisal and Recognition System. This employee performance evaluation program will emphasize:

1. Linking employee performance elements and standards directly to the Agency's mission, strategic goals, programs and policy objectives, and/or annual performance plans and budget priorities.
2. Providing employees with a clear understanding of what is expected of them in a result-oriented performance plan which is applied to their respective areas of responsibility and stated in terms of observable, measurable, and demonstrable performance.
3. Creating a framework for managers and employees to have an ongoing dialogue about the employee's job performance and developmental needs.
4. Differentiating between levels of performance to provide an equitable basis for personnel actions.
5. Providing managers with the mechanisms to recognize and reward excellent performers.
6. Providing a process to assist employees to improve and enhance their performance; and correct less than effective performance.

7. Providing a process for employee input into improving organizational effectiveness.

## **Section 2. Coverage**

This performance management program will cover all EPA bargaining unit employees represented by AFGE.

## **Section 3. Authorities**

In the administration of all matters covered by this Article, the parties agree that Article 3, "Governing Laws and Regulations" of the Master Collective Bargaining Agreement ("MCBA") will be controlling.

## **Section 4. Definitions**

A. **Effective:** Minimum level of performance that warrants advancement of the employee's rate of basic pay to the next higher step of the grade in accordance with 5 C.F.R. §§ 531.403 and 404. The level of performance below Distinguished but above Unacceptable. Given when one half or more of the CEs are rated Effective and none of the CEs are Unacceptable.

B. **Appraisal Period:** The established period of time for which performance will be reviewed and for which a rating of record will be prepared.

C. **Assumptions:** Known factors over which an employee has little, if any, control, but which might exert a significant impact on the employee's performance or ability to achieve an objective. It is understood that employees cannot be held accountable on critical elements for factors outside their control.

D. **CFR:** Code of Federal Regulations

E. **Critical 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.

F. **Levels of Performance:** There are three levels of performance: Distinguished (D), Effective (E), and Unacceptable (U).

G. **Within Grade Increase:** A periodic increase in an employee's rate of basic pay from one step of the grade of their position to the next higher step of that grade.

H. **Interim Rating:** A written rating prepared as input to the rating of record by the former supervisor when a change of supervisor occurs during the appraisal period. An employee must have completed the minimum period of performance to receive an interim rating.

I. Management: The Employer or U.S. EPA

J. MCBA: Master Collective Bargaining Agreement.

K. Measurement Source(s): Identification of sources that may establish reliable and supportable basis for a rating and may be used to determine if standards are met or not met, such as but not limited to: personal observations, employee written products, or feedback from team leaders.

L. Minimum Period of Performance: The minimum amount of time (90 days) that must be completed before a rating of record may be given.

M. Non-Critical Element: A dimension or aspect of individual, team, or organizational performance, exclusive of a critical element. Such elements may include, but are not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance. Non-critical elements are not used in assigning a summary level.

N. PARS: Performance Appraisal and Recognition System.

O. Performance: Accomplishment or failure to accomplish work assignments or responsibilities.

P. Performance Agreement: See Performance Plan.

Q. Performance Plan: All of the written, or otherwise recorded, performance elements, critical elements, non-critical elements, and performance standards that set forth expected performance. A plan must include all critical (and additional elements, if applicable) and their performance standards. This is commonly known as the performance agreement. To the extent any portion of the plan is contrary to the requirements of this Article 34, the plan will not be considered to be a valid plan. To the extent that the plan includes requirements or provisions that are contrary to any other requirement or agreement in the MCBA, the MCBA takes precedence over the contents of the plan.

R. Performance Improvement Plan (PIP): A written document from the immediate supervisor that is developed collaboratively between the immediate supervisor, the employee, and the Union (if requested by the employee) to help an employee improve performance that is Unacceptable to the Effective level.

S. Performance Standard: The management-approved expression of the performance requirement(s) or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, timeliness, cost effectiveness, and manner of performance. Each Critical Element must have an Effective performance standard.

T. Progress Review: A review with the employee about performance progress in critical or additional elements. The progress review is required, but not limited to, at least one per performance cycle. The review also includes assessing the need for adjusting the Performance

Plan; developing a plan of action for improving performance, where appropriate; and to discuss individual development.

U. Rating: The written appraisal of performance compared to the performance standard(s) for each critical element on which there has been an opportunity to perform for the minimum period.

V. Rating of Record: The performance rating prepared at the end of the appraisal period for performance over the entire period and the assignment of a summary level. This constitutes the official rating of record as defined in 5 CFR Part 430.

W. Unacceptable Performance: Performance that fails to meet established performance standards in one or more of an employee's critical job elements.

X. U.S.C.: United States Code.

## **Section 5.                    Advisory Board**

A.    Union Management Advisory Board:

1. The parties agree that the Agency will form a joint Union Management Advisory Board ("Advisory Board") to review, evaluate and make recommendations for changes in the development and operation of PARS, including but not limited to training programs to address areas of concerns (e.g., consideration of problems identified in grievances), surveys and work studies, and implementation issues for PARS. The Union representatives shall serve as participating members of the Advisory Board.
2. The Advisory Board will be comprised of up to ten (10) members, with an equal number of labor and management representatives.
3. The recommendation(s) of this Advisory Board will be submitted to the Assistant Administrator or their designee, of the Office of Mission Support, or its successor should the Agency change its organizational structure, who will seriously consider the recommendations.
4. The parties to this Agreement understand that the Advisory Board is not the forum for the negotiations of any proposed changes to PARS.
5. The Advisory Board will meet at least annually.

B.    Annual Evaluation of PARS:

1. Because the program set forth in this Article is intended to be innovative and evolutionary in nature, and because its fairness and effectiveness is critical to the Agency achieving its



mission, the Advisory Board will jointly evaluate the fairness and effectiveness of this multi-level performance management system annually.

2. A written report summarizing the findings and recommendations for the PARS system will be authored by the Advisory Board and will be submitted to the Assistant Administrator of the Office of Mission Support or its successor should the Agency change its organizational structure.
3. When labor and management cannot reach consensus on findings and recommendations, they may issue separate documents.
4. The Unions represented on the Board shall have the right to conduct independent studies.

## **Section 6. Appraisal Period**

For the calendar year 2007, the performance evaluation year will begin on January 1<sup>st</sup> and end on December 31<sup>st</sup>. For calendar year 2008, the performance appraisal period will begin on January 1, 2008, and end on September 30, 2008. For Federal fiscal year 2009 and thereafter, the performance appraisal period will begin on October 1<sup>st</sup> and end on September 30<sup>th</sup>.

Performance during the previous rating period or extended rating period will not be taken into consideration in the subsequent rating period.

## **Section 7. Minimum Period Of Performance**

Only those employees who have completed a minimum 90-day appraisal period under an approved performance plan will be evaluated at the end of the performance cycle. The appraisal period begins when the employee signs (or chooses not to sign) the performance plan. If the minimum 90-day period cannot be met before the end of the performance cycle (calendar year), the appraisal period must be extended until the 90 days are met.

## **Section 8. Summary-Level Ratings**

- A. There are three summary rating levels for critical job elements only. Each critical element must have an element rating of (D) Distinguished, (E) Effective and (U) Unacceptable.
- B. No further distinctions may be documented or recorded.
- C. Non-critical elements and other performance standards that are not critical elements are not evaluated.

## **Section 9. Performance Evaluation Responsibilities**

Supervisors, by position, are responsible for preparing and reviewing performance plans, performance ratings, award nominations, and performance related personnel actions. A supervisor is an individual employed by the agency having authority in the interest of agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term supervisor includes only those individuals who devote a preponderance of their employment time to exercising such authority. The Agency acknowledges its responsibilities and obligations under 5 CFR Part 410 and 5 CFR 430.

## **Section 10. Developing Performance Plans**

### **A. General Requirements**

1. Each employee will be given a copy of their draft Performance Plan for their position, no more than thirty (30) days after the beginning of the appraisal period. In order to facilitate collaboration, a meeting shall be scheduled at least one week in advance of finalization of the Performance Plan, in order to allow the employee to provide input on their performance plan.
2. Supervisors, in collaboration with the employee, are responsible for writing performance measures for each critical element, non-critical element and performance measure in a way which will permit, to the maximum extent feasible, the accurate evaluation of job performance on the basis of objective criteria.
3. To the maximum extent feasible, performance measures will include expectations of quantity, quality, and/or timeliness, and expectations concerning the manner of performance, where manner of performance is actually related to job duties and responsibilities. For example, manner of performance is related to the actual duties of an employee who regularly provides information to the public through direct contact.
4. Employees are encouraged to be responsible for taking action, to the extent possible, to remove barriers that impede their work and for informing their supervisors of those barriers.
5. Barring exigent circumstances, the phrase “other duties as assigned,” or its equivalent, shall not be used in Performance Plans to regularly assign work for a preponderance of duty hours. This does not preclude the employer from detailing employees to other assignments in accordance with applicable laws. Management will assign “other duties” in a manner consistent with safe and lawful work practices.

### **B. Grade Controlling Factors**

Supervisors shall give due consideration to an employee's grade level when developing Critical Elements, including measures for the evaluation of performance.

C. Collaborative Development of Critical and Non-Critical Elements and Performance Measures

1. Critical elements, non-critical elements and performance measures will be established by the supervisor in collaboration with the employee.
2. Employees are entitled to an explanation of the rationale for their critical elements, non-critical elements and performance measures placed in their performance plan. Furthermore, the immediate supervisor and employee will discuss, face-to-face, if practicable, what is expected of the employee, methods and resources to achieve the critical elements, non-critical elements and performance measures, and any concerns the employee may have.
3. Each supervisor will, after meeting and conferring with each employee, identify in writing those critical elements, non-critical elements and performance measures for each employee under their supervision. Critical elements, non-critical elements and performance measures so identified must be consistent with the duties and responsibilities contained in the employee's properly classified position description, and applied in a fair, consistent, and reasonable manner.

D. Steps to Writing a Performance Plan

The steps to writing a performance plan include:

1. Identify two to five critical elements, taking into account the organizational strategic goals, functions, responsibilities, priorities, and the employee's Position Description. Non-critical elements are optional. The plan must use the Agency Benchmark Standards including any measures for each element and if appropriate, document assumptions. Identify two to five critical elements which can be rated D, E, or U. Critical elements are for individual performance only and affect the employee's summary rating. Non-critical elements may be used for group performance and do not affect an employee's summary rating.
2. Supervisors must ensure that feedback relates to the employee's elements and standards, and that it establishes a reliable and supportable basis for issuing a rating. The supervisor is responsible for informing the employee of all feedback the supervisor was provided including feedback the supervisor did not use when assessing the employee's performance. To the extent one or more measurement sources were not factored into the supervisor's assessment, the supervisor must explain why it was not included and the efforts made to obtain the information. The employee must be allowed an opportunity to independently obtain the missing or unavailable information.
3. It is understood that employees cannot be held accountable on Critical Elements for factors outside their control.

4. The measures, metrics and critical elements in the plan must be consistent with the employee's Position Description (PD). Critical elements and standards that are outside of the employee's PD are inappropriate. To the extent that, during the appraisal period, it becomes clear that the employee's performance plan is being interpreted to require work outside of the employee's PD, it is the responsibility of the supervisor to initiate a revision to the employee's PD, in accordance with applicable law and the MCBA, or to change the employee's standards and/or assignments to bring them into line with the employee's PD.
5. No job function can be designated a Critical Element unless unacceptable performance on the Critical Element would result in a determination that an employee's overall performance is unacceptable (5 CFR 430.203).
6. In establishing Critical Elements, non-critical elements, and performance measures, due consideration will be given to:
  1. The resources available and the authority delegated necessary to meet the identified critical elements, non-critical elements, and performance measures;
  2. Employee input; and
  3. Performance Measures for comparable positions at the same grade.

#### E. Unresolved Differences

When there are unresolved differences between the immediate supervisor and the employee regarding Critical elements, non-critical elements and performance measures, the employee may add written comments for consideration and final determination by the second-level supervisor. The title of the second-level supervisor must be on the cover sheet of the Performance Plan.

#### F. Supervisor Responsibilities

1. Critical elements, non-critical elements and performance measures must be achievable and clear. Performance will be assessed against the Agency Benchmark Standards and any measures.
2. Supervisors are encouraged to respond to barrier issues raised by employees in the performance of their duties.
3. Supervisors are responsible for using appropriate means to keep performance agreements current and accurate and to obtain the performance data required to accurately assess the employee's performance.

### **Section 11. Assumptions**

A. Standards of performance will make allowances for factors over which an employee has little, if any, control, but which might exert a significant impact on the employee's performance or ability to achieve an objective. It is understood that employees cannot be held accountable on critical elements for factors outside their control.

B. The supervisor shall work collaboratively with the employee to identify all assumptions relevant to that employee's Performance Plan. The supervisor shall then make the determination of the applicable assumptions and list them in the standard. The employee may attach theirtheir comments on assumptions to the Performance Plan. Assumptions may include, but are not limited to, travel and training funds, availability of "high visibility" assignments, and budget constraints. Care should be taken that overtime is not a pre-requisite for a rating of "Effective."

## **Section 12. Content Of Performance Plan**

Performance elements, Critical Elements, non-critical elements, and performance standards must be in USA Performance and issued to employees at the beginning of the appraisal year. To the extent the Critical Element is solely dependent on an assumption that is not met, the Critical Element will not be rated and the supervisor will note the fact on the Performance Plan.

The plan must contain the following objective components:

**A. Title.** "Performance Plan."

**B. Element.** Name and/or description of the performance elements, critical elements, non-critical elements, and performance standards element type.

**C. Element Type (Critical or Additional).** A performance plan shall contain a minimum of two critical elements and maximum of five critical elements. Non-critical elements are optional.

**D. Standard.** The performance requirement(s) or expectation(s) for appraisal at a particular level of performance. A standard includes such factors as quality, quantity, timeliness, cost effectiveness, and manner of performance, as applicable. See Appendix A for the Agency's Benchmark Standards.

**E. Measurement Source(s).** Identification of sources that may establish reliable and supportable basis for a rating and may be used to determine if standards are met or not met, such as but not limited to: personal observations, employee written products, or feedback from team leaders that assign work.

**F. Critical Element Rating.** Each critical element must have an element rating of (D) Distinguished, (E) Effective or (U) Unacceptable.

**Assumptions.** Known factors over which an employee has little, if any, control, but which might exert a significant impact on the employee's performance or ability to achieve an objective.

**G. Employee Signature/Date.** The employee's acknowledgment of the performance plan and the date.

**H. Supervisor(s)'s Signature/Date.** Identification of the supervisor(s), their approval of the performance plan, and the date of the approval.

### **Section 13. Format Of Performance Plan (See Appendix A)**

### **Section 14. Communicating Performance Plans**

A. Communication and counseling during the work planning and the appraisal period will help ensure that work activity will be consistent with organizational goals. The supervisor will assure that the employee has an up-to-date position description, up-to-date copy of the Agency's mission and goals and, if applicable, the career ladder plan. The supervisor will initiate a dialogue with the employee to discuss the employee's duties and responsibilities in relation to the organizational unit's goals and the Employer's mission.

B. Discussions should be candid, forthright dialogues between the supervisor and employee(s) aimed at improving the work product. Discussions will provide the opportunity to assess accomplishments and progress and identify and resolve any problems in the employee's or work team's work product. Where indicated, the supervisor should provide additional guidance aimed at developing the employee(s) and improving the work product or outcome. Discussions will provide the employee the opportunity to seek further guidance and understanding of their work performance.

C. It is the supervisor's responsibility to communicate the written performance expectations to employees within thirty (30) days from the start of the appraisal period, or within 30 days of the employee's arrival in a new position. This will be accomplished by an oral discussion between the supervisor and the employee to explain, clarify, and communicate the employee's job responsibilities as articulated in the employee's position description and/or performance plan and how those duties relate to the organizational unit's goals and the Employer's mission.

D. The individual employee and supervisor should discuss the plan and make any changes that are needed. The supervisor and employee may signify joint agreement with the plan by both signing and dating the plan. However, if the parties cannot agree, the plan is established. The date the employee signs the plan, or refuses to sign, is the beginning date of the minimum period of performance. If the employee refuses to sign the plan, then the supervisor annotates the disagreement and date in the employee signature block

E. If the employee disagrees with the plan, the employee may attach their statement of concern to the performance plan and that statement of concern becomes a part of the plan which must be considered by the supervisor of record at all times when interim and final ratings are prepared. The supervisor keeps the original plan, including any attachments submitted by the employee, and the employee receives a copy within three (3) working days of the signature date.

F. Employer cannot take a performance-based adverse action against an employee who does not have a valid Performance Plan issued by the supervisor.

G. Subsequent discussions on the contents of the Performance Plan shall occur when there is a change in the work situation, including, but not limited to the following:

1. A change in the supervisor of record;
2. When the employee is detailed;
3. A change in the work unit's goals or objectives;
4. A change in assignments;
5. A change in the work processes of the unit; or
6. When an employee returns from an extended absence of ninety (90) calendar days or more.

H. Upon request, electronic or hard copies of performance plans shall be provided to the Union.

#### Progress Reviews

I. In addition to the annual performance appraisal, an employee shall have one formal feedback discussion (a "mid-year progress review") with the supervisor, six months into the appraisal year. This review will include a discussion on any proposed training (which may be on-the-job training) and development of the employee. At this time, employees in career ladder positions may ask their supervisors to advise them of their progress towards promotion to the next grade level. However, frequent informal reviews of performance throughout the appraisal period are required and may be requested by the employee or supervisor at any time.

For calendar year 2008, the performance appraisal period will be from January 1, 2008, through September 30, 2008. The mid-year progress review during this performance period (2008) will occur during the month of May. For Federal fiscal year 2009 and thereafter, the performance appraisal period will begin on October 1<sup>st</sup>, and end on September 30<sup>th</sup>. The mid-year performance review will occur during the month of April.

J. The Progress Review(s) should be open, candid, and aimed at improving work products, and will provide an opportunity for feedback regarding accomplishments and individual development.

K. Progress reviews shall be scheduled at least one week or more in advance in order to allow the employee to provide advance input at the option of the employee. If, during or after a progress review, an employee is in disagreement with the review or feels the supervisor has failed to note accomplishments, the employee may request a follow-up progress review and request that the supervisor correct or amend the original progress review.

L. Progress reviews shall be conducted in a manner that protects the privacy and dignity of the employee. With the supervisor's permission, the employee may request that a Union representative be present at a progress review.

## **Section 15. Assessing Employee Performance**

### Interim Ratings

A. Interim ratings must be prepared for employees who have been under a performance plan for the minimum period of performance, when the employee completes a detail of ninety (90) days or more is reassigned to another EPA organization, transfers to another agency, or when the employee's supervisor departs from that supervisory position.

B. In preparing the rating of record, interim ratings must be given consideration proportional to the amount of the appraisal period the employee and departing supervisor occupied each position. If the appraisal period is less than the minimum period of performance, only performance highlights will be provided.

C. The supervisor must indicate all measurement sources and any individual's input that were considered in preparing the interim rating.

D. Employees whose primary language is not English, or whose supervisor's primary language is not English, or who have disabilities with respect to hearing or speaking, will not be disadvantaged in their performance appraisal by their less frequent use of direct verbal contact.

#### Timing of the Appraisal

E. Performance appraisals (ratings of record) are scheduled to be done annually within one month after the close of the appraisal period. Under special circumstances described below, appraisals may deviate from that schedule:

1. If the employee has not completed the minimum period of performance by the end of the performance cycle, then the rating of record is given at the end of the minimum period.
2. Whenever the employee has a change of supervisor, either by the employee leaving the organization or by the supervisor's departure, the supervisor prepares an interim appraisal, which will be input to the employee's annual appraisal. (This would not occur if the employee has not completed the minimum period of performance or if the employee leaves EPA. For periods less than the 90 days, the supervisor should provide narrative performance highlights only).
3. Whenever the employee concludes a detail of 90 days or more to another position or a temporary promotion of 90 days or more, the supervisor for the detail prepares an interim appraisal which the supervisor for the employee's permanent position factors into the employee's annual appraisal. (This would not occur if the employee has not completed the minimum period of performance. For periods less than the 90 days, the supervisor should provide narrative performance highlights only.)

F. When a PIP is issued to an employee, the employee's performance period for that year is extended through the end of the PIP. The subsequent performance period begins the day after the PIP ends.

#### Assessing Employee Performance



G. The rating process requires the supervisor to assess the employee's actual performance accomplishments against the standards contained in the approved Performance Plan. The supervisor will review the standard(s) established for each performance element to determine whether or not the employee met the standard(s).

H. To the extent that an employee was assigned no work or very little work, or the employee was not given a chance to demonstrate their performance under a particular Critical Job Element, the supervisor shall not find that the employee's work was unsuccessful. For a Critical Job Element for which the employee has not had a legitimate opportunity to perform assigned work under a performance element or very little work was assigned, that Critical Job Element shall not be considered when preparing a summary level rating.

I. In the application of standards to individual employees, the Employer will consider assumptions listed in the Performance Plan.

J. The use of properly requested and approved leave shall not be a negative factor in an employee's performance rating.

K. The performance appraisal system is used as the basis for Within-Grade Increases. An employee who is deemed to be "Effective" and has achieved an "acceptable level of competency" will be entitled to an appropriate within-grade increase.

L. Eligibility for a Quality Step Increase (QSI) is predicated upon receipt of an "Distinguished" rating but does not guarantee a Quality Step Increase.

#### Rating of Record Grievable

M. If an employee does not agree with the action taken as a result of a Performance Appraisal, including but not limited to: a demotion; within grade increase; or removal; he or she may grieve or appeal that action in accordance with the MCBA. An employee's rating of record is grievable under the MCBA.

### **Section 16. Reduction In Force (Rif)**

A. In the event of a Reduction-In-Force (RIF), employees in the competitive area affected by the RIF who received rating of "satisfactory" under PERFORMS shall have their ratings evaluated for retention credit purposes.

B. For the purposes of RIFs, union representatives on 100% official time will be accorded a rating of record of Effective for years they were not rated because of full time Union work.

### **Section 17. Appraising Disabled Veterans**

A supervisor's appraisal of an employee who is a disabled veteran, shall not be adversely impacted or affected in any way, due to the employee's absence from work to seek or receive medical treatment or assistance.

### **Section 18. Appraising Employees Called To Active Duty/Volunteering For Emergency Work**

A. A supervisor's appraisal of the performance of an employee in the Armed Forces Reserve or National Guard who is called to active duty, shall not be adversely impacted due to the employee's absence from work.

B. A supervisor's appraisal of the performance of an employee who has volunteered to assist in an emergency declared by a local, state or federal governmental agency, department or entity, and sanctioned by the Federal government or U.S. EPA, shall not be impacted due to the employee's absence from work.

### **Section 19. Protected Union Activities**

A. Union activities by an employee will not be a factor in the evaluation or appraisal of an employee's performance.

B. Supervisors shall make every reasonable effort to accommodate Union representatives in the exercise of their official union duties. Should mission critical work preclude the Union representative's immediate release, the supervisor will advise the Union representative of when he or she will be released from duties.

C. A supervisor may, at the Union representative's request, reassign that Union representative's work (without prejudice to the Union representative's Performance Evaluation), to other qualified employees if the employer determines that the work cannot be timely performed due to the Union Officer's, Representative's or Steward's representational duties.

### **Section 20. Sources of Appraisal Input**

A. Written performance standards and sources of appraisal input will be applied in a consistent manner in determining the rating of each assigned element. The supervisor will ensure that feedback (input) used in the appraisal process are related to the employee's assigned elements and standards. The feedback used will be factual and relevant.

B. If the information may adversely affect the employee's rating, the employee will be made aware of the information in order to facilitate their ability to respond and to correct inaccurate information. The sources of such information will be annotated in the performance evaluation.

C. Supervisors will not withhold pertinent and objective information necessary to the appraisal of the employee's performance. In the interest of full and fair communication, supervisors will

communicate areas of improvement, performance issues and other potential negative feedback as soon as practicable.

## **Section 21. Rating an Element**

Employees are encouraged to provide their supervisor with a written self-assessment (e.g., list of accomplishments completed) at the end of the appraisal period and/or at other times throughout the year. After considering the employee's self-assessment and other appraisal input against the assigned standards, the supervisor will assign a rating to each performance element.

## **Section 22. Annual PARS Information**

By no later than 120 calendar days from the close of the performance appraisal period, management shall make available to the AFGE Council 238, summary information concerning the ratings of record issued to the bargaining unit represented by AFGE Council 238. The following information shall be provided and made available in Excel format, without personal identifiers: organization code (ORG CODE); organization description (e.g., Immediate Office, Regional Administrator, etc.); Pay Plan/Series/Grade (PP-SERS-GRD); geographical location (GEOLOC); bargaining unit code; PARS rating; and a key for the data fields.

## **Section 23. Annual Rating of Record**

- A. Employees will be appraised at least once a year and given a rating of record. The due date of the employee's annual rating of record will be specified on the cover sheet of the Performance Plan. The rating must be completed no later than 30 days after the due date.
- B. It is understood that employees will only be evaluated on work which they have been assigned.
- C. Raters must provide a narrative description when the element is rated "Distinguished" or "Unacceptable".

### Assigning the Summary Level

D. Once all of the performance elements (except for those where little or no work has been assigned as explained above) have been rated, the supervisor will assign the summary level (rating) as follows:

1. **Distinguished:** One-half or more Critical Elements are rated Distinguished, none lower Effective.
2. **Effective:** One-half or more Critical Elements are rated Effective, none lower than Effective.
3. **Unacceptable:** One or more Critical Element is rated Unacceptable.

Approving the Rating of Record:

- E. If the summary level is Distinguished or Effective, the supervisor must sign and date the form to approve the rating of record.
- F. Summary ratings of Unacceptable require a higher level management review and approval.

#### **Section 24. Documenting the Rating**

Official documentation of the rating of record consists of the completed Performance Plan located in USA Performance.

#### **Section 25. Communicating the Rating**

A. Upon approval of the rating of record, the supervisor meets with the employee to conduct a formal appraisal discussion. During the appraisal discussion, the supervisor communicates to the employee:

1. How each performance element was rated, and the measurement sources and measurements used in preparing the rating;
2. The rating of record;
3. If appropriate, areas that may need to be changed in the next year's performance plan; and
4. The supervisor and the employee will hold the appraisal discussion in private.

B. The supervisor will discuss the rating of record with the employee to avoid misunderstandings and possible inaccuracies. The discussion will be face-to-face to the extent practicable, but may be by telephone. Any rating which has a summary rating of Unacceptable must be approved by the second level supervisor before the proposed rating of record is discussed with the employee. There is no requirement for a second level supervisor to approve a summary rating of Distinguished or Effective.

C. At the conclusion of the appraisal discussion, the employee may sign the Performance Plan in USA Performance signifying that the appraisal discussion was held, not necessarily that the employee agrees with the rating of record. The date the employee signs or refuses to sign the appraisal Performance Plan will be considered the date the rating of record was communicated to the employee. However, the employee is entitled to attach their disagreement or concerns to the rating of record. The employee is not required to prepare their written disagreement or concerns with the rating of record at the actual discussion.

D. The employee will ordinarily receive their copy of the rating during the appraisal discussion, but in any case no later than three (3) work days from the appraisal discussion.

## **Section 26. Record Keeping**

A. The supervisor must submit the completed, original annual Performance Standards and completed evaluation, along with any other applicable attached documents including but not limited to the employee's self-evaluation, and response to the supervisor's evaluation, to the appropriate Human Resources Office. The Agency will maintain this submitted material in the employee's Employee Performance File (EPF) in accordance with the General Records Schedules issued by the Archivist of the United States under the authority of 44 U.S.C 3303a(d), and U.S. EPA Special Schedules.

B. Performance related notes, records and written observations will be applicable only to that performance year, and will be expunged from the employee's and supervisor's files upon entering a new appraisal cycle. Any notes, records and written observations retained beyond the performance year will be those related to ongoing arbitrations, grievances, PIPs, unfair labor practice charges, etc.

## **Section 27. Employee Development**

The supervisor shall have at least one formal discussion concerning career goals and individual development needs with their employees per year and utilize opportunities for employee development. The Individual Development Plan (IDP) identifies developmental needs and career objectives and is a useful tool for career development that benefits both the employee and the organization. The IDP is required if requested by the employee. The IDP process may include conducting a self-assessment; obtaining assessments from peers, superiors and customers; and identifying opportunities and other options for career growth. If a supervisor identifies required training, he or she will notify the employee and, if applicable, annotate the IDP.

## **Section 28. Performance Improvement Plan (PIP)**

If the supervisor determines the employee is performing their assigned job duties the unacceptable level, the supervisor shall develop in consultation with the employee and, if requested, their union representative, a written Performance Improvement Plan or PIP. The goal of this PIP is to return the employee to Effective performance as soon as possible. The Agency must have justification to place an employee on a PIP

### **A. Purpose of a PIP**

A PIP is a document intended to identify an employee's performance deficiencies, the actions that must be taken by the employee to improve performance, along with provisions for counseling, training, or other assistance to bring performance up to Effective. Placement on a PIP for unacceptable performance triggers a formal opportunity period as required by 5 U.S.C. 4302(b) (6).

### **B. Timing of a PIP**

- a. The employee's performance rating must be based on at least 90 days under the assigned critical elements (CE). A PIP must be presented to the employee within 15 working days after the employee is formally informed in writing of performance that is unacceptable.
- b. It is in the party's best interest to address performance issues as soon as they are discovered. Therefore, although an employee may be immediately placed on a PIP, corrective action should be taken as soon as performance is seen to drop below the Effective level.

#### C. Format of a PIP

A PIP should be in the form of a memorandum from the immediate supervisor to the employee. A specified beginning and ending date should designate the length of time the PIP will be in effect (not less than a 60-calendar-day period). However, the length of the period will depend on the nature of the position, the performance deficiencies involved, and how long it will take to demonstrate Effective performance.

#### D. Content of a PIP

Each PIP should be geared to the needs and circumstances of the situation. The PIP will be factual, constructive, reasonable and attainable. The following information should be included:

1. The employee's name, position title, series, grade, and organization location;
2. The basis for the PIP, e.g., a specific description of the CEs that were not met;-
3. Restatement of the assigned Critical Element(s) the employee is failing to perform acceptably and a description of how performance was determined to be deficient in relation to performance standards;
4. References to previous counseling sessions during the appraisal period;
5. A specific description of the requirements that must be met, in terms of quality, quantity, timeliness, cost effectiveness or manner of performance, for work to be judged Effective. Numerical criteria or bench marks in the Performance Plan that were used by the supervisor to interpret the performance standard must also be stated and clearly explained;
6. A similar explanation of what will be considered Effective performance;
7. Examples of ways the employee can improve performance and a description of the assistance the employee will receive from the supervisor;
8. A schedule of periodic performance reviews that will be held during the performance improvement period;

9. A list of assignments with due dates, or completion dates, if appropriate;
10. A statement that the employee is expected to maintain Effective performance on the remainder of the CEs; and
11. Notification that failure to improve performance to Effective may result in a change to a lower grade, reassignment, or removal.
12. With the employee's approval, the union will be notified of the PIP meeting and allowed to be present to participate in part or all of the collaborative process to develop a plan to correct the problem. The employee, at their own volition, may also contact and work with the Union outside the PIP meeting.

E. Implementation of a PIP

1. The supervisor signs and dates the PIP.
2. The employee's supervisor will meet and discuss the approved PIP with the employee. The employee may invite the Union representative to be present at the PIP meeting.
3. The employee may sign the PIP and is given a copy. The employee's signature on the PIP indicates that he or she received a copy, and does not signify concurrence. If the employee refuses to sign, the supervisor will annotate the PIP and date the annotation.
4. The supervisor sends a copy of the PIP to the servicing Human Resources Office along with the original performance agreement and rating package. The PIP will be filed in the Employee Performance File (EPF), and will be removed if the employee's performance improves to Effective and remains at that level for one year from the beginning of an opportunity to demonstrate Effective performance in accordance with 5 CFR 432.107(b), then destroyed (e.g., shredded).

F. Terminating or Extending a PIP

A PIP may be terminated or extended in situations such as those described below. In each case, the action will be documented by a memorandum to the employee or the employee's representative (designated in writing) and a copy sent to the servicing Human Resources Office for inclusion in the EPF. If the PIP is terminated because of demonstrated Effective performance, the PIP and memorandum will be removed from the EPF and destroyed after the employee's performance has continued to be Effective for one year.

1. A PIP will be terminated if the employee moves to a different position at the same or different grade. The PIP is not continued in effect in the new position.
2. A PIP may be terminated if the employee's performance improves to Effective prior to the expiration of the PIP.

3. A PIP will be removed from the employee's EPF if the employee leaves the Agency.
4. A PIP may be extended at any time by the supervisor with notice to the bargaining unit employee and their designated representative.
5. Notwithstanding the existence of an ongoing PIP, an employee may request a transfer to another position as a means of resolving the performance issue. An employee shall not be forced to successfully complete the PIP before moving on to another position.

#### G. Expiration of a PIP

If a PIP is not extended or terminated by the designated expiration date, the supervisor must notify the employee and their designated representative in writing of the status of their performance. If the employee's performance has improved to Effective, the supervisor must prepare a new rating of record if the opportunity period was triggered by an annual performance rating of Unacceptable. The new rating will be sent to the appropriate Human Resources Office. The supervisor and the employee each keep a copy. The servicing Human Resources Office will substitute the new appraisal for the previous rating of record. Once the employee has been deemed to be performing at the Effective Level, all performance-related personnel actions will be made effective.

When there is a PIP issued to an employee, the employee's performance period for that year is extended through the end of the PIP. The subsequent performance period begins the day after the PIP ends.

#### H. Change of Supervisors while on a PIP

In the event that the employee's supervisor leaves the unit either temporarily or permanently, the PIP shall not be extended because of the departure of the supervisor. The employee and new supervisor, along with the employee's designated representative, shall meet within 15 days of the new supervisor's arrival to discuss the PIP and the employee's progress in meeting the PIP's requirements.

#### I. Part-Time Employees

The Supervisor will give due consideration to the achievability of a PIP for a part-time employee. Assignments and deliverables should be commensurate with a part-time schedule.

### **Section 30. Performance-Based Actions**

A. Should an employee's performance continue to be Unacceptable and the employee's performance is determined to be Unacceptable after the reasonable opportunity to improve said performance to an acceptable level through a PIP, the supervisor will consider the following possible personnel actions:

1. Deny the employee's within grade increase in accordance with 5 CFR 531;



2. When the employee is capable of performing in a different position of the same grade, the supervisor may propose to reassign the employee to such a position in accordance with 5 CFR 430;
3. When the employee is not capable of performing in a position at the same grade but is capable of performing in a position at a lower grade, the supervisor may propose a demotion to a position at a lower grade in accordance with 5 CFR 432;
4. The supervisor may propose to remove the employee from Federal Service in accordance with 5 CFR 432. The supervisor must consult with the Human Resources Office before taking any action based on Unacceptable performance.

B. An employee whose reduction-in-grade or removal is proposed for such performance is entitled to:

1. A 30-day advance notice of the proposed action that identifies both the specific instances of Unacceptable performance by the employee on which the proposed action is based and the critical element(s) of the employee's position involved in each instance of that performance;
2. A representative. The employee may file a written statement with the deciding official indicating the name, title (if any) and address of their representative(s);
3. A reasonable time, but not less than 20 calendar days, to answer orally and/or in writing;
4. Use a reasonable amount of administrative time to prepare an answer;
5. A written decision which specifies the instances of Unacceptable performance on which the reduction in grade or removal is based. The decision shall be within 30 calendar days after expiration of the advance notice period. Unless proposed by the head of the Agency, the deciding official shall be at a higher level than the proposing official. The written decision shall be issued to the employee at or before the time the action will be effective. The decision shall inform the employee of any applicable appeal and/or grievance rights.

C. The employee and their designated representative have a right to material relied upon in formulating the proposed adverse action (5 CFR Part 432).

### **Section 31. Employee Objections to Performance Plans or Recognition Decisions**

The final determination of an employee's critical elements and standards are not grievable under the negotiated grievance procedure. If an employee believes that a decision or other action taken or not taken under this performance management program resulted from a prohibited personnel practice as defined in 5 U.S.C. 2302 or an act of discrimination, the employee may: (1) file a grievance under the negotiated grievance procedure or file a charge of discrimination with the Equal Employment Opportunity Commission and/or (2) file a complaint with the Office of Special Counsel.

### **Section 32. Employee Objection to Rating of Record**

- A. An employee who disagrees with their final rating of record may file a grievance under the provisions of the negotiated grievance process.
- B. A rating of record may not be appealed to the Merit Systems Protection Board.
- C. However, an employee may file an allegation with the Office of Special Counsel if the employee believes the rating decision or other action taken or not taken based on the rating of record, constitutes a prohibited personnel practice as defined in 5 U.S.C. 2302 or file an equal employment opportunity (EEO) complaint.

### **Section 33. Recognition**

A performance based award is a method for recognizing employees' accomplishments. Excellence in performance will be the basis for cash award determinations and quality step increase pay decisions. The parties recognize that the use of both monetary and non-monetary awards have a significant impact on employees' morale, motivation, and performance of assigned duties. It is agreed that recognition for employee contributions will be handled in accordance with the **Awards** article in the MCBA.

### **Section 34. Reopener**

- A. The Parties agree that the Agency has the right to modify the substance of the Performance Evaluation plan in accordance with 5 USC 7106. Should that occur, the Union will have the right to negotiate Impact and Implementation issues attendant to such changes.
- B. The Parties agree that issues identified by the Advisory Board may trigger a reopener of this agreement and additional Impact and Implementation bargaining.
- C. Any changes to this Article to address problems identified by the Advisory Board will be made by mutual consent of the parties, in accordance with Article 45 or its equivalent in the Master Collective Bargaining Agreement, regarding Supplemental Agreements and Other Negotiations during the Life and Term of the MCBA.
- D. Nothing in this Article shall serve to waive either party's rights under the law or MCBA.

### **Section 35. Duration**

- A. During any subsequent negotiations over this Article (or its equivalent or successor agreements in a new MCBA), the procedures and appropriate arrangements portions of this agreement shall remain in full-force and effect until such time that a new agreement is signed and has become effective. For example, procedures for PIPs etc., would remain unchanged.
- B. With respect to negotiable procedures and appropriate arrangements, both parties agree to

abide by the *status quo* as required by the Statute (5 U.S.C. Chapter 71) in any subsequent negotiations of the Employee Performance Evaluation Article or its successor article(s) in any new or subsequent MCBA.

## **Article 18: Reduction in Force and Transfer of Function**

### **Section 1. Scope.**

This Article governs Reduction in Force (RIF) and Transfer of Function (TOF) actions as provided in applicable laws and regulations. For purposes of this Article, the following terms are defined in law and are included for informational purposes:

A. Reduction in Force (RIF): When the Agency releases a competing employee from his or her competitive level by furlough for more than thirty (30) days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work, shortage of funds, insufficient personnel ceiling, reorganization, the exercise of reemployment rights or restoration rights, or reclassification of an employee's position due to erosion of duties when such action will take effect after the Agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within sixty (60) days or within thirty (30) days in emergency situations.

B. Transfer of Function (TOF): The transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected; or the movement of the competitive areas in which the function is performed to another commuting area.

C. Function: All or a clearly identifiable segment of any agency's mission (including all integral parts of that mission, regardless of how it is performed).

D. Competitive Area: The Agency will define the competitive area for a RIF or TOF action. The competitive area may consist of all or parts of the Agency. The competitive area will be defined solely in terms of EPA's organizational unit(s) and geographical location and will include all employees within the competitive area so defined.

E. Competitive Level: Positions in the competitive area that are in the same grade (or occupational level) and classification series that are so alike in qualification requirements, duties, responsibilities, pay schedule, and working conditions that the incumbent of one position can successfully perform the critical elements of any other position in the level upon assignment to it, without loss of productivity or undue interruption.

F. Commuting Area: The geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people like and can reasonably be expected to travel back and forth daily to their usual employment.

G. Undue Interruption: A degree of interruption that would prevent the completion of required work by the employee ninety (90) days after the employee has been placed in a

different position under a RIF action. However, a work program would generally not be unduly interrupted even if an employee needed more than ninety (90) days after the RIF to perform the optimum quality or quantity of work. The ninety (90) day standard may be extended if placement is made to a low priority program or to a vacant position.

**Section 2. Statement of Principle.**

A. The Agency and the Union recognize that employees may be seriously and adversely affected by a Reduction in Force (RIF) or Transfer of Function (TOF) action. Before implementing a RIF or TOF affecting bargaining unit employees, the Agency will attempt to minimize adverse effects through such appropriate means as attrition, reassignment, furlough, hiring freeze, and early retirement. The Agency considers a RIF to be an action of last resort.

B. Before taking a final decision in the matter, the Agency will meet with the appropriate Local for the affected location(s) as soon as possible to discuss any alternatives that could alleviate adverse effects on employees.

**Section 3. Notice to the Union.**

A. When the Agency reaches a final decision to take a RIF or TOF action, the Council President and the affected Local will be notified in writing at the earliest possible date, but no later than ninety (90) days prior to the effective date. Notice will include the reason for the RIF or TOF, approximate number and types of positions to be affected, geographic location, and anticipated date of the planned actions.

**Section 4: Retention Registers.**

A. The Agency will make current its retention registers before giving notice to affected employees. Upon request, the Agency will provide the Union with a copy of the updated retention register(s) and will meet with the Union to discuss any questions the Union has regarding the register(s). Employees will be permitted to review retention registers with the employee's name, and other retention registers for other positions that could affect the composition of the employee's competitive level and/or the determination of the employee's assignment rights.

**Section 5.**

Consistent with 5 CFR 351, after notice to the Union, the Agency will provide notice of RIF or TOF action to affected employees of no less than sixty (60) full days. Individual RIF or TOF notices must include the following information:

- A. The action to be taken, the reason for the action, and its effective date;
- B. The employee's competitive area, competitive level, retention subgroup, service date, and three most recent performance ratings of record received during the last four (4) years;

- C. The place where the employee may inspect the regulations and records pertinent to this case;
- D. The reasons why any lower standing employees in the same competitive area are being retained;
- E. Grade and Pay retention information applicable to the employee receiving the notice;
- F. Information on reemployment rights;
- G. The employee's right to grieve the action under Article 38, Negotiated Grievance Procedure.
- H. The option to either grieve the action under Article 38, Negotiated Grievance Procedure or to the Merit Systems Protection Board if the employee alleges the RIF action is a Prohibited Personnel Practice under 5 USC 2302.

#### **Section 6. Offer of Position.**

- A. The Agency shall, in accordance with 5 CFR 351, if possible, offer an assignment to each employee adversely affected through the implementation of a RIF or TOF. Consistent with 5 CFR 351.701 the offer, if made, shall be of a position as close as possible to, but not higher than, the current grade of the affected employee, and the position shall be in the same competitive area. Employees adversely affected by a RIF or TOF may request, in writing, that they be assigned to a particular continuing position meeting the provisions in the previous sentence. An employee is restricted to making such a request only one time; the request can be made only after the retention registers have been completed. Such an employee request will be answered within ten (10) days. These employee requests will not be grievable under the Negotiated Grievance Procedure if the request is rejected by the Agency.
- B. Employees will respond in writing to a best offer of employment to another position within fifteen (15) calendar days of receipt of a written offer. Failure to respond within fifteen (15) days will be considered a rejection of the offer.

#### **Section 7.**

In accordance with applicable RIF and TOF regulations and to the extent feasible, if the Agency is unable to offer an assignment to an affected employee, the Agency will waive some qualifications for a vacant position which it intends to fill, which does not contain selective placement factors, provided the a) employee meets any minimum education requirement for the position; b) Agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

## **Section 8.**

Use of Vacancies. To the extent possible, the Agency will not fill a vacant bargaining unit position within the organizational unit in which the RIF is taking place until it has considered all reasonable alternatives to reduce the adverse effects on bargaining unit employees who are to be displaced as a result of the RIF. In considering these alternatives, the Agency will review the possibility and feasibility of redesigning vacant positions.

## **Section 9. Relocation.**

- A. Employees who are relocated by the Agency as a result of action covered by this Article will receive relocation expenses and authorized absence as provided by law and regulations.
- B. Employees reassigned to a different commuting area who relocate will be allowed a period of time, as appropriate on a case by case basis, to complete the move and report to work at the new work location.
- C. The employee will be provided administrative time to research relocation matters such as area housing and schools in the new geographic location, disposition of their current homes, and to handle any other matters related to the move, to the extent allowable under appropriate laws and regulations.

## **Section 10. Placement Services.**

- A. The Agency will utilize all resources available under applicable law and regulation in efforts to place employees who are separated or reduced in grade in a RIF. This will include the Agency's Reemployment Priority List and OPM's Career Transition Assistance Program. Employees separated in a RIF will receive priority consideration to fill vacant positions at the activity where they worked for which they are qualified for in accordance with eligibility and employment restrictions per 5 C.F.R. 330.
- B. Whenever technological changes cause abolishment of some jobs and the establishment of other, the Agency agrees, when feasible, to utilize the abilities and skills of the displaced employees through established re-training programs designed to qualify these employees for other jobs:
  - (1) when feasible and applicable by law and regulation, and
  - (2) consistent with the abilities of the employees.
- C. Repromotion:
  - (1) for a period of two (2) years, an affected employee demoted by an action covered by this Article will be repromoted to vacancies the Agency determines to fill as they occur according to the following criteria:

(a) A satisfactory performance rating on his/her most recent rating which is documented in his/her official personnel file and meets other eligibility requirements of 5 C.F.R. 330.

(b) The employee has the requisite skills and abilities for the position without undue interruption.

(2) If more than one employee meets the criteria of subsection 1 and is not subject to the criteria in subsection 2, the employee who has the higher retention standing will be promoted.

(3) An employee who was previously demoted without personal cause, misconduct or inefficiency, and who meets all other eligibility criteria in 5 C.F.R. 330, will receive special consideration for repromotion.

D. Employees facing RIF actions will receive reasonable amounts of administrative leave to contact federal job placement officials and employment agencies.

### **Section 11. Excepted Service.**

In reduction in force and transfer of function actions, the Agency will apply the same procedures in this Article for both competitive and excepted service employees only as provided by applicable laws and regulations; however, excepted service employees will compete only with other excepted service employees in the same appointing authority and in the same competitive area. In no case will excepted and competitive service employees compete with each other for retention or placement.

### **Section 12. Unemployment Compensation.**

The Agency will counsel employees who are to be separated in a RIF in their eligibility and procedures for applying for unemployment compensation. Expert assistance from the relevant state will be obtained if the employee requests.

### **Section 13. Furloughs.**

- A. Employees who are furloughed during a lapse in appropriations will be retroactively paid and otherwise compensated when appropriations are approved to the extent permitted by law and regulation.
- B. Employees will be allowed to request a specific schedule for the furlough time. An employee's request will be honored unless management determines that mission and workload prevents approval of the request. Should an employee request be denied, the employee will be provided written reasons for the denial.
- C. The Agency will have a liberal leave without pay (LWOP) policy during periods of



furloughs, but will not coerce any employee into using LWOP during a furlough. The Agency will inform employees of any differences in eligibility for unemployment compensation if the employee is placed on furlough of LWOP.

**Section 14.**

Reemployment. In accordance with applicable laws and regulations, terminated employees as a result of RIF action will be notified of Agency vacancies for which they are qualified and will receive priority consideration over non-Agency employees for a two year period.

## **Article 19: Contracting Out**

### **Section 1.**

- A. Management agrees to notify and consult with the Union regarding any anticipated review of a function for contracting out that affects bargaining unit positions, as required or allowed by law, rule or regulation, OMB Circular A-76 and its Supplement, and this Agreement. This notification to the Union does not include a function that currently is not being performed by bargaining unit employees.
- B. Upon issuance, a solicitation used in the conduct of a cost comparison will be made available to the Union for comments. The Union shall be given the opportunity to review the document and submit comments before final receipt of offers from the private sector. Private sector offerors shall comment as provided by the Federal Acquisition Regulations.

### **Section 2.**

The Agency agrees to minimize the need to separate employees by a contracting out decision. It will use attrition and restrict new hires to the maximum extent possible, in the event of a RIF and will place the affected employees in positions consistent with OPM regulations.

### **Section 3.**

In the event the Agency determines to conduct a cost analysis study pursuant to OMB Circular A-76, during the course of the study, it will hold monthly meetings with affected bargaining unit employees for the purpose of providing information. The Union will be given an opportunity to participate in such briefings. The Parties can mutually agree to postpone or cancel any meeting. If there is no information to provide, the Agency will advise the employees and the Union via electronic mail and the meeting may be postponed or cancelled.

### **Section 4.**

Management and the Union recognize the right of first refusal required by OMB Circular A-76 and its Supplement. Declining to exercise the right of first refusal due to displacement from contracting out shall not be deemed to be a waiver in any appeal or grievance rights a bargaining unit employee might have under applicable law, regulation, and this Agreement.

### **Section 5.**

The Agency and the Union will cooperate and communicate to the maximum extent possible.

### **Section 6.**

During the contract performance period, the Union is encouraged to bring known contract deficiencies to the appropriate contract administrator or designee's attention.

## **Article 20: Equal Employment Opportunity**

### **Section 1.**

No employee will be denied a benefit of employment by the Agency, or a benefit or right of unit membership by the Union, because of the employee's race, color, creed, national origin, sex, age, sexual preference, Union affiliation, lawful political affiliation, marital status, or qualifying handicapping condition. Both Parties support the realization of a representative work force within the unit at all levels.

### **Section 2.**

The Parties hereby affirm their support of affirmative action.

### **Section 3.**

When the Agency, at the local level utilizes an EEO committee, or councils, the Union will be given the opportunity to have at least one bargaining unit employee at the location as its representative to participate as a committee member on matters affecting unit employees.

### **Section 4.**

The Union will designate an authorized representative for the Agency to deal with on all EEO matters which are beyond local scope and impact.

### **Section 5.**

The Union may submit the names of bargaining unit employees who are interested in serving as EEO Counselors to the appropriate management official. Employees who meet the criteria for an EEO Counselor and are selected by the Agency will receive appropriate training in accordance with the applicable policies and regulations. No Union representative who handles employee representation functions for the union may serve as an EEO Counselor nor may an EEO Counselor serve in a representative capacity for any employee.

### **Section 6.**

A bargaining unit employee may file an EEO complaint under the Negotiated Grievance Procedure or the administrative procedure provided by statute and regulations, but not both. An employee filing a formal EEO complaint under the Agency's procedure is entitled to a representative of personal choice subject to Agency policies and regulations. An employee filing a formal EEO complaint under the Negotiated Grievance Procedure may be represented only by an authorized Union representative.

### **Section 7.**

Upon request, in accordance with the provisions of Section 7114(b)(4) of the Statute, and this Agreement, the Agency will provide any prepared statistical EEO reports and EEO complaint summaries on the unit to the Union.

**Section 8.**

An employee shall be deemed to have exercised his or her option in filing an EEO complaint at such time as the employee timely initiates a formal written EEO complaint/notice of appeal under the statutory procedures or timely initiates a grievance in writing above the first step (informal) in accordance with the Grievance Article.

**Section 9.**

Employees are encouraged to discuss EEO allegations with an EEO counselor. Discussions between an employee and an EEO Counselor do not preclude an employee from opting to select the negotiated procedure.

## **Article 21: Disciplinary and Adverse Actions**

### **Section 1.**

The Agency and the Union recognize that the public interest requires the maintenance of high standards of conduct. The Parties collectively agree that the purpose of any disciplinary action is to correct or improve employee behavior and to maintain discipline within the workforce. All disciplinary actions will be taken only for just and sufficient cause.

Suspension for more than fourteen (14) days, removals, reductions in grade or pay, and furloughs of thirty (30) days or less will be taken for such cause as will promote the efficiency of the service.

- A. Where applicable, the Parties agree to the philosophy of progressive discipline.
- B. Whenever possible, disciplinary actions will be conducted privately and in such a manner as to avoid embarrassing the employee.
- C. Disciplinary and adverse actions will be initiated as timely as possible after the offense is committed or Management becomes aware of the offense.

### **Section 2. Definitions.**

- A. An informal action is non-punitive in nature and includes closer supervision, oral admonishment or a letter/memorandum of warning.
- B. An adverse action is a formal disciplinary action consisting of a suspension of more than fourteen (14) calendar days, a reduction in grade or pay (as defined in 5 C.F.R. 752.402), a furlough of thirty (30) calendar days or less, and removal.
- C. A formal disciplinary action is a suspension of fourteen (14) calendar days or less and letters of reprimand.
- D. Performance-based actions and RIF actions are neither disciplinary nor adverse actions.
- E. Where there are calendar based deadlines for action by the Agency, the Union, or individual bargaining unit employees, and the last day falls on a day which the official duty station is closed (weekends, holidays, emergency closures, etc.) the deadline shall be the next business day in which the official duty station is open.

### **Section 3. Informal Actions.**

- A. The supervisor or appropriate management official shall advise the employee of the specific infraction or breach of conduct, and give the employee the opportunity to explain his/her side of the matter and, if warranted, an oral admonishment will outline what steps

are necessary to preclude a recurrence. The employee will be provided reasonable time to seek union representation if requested. It is understood that it is the employee's obligation to make such a request.

- B. Letter/memorandum of Warning consists of a description of the misconduct, an outline of positive corrective steps, and state what penalty might result if the actions continue.
- C. Since this section deals with informal actions which are not disciplinary in nature, the Agency will not cite any records regarding such an informal action beyond eighteen (18) months in any subsequent disciplinary action which might occur. The only exception is where, in the interim period, an action for a like offense has been issued.

#### **Section 4. Disciplinary Actions.**

- A. Before issuing a letter of reprimand, the supervisor or appropriate management official must fully discuss the incident in question, with the employee to permit the employee to present his/her side of the situation. If after the employee presents his/her views, the supervisor or appropriate management official considers a reprimand to be warranted it will be issued to the employee in writing by the immediate supervisor or appropriate management official not less than two (2) work days after the discussion. The letter will state the employee's right to be represented by an attorney or other representative, including the Union. The employee will be given five (5) business days to provide a written response to the reprimand. The employee shall be authorized a reasonable amount of official time to prepare a response. This response will be included in the employee's file with the reprimand if so requested. Letters of reprimand will be maintained in an employee's Official Personnel Folder for up to two (2) years.
- B. Any suspension of fourteen (14) days or less must be preceded by a written proposal notice at least fourteen (14) calendar days before the discipline is to be effected. The employee will be given ten (10) calendar days in which to provide the deciding official a response either orally, in writing, or both. Advance notices will specify the deciding official to whom the employee should provide any reply. The notice will state the employee's right to be represented by an attorney or other representative, including the Union. The employee shall be authorized a reasonable amount of official time to prepare a response.
- C. The employee shall be provided with an additional copy of all disciplinary actions marked "COPY for EMPLOYEE's REPRESENTATIVE".

#### **Section 5. Adverse Actions.**

All adverse actions with the exception of C and D below, must be preceded by written notice at least thirty (30) calendar days before the intended effective date. Employees will receive at least fifteen (15) calendar days to provide the deciding official a response, either orally, in writing or

both and to furnish affidavits or other evidence in support of the answer. Employees shall be granted a reasonable amount of official time to prepare the response. The notice will state the employee's right to be represented by an attorney, or other representative, including the Union. The deciding official or designee will consider requests for extensions of time, and may grant them where he/she believes the request reasonable.

A. The advance notice shall inform the employee of the right to review the material management is relying upon to propose the action.

(1) If supervisory notes are kept on employees, the notes will be maintained in a secure fashion and disclosed only to those officials with a need to know. Supervisory notes, or the applicable portion thereof, used to support a disciplinary or adverse action are to be made available to the employee upon request, as soon as practicable.

(2) The Agency may redact any material reviewed or supplied to the employee/representative, consistent with legal or regulatory requirements. If management is relying upon witness statements, the Agency will provide the identity of the witness(es), and any witness statements.

B. The notice of proposal will specify the Agency official who will hear the employee's answer and make a decision on the proposal. The official will normally be the next higher level official in the proposing official's chain of command, unless the proposing official is the Deputy Administrator, or Administrator of the Agency. If the employee chooses to make an oral reply, the reply will be made at the deciding official's work location, unless agreed otherwise. In cases where the employee and deciding official work at different locations, but within the same commuting area, the employee will travel to the deciding official's work location, unless agreed otherwise. When the two are in different commuting areas, the oral reply will be made by video or telephone conference, unless agreed otherwise. The deciding official or his/her designee, will summarize the oral reply, if any, and include it in the case file. If the employee chooses he/she may provide a summary to be included in the case file.

C. In cases of proposed adverse action when the Agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed, and the Agency determines it to be in its best interest, no advance notice is required.

D. An advance written notice and opportunities to respond are not necessary for furlough without pay due to unforeseeable circumstances, such as acts of God, or sudden emergencies requiring immediate curtailing of activities. Management agrees that such furloughs will be an act of last resort. When Management has the authority to do so, excused absence may be granted, as appropriate.

E. The employee shall be provided with an additional copy of disciplinary actions



marked "COPY for EMPLOYEE'S REPRESENTATIVE."

## **Section 6. Decisions.**

The decision will be provided in writing to the employee and will specify the charges sustained and the penalty imposed. The decision will include the rights of appeal available to the employee and will notify him/her of the right to designate a representative, including the Union.

The Agency will consider the following factors when making a final determination on the appropriateness of a penalty in an adverse action case. The proposing and deciding official must review each case individually and apply those factors that are relevant. The factors may or may not weigh in the employee's favor:

- A. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional, technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- B. The employee's job level and type of employment, including any fiduciary role, contact with the public, and/or prominence of the position;
- C. The employee's past disciplinary record;
- D. The employee's past work record, including length of service, job performance, ability to get along with fellow workers, and dependability;
- E. Any effect of the offense upon the employee's ability to perform at a fully successful level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties;
- F. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- G. Consistency of the penalty with the penalties in the Agency's conduct and discipline order;
- H. The notoriety of the offense or its impact upon the reputation of the Agency;
- I. 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;
- J. Potential for the employee's rehabilitation;
- K. Aggravating or mitigating factors surround 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

- L. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

### **Section 7. Removal From the Workplace Pending a Decision.**

Under ordinary circumstances, an employee whose removal has been proposed will remain in a duty status in the position of record during the advance notice period. In circumstances in which the Agency reasonably believes that the employee's continued presence in the work space during the reply period poses a threat to persons or property, or otherwise jeopardize Government interests, the Agency will consider the following alternatives prior to placing the employee in a paid, non-duty status:

- (1) Assigning the employee to duties where the perceived threat no longer exists;
- (2) Placing the employee on leave, with his/her consent; or
- (3) Carrying the employee in the appropriate status if he/she is absent for reasons not originating with the Agency.
- (4) If none of these alternatives are selected, the Agency may place the employee in a paid, non-duty status during all or part of the advance notice period, as consistent with law or regulation.

### **Section 8.**

Employees may only grieve a disciplinary action through the Negotiated Grievance Procedure (NGP). Employees may appeal adverse actions to the Merit Systems Protection Board (MSPB), or file a grievance under the NGP, but may not do both. Once an employee has elected to file an MSPB appeal or a written grievance under the NGP, the employee may not change subsequently to the other procedure.

### **Section 9.**

In lieu of rendering a decision on a proposed action a deciding official may choose to offer an employee a settlement agreement, or access to ADR if locally established pursuant to Article 38 of this Agreement. Any settlement agreement may not conflict with the terms of this agreement. Any settlement talks which constitute "formal discussions" under 5 U.S.C. Chapter 71, may be attended by a Union representative pursuant to Article 5, Section 8 of this Agreement.

### **Section 10.**

This Article will be administered as required by law and in accordance with MSPB regulations. Where an employee appeals an adverse action through the negotiated grievance procedure and

the Union proceeds to arbitration, the arbitrator is bound by the same rules governing the burden of proof and standards of proof that govern adverse actions before the Merit Systems Protection Board.

**Section 11.**

The Parties recognize that the age of any evidence offered by any Party may be a factor detracting from its credibility and that as such, such evidence may lose its probative value.

## **Article 22: Negotiated Grievance Procedure**

### **Section 1.**

The Parties agree that this Article establishes the sole and exclusive procedure available to bargaining unit employees and the Parties for processing and settlement of grievances that fall within its coverage, including questions of grievability and arbitrability. The Parties recognize and endorse the importance of bringing to light and resolving grievances in a prompt manner. The Parties agree that the expeditious resolution of grievances is in the public interest. Inasmuch as dissatisfactions and disagreements arise occasionally among people in any work situation, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, performance, loyalty, or desirability.

### **Section 2.**

A grievance means any complaint:

- A. By any bargaining unit employee concerning any matter relating to the employment of the employee;
- B. By the Union concerning any matter relating to the employment of a bargaining unit employee; or
- C. By the Union or the Agency concerning:
  - (1) The effect or interpretation, or claim of breach of this Agreement, Supplemental Agreements or Memoranda of Understanding; or
  - (2) Any claimed violation, misinterpretation, or misapplication of law, rule, or regulation affecting conditions of employment.

### **Section 3.**

In addition to any other exclusions contained in this Agreement, the grievance procedure will not apply to:

- A. Any claimed violation of Subchapter III of Chapter 73 of Title 5, U.S.C. (relating to prohibited political activities);
- B. Retirement (5 C.F.R. 831), life insurance (5 C.F.R. 870, 871, 872 and 873) or health insurance (5 C.F.R. 890);
- C. Any examination or certification (5 C.F.R. 332 and 337), or appointment, e.g., the separation of an employee during a probationary period (5 C.F.R. 2, 3, and 8);
- D. A suspension or removal under Section 7532 of Title 5 U.S.C. (Relating to national

security matters);

- E. The classification of any position which does not result in a reduction in grade or pay of an employee (5 C.F.R. 511);
- F. A management decision to make or terminate a temporary promotion, detail, or reassignment;
- G. The adoption or non-adoption of a suggestion or the receipt or non-receipt of an honorary or cash award in accordance with the terms of this agreement;
- H. The mere non-renewal or extension of a temporary employee, termination of a temporary appointment due to reduction in force, and any other termination of the appointment of a temporary employee in accordance with applicable policy, law and this Agreement;
- I. Separation of a term, trial or excepted service employee in accordance with applicable policy, regulation, law, or this Agreement.

#### **Section 4. Other Applicable Procedures**

- A. The following actions may be filed either under the appropriate statutory procedure or under the procedure outlined in this Article, but not both:
  - (1) Actions based on unsatisfactory performance (5 U.S.C. 4303);
  - (2) Adverse Actions (5 U.S.C. 7512);
  - (3) Prohibited Personnel Practices (5 U.S.C. 2302 (b) (1));
  - (4) A formal EEO complaint (29 C.F.R. 1614).
- B. Nothing in this Agreement shall constitute a waiver of any further appeal or review rights permissible under 5 U.S.C. Chapter 71.
- C. An employee shall be deemed to have exercised his/her option under this section when he/she timely initiates an action under the applicable statutory procedure or files a timely grievance in writing under the negotiated grievance procedure in this Article, whichever occurs first.
- D. Employees who have sought informal EEO complaint counseling may still file a grievance, provided that such grievance is initiated within forty-five (45) days of the event or non-event which caused the grievance to be filed, and no formal EEO complaint has been filed. Per 29 C.F.R. Part 1614, initiating one formal process precludes the use of the other.

## **Section 5.**

Only the employee or a representative designated by the Union may be the representative in a grievance under this procedure.

- A. If an employee chooses to represent him/herself, the Agency will: (1) provide the Union with a copy of the grievance within one workday of receiving the grievance; (2) provide the Union with advance notice of each meeting between the grievant and the Agency; (3) afford the Union the right to be present at all stages of the process; and (4) provide the Union with copies of Agency written grievance responses and/or settlement agreements/written resolution. Any resolution of the grievance must comply with the terms and conditions of this Agreement, including any applicable supplements, amendments, or Memoranda of Understanding.
- B. If the Union is the grievant's designated representative, the employee will so state in writing at the initial filing of the grievance. Communications under this procedure shall be directed to the representative designated by the Union. Any changes to that designation also will be in writing. Each Party shall have a representative available to meet referenced grievance filing time frames. Extensions may be granted by mutual agreement of the Parties.

## **Section 6.**

- A. A grievance must be filed initially within thirty (30) days of the date of the matter, incident or issue out of which the grievance arose or thirty (30) days after the date the grieving party or person should have been aware of the matter, incident or issue. The use of the word "day(s)" will be interpreted as calendar days. A step of the grievance procedure can be waived by mutual agreement of the Parties.
- B. Requests for extensions to the time limits for filing must be submitted, in writing, to the other Party prior to the expiration of the applicable time limit. Requests for extensions of time limits shall be considered upon receipt of a written request and justification. A written decision will be provided to the requesting Party. If the Agency fails to comply with the time limits at any step of the grievance process, the grievance may be advanced to the next step of the process.
- C. The Agency will provide timely and appropriate responses to information requests from the Union consistent with 5 U.S.C. Section 7114.

## **Section 7.**

A reasonable amount of official time during work hours will be allowed for employees and Union representatives to discuss, prepare for, and present grievances including attendance at meetings with Agency officials concerning the grievance.

## **Section 8. Employee Grievance Procedure**

### Informal Grievance:

The Parties recognize that grievances may arise from misunderstandings or disputes that can be resolved promptly and satisfactorily on an informal basis.

At the election of the employee or his/her representative, an employee complaint may be brought to the supervisor or appropriate management official with authority to resolve the matter in an attempt to resolve the matter informally. The supervisor or appropriate Agency official will provide a written response within five (5) work days of the matter being brought to their attention under this Section. If a matter is not resolved in this manner, the employee or his/her representative, may file a grievance in accordance with the procedures set forth herein. At the election of the employee or his/her representative, this informal process may be bypassed. An election to pursue resolution informally does not toll the required time frames for filing a formal grievance. However, an extension may be granted by mutual agreement of the Parties.

If the dispute cannot be resolved informally or the employee or his/her representative chooses to forego the informal meeting described above, the following formal process must be used:

### Formal Step 1

- A. An employee will present his/her grievance in writing to the immediate supervisor, unless the immediate supervisor does not have the authority over the matter grieved. In that case, the employee will present his/her grievance to the Agency official at the level having the necessary authority.
- B. The employee must state specifically that he/she is presenting a grievance; the personal relief sought; the name, organizational unit and location of the aggrieved; a statement of the items, regulations or agreement alleged to have been violated, citing specific paragraphs or articles; designation by name of the Union representative or statement of self-representation. The grievance must be signed and dated.
- C. Within fifteen (15) calendar days after receipt of the grievance, the step 1 deciding official will issue a written decision. If the grievance is denied, the response will include the name of the Step 2 Agency official who has the authority to resolve the matter. The Agency's failure to respond to the grievance within the specified time frames, or as mutually agreed to by the Parties, will automatically advance the grievance to the next step.

### Step 2

- A. If the matter is not satisfactorily settled following Step 1, the aggrieved employee and/or his/her representative, if any, may, within fifteen (15) calendar days of notification of denial or the date that a response should have been received, present the matter in writing to the Step 2 Agency official identified in the Step 1 decision. The grievance will

contain the information submitted in Step 1 plus the Agency response at Step 1.

B. The Step 2 Agency official shall issue a written decision on the grievance within thirty (30) calendar days of receipt of the grievance. If the grievance is not satisfactorily settled, the Union may refer the matter to arbitration in accordance with the procedures set forth in the Arbitration Article.

C. If at any time during the processing of a grievance a settlement agreement is accepted by the employee or his/her designated representative, the agreement shall be in writing and the grievance shall be withdrawn in its entirety upon execution of the settlement agreement.

### **Section 9. Grievance of the Parties**

A. Should either Party have a grievance concerning institutional rights granted by law, regulation or this Agreement, it shall inform the designated representative of the other Party of the specific nature of the complaint in writing, as well as any provision of law, rule, or regulation allegedly violated, and the relief sought, within thirty (30) days of the date of the matter, incident or issue being grieved, or the date the Party reasonably should have been aware of the matter, incident or issue. The grieving Party will file the grievance with the designated representative of the other party at the level of recognition.

(1) A local matter will be filed with the designated local representative of the other Party; or

(2) A national matter will be filed with the designated national level representative.

B. Within thirty (30) calendar days after receipt of the written grievance, the receiving party will send a written response stating its position regarding the grievance. If the matter is not resolved, the grieving party may refer it to arbitration in accordance with Article 44.

### **Section 10. Alternative Dispute Resolution (ADR)**

A. Alternative Dispute Resolution (ADR) may be used to promote principles and practices that will contribute to an improved working relationship either before or during the processing of a grievance. The ADR process demonstrates a commitment to a positive approach and joint ownership of concerns and solutions. It is intended to resolve disputes quickly and informally.

B. The ADR program will be guided by the following principles:

(1) The employee grievant or his/her representative may opt to use the ADR process at any time during the grievance procedure prior to the Step 2 decision.



(2) Any request for ADR must be filed to the Agency's designated representative in writing prior to the expiration of any controlling time frame in the grievance process.

(3) If a matter is not resolved through ADR, the grievance will continue through the grievance process, beginning at the step where the Party first made a request for ADR. (If the grievant already filed a step 2 grievance and was waiting a reply, the process resumes where it left off.)

(4) This process does not take away statutory rights.

(5) ADR is purely voluntary on the part of the Employee. Participation is open to all aggrieved Parties, i.e., employees, Union and Agency.

(6) ADR is confidential. The Parties to the ADR process will be advised that the contents of the mediation discussion are confidential. All notes will be destroyed at the close of mediation.

(7) All ADR Settlement Agreements signed by the Parties to the ADR are binding on the Parties and will be recorded. Each Party will be provided a copy of the ADR Settlement Agreement. Copies of agreement with original signatures will be maintained by both Parties.

(8) Any issue subject to the grievance procedure may be considered for ADR.

(9) The Parties agree to educate employees on the ADR process.

(10) If ADR is requested, time frames of the grievance process are tolled until the ADR process is completed.

(11) The ADR process will be completed within 30 (thirty) days.

C. ADR procedures, expenses, and choice of mediators, shall be subjects for local level negotiations.

## **Article 23: Arbitration**

### **Section 1.**

Only the Union or the Agency may refer to arbitration any grievance that remains unresolved after the final step under the negotiated grievance procedure. A notice to invoke arbitration shall be made in writing, by hard-copy or by electronic mail, to the opposite Party within thirty (30) calendar days of receipt of the written decision rendered in the final step of the grievance procedure.

### **Section 2.**

The Party desiring to submit the grievance to arbitration shall request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven (7) impartial qualified persons to act as arbitrators. The Parties shall meet within five (5) days after receipt by both Parties of the list of Arbitrators. If they cannot mutually agree upon one of the listed arbitrators, the Parties will each strike three (3) names, and the remaining person will be the duly selected arbitrator. The flipping of the coin or other mutual agreeable means will be used to determine which Party will strike the first three (3) names. The initiating Party will pay the FMCS fee. If either Party refuses to participate in the selection of an arbitrator then the other Party may select the arbitrator.

- A. Once a final name is selected the Parties will sign the FMCS arbitration form letter and mail, fax or email it back to FMCS within ten (10) workdays. If electronic filing is used, the requesting Party shall submit the selection form to FMCS and provide a copy to the other Party. The parties will ensure that the listed names, addresses and phone numbers of the applicable Union and Management representatives and the arbitration issue are correct.
- B. The hearing with the arbitrator will normally be within sixty (60) days of the written notification to avoid arbitrating “stale” facts, dependent upon the arbitrator’s availability.
- C. Upon selection of an arbitrator, the representatives for the Parties will jointly communicate with the arbitrator and each other to select a mutually agreeable date for the hearing.

### **Section 3.**

Any extensions of the time limits in this Article must be mutually agreed upon by the Parties. Any request for an extension(s) must be in writing, specifically identifying which time frame in this Article the requested extension is for and the reason. A denial or agreement from the opposite Party must be in writing. These requests become part of the grievance file.

### **Section 4.**

- A. The cost of the arbitrator’s fees and expenses will be shared equally by the Parties.

- B. The Union and the Agency shall each be allowed up to two (2) representatives to present its case; additional representatives may be permitted on an equal basis only, by mutual agreement of the Parties.
- C. In arbitration hearings involving a single named grievant or multiple named grievants from a single duty station, if the hearing is not held at the grievant(s) official duty station, the Agency shall pay travel expenses and per diem, as authorized by law and regulations, for:
- The single named grievant, or
  - Multiple named grievants from a single duty station, and
  - One union representative employed at the same official duty station as (a) or (b) immediately above.

The Agency shall not be required to pay these costs if the Agency agreed in writing to conduct the hearing at the official duty station.

- D. The Parties shall determine the location of hearings on national Grievances of the Parties filed by Council 238 on a case by case basis by mutual agreement. In the event the parties cannot agree on a location, location disputes shall be resolved by an arbitrator. The arbitrator shall be selected on an alternating basis from a Washington D.C. area FMCS list and a list from the official duty station of the President of Council 238. The arbitrator's decision shall not be decided based on personal appearance, but using an alternative method as specified by the arbitrator (e.g. paper submission, telephone /video conference). The Arbitrator shall make his/her decision on how he/she would like to have the issue of location presented based on position statements submitted separately by the Parties. Position statements to the Arbitrator on the issue of how the Parties should present the case to the Arbitrator shall be mailed to the Arbitrator and to the other Party within thirty (30) calendar days of the selection of the Arbitrator.

**Section 10.**

The Agency will make its presentation first in disciplinary and adverse action cases. In all other issues, the Party requesting the arbitration will make its presentation first in the hearing.

**Section 11.**

The arbitrator will be requested to render his/her decision as quickly as possible, but in any event not later than thirty (30) days after the conclusion of the hearing or closing of the hearing record, including submission of briefs, unless the Parties agree to extend the time limit.

**Section 12.**

When the Parties mutually agree to an expedited arbitration, the arbitrator may render a decision at the close of the proceedings. Such bench decisions will have no precedential value with regard to future grievances or arbitrations.

**Section 13.**

Arbitration hearings may be bifurcated (separated into two parts) only by mutual agreement of the Parties.

**Section 14.**

The arbitrator's award shall be binding on the Parties; however, either Party may file an exception with the Federal Labor Relations Authority under regulations prescribed by the Authority. The filing of an exception to the Authority will serve to automatically stay the implementation of the award until the exception is disposed of under the terms of this section.

**Article 24: Supplemental Agreements and Other Negotiations During the Life and Term of  
This Agreement and Designated Representatives of the Parties**

**Section 1.**

The Parties agree that the circumstances under which negotiations are appropriate during the life and term of this Agreement are included and described below:

- A. At the Union's option, when the Agency, at any level, proposes a change in the substance of an otherwise negotiable personnel policy, practice or working condition not part of this Agreement;
- B. At the Union's option, when the Agency, at any level, exercises a management right and the impact of that decision creates adverse impact on bargaining unit employees;
- C. At either option, local level negotiations on matters delegated to the local level by this Agreement;
- D. By mutual consent, a reopening of this Agreement; and
- E. At a local level, a single supplemental agreement; on matters not set forth in (A) through (D) above by mutual consent of the Parties at that local level.

**Section 2.**

In situations (A) and (B) described in Section 1, the Agency will notify the authorized agent of the Union in advance in writing of the proposed change or management decision and its impact. (It is understood that the Agency is not required to negotiate its decisions which do not adversely affect the bargaining unit.) The Agency will notify the authorized agent of its decision and date of implementation. When negotiation is desired, the authorized agent will indicate his/her desire to enter into negotiations by advising the authorized Agency representative in writing within ten (10) days from receipt followed by written proposals within fourteen (14) days from receipt. Upon request, the Agency will explain the proposed change or management decision and its impact to the designated union representative.

**Section 3.**

In situations (C) and (D), the party desiring negotiations will so indicate by presenting written proposals to the authorized representative of the other party.

**Section 4.**

In situation (E) the party desiring to negotiate will present its proposals in their entirety to the other party. Within fifteen (15) working days, the other party will present any proposals on subjects not covered by the initiating party's proposals. Within ten (10) working days after

presentation of those proposals each party will indicate in writing whether it desires to enter into negotiations. If both parties agree, a written signed document to that effect will be sent to the respective national level representatives and negotiations may proceed. Supplemental Agreements must conform to the provisions of Section 5 of the Duration Article.

#### **Section 5.**

The parties agree to recognize each others duly authorized representatives. At each location, the parties shall designate an authorized agent. At the Agency and national levels, the parties shall designate an authorized representative. All dealings between the parties shall take place between the appropriate authorized representatives unless an authorized representative designates another individual to act in his or her place. Understandings reached by unauthorized individuals will have no force and effect unless approved by the authorized representative of the parties. The parties will advise each other of their respective authorized representatives at the local levels at least annually. The parties will notify each other of their authorized Agency or national level representative in writing and such authorization will remain in effect until revoked.

#### **Section 6.**

Nothing in this Agreement precludes the Agency, at its explicit election, from negotiating on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work.

#### **Section 7.**

Where appropriate, the parties will negotiate ground rules for bargaining of issues arising from the operation of this Article which are at the national level. Where an employee/union representative's travel would be in the primary interest of the Government, the payment of those travel expenses may be negotiated by the parties in ground rules bargaining.

#### **Section 8.**

In all preparations, negotiations and other activities arising under this Agreement, the parties will be aware of their obligation to the public to conduct such activities in the most cost efficient and cost effective manner.

#### **Section 9.**

Existing conditions of employment not in conflict with law or provision of this Agreement will remain in effect.

#### **Section 10.**

An equal number of union representatives as management representatives shall be authorized official time while engaged in local negotiations.

## Article 25: Employee Rights

### Section 1. General

All agency employees shall be treated with mutual respect, which means a workplace free of discriminatory harassment. The Agency will comply with all laws and Government-wide regulations prohibiting discrimination against employees on the basis of race, color, religion, national origin, sex, union activity, political affiliation, marital status, age, sexual orientation, a qualified person with a disability and genetic information. EPA also will not tolerate harassment of any type. Assignment of work by a supervisor, a difference of opinion, a disagreement on a work-related matter, or any other similar communication that is expressed in a professional manner, are not considered harassment. The Agency will comply with the Privacy Act of 1974. The Agency will comply with employees' rights under the United States Constitution. The Agency will consider impacts on employee morale, as it exercises its right to ensure that its mission is accomplished in an effective and efficient manner.

### Section 2. Right to Union Membership

Pursuant to 5 U.S.C. Section 7102:

*“Section 7102 Employee rights*

*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 this chapter, such right includes the right--*

*(1) 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 heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and*

*(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.”*

Employees temporarily assigned to a managerial or supervisory position or a position outside the bargaining unit may not serve as a Union representative and are temporarily outside of the bargaining unit.

### Section 3. Right to Private Lives

Employees shall have the right to pursue their private lives, personal welfare and personal beliefs without interference, coercion or discrimination by the Agency if those activities do not conflict with any applicable law, Government-wide regulations, and Agency rules, regulations, policies, directives, guidance and manuals; and if such activities do not conflict with job responsibilities. Prior to making changes to Agency rules, policies, directives, guidance and manuals which constitute negotiable changes in conditions of employment under 5 USC 7103(a)(14) the Agency will provide notice to the Union and negotiate per the Mid Term Negotiations Article of this Agreement (Article 18).

#### **Section 4. Merit Systems Principles**

As required by 5 U.S.C. 2301(b) (1) through (9), the Agency's personnel management program will be implemented consistent with the following merit system principles *quoted verbatim*:

*(1) 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.*

*(2) 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.*

*(3) 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.*

*(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.*

*(5) The Federal work force should be used efficiently and effectively.*

*(6) 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.*

*(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.*

*(8) Employees should be—*

*(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and*

*(B) 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 election.*

*(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—*

*(A) a violation of any law, rule, or regulation, or*

*(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.*



## **Section 5. Prohibited Personnel Practices**

The following personnel practices are prohibited pursuant to 5 U.S.C. 2302(b)(1) through (14) and are *quoted verbatim*:

- (1) *discriminate for or against any employee or applicant for employment—*
  - (A) *on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);*
  - (B) *on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);*
  - (C) *on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));*
  - (D) *on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or*
  - (E) *on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;*
  
- (2) *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 the personal knowledge or records of the person furnishing it and consists of—*
  - (A) *an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or*
  - (B) *an evaluation of the character, loyalty, or suitability of such individual;*
  
- (3) *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;*
  
- (4) *deceive or willfully obstruct any person with respect to such person’s right to compete for employment;*
  
- (5) *influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;*
  
- (6) *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 for any position) for the purpose of improving or injuring the prospects of any particular person for employment;*
  
- (7) *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 section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section*

3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;

(8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—

(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

(i) any violation of any law, rule, or regulation, or

(ii) gross 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 and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs;  
or

(B) any disclosure to the Special Counsel, or to the Inspector General of an 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—

(i) any violation (other than a violation of this section) of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—

(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation—

(i) with regard to remedying a violation of paragraph (8); or

(ii) other than with regard to remedying a violation of paragraph (8);

(B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A)(i) or (ii);

(C) cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

(D) refusing to obey an order that would require the individual to violate a law, rule, or regulation;

(10). 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 in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness 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;

(11) (A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or

*(B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement;*

*(12) 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 section 2301 of this title;*

*(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of 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, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling." ; or*

*(14) access the medical record of another employee or an applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13). This subsection shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress. For purposes of paragraph (8), (i) any presumption relating to the performance of a duty by an employee whose conduct is the subject of a disclosure as defined under subsection (a)(2)(D) may be rebutted by substantial evidence, and (ii) a determination as to whether an employee or applicant reasonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.*

## **Section 6. Additional Principles**

The Union and the Agency further agree to the following principles:

- A. Assign Work and Direct Employees: This Agreement is not to be interpreted or applied by the Union or by an arbitrator to prevent, limit or interfere with management's reserved right to assign work, including determining the method and manner to assign work and direct employees, except as provided by 5 USC 7106(b)(2) and (3).
- B. Working Conditions: This Agreement is not to be interpreted or applied by the Union or by an arbitrator to prevent, limit or interfere with management's reserved right to

determine the day-to-day circumstances under which an employee *performs his or her job*.

- C. Service of a Warrant or Subpoena: If an employee is to be served with a warrant or subpoena, to the extent it is within the Agency's control, the service will be done in private without the knowledge of other employees.
- D. Supervisory Instructions and Orders: Employees are expected to follow all lawful supervisory instructions and orders. The employee may discuss an instruction or order with the employee's supervisor to address conflicting instructions, questions or concerns. The employee is not excused from timely following the instruction or order unless otherwise directed to do so by the supervisor. In the case of an emergency or inability to communicate with the supervisor, the employee is expected to act with appropriate prudence and responsibility.
- E. Personal Belongings and Agency Equipment: The Agency is not responsible for personal belongings brought to the workplace by an employee. Employee's personal belongings may not be searched without reasonable suspicion and notice. All furniture and equipment furnished by the Agency for an employee's use in carrying out the employee's duties is the property of the Federal government and may be: (1) recalled by the Agency at any time without notice; and (2) may be searched by the Agency at any time without notice.
- F. Resign/Retire: An employee may resign or retire at any time, to set the effective date of his/her resignation or retirement, and to have his/her reasons for resigning/retiring entered in his/her official records. An employee may request to withdraw his/her resignation/retirement at any time before it has become effective. The Agency may accept or deny an employee request to withdraw a resignation/retirement before its effective date. An employee will be informed of the reason(s) when a request to withdraw a resignation/retirement is denied. Reasons to deny a request include, but are not limited to, administrative disruption, the hiring or plans to hire a replacement, the acceptance of a VERA/VISP signified by submitting retirement forms to HR, and the presence of an executed settlement agreement.
- G. Methods to Evaluate Employees: This Agreement is not to be interpreted or applied by the Union or by an arbitrator to prevent, limit or interfere with management's reserved right to determine the methods it will use to evaluate employees.
- H. The Agency will make every reasonable effort to continue to provide for the secure storage of personal belongings. When new furniture is installed, the furniture will contain lockable, secure space for storage of personal belongings.
- I. No Recording Protected Union Activity: No recording will be made without mutual consent by the Agency or by the Union or by a unit employee of any conversation involving 5 U.S.C. 7102 protected Union activity.

- J. Recording Other Conversations: No recording will be made without mutual consent by the Agency or by the Union or by a unit employee of any conversation involving any management official involving work related matters, except for Inspector General Investigations, or other law enforcement investigations conducted by the Agency or agencies outside of the Agency. When a transcript is made from a recording, except for Inspector General Investigations, or other law enforcement investigations conducted by the Agency or agencies outside of the Agency, the employee will be given the opportunity to review the transcript for accuracy and the employee will be provided a copy of both the tape and the transcript if any. Information obtained in conflict with this section will not be used as evidence against any employee. This provision does not apply to the video taping of training sessions.
  
- K. Outside Employment: Employees may work at outside employment only when consistent with applicable law, Government-wide regulations, and Agency rules, regulations, policies, directives, guidance and manuals; and if such activities do not conflict with job responsibilities, and do not raise a real or an apparent conflict of interest. Prior to making changes to Agency rules, policies, directives, guidance and manuals which constitute negotiable changes in conditions of employment under 5 USC 7103(a)(14) the Agency will provide notice to the Union and negotiate per the Mid Term Negotiations Article of this Agreement (Article 18). When Agency approval of outside employment is required, the Agency agrees to approve or disapprove an employee's written request to engage in outside employment within a reasonable timeframe. The Ethics Officer or designee will respond in writing and if the request is denied, the reason for the doing so will be included.

**Section 7. Right to Obtain Information**

- A. Right to Voice Concerns: An employee may discuss a condition of employment or potential grievance with a Union representative per the procedure in Article 19.
  
- B. Work Related or Personnel Related Issues: An employee may discuss work related or personnel related issues with the Union, their supervisor the Human Resources Office, the Equal Employment Opportunity Office, and the Payroll Office.

**Section 8. Right to Representation**

In matters under the negotiated grievance procedure in Article 19, an employee may only be represented by him/her self or by a Union representative. Except as provided by this Agreement and applicable law, Government-wide regulations, and Agency rules, regulations, policies, directives, guidance and manuals, an employee is not entitled to be represented in conversation with any Agency official concerning work-related or personnel related matters. This Section does not prohibit Union representation in matters where all parties agree to such involvement.

**Section 9. Right of Access to Documentation**

The Agency will maintain and utilize records covered by the Privacy Act of 1974 in accordance with that law. Employees may review and/or copy the records and/or make comments and recommendations on corrections with regard to the records maintained under the Privacy Act of 1974 as provided for in that law. As workload permits, employees shall be granted a reasonable amount of duty time to perform these activities during their regular work hours.

### **Section 10. Participation in Voluntary Activities**

Employees have the right to participate or decline to participate in voluntary activities publicized by the Agency. The Agency will not require or coerce employees to participate in any way in voluntary activities. Employee participation or non-participation in any of voluntary activities will not be a consideration in any work related or personnel related matter.

### **Section 11. Right to Debt Collection**

The Agency will comply with: 5 C.F.R. Part 581 regarding Processing Garnishment Orders for Child Support and/or Alimony, and 5 C.F.R. Part 582 regarding Commercial Garnishment. The Agency agrees to hold in confidence all matters related to this Section. Notice to employees regarding debts will be sent in accordance with applicable law and regulation.

### **Section 12. Right to Proper Payment**

The Agency will comply with applicable Government-wide regulations, including 5 C.F.R. 5584 and Agency regulations and polices regarding: the delivery of employee pay; overpayments; waiver of overpayment and underpayments. When an employee becomes aware of an overpayment, it is the responsibility of that employee to notify the Agency of the overpayment immediately. If an employee notifies the Agency that they have been overpaid, the Agency will explain to the affected employee the circumstances of the overpayment and will explain the process for completing a Request for Waiver of Claim for Erroneous Payment.

### **Section 13. Right to Notice of Benefits**

- A. Notices: The Agency will notify employees using electronic messaging systems designed to send individual notification regarding OPM announcements of the following events:
- (1) Open season for the Thrift Savings Plan;
  - (2) Open season for Federal Employee Health Benefits (FEHB);
  - (3) How to obtain copies of FEHB provider brochures;
  - (4) Discontinued service by an FEHB provider;
  - (5) Open season for Federal Group Life Insurance.

B. FEHB and Non-Pay Status: The Agency will comply with applicable law and Government-wide regulations regarding the coverage under the FEHB when an employee is on a non-pay status.

## Article 26: Dues Deductions

### Section 1. Eligibility

To be eligible to make a voluntary Union dues allotment, an employee must:

- A. Be an employee in the unit covered by this Agreement;
- B. Be a member in good standing with the Union;
- C. Have a net salary, after other legal and required deductions, sufficient to cover the amount of authorized allotments; and
- D. Submit an SF-1187, Request and Payroll Deduction for Labor Organization Dues, to a designated Union representative.

### Section 2. Withholding

As authorized by Title 5 United States Code (U.S.C.) § 7115, employees may have their Union dues withheld through payroll deductions as governed by this Article.

### Section 3. Dues Withholding

The Agency's payroll/HR system provider allows for electronic distribution of an employee's allotment to AFGE National (Washington D.C.) the amounts may vary from local to local as well as within a local.

### Section 4. Responsibilities of the Union

The Union shall:

- A. Regular Dues: Submit SF-1187 allotment for only those dues which are the regular and periodic dues required by the Union for that employee; Initiation fees, special assessments, back dues, fines, and similar items are not considered dues and shall not be deducted;
- B. Forms: Provide forms SF-1187, Request and Payroll Deduction for Labor Organization Dues, to employees;
- C. SF-1187: State on the SF-1187 the allotment amount to be withheld each bi-weekly pay period;
- D. SF-1187's: Promptly sign and forward properly completed SF-1187 forms to the Human Resources Office for submission to the payroll office;
- E. Authorized Union Officials: Furnish a written statement to the Agency's payroll office, listing the names and titles of local Union officials authorized to sign the form SF-1187;



F. Notice to Agency of Changes: Provide the Agency's payroll office, via the Human Resources Office, with written notification concerning:

- (1) Changes in the amount of Union allotments at least 60 days before the pay period in which the change is requested. The amount of dues withheld cannot be changed more than once per year.
- (2) Changes in the Union officials who are authorized to certify and submit SF-1187.
- (3) Any change in the bank routing number and/or account number used by the Union for the receipt of dues allotments.
- (4) The name of any employee who has been expelled or ceased to be a member in good standing with the Union within 15 calendar days of the date of final determination.

### **Section 5. Agency Responsibilities**

The Agency agrees to:

- A. Withhold dues on a bi-weekly basis, at no charge to the Union;
- B. Within ten (10) days of the close of each pay period, transmit employee dues withholdings to the bank account designated by the Union.
- C. Promptly forward to the designated Union officials copies of SF-1188s received directly from Union members before processing;
- D. The Agency will neither encourage nor discourage union membership; it will not interfere with employees' right to pay, withhold or revoke union dues

### **Section 6. Processing Steps to Effect Allotment Withholding**

Bargaining unit members, who decide to join the Union, may have their dues, fees and assessments, known collectively as allotments, withheld by payroll deduction by properly completing a form SF-1187 and submitting it to officials designated by the Union. These Union officials will certify the form and include the amount of allotment to be withheld. The Union will forward the certified form SF-1187 to the Agency Human Resources Office for transmittal to the payroll office for processing. Allotments will be withheld by the Agency beginning the first bi-weekly pay period after receipt by the payroll office.

### **Section 7. Revocation of Allotments**

- A. As required by 5 U.S.C. § 7115(a), employees may not revoke their dues withholding for at least one (1) year after the first deduction.

- B. Employees may submit to the Human Resources Office a SF-1188, "Cancellation of Payroll Deductions For Labor Organization Dues" to cancel dues at any time after their first anniversary date.
- C. "Anniversary date" means the documented date of the first deduction of union dues via payroll deduction. For individuals who were members prior to the effective date of this Agreement, and evidence of an anniversary date was not in the Agency's records, the "anniversary date" is September 18<sup>th</sup>.
- D. If the employee believes the anniversary date of record is in error and they have such evidence (i.e. earnings and leave statement, etc.), they should attach it to any SF 1188 submitted to the Human Resource Office.

**Section 8. Reinstatement of Allotment Withholding**

- A. When the employee is temporarily detailed, reassigned or promoted to a position outside the bargaining unit, the Union allotment withholding will restart automatically when the employee returns to their position in the bargaining unit.
- B. When an employee previously on dues allotment returns to pay status from non-pay status, the Agency will automatically reinstate the allotment withholding at the rate in effect at the time the employee returns to pay status. The Agency is not normally responsible for additional dues withholding when/if an employee returns from a non-pay status. The only exception is in the case of a furlough where employees later receive backpay. In that case, the Agency will calculate and retroactively collect any Union dues which would have been paid during the furlough period.

**Section 9. Correction of Errors**

- A. Under-Withholding - Any substantiated under-withholding errors made by the Agency shall be corrected as soon as practical after the error is discovered by the Agency or after the Agency has received a written notification from the Union's designated representative of the error.
- B. Correcting Under-Withholding - If an under-withholding occurs, the Agency will provide the employee with a written explanation that indicates the additional amount to be withheld each pay period and paid to the Union and the number of pay periods over which the additional amount will be withheld to correct the error.
- C. Over-Withholding - If the Agency, through an administrative error, does not process an approved SF-1188 timely (or otherwise over-collects from the employee), and the Union collects more dues than is authorized, the Union will be responsible for re-payment of the over-collected amount to the employee.

**Section 10. Continuation of Existing Agreements. -**

Employees who have a current dues withholding agreement in effect on the date this Agreement is effective need not execute a new SF 1187 to come under the provisions of this Agreement.

### **Section 11. Changes to Existing Regulations**

Should 5 CFR 2429.19 change the requirement to permit Union members to submit 1188s any time after their first anniversary, then Section 7B of the Interim MCBA (2020 MCBA language) will be replaced with Section 7C and the first sentence of 7D from the 2007 MCBA Dues Article.

## **Article 27: Alcohol and Drug-Free Workplace**

### **Section 1. Purpose**

The Agency will administer its Alcohol and Drug-free Workplace program in cooperation with the Union in accordance with this Agreement and all applicable laws, regulations, and rules including Executive Order 12564 dated 9/15/1986, EPA Order 3120.3A dated 3/18/1980, and US EPA Drug-free Workplace Plan (1000) dated 1/16/1998.

### **Section 2. Agency Responsibilities**

It is the responsibility of EPA Management to take disciplinary and/or adverse action when the use of alcoholic beverages and/or drugs impairs an employee's performance, attendance or conduct, when an employee uses federally illegal drugs on or off duty, or when an employee possesses federally illegal drugs on duty or in a federal facility.

Disciplinary action is not required if an employee:

- A. Voluntarily admits his/her drug use before being:
  - (1) identified by other means, or
  - (2) notified to report for a drug test; and
- B. Thereafter, obtains counseling or rehabilitation through EAP or other approved health care provider; and
- C. Thereafter refrains from illegal drug use. To ensure that such employees do refrain from illegal drug use they will be subject to testing on a more frequent basis as stipulated in §X(C) of the US EPA Drug-Free Workplace Plan dated 1/16/98.

It is the responsibility of the Agency to refer any employee who is found to use federally illegal drugs to an Employee Assistance Program for assessment, counselling, and referral for treatment or rehabilitation as appropriate.

EPA shall not allow any employee to remain on duty in a sensitive position who is found to use illegal drugs, prior to successful completion of rehabilitation through the Employee Assistance Program or other approved rehabilitation program. However, as part of a rehabilitation or counselling program, the head of an Executive agency may, in his or her discretion, allow an employee to return to duty in a sensitive position if it is determined that this action would not pose a danger to public health or safety or the national security.

### **Section 3. Employee Responsibilities**

As a condition of continued employment, employees must refrain from the use of federally

illegal drugs, on or off duty, and the possession of federally illegal drugs on duty or in a federal facility. Employees must refrain from the use of alcohol while in a duty status, and/or being under the influence of alcohol while in a duty status. The only exception to this standard is when alcohol consumption is approved by management at an agency-sanctioned event.

Employees who suspect that they have a drug or alcohol problem are encouraged to voluntarily seek information and counselling through the Agency EAP or other approved health care provider on a confidential basis at the earliest opportunity. It is agreed that employees will not be subject to discipline for self-reporting as set forth in Section 2a – c above, unless there has been other misconduct for which discipline would normally be appropriate. An employee's cooperation of availing himself or herself of professional health care assistance may be considered by the Agency when proposing or deciding disciplinary action related to the conduct or performance of the employee due to the use of drugs and/or alcohol.

#### **Section 4. Random Testing of Employees in a Testing-Designated Position**

- A. The Agency will designate positions subject to random drug testing referred to as Testing-Designated Positions (TDP). If an employee's position is changed to a TDP, the employee will be notified in writing at least 30-days prior to the change. Such notices will include at a minimum:
  - (1) That the employee is subject to mandatory random testing;
  - (2) The consequences of a positive result or refusal to cooperate, including adverse action;
  - (3) That after any confirmed positive drug test there will be an opportunity for them to submit supplemental medical documentation to support the legitimate use of a specific drug;
  - (4) That drug and alcohol abuse counseling and referral services are available through the employee Assistance Program (EAP). The employee can seek counseling and or treatment voluntarily prior to testing without reprisal. The notice will contain information on how to contact the EAP.
- B. Bargaining unit employees selected for random testing will be selected randomly on the basis of neutral criteria. The basic required random testing program shall not be used to single out any individual employee or group of employees for increased frequency of testing.
- C. An employee who is selected to report for random drug testing shall be notified orally two (2) hours prior to the time he/she is to report. Whenever possible, this oral notification will be confirmed promptly by electronic mail. Oral notification will be made as discretely as possible. The employee will be provided the following information at a minimum:
- D. That he/she was randomly selected and is not under suspicion of taking illegal drugs;

- (1) Where and when to report for testing;
- (2) The consequences of refusing to report for testing, including possible removal;
- (3) The employee will be required to sign in at the collection site and provide a picture identification.

## **Section 5. Reasonable Suspicion Testing**

A. Reasonable suspicion testing may be required of:

- (1) Any employee in a testing designated position (TDP) when there is reasonable suspicion that the employee uses federally illegal drugs, whether on or off duty, or
- (2) Any employee in any position when there is reasonable suspicion of on duty use or on duty impairment.

B. Prior to directing an employee to testing based on a reasonable suspicion that the employee uses federally illegal drugs, the supervisor ordering such testing will receive concurrence from a higher level official or authorized management official. A written statement will be prepared that will document the concurrence and articulate the reasons for testing.

## **Section 6. Methods and Procedures for Testing**

A. All drug testing will be conducted in accordance with the HHS scientific and technical guidelines. The methods and equipment used will meet the requirements set forth in the guidelines. The Agency agrees that the following procedure will be utilized to assure drug testing is reliable:

- (1) Affected employees will report to the designated location to be tested;
- (2) Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided;
- (3) Laboratory analysis will comply with the HHS technical guidelines in effect at the time of testing;
- (4) If sufficient volume of urine is not initially able to be provided the Agency will ensure that collection site personnel allow the employee a reasonable amount of time to produce a sufficient volume;
- (5) The collection, handling and transportation of all specimens will be in accordance with the HHS chain of custody procedures;

- (6) An authorized agent will collect all drug testing specimens.

**Section 7. Confidentiality and Safeguarding Information**

- A. All samples will be subject to a strict chain of custody in accordance with the HHS technical guidelines.
- B. Employees will be guaranteed confidentiality in all matters relating to drug and alcohol testing as set in Sections XII.A and C of the US EPA Drug-Free Workplace Plan dated 1/16/98.
- C. Employees will be given access to all records relating to his/her drug and/or alcohol test.

**Section 8. Counseling and Rehabilitation**

- A. Employees whose tests have been confirmed positive will be referred to the Employee Assistance Program, which provides counseling services at no cost to the employee.
- B. When feasible, the services of the EAP will be offered at no cost to family members of employees with substance abuse problems and offered to employees who have family members with substance abuse problems.

## **Article 28: Health and Safety**

### **Section 1.**

It is recognized that the health and safety of the employees is a mutual concern of the Agency and the Union.

- A. The Agency shall furnish to each employee a place of employment which is free from recognized hazards and provide a working environment consistent with appropriate health and safety standards and controlling laws.
- B. To ensure the greatest possible protection for employees in the workplace, Personal Protective Equipment (PPE) shall be provided, maintained, and replaced by the Agency at no-cost to the employee. PPE shall be provided to employees whenever such equipment is determined to be required by a hazard assessment conducted in the workplace through a comprehensive safety and health program, and for protections against exposures to occupational hazards and risks, hazardous chemicals, biologicals or radiologicals which could cause illness or injury, as defined under OSHA, HHS, NRC and other applicable regulations. The Agency shall provide training as appropriate on the use and care of the PPE, maintaining PPE, and periodically evaluate the effectiveness of the PPE program.

### **Section 2. Employees**

- A. Shall comply with OSHA, EPA Occupational Safety and Health Standards, rules, regulations, Orders, and all other applicable Safety and Health regulations
- B. Are responsible to properly wear and use agency provided personal protective equipment (PPE) and other health and safety devices, attend PPE and safety training sessions, provide the proper care and routine cleaning to help maintain the PPE, and inform a supervisor of the need to repair or replace PPE.
- C. Shall follow the procedures, provided or as directed, necessary for their protection;
- D. Shall promptly report any work-related accidents, illnesses and near-misses to management; and
- E. May decline to perform assigned tasks because of 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. Such imminent risk may be caused by failure of the employer to provide appropriate protective clothing or equipment.



**Section 3.**

The Agency will take all reports of accidents, illnesses and near misses seriously. All such reports will be kept confidential as much as possible; and the Agency will

not retaliate against employees for reporting safety and health issues.

**Section 4.**

Employees may voluntarily participate in immunization programs when EPA provides or offers such services to employees.

**Section 5.**

The Agency agrees to provide the names and contact information for the Safety, Health and Environmental Management (SHEM) program coordinator at the applicable location and other officials having responsibilities in the Safety and Health program upon request.

**Section 6.**

The Agency agrees upon request to grant the Union access to any Safety Data Sheets (SDS) maintained or prepared by the Agency for chemicals to which bargaining unit employees may be exposed. The Agency agrees to implement the OSHA Hazard Communication Standard.

**Section 7.**

When a formal health and safety inspection is conducted by the Agency or Agency contractors on the Agency's premises, the Union will be notified in advance and, upon request, permitted to accompany the inspection team. This does not include routine inspections done by Facility personnel. For inspections from organizations outside the Agency, the Union will be notified as soon as practicable and permitted to accompany the outside inspection team. Safety precautions will be followed during inspections.

In responding to a specific health and safety concern, e.g., a bed-bug inspection after a report of bed-bugs or a mold inspection after a water leak, the Union will be notified in advance and, upon request, will be provided a briefing on the results of the inspection.

**Section 8.**

When the Agency cannot provide a work space consistent with Section 1.A above, it will make alternative arrangements which may include temporary relocation of employees or telework.

**Section 9.**

Where Union representatives formally join a Field Federal Safety Council, they can request official time to attend and participate in Council meetings during duty hours.

**Section 10.**

It is understood that some employees may be required to undergo an Occupational Medical Surveillance Program (OMSP) examination.

**Section 11.**

The Employer will conduct its Workers' Compensation program according to the requirements of Federal Employees' Compensation Act (FECA) as amended (5 U.S.C. 8101) and Title 20 C.F.R. Employees should report any work-related injury, illness, disease or death immediately to the Agency. These incidents should be reported to management, the local Safety and Health Manager and the Worker's Compensation Program Manager/Worker's Compensation Coordinator. The Employer will assist employees in applying for reimbursement from the Office of Workers Compensation Program (OWCP) for all expenses incurred in obtaining medical treatment, although the responsibility for filing all claims with the Employer resides with the employee.

**Section 12.**

The Agency will notify the Union when indoor air quality testing is being conducted. The Agency shall provide a report to the Union on the testing results and the quality

of air in agency work spaces where bargaining unit employees are located, upon request.

### **Section 13.**

Where available under existing public health or wellness programs, the Agency may offer the opportunity for employees not covered by the Occupational Medical Surveillance Program to participate in general physical examinations.

### **Section 14. Safety and Health Committees**

- A. A safety and health committee will be established at the national level. Safety and health committees will also be established at the local levels. These committees shall make recommendations to the appropriate authorities with regard to EPA occupational safety and health, in accordance with 29 C.F.R. Part 1960, Subpart F. Union officials can request official time to attend and participate in Safety and Health Committee activities and meetings.
- B. Each Safety and Health Committee will have at least one (1) Union representative appointed by the Union.
- C. The Parties agree that all confidential information will be protected and treated accordingly. It is understood that such committees are advisory bodies to management on health and safety issues. Union representatives on safety committees shall receive the same training opportunities that other committee members receive as a result of their membership on the committee.

### **Section 15.**

Upon request, pursuant to 5 USC 7114 (b)(4), the Agency must provide the Union a copy of testing results and all reports of Safety and Health inspections, accidents, indoor air quality, and occupational illnesses, unless prohibited by the Privacy Act or other applicable law. Any information given to the Union may be further sanitized or redacted by mutual agreement.

## **Article 29: Awards**

### **Section 1. Introduction**

The EPA award program reflects the Agency's commitment to promote continuous improvement in the Agency's performance. It is recognized that the use of both monetary and non-monetary awards has a significant effect on employee morale, motivation and performance. The EPA award program is an incentive program that provides recognition based on employee achievements that contribute to the Agency's mission. The EPA award program is intended to motivate and reward employees to continually strive for excellence. In addition, the program provides for monetary and non-monetary awards for suggestions, inventions and special acts of service or heroism.

### **Section 2. Authorities**

In the administration of all matters covered by this Article, the Union, the Agency and employees shall be governed by 5 C.F.R Parts 451 and 531; EPA Order 3130, this Agreement, and all other applicable policies and procedures.

### **Section 3. Additional Provisions**

Recognition will be granted in accordance with this Agreement, and all other applicable policies and procedures:

- A. EPA Awards Board. The EPA Awards Board shall include representation from AFGE.
- B. If local management elects to establish a local awards board which includes participation of bargaining unit employees, the Union will also be invited to participate and provide input to that board. Management will consider, and may elect to incorporate/accept, the Union's input.
- C. Awards Budgets. At the beginning of each appraisal period or as soon as available, information concerning the amount and allocation of the awards budget will be provided to the union. The Union will also be provided with periodic updates on the expenditure of awards budgets.
- D. Peer Awards. The nominator and nominee must have an established working relationship. The monetary amount will be determined by the recommending/approving official(s).
- E. Employee awards information, including names, award types and dollar amounts will be provided to the Council President and local union presidents on a quarterly basis. Such information will be electronically sortable by organization and location. This data will be treated by the union in a confidential manner. At least annually, each organization will electronically publish the names of award recipients and the types of awards they received.

## Article 30: Merit Promotion

### Section 1. Purpose

This Article shall be administered consistent with 5 U.S.C. Chapter 23. This article applies only to competitive service bargaining unit positions that the Agency chooses to fill through merit promotion vacancy announcements.

### Section 2. Definitions

- A. Best Qualified Candidates: Those eligible candidates who rank at the top of eligible applicants as evidenced by an assessment score of 90 and above, and who are referred to the selecting official on a Merit Promotion Certificate.
- B. Eligible Candidates: Those who meet the area of consideration and minimum qualification standards and possess all appropriate selective placement factors for a position.
- C. Promotion: The change of an employee to a position at a higher grade or pay level.
- D. Selective Placement Factors: Knowledge, skills, abilities, licensures, or certifications which are absolutely required because a person cannot perform successfully in the position without such qualifications.
- E. Selecting Official: The supervisor/manager who has authority to select an employee for assignment to a position.

### Section 3. Posting Vacancy Announcements

- A. Posting: The Agency will post merit promotion vacancy announcements on the Agency's automated hiring system for a minimum of five calendar days, except in the case of positions that consistently produce large applicant pools (i.e. 75 candidates or more) or that are being filled as an urgent need. These positions may be posted for less than five calendar days.
- B. Applications: In order to be considered, applicants must submit a complete online application package, including all required documents as specified in the job announcement, by 11:59 p.m. E.S.T. on the closing date of the job announcement.

### Section 4. Ranking and Referral of Candidates

The following is how the Agency will determine the qualified candidates. All candidates will be rated against applicable OPM qualifications as well as the qualifications and job assessment developed by the Agency during the recruitment process. The decision to use a qualification and job assessment and the content of each assessment is at the Agency's discretion and is not part of this negotiated Agreement, but is inserted for informational purposes only.

- A. Determining Best Qualified: Promotion-eligible candidates will be ranked according to the rating scores assigned to them by the automated hiring system. Promotion-eligible candidates

with a score of 90 and above will be referred to the selecting official.

## **Section 5. Interviews and Selections**

- A. Decision to Interview: When the selecting official or interview panel receives a merit promotion certificate from a competitive announcement, the selecting official or the interview panel may interview all, some or none of the referred candidates.
  
- B. Release of the Selected Employee: For an employee who has been selected for an internal position, the Agency will consider making the effective date no later than:
  - (1) One complete pay period for promotions, following the selectee clearing all requirements for the new position; or
  - (2) Two complete pay periods for reassignments, following the selectee clearing all requirements for the new position.
  
- C. When an employee is nearing the end of a waiting period for a within-grade pay increase, consideration will be given to releasing the employee at the beginning of a pay period on or after the effective date of the within-grade increase, provided such an action would benefit the employee.

## **Section 6. Employee Inquiry and Concerns**

When an employee has a question or concern about the merit promotion process, the employee may discuss it with an appropriate human resources representative.

## **Article 31: Position Description and Classification**

### **Section 1. Position Descriptions**

- A. A bargaining unit employee will be provided a current position description reflecting their principal duties and responsibilities, it will normally be uploaded to the employee's eOPF (or successor system) within 30 calendar days of assignment to a position. If the PD has not been uploaded within that timeframe, employees should contact their supervisor for a copy. Employees may discuss with supervisors any perceived substantial differences between the duties assigned or performed, and those contained in the position description. Occasionally, an employee may be required to perform "other duties as assigned" which are incidental to the principal duties and responsibilities of the position, that are impractical to include in the narrative portion of the position description, as well as duties which may be required in emergency situations, consistent with the Agency's mission.
- B. When permanent changes in the duties and responsibilities so warrant, the position description shall be amended or rewritten and submitted for classification in a reasonable time, generally within 30 calendar days.

### **Section 2. Union Notification**

- A. The Agency agrees to inform the Union when, due to reorganization, defined as an effort to transfer, consolidate, authorize, or abolish an organization, the Agency establishes new positions and /or is making significant changes in the duties and responsibilities of positions within the bargaining unit.
- B. The Agency agrees to inform the Union when OPM notifies the Agency of changes in position classification standards. From the time of notification the Union has ten (10) workdays to make recommendations and present supporting evidence thereto. The Agency will consider the Union's recommendations and upon request advise the Union of the results of its review.



## Article 32: Work Schedules

### Section 1. Purpose

This Article is designed to maintain and enhance the needs of the Agency, while at the same time, offering scheduling flexibility for individual employees. It reflects the recognition that employees have different personal and professional responsibilities which result in the options employees may request for differing work schedules.

### Section 2. Background

Public Law 97-221 permits the establishment of alternative work schedules (AWS) by modifying the premium pay and scheduling provisions of 5 U.S.C. Chapter 61 and the overtime provision of the Fair Labor Standard Act (FLSA). Hours of work for EPA employees shall be in accordance with applicable laws and regulations. If any provision of this Agreement is found to be contrary to law or regulation, the law or regulation will supersede that provision.

### Section 3. Definitions

- A. Administrative workweek: The period of seven consecutive calendar days beginning Sunday and ending Saturday. There are two administrative workweeks per pay period.
- B. Alternative work schedules (AWS): Includes Maxiflex and compressed work schedules (5/4/9 and 4/10).
- C. Basic work requirement: The basic work requirement is the number of hours, excluding overtime hours, an employee is required to work, or to account for, by charging leave, credit hours, excused absence, holiday hours, compensatory time off or time off as an award.
- D. Biweekly Pay Period: The two-week period for which an employee is scheduled to perform work, beginning on Sunday and ending on Midnight Saturday, 14 calendar days later.
- E. Compressed work schedule (CWS): 1) In the case of a full-time employee, an 80 hour biweekly basic work requirement that is scheduled by an agency for less than 10 workdays; and 2) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours that is scheduled by an agency for less than 10 workdays and that may require the employee to work more than 8 hours in a day. (5 U.S.C. § 6121(5).)
- F. Core hours: The days and hours all employees must be in a duty status and/or on approved absence. The core hours are 9:30 A.M. to 2:30 P.M., Monday through Friday for Maxiflex work schedules.

- G. Credit hours: The hours an employee elects to work, with supervisory approval, in excess of the basic work requirements under a Maxiflex work schedule.
- H. Regularly Scheduled Administrative Workweek: For a full-time employee, the period within an administrative workweek within which the employee is regularly scheduled to work. For a part-time employee, the officially prescribed days and hours within an administrative workweek during which the employee is scheduled to work.
- I. Work-Related Needs: Work-related needs include office staffing; office personnel not available to perform work; office coverage; work priorities; emergencies; time-sensitive assignments; work assignments; the need for team efforts; the need for meeting in person; and other operational needs that involve the work of the Agency.

#### **Section 4. Responsibilities**

A. Supervisors are responsible for:

- (1) Scheduling meetings or events, which require employee attendance. While not required, supervisors may consider scheduling meetings or events during core hours.
- (2) Approving/disapproving, changing, modifying or removing an employee from a specific work schedules in accordance with this Agreement.
- (3) Approving/disapproving an employee's request to earn and/or use credit hours.
- (4) Resolving conflicts in scheduling the regular day off for an employee working a 5-4/9 or 4-10 Compressed Work Schedule or Maxiflex.
- (5) Approving/disapproving adjustments of more than 1 hour (earlier or later) to the arrival and departure times of the approved Maxiflex proposed work schedule.
- (6) Coordinating work schedules among employees in their organization to accomplish the Agency mission.

B. Employees are responsible for:

- (1) Adhering to the procedures and requirements in this Agreement when requesting and participating in an AWS.
- (2) Being present for duty during hours corresponding to approved work schedules.
- (3) Ensuring that their time and attendance submission is submitted, coded for overall accuracy, and timely entered and attested to in the Agency Time and Attendance Recording System.

- (4) Maintaining the quality and quantity of work regardless of which work schedule is approved. Attending required meetings or events even though the meeting or event may be scheduled outside of the core hours.
- (5) Timely request work schedules and changes to approved work schedules in accordance with this Article.
- (6) Will timely submit, in accordance with this article, their *Maxiflex Pay Period Time Sheet*, if on an approved Maxiflex schedule.
- (7) Request prior supervisory approval to be absent from their scheduled hours in accordance with Article 16 of this Agreement.
- (8) Unless provided an exception by the supervisor, employees should maintain their current work schedule on the Agency's electronic calendar to assist coworkers to know their availability for meetings. The employee's free/busy time must be visible to all staff and clients, unless provided an exception by the supervisor.

## **Section 5. General Provisions and Procedures**

### **A. Requesting an AWS.**

Employees must submit the Work Schedule Request Form to their immediate supervisor. For changes to an existing schedule, the request normally must be submitted at least three (3) workdays prior to the end of the pay period immediately preceding the pay period for which the employee requests the change. Supervisors will communicate schedule change request decisions as soon as practicable to the employee. While no requests will unreasonably be denied, requests for AWS may be denied in accordance with this article. No more than four (4) work schedule changes will be approved in a calendar year. By signing a request, the employee agrees to read and comply with the terms and conditions set forth in this Agreement.

### **B. Meetings and Training.**

Employees scheduled for training, travel or other EPA events will arrange their schedules to correspond with the start/stop times and weekdays of the events. Employees will not be excused from attending meetings or other events solely because the employee is on an AWS and the meeting or event is outside of the Agency's core hours. Employees and supervisors should discuss options to make temporary adjustments to an employee's schedule, when necessary. An employee may be required to temporarily revert to a straight eight (8) hour per day schedule due to training, travel, meetings or other Agency needs.

### **C. Lunch Period.**

An unpaid lunch period must be taken for any work schedules of six (6) or more hours per day. The lunch period will not be taken at the beginning or at the end of the actual work time. The lunch period will be a minimum of 30 minutes and a maximum of one hour in length. For employees on a fixed schedule (CWS or Straight 8), the employee

must designate a length of time for the lunch period for each day. The lunch period should normally be taken between 10:00 A.M. and 2:00 P.M.

D. Breaks.

Employees may generally leave their assigned work area for personal reasons (e.g., to obtain coffee; make personal calls; use the restroom; etc.) and take unscheduled breaks as needed, provided they do not interfere with work-related needs. Therefore, there is no entitlement to two (2) scheduled 15-minute breaks. However, unscheduled breaks may not exceed a total of 15 minutes during each four hours of duty. Employees who may not leave their assigned work area for personal reasons are entitled to a 15-minute break during each four hours of duty. For all employees, scheduled or unscheduled breaks may not be taken at the beginning or end of the work day to shorten the work day, or at the beginning or end of the lunch period to extend the lunch period.

E. Overtime and Compensatory Time.

Overtime and compensatory time will be in accordance with applicable laws and regulations.

F. Night Shift Differential.

Employees will not receive night shift differential pay solely because they elect to work credit hours or elect a time of arrival or departure at a time of day when night shift differential is otherwise authorized. 5 USC 6123.

G. Holidays.

Holidays will be administered in accordance with applicable laws and regulations. For employees on Maxiflex, full-time employees relieved from duty on a holiday are entitled to basic pay for 8 hours and part-time employees are entitled to basic pay for the number of hours they were scheduled to work on the holiday (*5 USC § 6124 and 5 C.F.R § 610.405*).

H. Telework and Alternative Work Schedules.

Employees who work an alternative work schedule may utilize telework opportunities consistent with Article 17 of this Agreement.

I. Schedule Disapproval.

If an employee's written request to participate in an AWS is disapproved, or if the supervisor determines that an employee can no longer participate in the AWS program, the supervisor will provide the reason(s) in writing to the employee. Supervisors may discuss other schedule options with an employee prior to disapproving a requested schedule. Supervisors will not remove an employee from AWS in the middle of a pay period. Further, employees who are removed from an AWS will normally be given at least one (1) administrative work week notice.

J. Removal from an AWS.

The supervisor or management official may remove an employee from AWS when there are documented misconduct or performance issues, when the employee does not comply with the provisions provided in this article, or to meet the organization or unit's specific work-related needs. The default work schedule for the employee in such circumstances is a Straight-8 schedule, but the supervisor or management official has the authority to

permit temporary changes to the schedule on rare occasions and due to extenuating circumstances.

- (1) For AWS removals resulting from misconduct or performance issues or for the employee's failure to comply with the provisions of this policy, employees may reapply no sooner than six months after termination.
- (2) For AWS removals resulting from work-related needs, the employee may reapply if or when any such issues are resolved. If the employee is on Maxiflex, supervisors and employees may discuss whether or not a temporary modification to the Maxiflex Schedule will meet the work-related needs (e.g. using Maxiflex to work a Straight-8), rather than removal from the Maxiflex schedule.

K. Changing work schedules. Changes to work schedules will be effective at the start of a pay period.

## **Section 6. Schedule Options for Employees**

### **A. Straight 8**

- (1) This schedule consists of eight (8) hours per day, five (5) days per week, Monday through Friday, with a fixed start time between 6:00 am and 9:30 am and a fixed endtime between 2:30 pm - 6:00 pm. These times must be consistent for each workday.
- (2) Credit hours are not authorized for employees on this schedule.

### **B. Compressed Work Schedules (CWS)**

- (1) These schedules require a fixed start time between 6:00 A.M. and 9:30 A.M. and a fixed end time between 2:30 P.M. and 6:00 P.M. These times must be consistent for each workday. Employees must account for their scheduled tour of duty with work hours and/or approved absence each day.
- (2) A 5/4/9 compressed work schedule consists of one (1) five (5) day workweek and one (1) four (4) day workweek, totaling 80 work hours in each biweekly pay period. The work schedule will consist of eight (8) nine (9) hour days, one eight (8) hour day and a designated day off in each pay period. To be established, employees request, and supervisors must preapprove, fixed arrival and departure times and one fixed non-workday each pay period.
- (3) A 4/10 compressed work schedule consists of four (4) ten (10) hour days each week of the bi-weekly pay period totaling 80 hours with a designated day off each week. To be established, employees request, and supervisors must preapprove, fixed arrival and departure times and two fixed non-workdays, one day each week. The fixed non-workdays must be the same day of each administrative work week and must not be consecutive.
- (4) Employees may request to change their compressed day off prior to the commencement of the pay period, subject to supervisory approval. A scheduled

compressed day off, as part of the schedule, normally should not be changed once apay period begins.

- (5) Credit hours are not authorized for employees on these schedules.

### C. Maxiflex Schedule

- (1) This schedule allows a flexible duty start time between 6:00 A.M. and 9:30 A.M. and a flexible end time between 2:30 P.M. and 7:00 P.M. Employees have the flexibility to vary the start and end of their workday each day. Employees must account for eighty (80) hours of work and/or approved absence each pay period (and a prorated number of hours for part time employees).
- (2) Employees must work and/or be on approved absence during the designated core hours. Subject to supervisory approval and the provisions of this Article, employees are not required to work a specific number of hours each day beyond the core hours; however, the maximum number of regular work hours an employee may work is 10 hours, not including a lunch break. Subject to the limitations of this Article, employees may request up to 2 credit hours in addition to the 10 regular hour maximum.
- (3) Employees must account for all hours worked using the Agency's Time and Attendance Reporting System.
- (4) All employees on Maxiflex are subject to an advanced scheduling requirement each pay period. Since Maxiflex allows employees to vary their work hours during flexible times for each pay period, employees must electronically submit a proposed work schedule on the *Maxiflex Pay Period Time Sheet* to their supervisors in advance of each pay period. The *Maxiflex Pay Period Time Sheet* is not a substitute for the electronic Agency's Time and Attendance Reporting System. Rather, the *Maxiflex Pay Period Time Sheet* is a tool for an employee to request specific work hours and it serves as a reference to be used when an employee completes the Agency's Time and Attendance Reporting System. Part time and full-time employees follow the same advanced scheduling requirements. The Agency has the unilateral authority to include this process electronically in PeoplePlus or successor electronic time and attendance systems.
- (5) Submitting proposed Maxiflex Pay Period Time Sheet: Unless provided an exception by the supervisor, employees must timely submit their *Maxiflex Pay Period Time Sheet*, pursuant to the supervisor's designated deadline, that documents: a) the planned hours to be worked in the upcoming biweekly pay period with specific days, and starting and ending times, b) the planned requested leave usage of all types; c) the number of credit hours the employee is requesting to earn; and d) the number of credit hours the employee is requesting to use. Exceptions should be rare. Advanced requests for scheduling of the pay period minimizes potential problems in determining an employee's entitlements to pay and leave and best allows for supervisors to be able to plan and assign work.
- (6) Standing Proposed Schedule: Employees who have limited variability in their

biweekly proposed schedule may submit a standing proposed schedule for approval/disapproval by their supervisors. However, any standing approved proposed schedule is subject to the requirements of this section (e.g., must seek approval of the supervisor for adjustments of more than one hour). It is solely the responsibility of the employee to submit an updated biweekly proposed schedule when there is any variation in the standing proposed schedule (e.g., a holiday in the next pay period, scheduled leave, training, etc.).

- (7) Failure to Timely Submit the Maxiflex Pay Period Time Sheet: Unless provided a rare exception by the supervisor, employees who fail to submit the Maxiflex Pay Period Time Sheet in advance pursuant to their supervisors' deadline are required to work fixed 8-hour days (either from 8:00 A.M. to 4:30 P.M. or from 9:00 A.M. to 5:30 P.M.) for the affected pay period.
- (8) Completing the Maxiflex Pay Period Time Sheet: Employees must record their time in to work and time out of work daily either by a method directed by the supervisor (e.g., contemporaneous email), or on the *Maxiflex Pay Period Time Sheet* and also in the Agency's Time and Attendance Reporting System.
- (9) One Hour Variations: Once a biweekly Maxiflex work schedule is approved, an employee may adjust the arrival and/or departure times of the approved work schedule by a maximum of one hour without prior supervisory notification or approval, provided the one hour change does not interfere with the established core hours and does not impact already scheduled meetings or work-related needs. Thus, the actual work schedule may vary from the approved work schedule. While the one hour adjustment does not need prior supervisory notification or approval, like all hours worked or used for approved leave or credit hour use, the adjusted hours must be accurately recorded by employees in the Agency's Time and Attendance Reporting System. Adjustments of more than one hour to the arrival and departure times of the approved work schedule requires prior supervisory approval.
- (10) Core Hour Exception for Last Scheduled Day of Tour of Duty: Subject to supervisory approval and work-related needs, employees with less than five hours remaining in their 80-hour biweekly requirement may work outside of core hours on their last scheduled day during their normal tour of duty and/or for less than the full 5 hours core hour period. For example, if by the second Thursday of the pay period, an employee has earned 77 regular hours and is scheduled to work only three regular hours on Friday, the employee may work these three hours outside of core hours during their normal tour of duty. On the last scheduled day of the pay period, employees must work for a sufficient duration to perform a reasonable amount of work.
- (11) Time and Attendance Reporting: Employees must separately request leave and credit hours to be earned and to be used in the Agency's Time and Attendance Reporting System.

- (12) Recording Credit Hours: Employees must record the number of credit hours earned and used each workday. Employees must be aware that at the end of the pay period, hours worked will be counted as credit hours only after the 80-hour bi-weekly requirement is met.

## **Section 7. Credit Hour Provisions**

- A. Credit Hours: Credit hours are those hours within the Maxiflex work schedule that are more than an employee's basic biweekly 80-hour work requirement and that the employee, upon supervisory approval, elects to work. If elected by the employee and preapproved by the supervisor, credit hours may be earned outside of the normal tour of duty (6:00 A.M. – 7:00 P.M.), with supervisory approval.
- B. Requesting Credit Hours: Employees who want to earn credit hours must make a written request to their supervisor (preferably by email). The supervisor may request additional information regarding the nature of the request (e.g., work to be performed, anticipated duration of work, etc.) before deciding on the request.
- C. Earning Credit Hours: Working credit hours must be requested by the employee and preapproved by the supervisor. For an example of credit hours, an employee is scheduled to work 7 hours on Monday. The employee requests and is approved to work 2 additional hours on that day. If the employee works at least 73 more hours during the pay period, the 2 additional hours are considered credit hours because they are more than the scheduled basic 80 hours that the employee is required to work in this particular pay period. However, if at the end of the pay period the employee has not accounted for 80 hours with a combination of approved leave and work, the 2 additional hours are counted towards the 80-hour biweekly work requirement and are not credit hours.
- D. Credit Hour Limits: Employees on Maxiflex can earn up to 2 credit hours per workday and up to 10 credit hours per pay period, subject to prior supervisory approval. Supervisors may grant standing approvals to work credit hours for known or anticipated workload needs if the credit hours are within the 2 credit hours per workday and within the 10 credit hours per pay period limit. Standing approvals for known or anticipated workload needs must be requested in writing and approved in writing for a designated period with an end date.
- E. Exceptions to the 2/10 Credit Hour Limit: On rare occasions when necessary to meet work-related needs, supervisors may grant more than 2 credit hours per workday or more than 10 credit hours per pay period, on a case-by-case basis. Standing approvals for more than 2 credit hours per workday or more than 10 credit hours per pay period are not permissible.
- F. Weekend Credit Hours. Employees on Maxiflex may elect to earn credit hours on weekends only with prior approval of the supervisor. Requests to earn credit hours on the weekend are subject to heightened review/scrutiny, and should only be approved in rare circumstances. The flexible time bands for employees on Maxiflex who earn credit hours on Saturday or Sunday are 6:00 A.M. to 6:00 P.M. Employees cannot earn credits hours outside of that timeframe on the weekend.



- G. Recording Earned and Used Credit Hours: Credit hours must be recorded on the Maxiflex Pay Period Time Sheet, and in the Agency's Time and Attendance Reporting System each time approved credit hours are earned and/or used, and must be recorded in 15-minute increments.
- H. Fifteen Minute Increments: Credit hours are earned in full 15-minute increments, no rounding is allowed.
- I. Using Credit Hours: The use of earned credit hours is subject to the same approval process as annual, sick or other leave. An employee may substitute earned credit hours for all or part of any approved leave before the leave is used. Credit hours must be earned before they can be used.
- J. Time and Attendance Reporting: Once approved, the employee must account for the approved earning and the approved use of accrued credit hours in the Agency's Time and Attendance Reporting System.
- K. Using Credit Hours Rather Than Use or Lose Annual Leave: If credit hours are used instead of use or lose annual leave and the annual leave is subsequently forfeited, the forfeited leave is ineligible for restoration.
- L. Carrying Over Credit Hours: The statutory limit for credit hour carryover from one pay period to the next is 24 hours for full time employees and 25% of the biweekly work schedule for part time employees. For example, a part time employee who works 64 hours per pay period may carry up to 16 credit hours from one pay period to another. In no instances can an employee carry forward any more credit hours than the statutory limit, even under extenuating circumstances. Employees are accountable for keeping track of their credit hour balances from day to day, week to week, and pay period to pay period. If an employee erroneously carries forward credit hours more than the allowable number and the credit hours are forfeited, the credit hours cannot be restored or paid to the employee. However, there is no prohibition to earning more than 24 credit hours in one biweekly period, but the employee must use the excess hours over 24 hours in the same pay period, or the excess credit hours will be forfeited.
- M. Credit Hours Do Not Expire: Although there is a statutory limit on the number of credit hours that an employee may carryover from one pay period to the next, there is no time limit for using earned credit hours. Credit hours do not expire. If the employee's credit hour balance does not exceed the statutory limit, those hours will be available for use as long as the employee is on the Agency's Maxiflex program described in this Article. If for any reason – voluntary or involuntary, separation or transfer—an employee leaves the Maxiflex program described in this Article, the employee will be paid for the accumulated credit hours at the employee's current rate of basic pay.
- N. Overtime, Compensatory Time and Credit Hours: If credit hours are approved and overtime is subsequently made available prior to the working of the credit hours, the employee will be afforded the opportunity to elect to work the overtime. Supervisory approval to earn credit hours does not alter an employee's eligibility to earn overtime pay or compensatory time off.

## Article 33: Telework

### Section 1. Eligibility

The eligibility of employees to participate in telework is based on: 1) the extent to which their work is portable; and 2) the employee eligibility requirements contained in Sections 8, 9, and 10 of this Article. An employee's participation in telework is voluntary. Teleworkers will receive the same treatment and opportunities as non-teleworkers (e.g., work assignments, awards and recognition, development opportunities, promotions, etc.).

### Section 2. Definitions

For the purpose of this Article:

- A. Telework: Work performed away from an office worksite at an approved location.
- B. Alternative Work Location: An approved work location other than the employee's official worksite. A telework alternative work station is a home or an employee's residence, a telecenter or another approved worksite. An alternative work location will normally be within the local commuting area (as that area is defined in 5 C.F.R. 351.203), such as a home or a facility established by state, local or county government or private organizations for use by teleworkers.

Employees are not permitted to conduct regular telework from outside the local commuting area. In limited circumstances, supervisors may approve employee requests to work at an alternative work site outside of the local commuting area in cases of situational telework and medical telework.

- C. Local Commuting Area: As defined in 5 C.F.R. 351.203: "[T]he geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their official worksite."
- D. Portable Work: Work that is normally performed at the employee's official worksite, which can be performed at another location with equal effectiveness with respect to quality, quantity, timeliness, customer service, and other aspects of accomplishing the Agency's mission. Such work must be part of the employee's regular assignments and does not involve a significant change in duties or the way in which assignments are performed.
- E. Official Worksite: As defined in 5 C.F.R. 531.605: "[T]he location of an employee's position of record where the employee regularly performs his or her duties."
- F. Position of Record: An employee's official position as defined by grade, occupational series, employing Agency, law enforcement officer status and any other condition that determines coverage under a pay schedule (other than official worksite), as documented on the employee's most recent Notification of Personnel Action (Standard Form 50 or

equivalent) and current position description, excluding any position to which the employee is temporarily detailed.

- G. Regular Office/Worksite: The office (program, region, lab, HR Shared Service Center) to which the employee reports on a regular and recurring basis, receives direction, and/or returns to if the supervisor recalls the employee or terminates the telework agreement.
- H. Telework-Ready Employee: Any employee who has a Telework Agreement currently in effect, authorizing any type of telework.
- I. Work-Related Needs: Office staffing; office personnel not available to perform work; office coverage; work priorities; emergencies; time-sensitive assignments; work assignments; the need for team efforts; the need for meetings in person with co-workers, Agency officials and clients/customers/the public; and other operational needs that involve the work of the Agency.

### **Section 3. Supervisor Telework Decisions**

- A. Management Responsibilities: Taking into account work-related needs, supervisors are responsible for:
  - (1) Approving or disapproving new or revised written applications to telework. In cases of disapproval, the manager must provide the rationale to the requesting employee, in writing.
  - (2) Recertifying employee telework agreements every 12 months (or earlier if a particular organization's annual recertification time period is sooner, so that all employees can be recertified at the same time).
  - (3) Determining work-related needs and modifying individual telework agreements to meet work-related needs.
  - (4) Maintaining records and information necessary for evaluation of the telework program.
  - (5) Assessing whether teleworkers have complied with all existing security policies and procedures, including IT security, the protection of personally identifiable information and confidential business information.
  - (6) Assessing whether appropriate and accurate telework time reporting codes to document hours teleworked are being used.
  - (7) Evaluating performance consistently regardless of telework status.
  - (8) Determining that all required certifications for telework and appropriate management controls and reporting procedures are in place before employees begin telework assignments.

(9) No requests for telework will be unreasonably denied.

#### **Section 4. Employee Responsibilities**

- A. Approval: All employees must obtain written advanced approval for any type of telework.
- B. Telework Agreement: All employees on telework must complete a telework agreement, with the attachments, and submit it to their supervisor for approval prior to teleworking.
- C. Self-Certification Safety Checklist: All employees on telework must perform an assessment of the alternative work location and honestly and accurately answer all of the questions on the Self-Certification Safety Checklist.
- D. Comply with the Telework Policy: All employees on telework must fully comply with this Article, all articles in this Agreement, the Agency telework policy and procedures and the terms and conditions of their approved telework agreement.
- E. Comply with Security Policies: All employees on telework must fully comply with Agency policies and procedures for information technology security, including those relating to Personally Identifiable Information and Confidential Business Information.
- F. Use Government Equipment: All employees on telework comply with EPA policies governing the use of government equipment and materials.
- G. Non-Business Activities: All employees on telework must avoid personal disruptions such as non-business telephone calls and visitors.
- H. Suggesting Modifications: All employees on telework must notify their supervisor if modifications are necessary or potentially necessary to their telework agreement.
- I. Assist in Recertification: All employees on telework must assist their supervisor to recertify their telework agreement.
- J. Work Communications: All employees on telework must be available throughout the workday by telephone, email, Skype, etc. in order to communicate with their supervisor to receive assignments and complete their work in accordance with the supervisor's instructions and to be accessible to co-workers and customers.
- K. Maintain Communications: All employees on telework must maintain communication with their supervisor while teleworking and must work with their supervisor to overcome problems or obstacles as they occur so that their work is accomplished in an effective, efficient and timely manner, as to quality and quantity.
- L. Dependent Care: All employees on telework must arrange for dependent care, if applicable, during the time the employee is working at an alternative work location.

- M. Telework When the Government is Closed: All employees must be prepared to telework in the event that OPM or the Agency announces changes to its operating status, including changes to dismissal and closure procedures.
- N. Anticipate Weather Event: All employees, in case of a forecasted inclement weather event, must plan ahead, including taking any necessary equipment, such as laptops, home prior to the forecasted weather event.
- O. Locality Pay: If the employee does not physically report to the regular office/worksite at least twice each biweekly pay period, the employee's locality pay may be impacted per 5 C.F.R. 531.605.

## **Section 5. Types of Telework**

The following types of telework are available at the Agency based on work-related needs:

- A. Regular Telework: Employees perform their duties at an alternative work location on a regular and recurring basis, on predetermined days each pay period.
  - (1) Regular telework cannot exceed two days per week.
  - (2) Employees are not permitted to conduct regular telework from outside their local commuting area, as determined by management.
- B. Situational Telework: Employees perform their duties at an alternative work location on a non-routine, occasional, emergency, or ad hoc basis.
  - (1) Situational telework may be used to complete short-term special assignments or to accommodate special circumstances and must be for a defined, finite period.
  - (2) Situational telework cannot be used in a routine manner which appears to extend an employee's regular telework schedule.
  - (3) An employee must have an approved situational telework agreement in place.
  - (4) Management has the sole authority to approve/disapprove all situational telework requests.
  - (5) An employee must have explicit advanced approval before any telework is worked.
  - (6) An employee may be approved for both situational and regular telework, consistent with Section B.2. above.

- (7) In limited circumstances, supervisors may approve employees to work at an alternative work location that is outside of the employee's local commuting area. This determination must be made by management on a case-by-case basis. The employee must meet all eligibility requirements contained in this Article. If the employee does not physically report to the regular office/worksite at least twice each biweekly pay period, the employee's locality pay may be impacted per 5 C.F.R. 531.605.
- C. Unscheduled Telework: Unscheduled telework is not scheduled in advance. Unscheduled telework is performed when the Agency announces changes to its operating status, including changes to dismissal and closure procedures pursuant to the Agency, OPM and/or Federal Executive Board operating status announcements. Any telework-ready employee must perform unscheduled telework, pursuant to Section 16 of this Article.
- D. Medical Telework: Medical telework allows for the continued accomplishment of the Agency work while an employee has a physician-certified medical condition which does not affect the employee's ability to perform the employee's regular work assignment at an alternative work location.
- (1) Medical telework is not intended to be a permanent arrangement and will normally not exceed 90 calendar days.
  - (2) After 90 calendar days, in rare circumstances, a medical telework agreement may be extended for up to three additional 90-calendar day periods (i.e. nine months) if an additional medical certification justifies each 90-day extension. Employees are not authorized medical telework beyond 12 continuous months. The total maximum allowable time for a medical telework agreement is 12 months within any three year period.
  - (3) In limited circumstances, supervisors may approve employees on medical telework to work at an alternative work location that is outside the local commuting area. This determination must be made by the supervisor on a case-by-case basis. The employee must meet all eligibility requirements contained in this Article. If the employee does not physically report to the regular office/worksite at least twice each biweekly pay period, the employee's locality pay may be impacted per 5 C.F.R. 531.605.
  - (4) Based on the amount of portable work and the employee's ability to perform tasks, the supervisor may grant the employee leave (sick, annual, unpaid) or approve a combination of leave and telework to cover the situation. Employees are not entitled to full-time medical telework if they do not have full-time portable work.
  - (5) Medical telework is appropriate for employees with non-work compensable injuries. Employees with work compensable injuries will be subject to applicable workers' compensation regulations.

- E. Reasonable Accommodation under the Telework Program: Telework can be used as a way to accommodate qualified employees with disabilities under the Agency's reasonable accommodation process.
- (1) Employees seeking to telework as a reasonable accommodation must contact their immediate supervisor and the National and Local Reasonable Accommodation Coordinator.
  - (2) Employees who telework as a reasonable accommodation must follow the general requirements contained in this Article to the extent that such requirements are not inconsistent with the reasonable accommodation.
  - (3) Employees who seek to telework as a reasonable accommodation must submit a signed telework application, completed safety checklist and a training certificate.
  - (4) Employees approved to telework as a reasonable accommodation are required to have a valid, signed telework agreement.
- F. Agency Continuity of Operations Plan (COOP): Telework during a COOP enables employees to work from alternative work locations during emergencies such as a natural disaster, a terrorist attack, disruption to facilities, or a pandemic health crisis.
- (1) Telework as part of a COOP allows the Agency to continue to perform the Agency's mission in the face of an emergency.
  - (2) During a COOP, any employee, with or without a telework agreement, may be required to telework.
  - (3) During any period that the Agency is operating under a COOP, the COOP shall supersede this Article.

## **Section 6. Work Suitable for Telework**

- A. Not All Job Tasks are Portable: Not all aspects of all jobs can be performed effectively at an alternative work location and thus not all aspects of all jobs are portable.
- B. Job Content Controls: Work that is portable and suitable for telework depends on job content, rather than job series or title, type of appointment, or work schedule.
- C. Differentiations: It is possible that within identical or related occupational series, one position or a portion of a position, may be determined to be eligible for telework, and another may not, depending on individual job requirements.
- D. Tasks Generally Suited for Telework: The following tasks and functions are generally suited for telework. These tasks and functions include, but are not limited to:

- (1) Reviewing and writing
  - (2) Policy development
  - (3) Report writing
  - (4) Research (when research tools are available at the alternative work location)
  - (5) Analytical work
  - (6) Telephone-intensive tasks
  - (7) Computer technology-oriented tasks (e.g., programming, data entry, data processing, word processing, web page design) when databases, etc. are not equally accessible and functional at an alternate work location
- E. Different Circumstances: Employees may have some duties that are suitable for telework and others that are not. For these employees, supervisors will determine how many days per pay period an employee is eligible to work at an alternative work location as part of regular telework.

## **Section 7. Positions Ineligible for Telework**

- A. Ineligible Positions: Ineligible telework positions are those positions that involve tasks that are not suitable to be performed away from the regular office/worksite.
- B. Examples: Examples of ineligible telework positions include, but are not limited to, positions/tasks that:
- (1) Require an employee to have daily face-to-face contact with the supervisor, Agency officials, co-workers, clients or the general public in order to perform the employee's job effectively, and which communications cannot otherwise be achieved via e-mail, telephone, fax or similar electronic means.
  - (2) Require an employee to have daily access to secure or classified information or a secure or classified installation. Secured materials are those materials for which there exists a written policy, at the government, Agency or organizational level, that restricts the use and/or access outside of a specific government installation or area within a government installation, and including sensitive personally identifiable information and confidential business information.
  - (3) Involves the construction, installation, maintenance and/or repair of Agency facilities.



- (4) Involves the physical protection of Agency facilities or employees.
- (5) Involves a physical presence and/or is a site-dependent activity (e.g., emissionstesting, laboratory trials, etc.).

## **Section 8. Employee Eligibility Requirements**

To be authorized to telework, an employee must meet all of the following requirements:

- A. Portable Work: The employee must have sufficient portable work for the amount oftelework requested.
- B. Fully Successful: The employee must be currently performing at the fully successful level or above. If an employee's last rating of record is less than fully successful, the employee must wait until a rating of record of fully successful or above is received.
- C. Effectiveness: The telework arrangement must not create any impediment to the effective accomplishment of the employee's work or the Agency's work-related needs.
- D. Return to Office: The employee must agree to return to the regular office/worksite on a telework day if required to do so by the employee's supervisor. Employees on a regular and recurring telework arrangement are required to report to the official worksite and dutystation as needed, as determined by the Agency.
- E. Comply with Agreement: The employee must continue to comply with the terms of theemployee's written and approved telework agreement; and,
- F. Dependent Care: Arrangements must be in place for dependent care, if applicable, during the time the employee is working at an alternative work location.

## **Section 9. Disqualifications from Telework**

Employees cannot telework if any of the following occur:

- A. The employee's current rating of record is less than fully successful or the employee iscurrently performing less than fully successful.
- B. The employee has been officially disciplined for being absent without permission formore than five days in any calendar year.
- C. The employee has any documented performance or conduct deficiencies within the preceding 12 months, including, but not limited to, letters of reprimand, written warnings,counseling, or leave restrictions.
- D. The employee, at the Agency or at another Federal Agency, has ever been disciplined

for viewing, downloading, or exchanging pornography, including child pornography, on a federal government computer or while performing official federal government duties.

- E. The employee has been disciplined for misuse of a government computer.
- F. The employee has refused a visit by the supervisor or any other Agency official to the employee's alternative work site.

#### **Section 10. Authorizing Telework for New EPA Employees**

- A. New Employees: Employees who have worked at the Agency for less than six months, even if their position or some duties are telework approved, normally do not engage in regular telework.
- B. Need for Experience: New employees should obtain experience in their position, work unit and organization before being approved for regular telework.
- C. Situational Basis: Telework for new employees may be approved on a situational basis; e.g., for a management declared weather event, emergency, or other disruption.
- D. Factors to Consider: In addition to the eligibility requirements for Agency employees in Section 9 of this Article, and the disqualifications in Sections 9 and 11 of this Article, supervisors also must consider, at a minimum, the following factors before authorizing telework for new employees:
  - (1) Previous federal service, if any;
  - (2) Length and nature of previous work experience; and
  - (3) Any previous experience teleworking.

#### **Section 11. Conditions to Being Approved for Telework**

All employees who request to telework must meet the following conditions. The failure to comply with any one of the conditions listed below will result in the denial or termination of a telework arrangement:

- A. Prior to Requesting Telework:
  - (1) The employee must complete the required employee telework training;
  - (2) The employee must complete the *Telework/Application Agreement* and the *Employee Self-Certification Safety Checklist* (which identifies the significant safety standards that must be met at the alternative work location) and must submit the Agreement

- and the Checklist to their supervisor for approval, along with the Training Certificate;
- (3) The employee must make all necessary dependent/elder care arrangements and certify that the arrangements will not interfere with the employee's work performance while working at the alternative work station;
  - (4) The employee must have equipment at the alternative workstation that is available and working properly to ensure compliance with the Agency's information technology policies and procedures;
  - (5) The employee must agree to telework in case of an emergency; and,
  - (6) The employee must agree to leave the alternative work station and return to the regular office/worksite if requested by the employee's supervisor. Employees on a regular and recurring telework arrangement must agree to report to the official worksite and duty station as needed, as determined by the Agency.

B. While Teleworking:

- (1) The teleworking employee must comply with established pay and administration policies on work schedules, consistently use the appropriate telework time reporting codes to document time and attendance on a bi-weekly basis and give a copy of their telework schedule to the office timekeeper.
- (2) The teleworking employee must comply with Article 9 of this Agreement for requesting and using leave.
- (3) The teleworking employee must maintain a current performance level of at least fully successful.
- (4) The teleworking employee must ensure that working from the alternative work station causes no disruption in the efficiency, timelines, quantity and quality of the employee's work.
- (5) The teleworking employee must ensure availability (e.g., by telephone, email, Skype) to the employee's customers, co-workers and supervisors and other Agency officials.
- (6) The teleworking employee cannot be unavailable during regular teleworking hours for calls, meetings or virtual meetings.
- (7) The teleworking employee cannot during regular teleworking hours put "out of office" messages on e-mail, voice mail and electronic calendars indicating that they are unavailable.
- (8) The teleworking employee must utilize call forwarding technology, if available.

- (9) The teleworking employee must maintain organizational requirements regarding communication and accessibility and respond in a timely manner to the employee's team leaders, supervisors, managers, co-workers, Agency customers and the public.
- (10) The teleworking employee must be capable of joining and be available to join teleconference meetings or conference calls while working at the alternative worklocation.
- (11) The teleworking employee must safeguard Agency equipment (if provided) and use it only for official purposes in accordance with established Agency policies and practices.
- (12) The teleworking employee must participate in the annual recertification process as required by this Article and in any other telework program monitoring and/or evaluation processes required by the Agency or other authoritative entities (e.g., OPM, Government Accountability Office, Congress).

## **Section 12. Telework Training**

- A. Training is Necessary: An employee must successfully complete the Agency approved training and obtain a certificate of training before participating in telework.
- B. Attachments to the Telework Agreement: The employee's certificate of successful completion of the required training must be attached to the telework agreement.

## **Section 13. Establishing the Telework Agreement**

- A. Regular and Situational Telework: An employee must complete the following actions in order to be approved for a regular or situational telework agreement:
  - (1) The employee must submit a completed application to the employee's immediate supervisor, including the completed safety checklist and the certification of the employee's telework training.
  - (2) The employee and supervisor must discuss the proposed telework agreement and the type of work to be completed by the employee at an alternative work location.
  - (3) Once all requirements are completed, the employee must sign and date the telework agreement.
  - (4) A separate agreement for each telework episode is not necessary if the employee

hassigned an agreement to telework on a situational basis.

- (5) For each specific situational request, the employee must identify in writing, generally by email, to the supervisor, with sufficient time for the supervisor to approve or disapprove: the requested date, the portable work to be performed, the alternative work location, and the telephone number if there is no call-forwarding function available. Response to requests must be in writing. Telework may not be performed unless approved in advance.
  - (6) Employees must obtain information and implement all procedures for accessing thesecured operations of the regular office/worksite.
  - (7) If the alternative work location is a telework center, arrangements must be made bythe employee's organization to cover the cost and to reserve a workstation for the employee.
- B. Medical Telework: To be approved for a medical telework agreement, the employee mustsubmit a physician-certified written statement that:
- (1) Provides a description of the diagnosis of the medical condition necessitating the telework arrangement.
  - (2) Summarizes the prognosis, including the expected return-to-work date, and, as appropriate, discusses medical management, including how the temporary medicalcondition might interrupt the employee's work schedule.
  - (3) Lists restrictions that should be placed on the work performed at the alternative worklocation, if applicable.
  - (4) States that the employee is able to perform the duties of the position at an alternativework location; and,
  - (5) Describes the benefit to the employee's medical condition from working at an alternative work location, or the reduction of health risks to other employees, if any,derived from this medical telework arrangement.

## **Section 14. Telework Agreements**

### **A. Content of a Telework Agreement:**

- (1) The telework agreement covers the terms and conditions of the telework arrangement.
- (2) The telework agreement constitutes an agreement by the employee to adhere to the provisions of this Article and Agency policies and procedures that do not conflict withthis Article.

- (3) The telework agreement includes items such as: the voluntary nature of the arrangement; duration of the telework agreement; hours and days of duty at each worklocation; responsibilities for timekeeping; leave approval and requests for overtime and compensatory time; performance requirements; and proper use and safeguards of government property and records.
- B. Changes to a Telework Agreement: When any aspect of the telework agreement changes (e.g., position, work assignment, supervisor, alternate work location), the supervisor will reassess the employee's work to determine telework suitability and continued approval.
- C. Yearly Renewal: Each individual telework agreement must be renewed every 12 months. Telework employees must be on the same 12-month renewal calendar, even though the first year of a telework agreement must be renewed before 12 months have expired.
- D. Essential Employees: Employees who are designated essential for inclement weather or other emergencies and/or are emergency response employees for COOP purposes, must have signed telework agreements in place to facilitate continuity of operations in the event of emergencies.
- E. Copies of the Telework Agreement: The supervisor must retain a copy of the signed telework agreement and a copy must be provided to the employee. A copy of the signed telework agreement must also be provided to the program/regional office telework coordinator who is responsible for maintaining telework records in the organization.

## **Section 15. Time, Attendance and Other Miscellaneous Issues**

- A. Recording Telework Hours: Employees must timely and accurately record all telework time (regular, situational, medical and unscheduled) in the Agency's Time and Attendance Reporting System.
- B. Telework Time Reporting Codes: All teleworking employees must use the official Agency time reporting codes to document and certify their work hours. There are separate Time Reporting Codes (TRCs) for regular, situational, medical and unscheduled telework as well as for overtime telework and telework as a reasonable accommodation. The Agency's current official Time Reporting Codes are as follows (should TRCs change in the future, employees will be required to use the updated codes as designated by the Agency):
  - (1) **TMREG**: Telework Medical Regular
  - (2) **TOHRW**: Telework Overtime Hours
  - (3) **TWRAC**: Telework for Reasonable Accommodation

- (4) **TREGW:** Telework Regular Hours
- (5) **TWCTU:** Telework Comp Time Used
- (6) **TWCTE:** Telework Comp Time Earned
- (7) **TWEHR:** Telework Episodic Hours (for Situational Telework)
- (8) **TWUSH:** Telework – Unscheduled.

C. Hours of Duty and Work Schedules:

- (1) An employee who teleworks must work the same schedules that the employee would have worked at the regular office/worksite, including compressed or flexible schedules under Article 12 of this Agreement. Eligible work schedules for employees participating in telework are the same as for those employees working at the regular office/worksite.
- (2) An employee who teleworks may not work non-standard evenings and weekend schedules.
- (3) Emergency or extreme circumstances may warrant work schedules to be changed with supervisor approval and in accordance with this Article and established Agency policies and procedures that do not conflict with this Agreement.
- (4) Unstructured arrangements where employees work at the alternative work location without prior supervisory approval are not permitted.
- (5) Employees on flexible schedules may work credit hours at the alternative work location schedule, subject to the same approved process in Article 12 of this Agreement.

D. Overtime During Telework - Eligibility Requirements:

- (1) All overtime must be approved in advance.
- (2) Any overtime work that is not ordered and approved in advance by the supervisor, in writing, will not be compensated. Employees cannot perform unauthorized overtime work while teleworking (i.e., overtime that is not ordered and approved by the supervisor in advance and in writing).
- (3) When an employee working at the employee's alternative work location on a regular or situational telework day is directed by the employee's supervisor to perform work that would require more time than the employee's regularly scheduled number of hours for the day, the supervisor may order overtime for the employee.

E. Leave: Procedures for requesting leave are the same for employees participating in telework and employees working at the regular office/worksites. Employees are responsible for obtaining leave approval in advance as required by Article 9 of this Agreement, and for reporting leave usage appropriately in the Agency's Time and Attendance Reporting System.

F. Workers' Compensation:

- (1) Employees who telework are covered by the Federal Tort Claims Act or the Federal Employees Compensation Act and qualify for continuation of pay for workers' compensation for injuries sustained while performing their official duties.
- (2) The Federal Tort Claims Act and the Federal Employees Compensation Act only apply to injuries sustained while performing official duties when the telework at the alternative work site was approved in advance and adhered to by the employee.
- (3) The supervisor's signature on the request for compensation attests only to whether the event occurred at the regular office/worksites or at an approved alternative work location during official duty. Since supervisors are not present when an employee sustains an injury at an alternative work location, employees must honestly and accurately inform their immediate supervisor of an injury at the earliest time possible, seek appropriate medical attention and file the appropriate workers' compensation claim form.
- (4) Telework arrangements can result in employees who are currently receiving continuation of pay or worker's compensation returning to work, taking them off the workers' compensation rolls. Supervisors may be able to find work that such employees are able to perform at their home alternative work location, or restructure existing work so that some of the work may be completed at home.

G. Requirement to Return to the Regular Office/Worksite on a Scheduled Telework Day:

- (1) Employees on telework will exercise professionalism and attend scheduled meetings in-person at their regular office/work site when appropriate without being instructed by their supervisors.
- (2) Employees on a regular and recurring telework arrangement are required to report to the official worksite and duty station as needed, as determined by the Agency. Employees participating in the telework program must be accessible and available for recall to their regular office/worksites for a variety of reasons such as, but not limited to: meetings; briefings; special assignments; training; travel; unscheduled absence of other employees; emergencies; or other situations deemed necessary by the supervisor to meet work-related needs. Under these circumstances, the following will occur:



- (a) The supervisor will recall an employee to the regular office/worksite by notifying the employee as soon as practicable. Employee recalls are at the sole discretion of the supervisor.
- (b) If an employee is unable to telework from the employee's alternative work location due to being required to be at the regular office/worksite on a regularly scheduled telework day, or being on approved leave or travel, the employee is not entitled to another telework day.
- (c) If an employee is unable to telework from the employee's alternative work location due to being on approved leave or travel, the employee is not entitled to another telework day.

H. Travel: Government-wide regulations, Agency policies and procedures that do not conflict with this Agreement which apply to employees working at the regular office/worksite also apply to employees who telework.

I. Prohibited Uses of Telework:

- (1) Agency officials are prohibited from authorizing regular, situational, or unscheduled telework for employees seeking to engage in activities solely of a personal, non-work-related nature that should otherwise be accommodated through other appropriate processes. Examples include, but are not limited to:
  - a. Substituting telework for dependent/elder care. When the home is the alternative work location, an employee must not use telework as a means to care for the employee's spouse, child, relative, or any other individual.
  - b. Allowing an employee to telework in lieu of leave.
  - c. Accommodating an employee's personal requests that should legitimately be resolved by other appropriate means (e.g., sick leave, annual leave, leave without pay, donated leave, advanced leave, accrued compensatory time, change in work schedule, reassignment).
  - d. Including time spent in routine commuting to and from the official worksite.
- (2) There may be circumstances where telework eligible employees utilize leave for a portion of the workday and, with the supervisor's approval, may be permitted to telework at an alternative work station for the remainder of the workday.

J. Monitoring Performance:

- (1) Teleworkers and non-teleworkers will be treated the same for the purposes of monitoring and assessing job performance. However, supervisors may, at their discretion, utilize different mechanisms for communicating with, and monitoring

the work of, teleworking employees.

- (2) Employee performance while on telework must be monitored by the supervisor to ensure the timeliness, quality and quantity of the employee's performance and that employees are indeed working and are working efficiently and effectively when scheduled.
- (3) Appropriate management controls and reporting procedures must be in place before employees begin telework assignments. Some approved monitoring techniques which are applicable to telework arrangements, include:
  - a. Supervisory telephone calls or e-mail messages to an employee during times the employee is scheduled to be on duty.
  - b. Visits by the supervisor to the employee's alternative work location.
  - c. Use of performance management systems, including regular workload/accomplishments reports used for teleworking and non-teleworking employees, to determine reasonableness of work output for time spent, project schedules, key milestones, quality of the work performed, and team reviews.

## **Section 16. Emergencies: Unscheduled Telework, Dismissals, and Closures**

### **A. Unscheduled Telework/Closures:**

- (1) In the event of an office closure, telework-ready employees already scheduled to telework that day are required to work telework or take annual or unpaid leave.
- (2) In the event of an office closure, telework-ready employees not scheduled to telework that day, in coordination with their supervisor, must utilize unscheduled telework to the maximum extent possible or take annual or unpaid leave.
- (3) Employees who are required to work during their regular tour of duty on a day when federal offices are closed to the public (or during delayed arrivals or early dismissals) are not entitled to overtime pay, credit hours, or compensatory time off for performing work during their regularly scheduled hours.
- (4) Employees reporting to an alternative work location, other than the employee's primary residence, during the workweek must follow the closure or dismissal procedures of the alternative work location.

### **B. Late Arrivals/Early Dismissals at the Regular Office/Worksite:**

- (1) When the Agency announces early closure or late arrival of the regular office/worksite, telework-ready employees already scheduled to telework that day are required to telework their regularly-scheduled non-overtime hours.
  - (2) When the Agency announces early closure or late arrival of the regular office/worksite, telework-ready employees that are not scheduled to telework that day are required, in coordination with their supervisor, to utilize unscheduled telework to the maximum extent possible.
  - (3) Early release for a holiday will be granted to those on telework to the same extent as granted to those employees working at the regular office/worksite.
- C. Unscheduled Telework Announced: In the event that the regular office/worksite is open, but there is an announcement of the option for unscheduled telework that day, telework-ready employees not otherwise scheduled to telework may come into the regular office/worksite, request approval for unscheduled telework or request approval for annual, credit, or other leave.
- D. Other Emergencies or Disruptions to the Regular Office/Worksite: In the event of a disruption to normal office operations (e.g., national or local emergency, emergency event involving inclement weather, or any situation that may result in a disruption to normal office operations), employees approved for regular and situational telework are expected to telework if instructed to telework by their supervisor. Telework may be required in COOP situations.
- E. General Provisions:
- (1) Employees must be prepared and plan ahead when conditions indicate severe weather is possible. Teleworking employees must make necessary arrangements to take home necessary equipment and work-related materials (e.g., laptops, documents) prior to a forecasted weather event.
  - (2) As with scheduled telework, an employee performing unscheduled telework must have sufficient portable work to perform throughout the workday when teleworking. An employee who does not have enough portable work must report to the regular office/worksite if it is open, contact their supervisor for additional work, or request annual leave, credit time, or other leave.
  - (3) When inclement weather or other emergency (such as flooding or a roof collapse) prevents an employee from working safely at the alternative work location, and the regular office/worksite is closed to employees, a telework-ready employee may, on a situational basis, be granted weather and safety leave for all or part of the workday.

## **Section 17. Modification and Termination of the Telework Agreement**

- A. Agency Must Approve Telework and the Continuation of Telework: Telework is subject to Agency approval and not an employee entitlement. Employees who telework do not have an automatic right to continue teleworking.
- B. Agency Mission Comes First: The operational and work-related needs of the Agency are paramount and take precedence over any employee concerns.
- C. Modification, Adjustments and Termination:
  - (1) Telework agreements may be modified, adjusted or terminated at any time by the Agency based upon an employee's failure to adhere to telework requirements or based upon any other consideration affecting employee eligibility consistent with this Article.
  - (2) Telework agreements may also be modified or adjusted at any time when requested by the employee.
  - (3) The Agency has the unreviewable right at any time to end an employee's use of telework if: the employee's performance falls below the fully successful level; the employee is charged with misconduct; the employee fails to comply with the terms of the employee's telework agreement; or if the telework agreement no longer meets the organization's work-related needs. Participation in telework must be terminated when the employee no longer meets the eligibility criteria.
  - (4) The Agency will provide sufficient notice, when feasible, before modifying or terminating a telework agreement to allow the affected employee to make necessary arrangements. The reason for termination will be documented, signed by an Agency official, and furnished to the employee. Consent or acknowledgement via signature by the affected employee is not required for the termination of telework to take effect.
  - (5) When an aspect of an employee's work changes (e.g., position, work assigned, alternative work location), the supervisor will reassess the portability and suitability of the employee's work for continued telework approval.
  - (6) An employee may withdraw an application for telework or terminate an approved telework agreement at any time and return to the regular office/worksite. The employee must notify the supervisor in writing, and the supervisor will acknowledge the employee's notice in writing, to prevent misunderstandings about work location.

## Section 18. Facilities and Equipment

### A. Alternative Work Location Office Space:

- (1) Requirements will vary depending on the nature of the work and the equipment needed to perform the work. At a minimum, employees must be able to easily and reliably communicate by telephone and email with the supervisor, Agency officials, co-workers, clients and the public when working from their alternative work location.
- (2) Employees must ensure and verify that their work areas are always in compliance with health and safety requirements as set forth in the *Employee Self-Certification Safety Checklist*. Home work areas must be clean and free of obstructions, in compliance with all building codes, and free of hazardous materials. An employee's request to telework will be disapproved or rescinded based on safety problems or the presence of hazardous materials.
- (3) A supervisor or other Agency official may inspect the home office or other alternative work location at any time for compliance with the contents of this article and/or compliance with health and safety requirements.

### B. Regular Office/Worksite Space Sharing:

The organizational unit to which an employee is assigned has the right to implement space-saving initiatives when employees have approved telework agreements. Space-saving options include shared workstations, smaller workstations or unassigned touchdown/hoteling situations. In the event the employee is no longer on an approved telework agreement, they may still be assigned to such work stations.

### C. Government-Furnished and Privately-Owned Equipment:

- (1) The Agency is under no obligation to provide government-furnished equipment to employees solely for the purpose of teleworking. Supervisors, at their unreviewable discretion, and if funding permits, may authorize certain items and services for the individual teleworker, such as computers, printers, and telecommunications equipment and services.
- (2) Employees who have an Agency-issued laptop or mobile phone assigned to them must use that assigned equipment while teleworking and must take reasonable safeguards against theft and damage when they use and transport the equipment while teleworking.
- (3) All Agency-issued equipment and supplies remain the property of the Agency. The Agency is responsible for the service and maintenance of Agency-issued

equipment.

- (4) The Agency has no obligation to service or maintain equipment belonging to the employee, even if the employee uses the equipment for Agency work.
- (5) Employees whose office worksite phone lines have a call forwarding function must use this function to forward calls to the office to a phone available to the employee at the employee's alternative work location. Unless the call forwarding function is not available, callers should not be directed by an outgoing message to dial a different number to reach an employee at an alternative work station. An employee cannot be only accessible by phone by retrieving voicemail messages from the office site phone line.
- (6) If an employee furnishes the employee's own equipment at the alternative work location, the Agency will not reimburse the employee for the purchasing costs of the equipment. The employee is responsible for the maintenance, repair and replacement of privately-owned equipment. The Agency will not reimburse the employee for the maintenance, repair and replacement of privately-owned equipment, including broadband.
- (7) The Agency will not reimburse employees for the utility costs (e.g., heating, air conditioning, lighting and the operation of government-furnished computers) for alternative work locations. Utility costs include the monthly service charges for telephone or specific telephone charges. Teleworking employees making long distance calls to conduct official government business may use Agency issued mobile phones, if available. As with all Agency equipment, Agency issued mobile phones are subject to Agency monitoring to ensure that they are being utilized in connection with Agency business.
- (8) If an employee works at an alternative work location that is outside of the local commuting area, or is on full time medical telework or is on full time telework as a reasonable accommodation, the Agency is responsible for service and maintenance of government furnished equipment. If the government furnished equipment is in need of repair and upgrade, the Agency will make a reasonable effort to initiate repairs and upgrades remotely. However, if on-site assistance is required, employees must either return to their regular office/worksite or make other arrangements with their supervisor to ensure that repairs and upgrades can be made expeditiously. Supervisors will make unreviewable determinations over questions concerning the employee's duty status, appropriate work assignments and potential temporary equipment during the interim period between when repairs and upgrades are required and when they are completed.
- (9) Consistent with the Agency's Records Management Policy, official Agency business must only be accomplished on official Agency information systems. The Federal Records Act prohibits the creation or sending of a federal record using a

non-Agency electronic messaging account unless the individual creating or sending the record either: (1) copies their Agency email account at the time of initial creation or transmission of the record, or (2) forwards a complete copy of the record to the individual's Agency email account within 20 days of the original creation or transmission of the record.

## **Section 19. Information Security**

- A. **Security is a Priority:** Employees on telework must strictly adhere to all Agency policies, procedures, directives and other Agency security issuances that protect Agency information and information systems, including when work is done on telework. Employees on telework must minimize security risks to all Agency information and systems.
- B. **Secure Devices:** The alternative work location and any devices used with Agency information must be configured to ensure all Agency information in any form or format is properly protected at all times and in accordance with all Agency policies, procedures, directives and other Agency security issuances.

## **Section 20. Records Management**

- A. **Records Management:** When working at an alternative work location, Agency employees must continue to comply with the Agency's records management policy and any other applicable Agency and government-wide policies related to using, creating, maintaining and disposing of records.
- B. **Comply with Records Laws:** Employees on telework must comply with the Federal Records Act, the Freedom of Information Act, the terms of any litigation hold, discovery in litigation and any requests for records by the Office of the Inspector General.
- C. **Property of the Agency:** Any record removed from the regular office/worksite for telework assignments remains the property of the Agency and any information generated from telework assignments is the property of the Agency.
- D. **Agency Records:** Employees on telework are responsible for maintaining the integrity of their records and for producing records on demand. Employees must use Agency equipment when available. Creating, maintaining or modifying Agency records on personal computer equipment may subject the employee to having that equipment analyzed.

## **Article 34: Duration**

### **Section 1.**

Once an agreement is signed and dated by both parties, the agreement will be transmitted to the Agency Head. The Agency will have 30 calendar days to complete Agency Head review pursuant to 7114(c). This Interim agreement will become effective on the date that Agency Head Review is completed.

### **Section 2.**

If the Agency Head disapproves any provision(s) of the agreement under 7114(c) the parties agree to implement all provisions of the agreement not disapproved by the Agency. The parties will return to bargaining to negotiate over the provision(s) disapproved under 7114(c) within 7 days of the Agency's written notice to the Union upon notice of desire to renegotiate by either party. Any subsequent agreement will be resubmitted to the Agency Head for Agency Head review pursuant to 7114(c).

### **Section 3.**

If the Union files a petition for review following Agency Head disapproval of a provision or provisions under 7114(c) the parties agree to sever the challenged provision(s) from the agreement and the remaining provisions will go into effect.

### **Section 4.**

The parties' intention is to reach agreement on a new term agreement within 2 years. If a new term agreement is not reached within a period of 2 years, it is agreed that the Interim Agreement will remain in full force and effect until such time that a new term agreement is negotiated and the Interim Agreement will automatically extend for six-month periods. If agreement is not reached within 3 years, this agreement will expire.

### **Section 5.**

The parties agree that term negotiations to replace this Interim Agreement will begin no later than 90 days upon finalization of this Agreement (Agency Head Review), starting with ground rules negotiations. Provisions of the MoU dated April 2, 2021 are incorporated by reference as part of this Agreement.

### **Section 6.**

Timelines in this section may be extended by mutual agreement.

\*\*\*\*\*Signatures are on the following page\*\*\*\*\*



For the American Federation of Government Employees

*Cathie McQuiston*  
Cathie McQuiston

5/28/21  
Date

For the Environmental Protection Agency

\_\_\_\_\_  
Phil Brown

\_\_\_\_\_  
Date