U.S. ENVIRONMENTAL PROTECTION AGENCY

PROPOSALS

FOR

COLLECTIVE BARGAINING AGREEMENT WITH

ENGINEERS AND SCIENTIST OF CALIFORNIA, LOCAL 20

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PURPOSE

The parties agree the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operation of the Agency. The parties enter into this agreement with the ultimate goal that employees and management can work most effectively to achieve the mission of the Agency, to protect public health and the environment.

The parties agree that the right of employees to organize, bargain collectively, and participate through the Union in decisions which affect them:

1. Safeguards the public interest;

2. Contributes to the effective conduct of public business; and

3. Facilitates and encourages the amicable settlements of disputes between employees and the Agency involving conditions of employment.

ARTICLE 1 Recognition and Unit Designation

Section 1. Exclusive Representative

A. Engineers and Scientists of California, Local 20 (the "Union" or "ESC") is the exclusive representative of all employees in the bargaining unit as defined in Section 2 of this Article. Pursuant to 5 U.S.C. Section 7114(a) (1), "[the Union] is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership."

B. For all matters in which the Union is represented under this Agreement and under the Federal Labor Statute, the Agency is only obligated to deal with one Union representative for each matter. Within 15 days after the effective date of this Agreement, the Union will provide the Agency with a list of designed Union representatives, their contact information and the types of matter(s) for which they will serve as a Union representative. The Union may amend its list by providing written notice to the Agency, but only the Union President or designee for that specific purpose will be allowed to make such modifications. If a Union official claims to be a Union representative for a particular matter but is not on the list for that matter, the Agency will notify the Union President, but the Agency will have no duty under this Agreement or the Statute to recognize any individual as a Union representative who is not on the list.

C. Nothing in this section will preclude a Union employee from representing the Union or an employee.

Section 2. Definition of the Unit

The Union is the exclusive representative of employees in the units certified by the Department of Labor (DOL) Case No. 70-6025 (RO), 1978, which is composed of all permanent, professional employees of the Environmental Protection Agency, Region 9.

A. Exclusions: The following are excluded from the Union's units of exclusive recognition:

1. Management officials and supervisors;
2. Confidential employees, as defined in 5 U.S.C. Section 7103;
3. Employees engaged in personnel work in other than a purely clerical capacity;
4. Employees engaged in administering the Federal Service Labor Management Relations Statute;
5. Employees engaged in intelligence, counterintelligence, investigative or security work which directly affects national security;
6. Employees primarily engaged in investigation or audit functions relating to the work of individuals, employed by the Agency whose duties directly affect the internal security of the Agency, but only if the functions are undertaken to ensure that the

duties are discharged honestly and with integrity;

7. Employees of the Office of the Inspector General;
8. Experts and consultants appointed under 5 CFR 304.101;
9. Intermittent employees;
10. Employees hired under the summer employment program and employees under student appointments;
11. Employees appointed under fellowship programs;
12. Commissioned officers of the United States Public Health Service;
13. Employees on temporary appointments of 90 days or less;
14. Other employees excluded by the Statute; and
15. Employees in positions that have been excluded under certifications and clarifications issued by the FLRA.

B. Nothing in this section is meant to exclude any employee from the bargaining unit who is not excluded by statute.

Section 3. Other Units

If the Union becomes certified as the exclusive collective bargaining representative for any employees or bargaining unit not currently covered by this Agreement, this Agreement shall extend automatically to all employees covered by that certification on the sixtieth (60th) day following the certification of such unit. However, the dues withholding provision shall be applicable upon certification of the Union.

ARTICLE 2 Union Activities and Official Time

Section 1. General

The parties recognize and agree that the union has the right to represent and protect the right of employees to organize, bargain collectively and participate through the union in decisions which affect them and facilitate and encourage the amicable settlement of disputes between bargaining unit employees and managers, contributing to the effective conduct of public business, and safeguarding the public interest.

Section 2. Official Time & Union Representatives

A. Official time shall be granted to employees who are representatives of the Union, who have been designated in writing and who are otherwise in a duty status, to accomplish the specified functions as set forth herein.
B. The Union will provide a current listing of officials and stewards authorized to receive official time to the local Human Resources Office (HRO) point of contact within 2 weeks after the effective date of this agreement, and within two weeks after any change of any official/steward, to the point of contact. The Employer will not approve such official time until the servicing HR Office receives the written notice. Failure to provide timely notice of a change in steward designation will not serve to deny an employee representation.
C. Nothing in this section will preclude a Union employee from representing the Union or an employee.

Section 3. Collective Bargaining

Union representatives are authorized official time for the purpose of negotiating a collective bargaining agreement, including attendance at impasse proceedings. The number of Union representatives for whom official time is authorized shall not exceed the number of individuals designated as representing the Agency for these purposes.

Section 4. Union Representational Functions

All authorized representatives shall be granted a reasonable amount of official to:

A. Present and prepare for grievances at any step of the Negotiated Grievance Procedure;
B. Represent an employee or the Union at an arbitration hearing, including necessary preparation time;
C. Appear as a witness at any step of a grievance;
D. Appear as a witness at an arbitration hearing;
E. Meet and confer with management;
F. Prepare for and represent an employee (e.g., EEOC, MSPB) or the Union (e.g., FLRA) in appeal hearings covered by regulatory or statutory procedures;

G. Attend meetings or committees on which Union representatives have authorized membership;
H. Represent the Union in formal discussions, grievances or any personnel policy or practice or other general condition of employment of employees, or any other matters covered by 5 USC 7114 (a)(2)(A);
I. Represent employees in investigatory interviews if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests representation;
J. Prepare for meetings scheduled by management to which the union has been invited;
K. Assist employees when designated as their representatives in preparing and presenting a response to a proposed disciplinary, adverse or unacceptable performance action;
L. Prepare responses to management-initiated correspondence to the union;
M. Assist a probationary employee in order to prepare replies in response to a proposed termination;
N. Prepare and negotiate with the Employer, including mediation and impasse proceedings;
O. Confer with employees with respect to matters for which remedial relief may be sought pursuant to terms of this Agreement;
P. Meet with staff representatives of the Union in connection with grievance, negotiations, arbitration or ULP charge;
Q. Prepare reconsideration statements and attend meetings in connection with the denial of within grade increases, when designated as the employee's representative;
R. Contact members of Congress and their staffs to discuss legislative and related matters affecting the Employer and its employees;
S. Participate in ADR activities on behalf of unit employees;
T. Attend Employer sponsored activities to which the Union has been invited;
U. Present information and attend formal employee orientation sessions;
V. Prepare and maintain records and reports required of the Union by 5 USC 7120;
W. Respond to parties, including journalistic media and members of the general public, who make inquiries of the Union regarding issues affecting the terms and conditions of employment of the bargaining unit (any request for an Agency position on such matters is to be referred to the Office of Media Relations); and
X. Communicate with bargaining unit employees on issues involving terms and conditions of employment.

Section 5. Union Training

A. The parties recognize that the training of chapter officers, Chief Stewards, stewards and other chapter representatives is considered to be of mutual interest to the Union and the Employer. Therefore, each chapter will be granted 100 hours of official bank time to train representatives for each year of the contract and for each year that the contract is extended.

B. Excused absence will be granted to employees who are officers or official Union representatives to attend training sessions sponsored by the Union, the Federal Labor Relations Authority, the Federal Mediation and Conciliation Service or other entities.

C. Excused absences will not exceed one hundred (100) total hours per year for up to six (6) individuals. It is understood that the Employer will incur no costs for such training.

D. Training must be determined by the Labor Relations Officer to be of mutual advantage to the Employer and the Union and relate to matters of mutual concern which come within the scope of The Federal Service Labor-Management Relations Statute, 5 U.S.C. Chapter 71. Excused absence will not be granted for training primarily concerned with internal organizational matters.

E. Requests for such excused absence must be submitted by the Union to the Labor Relations at least fourteen (14) days or as soon as possible before the training session together with sufficient information for the Employer to make a determination that the attendance is in the interest of the Employer.

Section 6. Third Party Proceedings

Union representatives and employees shall be granted official time, as determined by the Federal Labor Relations Authority, for participation on behalf of the Union in any phase of proceedings before the Authority.

Section 7. Authorized Travel

Where official time is available to employees and Union representatives under the terms of this Article, it shall include all necessary, authorized travel time in accordance with the GTR and EPA travel policy.

Section 8. Travel & Per Diem for Union Representational Activities & Union Sponsored Training

The Union may submit requests for travel and per diem for representational purposes, including union- sponsored training. Such requests are to be submitted to the Labor Relations point of contact for coordination. Management will review such requests on a case by case basis.

Section 9. Union Orientation

The Union will be afforded the opportunity to participate in the orientation process for bargaining unit employees, consistent with Article 39.

Section 10. Limitations

Activities concerned with the internal management of the Union or Union business will be conducted before or after regular working hours or during lunch or other breaks. This includes, but is not limited to, such activities as membership meetings, solicitation of membership, collection of dues by representatives, campaigning for Union offices, conducting elections for Union offices, and distribution of literature.

Section 11. Official Time for Employees

A. Employees who are otherwise in a duty status will be granted a reasonable amount of official time to participate in the following activities:
   1. Present and prepare for grievances at any step of the negotiated grievance procedure, including arbitration;
   2. Appear as a witness at any step of the grievance process, including arbitration;
   3. Prepare and attend appeal hearings covered by regulatory or statutory procedures when their attendance is necessary;
   4. Confer with the Union with respect to matters for which remedial relief may be sought pursuant to the terms of this Agreement;
   5. Meet with staff representatives of the Union in connection with a grievance, negotiations, arbitration or ULP charge;
   6. Prepare reconsideration statements and attend meetings in connection with the denial of within grade increases;
   7. Participate in ADR; and
   8. Communicate with the Union on issues involving terms and conditions of employment.

B. In requesting time, the employee will follow the procedures delineated in Section 12.

Section 12. Procedure for Use of Official Time

The following procedures apply for the use of official time:

A. The Union representative and affected employee will notify his or her supervisor or designee of his or her intent to use time under this Article, and the anticipated duration of such usage. The representative and affected employee(s) will be granted the requested time unless their absence would substantially interfere with meeting an essential work related deadline, or pressing mission related need.

B. If the Union representative and/or the employee is not allowed official time, they will be granted such use at the earliest possible date, generally within one day.

C. Any denial of official time must be made as quickly as possible and the reasons therefore stated in writing, at the written request of the employee.

D. Upon return to the work area, the representative and/or employee will notify the supervisor of their return.

E. The Union representative will document the time spent on representational activities on the People Plus.

Section 13. Use of Official Time and Performance Assessment

A. Union representatives will not be disadvantaged in the assessment of their performance based on their use of official time when conducting labor-management business.
B. The performance of Union representatives will be rated on the basis of prorated work time; i.e., the work performed on available work time after official time has been subtracted.

ARTICLE 3 Use of Agency Facilities and Services

Section 1. Meeting Space

Upon advanced notice by the Union, the Employer will provide meeting space, if available, for meetings during or after hours. The Union will comply with all security and housekeeping rules and will use local scheduling systems. The meeting may not extend beyond the hours the building is normally opened.

Section 2. Office Space and Furniture

a. The Employer will continue to provide dedicated office space and furniture in the current location. Changes to the size or location of office space and/or changes to the furniture currently provided are subject to local negotiations by the parties to the extent required by law.

The Union's office will be furnished like any other office and will have working and updated equipment, as provided in Section 3 of this Article, and lockable storage.

Section 3. Union Access to Government Equipment

A. The Union will be granted reasonable access, at no cost to the Union, to teleconferencing, fax machines, copiers, scanners, and email, for union representational activities. The Union will be provided reasonable access to videoconferencing equipment if available, at no cost, when necessary for representational activities. The Union will be granted access and reasonable use to a color printer if one is available and necessary.

B. The Employer will provide the Union office with a computer (which may be a laptop), printer, telephone, and voicemail, removable media and associated peripherals consistent with the equipment routinely provided to Agency employees. This hardware and/or software will be refreshed in a manner consistent with the Employer's refresh cycle.

C. The Employer shall provide the Union office a computer with access to Internet resources in a manner consistent with safe and secure IT practices and pursuant to Agency IT policies and procedure s applicable to all employees. The Union may request access to any blocked or filtered sites through the procedures established by the Office of the Chief Information Officer or the appropriate Agency office. If the Union reports a problem in communicating with bargaining unit employees through the employer's email system, or any other technological problem working with EPA systems for which EPA would provide IT support, Agency IT staff will work with the Union to resolve the problem.

D. Each Union steward will have access to a telephone. If the steward does not have access to a private telephone, the Employer will, to the extent practicable, allocate space to facilitate the steward's ability to conduct private conversations for representational purposes. Union representatives who have access to Government telephones, voicemail, e-mail, or Government owned computers, for performing his or her regular duties, may utilize those devices for labor management matters in accordance with the applicable provisions of Article 2 of this Agreement.

Section 4. Use of Email

The Union recognizes that the email system is the property of the employer. In addition:

A. Use by the Union will be restricted to representational purposes pursuant to 5 USC Section 7101 et. seq.

B. Email attachments may need to be limited based on the Agency information technology systems. For large attachments, the union will use a link to OneDrive or a comparable tool. The Agency will provide reasonable IT support to enable a link. The Union will limit its email communications to those employees who have a relevant interest in the subject matter.

C. The Union will ensure that no email will violate law or security or contain defamatory material or material maligning the integrity of any individual, the Employer, or the Federal Government.

D. The Union is subject to the same standards that apply to all users as established by EPA Policy.

Section 5. Bulletin Boards

A. The Employer will provide to the Union, at a minimum, one bulletin board per building containing bargaining unit employees. Any additional bulletin boards will be negotiated locally.

B. A bulletin board, approximately 30” x 36”, for the exclusive use of the Union, shall be placed in either the break room or the copy room on each floor of the 75 Hawthorne Street Regional Office where bargaining unit employees are located. The Employer will provide the Union keys to each of the bulletin boards.

C. The Union will ensure that no posting will violate law or security or contain defamatory material or material maligning the integrity of any individual, the Employer, or the Federal Government.

D. The Employer agrees not to post any of its own materials in the Union bulletin boards

Section 6. Mail Distribution

The Union may use the Employer's internal mail system to distribute mail for official representational purposes. The Union shall have the right to receive U.S. Postal Service mail or private express mail services addressed to the Union. The Employer will not, under any circumstances, open such mail addressed specifically to the Union.

Section 7. Access to Union Representatives' Contact Information

At the request of the Union and upon receipt of the relevant information from the Union, the Employer shall list the names of Union Representatives, telephone numbers, and e-mail address on any electronic directories. When the Union informs the Employer of a change, directories will be updated within a week.

Section 8. Use of Other Non-Work Areas

A Union staff member may, upon advance notice, visit the union office, auditorium or other non-work areas located on the Employer's premises to discuss appropriate Union business, including Union membership programs on non-work time.

Section 9. Distribution of Collective Bargaining Agreement

A. The Employer shall provide each bargaining unit employee with an electronic copy of the parties' Collective Bargaining Agreement. The Employer shall provide the Union with 25 bound copies of the parties' Collective Bargaining Agreement.

B. The Employer will provide the Union with an electronic copy of the Collective Bargaining Agreement.

C. If requested by a visually challenged employee, the Employer will be responsible for providing a copy of the Collective Bargaining Agreement in an alternative format, e.g. Braille or an electronic copy of this Collective Bargaining Agreement that is accessible to visually impaired employees and, thus, complies with the Rehabilitation Act, 29 U.S.C. § 701, et seq.

Section 10. Access to EPA Webpage

A. The Agency will make available a web site for the Union on the intranet. The Union will be responsible for all content posted at its web site. The Employer shall provide IT support that will post material onto the web site. The Union will maintain its site in accordance with the same standards applicable to all other users. The Union will provide the Human Resource Office point of contact with a list of the employees who are authorized to post information to the Intranet site.

B. The Employer will maintain a clearly titled and appropriately positioned link from its Intranet site to the Union web site (http://www.ifpte20.org).

Section 11. Ballot Box Elections

The Employer will provide the Union with a reasonable amount of space to conduct ballot box elections.

Section 12. Chapter Newsletter

Subject to the requirements of this article regarding email distribution, the Union may electronically distribute any newsletters and/or materials directly to bargaining unit employees or post any Union newsletters or materials to the local Union intranet site and notify employees of the unit by e-mail of the new or updated material in accordance with the provisions of this Article.

ARTICLE 4 Union Dues

Section 1. Withholding

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

Section 2. 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 3. Consistent Dues Deduction

A. The Agency's payroll/HR system provider allows for electronic distribution of an employee's allotment to ESC.

B. ESC shall provide the Agency with the new dues withholding amounts no later than 30 days after the implementation of this Agreement.

C. The amount of dues withholding shall be consistent across the Agency, irrespective of grade, step, union local, geographic location or any other potential variables.

Section 4. Responsibilities of the Union

The Union shall:

A. <u>Regular Dues</u>: 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. <u>Inform Employees</u>: Inform and educate its members of the voluntary nature of the allotment program, including conditions governing institution of allotments; and conditions governing the termination of allotments;

C. <u>Forms</u>:

1. Forward properly executed and certified Standard Form SF-1187 to the servicing Human Resources Office on a timely basis.

2. State on the SF-1187 the allotment amount to be withheld each bi-weekly pay period and maintain copies of form SF-1187 for all active union members;

3. Forward an employee's revocation (Standard Form 1188) to the Human Resources Office when such revocation is submitted to the Union.

D. Authorized Union Officials: Furnish a written statement to the Agency's payroll office, listing the names and titles of local Union officials authorized to certify the form SF-1187; and,

E. 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. Per Section 5. B, 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 and SF-1188 forms.

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 days of the date of final determination.

Section 5. Agency Responsibilities

A. The Agency agrees to:

1. Withhold dues on a bi-weekly basis, at no charge to the Union;

2. Withhold a different amount of dues, upon certification from the Union's President provided that the amount of dues withheld has not been changed during the past 12 months;

3. Forward to the designated Union officials copies of SF-1188s received directly from Union members for processing;

4. Within ten (10) days of the close of each pay period, transmit employee dues withholdings to the bank account designated by the Union along with an alphabetical listing of employees for whom deductions were made.

B. The Agency will terminate an employee's voluntary allotment on the first full pay period, and provide notice to the Union of such termination and the reasons for that decision, following:

1. Loss of exclusive recognition by the Union;

2. Assignment or reassignment of the employee to an administrative unit outside of any of the Union's recognized bargaining unit, the temporary detail, reassignment or promotion to a position outside the bargaining unit;

3. Separation of the employee from the Agency;

4. Upon notice from the Union that the employee has been expelled or ceased to be a member in good standing of the Union.

Section 6. Processing Steps to Effect Allotment Withholding

Bargaining unit members who decide to join the Union will have their dues 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. 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 her 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 responsible for additional dues withholding when/if an employee returns from a non-pay status. Should the Union request to collect dues for the period of non-pay, the Union is solely responsible for collecting the dues from the employee.

Section 8. 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.

ARTICLE 5 Midterm Negotiations

Section 1.

This Article governs the negotiations process for changes in terms and conditions of employment affecting bargaining unit employees. In the event the Agency refuses to bargain over an issue on the ground that it is "covered by" the Agreement and the Union disagrees, the Union may reopen negotiations related to the particular articles cited by the employer.

Section 2. Mid-Term Negotiation Procedures

A. Notice: When the Employer wishes to implement negotiable changes in personnel policies, practices and working conditions the Employer will provide the Union advanced notice of the proposed changes in working conditions of employment in accordance with the law. Notice shall be provided as far in advance as possible but in no circumstances less than one month prior to the desired implementation date of the proposed change, taking into account the nature and scope of the proposed change and the need for timely implementation. When the Union wishes to initiate bargaining over subjects within the Employer's obligation to bargain that are not covered by the terms of this Agreement, it shall notify the Agency's designated representative of its intent to initiate negotiations by submitting its written proposals or a summary of the desired change that it wishes to bargain over.

B. Authorized Representatives: The parties will approach negotiations in good faith with a sincere resolve to efficiently reach an agreement. Only the Union designated representative and Agency representative, as designated by Region 9, may negotiate and execute a mid-contract memorandum.

C. Request to Bargain and Proposals: If a party intends to exercise its bargaining rights regarding a proposed change that creates a statutory duty to bargain, the party must request to bargain and submit timely bargaining proposals in writing.

D. Implementation: Where the Union wishes to negotiate over the requested change, the Employer will delay implementation of such change until the Parties have reached agreement on the proposed change unless required by law to implement prior to reaching agreement, or unless the Agency is faced with an overriding exigency in accordance with the law.

Section 3. Content of Agency Notice of Mid-Term Bargaining

The Agency-written notice for mid-term bargaining shall include:

1. A description of the proposed change;
2. The known nature and scope of the proposed change;
3. The planned timing of the change;
4. The Agency's point of contact; and

5. Any relevant documents or attachments.

Section 4. Service of Notices

A. All notices will be by email.

B. The Agency shall serve such notice to the Union President. The Union, through the Union President, will serve notice to the Agency's designated representative.

C. Union Demand to Bargain: The Union must submit a written demand to bargain no later than twenty-one (21) work days of the actual receipt of the Agency's notice.

D. Briefing: The Union may request a briefing on the proposed change by submitting a written request within seven (7) work days of the actual receipt of the notice. If a briefing is requested, it will be scheduled to occur within five workdays after the Agency receives the Union's demand to bargain/request for briefing (whichever comes first), unless the Agency's subject matter experts (SMEs) are not available within the five workdays. In cases where the Agency cannot provide the Union with a briefing within five workdays, the Agency will schedule the briefing as early as practicable. If the Union requests a briefing, it will have seven (7) work days from the date of the briefing to invoke its right to negotiate over the requested change.

E. Timeframe to Begin Bargaining: Bargaining shall commence as soon as possible, subject to the provisions in Section 5(I) of this Article.

Section 5. Mid-Term Bargaining Ground Rules

The following ground rules will govern all mid-term bargaining; there will be no further bargaining on additional ground-rules.

A. Coordinate Bargaining: Where practicable and agreeable, the parties will coordinate negotiation meetings with other scheduled meetings.

B. Face-to-Face Negotiations:

1. Negotiations will take place at EPA, Region 9, 75 Hawthorne Street, San Francisco, CA. To the extent the parties participate in third party proceedings, the parties will request such proceedings to occur in the San Francisco Bay Area.

2. Negotiations will be conducted during the regular business hours of operation where the negotiations are taking place.

C. Consolidated Bargaining: If both parties consent, negotiations on different proposed changes may be consolidated or held concurrently.

D. Proposals: Proposals must be related to the proposed change. Where applicable, if proposals are appropriate arrangements, such proposals must identify the adverse impact upon the employees that the proposals are intended to reduce or remedy. At any point in the bargaining process, the party proposing the change may elect to withdraw any proposed change, in whole or in part. However, nothing considered in this paragraph shall prevent either party from subsequently initiating negotiations over the same subject matter.

E. Number of Negotiators/Spokesperson Authorities/Alternates:

1. The number of Union negotiators representing the Union in bargaining under this Article who will be authorized official time under section 7131 (a) of the Statute for such purposes during the time the employee otherwise would be in regular duty status, shall not exceed the number of Agency negotiators. In addition, the Union bargaining team may include an ESC staff member. The Agency will inform the Union of the number of Agency negotiators after the Agency receives the Union's bargaining proposals.

2. Each party shall be represented at the negotiations at all times by one duly authorized chief negotiator or designee, who is prepared and authorized to reach agreement on all matters subject to negotiations and to sign-off on agreements for their respective party.

3. The parties will exchange the names of their bargaining team members for the specific issues to be negotiated no later than 3 work days prior to the commencement date of the bargaining. Alternates may substitute for team members with advanced notice to the other side. Such alternates will be entrusted with the right to speak for and bind the members for whom they substitute. Inability to have all team members present will not delay negotiations.

F. Subject Matter Experts (SMEs): Technical advisors and SMEs may be used by each party with a limit of one technical adviser/SME at a time. The requesting party will be responsible for all costs associated with the attendance of technical advisors/SMEs. Technical advisors/SMEs shall be excused once they have served their purpose.

G. Silent Observers: Either party is authorized up to one silent observer to attend negotiations. Silent observers are not authorized to speak during negotiation sessions. The Agency and Union will introduce silent observers by name and association at the beginning of negotiation sessions.

H. Mid-Term Bargaining Schedule: Negotiation sessions dates and times shall be by mutual agreement. The parties shall meet at reasonable times and as frequently as may be necessary, and to avoid unnecessary delays.

I. Caucus: Either team may request a caucus. The length of the caucus will be determined by what is reasonable by the Party calling the caucus. There is no limit to the number of caucuses which may be held, but each party must make a concerted effort to restrict the number and length of the caucuses.

J. Failure to Reach Agreement: If an agreement is not reached the parties will request the mediation services of the Federal Mediation Conciliation Services (FMCS) and mediation shall

be scheduled within five work days or as soon as a mediator is available, unless the parties consent otherwise. If the parties cannot reach a voluntary settlement with the assistance of a FMCS mediator, either side, or the parties jointly, may seek assistance from the Federal Service Impasses Panel.

K. Memorializing Agreement: Agreements will be in the form of memoranda of understanding (MOUs)/memoranda of agreement (MOAs). Upon agreement of each section, the chief negotiator for each party (or designee) will signify temporary agreement on each section of the MOU/MOA by initialing and dating the agreed upon section(s) of the working documents. Upon agreement of the entire MOU/MOA, the chief negotiator for each party will sign and date two copies of the MOU/MOA to signify final agreement. When an agreement is reached, it will be typed in final form and signed by both parties without delay. Such agreements and understandings shall conclude negotiations on such matter(s).

L. All MOUs/MOAs signed by the parties and entered into during the life of the parties' master collective bargaining agreement (MCBA) will be considered an addendum to this agreement and subject to its duration, unless a shorter expiration date has been agreed to in the MOU/MOA.

M. All MOUs/MOSs signed by the Parties are subject to Agency Head Review, consistent with 5 U.S.C. 7114.

N. Official Time: Official time for negotiations under this Section shall be provided consistent with 5 U.S.C. 7131(a). A reasonable amount of official time will be granted to prepare for negotiations, including time spent reviewing proposals, preparing counter-proposals and performing other tasks directly related to negotiations. Union negotiators' schedules and workloads will be adjusted to ensure they are able to perform such tasks.

ARTICLE 6 Negotiated Grievance Procedure

Section 1. Grievance Definition

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 any bargaining unit employee, the Union, or the Employer concerning:

(1) The effect or interpretation, or claim of breach of a negotiated agreement; or

(2) Any claimed violation, misinterpretation, or misapplication of law, rule, or regulation affecting conditions of employment.

Section 2. Exclusions

Grievances on the following matters are excluded by Section 7121(c) (1)-(5) of the Statute, including:

A. Any claimed violation of prohibited political activities (Subchapter III of Chapter 73 of Title 5);

B. Retirement (5CFR Sec. 831); life insurance (5CFR Sec. 870, 871, 872, and 873), or health insurance (5 CFR Sec. 890);

C. A suspension or removal for national security reasons (5 CFR 7532);

D. Any examination or certification (5 CFR Sec. 332 and 337) or appointment (5 CFR Sec. 2, 3 and 8);

E. The classification of any position which does not result in the reduction in grade or pay of an employee (5 CFR Sec. 511); or

F. The termination of a probationary employee; and

G. The termination of a term employee serving a trial period.

Section 3. Other Applicable Procedures

A. Nothing in this Agreement shall constitute a waiver of any appeal or review rights permissible under 5 U.S.C. Chapter 71.

B. The grievance procedures contained in this Article shall be the exclusive procedures available to the Parties and the bargaining unit employees for resolving a grievance, except as provided in Sections 4(C) and (D) of this Article; provided, however, that if an alleged grievance also constitutes an alleged unfair labor practice, the aggrieved Party has the option to seek redress under this Article or under the unfair labor practice procedure set forth in 5 U.S.C. Sec. 7116 and 5 C.F.R § 2423, but not both.

C. A grievance involving an adverse or unacceptable performance action of removal, suspension for more than fourteen (14) calendar days, reduction in grade, reduction in pay, or furlough of thirty (30) calendar days or less may be raised either under the appropriate appellate procedure or under this negotiated grievance procedure, but not both. An employee shall be deemed to have exercised their option at such time as the employee timely files a notice of appeal under the applicable appellate procedure or timely files a grievance in writing in accordance with the provisions of this Article, whichever occurs first.

D. A grievance involving discrimination based upon race, color, religion, sex, national origin, age, disability, marital status or political affiliation may, in the discretion of the aggrieved employee, be raised either under the approp1iate statutory procedure or under this negotiated grievance procedure, but not both. Pursuant to 5 U.S.C. Section 7121(d), an employee shall be deemed to have exercised his or her option to raise a matter either under the applicable statutory procedure or under this negotiated grievance procedure at such time as the employee timely files a formal complaint of discrimination or timely files a grievance in writing in accordance with the provisions of this Article, whichever event occurs first.

E. Employees who have sought informal EEO complaint counseling may still file an informal oral grievance, provided that such grievance is filed within 45 calendar days of the event or non-event, or within 45 days of when the employee became aware 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 used of the other.

Section 4. Designation of Representative

A. An employee, a group of employees, the Union or the Employer may initiate a grievance. It is understood that an employee processing a grievance under this Article shall be limited to Union representation or self-representation.

B. When an employee presents a grievance on their own behalf, the Union shall have the opportunity to have an observer present at all steps of the grievance process, and will normally be notified at least three (3) days in advance of the meeting. The union observer will not participate during the employee's presentation of the grievance, but will be allowed to present the Union’s position on the grievance or any relief sought at the conclusion of the meeting. The Employer will provide the Union with a copy of all written grievance correspondence between the Employer and the grievant.

C. If the Union is the grieving's designated representative, the employee will state that 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 must be in writing. Each party shall have a representative available to meet grievance filing time frames. Extensions may be granted with the consent of both parties.

Section 5. Procedure for handling a grievance involving an adverse or unacceptable performance action.

A. An employee who receives a notice of final action regarding an adverse action has thirty (30) calendar days beginning with the day after the effective date of the action to appeal the action to the Merit Systems Protection Board.

B. If the employee decides to seek recourse through this negotiated grievance procedure and the Union decides to invoke arbitration, without first following the steps of the grievance procedure, notice of a decision to seek arbitration must be served upon the Employer within thirty (30) days beginning with the day after the effective date of the action.

C. If the Union wishes to raise new issues not raised before the deciding official, it should, identify any additional issues in its written invocation of arbitration. However, this will not preclude either party from raising any additional or new issues prior to the pre-hearing conference. In no event may the Union or Agency raise new issues before the arbitrator that have not been identified at the prehearing conference that shall occur no later than 14 days prior to the scheduled hearing date.

Section 6. Disputes of Grievability

A. All disputes of grievability may be appealed to the next step of the grievance process. In the event the Union invokes arbitration, questions of grievability shall be decided first. If the issue is determined not to be grievable, the grievance will terminate.

B. The Parties agree to make every effort to raise any questions of grievability or arbitrability of a grievance at the lowest level of the negotiated grievance procedure. When the Employer alleges an issue is non-grievable or non-arbitrable, the Union will have seven (7) workdays to amend and refile the grievance from the date on which the Employer alleges the issue is non-grievable or non-arbitrable. It will be resubmitted at the level at which the issue was raised and proceed as a normal grievance.

C. Where the grievance is timely filed and the Union or employees alleges a violation of rules or regulations, the Employer will not dismiss the grievance as non-grievable solely because of an incorrect reference or citation.

Section 7. Information requests

A. The Employer recognizes its obligations to provide the Union and its representatives with relevant and necessary data pursuant to the standards set forth in 5 USC 7114(b) (4).

B. When a request for information cannot be filled within five (5) working days, the Parties may mutually agree to either postpone or amend any filling or other deadlines related to the information request.

C. If the Agency denies the request, it will provide a written statement giving the reasons why the data will not be provided. The Employer's decision to not provide all or part of the information sought may be joined with the grievance and processed to arbitration in the event the Union invokes arbitration. At arbitration, the arbitrator shall review the Union's information request and the Agency's decision not to provide the information and determine whether or not the information is to be provided to the Union.

Section 8. Filing a Grievance

A. A grievance must be filed within 30 calendar days of the notice of the matter, incident or issue out of which the grievance arose or 30 calendar days after the date the grieving party or person reasonably should have been aware of the matter, incident or issue. For this section the use of the word "day(s)" will be interpreted as calendar days.

B. The Parties may mutually agree to extend the time limits contained in this procedure. 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. Replies to the requests for extension shall be in writing.

C. A step of the grievance procedure can be waived by mutual agreement. Such request and agreement must be in writing.

D. 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.

Section 9. Informal Process

The parties acknowledge that, ideally, grievances should be settled at the lowest possible level. Consistent with this principle, employees are encouraged to initially raise grievances through an informal conflict resolution process by raising complaints with their supervisor, unless the immediate supervisor does not have the authority over the matter grieved. In that case, the employee will present their informal grievance to the management official at the level having the necessary authority. An employee shall raise any such complaint within fifteen (15) working days after the employee knew or should have known of the occurrence of the events giving rise to the

alleged grievance. The appropriate Agency and Union representatives will make themselves available to participate in the informal conflict resolution process.

Section 10. Employee Grievance Procedure

A. Formal Grievance- Step 1

1. An employee will present their 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 their grievance to the management official at the level having the necessary authority. If the employee files with the wrong official, the time limit for responding is automatically extended by the length of time necessary for the receiving official to route it to the proper official; the receiving official will provide the grievant and the Union with written notification that they are routing the grievance to the proper official. If the employee wishes to meet with responding official to discuss their grievance, the request for such a meeting must be included in their Step 1 grievance.

2. The employee must state specifically that they are presenting a grievance; the remedy or relief sought; the name, organizational unit and location of the aggrieved; a statement of the items, regulations, agreement or law alleged to have been violated, citing specific paragraphs or articles; a description of the circumstances giving rise to the violation; and designation by name of the Union representative or statement of self-representation. The grievance must be signed and dated.

3. If so requested by the employee, the supervisor may schedule a meeting with the employee within 15 days of receipt of the Step 1 grievance. Within 15 days of the meeting, if one is provided, or within 15 days after receipt of the grievance, if no meeting is requested or provided, the 1st level official will issue a written decision. The decision will include, if relief is denied or modified, the reason(s) for such actions, the name and location of the Step 2 responding official, and the time limits for filing a Step 2 grievance.

B. Step 2

1. If the matter is not satisfactorily settled following Step 1, the aggrieved employee and/or their representative, if any, may within fifteen (15) days of the notification of denial present the matter in writing to the next level supervisor over the supervisor who heard Step 1. The grievance will contain the information submitted in Step 1plus the disposition at Step 1. If the employee wishes to meet with this next level supervisor, they must request such a meeting in their Step 2 grievance.

2. If the employee has requested a meeting with the next level supervisor, the next level supervisor, or designee, will schedule a meeting within 15 days of receipt of the Step 2 grievance. The supervisor shall issue a written decision on the grievance within 15 days of the meeting, if one is provided, or within 15 days of receipt of the grievance, if no meeting is requested or provided. The decision will include, if relief is denied or modified, the reason(s) for

such actions, the name and location of the Step 3 responding official, and the time limits for filing a Step 3 grievance.

C. Step 3

1. If an employee is dissatisfied with the response provided in Step 2, the employee may appeal the grievance to the Regional Administrator. Such notice of appeal will be timely made within fifteen (15) days of receipt of the response in Step 2. If an appeal is made, either party may request that a meeting be held to discuss the matter or the parties may agree that no meeting be held. If either party elects a meeting, it shall take place with the third level official or designee within fifteen (15) days of the notice of appeal. Within fifteen (15) days of the meeting, if one is requested, or within 15 days after receipt of the grievance, if no meeting is requested, the third level official will issue a written decision.

2. If the grievance is not satisfactorily settled, the Union may refer the matter to binding arbitration in accordance with the procedures set forth in Article 7 of this Agreement. Issues not raised at Step 3 may not be raised in arbitration unless mutually agreed to by the Parties in writing.

Section 11. 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. The grieving party will file the grievance with the designated representative of the other Party at the level of recognition.

B. Within fourteen (14) 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 the Arbitration Article.

Section 12. Alternative Dispute Resolution

A. Either before or after a grievance is filed, the following alternative dispute resolution (ADR) process may be entered into by mutual agreement of the affected employee, the Union and the Employer. Any request for ADR must be filed in writing prior to the expiration of any other controlling time frame in order to receive consideration. If ADR is entered into, the following procedure applies:

B. The Parties will secure a mediator from FMCS and select a date to meet that is mutually acceptable to all participants within 15 days of the date that agreement to pursue ADR is reached. Time limits may be extended if the parties mutually consent.

C. The meeting will include the parties involved in the dispute, the mediator, and other mutually agreed to participants such as union and management representatives and subject matter experts.

D. The parties will meet to attempt to resolve the issue until/unless the mediator determines that further progress is unlikely or until any party to the ADR submits a written notice of withdrawal from the process.

E. If a matter is not resolved through ADR, the grievance will continue through the grievance process, beginning at the step at which grievance proceedings were stopped pending ADR efforts or at the first step if the request for ADR was timely made so as to suspend the time for filing a grievance initially, and employing the time remaining under the applicable time limits in effect at that step.

F. If the matter is resolved, the settlement will be reduced to writing and will be signed by the grievant, the Union and the Employer, and the grievance will be withdrawn as settled.

G. Settlement offers or discussions will not be used as evidence or referred to in the remaining steps of the grievance process or at arbitration, if the ADR efforts do not result in agreement.

H. Any expenses associated with the ADR will be shared between the parties.

ARTICLE 7 Arbitration

Section 1. Invocation

A. Time Limits to Invoke Arbitration: A notice to invoke arbitration will be made in writing by electronic mail to the other Party within 30 calendar days of receipt of the written decision rendered in the final step of the grievance procedure. If no written decision has been rendered, the 30-calendar day period begins the day after the written decision was due.

B. The Parties: Only the Union or the Agency may refer to arbitration any unresolved grievance after the final step of the negotiated grievance procedure. A referral must be made only by a designated Union representative or the Agency Labor Relations Director (or designee). The notice to invoke arbitration filed by the Union must be served on both the alleged responsible management official and on any local designated management representative, such as a Labor Relations Officer.

Section 2. Arbitrator Selection and Site/Timing of the Hearing

A. Time Limits to Request List of Arbitrators: Within five calendar days of invoking arbitration, the invoking party will request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven impartial qualified persons to act as arbitrators. The invoking party will request that the FMCS serve a copy of the panel list on both parties (Union and management). The invoking party will pay the FMCS fee.

B. Site of Hearings: Hearings will be held within the commuting area of the site of the dispute and the panel list will only include arbitrators in that area. For grievances regarding individual employees, the site of the dispute is defined as the location of the grievant's official duty station. If the majority of witnesses are located outside of the local commuting area the site of the dispute is where the majority of witnesses are located and that is where the hearing shall be held.

C. Travel Expenses and Other Costs: The Agency will secure a location for the hearing within the Agency's facilities. If this is not possible, the Agency is responsible for securing a location and the parties will share the cost equally. Each party is responsible for any travel-related expenses and per diem associated with travel to the location of the hearing for its advocates and witnesses. Official time for attendance and travel to arbitration hearings is covered under Article 2.

D. Selecting the Arbitrator: After the parties receive the list of arbitrators, they will meet in person, by telephone or by videoconference, within seven calendar days or unless the parties consent to extend this period. The invoking party will arrange the logistics for a coin toss to determine the order for striking, i.e., whether the Agency or the union strikes first. The logistics will include selecting an online website to perform an electronic coin

toss at a mutually agreeable time. The non-moving party will flip the coin. If the coin lands “heads up,” the union strikes first; if the coin lands “tails up,” the Agency strikes first. If the selection is being done by parties in different locations, the parties may agree to use an electronic audible coin toss or other non-visual mechanism for determining which party goes first. The parties shall each strike one name from the list alternately and then repeat the procedure until only one name remains. The person whose name remains shall be selected as the arbitrator.

1. Once a final name is selected the parties will sign the FMCS arbitration form letter and the invoking party will email it back to the FMCS within five calendar days and provide a copy to the other party. If electronic filing is used, the invoking party will 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 are correct.

E. Setting the Hearing Date: Subject to availability, the hearing with the arbitrator will be scheduled to occur within 90 days of the notice to invoke arbitration in Section 1.A.

F. Upon selection of an arbitrator, the arbitrator will offer dates for the hearing and then the representatives of the parties will communicate with the arbitrator and one another to select a date for the hearing.

G. Failure to Comply or Cooperate: Failure by the invoking party to comply with timelines in this section and/or failure to cooperate in the selection of an arbitrator, shall result in the grievance being withdrawn with no right to refile. If the non-invoking party refuses to participate in the selection of an arbitrator than the invoking party is entitled to select the arbitrator from the FMCS list.

Section 3. Fees and Expenses

A. The cost of the arbitrator's fees and expenses will be shared equally by the parties.
B. Once a hearing is scheduled, should one Party request unilaterally that the hearing be postponed or canceled for whatever reason, that Party will pay any fees charged by the arbitrator for the delay.
C. In cases where the Parties mutually agree to postpone or cancel a hearing, the Parties will share any fees charged by the arbitrator for the delay.
D. Outside of settlement, if the invoking party withdraws its grievance prior to an arbitrator rendering a decision, the invoking party is responsible for all arbitrator’s fees or expenses incurred.
E. If a settlement agreement is reached prior to the hearing, the parties agree to notify the arbitrator that the matter has been settled as soon as possible, in order to minimize the costs.

F. Generally, no transcript will be made of the hearing, however, either party may request a verbatim transcript at their own expense.

Section 4. Arbitrator's Jurisdiction and Authority

A. An arbitrator's jurisdiction is limited to the allegations raised in the grievance at Step 2 or the Grievance of the Parties (for an institutional grievance). The arbitrator shall have no authority to alter, in any way, the terms and conditions of this agreement, any supplemental other negotiated agreement, any other condition of employment or issue not properly before the arbitrator.
B. The arbitrator has the authority to make an employee whole, to the extent that such remedy is not limited by law or regulation, including but not limited to the authority to award back pay, reinstatement, attorney fees, where appropriate, and to issue an order to expunge the record of all references to a disciplinary, adverse or unacceptable performance action, if appropriate.

Section 5. Bifurcation

The arbitrator has the authority to make all grievability and/or arbitrability determinations. The arbitrator shall make decisions as to the arbitrability of a grievance before addressing the merits of the case. Upon mutual agreement of the Parties, such threshold issues may be submitted to the arbitrator by brief, and decided prior to a hearing on the merits of the underlying grievance. If the arbitrator determines there is reasonable basis to find that the issue is arbitrable, they will hear the merits of the underlying grievance and decide the issues together.

Section 6. Pre-Hearing Procedures

A. Pre-Hearing Exchange: No later than 5:00 pm Pacific time, ten (10) work days prior to the arbitration, the parties will identify their statement of the issue(s) and the witnesses and documents they intend to present at the hearing. The list of witnesses shall include a brief one or two sentence summary of each witness' expected testimony. If the other party is unclear on a document or does not have a copy, it will be provided within 24 hours of receipt of request. Rebuttal witnesses and rebuttal evidence not previously identified may be presented to the arbitrator; the arbitrator has the authority to determine whether that information should have been previously identified and, if so, whether it shall be allowed into evidence and/or whether the other party shall be permitted a delay to present sur-rebuttal evidence.

B. In the event of a known disagreement over the parties' proposed witnesses or evidence, the parties may initiate a conference call with the arbitrator at least five (5) work days prior to the hearing to seek a ruling on the contested witnesses and/or evidence. Not having done so does not preclude either party from making objections to witnesses or evidence at the hearing. However, if not having raised the issue in advance has resulted in a challenged witness traveling to the hearing from outside the local commuting area, arbitrators are empowered to take that into account in determining whether a witness

should be permitted to testify. If evidence or information becomes available to a party prior to the start of or during the proceeding, which has not been made available to the other party and it intends to enter that evidence or information in the arbitration, the other party will be provided that evidence or information immediately. If the information or evidence is substantial, the other party may seek a postponement of the arbitration for one work day or until the arbitrator's next available date.

C. The parties will attempt to reach agreement on joint exhibits.

D. The above exchanges may be done in person or through email.

Section 7. Stipulations

Prior to the hearing, the parties will attempt to stipulate the issue(s) to be arbitrated, joint exhibits, and any factual matters which would expedite the arbitration. In the event no questions of fact exist, the parties may, by both parties' consent, forego a formal hearing and present the grievance directly to the arbitrator by written submission. The Parties will agree on the time frame within which joint submissions are due to the arbitrator. The arbitrator is empowered to make a finding and award based on those submissions. If the parties do not agree on whether questions of fact exist to warrant a formal hearing, either party may request that the arbitrator make this determination and the arbitrator is empowered to do so. If the parties are unable to agree on a joint stipulation of the issue(s), each party shall submit its statement of the issue(s) to the arbitrator at the opening of the hearing. In that situation, the arbitrator is empowered to articulate the issue(s).

Section 8. Hearing Procedures

A. Hearing Location and Official Time: As provided by Section 2, the Agency will secure a location for the hearing within the Agency's facilities. If this is not possible, the Agency is responsible for securing a location and the parties will share the cost equally. The hearing will be held during the regularly scheduled workweek. Employees (e.g., witnesses and grievants) in a duty status will be granted official time necessary to prepare for and participate in the arbitration proceedings. Official time for Union representatives will be granted pursuant to Article 2 of this Agreement.

B. Number of Representatives: The Union and the Agency shall each be allowed up to two representatives to present its case; additional representatives may be permitted only by the consent of the parties.

C. Closed Hearings: Arbitration hearings are not open to the public and, except by the consent of both Parties, may not be attended by anyone other than the party representatives and the grievant(s).

D. Hearings Not Held in the Local Commuting Area: 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 official duty station of the grievant(s), the Agency shall pay travel expenses and per diem, as authorized by law and regulations, for:

1. The single named grievant or a representative grievant if there are multiple grievants.

2. Witnesses whose official duty stations are not in the local commuting area of the hearing location may participate via videoconference or teleconference and the arbitrator will accept this testimony as if given in person.

Section 9. Case Presentation and Burden of Proof

A. Order of Presentation: The Agency will make its presentation first in disciplinary and adverse action cases and it must support its case by substantial evidence. In all other issues, the party invoking arbitration will make its presentation first in the hearing and that party has the burden to prove its case by a preponderance of the evidence. In bifurcated cases, the party requesting bifurcation will make its presentation first in the jurisdictional hearing. For disputes presented only via briefs, rather than at a hearing, the party invoking arbitration files shall submit the first brief, with the other party responding within a time period set by the arbitrator.

B. Post-Hearing Briefs: Each party is entitled to file a post hearing brief by email within the time frame decided by the arbitrator at the hearing. Each party shall serve the other party with its brief by email on the next business day after briefs filed with the arbitrator or by other arrangement made with the arbitrator.

Section 10. Decisions

A. Issuance of Arbitration Decision: The Parties will request the arbitrator to issue the decision within thirty (30) days from the close of the record, including submission of briefs, unless the parties consent to extend the time limit. When the parties both consent to an expedited arbitration, the arbitrator may render a decision at the close of the proceedings.

B. Finality of Arbitration Award: An arbitrator's decision shall be binding on the parties subject to the provisions in Section 11. Any dispute over the application of the award shall be returned to the same arbitrator for clarification.

C. Standards for an Arbitration Award: Arbitrators will ensure that their award is consistent with law and applicable rules and regulations in effect at the time of the effective date of this Agreement.

Section 11. Exceptions

Either party may file exceptions to the arbitration award with the FLRA under regulations prescribed by the Authority. Pursuant to the Statute, an arbitration award is final when no timely exceptions have been filed with the FLRA or when timely filed exceptions have been decided by the FLRA. The filing of an exception with the Authority will serve to automatically stay the implementation of the award until the FLRA rules on the exception.

ARTICLE 8 Merit Promotion

Section 1. Purpose

This Article shall be administered consistent with 5 USC Chapter 23 to ensure that merit promotion principles are applied in a consistent manner to all bargaining unit employees.

Section 2. Merit Promotion Program

A. General

Merit promotion is one means of filling vacancies. In the exercise of this responsibility, and through the assessment of the organization's needs, managers may elect to fill vacancies by recruitment alternatives other than merit promotion. Such alternatives include obtaining eligible candidates via reassignment; change to lower grade; transfers from other agencies; reinstatement; OPM registers; EPA delegated examining registers; student appointments, appointment of persons with disabilities, veterans readjustment appointments, disabled veterans who have compensable service connected disability of 30% or more, and other excepted service appointments as appropriate; employees granted priority consideration for placement; and re-employment priority list registrants, etc. When fully-qualified candidates for a position can be found via other means of recruitment, these methods may be used in lieu of or in addition to the merit promotion process.

B. When Competition is Required

Competition is required for the following actions:

1. Promotion or transfer to a higher grade;

2. Temporary promotion for more than 120 days. Any prior details to higher-graded positions or temporary promotions during the preceding 12 months (whether competitive or non-competitive) must be included when calculating the number of days;

3. Selection for detail for more than 120 days to a higher-graded-position or to a position with known promotion potential;

4. Selection for training which is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for a promotion;

5. Reassignment, demotion, reinstatement or transfer to a position with more promotion potential than a position the employee previously held on a permanent basis in the competitive service (except when a reassignment or demotion is made to place an employee affected by a RIF or in lieu of disability retirement); and

6. Reinstatement to a permanent or temporary position at a higher grade than any grade held in a permanent position in the competitive service.

C. When Competition is Not Required.

Competition is not required for:

1. Career Ladder Promotions. Career ladder promotions are permitted when an employee is appointed or assigned to any grade level below the established full performance level of the position (i.e., the position has a documented career ladder and promotion potential). These promotions may be made noncompetitively for any employee who entered the career ladder by:

a. Competitive promotion procedures;

b. Competitive appointment from a certificate of eligibles (through OPM or delegated examining authority); or

c. Non-competitive appointment under a special authority, e.g., conversion of a Student Career Experience Program student or Federal Career Intern, appointment of former ACTION Volunteers or Peace Corps personnel (must clear ICTAP through an announcement), conversion of a Veterans Readjustment Act (VRA) appointee and Presidential Management Intern.

2. Promotion Based on Reclassification When:

a. No significant change occurs in the duties or responsibilities and the position is upgraded due to issuance of a new classification standard, an updated Agency-wide classification policy or the correction of a classification error; or

b. The position is upgraded due to accretion of additional duties and responsibilities and all of the following provisions are met:

i. The employee continues to perform the same basic functions in the same organization, working for the same supervisor (the duties of the former position are administratively absorbed into the new position, and the former position is abolished);

ii. The new position has no promotion potential;

iii. The additional duties and responsibilities assigned or accrued by the incumbent do not adversely affect or impact the grade-controlling duties and responsibilities of other positions in the unit; and

iv. The accretion is supported by a written analysis of the position (which may involve an audit with the employee and/or employee's supervisor, or other fact-gathering method).

3. Permanent Promotion to a position held under a temporary promotion when:

a. The assignment was originally made under competitive procedures; and

b. It was known to all competitors at the time that the assignment may lead to a permanent promotion.

4. Temporary Promotion of an employee for less than 120 days, or for more than 120 days to a grade level the employee previously held on a permanent basis in the competitive service.

5. Placement as the Result of Priority Consideration when the referral is a remedy for candidates not given proper consideration in a competitive promotion action;

6. Reduction in Force Placements which result in an employee receiving a position with higher promotion potential;

7. Promotion to a Grade Previously Held on a permanent basis in the competitive service, from which an employee was separated or demoted for other than performance or conduct reasons.

8. Promotion, Reassignment, Demotion, Transfer, Reinstatement, or Detail to a Position Having No Greater Promotion Potential than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service and did not lose because of performance or conduct reasons.

9. Promotion Resulting From Successful Completion of a Training Program for which the employee was competitively selected;

10. Selection from the Re-employment Priority List at the same or lower grade level than the position from which selected;

11. Reinstatement to any Position of a career or career-conditional employee who served under a career SES appointment consistent with 5 CFR 335.103(c) (3).

12. Promotion as a Legal Remedy as ordered or agreed upon in a legal or administrative proceeding.

13. Details for one hundred and twenty (120) days or less to a higher grade position or to a position with known promotion potential.

D. Area of Consideration (AOC)

1. Since the AOC targets the group of candidates who will be considered for competitive selection, it is important that it be sufficiently broad to uphold the basic merit principles of open competition, equal employment opportunity and identification of best qualified candidates. The AOC is not intended to limit competition. When establishing the AOC, HRO's should consider any appropriate sources which are likely to help EPA meet its mission and EEO objectives, and contribute fresh ideas and new viewpoints to the organization.

2. The minimum AOC will be an organizational unit, no less than a division, which is considered sufficient to attract more than one qualified candidate for promotional consideration.

The local appointing authority has the option of establishing an AOC larger than the minimum prescribed above, especially if experience shows that those minimum areas fail to provide enough qualified candidates.

3. An AOC will be established for each vacancy;

4. OPM will be notified of vacancies in the competitive service for which the Agency will consider applicants from outside the Agency in accordance with 5 USC 3327.

E. Time Limits for Posting Vacancy Announcements

1. The Employer will post a vacancy announcement to cover all vacancies that must be filled in accordance with the procedures of this Article. The HR Office will post the announcement on the Agency's Intranet for a minimum of ten (10) business days and include the announcement in a weekly email to all Region 9 employees.

2. Applications post marked or submitted electronically on or before the closing date will be accepted.

3. As a minimum, the vacancy announcement will contain the same type of information as contained in the OPM announcement template, for example:

a. Title, series and grade(s) of the vacancy announcement and announcement number;

b. Geographic and organizational locations;

c. Summary statement of the principal work assignments;

d. Minimum OPM qualification requirements plus any mandatory (selective placement) factors;

e. Knowledge, skills and abilities and/or competencies and/or task statements required;

f. Who to contact for additional information;

g. Where and/or how applications should be sent and what they should include; (h) Opening and closing dates;

h. If the vacancy has known promotion potential or is a career ladder position;

i. A statement of EEO;

j. Area of consideration; and,

k. Number of positions expected to be filled at the time if more than one.

F. Methods of Locating Candidates.

Candidates may be located using a wide range of methods which may vary with each vacancy depending upon the AOC, the type of position, and similar considerations. All Merit Promotion announcements (or subsequent cancellations) under this article will be posted at a minimum on the Agency Intranet and in a weekly email to all Region 9 employees.

These methods include: **[NOTE: get more information/full list of current methods from Agency]**

1. Vacancy Listings - A brief summary of multiple positions open to competition under the merit promotion procedures.

2. Individual Vacancy Announcements - Posted notices that advertise one or more positions open to competition under the merit promotion procedures. They will contain the same type of information as found in the OPM announcement template. Individual vacancy announcements will be open for a minimum of 10 business days.

3. Open Continuous Announcements - Posted notices through which applications may be accepted and referred to selecting officials on a continuing basis. They may be used when there is a continuous need for candidates in a particular occupation or group of occupations. They will contain the same type of information as found in the OPM template.

G. Priority Consideration.

The referral of individuals who by law, regulation, settlement agreement or final decision in a grievance or discrimination complaint must be considered before other candidates. Management must show that the employee received priority consideration for placement. Types of priority consideration include:

1. <u>Repromotion Consideration Eligibles</u>. Employees demoted in the Agency without personal cause and on grade/pay retention are entitled to priority consideration for any vacancies for which they qualify in their local commuting area. Repromotion eligibles are entitled to priority consideration for 2 years unless they are repromoted to their former grade or decline a position of equal grade, whichever occurs first. Candidates may receive consideration only at the grade level in which consideration was lost and having no higher promotion potential than the position previously held.

2. <u>Candidates Who Did Not Receive Proper Consideration in a Previous Merit Promotion Action Due To a Procedural, Regulatory or Program Violation</u>. These candidates will receive priority consideration for the next appropriate vacancy in the geographic location where proper consideration was denied. The following conditions must be met before priority consideration under this provision may be granted:

   a. It is a similar type position in the same pay system as the position for which the employee failed to receive proper consideration;

   b. The employee is qualified for and would have been in the best qualified group; and

c. The vacancy is at the same grade level with no higher potential than the position for which consideration was lost.

3. Employees Who Receive Priority Consideration Based on An EEO Complaint. These employees must be given priority consideration if it is either the agreed upon resolution to settle the complaint or the remedial action ordered in the final decision of a discrimination complaint.

4. Displaced Applicants. The Agency will provide special selection priority to eligible displaced applicants who are determined to be well-qualified, in accordance with the regulatory requirements (e.g., under the Career Transition Assistance Plan or the Interagency Career Assistance Program).

H. Application Procedures.

1. General. Unless otherwise specified in individual vacancy announcements or vacancy listings, interested persons must submit either a resume, curriculum vitae, the Optional Form for Federal Employment (OF 612), or any other written format to describe job-related qualifications and the necessary answers required by the questions provided in the vacancy announcement. A copy of the most recent performance appraisal may be required. The questions contained will be developed through the HR Office with input from the selecting official and/or subject matter expert. The questions contained within will be based on the knowledge, skills, and abilities required for the position. It is understood that vacancy questions and any relevant weighting factors will be developed and identified prior to announcing the vacancy. No matter what format is used, the application must contain all of the information required in the vacancy announcement/listing.

2. Accepting Applications.

a. When the HR Office Uses a Manual Recruitment System. Generally, the manual system will be used in such situations as identification of systematic problems with the automated staffing system, system failure, and/or loss of the vendor contract. Unless otherwise specified, applications will be accepted from all promotion-eligible candidates whose applications are received in the servicing HRO or postmarked by the closing date.

Applications from noncompetitive eligibles, qualified persons with disabilities, 30% or more compensable disabled veterans, VRA eligibles, and Public Health Service officers 54 may be accepted up until the time that the certificate of eligibles is sent to the selecting official. Employees within the AOC who are absent for legitimate reasons, such as approved leave, official travel, detail, Intergovernmental Personnel Act assignment, training or military service, may furnish copies of their application to other employees or their supervisor and request in writing that they be submitted for vacancies. Applications from outside the AOC will not be accepted.

b. When the HR Office Uses an Automated Staffing System. Unless otherwise specified, applications must be submitted on-line by all candidates by the closing date and time specified in the vacancy announcement. For assistance in applying for a vacancy, applicants may

contact the human resources representative listed on the vacancy announcement who will assist applicants to submit their applications online by the closing date of the vacancy announcement. If applying online poses a hardship, applicants must call the human resources representative before the closing date of the announcement to request assistance. In addition, applicants who have a hardship must respond to the same questions as applicants applying online and submit a signed copy of their responses to be received by the servicing HR Office prior to the closing date of the vacancy announcement. The HR Office will input the data into the system on the applicant's behalf for the specific job for which the applicant is applying only. An example of hardship would be where an applicant lives in or is temporarily assigned to a remote location where it would pose a hardship for the employee to get to a computer and/or access the automated staffing system.

I. Eligibility Requirements.

1. General. Applicants must meet OPM qualification requirements and any selective placement factors by the closing date of the announcement. Selective placement (mandatory) factors are knowledge, skills and abilities or competencies not contained in the OPM Operating Guide for General Schedule positions that are so essential for successful performance in a particular position that they become part of the qualification requirements in addition to those outlined in the Operating Manual or the Introduction to the Federal Wage System Job Grading System. Selective placement factors are determined by appropriate management officials and are readily identifiable from the position description or vacancy announcement. A copy of any selective placement factors will be retained in the merit promotion file. However, certain legal and regulatory requirements (i.e., time-in-grade requirements, time-after-competitive appointment, etc.) must be met within 30 days of the closing date of the vacancy announcement. Applicants responding to open continuous announcements must meet the eligibility requirements at the time the application is submitted to the HRO.

2. Minimum Qualification Requirements. Minimum qualification requirements will be those described or approved by OPM for the particular position involved, plus any mandatory (selective placement) factors. Qualification requirements are found in the OPM Operating Manual for Qualification Standards for GS positions.

J. Distinguishing Between Candidates.

Candidates who meet eligibility requirements will be divided into two categories:

1. Promotion Eligibles -Those applicants who must compete in order to be placed in the position (applicants in the promotion eligible category will be evaluated in accordance with the provisions below); and

2. Noncompetitive Eligibles - Those applicants with or without competitive status who are eligible for reinstatement, reassignment, change to lower grade, special appointing authority (e.g., persons with disabilities, disabled veterans, etc.) or other action where competition is not required for placement in the position. Noncompetitive eligibles will be referred alphabetically

without being rated and ranked. Such referrals may be made up until the time that the certificate of eligibles is sent to the selecting official.

K. Evaluation of Candidates

1. Applications may be evaluated by a subject matter expert, a rating panel or a human resources representative. Regardless of the evaluator, ratings must be based solely on the application material submitted by the applicant. If an automated staffing system is used to qualify, rate and/or rank applicants, then a human resources representative will conduct a quality review before the rating is finalized. When a quality review is conducted for an automated rating, an adjustment will only be made in the event that an applicant's answer(s) to the automated question(s) are not consistent with the applicant's resume or other documentation provided in the promotion package.

2. All candidates who meet the minimum (basic) qualification requirements must be evaluated on job-related criteria (i.e., work experience, education and training) and the selecting official or interview panel will consider applicant awards and appraisals in the selection process, if they are required by the vacancy announcement.

3. Evaluation methods must include an analysis of the job to determine pertinent knowledge, skills and abilities (KSA's) or competencies that are important for successful job performance. Based on the job analysis, the KSA's/competencies to be used as Mandatory KSA's/competencies and rating factors for the vacancy announcement will be identified and weighted. In an automated staffing system, the identified KSA's/competencies will be elicited in the form of questions or requests for information that the applicant must answer.

4. A rating plan must be developed by the subject matter expert or human resources representative. Only the criteria and established point values given in the rating plan for the vacant position will be applied in this process. The automated staffing system or promotion panel/ranking official will provide an objective assessment of each applicant's potential to perform in the vacant position.

5. All candidates meeting the minimum qualifications for the position will be rated and ranked, regardless of the number of applicants.

6. Anyone present during the panel/ranking official's deliberations is prohibited from divulging to any unauthorized person, including the selecting official, any of the following: contents of rating and ranking worksheets, deliberations, and the numerical scores assigned to candidates until the selection is made. Under no circumstances will such matters be discussed with someone without a need to know.

L. Ranking and Referral of Candidates.

1. <u>Determining Best-Qualified.</u> Promotion eligible candidates will be rated against the KSA's/competencies set forth in the rating plan. Candidates will be identified as either "best-qualified" or "qualified" based on the scores received in the evaluation process. When more than 10 candidates are rated as eligible, best- qualified candidates will be determined by using all of

the rating factors listed in the vacancy announcements in the evaluation process. Candidates will be ranked according to their rating scores assigned by the automatic staffing system or promotion panel/ranking official.

2. Referral When There Are More Than Ten Qualified Competitive Candidates. The Best Qualified threshold score will be set prior to the close of the vacancy (90). The Union will be notified if this number changes. The Best Qualified candidates who will be referred for consideration will be determined based on the most logical (natural) break in scores, i.e., two or more points. However, in the event the natural break method results in more than 9 Best Qualified candidates, then the HR Official will resort to identifying only the top 10 numerically ranked candidates who will then be forwarded to the selecting official/panel in alphabetical order. All tied scores (at number 10) will be forwarded to the selecting official. Candidates will be ranked according to the rating score assigned by the automated staffing system or panel/SME and referred in alphabetical order.

3. If a best qualified certificate is to be used for more than one vacancy, an additional best qualified candidate (if available) may be added for each additional vacancy.

4. If there are fewer than 10 best-qualified candidates, only the best-qualified candidates will be referred.

5. If there are no best-qualified candidates and the selecting official, with the concurrence of the human resources representative, determines that it is impractical to expand the AOC, then the qualified candidates may be referred in alphabetical order. If the human resources representative makes such a decision, the reason(s) why the further expansion of the AOC is impractical must be fully documented in writing and included in the Merit Promotion case file.

6. Duration of Merit Promotion Certificate. Normally, certificates are issued with a 60 calendar day time limit. In extenuating circumstances, certificates may be extended for an additional 60 days with a written request from the selecting official to the servicing HRO. A copy of the written request for extension will be sent to the Union.

7. Use of Certificates for Additional Positions. Certificates may be used to fill additional vacancies for similar positions up to 120 days. A similar position is one that is located in the same division or office, has the same title, series and grade (and promotion potential, if applicable,) and requires the same KSA's or competencies.

M. Interviews and Selections

1. Interviews may be conducted at the discretion of the selecting official or interview panel, subject to the following; if one EPA internal candidate is interviewed from the best qualified list, all bargaining unit employee candidates will be given the opportunity to be interviewed.

2. The selection process is a management prerogative involving the exercise of informed judgment coupled with responsibility. Each selecting official should choose the person(s) who will best fulfill their requirements and the objectives of the organization. Selecting officials may select or non-select any candidate on a certificate of eligibles.

N. Release and Notification of Applicants.

The human resources representative will work with program officials to establish mutually agreeable release dates based on mission and program requirements. Normally, an employee will be released no later than one complete pay period for promotion, following the selection. When local workforce and program conditions permit, an employee will be released no later than two complete pay periods for reassignments, following the selection. When an employee is nearing the end of a within-grade increase waiting period, consideration should be given to releasing an 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. All best qualified applicants will be notified of the outcome of announced vacancies. The effective date for a promotion will be the first day of the pay period in which the selectee assumes the duties of the position for which selected.

O. Disclosure of Information

1. All candidates must have equal access to information on the merit promotion process and procedures.

2. Applicants will be notified of:

   a. Whether they were found eligible;

   b. Whether they were referred to the selecting official/grouped on the best qualified list; and

   c. Who was selected.

3. In addition, applicants may request and receive information concerning:

   a. Whether the vacancy announcement was canceled;

   b. Areas, if any, in which they should improve to increase their chance for future promotion; and

   c. The applicant's own rating assigned in the ranking process, both before and after the quality review if applicable.

P. Employee Concerns.

If an employee/Union wishes to raise concerns about an apparent violation of the merit promotion procedures, they may file a grievance under the negotiated grievance procedure. For purposes of raising such an allegation, the grievant must file the first- step grievance with the HR Officer or with the appropriate HR Staff Director (in HQ) with jurisdiction over the merit promotion case when they have authority to take corrective action.

1. When processing grievances related to merit promotion actions taken under the terms of this Article, the employee's representative will, upon request to the appropriate servicing HRO, be furnished the relevant and necessary evaluative material (e.g., the application package,

interview notes, quality review results) used in the ranking process and/or by the Selecting Official that is contained in the Merit Promotion file used in the selection action, subject to the following:

a. Evaluative material will be confined to the applicants appearing on the Best Qualified List;

b. No information will be released that includes identifying information, in order to protect privacy rights;

c. If a crediting plan is to be reviewed by a union representative, they will perform the review in the presence of an authorized HRO official. A hard copy of the crediting plan will not be provided. The union representative may not release the contents of that crediting plan to any other EPA employee.

Q . Priority Consideration.

1. If as a result of a grievance being filed under this Agreement, either the Employer agrees or an arbitrator decides that an employee was improperly excluded from the best qualified list or was not selected in violation of these merit promotion principles, they will receive priority consideration for the next appropriate vacancy for which they are qualified. An appropriate vacancy is one at the same grade level, in the same area of consideration, and which has comparable promotion opportunities as the position for which the employee received improper consideration. Priority consideration means that the employee alone must be given bona fide consideration by the selecting official before any other candidates [except for the repromotion priority placement plan eligibles] are referred for the position to be filled. The employee is not to be considered in competition with other candidates and is not to be compared with other candidates. In the event two or more employees receive priority consideration for the same promotion action, they may be referred together. However, priority consideration for separate actions will be referred separately and in the order received based on the date the determination of improper consideration is made.

2. When an appropriate authority (e.g., management official or arbitrator) has determined that an employee has been affected by an unjustified or unwarranted personnel action, entitlement to back pay shall be handled in conformance with 5 CFR 550.804(a) and other applicable, laws, rules, regulations and this agreement.

R. Miscellaneous.

1. The fact that an employee is the subject of a conduct investigation will not prevent or delay their proper consideration for promotion, unless the Agency determines that such is necessary to protect the integrity of the Agency.

2. Upon request from the Union, the following information will be provided within a reasonable period of time, and in accordance with the Privacy Act to protect the privacy of the eligible candidates and panel members:

a. Announcement number;

b. Number of vacancies;

c. Panel scores of the candidates referred, before and after a quality review;

d. The series, grade of the employees referred, if the candidate was an employee within the unit;

e. If the candidate was not a unit employee, this will be so designated;

f. Selection action;

g. Date of selection action.

3. The Employer will maintain promotion and selection information for two (2) years or after an OPM evaluation, whichever comes first, in accordance with governing laws, rules and regulations.

ARTICLE 9 Leave

Section 1. Annual Leave

A. Request for Annual Leave

1. Use of annual leave is a right of the employee, subject to approval by the supervisor. When an employee submits a formal and timely request for leave on the required OPM-71, the employer will approve and schedule leave either at the time requested by the employee or if that is not possible, because of workload exigencies (e.g. the need to meet a work project deadline, severe work interruption), at another time mutually agreed upon. If leave is denied, the Employer will provide reasons for denial in writing to the employee, if requested. Requests for leave will be approved or denied expeditiously after actual receipt by the supervisor or designee.

2. Where an employee's request for annual leave conflicts with the requests of other employees to the extent that to grant leave to all who have requested would create workload problems, every effort will be made to reach an agreement among the affected employees. If these efforts fail, the employee having requested leave on the earliest date shall be granted leave. In the case of simultaneous requests the most senior employee (EPA EOD date) will be granted leave, unless a workload exigency exists for that employee.

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

4. All leave may be requested and used in 15-minute increments.

5. The Employer shall not, in lieu of taking appropriate disciplinary action, deny the use of annual leave as a disciplinary measure. The use or non-use of approved annual leave will not be relied on in the employee performance appraisal or evaluation.

6. Employees will be allowed to reschedule previously scheduled leave to another time, subject to the scheduling requirement above.

7. The employer agrees to authorize annual leave or leave without pay to a union representative for attendance at a union sponsored convention, as long as the employee has requested the leave one (1) workweek in advance, the employee is not in a use-or-lose status, and no workload exigencies exist.

8. Employees may change substitute one kind of leave for another previously authorized leave where appropriate.

C. Annual Notice of Use or Lose Leave

Each year, the Employer will timely issue a notice advising and reminding employees of the regulations concerning use or lose annual leave and the need to request annual leave to avoid unintended forfeiture. When canceled use or lose leave is forfeited because of workload exigencies or limited time precludes it from being rescheduled during the remainder of the leave year, management will undertake to restore the forfeited leave the following year, in accordance with applicable law and regulation, upon a request from the employee to restore the forfeited leave.

D. Cancellation

The employer cannot withdraw approval for a leave that has already been approved unless requested by the employee.

Section 2. Sick Leave

A. Sick Leave Use

1. The employee shall use and earn sick leave in accordance with applicable laws and regulations.

2. Accrued sick leave shall be granted to employees when they are:

a. Incapacitated for the performance of their duties by sickness, injury, pregnancy, or childbirth;

b. Receiving medical, dental or optical examination or treatment, including time spent traveling to and from the medical appointment;

c. Providing care for a family member who is incapacitated as a result of physical or mental illness, injury, pregnancy, or childbirth, or who is receiving medical, dental, or optical examinations or treatment (subject to the limitations set forth in 5 CFR 630.401);

d. Making arrangements necessitated by the death of a family member or attending the funeral of a family member subject to the limitations set forth in 5 CFR 630.401;

e. Certified by the health authorities having jurisdiction or by a health care provider, as jeopardizing the health of others by his or her presence on the job because of exposure to a communicable disease; or

f. Absent for duty for purposes relating to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys, or travel, court proceedings, and any other activities associated with the adoption process.

3. Employees will be able to use sick leave in increments of 15 minutes.

B. Providing Care for Family Members

1. Per 5 CFR 630.401, Full-time employees are authorized sick leave use of up to a total of 104 hours per year in order to pursue the following:

a. Provide care for a family member who is incapacitated by a medical or mental condition or attend to a family member receiving medical, dental, or optical examination or treatment; or

b. Make arrangements or attend the funeral of a family member.

2. Per 5 CFR 630.401, an employee who is caring for a family member with a serious health condition may use up to 480 hours of sick leave (pro-rated for part-time employees) during a leave year to care for the family member.

3. For sick leave approved under the provisions above, family member means an individual with any of the following relationships to the employee:

a) Spouse, and parents thereof;

b) Sons and daughters, and spouses thereof;

c) Parents, and spouses thereof;

d) Brothers and sisters, and spouses thereof;

e) Grandparents and grandchildren, and spouses thereof;

f) Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this definition; and

g) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

C. Procedures for Requesting Sick Leave

1. If the use of sick leave cannot be anticipated, the request for approval shall go to the immediate supervisor or designee within two hours after the start of the employee's normal tour. Should the employee be unable to reach the immediate supervisor or designee, the employee may leave the immediate supervisor or designees a voicemail requesting the leave.

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

3. When possible, sick leave for a non-emergency medical, dental or optical examination, operation or treatment shall be requested when the employee becomes

aware of the need to take sick leave. Such requests shall be approved unless workload exigencies exist, in which event, the employee would be notified as soon as possible, so that other appointments can be made.

D. Medical Documentation

1. Medical certification means a written statement signed by a registered physician or other recognized practitioner certifying the incapacitation, examination or treatment, or the period of disability while the employee was receiving medical care. The supervisor may waive the requirement to provide medical certification when the employee suffers from a well-documented, chronic medical condition that requires infrequent absences in excess of three days. Any medical documentation or evidence submitted by an employee is confidential and may be discussed with other officials only on a need to know basis.

2. For sick leave of three (3) consecutive days or less, the employee shall not be required to submit medical certification or other acceptable evidence unless there is reasonable evidence of abuse.

3. For absences of more than three work days, the supervisor may require the employee to submit a medical certification completed by a physician or other acceptable evidence, or a signed statement from the employee giving the reason why a physician was not consulted.

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

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

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

E. Attend Health Unit

An employee who is returns to duty after visiting a health unit for 59 minutes or less will not be charged leave. Should the health unit recommend that the employee be sent home and the employee is released within 59 minutes of leaving the work site, the initial 59 minutes will not be charged to leave. The employee is responsible for notifying the supervisor or designee

immediately that they will not be returning to work. Other than an employee on leave restriction, no employee will be required to furnish a medical certificate to substantiate use of sick leave for that day.

F. Alternative to Sick Leave Usage

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

Section 3 Advanced Annual/Sick Leave

A. Criteria for Advancing Annual Leave

1. Employees will be given advanced annual leave, unless the Employer determines that the employee's services are necessary, when:

a. They are eligible to earn annual leave; and

b. Their request does not exceed the amount of annual leave they would earn during the remainder of the year; and

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

B. Criteria for Advancing Sick Leave

Absent severe workload considerations, employees will be given advanced sick leave when all the following conditions are met:

1. The employee is eligible to earn sick leave;

2. Their request does not exceed the maximum allowable advancement of 240 hours;

3. There is a reasonable belief that the employee will return to a duty status after having used the leave;

4. The employee has enough in their retirement account to reimburse the Employer for the advance, should they not return;

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

Section 4. Leave Without Pay

A. Criteria for Approving Leave Without Pay

1. Leave without pay may be granted to employees, subject to management's approval, and in accordance with applicable law, rules, regulations, and EPA Manual 3165. The LWOP request must contain estimated duration and reason. Valid requests include, but are not limited to:

a. Attending school, if the course of study will increase skills on the job;

b. Maternity leave, if the employee expects to return to duty;

c. Employees whose applications for disability compensation are pending;

d. Illness or injury documented by medical evidence, if the employee is expected to return to duty;

e. While being paid disability compensation unless permanently disabled; and

f. To teach at colleges and universities.

2. A condition of granting leave without pay is that the employee will be expected to return to duty. Employees may request leave without pay in lieu of annual leave. However, if an employee has more than eighty (80) hours of comp time or is in a use or lose status, the employee should use either the comp time or use or lose leave prior to requesting leave without pay. Such leave (LWOP) will be granted unless the approving official determines that the absence will create a problem with workload, staffing, or mission accomplishment.

C. Criteria for Approving Leave Without Pay for Union Officers

The Employer will approve leave without pay for an employee who is elected to a Union officer position subject to the following:

a. Approval of LWOP is subject to staffing and workload requirements;

b. If the employee's return to duty is required due to workload needs or the possession of scarce skills, the Employer will cancel the LWOP and direct the employee to return to duty;

c. When the employee returns to a duty status, the Employer will place the employee in the same title, series and grade position held at the time LWOP commenced, to the extent practicable;

d. If the above placement can't be made, the Employer will place the employee in a position for which they are qualified at the same grade held by the employee when commencing the LWOP (assuming that no RIF has occurred in the interim).

D. Insurance Coverage

As provided by regulation, employees may elect to maintain their group insurance coverage while in LWOP status. Employees contemplating LWOP in excess of 30 days should contact

their servicing HR benefits specialist to determine what effects such LWOP will have on within-grade increases and other benefits.

Section 5. Administrative Leave

A. Definition

Administrative leave is an excused absence from duty without loss of pay and without charge to leave.

B. Voting

When voting polls are not open at least three hours either before or after an employee's tour of duty, they must notify their supervisor in advance when they intend to adjust reporting or departing time in order to report to the polls. The employee may arrive for work three hours after the polls are open or leave work three hours before the polls close, whichever requires the lesser amount of time. The amount of voting leave allowable will depend upon the employee's tour of duty and the employee's voting location. 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 them to vote, depending upon the particular circumstances in thier individual case, but not to exceed a full day. This exception must be requested and approved in advance in writing.

C. Adverse Working Conditions and other Emergency Situations

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

1. Employees should check the public media, i.e., radio, television, and/or other established means known to the employee to determine if a decision is made prior to the beginning of the workday to close all or part of the day.

2. If the decision to close the workplace occurs during the workday, the notice of specific release will be communicated through supervisory channels. Treatment of leave requests depends upon whether the office is closed (employees are not allowed to report to work or remain at work) or employees are allowed to report for duty on a delayed basis or leave work early, at their discretion. Workdays on which a federal activity is closed are considered non-workdays for leave purposes.

3. When hazardous conditions result in the office being closed at the beginning of the shift, with a later scheduled opening, employees will be excused from work for the period of closure without charge to leave, including those who otherwise would have been on approved leave. This does not apply to employees on LWOP, military leave, suspension or otherwise in a non-pay status.

4. When hazardous conditions result in an adjusted home departure/unscheduled leave policy for non-emergency employees, employees who report for work in accordance with the adjusted home departure announcement will not be charged leave for the period of absence. Employees who do not report for work will be charged leave for the entire shift.

5. When hazardous conditions result in an adjusted work dismissal at an Agency office, non-emergency employees in a duty status at the time of the adjusted work dismissal will be excused without charge to leave. Employees in an approved leave status for the entire workday will be charged leave for the entire workday. If an employee is scheduled to return from approved leave following the announcement of an adjusted work dismissal, the employee will be granted excused absence for the remainder of the workday following the time set for dismissal.

D. Agency Sponsored Blood Donation/Medical Screenings

1. Employees may be granted up to four (4) hours of excused absence for necessary travel and recuperation for the purpose of donating blood, medical screening, or bone marrow screening when the agency is sponsoring those activities. Excusal for such purposes is subject to supervisory approval, based on staffing and workload needs. The employee will request an excusal for these purposes as soon as practicable.

2. If an employee is requested to serve as a special donor by a hospital, medical professional or practitioner, any excused absence is subject to the above requirements. Additionally, in such circumstances, the employee must provide a statement from the hospital, professional or practitioner certifying to the request and donation.

E. Tardiness

1. The Employer will excuse infrequent tardiness of less than one (1) hour if the supervisor or designee determines that the following are met:

a. The employee is not on a leave restriction letter, and

b. The employee's lateness is due to an understandable cause that is outside an employee's normal ability to control.

2. In the event that the tardiness does not meet the above criteria and annual leave is charged, the employee will not be required to perform work until the leave time charged is expired. Rather than taking leave, the employee may request to make the time up at the end of the regularly scheduled shift.

F. Volunteer Work

1. Granting of excused absence for volunteer activities will be considered only when law does not specifically prohibit the employee's absence, workload allows the employee's excusal, and the Employer determines that the activity satisfies the following criteria:

a. The absence is directly related to the EPA's mission;

b. The absence is officially sponsored or sanctioned by EPA; and

c. The absence is brief and is determined to be in the interest of the Employer.

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

G. Adverse Working Conditions

The Agency may grant administrative excusal to employees when environmental condition problems (e.g., unusually hot or cold, fumes and/or poor air quality, civil disobedience, water line/electric line disruption, on-site construction) create unhealthy or unsafe conditions (as defined by OSHA, EPA, or NRC regulatory criteria) such as to prevent or greatly degrade working in a safe environment, or it may direct employees to another work area until their regular work area is determined to be safe for use. The Agency may also direct employees to take portable work home with them in lieu of administrative excusal.

H. Organ and Bone Marrow Donation

In accordance with 5 USC 6327, employees will receive up to 30 days administrative leave per calendar year when they undergo a medical procedure for organ donation. Additionally, employees will receive up to seven (7) days per calendar year for bone marrow donation. The employee is entitled to use of this leave without loss or reduction in pay, leave to which they are entitled, credit for time or service, or performance or efficiency rating. The length of absence will vary depending upon the medical circumstance of each case. For medical procedures and recuperation requiring longer than the paid leave authorized by statute, the Employer will continue to accommodate employees by granting additional time off in the form of accrued sick and/or annual leave, and considering requests for leave without pay or advanced sick or annual leave. Leave requested under this section must be supported by a medical certificate submitted by the Employee.

Section 6. Sabbatical

A. The Parties agree that the mission of the agency and the welfare of the employees can be enhanced by the granting of sabbatical leave. The leave is designed to provide employees a period of rest or refreshment and to combat "burn-out" or professional "stagnation." Such leave must be of mutual benefit to both the agency and the employee and allow the employee to return to the job with an enhanced professional capability.

B. Sabbaticals may be granted at the discretion of the Employer for a period not to exceed twelve (12) months for the purpose of professional study or to gain additional work experience outside the Federal government or other substantial reasons.

C. Sabbaticals may be granted to an employee only once in any six (6) year period.

D. The employee granted a sabbatical will be placed in a leave-without-pay (LWOP) status.

E. The Employer may grant sabbaticals after proper consideration has been given such matters as:

1. The need and ability to refill the position on a temporary basis;

2. Budgetary constraints;

3. Loss of services which may be needed by the organization;

4. Obligation to provide active employment at the end of the sabbatical;

5. Cost of continued coverage of Health Benefits and Life Insurance;

6. Retention of a desirable employee, such as one with special skills or knowledge;

7. Furtherance of a program of interest to the Government;

8. Protection or improvement of employee's health and well-being.

F. Eligibility

An employee's eligibility is established by the following:

1. Employee has completed five (5) years of continuous employment with Region 9, EPA; and

2. Employee must not be eligible for retirement within a 3-year period of the sabbatical (before, during or after the sabbatical).

F. Procedure

1. The eligible employee requesting a sabbatical shall submit the request in writing to the immediate supervisor.

2. The request shall fully state the reasons for such leave, and the length of time needed.

3. The immediate supervisor will assess and consider the request, and if approval is recommended, will forward the request up through the proper supervisory channel to the Division Director with their written reasons supporting the recommendation.

4. The Division Director will concur/non-concur. If they concur, the request will be forwarded to the Regional Administrator through the Personnel Office.

5. The Regional Administrator will either approve or disapprove the recommendation and return the request with the justification through the proper supervisory channel to the immediate supervisor.

6. The immediate supervisor will notify the employee of the disposition of the request.

7. If the request is approved, the immediate supervisor will process a Standard Form 52, Request for Personnel Action, attaching all documents (employee's request, supervisor's recommendation, RA's approval) and submit through channels to the Personnel Office for processing.

8. The Personnel Office will process the action in accordance with appropriate procedures.

9. The employee will adhere to all separation procedures including out-processing, clearance, etc.

10. Requests for sabbatical leave will not be denied without good cause. Denial at any step must be in writing and may be challenged through the grievance procedure.

Section 7. Other Leave Provisions

A. Religious Holiday

1. An employee will be granted annual leave or leave without pay for a workday, which occurs on a religious holiday.

2. An employee whose personal religion requires abstention from work during certain periods of time may elect to engage in compensatory time and/or credit hours if appropriate, for time lost for meeting those religious requirements.

3. To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the agency's mission, the Employer shall, in each instance, afford the employee the opportunity to work compensatory overtime and shall, in each instance, grant compensatory time off to an employee requesting such time off for religious observances when the employee's religious personal beliefs require that the employee abstain from work during certain periods of the workday or workweek.

4. For the purpose stated in paragraph (2) above, the employee may work such compensatory overtime before or after the granting of compensatory time off. A granting of advanced compensatory should be repaid by the appropriate amount of compensatory overtime work within a reasonable period of time, generally within two pay periods. Compensatory time shall be credited and used in 15-minute increments. Appropriate records will be kept of compensatory overtime earned and used.

B. Military Leave

In accordance with 5 USC 6323, any full time permanent or part-time permanent employee who is a member of the National Guard or other reserve unit of the Armed Forces shall be entitled to military leave for each day of active duty in such organization up to a maximum of fifteen (15) calendar days in a fiscal year. Unused military leave up to fifteen (15) calendar days may be carried over for a maximum of thirty (30) calendar days and used in the next year (for part time

employees, the rate at which leave accrues will be prorated). Approval of the military leave provided in the foregoing shall be based on the copy of the military orders directing the employee to active duty. The employee must furnish a copy of the certification of completion of such duty to the supervisor when the employee returns to work.

C. Court Leave

Jury duty or witness appearances shall be administered in accordance with 5 USC 6322 and any implementing rules or regulations.

1. Court leave is appropriate for: jury duty with a federal, state, or local court; or witness duty on behalf of a private party when the federal, state or local government is a party to the judicial proceeding. Court leave applies only when the employee would be on duty or leave with pay status but for the jury duty or witness service.

2. An employee called for court service will present the court order, subpoena, or summons to the supervisor. The employee must provide to the supervisor any documentation provided by the court confirming the employee’s presence in court. The Agency will not request that an employee be released from jury duty unless unusual situations exist where the public interest would be better served by the employee staying in a duty status.

3. Fees for jury duty or witness service by an employee receiving court leave must be submitted to the appropriate finance office. The employee may retain reimbursements for travel, parking and other out-of-pocket expenses.

4. Employees will not be granted court leave for appearances as witnesses that are private, non-official, and non-governmental in nature.

D. Professional Examinations Leave

Employees shall be allowed time off with pay on Administrative Leave in connection with the taking of State Licensure examinations, such as Bar, C.P.A., P.E., etc., where such licensure, in the Employer's opinion, would contribute to the employee's capability to effectuate the mission of the Agency within the employee's current classification. Such approval will not be unreasonably denied.

ARTICLE 10 Performance

Section 1. General

A. 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.

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

1. Linking employee critical elements and performance 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 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 a process to assist employees to improve and enhance their performance; and correct less than fully successful performance.
6. Providing a process for employee input and improving organizational effectiveness.

Section 2. Reopener

A. The Parties agree that the Agency has the right to modify the substance of the performance evaluation system 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 prior to their implementation.

B. Nothing in this Article shall serve as a waiver of either party's rights under the law or the collective bargaining agreement between the parties.

Section 3. Training and Information

1. All bargaining unit employees will receive training and information on PARS. Employees will be kept informed of the operation of the system by way of discussion at annual employee performance appraisals, general orientation sessions for new employees, and incorporation of PARS information on the Agency's Intranet site.

2. Both the Agency and ESC recognize the importance of training employees, managers, supervisors, and ESC/EPA Unit officers/stewards within ESC's bargaining unit on elements of the PARS.

3. The Agency shall make PARS training available to all employees. The intended purpose for the training is to acquaint employees with PARS, its terms and provisions, foster frequent constructive dialogue on individual performance, improve transparency, enhance accountability, and promote a greater sense of connection to the Agency's mission.

   The Union will be given a minimum period of at least 30 days written advanced notice and afforded the opportunity to provide comments on the training materials before they are published or distributed.

Section 4. Annual Pars Information

By no later than February each year, and at other times requested by the Union, management shall make available to ESC PARS summary information concerning the ratings of record issued to Region 9 employees. The following information shall be provided and made available in Excel format, without personal identifiers: organizational code; organizational description; pay plan/series/grade; SES/non-SES; bargaining unit status; management status; over /under 40 years of age; gender; ethnicity; and a key for the data fields.

Section 5. Coverage

This performance management program will cover all EPA Region 9 employees in the bargaining unit represented by ESC.

Section 6. Authorities

In the administration of this Article, except as modified by this Article, the Union, Agency officials, and bargaining unit employees will be governed by 5 USC Chapter 43; 5 C.F.R. Parts 430, 432, and 531; EPA Order 3151.1, Performance Management; and EPA Order 3110.16, Reduction in Grade and Removal Based on Unacceptable Performance.

Section 7. Definitions

<u>APPRAISAL PERIOD</u> is the established period of time for which performance will be reviewed and for which a rating of record will be prepared.

APPROVING OFFICIAL is the first- or second-level supervisor with the delegated authority for approving the Performance Agreement, the rating of record, awards, and other performance-related personnel actions.

ASSUMPTION is a known factor 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.

CFR is Code of Federal Regulations.

CRITICAL ELEMENT is a work assignment or responsibility of such importance that Unacceptable performance on the element would result in a determination that the employee's overall performance is Unacceptable. Critical elements are established for the assessment of individual performance only.

INTERIM RATING is 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.

MANAGEMENT is the Employer or Agency or U.S. EPA Region 9.

MEASUREMENT SOURCE(S) is the source(s) that may establish reliable and supportable bases 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.

MINIMUM PERIOD OF PERFORMANCE is the minimum amount of time (90 days) that must be completed before a rating of record may be given.

PERFORMANCE APPRAISAL is the assessment of the employee's performance against their individual critical elements.

PERFORMANCE IMPROVEMENT PLAN ("PIP") is a written document from the immediate supervisor to help an employee improve unacceptable performance.

PERFORMANCE PLAN is all of the written, or otherwise recorded, performance elements that set forth expected performance. A plan must include all critical elements and their performance standards. This is commonly known as the performance agreement.

PERFORMANCE STANDARD is the management-approved expression of the performance threshold(s), requirement(s), or expectations 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, and manner of performance. Each critical element must have a Fully Successful performance standard.

PROGRESS REVIEW is a communication with the employee about performance compared to the performance standards of critical elements. 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.

RATING is the written appraisal of performance compared to each critical element on which there has been an opportunity to perform for the minimum period.

RATING OF RECORD is the performance rating prepared at the end of the appraisal period for performance over the entire period (minimum of 90 days) and assignment of a summary level. This constitutes the official rating of record as referenced in 5 C.F.R. Part 430.

SUPERVISOR (5 U.S.C. § 7103(a)(10)): "…'supervisor' means an individual employed by an agency having authority in the interest of the 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 actions, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgement…"

UNACCEPTABLE PERFORMANCE is defined by law and regulation as "performance of an employee which fails to meet established performance standards in one or more critical elements of such employee's position" (5 U.S.C. 4301 and 5 C.F.R. 430.201(C)).

U.S.C. is United States Code.

Section 8. Appraisal Period

Performance during the previous rating period or extended rating period will not be taken into consideration in the subsequent rating period. Similarly, ratings from subsequent periods will not be applied retroactively.

Section 9. Minimum Period of Performance

A. 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 on the date 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, the appraisal period must be extended until the 90 days are met.

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

Section 10. Summary Rating Levels

There are five summary level ratings for each critical job elements only. Each critical element must have an element rating of ("O") Outstanding, ("FS") Fully Successful, and ("U") Unacceptable.

Section 11. Performance Evaluation Responsibilities

The following individuals, by position, are responsible for preparing and reviewing performance plans, performance ratings, and performance-related personnel actions:

A. Supervisor**:** An individual employed by the Agency having authority in the interest of the 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 actions if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment.

B. Approving Official: is the first or second-level supervisor with the delegated authority for approving the Performance Agreement, the rating of record, awards and other performance related personnel actions.

Section 12. Developing Performance Plans

A. General Requirements

1. Each employee will be given a copy of the critical elements for their position at the beginning of the appraisal year.

2. Performance standards shall be written for each critical element 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 extent feasible, performance standards will include expectations of quantity, quality, or timeliness, and may include 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. 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.

C. Collaborative Development of Performance Plans

1. Performance standards and critical elements will be established by the supervisor in collaboration with the employee.

2. Employees are entitled to an explanation of the rationale for their performance standards and critical elements. Therefore, in the process of establishing and identifying critical elements and performance standards, the immediate supervisor and employee will discuss, face-to-face, if practicable, what is expected of the employee, methods and resources to achieve the performance standards, and any concerns the employee may have.

3. Each supervisor will, after meeting and conferring with each employee, identify in writing those performance standards and critical elements for each employee under her or his supervision. Performance standards and critical elements 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

1. The steps to writing a performance plan include:

a. Identify two to five critical elements, taking into account the organizational strategic goals, functions, responsibilities, priorities, and the employee's Position Description ("PD"). The plan must use the Fully Successful performance standard definition for each element and if appropriate, document assumptions. Identify two to five critical elements which can be rated O, FS, or U. Critical elements are for individual performance only and affect the employee's summary rating.

i. When an even number of Critical Elements (CE) is established for a performance plan and the summary ratings given for the CEs are evenly divided, and none of the summary ratings are "Unacceptable", the rating official shall "round-up" and assign the higher summary rating

b. The supervisor is 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. 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, the efforts made to obtain the information. The employee must be allowed an opportunity to independently obtain the missing or unavailable information.

c. It is understood that employees cannot be held accountable on critical elements for factors outside their control.

d. The performance standards and critical elements in the plan must be consistent with the employee's PD. Critical elements and performance 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 ESC Contract, or to change the employee's standards and/or assignments to bring them into line with the employee's PD.

e. 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).

2. In establishing performance standards and critical elements, due consideration will be given to:

a. The resources available and the authority delegated necessary to meet the identified performance standards and critical elements;

b. Employee input; and

c. Standards for comparable positions.

E. Unresolved Differences

When there are unresolved differences between the immediate supervisor and the employee regarding performance standards and critical elements, 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. Performance standards and critical elements must be achievable, specific, observable, and measurable. Performance will be assessed against the standard. 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.

2. Supervisors are encouraged to be responsible for helping to address those barriers and for taking their impact into consideration when evaluating the employee's performance.

Section 13. Assumptions

1. Performance standards 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.

2. 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 performance standard. The employee may attach her or his 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.

Section 14. Content of the Performance Plan

Performance standards and critical elements must be in writing and given 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.

A. Title. "Performance Plan."

B. Element. Name and/or description of the performance standards and critical elements.

C. Element Type (Critical). A performance plan shall contain a minimum of two critical elements and a maximum of five critical elements.

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.

E. Measurement Source(s). Identification of sources that may establish reliable and supportable bases 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 ("O") Outstanding, ("FS") Fully Successful, or ("U") Unacceptable.

G. 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.

H. Employee Signature/Date. The employee's acknowledgement of the performance plan and the date.

I. Supervisor(s) Signature/Date. Identification of the supervisor(s), her or his approval of the performance plan, and the date of the approval.

Section 15. Communicating Performance Plans

It is the supervisor's responsibility to communicate performance expectations to employees within the first 30 days of the appraisal period or within 30 days of the employee's arrival in a new position. The individual employee and supervisor should agree on the plan. However, if the parties cannot agree, the supervisor establishes the plan. The supervisor and higher level review, if established, sign and date the plan. The employee then signs and dates the plan. (Note that the date the employee signs the plan, or refuses to sign, is the beginning date of the minimum period of performance.) The supervisor keeps the original and the employee receives a copy.

A. Communication and counseling during the work planning and 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 and an up-to-date copy of the Agency's mission and goals. 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 Agency'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 his or her 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 thirty (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 Agency's mission.

D. The Agency cannot take a performance-based adverse action against an employee whose performance plan: a) has not been in effect for ninety (90) days, and b) does not comport with the required contents of a performance plan as set forth in this Agreement.

E. Subsequent discussions on 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.

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

Section 16. Changes to Performance Plans During the Performance Cycle

A. Keeping performance plans current and accurate.

1. A critical element may be added or amended during the appraisal period; however, the supervisor shall not rate an employee on an added or substantially changed critical element until the employee completes the minimum period of performance (90 days) under the added or amended critical element.
2. The employee will be given any changes in the performance plan in writing and may discuss any of the changes with his/her supervisor.
3. Supervisors are responsible for ensuring employees have current and accurate performance plans.
4. Employees may participate in the performance management process by providing input to performance plans and preparing for and engaging in performance discussions. Employees may present concerns with regard to the performance plan to the supervisor for consideration.

B. Subsequent discussions on the contents of the performance plan shall occur when there is a change in the work situation which materially alters the performance plan, including, but not limited to the following:

1. A change in the supervisor of record;
2. When an employee returns from an extended absence of ninety (90) calendar days or more.

Section 17. Cascading Performance Standards

At the request of the employee, the Employer agrees to provide to the employee a copy of the following performance standards: 1) the employee's immediate supervisor; 2) the Branch Chief (if applicable); and the Division Director. The Employer also agrees to provide the employee upon request those portions of the Region 9 Deputy Regional Administrator's performance standards that relate directly to that employee's performance standards or job description/position.

Section 18. Assessing Employee Performance

A. 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 critical element to determine whether or not the employee met the standard(s).

B. 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. If a Union representative is present the supervisor reserves the right to have another management official or HR representative present.

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

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

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

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

G. Eligibility for a Quality Step Increase is predicated upon receipt of an "Outstanding" rating, but does not guarantee a Quality Step Increase.

Section 19. Progress Reviews

In addition to the annual performance appraisal, an employee is entitled to at least one formal feedback discussion (progress review) with the supervisor, usually by mid-year. However, frequent informal reviews of performance throughout the appraisal period are strongly encouraged and may be requested by either the employee or the supervisor. The Progress Reviews should be open, candid, and aimed at improving work products, and will provide an opportunity for feedback regarding schedules, accomplishments, and individual development.

Section 20. Interim Ratings

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 120 days, is reassigned to another EPA organization or work unit, transfers to another agency, or when the employee's supervisor, having supervised the employee for the minimum period, departs from that supervisory position. In preparing the rating of record, interim ratings must be given consideration proportional to the amount of the appraisal period the employee and the departing supervisor occupied each position. (If less than the minimum period of performance, only performance highlights will be provided.)

Section 21. Timing of the Appraisal

A. Performance appraisals (ratings of record) are scheduled to be done annually within 60 days after the close of the appraisal period. Under special circumstances described below, appraisals may deviate from that schedule:

B. 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.

C. 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 90 days, the supervisor should provide narrative highlights only).

D. Whenever the employee concludes a detail of 120 days to another position or a temporary promotion of 120 days, 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.)

E. In the event that a PIP is still active after the close of the appraisal period, the annual rating of record will not be assigned until the PIP is concluded.

Section 22. Appraising Disabled Veterans

The performance appraisal and resulting rating of a disabled veteran will not be lowered because the veteran has been absent from work to seek medical treatment.

Section 23. 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 adversely impacted due to the employee's absence from work.

Section 24. Protected Union Activities

Union activities by an employee will not be a factor in the evaluation or appraisal of an employee's performance. In addition, the amount of time spend by an employee on union activities (time not available to the employee to perform job-related duties) will also not be considered in the evaluation or appraisal of an employee's performance. Should there be Union representatives on 100% official time no rating of record will be given. Where a Reduction in Force (RIF) impacts Union Representatives on 100% official time, their rating will be addressed in accordance with 5 C.F.R. §351.504(c)(1).

Section 25. Sources of Appraisal Input

The written performance standards and sources of appraisal input will be applied in a fair and understandable manner in determining the rating of each assigned element. The supervisor will ensure that feedback (input) used in the appraisal process is related to the employees assigned elements and standards. The feedback used will be factual and relevant. If the information may adversely affect the employees rating, the employee will be entitled to know the source of this information. Employees if they so request, shall have copies of all records to the extent the

information is recorded and related to the information. The Agency will make this material available as soon as possible, in order to facilitate their ability to respond to and correct inaccurate information. The sources of such information will be annotated in the performance plan. Supervisors will not knowingly withhold pertinent information necessary to the appraisal of the employee's job performance.

Section 26. Rating an Element

Employees are encouraged to provide their supervisor with a written self-assessment (e.g., list of accomplishments completed, etc.) 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 performance standards, the supervisor will assign a rating to each critical element.

Section 27. 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 60 days after the rating cycle ends.

B. It is understood that employees will only be evaluated on work which they have been assigned.

C. All performance appraisals must contain a written narrative justification for each critical element and summary rating beyond simply stating that the standards for a given critical element or that all critical elements (as regards the summary rating) have been met, not met, exceeded, etc. Normally, rating narratives need not exceed two single-spaced typed pages. If no justification is available due to a lack of opportunity to perform on a particular critical element or where observation of performance was necessary but not possible, this fact will be so noted.

D. Assigning the Summary Level: 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. Outstanding: One-half or more Critical Elements are rated Outstanding, none lower than Fully Successful.

2. Fully Successful: No Critical Elements are rated lower than Fully Successful.

3. Unacceptable: One or more Critical Elements is rated Unacceptable.

Approving the Rating of Record:

E. If the summary level is Outstanding or Fully Successful, 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 28. Documenting the Rating

Official documentation of the rating of record consists of the completed Performance Plan, which shows the rating of each element, and the completed Appraisal Cover Sheet that includes the rating of record (either Outstanding, Fully Successful, or Unacceptable), signatures, any performance highlights, supervisor's comments and employee comments. Additional pages may be used if needed. The Performance Plan and the Appraisal Cover Sheet are combined to form one annual appraisal document (package).

Section 29. Communicating the Rating

The supervisor meets with the employee in private to conduct a formal appraisal interview. During the appraisal interview, the supervisor communicates to the employee:

A. How each performance element was rated,

B. The rating of record,

C. Areas that need improvement, including making suggestions and asking the employee for suggestions on how to improve performance, and

D. If appropriate, areas that may need to be changed in next year's performance plan.

E. Training and other career development needs, including the development of an Individual Development Plan, as appropriate.

F. The requirement of a PIP, if appropriate.

At the conclusion of the appraisal interview, the employee may sign the Appraisal Cover Sheet signifying that the appraisal discussion was held. The date the supervisor signs and the employee signs or refuses to sign will be considered the date the rating of record was communicated to the employee. The employee should receive a written copy of the rating of record as soon as possible, but no later than three (3) work days, after the appraisal interview.

Section 30. Recordkeeping

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 31. 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. If a supervisor identifies required training, they will notify the employee and, if applicable, annotate the IDP.

Section 22. Performance Improvement plan

Programs will provide assistance to help employees improve performance to the successful level. Such assistance may include, but is not limited to: formal training, on-the-job training, counseling and closer supervision. A Performance Improvement Plan (PIP) and a reasonable opportunity to improve are required as soon as employee performance falls to Unacceptable on any critical job element.

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, and provisions for counseling, training, or other assistance to bring performance up to a Fully Successful performance level. 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 supervisor may initiate a written PIP as soon as employee performance on a critical element (CE) and consequently, overall performance, is determined to have met Unacceptable criteria. A PIP may be initiated at any time during the appraisal year, as soon as the performance slips to Unacceptable. The employee's performance rating must be based on 90 days under the CE that is assigned an Unacceptable rating. PIPs must be in place within fifteen (15) working days after the employee is formally informed of performance that is via an Unacceptable rating. The PIP is to be developed in consultation with the employee. The Human Resources Office must be consulted and the Union informed before a PIP is implemented.

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 at least Fully Successful performance.

D. Content of a PIP. Each PIP should be geared to the needs and circumstances of the situation. The tone of the PIP should be factual and constructive. 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., Unacceptable performance on one or more critical elements.

(3) Restatement of the critical element(s) the employee is performing at Unacceptable and a description of how performance was determined to be deficient in relation to the measures of performance.

(4) Reference(s) to previous counseling sessions, if the supervisor has documented these meetings.

(5) A specific description of the requirements that must be met, in terms of quality, quantity, timeliness or manner of performance, for work to be judged Minimally Satisfactory. Numerical criteria or bench marks used by the supervisor to interpret the performance standard must also be stated.

(6) A similar explanation of what will be considered as Unacceptable work.

(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 at least Fully Successful performance on the remainder of the CEs.

(11) Notification that failure to improve performance to Fully Successful on the CE(s) may result in a change to a lower grade, removal, or reassignment.

E. Implementation of a PIP

(1) The supervisor dates the PIP and sends it to the next higher level supervisor for approval.

(2) The supervisor will meet with the employee to discuss the approved PIP. The employee signs the PIP and is given a copy. The employee's signature on the PIP indicates that they received a copy, and does not signify concurrence. If the employee refuses to sign, the supervisor will annotate the PIP and date the annotation.

(3) 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 the Fully Successful level and remains at that level for one year from the beginning of an opportunity to demonstrate acceptable 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 and a copy sent to the servicing Human Resources Office for inclusion into the EPF. If the PIP is terminated because of demonstrated "minimally satisfactory" performance after the proposed advance notice period, the PIP and memorandum will be removed from the EPF and destroyed after the employee's performance has continued to be "minimally satisfactory" for one year.

(1) A PIP may be terminated if the employee's performance improves to the Fully Successful level prior to expiration of the PIP.

(2) A PIP will be removed from the EPF if the employee leaves the Agency.

(3) A PIP may be extended at any time. Notice of the extension shall be given the employee and the employees designated representative.

G. Expiration of a PIP.

If a PIP is not extended or terminated by the designated expiration date, the supervisor must notify the employee in writing of the status of his or her performance.

Where the employee's performance has improved to Fully Successful 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.

Should the employee's performance not improve to the Fully Successful level, the supervisor will take any of the following actions referenced in section 34, "Performance-Based Actions."

Section 33. Performance- Based Actions

A. Should remedial action fail and the employee's performance is determined to be "unacceptable" after the reasonable opportunity period, the supervisor will consider the following possible personnel actions:
   1. When the employee is capable of performing in another position of the same grade, the supervisor may propose to reassign the employee to a vacant position in accordance with 5 CFR 430;

   2. 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;

   3. The supervisor may propose to remove the employee from Federal Service in accordance with 5 CFR 432.

B. The supervisor must consult with the Human Resources Office before taking any action based on unacceptable performance. An employee whose reduction-in-grade or removal is proposed for unacceptable 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 unacceptable performance;

   2. All documents upon which the advance notice is based; if requested in writing by the employee or, the employee's representative.

   3. A representative. The employee must file a written statement with the deciding official indicating the name, title (if any) and address of the representative;

   4. A reasonable time, but not less than 10 work days, to answer orally and/or in writing;

   5. Use a reasonable amount of official time to prepare an answer;

   6. A written decision which specifies the instances of unacceptable performance on which the reduction in grade or removal is based. The decision shall be made no sooner than 30 calendar days after expiration of the advance notice period. Unless proposed by the head of the Agency, such written decisions shall be concurred on by an employee who is in a higher position than the person who proposed the action. 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.

Section 34. Employee Objections to Performance Plans or Recognition Decisions

The final determination of an employee's critical elements and performance standards is not grievable under the negotiated grievance procedure. However, if an employee believes that a decision or other action taken or not taken under PARS 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 file a complaint with the Office of Special Counsel. In addition, if an employee or the Union believes that a decision or other action taken or not taken under PARS resulted from retaliation or reprisal for protected union activities, the Union may file an Unfair Labor Practice charge with the Federal Labor Relations Authority pursuant to 5 U.S.C. 7116.

Section 35. Employee Objection to Rating of Record

A. An employee can file a written rebuttal within fifteen (15) days after receipt of the performance rating. The rebuttal will be attached to the performance appraisal and be submitted to the Human Resources Office.

B. An employee who disagrees with her or his final rating of record may file a grievance under the provisions of the negotiated grievance procedure.

C. A rating of record may not be appealed to the Merit Systems Protection Board.

D. 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 36. Performance Quotas

The employer agrees that quotas will not be used to determine the number of "Outstanding" or "Fully Successful" for final ratings of record given to employees for each appraisal period.

Section 37. Employee Performance Evaluation- Uncompensated Work

Employees will not be required to perform uncompensated work in order to be rated fully successful.

Section 38. Privacy Protections

The material included in the Agency's PARS system is confidential and is governed by the Privacy Act. This information will be disclosed, if necessary, in a manner consistent with the Privacy Act Statement on the Performance Plan Coversheet.

Section 39. Feedback to Supervisors

If desired, the Union and the Employer shall jointly develop an employee survey to provide feedback to supervisors on the quality of their coaching and feedback skills. After mutual agreement on contents and design format, management will conduct the survey on an annual basis. The feedback results will be distributed only to the respective supervisors and the Division Director and will be kept confidential. Participating in the survey will be voluntary on the part of employees and all feedback shall be given anonymously.

Section 40. Appraisal Cycle

The rating cycle will be from October 1 through September 30 of the following year.

A. It is highly recommended, but not mandatory, that each employee prepare a self-assessment. The self-assessment will be submitted to their immediate supervisor for consideration.

B. Performance reviews will be scheduled after supervisor receipt of the self-assessment and will generally be completed by November 30.

Section 41. Performance Standards Stringency

The Employer agrees that performance standards shall be fair and equitable and shall be consistently applied in Region 9.

Section 42. Employee Control

The Employer agrees that under no circumstances will factors beyond an employee's control be used to lower the employee's overall performance rating.

Section 43. QSI Award Limitation

An employee who receives a Quality Step Increase ("QSI") Award may not receive another ratings-based award for the same rating cycle.

Section 44. Awards Percentage for O's and F's

Subject to budgetary constraints, employees who serve a minimum of 90 days during an appraisal cycle are eligible for a rating-based award as a percentage of their current basic pay (which is determined by the employee's grade, step, and locality), based upon their rating of record, as follows: Outstanding – up to 5%, and Fully Successful – up to 3%.

Section 45. Performance Awards- Low Payroll Award Allocation Years

The Employer agrees to notify the Union at the beginning of the budget year, or as soon as possible, when the total payroll awards allocation for that year will be less than 1% of payroll.

Section 46. Performance Based Awards vs. Non-Performance Based Awards

The Employer agrees that performance-based awards and nonperformance-based awards are separate. For nonperformance-based awards, nothing in this Article or national agreements will supersede or alter current Region 9 Awards Policies.

Section 47. Monetary Controls/Funding Controls Mechanisms

The Regional Administrator, or their designee(s), will make ratings-based awards decisions in order to ensure fairness, consistency, equitability, and meaningful distinctions based upon levels of performance.

Section 48. Awards Decisions as a Group

A Fully Successful rated employee should not receive a higher percentage than an Outstanding rated employee, and Fully Successful rated employees as a group should not receive higher value awards than Outstanding rated employees. Therefore, award determinations must be made concurrently for all employees to assure these conditions will be met within available budgets, before awards are processed for any employees.

Section 49. Time Off Awards- Hours Availability

During each awards cycle, those employees with low leave balances and are eligible for a cash award will be notified by their supervisor that they can elect to get a time off award in lieu of a cash award if time off awards are available. The Employer also agrees, at the beginning of each

award cycle, to notify the Union concerning the methodology to be used to allocate performance-based Time Off Awards hours to ESC bargaining unit employees.

The Employer agrees to allocate a portion of total available regional performance-based Time Off Award hours to ESC bargaining unit employees in a fair, consistent and equitable manner.

The maximum amount of performance-based Time Off Award hours for a performance rating cycle that can be granted to a Region 9 employee is 40 hours. Any individual performance-based Time Off Award granted in excess of 20 hours requires Union review prior to approval.

Section 50. Performance Based Awards Reporting to the Union

Within 60 days of the end of the yearly performance-based awards cycle, the Employer agrees to provide to ESC a listing of ESC bargaining unit employees who receive a performance-based award for that performance year. This listing will provide the following awards information for each employee: QSI, dollar value of cash award and percent of salary cash award received, and/or number of Time Off Award hours received, and corresponding cash value/percent of salary Time Off Awards hours received.

Section 51. Headquarters Reviews

If management in Region 9 receives final written report(s) regarding the awards process pursuant to the Human Capital Accountability Program or other assessments, those reports will be shared with the Union.

Section 52. Reduction in Force ("RIF") Credit for Performance

In the event of a reduction-in-force at Region 9, ESC employees will receive additional years of retention service credit pursuant to 5 CFR §351.504(d) for achieving ratings of Outstanding and Fully Successful. Employees who receive a rating of Outstanding will receive an additional twenty (20) years of service. Employees who receive a rating of Fully Successful will receive an additional twelve (12) years of service.

Section 53. Agency Head Review

If as a result of Agency Head Review, if any of the provisions of this Article is disapproved either party can request to renegotiate the disapproved provision. The parties will exchange proposals within 30 calendar days from the Agency's notification.

ARTICLE 11 Discipline and Adverse Actions

Section 1. Statement of Purpose and Policy

The parties agree that employees shall maintain high standards of integrity, conduct and concern for the public interest and that the federal workforce shall be used efficiently and effectively. The purpose of discipline is to correct and improve employee behavior in order to promote the efficiency of the service. The specific penalty for an instance of misconduct shall be tailored to the facts and circumstances of the situation. Disciplinary and adverse actions will be initiated as soon as possible after the alleged offense is committed or the Employer becomes aware of the alleged offense.

Section 2. Definitions and Exclusions

A. Definition: For the purposes of this Article discipline incudes oral admonishments, written warnings, letters of reprimand, suspension, downgrade, or separation from Federal service or any other action defined as discipline in EPA Order 3120.1, Conduct and Discipline Manual.

B. “Crime Provision:” In instances where public or employee health, safety, or welfare may be impaired or endangered, or there may be a serious breach of applicable standards of conduct, or it is necessary to invoke the "crime provision" of 5 U.S.C. 7513(b) (1), the Agency reserves the right to take appropriate action immediately and before the procedures in this Article are initiated or exhausted.

Section 3. Written Reprimand

A. A written reprimand is a written letter that specifies the employee’s misconduct. The reprimand will be maintained in the employee’s electronic Official Personnel Folder for two years.

B. Oral admonishments which are reduced to writing will be retained by the employee’s supervisor for a period of time specified in the oral admonishment, which may not exceed one year.

Section 4. Just Cause and Progressive Discipline

A. When proposing and effecting disciplinary actions, management will consider each case on its own merits. The Employer will be guided by the principles of just cause and progressive discipline. The Employer will use the agency Table of Penalties as a guide in determining the appropriate action to take.

B. When determining the appropriateness of a disciplinary action, the Employer agrees to consider the following factors, as relevant:

1. The nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;

2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;

3. The employee's past disciplinary record;

4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;

5. The effect of the offense upon the employee's ability to perform at a fully satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties;

6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;

7. Consistency of the penalty with any applicable Agency table of penalties;

8. The notoriety of the offense or its impact upon the reputation of the Agency;

9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

10. Potential for the employee's rehabilitation;

11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter; and

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

C. All of these factors may not be relevant in every case. Factors may or may not weigh in an employee's favor. Selection of an appropriate penalty involves a responsible balancing of the relevant factors.

D. An effective means of maintaining appropriate conduct in the workplace is through the promotion of cooperation, sustained good working relationships, and the self-discipline and responsible performance expected of mature employees. The Union agrees to encourage employees to:

1. Conscientiously perform assigned duties;

2. Comply with Government-wide and EPA standards of conduct;

3. Cooperate and strive to maintain good working relations with their supervisors and fellow employees; and

4. Maintain satisfactory attendance records.

Section 5. Procedure

When the Employer proposes a suspension, removal, reduction in grade or pay or a furlough of 30 days or less, the following procedures will apply:

1. The written proposal will be delivered prior to taking the disciplinary action and will contain the specific reasons for the proposed action, stated in detail. It is understood that a proposed notice is not grievable upon receipt. However, grievances regarding the proposal may be merged into a grievance concerning the final decision of the Employer, after that final decision is issued.
   a. Suspension for fourteen (14) days or less: the employer's written notice of the proposed action must be delivered no less than fourteen (14) calendar days prior to taking the disciplinary action.
   b. Suspensions of fourteen (14) days or more, removal, reductions in grade or pay, or furlough of 30 days or less: the employer's written notice of the proposed action must be provided at least thirty (30) calendar days prior to taking the disciplinary action.

2. The employee will be given ten (10) work days from the date they receive the notice of proposed disciplinary action, to deliver an oral and/or written reply. Reasonable requests for extension will be granted. The proposal notice will specify who will hear/receive the oral and/or written reply. This official will be the person who will be making the final decision on the matter, or their designee.

3. The employee and their representative will be given reasonable time to prepare the reply, in accordance with the terms of Article 2.

4. The proposal notice shall inform the employee of their right to review the material which is relied upon to support the proposed action. The term "material relied upon" includes all documents contained in the disciplinary action file, whether favorable or unfavorable to either party's position. The Employer will make a copy of such material available for review, concurrent with the delivery of the proposal notice to the employee. The Employer may sanitize any information provided, consistent with legal or regulatory requirements.

5. Where management has relied upon witnesses to support the reason for the proposed action, the Employer will make available, as part of the material relied upon, the identity of those witnesses and any written statements taken from them. The Employer reserves the right to sanitize any material which is provided to the employee or the employee's represented, when required by law. If requested by the employee or their representative, the Employer will furnish a copy of such material prior to the oral reply.

6. In making a reply, the employee may set forth mitigating circumstances, refute aggravating circumstances, and/or give reasons why the proposed action should not be effected.

7. If an employee chooses to make an oral reply, the reply will be made either at the work site of the employee or the Employer may arrange to hear the reply by phone if the employee's representative agrees to such an arrangement. If the oral reply is to be made at a location outside of the employee's local commuting area, the Employer will pay, in accordance with law, rule and regulation, the travel and per diem expenses of the employee.

8. The Employer will summarize an employee's oral response and include the summary in the case file. The Employer will provide a copy of the written summary to the employee prior to serving the decision. The employee may submit comments about the written summary which will also be included in the case file. Employees making an oral response should provide an outline of their presentation at the beginning of the reply meeting.

9. The Employer agrees that the employee may use the same means as the Employer does to take notes during the oral reply.

10. The final decision in an adverse action covered by this Article must be made by the next higher level official in the proposing official's chain of command, unless the proposing official is the Deputy Administrator or the Administrator of the Agency. The decision notice will specify the charge(s) sustained and the reason(s) for the decision.

Section 6. Challenging the Discipline

A. In the event the Employer sustains the charge(s) and disciplines an employee, they may elect to challenge the adverse action in only one of the following ways:

1. Under this Agreement and only with the Union's concurrence, by appealing directly to binding arbitration (which may include an allegation of discrimination), within the time set forth in Article 7;

a. If the Union wishes to raise new issues not raised before the deciding official it should, as practical, identify any additional issues in its written invocation of arbitration. However, this will not preclude either party from raising any additional or new issues prior to the pre-hearing conference. In no event may the union or agency raise new issues before the arbitrator that have not been identified at the prehearing conference that shall occur no later than 14 days prior to the scheduled hearing date.

2. By filing an appeal with the MSPB in accordance with applicable law and regulation (currently thirty (30) calendar days); or

3. By filing a formal complaint of discrimination under the administrative EEO process.

B. The final decision letter which is issued on the adverse action to the employee will contain a statement of their right to challenge the action. Once an employee has elected one (1) of these procedures, the employee cannot change thereafter to a different procedure.

Section 7.

A. Under ordinary circumstances, an employee whose removal has been proposed shall remain in a duty status in their regular position during the advance notice period. In those circumstances where the Employer determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize Government interests, the Employer will consider whether any of the following alternatives is preferable:

1. Assigning the employee to duties where they are no longer a threat to safety, the Agency mission, or to Government property;

2. Placing the employee on administrative leave with their consent;

3. Carrying the employee on appropriate leave (annual, sick, leave without pay, or absence without leave) if they are absent for reasons not originating with the Employer.

B. If none of these alternatives is selected, the Employer may place the employee in a paid, nonduty status during all or part of the advance notice period, if otherwise consistent with applicable law, rule or regulation. The Employer may also curtail the notice period when it can invoke the provisions of 5 CFR 752.404(d) (1) (the "crime provision"). This provision may be invoked even in the absence of judicial action if the Employer has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed.

Section 8.

In case of off duty misconduct, the proposal and the decision will establish the relationship (i.e., nexus) between the misconduct and the efficiency of the Service.

Section 9.

So long as the information request standard found in Article 15 is met, management will issue, upon request, copies of proposed and final adverse action notices.

Section 10.

The documentation maintained in an adverse action file will be purged/destroyed pursuant to applicable rules for the system(s) of records governing adverse action files in which the documentation is maintained. If an adverse action is overturned, appropriate action will be taken with respect to all other records (e.g., SF 50) in accordance with the disposition of the case.

Section 11.

The deciding official may either reduce or overturn the proposed action, or sustain the proposed action, or alternatively may offer the employee a settlement agreement in resolution of the matter.

ARTICLE 12 Work Schedules

Section 1. Policy

Alternative Work Schedule programs have the potential to improve productivity and morale and to accomplish the Agency's mission and goals in an efficient fashion. Supervisors are encouraged to provide maximum flexibility for their employees.

It is the policy of this Region to institute work schedules designed to:

1. Empower employees to allow for increased productivity and streamline government operations to improve public service;
2. Increase the efficiency of Government operations;
3. Reduce traffic congestion and commute problems;
4. Reduce levels of energy consumption;
5. Increase service to the public and other Regional staff;
6. Enhance opportunities for full-time and part-time employment; and
7. Improve the quality of life for individuals and families.

Section 2. Definitions

A. ***Administrative workweek***. A period of 7 consecutive calendar days designated in advance by the head of an agency. For EPA employees, the administrative workweek begins on Sunday. There are two administrative workweeks per pay period.

B. ***Alternative Work Schedule (AWS):*** Work schedules which include either flexible work schedules or compressed work schedules.

C. ***Basic Work Requirement*** : The number of hours, excluding overtime hours, that 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.

E. ***Compressed Work Schedule (CWS):*** means:

1. In the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled 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 which is scheduled for less than 10 workdays;

F. ***Core Hours***: The time periods during the workday, workweek, or pay period that are within the tour of duty during which an employee covered by a flexible work schedule is required by the agency to be present for work. (See 5 U.S.C. 6122(a) (1).) Core hours for Region 9 are from 10:00 to 2:00 PM.

G. ***Credit Hours***: Those hours within a flexible work schedule that an employee elects to work in excess of his or her basic work requirement so as to vary the length of a workweek or workday. There is no provision within the law to use credit hours as part of the compressed work schedule. Credit hours may be earned in 15-minute increments.

H. ***Fixed Work Schedule:*** A work schedule that is assigned or approved by the supervisor and cannot be changed without prior supervisory approval. Standard/Regular and compressed work schedules are fixed work schedules.

I. ***Flexible hours (also referred to as "flexible time bands"):*** The times during the workday, workweek, or pay period within the tour of duty during which an employee covered by a flexible work schedule may choose to vary his or her times of arrival to and departure from the work site consistent with the duties and requirements of the position. (See 5 U.S.C. 6122(a) (2).)

J. ***Flexible work schedule (FWS)*****:** A work schedule established under 5 U.S.C. 6122, that:

1. In the case of a full-time employee, has an 80-hour biweekly basic work requirement that allows an employee to determine his or her own schedule within the limits set by the agency; and

2. In the case of a part-time employee, has a biweekly basic work requirement of less than 80 hours that allows an employee to determine his or her own schedule within the limits set by the agency.

Flexible Work Schedules can split the workday into two distinct kinds of time – core hours and flexible hours or bands. Under most flexible schedule arrangements, all employees must be working during core hours, but they may establish their arrival and departure times during the flexible bands.

K. ***Flexitour*****:** A type of flexible work schedule in which an employee is allowed to select starting and stopping times within the flexible hours. Once selected, the hours are fixed until the agency provides an opportunity to select different starting and stopping times.

L. ***Gliding schedule*****:** A type of flexible work schedule in which a full-time employee has a basic work requirement of 8 hours in each day and 40 hours in each week, may select a starting and stopping time each day, and may change starting and stopping times daily within the established flexible hours.

M. ***Maxiflex***: A type of flexible work schedule that contains core hours on fewer than 10 workdays in the biweekly pay period and in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee may vary the

number of hours worked on a given workday or the number of hours each week within the limits established for the organization.

N. ***Overtime Hours*** means

1. **Standard/Regular (Straight-8) Work Schedule**: Any work hours more than 8 hours in a day or 40 hours in a week that are official officially ordered in advance.

2. **Compressed Work Schedule**: Any hours officially ordered more than those specified hours for full-time employees that constitute the Compressed Work Schedule (i.e., 5-4/9 or 4-10). For part-time employees, overtime hours are hours required to be worked outside of the compressed work schedule. However, if those additional hours still total less than 8, the employee receives a basic pay rate for the added hours. Only hours greater than 8 in a day and 40 in a week earn an overtime rate of pay.

3. **Maxiflex**: Any hours more than 8 hours in a day or 40 hours in a week that are officially ordered in advance, but not including credit hours. Credit hours worked by the employee beyond 8 hours in a day or 40 hours in a week are not overtime hours.

O. ***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.

P. ***Tour of Duty.*** Tour of duty under a flexible work schedule means the limits set within which an employee must complete his or her basic work requirement. Under a compressed work schedule or other fixed schedule, tour of duty is synonymous with basic work requirement.

Q. ***Work Day***: The period, including the unpaid lunch break, during which an employee is normally scheduled to be at work.

R. ***Basic Work Requirement***: 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.

S. ***Approved Work Schedule***: The number of hours of work and/or hours of absences that the employee plans to accomplish in a given biweekly pay period and which is approved by the supervisor.

T. ***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 meeting in person; and other operational needs that involve the work of the Agency.

Section 3. Responsibilities

A. This AWS program is designed to accommodate individual employees' needs, while balancing the work schedule and workload, quality of work, and mission accomplishment. Therefore, the responsibility to effectively use these various work schedules is shared with the employee and the supervisor. It is particularly important that the employee have regular one-on-one meetings (such as monthly work planning meetings) to discuss progress on work assignments as well the effective use of these work schedules.

B. Managers and Supervisors:

1. Shall ensure that the mission of the agency is not adversely impacted by alternative work schedules through a reduction in productivity; a diminished level of services provided to the public; or an increase in operations cost. The Employer may terminate an alternative work schedule under these conditions. However, such termination is subject to the negotiated grievance procedure.

2. Shall ensure that offices are adequately covered in terms of both the numbers and types of employees needed during official business hours. Office coverage includes answering phones; expeditious handling of inquiries from the public; maintaining clerical, technical, and professional support of office functions; providing representation at essential meetings; meeting deadlines and peak workload requirements or other program needs.

3. Shall approve/disapprove all work schedules, subject to provisions of this Article, prior to being worked. To the extent possible, personal preferences will be considered in making such decisions. If an employee's request for a specific alternative work schedule is denied, upon request, the supervisor will provide a written explanation to the employee.

C. Employees:

1. Shall request a work schedule or work schedule changes to immediate supervisors for approval on the Agency's Work Schedule Request Form or designated electronic system;

2. Ensure that schedules are set to include eighty (80) hours of paid time in each biweekly pay period for full-time employees, and comply with all other work schedule requirements;

3. Request and obtain approval of leave as appropriate when leave is desired;

4. Request variances to chosen work schedules from supervisors as far in advance as possible; and

5. Ensure that the supervisor is properly briefed on the status of work assignments so that work of the unit is not affected when variances to approved work schedules occur.

6. Ensure their time and attendance submission is properly coded and timely entered and attested to in the Agency Time and Attendance Recording System.

Section 4. Types of Work Schedules

The following work schedules are available at the Agency:

A. Standard/Regular (Straight-8 or 5/8) Work Schedule (fixed)

1. The basic 40 hour workweek is scheduled on 5 days, normally Monday through Friday, and the working hours are the same each day.

2. Regular schedule tour of duty times are fixed and must be between 6:00 a.m. and 6:00 p.m.

B. Compressed Work Schedules (a fixed alternative work schedule)

1. 5-4/9 Work Schedule (a fixed alternative work schedule)

2. 4-10 Work Schedule (a fixed alternative work schedule)

C. Flexible Work Schedules (a flexible alternative work schedule)

1. Flexitour

2. Daily Flexible Schedule

D. Maxiflex

Section 5. Holidays

A. Employees shall be entitled to all holidays now prescribed by law and any that may be later added by law and all holidays that may be designated by Executive Order that cover bargaining unit employees.

B. When an employee has three consecutive non-work days, the preceding work day shall be designated as the "in lieu of" holiday, and when the holiday falls on the third non-work day, the next work day shall be designated as the "in lieu of' holiday.

C. Part-time employees: If a holiday falls on a non-work day, part time employees are not entitled to an "in lieu of" holiday. If the holiday falls on a day that is on a part-time employee's established work schedule, the employee is entitled to pay for the number of hours they were scheduled to work on that day, not to exceed nine hours.

Section 6. Standard/Regular Work Schedule

A. **Work Week and Hours:** The basic 40-hour workweek is scheduled on five days, normally Monday through Friday, and the working hours are the same each day.

B. **Fixed Schedule:** The 8-hour regular schedule tour of duty times are fixed and must be between 6:00 a.m. and 6:00 p.m.

C. **Overtime:** An employee is entitled to overtime pay when they work more than 8 hours in a day or 40 hours in a week.

D. **Night Pay:** An employee is entitled to night pay when the employee is required to work overtime hours between 6:00 P.M. and 6:00 A.M.

E. **Holidays:**

1. When relieved from duty on a holiday, full-time employees are entitled to basic pay for 8 hours. Part-time employees are entitled to basic pay for the number of hours they were scheduled to work on the holiday.

2. When an employee is required to perform non-overtime work on a holiday, the employee is entitled to holiday pay for the number of hours during which work is performed.

3. When an employee is required to perform work on a holiday outside of the employee's regularly scheduled daily tour of duty, the employee earns the employee's overtime rate of pay for the hours worked.

Section 7. Compressed Work Schedules (CWS)

A. Authorized Compressed Work Schedules

1. "4-10" Schedule (4-Day Workweek): This is a fixed schedule that includes four days of 10 hours of work each day and one compressed day off each work week.

2. "5-4/9" Schedule: This schedule allows employees to complete the pay period in eight days of 9 hours of work each day and one day of 8 hours of work with 1 non-workday each pay period, totaling 80 hours of work per pay period. Employees preselect fixed arrival and departure times and a fixed non-workday.

B. Employees may change their compressed day off with prior supervisor approval.

1. Conflicts in Days Off: Supervisors will resolve conflicts in scheduling the regular day off for an employee working a 5-4/9 or 4-10 Compressed Work Schedule. Supervisors may consider the following factors when resolving conflicts:

a. Work-related needs.

b. The order in which involved employees selected the schedule.

c. Employee seniority (based on service computation date for leave).

C. Employees who are approved to work a compressed work schedule will be required to provide affirmative evidence that they have worked the proper number of hours in a biweekly

pay period in accordance with 5 CFR 610.404. Entering and attesting time in the agency time reporting system will satisfy this requirement.

D. Employees must work core hours with pre-determined fixed hours each work day unless leave is requested.

E. Compressed schedule tour of duty times are fixed and must be between 6:00 a.m. and 6:00 p.m. except as approved in advance by the supervisor such as in the case of earned comp time.

F. Variations to arrival and departure times up to 30 minutes do not require advanced supervisory approval.

G. Lunch Period: Employees must document a 30 to 120 minute unpaid lunch period when scheduled to work at least 6 hours in a day. Lunch longer than120 minutes would require the use of leave, credit hours, or comp time.

M. Overtime Work. For a full-time employee, overtime work consists of all hours of work in excess of the established CWS. For a part-time employee, overtime work must be hours in excess of the CWS for the day (more than at least 8 hours a day) or for the week (more than at least 40 hours).

N. Night Pay. The regular rules governing entitlement to night pay, at 5 CFR 550.121 and 122, apply.

O. Holiday Pay.

1. If a federal holiday falls on an employee's 8 hour work day, it will be recorded as 8 hours. If the holiday falls on a 9 or 10 hour work day, it will be recorded as 9 or 10 hours respectively.

2. If the holiday falls on an employee's scheduled compressed day off, the holiday will be charged as follows:

a. If the holiday falls on a Sunday, the employee will get the next regularly scheduled workday off (e.g., if the employee's compressed day off is Monday, Tuesday will be observed as the "in- lieu-of holiday").

b. If the holiday falls on any other day, the employee will get the preceding regularly scheduled workday off (e.g., if the employee's compressed day off is a Monday and the holiday falls on Monday, the preceding Friday would be the "in- lieu-of" holiday).

Section 8. Flexible Work Schedules

A. Authorized Flexible Work Schedules

1. Flexitour: This schedule allows an employee to select arrival and departure times within a flexible time band; however, once selected, the hours become the employee's regular work schedule. The basic work requirement is the traditional 8 hours of work a day 40 hours of work a week, and 80 hours in a biweekly period. Even though the daily hours of the employee are "fixed", this work schedule qualifies as a flexible work schedule and is eligible to participate in the credit hour program.

2. Daily Flexible Schedule: This schedule allows an employee to select a starting and stopping time each day and may change starting and stopping times daily outside of the established core hours. This is a gliding schedule. Departure times are adjusted based on the start time. Once an employee's daily flexible schedule has been approved, an employee may change their starting and stop times, daily, without prior supervisory approval as long as they are present for the core hours (unless leave is requested within the core hours. The basic work requirement is the traditional 8 hours of work a day, 40 hours of work a week, and 80 hours of work in a biweekly period. An employee's daily basic work requirement is considered completed following 8 hours of work after the employee's starting time on a given day. Employees on this schedule are eligible to participate in the credit hour program.

3. Maxiflex: Maxiflex has an 80-hour bi-weekly work requirement for full time employees (and a prorated number of hours for part time employees), rather than a daily or weekly work requirement. Maxiflex permits employees to request to vary the number of hours worked each day and each week. Maxiflex allows employees to complete the 80-hour work requirement in less than 10 workdays each pay period, and to earn approved credit hours for work performed in more than 80 hours bi-weekly.

B. Employees must work established core hours when participating in any Alternative Work Schedule Program unless at lunch or on approved leave.

C. Day(s) Off: When establishing the work schedule, an employee on the CWS may select their regularly scheduled designated day(s) off to be any day(s) during the bi-weekly period subject to advance approval of their supervisor. Variations to the approved schedule are allowed, with prior approval by the employee's supervisor.

D. Credit Hours: Credit hours are those hours which are in excess of an employee's basic work requirement under a flexible work schedule. The earning and use of credit hours must be requested by an employee and approved in advance by the employee's supervisor. Supervisors may grant a standing request to work credit hours for known or anticipated workload issues. By law, only employees on flexible work schedules may earn credit hours; employees working under a compressed work schedule cannot earn credit hours.

1. Credit hours must be earned in advance of their use and may be used and earned only in increments of fifteen (15) minutes. 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, any credit hours earned are counted towards the 80-hour biweekly work requirement first and are not counted as credit

hours. Once the 80-hour work requirement is reached, any additional credit hours can be counted as credit hours.

2. Employees who want to earn credit hours must make a written request to their supervisor (preferably by email). The supervisor is entitled to 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.

3. Approval of credit hours used will be based on the same criteria used to grant annual leave.

4. When an employee uses credit hours, they constitute part of the basic work requirement to which they are applied. An employee is entitled to the basic rate of pay for credit hours and credit hours may not be used to create or increase entitlement to overtime pay.

5. Full-time employees may transfer a maximum of 24 credit hours between biweekly pay periods. Part-time employees may carry over one-fourth (1/4) of the hours in their biweekly work period. 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. An employee may also substitute earned credit hours for all or part of any approved leave.

6. Employees on a Flexible Work Schedule may 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

7. 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 Flexible Work Schedule program described in this Article. If for any reason - voluntary or involuntary, separation or transfer-an employee leaves the Flexible Work Schedule program described in this Article, the employee will be paid for the accumulated credit hours at the employee's current rate of basic pay.

8. 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.

9. Subject to law, regulation, agency policy and this agreement, credit hours may be used alone or in combination with annual, sick, leave without pay or compensatory time off. When an employee is in a use-or-lose annual leave status, annual leave must be used prior to the use of credit hours.

10. Credit hours may be earned outside of the normal tour of duty (6:00 A.M. – 6:00 P.M.), with supervisory approval.

11. Credit hours may be earned while on telework.

12. There is no requirement to send multiple requests for credit hours. Email, Maxiflex Pay Period Time Sheets, and the leave module in People Plus are all available options for requesting credit hours.

Section 9. Compensation and a Flexible Work Schedule

A. Overtime Work. Overtime work consists of hours of work that are officially ordered in advance and in excess of 8 hours a day or 40 hours in a week, but does not include hours that are worked voluntarily, including credit hours.

B. Night Pay. For hours worked between 6:00 p.m. and 6:00 a.m., the Agency is only obligated to pay night pay for those hours that must be worked between those times to complete the 8-hour daily tour of duty or for designated core hours worked between those times. Employees working credit hours outside of the regular 6:00 a.m. to 6:00 p.m. are not eligible for night pay unless those hours are mandated by management.

C. Holiday Pay. A full-time employee on a Flexible Work Schedule is entitled to no more than 8 hours of pay on a holiday or for an “in lieu of” holiday. A part-time employee is entitled to pay for the number of hours they would have worked, not to exceed 8 hours. When a holiday falls on a non-workday of a part-time employee, there is no entitlement to pay for an “in lieu of” holiday. In the event the President issues an Executive Order granting a "half-day" holiday, a full-time employee on a Maxiflex work schedule is credited with half the number of hours the employee was scheduled to work, not to exceed 4 hours.

D. Employees who are approved to work a flexible work schedule will be required to provide affirmative evidence that they have worked the proper number of hours in a biweekly pay period in accordance with 5 CFR 610.404. Entering and attesting hours in the EPA Time and Attendance Reporting system will satisfy this requirement.

Section 10. Maxiflex Work Schedule

A. Flexibilities: Maxiflex allows employees to request their own schedule consistent with this Article. Maxiflex has an 80-hour bi-weekly work requirement for full time employees (and a prorated number of hours for part time employees), rather than a daily or weekly work requirement. Maxiflex permits employees to request to vary the number of hours worked each

day and each week. Maxiflex allows employees to complete the 80-hour work requirement in less than 10 workdays each pay period, and to earn approved credit hours for work performed in more than 80 hours bi-weekly.

B. Tour of Duty: A tour of duty under a Maxiflex work schedule is the time period within which an employee must complete the employee's basic 80-hour biweekly work requirement. The tour of duty is composed of both core hours and flexible hours. The tour of duty for employees on Maxiflex is Monday through Friday, and may begin as early as 6:00 A.M. and end as late as 6:00 P.M.

C. Ten Hour Work Days: Employees may work up to a maximum of 11.5 non-overtime hours in a single workday. These hours can be work hours, hours of approved absence, or a combination of both. No hours can be worked outside of the tour of duty without prior supervisory approval. These 11.5 work hours do not include a scheduled unpaid lunch break of a minimum of 30 minutes for daily tours of duty greater than 6 hours.

D. Core Hours: Core hours are the designated hours during which an employee must be present for work. Core hours must be accounted for through duty time, use of leave, or use of accrued credit hours.

E. Flexible Time Bands: Flexible time bands/flexible hours are the times during the workday, work week, or pay period when an employee covered by a Maxiflex work schedule may choose: to vary the employee's times of arrival to and departure from work consistent with work-related needs; earn and use credit hours; and be absent without being in a leave status. The flexible time bands for employees on Maxiflex are: 6:00 A.M. to 9:30 A.M. and 2:30 P.M. to 6:00 P.M. Credit hours may be earned outside of these hours. Maxiflex allows Employees to "flex" their starting and stopping times with no set times of arrival or departure except to be there during the core hours Tuesdays through Thursdays.

F. Changes to Work Schedule: Employees may alter their work days on a Maxiflex work schedule on a pay period to pay period basis.

G. Regardless of the particular hours that an employee requests and actually works, at the end of each pay period, all full-time employees must meet the 80-hour biweekly work requirement (or the prorated number of hours for part time employees). Maxiflex has no mandatory daily or weekly work requirement. For example, employees are not required to meet a daily work requirement of 8 hours or a weekly work requirement of 40 hours.

Section 11. Obtaining Approval of a Maxiflex Work Schedule

A. Requesting a Maxiflex Work Schedule: Employees interested in participating in a Maxiflex work schedule must:

1. Acknowledge in writing that the employee has read and understands this Article;

2. Submit the completed Work Schedule Request Form to their supervisor for approval or disapproval; and

3. Submit a proposed work schedule on the Maxiflex Pay Period Time Sheet to their supervisors in advance of each pay period so that their supervisor can understand which days the employees plans to be working. If a schedule is not submitted prior to a pay period, the most recently submitted schedule will apply.

B. Start/End Date: Employees cannot begin or stop using Maxiflex in the middle of a pay period since the Maxiflex schedule format is based on two-week intervals.

C. Initial Request Approval/Disapproval: An employee's initial request to work a Maxiflex work schedule should be approved or disapproved by the supervisor in writing normally within 14 calendar days.

Section 12. Maxiflex Work Schedule Employee Requirements.

A. Advance Scheduling Requirement: 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 Agency's electronic Time and Attendance Reporting System. Rather, the Maxiflex Pay Period Time Sheet is a tool for an employee to plan 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 authority to include this process electronically in People Plus or successor electronic time and attendance systems.

B. Completing the Maxiflex Pay Period Time Sheet: 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 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. Advanced plans 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. Changes to the Maxiflex Schedule during the pay period should be provided to the supervisor as much in advance as possible.

C. Employees who fail to submit the Maxiflex Pay Period Time Sheet in advance will be working on the most recently submitted schedule and must notify the supervisor of any changes for that pay period as much in advance as possible.

D. Disapprovals: If the supervisor does not approve all or part of the requested Maxiflex work schedule, the supervisor will state the reason(s) for disapproval on the Maxiflex Pay Period Time Sheet and may offer an alternative, if available.

E. Time and Attendance Reporting: Employees must separately request leave and credit hours to be used in the Agency's Time and Attendance Reporting System.

F. Recording Daily Hours: Employees must record their time in to work and time out of work daily in the Agency's Time and Attendance Reporting System.

G. 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.

H. Recording a Lunch Period: Employees must document a minimum of a 30-minute unpaid lunch period when scheduled to work at least 6 hours in a day.

I. Electronic Calendar: Employees must 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.

J. Maxiflex and Annual Leave Forfeiture: Employees must carefully plan and schedule annual leave throughout the year to avoid annual leave forfeiture. Employees on Maxiflex in high leave earning categories or with high leave balances run the risk of annual leave forfeiture at the end of the leave year. Employees must ensure that their annual leave is requested and scheduled in writing each leave year to prevent any loss of annual leave at the end of the leave year. Requesting and recording annual leave is an employee responsibility. An employee's approved work schedule is not a basis on which annual leave can be restored.

Section 13. General Work Schedule Provisions

A. Employee participation in an AWS is voluntary; the Employer will accommodate any employee's request to work a regular work schedule.

B. Supervisors shall use objective criteria in determining whether to approve an employee's request to work a compressed work schedule. Such criteria include the following: adequate office coverage, anticipated emergency situations, additional cost to the Agency, criticality of the employee's position, and customer service.

C. All daily tours of duty of greater than 6 hours will include at least a 30 minute unpaid lunch break. Fixed schedule daily tours of duty cannot contain an unpaid lunch break greater than one hundred twenty (120) minutes without requesting approved leave. Employees may not use the unpaid lunch break at the beginning or end of the scheduled work day in order to shorten the length of the day. An employee's tour of duty will be established to ensure that the employee works the required number of hours for the type of work schedule selected accounting for the lunch period.

D. The Agency may reopen the Agreement at any time, under 5 USC § 6131(c) (3) (A), to seek termination of any alternative work schedule in all or a portion of a covered bargaining unit,

if it determines that the schedule has had an adverse impact. Should the Agency determine to modify or terminate such a program, it will notify ESC and include in the notification the reason(s) for its wish to terminate or modify an existing schedule:

1. A reduction of productivity;

2. A diminished level of services furnished to the public; or

3. An increase in the cost of operations (other than an administrative processing cost in the establishment of an AWS).

E. The Employer may restrict participation in AWS for positions it determines are of a critical nature.

F. If an employee's work schedule must be temporarily changed based on the items below, the supervisor will inform the employee or the employee will inform the supervisor at the earliest opportunity.

1. A work schedule may be changed when the employee is attending training and the training hours conflict with the work schedule.

2. A work schedule may be changed when the employee is in a travel status if the hours at the temporary duty station differ from those of the employee.

3. Supervisors may make temporary changes in employee's work schedules due to work load changes, emergency or time-sensitive assignments, changes in staffing levels, or work assignments involving team efforts, etc.

4. Work schedules may be changed to accommodate employee assignments involving team efforts.

5. A work schedule may be changed to accommodate an employee's military or other personal commitments.

G. Employees may request to change their work schedules no more than once per quarter, unless agreed upon by both the supervisor and the employee.

H. Employees who work an AWS may also fully utilize telework opportunities. Subject to applicable rules and eligibility requirements, teleworking employees are eligible for the same work schedules, including the daily flexible schedule, as non-teleworking employees.

I. New employees (i.e., employees who have worked at the Agency for less than six months) will be on a Standard/Regular 5/8 Work Schedule through their first full pay period. They may then request an alternative work schedule.

J. The Agency reserves the right to terminate the employee's 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/unit's specific operating needs. In

such event, an employee may request that their AWS may be reinstated upon resolution of any such issues.

K. Except in situations where the organization would be seriously handicapped in carrying out its functions or where costs would be substantially increased, efforts will be made to give an employee two (2) weeks notice of a change in tour of duty.

L. The Agency will consider an employee's needs to change car pools, day care and eldercare schedules or other work related commuting arrangements, when scheduling a change in tour of duty.

Section 14. Grievability

Employees may grieve the denial of any work schedule request or the suspension of any work schedule request consistent with law and regulation.

ARTICLE 13 Telework

Section 1. **General**

The parties support the use of telework to the maximum extent practicable. The parties agree that a successful telework program can yield many benefits, including cost savings, increased productivity and performance, enhanced recruitment and retention, heightened employee morale, improved emergency preparedness and reduced energy use.

Section 2. 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 outlined in this agreement. Employee 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 3. Definitions

For the purpose of this Article:

A. ***Telework.*** Work performed away from an office worksite at an approved location.

B. ***Alternate Work Location*** (AWL). An approved work location other than the employee's office worksite. A telework AWL will generally be an employee's residence, a telecenter or other approved worksite such as a facility established by state, local or county government or private organization for use by teleworkers.

In limited circumstances, supervisors or managers may approve employee requests to work at an AWL outside of the local commuting area in cases of regular, episodic, medical and full-time telework.

C. ***Local Commuting Area*:** As defined in 5 CFR 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 website."

D. ***Portable Work.*** Work that is normally performed at the employee's official worksite but which can be performed at another location with equal effectiveness with respect to quality, timeliness, customer service and other aspects of accomplishing EPA's mission. Such work is 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*.** The official location of an employee's position of record as determined under 5 CFR 531.605 and where the employee regularly performs his or her duties.

F. ***Position of Record.*** An employee's official position 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 4. **Guidelines and Operating Principles**

A. Employees who telework will be treated the same as those who do not participate in telework for purposes of:

1. Periodic appraisals of job performance of employees;

2. Training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees;

3. Work requirements; or

4. Other acts involving managerial discretion;

B. The governing rules, regulations and policies regarding time and attendance, overtime, leave, flexible and compressed work schedules, including all requirements for supervisory approvals, are unchanged by participation in telework.

C. Injuries that arise in the performance of duty at the AWL are subject to the Federal Employees' Compensation Act.

D. All employees with telework agreements are required to telework from an approved AWL when EPA offices are closed, to the maximum extent possible and subject to available portable work.

E. Teleworking employees must ensure that working from the AWL causes no disruption in the efficiency of work, and that the employee is available to his or her customers, co-workers and supervisors. This means, for example, that teleworking employees cannot make their regular teleworking hours unavailable for calls, meetings or virtual meetings in their electronic calendars or put "out of office" messages on e-mail and voice mail systems indicating that they are unavailable.

F. Teleworking employees must be available and accessible to supervisors, co-workers and customers at all times while performing work at an AWL. Teleworking employees must ensure that incoming calls, voice mails, instant messages and emails are handled seamlessly with the same expectations as if they are working at the official worksite.

G. Teleworking employees must be capable of joining and be available to join teleconference meetings or conference calls while working at the AWL and be willing and able to leave the AWL to expeditiously return to their official worksite if requested by his or her supervisor.

H. If the employee is unable to work at the AWL due to circumstances beyond his or her control, the employee should contact his or her supervisor to request the appropriate leave or to notify the supervisor that they will return to the office worksite, if practicable. Contact shall be made in a timely manner, typically within thirty (30) minutes of such an inability, absent extenuating circumstances.

I. Teleworking employees must participate in any annual recertification process established by their office, division or higher organizational unit, and in any other Telework program reporting and/or evaluation processes required by EPA or other authoritative entities (e.g., OPM, GAO or Congress). Each office, division or higher organizational unit may require annual recertification at a designated time.

J. Supervisors or managers may approve employee requests to work at an AWL outside of the local commuting area in cases of episodic, medical telework, regular and full-time telework.

Section 5. Types of Telework

Telework may take any of the following forms:

A. ***Regular.*** Under this type of telework, employees may request approval to perform their duties at an alternate work location on a regular and recurring basis, on the same days each pay period. Regular telework may range from one day per pay period up to full time. Full time telework must comply with all requirements for regular telework and with additional criteria set out below.

B. ***Episodic***. This form of telework is appropriate for work or assignments of specific limited duration or that may occur intermittently rather than on the same days or on the same number of days every week. An employee must have an approved episodic telework agreement

in place and receive approval in advance each time they wish to telework. An employee may be approved for both episodic telework and regular telework.

In limited circumstances for episodic telework, supervisors or managers may approve employees to work at an AWL that is outside of the local commuting area. This determination will be made by the supervisor or manager, on a case-by-case basis, provided the employee meets all eligibility requirements contained in this policy or any applicable CBAs. Note: If the employee does not physically report to the regular office/worksite at least twice each biweekly pay period, their locality pay may be affected. (5 CFR 531.605).

C. ***Medical.***

1. This form of telework is designed for the continued accomplishment of Agency work while an employee has a physician-certified medical condition which does not affect the employee's ability to perform his or her regular work assignment at an AWL. This type of telework may be for the equivalent of full time, but is not intended to be a permanent arrangement and will normally not exceed three (3) months. After three (3) months, a medical telework agreement may be extended once for up to three additional ninety days (three months) if the additional medical certification justifies such an extension. The total maximum allowable time for a medical telework agreement is 12 months in any one rolling calendar year.

2. Based on the employee's condition, the supervisor or manager may grant the employee sick leave or approve a combination of sick leave and telework to cover the situation. Medical telework is appropriate for employees with non-work compensable injuries. Employees with work compensable injuries will be managed under applicable workers' compensation regulations.

3. In limited circumstances for medical telework, supervisors or managers may approve employees to work at an AWL that is outside the local commuting area. This determination will be made by the supervisor or manager, on a case-by-case basis, provided the employee meets all eligibility requirements contained in this policy or any applicable CBAs.

a. Reasonable Accommodation. If disabled, an employee may wish to review the Agency's Reasonable Accommodation procedures to determine if a request under that authority is more appropriate for them than a request for medical telework. A Reasonable Accommodation request may be made at any time. Information on the Agency's Reasonable Accommodation procedures (including the procedures and contact information) can be found on the Agency's Office of Civil Rights website.

D. ***Unscheduled.*** Telework not scheduled in advance, but performed when the Agency announces changes to its operating status, including changes to dismissal and closure procedures pursuant to OPM and Federal Executive Board operating status announcements. Unscheduled telework may be performed at an AWL by any telework ready employee, subject to available portable work.

E. ***Continuity of Operations Plan (COOP).*** Telework is an important part of the EPA COOP. It enables employees to work from AWLs during emergencies and is a key tool in continuing EPA's vital role in the federal government at such times. During any period that EPA is operating under a COOP, the COOP supersedes this policy. Any employee, with or without a Telework Agreement, may be asked to telework during that period.

Section 6. Changes in Operating Status

A. Unscheduled Telework/Closures

1. In the event of an office closure, telework-ready employees already scheduled to telework that day are required to do so.

2. In the event of an office closure, telework-ready employees not scheduled to telework that day are required, in coordination with their supervisor or manager, to utilize unscheduled telework to the maximum extent possible, subject to available portable work. If there is insufficient portable work as determined by the supervisor or manager, the employee may be granted administrative leave to cover all or a portion of the scheduled workday.

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 AWL other than the employee's primary residence during the workweek will follow the closure or dismissal procedures of the AWL.

5. 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.

6. 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. Telework may be required in COOP situations.

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

1. When the Agency announces early closure or late arrival of the regular office location, 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 location, telework-ready employees that are not scheduled to telework that day will be required, in coordination with their supervisor, to utilize unscheduled telework to the maximum extent

possible, for their regularly-scheduled non-overtime hours when the office is closed. If there is insufficient portable work as determined by the supervisor or manager, the employee may be granted administrative leave for their regularly scheduled non-overtime hours when the regular office/worksite is closed.

3. Early release for holidays granted by Executive Order shall be granted to those on telework.

C. General Provisions

1. It is recommended that supervisors and employees coordinate in advance if there is an anticipated event that may disrupt normal office operations to ensure that employees have portable work and the necessary equipment to perform telework during a regular office/work site closure to the extent possible.

2. As with scheduled telework, an employee performing unscheduled telework must have a sufficient amount of work to perform throughout the workday when teleworking. Telework-ready employees not scheduled to telework that day are required, in coordination with their supervisor or manager, to utilize unscheduled telework to the maximum extent possible, subject to available portable work. An employee who does not have enough work must report to the office if it is open, contact his or her supervisor for additional work, request annual leave, credit time or other leave.

3. When severe weather or other circumstances prevent work from the AWL (e.g., loss of electricity, employee must evacuate, infrastructure/connectivity and child/elder care issues) or there is a lack of portable work as determined by the supervisor or manager, and the regular office/worksite is closed to employees, a telework-ready employee may be granted administrative leave by his or her supervisor or manager.

Section 7. **Responsibilities**

A. Supervisors are responsible for the overall management of telework within their work units, including:

1. Approving or disapproving new or revised requests to telework within a reasonable timeframe (i.e., normally within 15 calendar days) and in cases of disapproval; See Section 9, Requirements for Full-Time Telework, for approval requirements of full-time telework.

2. Providing the rationale for ineligibility to the requesting employee;

3. Ensuring proper office coverage;

4. Overseeing day-to-day telework operations, and modifying individual telework agreements to meet mission needs or changing circumstances;

5. Ensuring that teleworkers comply with existing security policies and procedures, including those relating to IT security and personally identifiable information (PII) and Confidential Business Information (CBI); and

6. Ensuring proper use of appropriate telework time reporting codes to document hours teleworked.

B. Employees are responsible for**:**

1. Completing a Telework Agreement and submitting it to their supervisor for approval prior to teleworking;

2. Performing an assessment of the AWL and answering the required questions on the Safety Checklist;

3. Adhering to the telework policy and procedures and the terms and conditions of the approved telework agreement;

4. Annual recertification if required by their office, division or higher organizational unit;

5. Maintaining communication with the supervisor while teleworking, and working with the supervisor to overcome problems or obstacles as they occur so that the work of the organization is accomplished in an effective and timely manner;

6. Complying with EPA/Regional/Office policies for information technology security and use of government equipment/materials;

7. Ensuring personal disruptions such as non-business telephone calls and visitors are kept to a minimum;

8. Complying with all existing security policies and procedures, including those relating to personally identifiable information (PII) and Confidential Business Information (CBI);

9. Teleworking to the extent feasible in the event of the Agency announces changes to its operating status, including changes to dismissal and closure procedures; and,

10. Making arrangements for dependent/elder care, if applicable, during the time the employee is working at an AWL.

Section 8. Eligibility

A. Although the supervisor or manager has ultimate decision making authority, an employee and supervisor should work together to determine if telework is appropriate. Employees may be authorized to telework if:

1. The employee has sufficient portable work for the amount of telework requested;

2. The employee is currently performing at the "Fully Successful" level or above; if an employee's last rating of record is less than "Fully Successful," they will not be eligible to telework until a rating of record of "Fully Successful" or above is achieved;

3. The employee may not be eligible to participate in telework based upon documented conduct deficiencies including but not limited to letters of reprimand, warnings or leave restrictions; or performance deficiencies within the preceding 12 months (unless the supervisor determines that the conduct deficiencies have no impact on the employee ability to telework),

4. The employee has not been absent without permission for (5) five or more days in a calendar year, or violated subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch pertaining to pornography;

5. The employee agrees to return to the official worksite on a telework day if required to do so by his or her supervisor;

6. The employee continues to comply with the terms of his or her written and approved Telework Agreement; and,

7. New employees (i.e., employees who have worked at the agency for less than six months) may telework at the discretion of their supervisor. The employee has been employed at the EPA for at least a reasonable "orientation" period of 90 days up to six (6) months, as determined by the supervisor. In addition to the basic eligibility requirements for EPA employees noted above, managers authorizing telework for new employees should consider previous federal service, if any, length and nature of previous work experience, and any previous experience teleworking.

B. ***Positions Generally Ineligible for telework***. The nature of an employee's duties determines whether work is portable for the purpose of telework eligibility. Duties which employees are not likely to be able to perform while teleworking include those that:

1. Require the employee to have daily face-to-face contact with the supervisor, colleagues, clients or the general public in order to perform his or her job effectively, which cannot otherwise be achieved via e-mail, telephone, fax or similar electronic means;

2. Require daily access to classified information or a classified installation;

3. Involve the construction, installation, maintenance and/or repair of EPA facilities;

4. Involve the physical protection of EPA facilities or employees; or

5. Other physical presence/site-dependent activity (e.g., emissions testing, laboratory trials).

C. ***COOP or Other Emergency Designation***. Any employee who has been designated essential for inclement weather or other emergencies, or is an emergency response employee for COOP purposes, should meet telework eligibility requirements and be approved for telework.

Section 9. Requirements for Full Time Telework.

A. ***Eligibility.*** In addition to meeting the eligibility requirements set forth above for all teleworkers, employees seeking to telework full time must meet the additional criteria set forth below. As with all telework, management reserves the right to determine if authorizing an employee to perform full-time telework is appropriate. Approval for full-time telework should only be authorized in those rare instances when:

1. All of the employee's work is portable;

2. The employee's position requires minimal personal interface with management officials and other employees;

3. The employee has a demonstrated track record of meeting performance plan objectives and working without close supervision;

4. Technology needed to perform duties is available and fully functional; and,

5. The AA or RA (or their designee) has approved the request for full-time telework based on a determination that an employee meets all required criteria in this section.

B. Approvals Must Be in Writing. All requests for telework must be approved in writing by the requesting employee's immediate supervisor or other appropriate agency manager. A request for full-time telework must also be approved in writing by the Deputy Assistant Administrator (AA), Regional Administrator (RA), or their designee of the employee's organization.

C. If approved for full-time telework, the employee understands and agrees that:

1. The official duty station may change subject to 5 CFR 531.605

2. If the employee chooses to move, any relocation costs associated with moving is the sole responsibility of the employee;
3. The first-line supervisor will provide a five (5) workday written notice of intent to terminate the agreement and the employee will have 10 (ten) workdays after the date of termination to report to the official worksite. Supervisors or managers will need to ensure adequate office space availability upon the employee's return to the regular office/worksite after termination of his or her telework agreement;
4. Locality pay may change.

D. Relocation.

1. Requests by employees engaged in full-time telework who are seeking to relocate outside of the local commuting is voluntary on the part of the employee. The relocation, if approved, would be for the convenience and benefit of the employee, and the Agency will therefore not pay for nor reimburse any relocation costs incurred by the employee.

2. Employees engaged in full-time telework seeking to change their Official Worksite to relocate outside of the local commuting area must receive the written recommendation for doing so in advance from their supervisor or manager. The written recommendation must be submitted by the supervisor to the DAA, DRA or their designee. The recommendation must clearly explain how the employee is fully able to perform all of his or her duties effectively from the remote location, so that approval of the request will not under any circumstances diminish the Agency's ability to accomplish its mission and meet its operational goals.

3. An assessment of relocation requests, must at a minimum include 1) a consideration of the employee's current and likely future duties and whether or not the employee is likely to retain full-time telework eligibility in the future; and 2) the costs associated with any recall that may be necessary (particularly those requesting to relocate significantly outside of the local commuting area). This documentation must be approved and signed by the DAA/DRA or their designee. If disapproved, the DAA, DRA or their designee will respond in writing with the reasons the request was denied.

E. Travel Costs Associated with Full-Time Telework: If the supervisor or manager recalls an employee on approved full-time telework to the office, then the employee is entitled to travel expenses.

Section 10. Records Management

A. When working at an AWL, EPA employees must continue to comply with EPA's Records Management Policy and guidance located at http://www.epa.gov/records/policy/index.htm and any other applicable policies on using, creating, maintaining and disposing of records. Employees shall also comply with the Federal Records Act, the Freedom of Information Act (FOIA), the terms of litigation holds, discovery in litigation and any requests for records by the Office of Inspector General.

B. Any record removed from the official worksite for telework assignments remains the property of EPA and any information generated from telework assignments is the property of EPA. Employees are responsible for maintaining the integrity of their records and for producing records on demand. Agency work maintained on an employee's personal computer or on any portable media (e.g., disks, flash drives) may be subject to litigation discovery or FOIA even if it is not considered a record under the Federal Records Act.

C. Consistent with the agency's Records Management Policy, official agency business should first and foremost be done on official EPA information systems. The Federal Records Act prohibits the creation or sending of a federal record using a non-EPA electronic messaging account unless the individual creating or sending the record either: (1) copies their EPA email account at the time of initial creation or transmission of the record, or (2) forwards a complete copy of the record to their EPA email account within 20 days of the original creation or transmission of the record.

Section 11. Facilities and Equipment at AWL and the Official Worksite

A. ***AWL expenses***. EPA will not reimburse employees for any operating costs, home maintenance, utility costs or other residential costs, or for any telephone or internet installation or repair services. Upon request, employees may be reimbursed business related phone charges in excess of land-line or cellular plans. Employees must utilize all available automation and technological tools available to minimize excess costs.

B. ***Equipment at AWL***. Employees who have an Agency-issued laptop or mobile phone assigned to them may use such equipment while teleworking and shall take reasonable safeguards against theft and damage when they do so. All Agency-issued equipment and supplies remain the property of the Agency, and EPA remains responsible for service and maintenance of that equipment. Subject to budgetary constraints, the Agency agrees to provide laptops to employees who telework routinely, whether regular or episodic. Supervisors or managers, at

their discretion, and if budget permits, may authorize certain items and services for the individual teleworker, including computers, printers, and telecommunications equipment and services.

C. ***Workstations at regular work location***. In accordance with the Region 9 Renovation Memorandum of Understanding (MOU), dated December 20, 2012, employees working two days or less per week at 75 Hawthorne Street may be assigned or may share “touchdown” workstations.

D. For employees that work at an AWL outside of the LCA, 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 GFE. In cases where GFE is in need of repair and upgrade, the agency will make all reasonable efforts to initiate repairs and upgrades remotely. However, should on-site assistance be required, employees must either return to their regular office/worksite or make other arrangements with their supervisor or manager to ensure that repairs and upgrades can be made expeditiously. In consultation with the employee, supervisors or managers will make determinations over questions such as 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.

Section 12. Process and Procedures

A. Employees who meet the eligibility criteria outlined above must complete telework training specified by the Agency and/or by the employee’s organization, prior to applying for telework. Employees will be given a reasonable amount of duty time to complete training.

B. Employees complete and sign the EPA telework Agreement and the Safety Checklist and submit them, along with a certificate of telework training, to their immediate supervisor for approval. Only one telework Agreement is required for approval of episodic telework, but each episodic telework occasion must be approved by the immediate supervisor. Each Telework Agreement shall cover the terms and conditions of the telework arrangement, including but not limited to hours and days of duty at each work location, the voluntary nature of the agreement, adherence to all applicable guidelines, policies for timekeeping and leave, and responsibilities for government equipment and records.

C. The employee and supervisor discuss the proposed telework arrangements and what work of employee’s is portable.

D. The supervisor reviews each proposed agreement on an individual basis prior to approval, based on the eligibility criteria set forth in this agreement. This review should generally be completed within 15 calendar days. Prior to denial of the employee’s request to telework, the supervisor will consult with his or her manager. The supervisor shall notify the employee in writing of approval or disapproval. If telework is not approved, the supervisor shall also specify in writing the reasons for the disapproval. The supervisor may use the Notification Template for reference when preparing the notification. If disapproved the employee may file a grievance in

connection with the provisions of this agreement to the extent permitted by Article ## of the EPA/ESC Negotiated Agreement.

Section 13. Return to the Regular Office/Worksite on Telework Days.

A. Employees participating in the telework program, including full-time telework must be accessible and available for recall to their official worksite 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 mission, staffing and workload requirements.

B. 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.

B. Management should give the employee as much advance notice of the recall as possible and at least 24 hours. A supervisor or manager may recall an employee to the regular office/worksite with fewer than 24 hours when recall is essential for the agency to meet its mission and the employee is not prevented from commuting to the regular office/worksite.

C. An employee is not entitled to another telework day as a result of being recalled to the official worksite on an otherwise scheduled telework day, or for any other reason being unable to telework on a scheduled day. It is within management's discretion whether to approve other telework days.

D. After commencement of workday, if an employee is recalled the same day they are teleworking, travel time to the office is considered duty time.

Section 14. Work Schedules.

A. Employees who telework will work the same work schedules that they work in the official worksite, including compressed or flexible schedules under Article 12 of this Agreement. Eligible work schedules for employees participating in telework are the same as those employees working at the official worksite but can be structured to meet the needs of participating employees and their supervisors.

B. In the event of emergency or extreme circumstances, work schedules may be changed with supervisor approval and in accordance with established procedures.

C. Unstructured arrangements where employees work at the AWL without prior supervisory approval are not permitted.

D. Employees on a Maxiflex schedule may work credit hours at the alternative work location.

E. Work schedules may also include fixed times during the day for supervisor/employee telephone conversations. Establishing such times may be helpful to ensure ongoing communication. E-mail and voice mail messaging offers additional supervisor/employee communication options.

Section 15. Prohibited Uses of Telework.

A. Supervisors, managers and approving officials are prohibited from authorizing regular, episodic or unscheduled telework whose underlying purpose is to accommodate employees with non-work-related issues or personal circumstances that should be accommodated through other appropriate processes. Examples include, but are not limited to:

1. Substituting telework for dependent/elder care (i.e., when the home is the AWL, an employee should not be using telework to care for his or her spouse, child or relative;

2. Allowing an employee to telework in lieu of leave

3. 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 etc.); and

4. Including time spent in routine commuting to and from the official worksite.

B. Telework eligible employees may utilize leave for a portion of the workday with a supervisor's approval and may be permitted to telework in an alternative work station for the remainder of the workday.

Section 16. Monitoring Performance.

A. 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.

B. 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.

C. 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:

1. Supervisory telephone calls or e-mail messages to an employee during times the employee is scheduled to be on duty; and

2. Use of performance management systems, including regular workload/accomplishments reports 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 17. Overtime during Telework

A. All overtime must be approved in advance.

B. Any overtime 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 in writing).

C. When an employee working at the employee's alternate 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.

Section 18. Changes, Review and Termination of Telework Agreements.

A. Telework is a voluntary program and not an employee entitlement. The operational needs of the Agency are paramount. Employees who telework do not have an automatic right to continue teleworking. Telework arrangements may be modified, adjusted, or terminated at any time deemed necessary by management based upon an employee's failure to adhere to telework requirements or based upon any other consideration affecting employee eligibility or when requested by an employee. Management has the right at any time to end an employee's use of telework, if, for example, the employee's performance falls below fully successful, the employee engages in misconduct, the employee fails to comply with this agreement or with the terms of the employee's Telework Agreement, or if the telework arrangement no longer meets the organization's needs. Participation in telework will be terminated when the employee no longer meets the eligibility criteria.

B. Management shall provide sufficient notice (at least 30 calendar days) 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 the supervisor/approving official, and furnished to the affected employee. Consent or acknowledgement via signature by the affected employee is not required for the termination of telework to take effect.

C. When any significant aspect of an employee's work changes (e.g., position, work assigned, alternate work location,), the supervisor will reassess the portability and suitability of employee's work for continued telework approval.

D. An employee may withdraw an application for telework, or terminate an approved Telework Agreement, at any time without prejudice, and return to the regular work location. The employee must notify the supervisor in writing, and the supervisor should in turn acknowledge the employee's notice in writing, to prevent misunderstandings about work location.

Section 19. Workers' Compensation:

A. 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.

B. 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.

C. The supervisor's signature on the request for compensation attests only to whether the event occurred at the regular office/worksite 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.

D. 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.

ARTICLE 14 Duration

Section 1. Force and Effect of Agreement

A. Agreement: The Agency and the Union agree that for the full term of the Agreement (as set forth in Section B of this Article and, as may be applicable, in Section C of this Article) the provisions of this Agreement shall remain in full force and effect and unchanged unless the parties consent to a change in the Agreement, or as required by applicable law.

B. Supersedes Previous Agreements: This Agreement supersedes and replaces any and all negotiated agreements, written or oral, at all levels and facilities of the Agency, that were in effect prior to the effective date of this Agreement.

C. Inconsistent Past Practices: Existing conditions of employment not in conflict with provisions of this agreement will remain in effect. Any practice that conflicts with the terms of this agreement is void on the effective date of this agreement.

D. Duration of Memorandum of Understanding (MOU)/Memorandum of Agreement (MOA): MOUs/MOAs negotiated under the terms of this agreement shall be considered part of this agreement and shall have duration concurrent with the agreement, unless otherwise specified in the MOU/MOA.

Section 2. Duration of Agreement

This Agreement shall remain in effect for two years from the effective date of this Agreement.

Section 3. Notice to Renegotiate the Expired Agreement

Renewal and Termination: This Agreement shall automatically be renewed from year to year unless one party gives the other written notice of its intention to renegotiate this Agreement no less than 60 or more than 90 calendar days prior to this Agreement's expiration date. If notice to renegotiate is given, this Agreement shall remain in full force and effect until the changes are negotiated and approved.

Section 1. Negotiation Procedures for a Subsequent Agreement

In the event that one of the parties decides to renegotiate this Agreement as provided for in Section 3 of this Article, the Parties will agree on mutually satisfactory ground rules for the conduct of these negotiations.

ARTICLE 15 Union Rights

Section 1.

The Union has been accorded recognition as the exclusive representative of the employees in the unit it represents and is entitled to act for and negotiate collective bargaining agreements covering all employees in the unit. The Union has the right to negotiate with respect to changes in personnel policies, practices, and other matters affecting working conditions. The Union may refuse to represent employees in proposed disciplinary actions, in statutory appeals (for example, adverse actions and equal employment opportunity complaints) and in any other matters permitted by law.

Section 2. Formal Discussions

The union shall be given the opportunity to be represented at formal discussions between the Employer and employees concerning grievances, changes in personnel policies and practices, or other matters that affect working conditions of employees in the unit. The Union President or designee will be notified via electronic mail at the earliest practicable date in advance of any formal meetings; but no less than three (3) workdays in advance of the meeting(s). The Union recognizes that circumstances may arise with regard to health, safety, facility, or security concerns that require immediate action. In those circumstances, the Employer will provide the Union with notice of a formal meeting as soon as possible. If the Union is unable to provide representation at the meeting due to time constraints, the Employer will give reasonable consideration in, providing up to two (2) additional days to ensure representation.

The union representative will introduce him/herself to the organizer of the meeting, stating their role for attending the meeting is to represent the interests of the bargaining unit. The Union representative may participate in such discussions in an orderly fashion, may ask questions, and may outline the Union's position concerning the issue(s) discussed. The Union representative may also inform employees that if any of them wish to discuss or consult with the Union on the meeting topics further or in private, the employee may come to the Union office or another area to meet. If an employee(s) wishes to discuss or consult with the Union regarding any matters discussed at the meeting, they may do so.

Section 3. Right to Represent Employees without Restraint, Interference, Coercion, or Discrimination

The Employer shall not restrain, interfere with, coerce, or discriminate against designated representatives of the Union in the official exercise of their responsibilities as representatives for the purpose of collective bargaining, processing grievances, or acting in accordance with applicable regulations and agreements on behalf of an employee or group of employees within the bargaining unit.

Section 4. Bargaining Unit Status Report

Every quarter the Employer will provide, at no cost, electronic bargaining unit status to the Union. These bargaining unit status reports will be in an excel spreadsheet or similar format with similar functionality and will include the following information: the employee name, employee ID number, e-mail address, grade and step, position title, organizational element/unit broken down by Region/Assistant Administrator-ship, Office, Division and Branch, and location/building code.

In the event a Union Chapter brings any discrepancies or inaccuracies in the quarterly bargaining unit status report to the Employer's attention, the Employer shall resolve, as soon as practicable, the issue and demonstrate that the issue has been resolved no later than twenty-one (21) calendar days following the report of the discrepancy or inaccuracy to the Employer, unless an extension is mutually agreed to by the parties.

Section 5. Union Access to Information Regarding Changes in Personnel Policies, Practices, Conditions of Employment, and/or New Rules or Regulations

A. The Employer recognizes its obligations to provide the Union and its representatives with relevant and necessary data within a reasonable time period pursuant to the standards set forth in 5 USC Section 7114(b)(4). When a request cannot be fulfilled within seven (7) working days, the Agency will notify the Union. The parties will then confer to discuss a timeline for the production of the information, modification of the request, and providing/receiving the information that is available early in an interim response. The parties may also agree to postpone or amend deadlines relating to Union-initiated actions that may be impacted by an information request.

B. The Employer will provide the Union with the website or an electronic copy (or a hard copy if not available electronically or on website) of all changes to EPA Orders, Directives, Manuals, and issuances relating to personnel policies, practices, procedures, and matters affecting working conditions of bargaining unit employees.

Section 6. Bargaining Unit Surveys

Prior to surveying bargaining unit employees, the Employer will provide the Union with a copy of the survey document and allow the Union an opportunity to comment on it. The Employer will provide a copy of any survey results obtained to the Union.

ARTICLE 16 Transit Subsidy

Subject to the availability of funds, the Agency will support the transit subsidy program to the maximum allowable as a tax-free benefit under the Internal Revenue Service Code. If EPA determines that due to budgetary constraints the maximum allowable amount cannot be maintained for all employees, ESC will be timely notified and may re-open negotiations pursuant to Article 5 (Mid-Term Negotiations). The amount of the subsidy depends on the employee's actual commuting costs and cannot exceed the costs incurred.

ARTICLE 17 Student Loan Repayment

Section 1. Student Loan Repayment Plan

The Employer has established a Student Loan Repayment Plan in accordance with 5 U.S.C. 5379 and 5 C.F.R. 537 and other government-wide rules and regulations. Implementation of the Student Loan Repayment Program is subject to the availability of funds. The Employer may use the plan as an incentive to recruit highly qualified candidate-s and to retain highly qualified employees likely to leave for employment outside the Federal service, at the Agency's discretion.

Section 2. Criteria

There is no entitlement to participation in the Student Loan Repayment Plan. The Employer may use this student loan repayment incentive on a case-by-case basis in accordance with 5 C.F.R. Section 537. Under the Plan, employees may be considered for loan repayment assistance up to the statutory limit, which is currently $10,000 per calendar year, with a total limitation of not more than $60,000 for any one employee.

Section 3. Coverage

A. The Employer may offer student loan repayment incentives to recruit or retain the following full-time or part-time employees:

1. Permanent employees (including employees serving on indefinite appointments);

2. Employees serving on term or excepted appointments with at least 3 years remaining on their appointments;

3. Employees serving on excepted appointments that can lead to non-competitive conversion to term, career, or career-conditional appointments.

B. The following employees are ineligible for the Student Loan Repayment Program:

1. Employee who has separated from the agency, either voluntarily or involuntarily;

2. Employee who does not maintain an acceptable level of performance (acceptable level of performance is performance that is fully successful or higher;

3. Employee who violates a condition in the service agreement.

Section 4. Service Agreement

Once approved, employees must sign a written service agreement that requires the employee to complete, at a minimum, a three-year period of employment with the Employer regardless of the amount of the loan repayment authorized. If the employee separates voluntarily or is separated involuntarily for misconduct or poor performance before fulfilling the service agreement, they must reimburse EPA for any of the amount of the benefit received. (See 5 USC 5379.) Loss of eligibility in the program and employee reimbursement to the Agency are described, respectively, in 5 CFR Parts 537.108 and 109 and in Sections 3 and 5 of this Article.

Section 5. Requirement to Reimburse and Waiver Request

A. Pursuant to 5 CFP Part 537.109, Employee Reimbursement to Government, an employee is indebted to the Federal Government and must reimburse the paying agency for the amount of any student loan repayment benefits received under a service agreement if the employee:

1. Fails to complete the period of service required in the applicable service agreement (except as provided by paragraph (b) of this section); or

2. Violates any other condition that specifically triggers a reimbursement requirement under the agreement.

B. An agency may not apply paragraph (a) of this section based on an employee's failure to complete the required period of service established under a service agreement if:

1. The employee is involuntarily separated for reasons other than misconduct, unacceptable performance, or a negative suitability determination under 5 CFR part 731; or

2. The employee leaves the paying agency voluntarily to enter into the service of any other agency, unless reimbursement to the agency is otherwise required in the service agreement, as provided by § 537.107(e).

C. If an agency and an employee mutually agree to modify an existing service agreement to provide additional student loan repayment benefits for additional service (as provided by § 537.107(b)), the modified service agreement may stipulate that, if the employee completes the initial service period but fails to complete the additional service period, they are required to reimburse the paying agency only for the amount of any student loan repayment benefits received during the additional service period.

D. If an employee fails to reimburse the paying agency for the amount owed under paragraph (a) of this section, a sum equal to the amount outstanding is recoverable from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and 5 CFR Part 550, subpart K, or through the appropriate provisions governing Federal debt collection if the individual is no longer a Federal employee.

E. An authorized agency official may waive, in whole or in part, a right of recovery of an employee's debt if they determine that recovery would be against equity and good conscience or against the public interest. (See 5 U.S.C. 5379(c) (3).)

F. Any amount reimbursed by, or recovered from, an employee under this section must be credited to the appropriation account from which the amount involved was originally paid. Any amount so credited must be merged with other sums in such account and must be available for the same purposes and time period, and subject to the same limitations (if any), as the sums with which merged. (See 5 U.S.C. 5379(c) (4).)

Section 6. Reporting

A. Once a year, upon request, the Employer shall provide ESC the following for ESC bargaining unit employees:

1. The number of employees selected to receive student loan benefits;
2. The name and job classification of the employees selected to receive benefits; and
3. The amount of benefit received by each employee.

B. Nothing herein precludes the Union from requesting additional information concerning the student loan repayment program consistent with 5 U.S .C. 7114(b) (4).

ARTICLE 18 Child Care Subsidies

Section 1.

The parties recognize that many employees need to have adequate child care services during duty hours. The Employer will continue to provide the child care center and services in the EPA Region 9 building and will continue to provide opportunities for access to child care facilities. Changes to the manner in which the Agency offers child care opportunities to employees will be reserved for local bargaining.

Section 2.

The GSA-established board for the childcare center shall include an EPA union member representative. The representative will be permitted up to one hour of official time per month to attend board meetings convened during normal business hours.

Section 3.

Management will appoint a representative to serve as liaison between GSA and the Union on matters concerning the child-care center. This representative will communicate with the designated union representative if notified of any significant changes such as a change in the service provider, fee structure, etc.

Section 4.

Should management learn of developments adversely affecting the establishment or viability of the child care center, management will provide notice to the designated union representative within two business days and seek to convene a meeting shortly thereafter.

Section 5.

The Agency is committed to establishing a child care subsidy program. When it has developed a policy establishing such a program, it will provide the draft policy to ESC per the terms of Article 5 (Mid-Term Negotiations).

ARTICLE 19 Employee Assistance Program

Section 1.

The Employer and the Union recognize the importance of an Employee Assistance Program for employees whose job performance is affected by issues such as elder care, child care, financial concerns, emotional concerns, drug or alcohol abuse, or other personal concerns. Employee participation in the program shall be voluntary.

Section 1.

Initial ECAP consultations will be approved as duty time if the meetings are scheduled during regular work hours. The ECAP counselor will keep information discussed with the employee confidential.

Section 2.

Employee counseling may include referral to outside professional treatment and assistance sources. Employees may request annual or sick leave, or earned compensatory time, for purposes of undergoing a treatment program. Such leave requests will be approved or denied on the same basis as similar requests resulting in an employee's absence from work.

Section 3.

The Parties shall inform unit members who are experiencing performance, conduct and/or attendance problems of the existence and operation of the program and refer those seeking assistance to the Program. The agency will keep the union informed concerning the correct telephone numbers and contacts for the program. If the Agency intends to modify the program, it will notify the Union in accordance with Article 5 (Mid-Term Negotiations).

Section 4.

On a periodic basis and no less than annually, the Parties shall publicize the Program, including the name of the Program Coordinator, to employees. The agency will publicize the broad range of assistance available from the EAP program from assistance such as financial and legal assistance, elder, child, and pet care assistance, as well as assistance from professional counselors, therapists, and psychologists. Communications about the program shall include an assurance that employees' participation in the program will be kept strictly confidential.

Section 5.

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

ARTICLE 20 Workers Compensation

Section 1.

Employee(s) and/or witness(es) should report all on-the-job injuries immediately or as soon as possible to management.

Section 2.

The appropriate Human Resources Officer or designee will provide the proper form(s) and assistance to the employee or representative required for medical treatment and/or claim for benefits to be filed with the Office of Workers' Compensation.

Section 3.

The employee will be allowed to review documents concerning workers' compensation benefits available, as well as procedures for filing for benefits. If the employee is unable to conduct this review, their representative will be allowed to do so, subject to a written authorization from the employee.

Section 4.

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

Section 5.

The Employer will counsel an injured employee on their right to file a claim, the right to use compensation benefits in lieu of sick or annual leave, the types of leaves, benefits and compensation available, and the procedures for filing a claim.

Section 6.

The Employer will counsel a disabled employee, on all aspects of disability retirement, if appropriate, while a compensation claim is pending. When an employee has been on Workers' Compensation benefits (LWOP) for over one year, with no anticipated return to full duty, the Employer will provide him/her with possible job options, such as continued long-term worker's

compensation, disability retirement, or resignation. There will be no effort to urge the employee to choose one option over another regarding claims for benefits.

ARTICLE 21 Medical Qualifications Determinations

In directing employees to undergo a fitness-for-duty examination, the Employer will observe applicable laws and regulations including 5 CFR 339.

ARTICLE 22 Transfer of Function

Section 1.

The Employer shall provide notice to the Union at the earliest possible date when it is considering a transfer of function involving bargaining unit employees, so that the Union has an opportunity for pre- decisional involvement.

Section 2.

The Employer shall provide a written notice to an employee whose position has been transferred outside the competitive area at least sixty (60) days in advance of the effective date.

Section 3.

An employee will have at least 30 days after issuance of the written notice to accept or reject the offer of transfer. Failure to respond within the required period will act as a declination of the offer. Reasonable extensions to the above time limits may be granted for good cause. An employee may subsequently change an initial acceptance offer without penalty. An employee may not subsequently change a declination offer.

Section 4.

At the employee's request, the Employer will assist an employee who declines a transfer of function outside the competitive area in attempting to locate employment within the Agency or with other Federal agencies.

Section 5.

Severance pay for those employees declining a transfer of function will be the maximum extent practicable in accordance with applicable law and regulation. In the event an employee moves to accompany their position, the Employer will pay moving expenses in accordance with law and regulation.

ARTICLE 23 Employee Rights

Section 1.

A. The employer and the Union will recognize and respect the dignity of employees, supervisors and managers in the formulation and implementation of personnel policies, practices and conditions of employment and, at all times, treat employees with courtesy and respect. Relationships between employees, their representatives, and their supervisors will be mutually conducted in a businesslike, courteous and tactful manner.

B. Employees recognize their responsibility to promptly comply with all orders and instructions from their supervisors. If an employee reasonably believes that an order or instruction patently violates any law, rule, regulation or Agency policy, they should state their beliefs to their supervisor. Additionally, Supervisors recognize their responsibility to ensure that all orders and instructions are consistent with law, rule, regulation or Agency policy.

C. The employee may document their belief that the order or instruction violated one or more laws, rules, regulations or Agency policies. If an employee refuses to carry out an order or instruction promptly and the EPA takes an adverse personnel action against the employee as a result of such refusal, that employee may assert as a defense that they believed the order or instruction to be illegal. An employee will not be subject to discipline on the basis that the employee carried out the order of the supervisor.

Section 2.

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

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

B. To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this agreement. Employees formally assigned (as documented by a SF-52) to a non-unit position may not concurrently serve as a Union representative.

Section 3.

A. The initiation of a grievance in good faith by an employee does not affect the employee's standing with the Agency. Employees who have relevant information concerning any matter for which remedial relief is available under this agreement will, in seeking resolution of such matter, be assured freedom from restraint, interference, coercion, discrimination, intimidation or reprisal.

B. Employees will be free from restraint, coercion, discrimination, interference or reprisal for designating the Union as their representative in a matter of concern over the interpretation or application of this Agreement or of representing the employees to any Government agency or official other than the Employer.

Section 4.

If there is a disagreement between the employee and the Employer regarding the employee's right to Union representation the meeting will be delayed no more than one full workday, in order to permit the employee to consult with their Union representative, and for the supervisor to consult with the local HR office. Contact with union representatives and/or HR officials should occur as soon as the meeting is scheduled.

Section 5.

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

B. Employees will be informed annually of this right to representation through e-mail at the beginning of each calendar year.

C. If an employee requests Union representation under this Article and a Union representative is not available, the examination will be rescheduled as soon as practicable, but not to exceed two (2) workdays in order to secure a Union representative. If the examination will be in a field office/place based office outside of a regional or district office, or in a headquarters office located in the field where no union representative is co-located, the examination may be rescheduled as soon as practicable, but no longer than (5) five workdays in order for the employee to secure a representative.

D. Any discussion with employees by representatives of the Employer which may reasonably be considered by an employee to lead to disciplinary action will be conducted in private. At any meeting as referenced in Section 5A above, the Employer agrees:

1. To inform the employee in advance of the meeting, of the general subject of the interview, including whether or not it is criminal in nature; and

2. That the interview will be scheduled to allow the employee an opportunity to seek the counsel of a Union representative and to prepare for the investigatory interview.

E. Employees shall be given any warnings required by law to protect their constitutional privilege against self-incrimination in criminal proceedings. Refusal to respond to questions based on a proper invocation of the privilege against self-incrimination in a criminal proceeding may not be used as the sole basis for a disciplinary or adverse action. The Employer may determine, in circumstances potentially involving criminal misconduct, that it is necessary or desirable that employees being interviewed be required to respond to questions concerning misconduct or face disciplinary/adverse action, provided that the employees are informed that their answers cannot be used to incriminate them. In such cases, the Employer shall provide a Kalkines warning, orally and in writing, to the employee being investigated.

F. When employees are given the warning, they shall be given a "Statement of Rights and Obligations." Employees will acknowledge on the statement the receipt of the above warning. Employees may acknowledge on the statement the receipt of this warning. Employees shall be given a copy of the statement for their records. The employee's acknowledgment indicates only that the employee received the warning. It does not constitute the employee's admission of any wrongdoing by the employee.

G. When an employee being interviewed is accompanied by a Union representative, the role of the representative includes:

1. Requesting that the interviewer clarify questions;
2. Clarifying responses provided by the employee;
3. Assisting the employee in providing favorable extenuating facts;
4. Suggesting other employees who may have knowledge of relevant facts; and
5. Advising and/or conferring privately with the employee during the course of the meeting.

At the conclusion of the interview, the Union representative and employee may meet briefly to determine if there are additional facts the employee would like to bring to the interviewer's attention. In the event EPA changes the Kalkines statement in accordance with law, rule or regulation, EPA will provide a copy of the new form to the Union before it is used.

H. Interviews of employees by investigative officials of the Employer will be limited to matters having a nexus to the efficiency of the service.

Section 6

All employees will be officially notified at least on an annual basis of the Employer's policies regarding the monitoring of employee use of the computer system.

Section 7

Upon request, employees will be authorized up to a maximum of one (1) hour of administrative leave annually, or at the employee's option may use their lunch break to consult with a national Union sponsored benefits counselor. Supervisors will approve such requests unless precluded by the employee's workload.

Section 8.

Employee participation in the Combined Federal Campaign, blood drives, and other solicitations will be voluntary, and employees will not be coerced to contribute. Supervisors may solicit pledges or contributions from employees generally, however, a supervisor will not solicit pledges or contributions from an individual employee under their supervision.

Section 6.

An employee who wishes to meet with a Union representative shall inform their supervisor that they are leaving the work site, and the expected duration of their absence but is not required to tell the supervisor the specific reason they need to speak with a Union representative. Refer to Article 2 for the procedures for documenting use of official time.

Section 7.

Subject to the availability of funds and demonstrated need, the Employer will provide the normal and routine current level of service offered by existing health units. Where considered feasible based on the location of the health unit, such services will include care for employees during emergency situations and until proper medical authorities can reach the employee. As testing, inoculations, and special programs are offered by the health unit, such programs will be made available to employees on an as available basis. If a health unit is closed, or the level of services provided by the health unit will change, the Employer will notify the Union prior to the change and negotiations will occur in accordance with this agreement.

Section 8.

The Employer will comply with all government-wide regulations pertaining to health benefit coverage for employees and open season procedures. The Union can access via the Intranet the OPM approved and provided FEHB Guides (RI-70-1) for the current year and any other OPM materials.

ARTICLE 24 Leave Bank and Voluntary Leave Transfer Program

The current leave bank and voluntary leave transfer program covering unit employees will remain in effect. Employees may access these programs via the EPA Intranet.

ARTICLE 25 Assignment of Work

The Parties agree that work assignments will be made in an objective manner. Therefore, when assigning work to employees, supervisory officials will consider such factors as efficiency, employee developmental needs, knowledge, skills, abilities, interests, experience, interpersonal competencies, existing organizational workload, mission and goals and deadlines.

ARTICLE 26 Contracting Out

Section 1. General

A. The Employer will notify the Union regarding any anticipated review of a function, currently being performed by bargaining unit employees, undertaken for the possibility of contracting out that function. To the extent required by law, the Parties will maintain the confidentiality of all information concerning the study and contract process until a decision is reached either to not contract out or to award a contract.

B. The Union shall be advised prior to the contracting out of work. It shall have the opportunity to engage in impact and implementation bargaining concerning any adverse personnel actions for employees resulting from the contracting out of work.

C. The Employer will make reasonable efforts to minimize the impact on employees when a function is contracted out. The Employer will provide reasonable, necessary training to employees who are reassigned as a result of a decision to contract out the work they formerly performed.

Section 2. Information

A. At the Union’s request, the Agency will provide information concerning commercial activity studies affecting unit employees, to the extent consistent with law, rule or regulation.

B. The Union will be involved in all phases of an A-76 study to the extent permitted by law and regulation.

ARTICLE 27 Probationary Employees

Section 1. General

The Parties recognize that new employees with the Federal Government may require counseling and assistance during their probationary period.

Section 2. Performance

Pursuant to Article 10 the probationary employee will receive at least one (1) progress review, typically mid-way (if not sooner) during their probationary year. Employees are encouraged to request updates on their performance.

Section 3. Termination of Probationers for Unsatisfactory Performance or Conduct

An employee's separation from the rolls under this Article must be effected before the employee has completed the probationary period. When an agency decides to terminate an employee serving a probationary or trial period because their work performance or conduct during this period fails to demonstrate their fitness or qualification for continued employment, it shall terminate their services by notifying them in writing as to the reason(s) for termination and the effective date of the action.

Section 4. Termination for Pre-Appointment Reasons

A. When an agency proposes to terminate an employee serving a probationary or trial period for reasons based in whole or in part on conditions arising before their appointment, the employee is entitled to the following:

1. Written notice stating the reasons, specifically and in detail, for the proposed action.

2. A reasonable time for filing a written answer to the notice of proposed adverse action and for furnishing affidavits in support of their answer. If the employee answers, the agency shall consider the answer in reaching its decision.

3. Delivery of the decision at or before the time the action will be made effective. The notice shall be in writing, inform the employee of the reasons for the action, inform the employee of any right to appeal to the Merit Systems Protection Board (MSPB), and inform him or her of the time limit within which the appeal must be submitted as provided in 5 CFR 315.806(d).

Section 5. Right to Appeal to EEOC

When the probationary employee believes that his or her termination is based on discrimination, the employee may pursue established EEO complaint procedures.

Section 6. Voluntary Resignation in Lieu of Termination

Probationary employees may choose voluntary resignation in lieu of termination at any time prior to the date of their termination. If the probationary employee voluntarily resigns, the employee's official personnel folder will reflect the voluntary resignation.

ARTICLE 28 Retirement/Resignation

Section 1. Withdrawal of Resignation/Retirement Application

The Agency may allow an employee to withdraw a resignation or retirement at any time before it becomes effective. The Agency may decline a request to permit an employee to withdraw a resignation or retirement before its effective date only when the Agency has a valid reason and explains that reason to the employee. A valid reason includes, but is not limited to, administrative disruption or the hiring or commitment to hire a replacement.

Section 2. Access to Union Retirement Information

The Employer will allow Union representatives the opportunity to provide to all retiring bargaining unit employees a package of information.

Section 3. Counseling

The Employer will make available information to each requesting employee who separates voluntarily or involuntarily as to their rights and benefits under the applicable retirement system.

ARTICLE 29 Prohibited Personnel Practices

Section 1. Definitions

For the purpose of this Article and in accordance with title 5 USC 2302, a prohibited personnel practice means a/n:

- appointment;
- promotion;
- action under title 5 USC chapter 75 or other disciplinary or corrective action;
- detail, transfer, or reassignment;
- reinstatement;
- restoration;
- re-employment;
- performance evaluation under title 5 USC chapter 43;
- decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this section;
- decision to order psychiatric testing or examination; and
- Any other significant change in duties, responsibilities, or working conditions.

Section 2. Prohibited Practices

In accordance with title 5 USC 2302(b), any employee who has the authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority:

1. Discriminate for or against any employee or applicant for employment on the basis of:
    a. Race, color, religion, sex, or national origin, as prohibited under Section 717 of the Civil Rights Act of 1964;
    b. Age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967;
    c. Sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938;
    d. Handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973;
    e. 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 except as provided under title 5 USC 3303(f);

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 any 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 title 5 USC 3110(a)(3)) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in title 5 USC 3110(a)(2)) 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:

      1. A violation of any law, rule or regulation, or
      2. 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 the 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:

1. A violation of any law, rule, or regulation, or

2. 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;
   B. Testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (a);
   C. Cooperating with or disclosing information to the Inspector General, or the Special Counsel, in accordance with applicable provisions of law; or
   D. For refusing to obey an order that would require the individual to violate a law.

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 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. Knowingly take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement, or knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement; or

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 title 5 USC 2301.

ARTICLE 30 Waiver of Overpayment

Section 1. Notification of Overpayment

A. In the case of an overpayment, an employee will be notified of his or her right to dispute the underlying debt in accordance with 40 CFR Part 13 and applicable government-wide regulations of the Department of the Treasury.

B. Such notice will include notification of overpayment, the employee's right to request a waiver of the overpayment or to dispute its validity, the employee's right to review documents establishing the debt, and the employee's right to request a hearing on the amount and validity of the debt prior to the initiation of salary offset.

Section 2. Waiver of Overpayment

A. An employee may request a waiver of an erroneous overpayment of pay or allowances or an erroneous payment involving travel, transportation or relocation expenses, in whole or in part.

B. The Agency will recommend waiver of the obligation to repay such overpayment if the overpayment occurred through administrative error and there is no indication of fraud, misrepresentation, fault or lack of good faith on the employee's part and is otherwise in accordance with title 5 USC 5584 and applicable regulations. Administrative error will not necessarily result in the approval of a waiver request or an entitlement to the amount received in error.

C. To the maximum extent feasible, the Agency will suspend collection of the overpayment in question pending final decision of the waiver request.

D. If the waiver is not authorized, the Agency will attempt to establish a repayment schedule that can be accommodated by the affected employee. Collection will begin no earlier than thirty (30) days after the employee is notified of the amount of overpayment.

ARTICLE 31 Outside Employment

Section 1.

A. The Employer agrees to objectively evaluate all requests for approval of outside activity, including outside employment. All requests for outside activity must be submitted in writing, no less than ten (10) calendar days in advance of the proposed start date for the outside activity.

B. Employees who wish to engage in outside employment or activities of the type listed in 5 CFR 6401.103(a)(1) and 5 CFR 2635 must submit a written request for approval of such outside employment or activity prior to engaging in it. The request for outside employment must address the criteria contained in 5 CFR 6401.103(b), and must be submitted to the appropriate Deputy Ethics Official (DEO) via the employee's immediate supervisor. The Employer will objectively evaluate all requests for outside employment or activity, consistent with the applicable statutes and Federal regulations.

Section 2.

Approval for requested outside employment shall only be granted upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation. Approval requests remain valid only for 5 years unless the DEO specifies a longer time frame.

Section 3.

Where an employee transfers to an organization for which a different DEO has responsibility, the employee must obtain approval from the new DEO. Approved requests remain valid only for five years unless the DEO specifies a longer period of time.

Section 4.

If an employee wishes to dispute the DEO's written disapproval of the request to engage in outside employment, they may file a request for reconsideration with the DEO. If the request for reconsideration is denied, the employee may appeal that decision to the next higher level ethics official. A final appeal of a negative determination made by a DEO may be made to the Alternate Agency Ethics Official.

ARTICLE 32 Part-time Employment

### Section 1.	Definition

For the purpose of this Article, part-time employees are those who are employed in permanent positions with a pre-scheduled tour of duty between sixteen (16) to thirty-two (32) hours per week.

### Section 2.	Criteria for Approval

The Employer may grant employee requests to work part-time when continuity of operations will not suffer. Decisions will be made within fifteen (15) work days of receipt of the request. The employee acknowledges that the request for part-time employment is voluntary.

### Section 3.	Coverage

The Employer recognizes that part-time career employment may be appropriate, but in no way limited to, the following class of employees:

A. Older employees seeking gradual transition into retirement;

B. Handicapped individuals or others who require a reduced work week;

C. Parents who must balance family responsibilities with the need for additional income; and

D. Students who must finance their own education and vocational training.

### Section 4.	Holidays

When a holiday falls on a part-time employee’s regularly scheduled workday, the employee will be paid for the number of hours they were scheduled for that day.

### Section 5.	Change in Employment Status

A. In accordance with 5 USC 3403, the Employer will not abolish any position occupied by an employee in order to make the duties of such a position available to be performed on a part-time basis.

B. Subsection 5(A) above does not preclude the Employer from permitting a full-time employee from voluntarily changing to a part-time schedule in accordance with Section 2 of this Article.

C. Any person who is employed on a full-time basis shall not be required to accept part-time employment as a condition of continued employment.

Section 6. Request to Return to Full-Time Status

Upon written request, the Employer will consider an employee's request to return to full-time status. If the request is denied, the employee will, upon written request, receive a reason for the denial in writing.

Section 7. Job-Sharing Program

Management will consider requests from employees to voluntarily job-share a position.

ARTICLE 33 Temporarily Disabled Employees

Section 1. Light Duty Assignments

Upon request, the Employer will make every reasonable effort to provide temporary light duty/alternative duty assignments within the same branch (work unit) for an employee temporarily unable to perform their regularly assigned tasks due to a medical condition. In certain circumstances, the Employer may require documentation from a medical provider to verify an employee’s medical condition. If the employee cannot carry out the alternate duties, they may request leave in accordance with this Agreement and/or applicable laws and regulations. This does not preclude any employee from filing an application for disability retirement, reasonable accommodations, or workers compensation in accordance with applicable regulations. Priority for light-duty assignments will be given to employees incapacitated due to a work-related injury or illness.

ARTICLE 34 Details and Temporary Promotions

Section 1. Definition

A. A detail is the temporary assignment of an employee to a different position at the same grade held or at a higher or lower grade or to a set of unclassified duties for a specified period when the employee is expected to return to his or her regular duties at the end of the assignment.

1. Selection for details with promotion or career building potential that are less than 120 days will be based on factors such as: employee skills, abilities, experience and developmental needs; existing organizational staffing and workload; mission and goals of the organization; and deadlines. When reasonable to do so, the Agency will communicate detail opportunities to all qualified employees, within the appropriate area of consideration, whenever the detail opportunity is available to more than one employee.

B. A temporary promotion is a temporary assignment for a specified period of time to a position at a higher grade than the one the employee currently holds where the employee is expected to return to his or her regular duties at the end of the assignment. An employee must meet the qualifications for the higher grade level before they can be temporarily promoted.

Section 2. General

A. Details will not be used as discipline; however, the Employer may consider a detail when addressing a workplace problem (e.g. allegations of harassment, friction between employees, short-term accommodation needs). The Employer will give reasonable consideration to assertions by an employee that the detail will cause significant personal hardship.

B. The Employer agrees to refrain from rotating assignments to employees solely to avoid compensation at the higher level.

Section 3. Detail to Higher Graded Positions

A. The Employer agrees that an employee who is detailed to a higher grade classified position for a period of more than thirty (30) consecutive calendar days will be temporarily promoted to that position effective with the beginning of the first full pay period following the beginning of the detail and will be paid at the higher grade for the duration of the temporary promotion, providing the employee meets the appropriate qualification standards.

B. Selection for details to higher graded positions and temporary promotions will be accomplished in accordance with Article 8, Merit Promotion, of this Agreement, when it is reasonable to expect that the assignment to the higher graded position is to last longer than one hundred twenty (120) calendar days. Prior service during the preceding 12 months under noncompetitive details to higher graded positions and noncompetitive temporary promotion counts towards the 120-day total. C. It is agreed that when an employee is detailed to a higher

graded position for more than thirty (30) consecutive calendar days, but is not eligible for a temporary promotion, the employee's 61 performance at an acceptable level of competence in a higher graded position will be cause for consideration for issuing a special achievement/or special act award, whichever applicable to that employee.

Section 4. Appraisals for Details/Temporary Promotions in Excess of 90 Days

Pursuant to 5 CFR 430, when employees are detailed or temporarily promoted and the assignment is expected to last ninety (90) days or more, the Employer will provide the employees with critical elements and standards as soon as possible (no later than thirty (30) days from the beginning of the assignment). The employees will be rated on the critical elements for the assignment if it lasts for 90 days or longer. These ratings will be considered in deriving the employee's next rating of record.

ARTICLE 35 Effect of Law and Regulation

Section 1.

The Parties are governed in all matters covered by this Agreement, existing and future laws, and government-wide rules and regulations in effect upon the effective date of this Agreement. If on the effective date of this Agreement there is a conflict between EPA orders, manuals, notices, and the terms of this Agreement, the Agreement will govern.

Section 2.

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

ARTICLE 36 Lactation Time and Facilities

Section 1.

The Agency will provide a reasonable break time for an employee to express breast milk for her nursing child each time such employee has need to express the milk.

Section 2.

The agency will provide a lactation room that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

ARTICLE 37 Furlough

Section 1.

Furlough means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.

Section 2.

Furloughs shall be conducted in accordance with applicable laws and government wide regulations.

Section 3.

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.

Section 4.

The Employer will officially notify the Union in writing when it is determined that a furlough is necessary. Traditional bargaining will then be utilized to reach an agreement on issue regarding a furlough. If time is of the essence, the Employer will request that traditional bargaining take place as soon as possible, since lack of a budget may necessitate immediate furloughs.

Section 5.

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 prevent approval of the request. Should an employee request be denied, the employee will be provided written reasons for the denial.

ARTICLE 38 Reorganization

Section 1.

The Employer will provide written notice to the Union as soon as possible if significant changes will be made in the duties and responsibilities of positions held by bargaining unit employees due to reorganization or realignment of program responsibilities, or when changes in position classification standards result in changes to title, series or grade or bargaining unit status of bargaining unit employees.

Section 2.

In order to facilitate efficient and timely reorganizations, the Employer and the Union will be involved, when practicable, in collaborative discussions. In the event that these efforts have failed, the Employer will officially notify the Union in writing, when it is determined a reorganization is necessary. Traditional bargaining then will be utilized to reach an agreement on issues regarding a reorganization.

ARTICLE 39 Orientation of New Employees

Section 1.

The Union shall have the opportunity to participate in the orientation process for bargaining unit employees and may speak to new staff about the union for fifteen (15) minutes. The Union will be furnished the name, position, duty station, and date of entrance on duty for new bargaining unit employees prior to the orientation date.

Section 2.

Regardless of the union's ability to participate in the orientation session, the Employer will:

D. Advise new unit employees upon reporting for duty that the Union is the exclusive representative of employees in the unit.

E. Provide new unit employees within their orientation packet:
   1. A hard copy of the cover page and table of contents of this agreement along with an electronic copy of this Agreement or a URL or other instructions on how to access this document on R9Online; and
   2. An information packet from the union if such packet has been provided to the employer.

ARTICLE 40 Fitness Center

Unit employees' access to existing EPA-sponsored health/fitness centers will be maintained. Any change in unit employees' access to such facilities will be handled pursuant to Article 5.

ARTICLE 41 Overtime

Section 1. Definitions

A. Overtime is work in excess of 40 hours in an administrative workweek, in excess of 8 hours in a regular work day, or in excess of the regularly scheduled hours in a compressed schedule work day.

B. Compensatory time is time off on an hour-for-hour basis in lieu of overtime pay. Compensatory time may be granted only for irregular or occasional overtime work.

C. Irregular or occasional overtime work means overtime work that is not part of an employee's regularly scheduled administrative workweek.

Section 2.

A. When the Agency decides to assign overtime to employee(s) who possess the requisite skills and abilities for the assignment (i.e., possess specific knowledge or experience needed to satisfactorily perform the overtime work) in the same organizational unit performing the same type of duties, the assignment(s) will be made in accordance with the following criteria:

1. Qualified employees assigned to a particular task during regular working hours normally will be given the overtime assignment. In situations involving the need for overtime, when no specialized experience or background is needed, management will solicit interest from among employees in the job classification that would normally perform such work. If excess employees express interest in the assignment, the assignment will go to the most senior qualified employee (service computation date). If too few employees express interest, management will assign the overtime to the least senior qualified employee.

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

Section 3.

The Agency will balance its needs against the needs of the employee when employees request to be excused from overtime and provide qualified substitutes for the assignment(s).

Section 4.

The Employer will give employees as much advance notice of overtime assignments as is practicable under the circumstances.

Section 5.

A. Compensation for overtime work will be made in accordance with applicable laws and regulations. Overtime work shall not be performed unless authorized by a supervisor.

B. Nothing in this section is meant to waive the union's or an employee's right to challenge "suffered or permitted" overtime worked by non-exempt employees or for FLSA exempt employees to file an appropriate challenge.

C. When allowable under controlling laws, regulations, and agency policies, employees may request compensatory time in lieu of overtime pay.

D. Compensation for hours worked during travel is governed by Title 29 of the Fair Labor Standards Act and Article 60 of this Agreement.

Section 6.

The basic workday for full-time employees shall be eight (8) hours each day, unless flexible work schedule with credit hours or compressed work schedules apply.

Section 7.

EPA sponsors or formally participates in off-site public events for the purpose of outreach and education (e.g., Earth Day, State Fairs, etc.). Employees will be compensated, in accordance with Agency and Government-wide overtime policies, regulations and laws, for time spent on an off-site activity when the activity is authorized by the Agency, when the assignment of work has been made and/or approved by the supervisor, and when the work is done outside of the employee's regularly scheduled work hours. Employees will not be compensated for time spent at off-site activities that are not authorized by the Agency, but for which the employee wishes to volunteer (e.g., beach clean-up).

Section 8.

When employees are called back to work outside of and unconnected with their regular work hours, the employees are credited with either two hours of work or the actual number of hours worked, whichever is greater.

Section 9.

Employees performing required standby duty will be compensated in accordance with applicable standby duty laws and regulations.

ARTICLE 42 Ethics

Section 1.

The Agency and the Union will work to mutually support the highest ethical standards for employees.

Section 2.

Subject to applicable laws and regulations, employees shall have the right to engage in outside activities of their own choosing and otherwise conduct their private lives as they see fit. Employees are required to seek advance approval of outside employment, as outlined in Article 31.

Section 3.

Ethics training for all employees shall be required as set forth by the Office of Government Ethics and the Agency Ethics Officials and regulations.

Section 4.

A Designated Ethics Official (DEO) shall be located and/or available to provide guidance for employees. Ethics guidance will be available from the Division Director. When an employee submits an ethics request they will be notified of the status within five (5) working days. If an ethics question is referred to a higher level for a decision, the employee will be provided with an estimated time that a decision will be forthcoming. In case of additional delays in an opinion, the employee will be provided with a contact point to determine the status and an explanation for the delays. All employee ethics matters will be treated in a confidential manner.

Section 5.

Subject to appropriate laws, regulations, and EPA policies:

1. Employees can invest their money, donate to charity and participate in similar type of activities freely;

2. Employees shall not accept a fee, compensation, gift, payment of expense or any other thing of monetary value in circumstances in which the acceptance may result in or create the appearance of conflicts of interest.

3. Employees shall not engage in outside employment which tends to impair their mental or physical capacity to perform the job or detracts from their ability to meet all requirements of the job.

4. Employees shall not receive any salary or anything of monetary value from a private source as compensation for his Government services.

Section 6.

When an ethics opinion is deemed to be questionable by the employee seeking an ethics opinion, opportunities shall be provided to appeal the ethics opinion in accordance with the applicable regulations without prejudice to the employee. The employee shall be given clear guidance on the appeal process.

Section 7.

Ethics opinions shall be based on relevant and applicable laws and regulations and shall not be arbitrary and capricious.

ARTICLE 43 Health and Safety

Section 1. General

A. The Employer will provide a safe and healthy work environment for employees. As such, the Employer will comply with all applicable provisions of the General Standards of the Occupational and Safety Health Administration as well as with all other appropriate relevant health and safety codes and standards including, but not limited, to the Health and Safety Committee Charter for Region 9 of the U.S. Environmental Protection Agency (R9HSC) and EPA Order 1440.1.

B. Each employee has a responsibility for their safety and an obligation to observe established health and safety rules and precautions as a measure of protection for him/herself and others. Employees may not engage in conduct that causes or will likely cause the Employer to be in violation of any rule, regulation, order, permit or license issued by a regulatory authority.

C. The employee will become familiar with and observe health and safety-related policies and procedures and guidelines issued by the Employer, which are applicable to the employee's own actions and conduct. If the Employer provides employees with safety equipment, personal protective equipment, or any other devices and procedures that the Employer considers to be necessary for employee protection, the employees will use such equipment as directed by the Employer. The Employer will provide any necessary training to use such equipment as directed by the Employer.

Section 2 Unsafe or Unhealthy Conditions

A. The Employer agrees to provide safe and healthful working conditions for bargaining unit employees and ensure that Employer activities are managed in ways that keep its workplaces and field activities free from recognized safety and health hazards. The Employer agrees to emphasize prevention rather than reaction as the foundation of its strategy. Senior Region 9 and Headquarters managers must ensure that appropriate financial and technical resources are allocated for the implementation of the Region 9 SHEMP.

B. In the course of performing assigned work both in the office and in the field, employees will be alert to the presence of unsafe or unhealthful conditions. When such conditions are observed, it is the employee's right to report them – with anonymity, if requested by the employee – to supervisory personnel and the Regional Safety Officer. Copies of all employee reports of unsafe or unhealthy working conditions will be forwarded to the Region 9 Health and Safety Committee.

1. In the event an employee perceives an imminent dangerous or unsafe situation, the employee will make reports to the Employer by the most expeditious means available. The employee has the right to decline to perform their assigned work because of a reasonable belief that, under the circumstances, the work 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. In these circumstances, the employee must report the situation to their supervisor, or another management official who is immediately available, and the Regional Safety Officer. If management officials are not immediately available, the employee will report the situation as soon as practicable.

2. The term "imminent danger" means any conditions or practices in any workplace or field location which are such that a danger exists which could reasonably to expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through normal procedures. The employee has the right not to begin work or to stop work should an imminent dangerous or unsafe condition be perceived and has the right to not begin or restart the work until the situation has been corrected. The Employer agrees to bear any additional costs associated with such a situation.

3. It is the Employer's responsibility to timely respond to health and safety complaints per EPA Order 1440.1 and 29 CFR Part 1960. The Employer will also report back to the Regional Safety Officer, Region 9 Health and Safety Committee, and to the employee at the employee's request, within a reasonable time frame. If the employee has additional concerns with regards to the Employer's response, the employee shall notify the Regional Safety Officer and the Region 9 Health and Safety Committee.

4. The Employer agrees not to engage in reprisal or retaliation of any kind including, but not limited to, threats of disciplinary action or lowering of performance ratings, against any employee who reports a workplace or field safety or health concern or who stops work because of such a concern.

Section 3 Regional Safety Officer

The Regional Safety Officer will have full authority to implement SHEMP programs and guidelines in Region 9 and will have at all times unobstructed access to the Region 9 designated safety, health, and environmental management official ("Region 9 DSHEMO") on all SHEMP-related matters.

Section 4. Annual Reports

By January 15 of each year, the Employer agree to provide to the Union a copy of the annual Region 9 report required by EPA Order 14401, Section 6.e.(8).

Section 5. Annual Review

The Employer will take steps, on at least an annual basis, to ensure that employees are familiar with the proper procedures for leaving their work areas during emergency situations such as suspected fire, bomb, or active shooter threats. When such emergencies occur, the Employer will take all steps necessary to safely and expeditiously evacuate employees. The Union will assist in this effort by encouraging its members to follow established procedures and to serve as monitors/coordinators, where such duties exist. Before serving as monitors/coordinators, employees will complete all necessary training as provided by the Employer.

Section 6 Emergency Training

A. The Employer will inform employees on at least an annual basis of the procedures to use to contact the local emergency management system (e.g. building security, Federal Protective Service, paramedics, fire departments, police departments, ambulance services, etc.).

B. The Employer will offer first aid, cardiopulmonary resuscitation ("CPR") training, and defibrillation training to interested employees as can reasonably be scheduled. The training will be offered at least annually on duty time as resources, interest, and recertification requirements allow. The Union will encourage it members to take the trainings.

C. The Employer agrees to continue to provide periodic health and safety information on the EPA Intranet. Health and Safety program information will be disseminated and posted in accordance with 29 CFR 1960.12(e).

Section 7 Safety Equipment and Procedures

A. In order to protect employees who are performing field activities, the Employer agrees to provide safety clothing and equipment as appropriate to ensure that employees are adequately protected.

B. The Regional Safety Officer shall have the full authority to inspect any field location or activity in order to assess the required procedures or level of safety equipment needed for employees to be adequately protected while performing work in those areas.

Section 8 Ergonomics

Upon request, the Employer shall provide ergonomic evaluations for employees who are required on an ongoing basis to use computers on the job with work stations or desks that hold computer monitors and which may include adjustable keyboard trays, headsets, etc., with ergonomic adjustments such as, but not limited to, wrist rests. In addition, the Employer will adjust workstation computer monitors or provide window shades or other such glare reduction devices in order to reduce the eye strain of employees in window cubicles or other cubicles exposed to direct sunlight.

Section 9 Indoor Air Quality

A. The Employer recognizes that EPA Region 9 employees work at different types of facilities. The indoor air considerations in such spaces may be quite different and the indoor air issues relative to each space will be different as well.

B. The Employer will work with the Union to address continuing poor indoor air quality issues affecting the 75 Hawthorne Street Regional Office and impacts to employees. In order to promote an improved understanding of the indoor air issues at 75 Hawthorne Street, the Employer will develop a general profile or characterization of the basic elements influencing indoor air quality. The Region 9 Health and Safety Committee, in consultation with the Regional Safety Officer, shall develop and agree upon applicable protocols for profiling the indoor air at 75 Hawthorne Street. The profile will rely on such elements as facility uses, building history, potential source identification, supporting habitats, temperature, relative humidity, storage of foodstuffs and perishables, housekeeping, housekeeping practices, internal carbon dioxide v. external carbon dioxide, and total airborne particulates.

   1. For employees still impacted by the poor indoor air quality at 75 Hawthorne Street, the Employer agrees to continue to offer relief such as, but not limited to, enhanced telework (up to five (5) days per week) and expedited reasonable accommodation requests.

C. The Parties will investigate indoor air quality general profiles or characterizations at other Region 9 facilities.

Section 10 Facilities Access – Regional Safety Officer

For all Region 9 facilities, the Regional Safety Officer shall coordinate with facility management staff, contracting officers, GSA building management representatives, and exercise appropriate SHEMP oversight, as necessary, to ensure that facility maintenance activities (e.g. hot work activities, testing of ventilation systems, fire protection systems, other non-routine tasks, etc.) are performed in a manner that will protect the safety and health of agency employees. The Employer agrees to provide the Regional Safety Officer free and unfettered access to all facility areas in order to carry out these SHEMP responsibilities.

Section 11 Issues Beyond the Employer's Control

To the extent that issues are outside the jurisdiction or control of the Employer, the Employer will cooperate with the Union in efforts to secure approval of recommended measures through appropriate channels. The Employer will work with the Union to address the impact of such issues on employees.

Section 12 Earthquake Supplies

The Employer will provide earthquake supplies on all occupied floors of EPA space in Region 9.

ARTICLE 44 Employee Training and Development

Section 1. General

The Employer is responsible for the training and development of employees and such training will be provided in accordance with Chapter 41, Title 5 U.S. Code.

A. The Employer agrees to provide employees with training necessary to assist employees in the performance of official duties, subject to budgetary and workload considerations. Training opportunities will be based on such factors as the organization's need for the new skills to meet organizational objectives, the employee's need for the training to acquire skills necessary to perform the duties associated with meeting organizational objectives, and the employee's potential for successfully completing the training and applying the new learning to the job. Employees may raise as a defense in performance related action, when relevant, the failure by the Employer to make available training which the Employer deemed necessary for the performance of the employee's currently assigned duties.

B. Employees are encouraged to participate in professional activities of their occupation. The Employer will give consideration to requests for annual leave, leave without pay, use of earned credit hours or compensatory time, or duty time, as appropriate, to participate in training, professional meetings, professional development, conferences, or continuing education courses. The Employer will make a special effort to grant employee requests, absent workload exigencies, for duty time to take examinations, training or continuing courses.

Section 2. Selection for Conferences/Courses not Specifically Related

For training courses/conferences not specifically related to employee needs, but furthering an agency goal, when one or more employees in a unit will be allowed to attend because the course is considered to provide beneficial training, the Employer will select attendees based on factors such as the following: the value of the conference/course offering to the employee and employing organization, whether the employee will be actively participating in the course/conference, the extent to which the employee has not had the opportunity to attend similar course/conferences in the past, and whether the employee is an officer or member of the organization presenting the conference/course.

Section 3. Access to Training

A. As supervisors are made aware of OPM or EPA training opportunities generally applicable to employees in the work unit, the supervisor will make the information available to employees except where the information is disseminated to all employees in the unit through either email notices or computer data bases ("unit", for purposes of this section, refers to employees working for common first-level supervisor). Employees have an individual

responsibility for researching training opportunities that can increase their potential or enhance their opportunity for advancement.

B. When new technology or equipment is introduced in a unit and creates the need for different knowledge, skills, or abilities in that work unit, the Employer agrees, if practicable, to provide training to those employees directly affected.

Section 4. Approval for Training

A. All training and related expenses should be submitted, approved and authorized at least ten working days in advance of the starting date of the training. Additional unanticipated appropriate and necessary costs related to training expenses may be submitted to the Employer for approval (e.g. tuition, books, appropriate fees, etc.)

B. Subject to budgetary and workload considerations and in accordance with the objective criteria identified in Section 1(A), in order to be approved, all requests for training expenses must meet the following criteria:

1. The training will contribute to an increased ability to perform their current job or a job they have been assigned to fill or to the mission of the Agency;

2. Comparable training is not available through EPA developed courses, and it would be too costly for EPA to develop a suitable program;

3. Reasonable inquiry has failed to disclose suitable, adequate, and timely programs being offered without cost by other government agencies within the local area;

4. The course meets the needs of the employee and the Employer as well as or better than other courses of its nature which may also be available at that time;

5. The course is not being taken primarily for the purpose of obtaining a degree.

6. The employee agrees in writing to meet any continuing service agreement established pursuant to 5 CFR 410.

C. Employees who fail to satisfactorily complete training for which the costs have been approved and authorized by the Employer shall reimburse the Employer for all tuition and related expenses that it incurred for such training. If the reason for non-completion of the training is beyond the employee’s control, the Employer may waive this requirement. Employees who are approved and authorized to attend other types of training are expected to maintain satisfactory attendance records and complete the course requirements.

D. An employee who is unable to attend training for which they have been authorized shall inform the Employer of their inability to complete the training as soon as possible after becoming aware of the impediment to attendance, in order to provide the maximum opportunity for the Employer to make other arrangements (e.g., obtain a refund of fees paid, substitute another employee into the course, etc.)

Section 5. Duty Time

Duty time will be granted to take authorized directed training. Additionally, duty time may be granted to take authorized non-directed training provided that the employee's absence would not create a workload or staffing problem, the course offering is unavailable during non-duty hours/the employee is unable to attend during non-duty hours, and it is impracticable for the employee to use annual leave, leave without pay, credit hours, compensatory time or to change the regularly scheduled hours of work.

Section 6. Career Development

The Employer, if requested by the employee, will discuss the employee's personal career development opportunities and goals. When an employee learns of a training opportunity in which they are interested, the employee should discuss the opportunity with the supervisor and document such training requests in mid-year and end of year evaluations and IDPs.

Section 7. Merit Promotion Principles

Competitive procedures contained in the Merit Promotion Article apply to selection for training which is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for promotion, per 5 CFR 335.103(c).

Section 8. Information Concerning Training Allocations

At the mid-point of the fiscal year, and upon request, the Agency will disclose to the Union the amount of money spent on training.

ARTICLE 45 Executive Development

Section 1.

When a program designed for executive development, such as the Leadership Development Program or other similar programs, is to be established, that fact will be communicated to unit employees. Any employee interested in participation in such a program will be given equal opportunity for consideration.

Section 2.

In addition, the Union may propose candidates for such a program.

ARTICLE 46 Performance Evaluation of Supervisors

Section 1.

To inspire continuous improvement, the parties encourage supervisors to participate in 360 reviews or other feedback opportunities that provide input from employers on a routine basis (every two to three years). On an annual basis, professional employees may conduct written performance evaluations of their immediate supervisor, Branch Chief, and Division Director using a form prepared by the Union based upon the EPA Performance Appraisal Form, provided such evaluations are not done while the employees are in a duty status.

Section 2.

The evaluations with above or below average or out- standing ratings will be considered only if accompanied by specific written comments. The evaluation does not have to be signed.

Section 3.

The completed evaluations may be submitted to the Personnel Office.

ARTICLE 47 Personnel Records and Access to Information

Section 1. Official Personnel Records

A. Employees or their designated representative shall have access to all files within their Official Personnel Folder (OPF), consistent with OPM or other government-wide rules and regulations. Employees or their designated representative will, upon written request to their servicing HRO, be given an opportunity to review any records in the OPF consistent with OPM or other government-wide rules and regulations. Designation of a representative must be in writing before access to the OPF will be granted. Access will take place in the presence of an individual having custody of the record. Before disclosure of a record is made to the employee or a personally designated representative, the identification of both must be verified.

B. Access to an OPF shall be made available for review within two workdays of the request, if the OPF is maintained on the premises where the employee is located and is immediately available, absent extenuating circumstances. If the OPF is not maintained on-site, the Employer will initiate prompt action to obtain it.

C. One copy of documents maintained in the OPF will be provided to the employee or designated representative without cost, upon request, if the document has not previously been provided to the employee within the preceding 12 months. If charges for the copy are assessed, the charges will be made in accordance with the Privacy Act and title 29 CFR 1611.11.

Section 2. Other Records

A. Each employee, or employee representative designated in writing, will have access to any record pertaining to the employee maintained in a system of records, with the exception of records restricted by law or regulation. Any such access shall take place in the presence of the individual having custody of the records, following verification of the identity of the employee or personally designated representative.

B. Access to such records will be granted within 10 working days following the employee's written request. If unable to meet this time frame, the systems manager will provide the requester with the reason for the delay and an estimate of when access will be granted. If access is denied or delayed, the custodian of the record will provide an explanation to the employee or designated representative.

C. Any charges for copies of documents will be assessed in accordance with title 29 CFR 1611.11.

D. No official record, file, or document pertaining to an employee will be made available to any unauthorized persons for inspection or photocopying.

Section 3.

OPF's and other personnel records will be maintained in accordance with applicable laws, rules and regulations. OPF's are the property of OPM and their contents may not be removed, altered or added to, except by proper authority.

Section 4.

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

Section 5.

Medical documentation will be treated confidentially, and the Agency will observe all requirements of the Privacy Act and other appropriate legal authorities. Medical file system records will be maintained in accordance with title 5 CFR 293 Subpart E and 5 CFR 297.205.

Section 6.

The Employer recognizes its obligation to provide the Union and its representatives with relevant and necessary data pursuant to the standards set forth in 5 USC 7114(b)(4). When a request cannot be fulfilled within 5 working days, the parties may mutually agree to either postponing or amending any filing or other deadlines related to

ARTICLE 48 Incentive Award

Section 1. Purpose

Managers and supervisors will support the awards program by appropriately using the various types of awards authorized for teams, workgroups, and/or individual employees. The administration of all matters covered by this article is governed by 5 USC Chapter 45, 5 CFR Parts 451 and 531, and the Agency Recognition Policy and Procedures Manual (3130 A2, Approved November 27, 2001). The Employer and the Union agree that the timely recognition of unit employees' outstanding achievements contribute to the efficiency of the work force and the accomplishment of the agency's mission. Recognition and awards shall be based solely on merit, equity, and credibility of the program. The Parties agree that all awards will recognize specific achievements and that the system for administering and granting awards will be objectively applied without regard to personal favoritism.

Section 2. Budget

The granting of monetary awards is subject to budgetary limitations and awards are paid at the discretion of the Employer.

Section 3. Reporting

The Employer will provide the Union with an annual report by January 31 of the ESC bargaining unit employees who received a cash award, a time off award, or a quality step increase ("QSI") during the prior fiscal year. The report will contain the employees' names, series and grades.

Also by January 31, the Employer will provide the Union with an annual report with awards data for ESC bargaining unit employees, for other bargaining unit employees, and for unrepresented employees including managers and supervisors (no employee names or grades will be provided). These reports will be broken out by the following at the office level:

$100-$500:	# of awards, # of employees, and total dollar amount
$501-1,000:	# of awards, # of employees. And total dollar amount
$1,001-$2,500+:	# of awards, # of employees, and total dollar amount
Time off 1-20 hrs:	# of awards, # of employees, and total hours
Time off 20+ hrs:	# of awards, # of employees, and total hours
QSIs:	# of awards

Section 4. Union Review

The Employer will provide the Union the opportunity to review the following awards for bargaining unit employees:

1. Cash awards of $1,000 and up;
2. QSIs;
3. Time off awards of 20 hours and up; and
4. National Honor Awards

The Union will have ten (10) workdays to review and provide any recommendations regarding the nomination (i.e., name of nominee, organization, type of award, basis for award, amount of proposed monetary amount). These recommendations will be promptly forwarded to the official providing the initial notification. The Parties at any time may agree to extend this timeframe. The deciding official will take into full consideration any recommendation made by the Union.

Section 5. Self and Peer Nominations

Self and peer nominations are allowed for all award categories, including QSIs. The Employer will so state in all award nomination announcements to employees.

Section 6. Team Awards

For purposes of team awards, all members of the team will receive an equal award.

Section 7. Awards Information

By January 31 of each year, the Union will be provided a report with the award budget allocation dollar amounts and the number of QSIs for Region 9 for that fiscal year.

Section 8 Conduct Investigation and Discipline

The fact that an employee is the subject of a conduct investigation or has been the subject of a disciplinary action during the rating period will not preclude a performance award that would otherwise be granted unless such preclusion is necessary to protect the integrity of the Service.

ARTICLE 49 Working Conditions

Section 1 Individual Working Conditions

The Employer recognizes individual working conditions as an important factor in work productivity, morale, and in serving the public in the mission of environmental protection. No employee shall be required to work under conditions which the employee has a reasonable, good-faith belief are injurious to his or her health. Any employee who is aware of such conditions, or any potential health or safety hazards, will immediately bring them to the attention of management, which shall work with the employee to address those concerns.

Section 2 Open Work Space

Employees are allowed acoustical screen dividers, glare/light reduction devices, plants, and other noise suppression/absorption techniques to create a quiet and private work area free from distractions. Managers and employees are expected to observe common courtesy when speaking and conduct their business in quiet tones so as not to interfere with the performance of other persons in the immediate area.

Section 3 Staff Work Space

A. The Parties will follow the Management-Union Agreement on Staff Work Space (April 10, 2013).

B. Employees will be consulted regarding any changes to their work space as far in advance as possible.

Section 4 Physical Matters Concerning Working Conditions

To the extent that these issues are outside the jurisdiction or control of the Employer, the Parties will cooperate in an attempt to secure approval or recommended and approved measures through appropriate channels.

Section 5 Work Space – Personal Items

Pictures and related personal items (non-electrical) which do not cause a potential hazard or undue distraction to other employees may be placed in an employee’s own work space.

Common sense and discretion will prevail. The concurrence of the Regional Safety Officer is required for any item that is subject to falling, or which could possibly injure others.

Section 6 95 Hawthorne Construction Project

The Employer will allow enhanced work space flexibility to employees (liberal use of alternate work locations, telework up to full-time telework, etc.) during the course of the 95 Hawthorne demolition and construction projects.

ARTICLE 50 Reduction-In-Force

Section 1.

The provisions of this article will apply to any Reduction in Force (RIF) conducted by the Agency during the life of this Agreement. In addition, any RIF will be accomplished in accordance with applicable laws, rules, and regulations. When the Employer reaches a final decision involving a reduction in force (RIF), it will provide the Union with a written notice at the earliest possible date and not later than 90 days prior to the planned effective date, when practical. The notification will include the reason for the RIF, approximate number and types of positions, the geographic location and anticipated date of the planned action. The Agency shall provide the Union, upon request, with information relating to the RIF in accordance with 5 USC 7114(8) (4). In recognition that some of the information provided to the Union is considered private and personal to employees, the Union will maintain the confidentiality of that information.

Section 2.

The Employer will brief the Union to discuss the reduction in force at a mutually agreeable time as soon as possible, but no later than one (1) week after notification. The Union retains its right to negotiate the impact and implementation of the RIF where not otherwise agreed to in this Article. To minimize the impact of a RIF, the Agency will, to the extent practicable, utilize attrition of employees and other means to effect staffing reduction; and make a reasonable effort to reassign affected employees to vacant positions for which they are qualified within the competitive area. Prior to issuing specific RIF notices to employees, the Agency will seek authorization from the appropriate source(s) to offer Voluntary Early Retirement Assistance (VERA) and Voluntary Separation Incentive Pay (VSIP) to all appropriate affected employees. In the event the Agency is granted authority to offer VERA and/or VSIP to employees, the Agency will brief all affected employees.

Section 3.

The Agency will make a reasonable effort to keep employees in a competitive area anticipating a RIF generally informed of recent developments and decisions. After notification of the Union, the Employer may hold general meetings with unit employees. General information concerning the RIF will be provided by an all-employee notice, individually disseminated, or disseminated by email and by posting on official bulletin boards at the location(s). Except with prior approval of Office of Personnel Management (OPM), the Employer will give affected employees an information notice at least thirty (30) days prior to a specific notice.

Section 4.

Employees receiving a specific RIF notice will be advised of their entitlement to Union representation.

Section 5.

The Employer shall issue specific RIF notices to employees affected by a reduction in force at least sixty (60) calendar days before the effective date of the notice.

Section 6.

In emergency situations, in accordance with applicable 1aw and regulations, the Employer will advise the Union in advance of specific situations requiring less than the normal notice period(s), set forth above. "Emergency situation" in this context is defined as circumstances arising that are not reasonably foreseeable requiring a reduction in force that does not permit 60 days specific notice but at least the minimum 30 days specific notice in unforeseen circumstances. Such requests to provide notice less than 60 days require the approval of the Director of OPM.

Section 7.

Employees on detail will not be released during a reduction in force from the position to which they are detailed, but rather from the employees' official positions.

Section 8.

A specific RIF notice and any attachments must contain the following information:

1. What reduction in force action is being taken (e.g., separation, demotion, furlough for more than 30 days, etc.) the reason for the reduction in force; and the effective date of the action

2. The employee's competitive area, competitive level, retention subgroup, service date, and the three most recent ratings of record received during the last 4 years.

3. The place where the employee may inspect the regulations and records pertinent to their case;

4. If applicable, the reasons for retaining a lower standing employee in the same competitive level;

5. As applicable, the employee's right to appeal the reduction in force action to the Merit Systems Protection Board under the provisions of the Board's regulations; and

6. For employees in tenure groups I and II, but not tenure group III, information on re-employment rights, the Re-employment Priority List and Career Transition Assistance Programs

and all other information required by Reduction in Force regulations. Along with the RTF notice of separation, the Agency will give the employee information concerning how to apply for unemployment insurance through their appropriate State office. The employee also will be given a release to authorize, at his or her option, the release of their resume and other relevant employment information for employment referral to State dislocated worker units.

Section 9.

Before separating any employee by RIF, the Agency will ensure the employee is enrolled in the Agency's Career Transition Assistance Program (CTAP). Also, the Agency has additional notice requirements to OPM, and to other Federal and non-Federal organizations when separating fifty or more employees from a competitive area, consistent with the provisions of 5 CFR 351 .803(b).

Section 10.

Bump and retreat rights will be handled in accordance with controlling regulations.

Section 11.

Salary and pay retention for affected employees will be in accordance with applicable law and regulations.

Section 12.

The agency shall establish competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that an agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption. Competitive level determinations shall be made in accordance with controlling regulations.

Section 13.

Undue interruption means a degree of interruption that would prevent the completion of required work by the employee 90 days after the employee has been placed in a different position under this part. The 90-day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, a work program would generally not be unduly interrupted even if an employee needed more than 90 days after the reduction in force to perform the optimum quality or quantity of work. The 90-

day standard may be extended if placement is made under this part to a low priority program or to a vacant position.

Section 14.

In the event of a reduction-in-force, retention registers shall be established with employees listed by tenure group, veteran's preference sub-group, and length of service (with credit for Performance included in computing total length of service). The retention registers shall be available for review except by an employee who has received a specific reduction in force notice and/or the employee's representative if the representative is acting on behalf of the individual employee, and an authorized representative from the Office of Personnel Management.

Section 15.

Upon request, an employee who has received a specific reduction in force notice, or representative, will be given the opportunity to review registers and any other records used by the Agency to the extent that the registers and records have a bearing on a specific action taken, or to be taken, against the employee.

Section 16.

An employee who has received a specific reduction in force notice or their representative, if the representative is acting on behalf of the individual employee, will be given the opportunity to review the retention register with the employee's name and complete 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 17.

A. Additional service credit is based on the last three most recent ratings of record which were received by the employee during the four (4) year period prior to the date of issuance of specific RIF notices.

B. Since the Agency is using the PARS performance appraisal system, additional service credit will be as follows: 1) Fully Successful – 12 years; 2) Exceeds Expectations – 16 years; and 3) Outstanding – 20 years.

C. To be creditable for RIF purposes, rating must have been issued to the employee, including all appropriate signatures and reviews, and must be on record. Performance appraisals will not be given solely to improve an employee's retention standing for RIF purposes. Assumed ratings of fully successful will be used for RIF purposes, in the absence of actual annual ratings of record.

Section 18.

For the duration of a reduction-in-force process, the Employer will provide the Union with up-to-date information and keep it informed of significant action taken regarding RIF' s, transfers of function, and reorganizations.

Section 19.

At the employee's request, the Employer will notify the affected employee released as a result of a RIF of their eligibility for outplacement training in accordance with applicable regulations and policies of higher authorities.

Section 20.

The Employer will provide assistance to employees participating in the Re-employment Priority List (RPL) and the Career Transition Assistance Program (CTAP). Assistance will be given in locating the appropriate local state employment security agency (employment office) that should have the information to inform the employee of any benefits that may be available to the affected employee.

Section 21.

Any career or career-conditional employee who is separated because of reduction in force will be placed in a re-employment priority list and such employees will be considered for rehiring in accordance with applicable regulations.

Section 22.

In accordance with applicable regulations, the Employer will grant a reasonable excused absence to an employee moving outside the competitive area as a result of RIF or transfer of function to find new housing.

Section 23.

The Employer will pay relocation expenses for all employees affected by RIF and directed by the Employer to a position within the Agency but outside of the commuting area in accordance with applicable law and regulation.

Section 24.

The Employer will provide information to the affected employee and keep the employee informed on the reduction in force as it affects the employee.

Section 25.

The Employer will refer any Group I or II displaced employee to the Office of Personnel Management (OPM) for consideration for employment under OPM's Displaced Employee Program, per the provisions of 5 CFR 330.

Section 26.

The Employer will cooperate with OPM by referring displaced employees to the Interagency Career Transition Assistance Program under applicable law and regulations.

Section 27.

The Employer will maintain all lists, records and information pertaining to the reduction-in-force for at least one (1) year in accordance with applicable law, rules and regulations.

Section 28. RIF Competitive Areas

The minimum competitive area is a subdivision of the Agency under separate administration within the local commuting area. The local commuting area is the geographic area that usually constitutes one area for employment purposes. It includes the population center and the surrounding localities in which people live and can be reasonably expected to travel back and forth daily to their usual employment.

Section 29.

Management may exclude positions from a competitive level only upon a showing that movement would create undue interruption to a degree that would prevent the completion of required work within deadlines or other demands, or cause impairment to the Agency's mission.

Section 30. RIF Involving Excepted Service Employees

RIF's involving Excepted Service employees will be handled in accordance with law and appropriate regulations. Excepted Service employees do not compete with Competitive Service employees; they compete only with others in the same appointing authority and in the same competitive area. Excepted Service employees have no assignment rights and may not be placed on re-employment priority lists (5 CFR 330.201). Excepted Service employees may not participate in OPM's Displaced Employees Program unless the individual has competitive status and was released from Group I or II (5 CFR 330.303(b) (1)).

Section 31

Employees separated from employment due to a RIF will receive severance pay in accordance with the provisions of 5 CFR 550 Subpart G.

Section 32.

Unit employees demoted as a result of RIF or without personal cause including those given grade/pay retention are entitled to special consideration for repromotion to their former grade (or any intervening grade) before any attempt is made to fill the position by other means. Employees remain entitled to special consideration for two years or until they have attained the highest grade from which they were involuntarily demoted or until they decline a position or equal grade, whichever comes first.

ARTICLE 51 Principles of Scientific Integrity

Section 1.

It is essential that EPA's scientific and technical activities be of the highest quality and credibility if EPA is to carry out its responsibilities to protect human health and the environment. Honesty and integrity in its activities and decision-making processes are vital if the American public is to have trust and confidence in EPA's decisions. EPA commits to these Principles of Scientific Integrity.

Section 2.

EPA employees, whatever their grade, job or duties, must:

A. Ensure that their work is of the highest integrity - this means that the work must be performed objectively and without predetermined outcomes using the most appropriate techniques. Employees are responsible and accountable for the integrity and validity of their own work. Fabrication or falsification of work results are direct assaults on the integrity of EPA and will not be tolerated.

B. Represent their own work fairly and accurately. When representing the work of others, employees must seek to understand the results and the implications of this work and also represent it fairly and accurately.

C. Respect and acknowledge the intellectual contributions of others in representing their work to the public or in published writings such as journal articles or technical reports. To do otherwise is plagiarism. Employees should also refrain from taking credit for work with which they were not materially involved.

D. Avoid financial conflicts of interest and ensure impartiality in the performance of their duties by respecting and adhering to the principles of ethical conduct and implementing standards contained in Standards of Ethical Conduct for Employees of the Executive Branch and in supplemental agency regulations.

E. Be cognizant of and understand the specific, programmatic statutes that guide the employee's work.

F. Accept the affirmative responsibility to report any breach of these principles.

G. Welcome differing views and opinions on scientific and technical matters as a legitimate and necessary part of the process to provide the best possible information to regulatory and policy decision-makers.

Section 3.

The Employer agrees that adherence to the above principles will assure that its employees can have confidence and trust in EPA's work and in its decisions. The Employer will not take or fail

to take, or threaten to take or fail to take any personnel action against any employee or applicant for employment who acts to uphold the Principles of Scientific integrity.

ARTICLE 52 Labor-Management Relations

Section 1. General

The Parties will 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. The Parties expressly encourage a continuing dialogue by their representatives in the belief that communication prevents and resolves difficulties which may arise.

The Parties at all levels will explore methods to further labor-management cooperation, e.g. local committees, ad hoc work groups, etc. The procedures and processes for such activities are a matter for local level agreement. The Parties expressly encourage a continuing dialog by their representatives at the local level in order to improve communications and prevent difficulties which might otherwise arise.

Section 2. Purpose

The matters to be discussed via any local cooperative process are expected to include the following: the discussion of personnel policies, practices, and working conditions; the interpretation and application of rules and policies; the establishment of improved employee/management/union relationships; the prevention of conditions that might lead to misunderstandings and grievances; and the exchange of information designed to enhance labor-management cooperation. These collaborative processes are not intended to resolve individual grievances or complaints raised under the negotiated grievance procedure or appropriate appeals procedure unless otherwise mutually agreed by the Parties.

ARTICLE 53 Bicycle Subsidy

Section 1. Eligible Employees

EPA bargaining unit employees are eligible to participate in the bicycle subsidy program to the same extent as all employees.

Section 2. Employees on Detail or Other Assignment

EPA bargaining with employees on detail or assignment to other federal agencies or departments are eligible to· participate in the bicycle subsidy program provided they receive their paycheck from EPA.

Section 3. Transit Subsidies

In order to receive a monthly bicycle subsidy, ESC bargaining unit employees may not receive any other form of public transit subsidy for that month. Should provisions be enacted into laws which allow Federal employees to receive both bicycle and other transit subsidies in the same month, the parties agree to reopen this provision for bargaining.

Section 4. Bicycle Subsidy Eligibility

In order for an EPA employee to receive the Bicycle subsidy they must commute from the residence to the work location by bicycle at least ten (10) days per month.

Section 5. Monthly Subsidy Amount

The amount of bicycle subsidy shall not exceed $40 a month, or the maximum amount that can be treated as non-taxable income by the employee.

Section 6. Membership in carpools/vanpools, holders of parking permits

EPA employees named on a workplace motor vehicle parking permit or subsidized parking permit, including employees listed as a member of a carpool or vanpool parking in a space subsidized by the EPA or any other federal agency, must withdraw their carpool or van pool membership for any month in which they receive the bicycle subsidy.

ARTICLE 54 Reassignments

Section 1. General

A. Consistent with applicable laws and regulations the parties agree the Employer has the right to reassign work within the Region and bargaining unit. A reassignment is a permanent change from one position to another without promotion, demotion, or break in service.

B. When making such reassignments, the employer shall give reasonable consideration to the following factors:

1. Agency needs;
2. Available positions;
3. Qualifications;
4. Employee's career goals;
5. An employee’s request for reassignment; and
6. An employee’s request not to be reassigned, based on the employee’s reasons for the request, including but not limited to personal hardship.

Section 2. Employer Initiated Reassignment

A. Prior to directing a reassignment management will solicit qualified volunteers for the reassignment. When seeking qualified volunteers to address a mission or management-related need, and merit promotion competition does not apply, the Employer will follow the following procedure:

1. Identify areas from which the reassignment will come;
2. Identify those employees who are qualified to fill the vacant position(s). In determining who is qualified to fill the positions, consideration will include:
    a. Qualifications needed for an employee to satisfactorily perform in the positions; and
    b. The skills and knowledge needed to effectively and efficiently accomplish the work.

3. Solicit volunteers from among these employees to determine if anyone is interested in a reassignment.

4. Consider factors such as employee knowledge, skills, abilities, experience, interests, attitudes and interpersonal competencies, organizational workload, mission, goals and deadlines, developmental needs and other relevant job qualifications in determining who will be reassigned. The Employer will also consider an employee's personal hardship that may result from the reassignment.

5. Interview the qualified volunteers for the voluntary reassignment.

B. When the Employer initiates a reassignment, the Employer will provide an employee with advance written notice of such reassignment as far in advance as practical, but not less than 120 days, unless the employee requests an immediate reassignment. The employee will receive a Standard Form 50 documenting the reassignment and a copy of the position description for the new position. An employee who is reassigned will be given a reasonable period of time to learn and satisfactorily perform the functions of their new position, in accordance with Article 10 (Performance).

Section 3. Employee Request for Reassignment

Employees desiring reassignment within the Agency may either apply for vacancies through the merit promotion process, request a reassignment within their current organization or request a reassignment directly to another EPA organization in which they are interested.

Section 4. Change in Duty Station

If a reassignment requires a change in duty station, the Employer agrees to provide the employee(s) a reasonable amount of time to accomplish the change in duty station. If the work of the employee's former position needs to be completed by the employee prior to the change in duty station, the Employer will provide the employee a reasonable amount of time to complete the work.

Section 5. Reassignments with Promotional Potential

Reassignments to positions with promotion potential higher than the employee's current position are processed under the provisions of the Merit Promotion Article (Article 7) of this Collective Bargaining Agreement.

ARTICLE 55 Drug-Free Workplace

Section 1.

The Agency will administer its drug testing program in accordance with Executive Order 12564, the HHS Mandatory Guidelines for Federal Drug Testing Programs, EPA's Drug Free Workplace Plan dated January 1998, other relevant laws and Government-wide regulations, and this Agreement.

Section 2.

Employees found to illegally use drugs shall be referred to the Drug-Free Workplace Coordinator for assessment, counseling and referral for treatment or rehabilitation as appropriate. The Employer shall provide assurance to Employees that their personal dignity and privacy will be respected.

Section 3.

A. The parties agree that in accordance with the EPA DFWP Region 9 shall:

1. Provide briefings to all employees subject to drug testing regarding the implementation of the drug testing program;

2. Inform all employees of the drug abuse counselling services available through the EAP;

3. Provide to all employees, on an annual basis a list of medications and substances that could result in false positive test results;

4. Ensure that all training is done on official time; and

5. Provide all new employees a copy of the DFWP, a copy of this agreement, the dates of the briefings on the Agency Drug Program, and whether they occupy a TDP position during their New Employee Orientation.

B. All union officials will receive the same training as supervisors and managers. Refresher training will be required every two years.

Section 4.

The Employer agrees that the only drugs that it will test for are:

C. Marijuana;
D. cocaine;
E. opiates;

F. amphetamines; and
G. phencyclidine (P P).
H. No other types of tests will be conducted.

Section 5.

The DFWP includes the following types of drug testing:

A. Applicant testing (TDP's);
B. Random testing of employees in testing designated positions (TDP's);
C. Reasonable suspicion testing;
D. Accident or unsafe practice testing;
E. Voluntary testing; and
F. Testing as part of a follow-up to counselling or rehabilitation.

Section 6.

Employees who currently occupy a TDP position or employees occupying positions which at a future date designated as TDP positions have 45 days to appeal the TDP designation to the Regional Administrator or to request a reassignment into a non-TDP position without any adverse effect upon the employee's grade, salary, classification or performance. No random drug test will be performed on the employee until a decision has been rendered on the appeal or reassignment. Such a reassignment will be made without any adverse effect upon the employee's grade, salary, classification or performance. There will be no reference in any personnel or management records for the reason for the reassignment.

Section 7.

Supervisors shall refer an employee found to use illegal drugs to EAP and, if the employee occupies a TOP, immediately detail or reassign the employee from that position to a non-TOP position. At the discretion of the Administrator or, their designee, as part of EAP, an employee may return to duty in a TOP if the employee's return would not endanger public health or safety or national security.

Section 8.

The nature of the disciplinary (corrective) action taken against an employee found to have used illegal drugs will depend on the circumstances of each case. Supervisors shall initiate disciplinary (corrective) action against any employee found to use illegal drugs except for those employees who voluntarily admit to drug use in accordance with Paragraph VI F of the DFWP. Any corrective action taken will be in accordance with applicable Agency procedures or the

applicable collective bargaining agreement. The parties will develop an Alternative Discipline program that would be applicable to the DFWP. The purpose of the alternative discipline is to provide positive motivation for change without resorting to punitive discipline.

The Alternative Discipline Program is an option that Management should consider when: (1) the facts or evidence is clear; (2) the employee admits the use of illegal drugs; and (3) it is the employee's first offense. To be eligible, the employee would agree not to engage in further use of illegal drugs and to complete counselling and/or treatment recommended by the Employee Assistance Program counsellor. In addition to agreeing to these conditions, sample alternative discipline might include unpaid community service/special projects, special training/selected reading programs, taking leave without pay as opposed to serving traditional suspensions. The alternative disciplinary action and offense will not be documented in the Official Personnel File (OPF). If the employee doesn't satisfactorily fulfill the terms and conditions of the agreement, the traditional disciplinary penalty may be imposed.

Section 9.

Bargaining unit employees are entitled to union representation, upon request, during the collection of urine samples. The Union representative may observe all actions of the collection site monitor. Union representatives shall be granted official time and travel expenses, if required, when carrying out these responsibilities.

Section 10.

If an employee is able to provide a sufficient amount of urine, and so requests, the collection site coordinator shall provide an additional second sample container with a tamper-proof seal, which shall be sealed, labelled, and signed for along with the official agency sample in accordance with HHS guidelines. The second sample will be forwarded to the designated laboratory, maintaining proper storage and chain of custody guidelines. The laboratory will store the backup sample until the primary sample findings have been received from the designated laboratory. If the primary sample shows a positive result, the employee may request the second stored backup sample to undergo testing at an independent HHS certified laboratory, at the employee's expense. All chain of custody forms and procedures will be adhered to in the transfer of the sample.

Section 11.

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

Section 12.

Reasonable suspicion testing may be based upon, among other things:

A. Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug.

B. Any observed deviation from the employee's usual pattern of conduct or behavior;

C. Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of criminal investigation into illegal drug possession, use, or trafficking; ·

D. Verifiable information provided by either reliable sources or independently corroborated; or

E. Newly discovered evidence that the employee has tampered with a previous drug test.

Section 13.

A. If an employee is suspected of using illegal drugs, their supervisor will gather all information, facts, and circumstances leading to and supporting this suspicion. A second level supervisor shall review all the facts and must agree that the circumstances warrant testing. The Component Drug Program Coordinator, the Agency-wide Drug Program Coordinator, Human Resources Officer, and Region 9 Legal counsel should be consulted before going forward and throughout the process to ensure that the employee’s rights are not violated.
B. Although reasonable suspicion testing does not require certainty, mere hunches are not sufficient to meet this standard. Such tests will not be directed in an arbitrary, capricious or punitive manner.

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Section 14.

With an employee's written consent, management will provide documentation underlying reasonable suspicion testing of a bargaining unit employee to the union.

Section 15.

Accident or unsafe practice testing may be directed in the following circumstances:

A. The accident or unsafe practice results in a death or personal injury requiring immediate hospitalization; or
B. The accident or unsafe practice results in damage to government or private property estimated to be in excess of $10,000.

Section 16.

The Agency shall take all reasonable precautions to protect the confidentiality of all information regarding a positive drug test result.

Section 17.

If management representatives decide to tour the local laboratory, the union will be asked if they would like to participate in the tour. The union observer will be on official time and authorized travel and per diem, if appropriate.

Section 18.

All job announcements for testing designated positions will clearly indicate that the position is so designated. When making job offers for testing designated positions, management will notify employees of the requirements of the position.

Section 19.

Any reports that Region 9 receives on the Drug-Free Workplace Program will be provided to the unions, subject to confidentiality and privacy considerations.

Section 20.

When a confirmed positive result has been returned by the laboratory, the Medical Review Official (MRO) shall perform the duties set forth in the HHS guidelines. This includes ensuring that an individual who has tested positive has been afforded an opportunity to justify the test result. Evidence to justify a positive result may include but is not limited to: a valid prescription or a verification from the individual's physician verifying a valid prescription.

Section 21.

The employer shall use disposable thermometers to guard against the possibility of tainted urine samples.

Section 22: Random Testing.

A. The Agency will designate positions subject to random drug testing. Employees occupying such positions will be notified in writing of this designation on a periodic basis. Whenever any change is made to a position's designation, the employee will be notified in writing no later than the next work day.

B. The Agency will provide each employee who is subject to required random testing with an individual (specific) notice of testing at least thirty (30) days prior to initiating testing. 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 abuse counseling and referral services are available through the Employee Assistance Program (EAP). The employee can seek counseling voluntarily prior to testing without reprisal. The notice will contain information on how to contact the EAP.

C. The Agency's drug testing selection methodology shall ensure that employees subject to testing in an area with an active random testing program will have an equal likelihood of being selected for testing. 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.

D. An employee who is selected to report for random drug testing shall be notified orally two (2) hours prior to the time they are 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:

1. That they were randomly selected and is not under suspicion of taking illegal drugs;

2. Where and when to report for testing;

3. The consequences of refusing to report for testing, including possible removal;

4. The employee will be required to sign in at the collection site and provide a picture identification.

Section 23: Reasonable Suspicion Testing.

A. Reasonable suspicion testing may be required of:

1. Any employee in a TDP when there is reasonable suspicion that the employee uses 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 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 24. 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 at Agency expense 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 25. 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 testing.

C. Testing laboratories will not provide unconfirmed initial positive test results to the Agency.

D. Upon written request, employees will be given access to all records relating to their drug test.

Section 24. Counseling and Rehabilitation.

A. Employees whose tests have been confirmed positive will be referred to the Employee Assistance Program 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.

Section 25.

A. The Employer may not randomly test an employee for illegal drug use when the employee has previously undergone drug testing because of accident or reasonable suspicion and the analysis of the prior test is incomplete.

B. An employee shall not be subject to a search, frisking or disrobing (with the exception of coats, jackets, or outer garments) before a drug test.

C. The Employer will separate out a reserve sample (a sample consisting of urine in excess of the required volume). At the employee's request, the Employer will test the reserve sample if the original sample tests positive for drugs.

D. Employees, if detained beyond scheduled work hours, shall be given the choice of overtime or compensatory time.

E. If Agency officials visit the testing Lab for an inspection, the Union will be entitled to designate an observer to attend the inspection. The observer will be on official time and authorized travel and per diem.

F. The Employer will continue employment of an employee who voluntarily admits to drug abuse and demonstrates continuing successful participation in a rehabilitation program consistent with the protection of public health and safety and with national security.

G. Employees who successfully complete rehabilitation and thereafter test negative for drug use will not be eliminated from competition for sensitive positions within the bargaining unit, if they are otherwise qualified for such positions.

H. Information concerning drug tests will be released only to the Medical Review Officer, or other personnel with an absolute need to know and who are required to be informed. These include physicians responsible for medical certification of the donor, Federal agency officials as required by regulation or designated employer representatives.

I. Employees who visit the EAP, voluntarily or by referral, shall be granted administrative leave for participation in such counseling and/or treatment sessions. Scheduling of such leave will be approved absent exigencies of business.

J. Employees will be informed of the consequences should they refuse counseling or rehabilitation.

ARTICLE 56 Equal Employment Opportunity

Section 1.

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

Section 2.

The Parties hereby affirm their support of a positive EEO program.

Section 3.

The local parties may establish an EEO committee or councils. The Union will appoint a representative to participate as a committee member on matters affecting unit employees. Bargaining unit employees serving on the committees/councils will do so on official time and unit employees serving as the Chapter representative shall be selected by the Union.

Section 4.

A. A bargaining unit employee may file a discrimination complaint under the negotiated grievance procedure or the administrative procedure provided by statute and regulations, but not both.
B. An employee filing a formal EEO complaint under the Agency's procedure is entitled to a representative of their personal choice provided that the representation does not create a conflict of interest, as described in 29 CFR 1614.605(c). An employee filing a discrimination complaint under the negotiated grievance procedure may represent himself/herself or may be represented by an authorized Union representative.
C. 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 in accordance with the Grievance article.

Section 5.

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

Section 6.

Upon request, employees shall be entitled to Union representation and granted duty time in all meetings with an EEO Counselor subject to the provisions of Article 2 of this agreement.

Section 7.

The Employer, pursuant to 29 CFR 1614.203(c) will make reasonable accommodations to the known physical or mental limitations of qualified employees unless it can be demonstrated that the accommodation would impose an undue hardship on the operations of the Employer's program.

ARTICLE 57 Career Counseling and Career Ladder Promotions

Section 1 Purpose

The Employer agrees that it is beneficial to keep employees in the bargaining unit informed as to their progress, job performance, potential for promotion, and other factors of concern. The Employer will make every effort to place unit employees, who so desire, on a career development program and address this in their career development plan (IDP).

Section 2 Career Ladder Promotions

A. Career ladder promotions shall be awarded in accordance with federal law, rule, and regulations. The timing of career ladder promotions is subject to meeting the conditions prescribed by law and regulation as described below. These conditions must be satisfied before a career ladder promotion occurs. The following conditions, prescribed by law and regulation (including 5 CFR § 335.104, eligibility for career ladder promotions) must be satisfied for an employee to be eligible for a career ladder promotion:

1. Available work exists at the next higher grade level to support the promotion;

2. The employee's performance demonstrates the ability to perform the duties of the next higher grade level;

3. The current rating of record is at the "fully successful" level or above; and

4. The employee has completed the minimum waiting period in the lower-graded position (52 week period pursuant to 5 CFR § 300.604).

B. In the event the employee meets all other eligibility requirements as described in Section 1(A) of this article except work is not available at the next higher grade level that results in a delay in the career ladder promotion, management will notify the employee in writing when the unavailability of work becomes known and will explain the determination to the employee. Upon request of the employee, the agency will provide any available documentation to support the determination of unavailability of work. When an employee continues to meet the other criteria for promotion described in Section 1.A. of this article and the work subsequently becomes available, management will promote the employee at that time.

In the event that the Employer denies or delays a career ladder promotion for any reason other than work not being available, the Employer shall provide notification of such in writing as well as the rationale for the denial or delay to the employee. Employees may grieve the denial or delay of a career ladder promotion consistent with applicable laws, rules, and regulations and the collective bargaining agreement.

C. For employees in career ladder positions, the progress review (both mid-term and end-of-year) shall include an assessment of the employee's demonstrated ability to perform the duties of

the next higher-graded position. The supervisor and employee should focus on the duties and level of performance expected at the higher-grade position and how the employee can demonstrate the ability to perform those duties while in the current position.

1. The supervisor and employee are encouraged to engage in discussion concerning whether the employee's performance will be sufficient to warrant a career ladder promotion throughout the rating year, including at mid-year and end of year performance meetings.

2. If the career ladder employee has not demonstrated the ability to perform at the next higher level, the supervisor and employee will develop a plan to assist the employee in developing skills and/or expertise to advance to the next grade. This will be accomplished no more than six and no less than three months prior to the employee’s anniversary date. The plan will be signed by both the supervisor and the employee, will allow for comments by both, and will be provided to the Division Director. The supervisor will provide constructive feedback and advise the employee of any developmental needs and establish future promotion expectations.

D. Within 60 days from the effective date of this agreement, the Employer shall provide the Union with a list of all bargaining unit employees who are eligible for a career ladder promotion and their anniversary date.

ARTICLE 58 Position Classification and Position Description

Section 1.

Bargaining unit employees shall be provided a current position description reflecting their principal duties and responsibilities, within 30 days of beginning duty in that position.

Employees may discuss with supervisors any perceived substantial differences between the duties assigned or performed, and those contained in the position description. At times an employee may be required to perform duties which are incidental to the principal duties and responsibilities of the position, as well as duties which may be required in emergency situations, consistent with the agency's mission. When changes in the duties, responsibilities, or supervisory relationship so warrant, the position description may be amended or rewritten.

Section 2.

Bargaining unit employee(s) will be given reasonable advance notice of any position audit or review that may affect the classification of the employee's position. The Union will be given reasonable advance notice of management-initiated audits (i.e., not in response to employee requests or dissatisfaction with current title, series or grade) of two or more bargaining unit employees that may affect the classification of the employees' position. Prior to the audit, the employee will be allowed to review the "Employee Guide to Desk Audits" to prepare for the audit. If the audit or review results in proposed changes to the employee's position description, the employee will be notified prior to effecting the change. Additionally, the employee will be provided a copy of any written evaluation prepared by the Employer as a result of an audit or review.

Section 3.

An employee dissatisfied with the classification of their position should first discuss the classification with their supervisor. If the supervisor is unable to resolve the issue to the employee's satisfaction, the appropriate human resources official will explain the basis for the classification/job grading.

Section 4.

A General Schedule employee who still believes their position is improperly classified may:

1. Request a desk audit at the local level (i.e., the HR office serving that region, lab or headquarters component). This step must happen before selecting any other options provided in this section, since an "appeal" is an appeal of the decision made at the local level.

2. File an appeal at the agency level to the Director, Office of Human Resources and Organizational Services, who is the Agency Appellate Authority; or

3. If dissatisfied with the agency's decision, the employee may file a subsequent appeal with the Office of Personnel Management; or

4. File an appeal with the Office of Personnel Management through the agency; or

5. File an appeal directly with the Office of Personnel Management; or

6. File an appeal with the Federal Labor Relations Authority.

Section 5.

The appeal should discuss the specific aspects of the position that the employee thinks were either misunderstood or not considered adequately. It should also include copies of the current classified Position Description, and any evaluation report by OHR. The position description submitted should be the employee's current position description of record.

Section 6.

The Union may assist an employee who has filed a classification appeal with the Employer in the preparation of the appeal.

Section 7.

When the Agency is afforded the opportunity to review and comment on proposed position classification standards by OPM, for bargaining unit positions covered by the agreement, the Agency will provide notice to the Union at the national level. If the opportunity to review the draft is not available to the Union via the OPM website, the Agency will provide the information to the Union. The Union may forward its comments separately to OPM.

Section 8.

The Agency will, upon request, provide the Union with access to written classification standards and qualification standards which the Employer maintains, if such are not available on the Agency's intranet site.

Section 9.

The Employer agrees to inform the Union as soon as possible if significant changes will be made in the duties and responsibilities of positions held by bargaining unit employees due to

reorganization or realignment of program responsibilities, or when changes in position classification standards result in changes to title, series or grade or bargaining unit status of bargaining unit employees. The Union may request to make recommendations and present supporting evidence pertaining thereto. The Employer will consider the Union's recommendations and upon request advise the Union of the results of its review.

ARTICLE 59 Within-Grade Increases

Section 1. Criteria for Granting a Within-Grade Increase

A. An employee will be granted a within-grade increase when they have completed the required waiting period and the employee has performed at an acceptable level of competence during the waiting period as follows:

1. One year to move to steps 2, 3, and 4
2. Two years to move to steps 5, 6, and 7
3. Three years to move to steps 8, 9, and 10

B. Supervisors are responsible for keeping employees informed whether they have demonstrated an acceptable level of competence on a regular basis.

C. An employee is regarded as having reached an acceptable level of competence when the employee's demonstrated work performance in all critical elements meets or exceeds standards established at the "Fully Successful"/pass level, and when the employee's rating of record is "Fully Successful"/pass or higher.

D. Where employees have been assigned to their present supervisor for less than ninety (90) days, and the supervisor cannot adequately assess the employee's performance, the supervisor shall secure the views of the employee's previous supervisor, when available, before making a determination.

Section 2. Denial of Within-Grade Increase

A. A supervisor will give ample warning, normally not less than thirty (30) calendar days prior to the within-grade increase due date, to an employee whose performance does not or may not meet the acceptable level of competence requirement. The supervisor will advise the employee of his or her deficiencies, and tell the employee that they may not be certified as meeting the acceptable level of competence requirement unless performance improves. The supervisor will record the date and substance of this notification and provide a copy to the employee, which at a minimum shall include: those critical aspects of the employee's performance in which the employee is deficient and the extent of the deficiency; any instances, specifically described, which support the alleged deficiencies; assistance which will be offered so as to enable the employee to improve their performance so as to meet the requirements specified for the position.

B. An employee not under written performance elements and standards will have performance elements and standards established. A determination shall then be made upon completion of the minimum appraisal period of 90 days and shall be based on the employee's appraisal period of 90 days and shall be based on the employee's rating of record completed at

that time. In certain circumstances, the supervisor may postpone the acceptable level of competence determination, e.g., the employee did not receive performance standards at least ninety (90) days before the end of the waiting period and they are not performing at an acceptable level of competence. In such cases, the period of postponement shall not be less than ninety (90) days.

Section 3. Notification of Withholding of Within-Grade Increase

A. Written notification to the employee of a determination to withhold a within-grade increase will be given as soon as possible after completion of the waiting period. Such notification shall:

1. Set forth the reasons for the negative determination;

2. Set forth the manner in which the employee must improve their performance in order to be granted a within-grade increase, and

3. Notify the employee of his or her right to request reconsideration of the negative determination and file a written response within fifteen (15) calendar days of receipt of the notice pursuant to section 5 of this Article.

B. When an employee receives a negative determination, they shall be granted a reasonable amount of official time to review the material relied upon to make the determination. The employee must otherwise be in a pay status in order to be granted official time.

C. If a negative determination is reversed by the Agency (either before or upon reconsideration), the effective date of the increase will be the original due date.

Section 4. Reinstatement of Within-Grade Increase

After a within-grade has been withheld, the Employer will grant the within-grade increase after the employee has demonstrated sustained performance at an acceptable level of competence. After withholding a within-grade increase, the Employer, at a minimum, shall determine whether the employee's performance is at an acceptable level of competence after each fifty-two (52) weeks following the original due date for the within-grade increase.

Section 5. Appeal of Denial of Within-Grade Increase

A. An employee may request reconsideration of a denial of a within-grade increase by filing, with their supervisor, not more than 15 calendar days after receiving notice of determination, a written response to the denial. This request for reconsideration shall set forth the reasons that the agency shall reconsider the determination. Upon request, the supervisor will meet with the employee and their representative. If the parties work within the local commuting area, this

meeting shall be in person; otherwise, the meeting will be by teleconference unless the Parties mutually agree to a face to face meeting.

B. The Agency shall provide the employee with a written decision within 15 workdays of receipt of the request for reconsideration.

C. Where an employee is denied their within-grade increase by the reconsideration official, the letter transmitting the official's decision shall include a statement which informs the employee about their right to appeal the decision through the grievance procedure and the number of days in which the employee must request such an appeal through the Union.

D. When an employee is dissatisfied with the decision, they may invoke the grievance procedure at the 2nd Step, in accordance with Article 6 of this Agreement.

ARTICLE 60 Travel and Per Diem

Section 1. Travel Outside Established Tour of Duty

A. The Employer agrees to schedule travel during the regular work hours and workweek of the employee, to the maximum extent practicable. Employees may travel on their own time if they so choose. The time spent traveling outside the established workday results in the travel being considered hours of work for non-exempt employees, and is compensable, if it meets the appropriate provisions of Title 29 of the Fair Labor Standards Act, e.g., travel results from an event which cannot be scheduled or controlled administratively.

B. If the meeting is within the control of the Employer, and it is administratively feasible, the EPA has determined that it will reschedule the meeting to avoid required travel on non-workdays. Emergency travel can be required on non-work days.

C. When a supervisor knows in advance that an employee’s administrative workweek will differ from the regularly scheduled tour of duty, due to travel, the supervisor will reschedule the employee’s administrative workweek to correspond with the specific days and hours the employee is expected to work.

D. Employees traveling on their own time at their option are responsible for any additional costs resulting from travel deviations.

Section 2. Travel During Established Tour of Duty

If circumstances require an employee’s attendance at a temporary duty station at a time too early to permit travel on that day during the employee’s regularly scheduled working hours, the employee may travel during regularly scheduled hours on the preceding day. If the preceding day is a non-workday, an employee may travel during the regularly scheduled hours on the last workday preceding the non-workday. If an employee choose to do so, subsistence reimbursement and use of the government travel card will be limited to what the employee would have been entitled to if traveling on a non-workday.

Section 3. Return to Duty Station

A. Employees who are unable to return from temporary duty stations (TDS) during normal duty hours may return that evening or the following day during normal duty hours. An employee electing to travel the next day should return at the earliest practicable opportunity during the regularly scheduled hours of work.

B. If the scheduling of a meeting is not within the control of the Employer, and it is administratively feasible, the Employer will attempt to reschedule the meeting to avoid required travel on non-workdays. Emergency travel can be required on non-workdays.

Section 4. Advance Notice of Travel

If employees are required to travel, the Employer will provide employees with advance notice as reasonably possible.

Section 5. Advance of Travel Funds

Sufficient travel advances will be made available prior to the date of departure to those employees without a travel card and who make timely application to receive an EFT deposit.

Section 6. Emergency Travel

In cases of emergency travel, an employee is expected to use the government issued individual travel card to cover necessary official travel expenses. The Employer will accommodate a traveler who does not have a travel card through an EFT deposit or other government provided means to avoid having an employee use personal funds to cover official travel expenses.

Section 7. Reimbursement of Business Related Travel Expenses

A. The Employer agrees to reimburse employees when in a travel status for authorized expenses incurred by them in the discharge of their official duties to the extent allowable by law and regulation.

B. Official travel generally begins when the employee leaves home, office or other authorized point of departure and ends when the employee returns home, to the office, or other authorized point at the conclusion of the workday or trip unless, for personal reasons, the traveler is mixing personal leave time and destinations with official travel. A per diem allowance shall not be allowed for travel within the limits of the official duty station or the vicinity of the employee's home.

Section 8. Use of Private Vehicle for Official Business

When use of a privately owned vehicle for official business is advantageous to the Employer, the employee providing such automobile will be reimbursed in accordance with government travel regulations. In no case may an employee be required to use their privately owned vehicle in connection with official business.

Section 9. Voluntary Return for Non-Workdays

A. When an employee in travel status voluntarily returns to their official duty station or residence for non-workdays, the maximum reimbursement for the round-trip transportation and

per diem en route shall be limited to the per diem allowance and travel expenses which would have been allowed had the employee remained at the temporary duty station or actual travel expenses, whichever is less. The employee shall perform any such voluntary return travel during non-duty hours or periods of authorized leave.

B. Employees who are required to routinely perform extended periods of temporary duty may, at agency discretion and within the limits of appropriations available for payment of travel expenses, be authorized round-trip transportation expenses and per diem en route for periodic return travel to their official duty station or residence for non-workdays.

Section 10. Illness During Travel

When an employee in a travel status becomes ill and is expected to remain so for any significant length of time, the Employer will cover all normal travel expenses in connection with returning that employee to their normal post of duty area as promptly as possible.

Section 11. Denial of Claim for Reimbursement of Travel Expenses

A. If the review of a travel claim by a travel review officer (TRO) discloses irregularities, the TRO will notify the traveler as soon as practical and attempt to resolve the irregularity with the traveler. If the serving finance office (SFO) finds the voucher improper, the SFO must return the voucher to the traveler and include an explanation, written if requested by the employee, of the reason(s) for the return and a contact in the SFO for assistance. The Agency must not exceed seven (7) working days for notifying the traveler that the travel claim is not proper.

B. Consistent with EPA policy and the FTR, if an audited voucher contains some items not properly supported or allowable, the traveler will be reimbursed initially only for those items properly supportable or allowable. The employee will be notified in writing regarding disallowed items and provided an opportunity to provide additional information/documentation to support the claim. If still unable to support all or part of a claim, the employee will be notified, in writing, why the claim remains disallowed and the process for filing a reclaim voucher or appeal. Travel vouchers not selected for audit will continue to be paid, as a general rule, within 30 days after submission.

Section 12. Access to Travel Regulations

A copy of official EPA travel regulations and/or guidelines will be made accessible to employees on EPA’s Intranet site, and the GSA travel regulations can be accessed via the Internet. These guidelines will include the appropriate use of government credit cards. All such regulations and guidelines will be explained to the employees upon request. The Employer agrees to provide the Union notice of changes to government travel regulations.

Section 13. Travel Voucher

A. Employees are to submit a completed travel claim normally within 5 work days after the end of the travel. If the employee is in a continuous travel status, the employee is to complete and submit a travel claim at least once every 30 days when practicable.

B. The Agency must reimburse the employee within fifteen (15) calendar days from the date the voucher is received from the traveler. If the voucher is returned to the traveler because of questionable claims or because it is incomplete, the fifteen (15) day time limit will resume when the voucher is resubmitted.

C. If the Agency fails to meet the fifteen (15) calendar day limit following submission of a complete and proper travel voucher, the Agency will reimburse the employee with a late payment fee per the provisions of the FTR and the agency's policy. When an employee's late payment was due solely to administrative problems not within the employee's control, the travel voucher approving official or the servicing finance office (wherever the administrative delay occurred) will, at the employee's request, explain to the credit card company that the late payment was not due to the employee submitting a late or incomplete voucher.

D. Upon request, the Employer agrees to determine the status of an employee's travel voucher and provide the employee with the status and reason why an EFT payment has not been received 15 days after an employee submitted their travel voucher to their supervisor.

Section 14. Time in Travel Status Defined

A. Time spent traveling shall be considered hours of work and therefore compensable for employees non-exempt from the FLSA if:

1. An employee is required to travel during regular working hours;

2. An employee is required to drive a vehicle or perform other work while traveling;

3. An employee is required to travel as a passenger on a one-day assignment away from the official duty station; or

4. An employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on non-workdays that correspond to the employee's regular working hours.

B. Time spent in a travel status away from the official duty station for employees exempt from the FLSA shall be deemed employment only when:

1. It is within their regularly scheduled administrative workweek, including regular overtime work; or

2. The travel: (a) Involves the performance of work while traveling (such as driving a truck containing materials necessary for a project); (b) Is incident to travel that involves the

performance of work while traveling (such as deadhead travel in order to drive an empty truck back to the point of origin);

3. The travel is carried out under arduous conditions (such as traveling by foot, on horseback, or over rugged terrain in the back of a vehicle); or

4. The travel results from an event that could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such an event to his or her official duty station (such as training scheduled solely by a private firm or job-related court appearance required by a court subpoena).

Section 15. Travel Compensatory Time Off (TCTO)

The Employer will administer employee TCTO pursuant to the EPA Pay Administration Manual, No. 3155-B3, Chapter 18.

ARTICLE 61 Diversity and Inclusion

Section 1.

The parties agree that a professional, productive, diverse and inclusive workplace is essential to the EPA's mission to protect human health and the environment. The Employer is committed to a diverse workforce, consistent with and practicing equal employment opportunity and engaging in affirmative efforts to maintain an environment that supports and encourages the contribution of all employees. The parties strive to achieve a workplace environment respectful of the diverse cultures of the workforce. The Employer and Union are proud of the diversity of the workforce, will strive to increase the diversity of race; color; religion; sex, (including pregnancy, gender identity, gender expression or transgender status); national origin; sexual orientation; physical or mental disability; age; protected genetic information; status as a parent; marital status; or political affiliation, due to the benefits that diversity brings to the industry.

Section 2. Diversity Advisory Committee

EPA Region 9 shall establish a diversity advisory committee made up of a diverse group in race, ethnicity, background, and gender. The committee will include an equal number of representatives from the union and management appointed for two-year terms and will meet at least quarterly. The advisory committee will be assigned a task of reviewing the existing processes and outcomes for practices of 1) outreach, 2) hiring, 3) retention, and 4) promotion of a diverse workforce. The advisory committee will then develop and present recommendations for implementation of the senior management team for process improvements. Review and recommendations will occur on an ongoing basis with recommendations provided to management at least every two years. In addition to EPA documents and processes, the committee will have access to information such as complaints or recommendations from applicants about the hiring process.

Section 3. Outreach

The agency agrees to establish contacts with diverse professional organizations, universities, and university student organizations that serve underrepresented communities and seek to develop partnerships with them to enhance their knowledge of the Employer and jobs and career opportunities for community members with the Agency. Examples of organizations EPA will establish relationships and outreach with include, but is not limited to the American Indian Science and Engineers Association, National Society of Black Engineers, National Action Council for Minorities in Engineering and Society for Advancement of Chicanos/Hispanics and Native Americans in Science

The Union agrees to assist management in achieving recruiting goals established locally and by the Equal Employment Opportunity Commission (EEOC) and in so doing will identify and

report to management minority applicant sources and other information intended to have a positive impact on successful program accomplishment.

ARTICLE 62 Use of Personal Electronics Devices

For work purposes, the Employer will provide employees government-issued electronic devices. Under no circumstances will the Employer require employees to use personal electronic devices to conduct Government business.