

**COLLECTIVE BARGAINING AGREEMENT**  
between  
**U.S. ENVIRONMENTAL PROTECTION AGENCY**  
and  
**THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES**

**The effective date of this agreement is July 8, 2019.**

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## **Article 1. Recognition and Unit Designation**

### **Section 1. Exclusive Representative**

- A. The American Federation of Government Employees Council 238 (the Union) 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 Council 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.

### **Section 2. Definition of the Unit**

The Union is the exclusive representative of employees in the units certified by the Federal Labor Relations Authority (FLRA) in case numbers 22-09130(UC)-001 (non-professional) and 22-09130(UC)-002 (professional), dated January 8, 1980, as amended and all subsequent FLRA certifications and clarifications.

- 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;
- (9) Intermittent employees;
- (10) Employees hired under the summer employment program and employees under student appointments;
- (11) Employees appointed under fellowship programs;
- (12) Schedule C employees;
- (13) Commissioned officers of the United States Public Health Service;
- (14) Employees on temporary appointments of 90 days or less;
- (15) Other employees excluded by the Statute; and
- (16) Employees in positions that have been excluded under certifications and clarifications issued by the FLRA.

## **Article 2. Union Activities and Official Time**

### **Section 1. Section 7131(a) Official Time**

- A. Union representatives are authorized official time under Section 7131(a) of the Federal Labor Statute 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 2. Prohibited Activities on Official Time**

- A. Union representatives will not engage in lobbying activities during paid time. Any activities related to internal union business will occur in a non-duty status.
- B. Official time will not be used by Union representatives to prepare or pursue grievances (including arbitration of grievances) brought against the Agency under the negotiated (or administrative) grievance procedure. This provision does not include official time used by employees to act on their own behalf or to appear as a witness in any grievance proceeding.
- C. Official time is not authorized for Union representatives to prepare or pursue cases before the Equal Employment Opportunity Commission or the Merit System Protection Board.
- D. Union representatives may request paid or unpaid leave to perform representational activities.

### **Section 3. Limitations on the Amount of Official Time**

- A. Union representatives will spend at least three-quarters (75 percent) of their paid time, each fiscal year (FY), performing Agency business. Agency business includes necessary job-related training. Any Union representatives on 100% official time at the time this Agreement is effective are to return to their position of record. Immediately upon implementation, or earlier, these representatives shall contact their immediate supervisor and/or Human Resources to arrange to discuss their position, expected duties, and any appropriate and necessary training to return the employee to duty.
- B. Official time exceeding one-quarter of the union representative's time in a FY will be counted towards official time for the subsequent FY. For the FY in which this agreement is implemented, this will be applied from the effective date of this Agreement to September 30.

### **Section 4. Union Time Rate**

- A. Union time rate (UTR) means the total amount of duty hours (official time) in the fiscal year that employees in a bargaining unit used. The total Union time rate shall not exceed one hour per year for each bargaining unit employee in the bargaining unit.

- B. The Agency is responsible for tracking a union time rate. The Agency will use the number of bargaining unit employees in the AFGE consolidated bargaining unit identified on the payroll as of October 1 of each FY, and will share this number with Council 238 by October 31 of each FY. The UTR for each FY is to be at one or below each FY for the AFGE consolidated unit, unless an overage is the result of matters covered under 5 U.S.C. Section 7131(a).

**Section 5. Misuse of Official Time**

- A. Union representatives will not use official time without advance written authorization or for purposes not specifically authorized in this Article. Union representatives who use official time without advance written authorization or for purposes not specifically authorized in this Article will be considered absent without leave and subject to appropriate disciplinary action.

**Section 6. Requests for Official Time**

- A. Union representatives must request official time using the Agency's Official Time Request form/system, filling in all of the information indicated. In order to be approved, requests for official time for Council 238 must be routed to the Office of Mission Support (OMS)-Labor and Employee Relations Division (LERD) and to the employee's immediate supervisor. Requests for official time for local unions, within Council 238, must be routed to the local designated authorizing official and to the employee's immediate supervisor. If no such designated authorizing official is identified, the local human resources officer shall be considered the authorizing official. Requests must be made sufficiently in advance and with sufficient detail to allow an assessment as to whether the time requested is reasonable and necessary to grant such time to accomplish such task(s). The authorizing official will notify the union representative and the first-level supervisor of all approved and denied requests. For continuing or ongoing requests, renewals must be submitted no less than once per pay period. Supervisors, designated authorizing officials, OMS-LERD representatives, field LER specialists, Human Resources Officers (HROs) and other designated management officials may delegate their approving authority.
- B. The designated Official Time Request form or system is also to be used following the use of official time to accurately account for the time, filling in all of the information indicated.
- C. The Agency may develop and implement other procedures and/or mechanisms for requesting and tracking in the future, such as utilizing PeoplePlus or a successor system.

**Section 7. Union Orientation**

- A. The Union will be afforded the opportunity to participate in the orientation process for bargaining unit employees, consistent with Article 3.

**Section 8. Union Communication**

A. The Union shall have the right to communicate with bargaining unit(s) employees consistent with Article 3.

## **Article 3. Use of Agency Facilities**

### **Section 1. Vacate Agency Facilities**

No later than 30 days after the effective date of this Agreement, the Union will vacate any and all designated union offices, meeting spaces and bulletin boards.

When vacating the designated Union office space, the Union, its representatives, and the bargaining unit it represents will leave in the Agency-provided space undamaged all Agency-provided office equipment (computers, phones, mobile phones, facsimile machines, copiers, furniture, etc.) in working order.

If any equipment (furniture, etc.) was not provided by the Agency, those items must be removed by Union representatives prior to vacating the space. Items not removed by the above date may be discarded at the Agency's discretion.

All keys to designated spaces and/or bulletin boards held by Union representatives must be returned to local management by the above date.

### **Section 2. Use**

All Union (at both the Council 238 and the local bargaining unit levels) websites hosted on the Agency's intranet will be removed, member emails will be deactivated, and associated telephone numbers, conference lines, and mobile phone numbers will be terminated.

### **Section 3. Prohibited Use of Agency Resources**

Union representatives are not to use any Agency equipment or systems (computers, email accounts, photocopiers, fax machines, scanners, etc.) for union activity, whether representational or not. Such unauthorized use of equipment will not be considered "de minimis" under the Agency's use of government equipment policy.

### **Section 4. Conference Rooms**

At each Agency location, Union representatives are permitted to reserve and use conference rooms for union activity to the same extent as employees who act on behalf of other non-federal organizations. To reserve a conference room, a Union representative shall follow local procedures and cc the sanctioned official time-authorizing official.



## **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**

The Agency's payroll/HR system provider allows for electronic distribution of an employee's allotment to AFGE Council 238.

- A. AFGE shall provide the Agency with the new dues withholding amounts no later than 30 days after the implementation of this Agreement.
- B. 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. Regular Dues: Submit SF-1187 allotment for only those dues which are the regular and periodic dues required by the Union for that employee. Initiation fees, special assessments, back dues, fines, and similar items are not considered dues and shall not be deducted;
- B. Inform Employees: 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. Forms: Provide forms SF-1187, Request and Payroll Deduction for Labor Organization Dues, and SF-1188, Cancellation of Payroll Deductions for Labor Organization Dues, to employees;

- D. Anniversary Dates: Keep a list of the “anniversary dates” of employees and provide the anniversary dates to employees or the Agency, upon request;
- E. SF-1187: 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;
- F. Certify SF-1187’s: Promptly certify and forward properly completed SF-1187 forms to the Human Resources Office for submission to the payroll office;
- G. 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,
- H. 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**

The Agency agrees to:

- A. Withhold dues on a bi-weekly basis, at no charge to the Union;
- B. Withhold a different amount of dues, upon certification from the Union’s National President provided that the amount of dues withheld has not been changed during the past 12 months;
- C. Forward to the designated Union officials copies of SF-1188s received directly from Union members for processing;
- D. Within ten (10) days of the close of each pay period, transmit employee dues withholdings to the bank account designated by the Union.
- E. The Agency will terminate an employee’s voluntary allotment on the first full pay period 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, or,
- (5) When the agreement for dues withholding is suspended or terminated by an appropriate authority outside of the Agency.

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

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

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

- A. An allotment shall be effective for one year after the first deduction, and can be revoked on a yearly basis as provided by 5 U.S.C. 7115(b) and this Agreement. At the first pay period after the anniversary of the first deduction, the allotment shall expire.
- B. "Anniversary date" means the date the employee signed the employee's first SF-1187 that caused the initiation of allotment withholding.
- C. To renew an allotment past the one year, the employee may submit an SF-1187 at any time prior to the 45-day period beginning before the anniversary date of the first deduction, to the official designated by the Union. If the employee does not submit the SF-1187 prior to the 45-day period of his/her anniversary date of the first deduction, the allotment will expire. The Union will forward the certified form SF-1187 to the Agency Human Resources Office for transmittal to the payroll office for processing no later than 30 days prior to his/her anniversary date of the first deduction. If the union does not submit the SF-1187 prior to the 30-day period of the anniversary date of the employee's first deduction, the allotment will expire. An SF-1187 that is not received in a timely fashion will be treated as a new request.
- D. Revocation notices (SF-1188) may be submitted by an employee at any time to the designated Union representative or to the Agency's Human Resources Office.

- E. The Union will submit SF-1188's received from unit employees to the Agency's Human Resources Office within two work days after being received by the union. The SF-1188 will be held by the Agency's Human Resources Office and will be effective upon the employee's next anniversary date.

### **Section 8. Reinstatement of Allotment Withholding**

- A. When the employee is temporarily detailed, reassigned or promoted to a position outside the bargaining unit, the Union allotment withholding will restart automatically when the employee returns to 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 9. Correction of Errors**

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

## **Article 5. Midterm Negotiations**

This Article governs the mid-term bargaining relationship of the parties over matters which are not covered by this agreement. The Agency will fulfill its midterm statutory bargaining obligations. The Agency has no duty to bargain under the Statute nor under this Agreement over matters that fall within the “covered by” doctrine as established and applied by the Federal Labor Relations Authority (FLRA) and the U.S. Court of Appeals for the District of Columbia. The purpose of this Article is to establish a complete and orderly process to improve efficiency and expedite mid-term negotiations in the interests of the Agency, the Union, employees, and Agency stakeholders.

### **Section 1. Mid-Term Negotiation Parameters**

“Necessary Functioning” Doctrine: As set forth in Article 14 (Duration), the terms of this Agreement shall remain unchanged during its entire term, except as provided by this Agreement or as required by law. The Agency has no pre-implementation duty to bargain midterm under the Federal Labor Statute nor under this Agreement over matters that fall within the “necessary functioning” doctrine as established and applied by the FLRA.

### **Section 2. Mid-Term Negotiation Procedures**

- A. 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 the Director of the Labor and Employee Relations Division (LERD), may negotiate and execute a mid-contract memorandum.
- B. 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. The request must be in accordance with the procedures and time frames in this Article, or the party will be considered to have waived its right to bargain.
- C. Notice: When notice of mid-term bargaining is required, the Agency shall serve its notice of the proposed change to the Union President. The Union, through the Union President, will serve notice to the Agency’s designated representative.

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

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

- A. The known nature and scope of the proposed change;
- B. The planned timing of the change; and,
- C. The Agency’s point of contact.

### **Section 4. Service of Notices**

All notices will be by email.

- A. **Union Demand to Bargain:** The Union must submit a written demand to bargain no later than three work days after the Agency's notice of the proposed change is served on the Union. The failure of the Union to timely demand to bargain will result in the Union's waiver of its right to negotiate on the matter.
- B. **Submission of Proposals:** If a briefing is requested, the Union must submit bargaining proposals within five workdays after the briefing. If a briefing is not requested, the Union must submit bargaining proposals within five work days after the Union's written demand to bargain is served. Failure to timely submit proposals will result in the Union's waiver of its right to negotiate on the matter.
- C. **Briefing:** If a briefing is requested, the briefing will be requested with the demand to bargain and 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.
- D. **Timeframe to Begin Bargaining:** Bargaining shall commence as soon as possible, but no later than 10 work days after the Union submits its bargaining proposals.

## **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. **Minimize Bargaining Costs:** The parties will minimize, to the greatest extent possible, Agency and Union expenditures during negotiations. As such, virtual, telephonic and all other means of low-cost negotiations will be utilized to the greatest extent possible.
- B. **Coordinate Bargaining:** Where practicable and agreeable, the parties will coordinate negotiation meetings with other scheduled meetings.
- C. **Face-to-Face Negotiations:** Both parties may consent that face-to-face negotiations are needed:
  - (1) Negotiations will generally take place at an Agency-provided location.
  - (2) Negotiations will be conducted during the regular business hours of operation where the negotiations are taking place. Participant schedules will be adjusted to allow for a full week of bargaining per Section J, and to account for all time spent on official time and for related negotiations travel.
  - (3) 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 (excluding travel time and preparatory time) for such purposes during the time the

employee otherwise would be in regular duty status, shall not exceed the number of Agency negotiators. The Agency will inform the Union of the number of Agency negotiators after the Agency receives the Union's bargaining proposals. In addition to the Union negotiators on official time, the Union may have one additional negotiator who is not on official time.

- D. Consolidate Bargaining: If both parties consent, negotiations on different proposed changes may be consolidated or held concurrently.
- E. Travel and Per Diem: Each party is responsible for the travel and per diem costs of its team associated with negotiations for all phases of negotiations, inclusive of assistance before the Federal Mediation and Conciliation Service (FMCS) and the Federal Service Impasses Panel (FSIP).
- F. Proposals: Proposals must be negotiable and 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.
- G. Number of Negotiators/Spokesperson Authorities/Alternates: 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. 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.
- H. 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.
- I. Silent Observers: Either party is authorized up to one silent observer to attend negotiations. Silent observers are not authorized to speak during negotiation sessions. Union silent observers are voluntary, thus they shall not be authorized official time pursuant to Section 5C(3).
- J. Mid-Term Bargaining Schedule:
  - (1) Negotiations will be held on five consecutive work days, Monday through Friday. Participants' work schedules will be adjusted to allow for a full week of bargaining and to account for all time.

- (2) In-person bargaining sessions will commence at 9:00 a.m. and conclude at 5:30 p.m. at the place where negotiations occur, with thirty (30) minutes allocated for lunch, except that Monday's bargaining session will commence at 1:00 p.m. and Friday's bargaining session will conclude by 12:00 p.m. EST, to allow for travel, when travel is required and when the parties consent to travel.
  - (3) The schedule for bargaining sessions conducted by teleconference or videoconference may be modified to account for the time zone of participants but will generally commence at 10:00 a.m. and conclude at 5:00 p.m. E.S.T., with 30 minutes allocated for lunch.
- K. Caucus: Either team may request a caucus and may leave the negotiating room to caucus at a suitable site provided by the meeting host for 30 minutes, unless otherwise communicated. 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. Caucuses cannot be held at the start or end of a negotiating day.
- L. Failure to Reach Agreement: If an agreement is not reached by the end of the third day bargaining (Wednesday), the parties will exchange last and best offers no later than the fourth day (Thursday) no later than 12:00 P.M. E.S.T. By close of business on Thursday, mediation services of the Federal Mediation Conciliation Services (FMCS) will be requested for the fifth day of bargaining (if agreement is not reached on the fourth day on the last best offers. If the services of a mediator are not available for the Friday bargaining session, negotiations will be concluded for the week and a subsequent session will be scheduled by the parties to be held within five work days or as soon as a mediator is available, unless the parties consent otherwise. Virtual meeting methods will be used to the maximum extent possible, unless the parties consent otherwise.
- M. 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.
- (1) All MOUs/MOAs will contain an expiration date. 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).
  - (2) 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.
  - (3) 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 by 5



U.S.C. 7131(a).

- (1) Time for preparation will be limited to eight hours of leave without pay for union activities per weekly negotiation session, per union team, unless otherwise requested by the union and approved by the Agency. Such time will be administered in accordance with Article 2.
- O. Impasse: Any bargaining impasse not resolved through the FMCS may be submitted by either party to the Federal Services Impasses Panel (FSIP) within three workdays of either party declaring impasse. The Union's failure to submit a bargaining impasse to FSIP within three workdays of declaring impasse constitutes a waiver, and the Agency may unilaterally implement the change without further bargaining obligations.

## **Article 6. Negotiated Grievance Procedure**

### **Section 1. Sole and Exclusive Procedure**

The parties agree that this Article establishes the sole and exclusive procedure available to bargaining unit employees and the parties for the processing and settlement of grievances that fall within its coverage, including questions of grievability and arbitrability.

### **Section 2. 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 Agency 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 3. Exclusions**

- A. Statutory Exclusions: Grievances on the following matters are excluded by Section 7121(c)(1) through (5) of the Statute:
  - (1) Any claimed violation of Subchapter III of Chapter 73 of Title 5 of the U.S. Code (U.S.C.) relating to prohibited political activities;
  - (2) Retirement, life insurance or health insurance;
  - (3) Suspension or removal under Section 7532 for national security reasons;
  - (4) Any examination, certification or appointment; or,
  - (5) The classification of any position which does not result in the reduction in grade or pay of an employee.
- B. Other Exclusions: Grievances on the following matters are also excluded by this Agreement:
  - (1) Written notice of proposed action;
  - (2) Letters of counseling/warning/instruction;

- (3) Performance progress reviews;
- (4) Performance improvement plan;
- (5) A management decision to make or terminate a temporary promotion, detail or reassignment;
- (6) The adoption or non-adoption of a suggestion;
- (7) The receipt or non-receipt of an honorary or cash award;
- (8) The non-renewal or non-extension of a temporary employee, termination of a temporary appointment due to reduction in force or any other termination of the appointment of a temporary employee;
- (9) Separation of a term, trial or excepted service employee;
- (10) Non-selection for promotion;
- (11) Removal of a probationary employee during probationary period;
- (12) Removal of an employee pursuant to Title 5, U.S.C., Chapter 75, and the implementing regulations at Part 752 of Title 5, Code of Federal Regulations (C.F.R.);
- (13) Removal of an employee pursuant to Title 5, U.S.C., Chapter 43;
- (14) The content of published Agency-wide policy, except where it conflicts with this Agreement, law, or governmentwide regulations;
- (15) Adverse personnel action (as enumerated in Section 7512 of Chapter 75 of Title 5, United States Code) taken against probationary, temporary or excepted service employees, except where appeal rights to the Merit Systems Protection Board exist under Chapter 75 or 43 of Title 5, U.S.C.;
- (16) Adjudication of claims the jurisdiction over which is reserved by Statute and/or regulation to another department, such as, but not limited to, Department of Labor determinations on workers compensation;
- (17) Claims alleging violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201 et. seq.
- (18) Actions taken by the Agency required by lawful court orders (e.g., garnishment of wages for indebtedness or child support) or actions that can be adjudicated in an alternate venue, (e.g., overpayment actions) which can be adjudicated through the Agency's Office of Hearing and Appeals;
- (19) Reduction in Force (RIF) actions;
- (20) Actions taken by the Agency during an emergency, including emergency furloughs;

- (21) Decisions regarding performance awards, on the spot awards or any other types of awards;
- (22) Decisions regarding incentive pay;
- (23) Disputes regarding the grant or denial of official time or leave without pay (LWOP) related to union activities;
- (24) Determinations of an employee's performance rating;
- (25) Performance-based actions appealed under another statutory procedure;
- (26) Disciplinary or adverse actions appealed under another statutory procedure;
- (27) Decisions regarding telework;
- (28) Decisions regarding work schedules;
- (29) Disputes regarding whether these exclusions apply to a particular grievance; and
- (30) Matters already disputed in an employee formal equal employment opportunity (EEO) complaint.

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

- A. No Waiver of Rights: Nothing in this Agreement shall constitute a waiver of any appeal or review rights permissible under 5 U.S.C. Chapter 71.
- B. Statutory Option Selection: An employee shall be deemed to have exercised the employee's option under Section 7121(d) and (e)(1) of the Statute when the employee timely initiates an action under the applicable statutory procedure or files a timely grievance in writing under the negotiated grievance procedure in this Article, whichever event occurs first.
- C. Informal EEO Grievance: Employees who have sought informal EEO complaint counseling may still file a grievance, provided that such grievance is filed within 45 calendar days of the event or non-event which caused the grievance to be filed, and no formal EEO complaint has been filed. Per 29 C.F.R. Part 1614, initiating one formal process precludes the use of the other.

#### **Section 5. Designation of Representative**

- A. Only the employee or a representative designated by the Union may be the representative in a grievance under this procedure.
- B. Union Representative: If the Union is the grievant'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 6. Filing an Employee Grievance**

- A. Time to File: A grievance is one specific action which is described in Section 2. In order to avoid stale litigation, a grievance must be filed within 15 calendar days of the date of the specific action which is the subject of the grievance. If the grievant was prevented from filing the grievance during the 15 calendar day period because of an Agency failure to perform a duty owed to the grievant or because of any concealment by the Agency that prevented discovery of the action during the 15-day period, then the grievance must be filed within 15 calendar days of the grievant's discovery of the action. A step of the grievance procedure can be waived with the consent of both parties.
- B. Extension to File: Requests for extensions to the time limits for filing must be submitted in writing to the other party prior to the expiration of the applicable time limit. Requests for extensions of time limits shall be considered upon receipt of a written request and justification. A written decision will be provided to the requesting party.
- C. Failure to Meet a Time Limit: If either party 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.
- D. Section 7114(b)(4): The alleged failure of the Agency to comply with Section 7114(b)(4) of the Statute will be decided by the Federal Labor Relations Authority (FLRA) upon the filing of an unfair labor practice charge, or the alleged failure can be raised in a new grievance filed under this Article.

## **Section 7. Official Time**

Official time to prepare for and present grievances will be administered pursuant to Article 2 of this agreement.

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

- A. Informal Grievance
  - (1) The parties recognize that grievances may arise from misunderstandings or disputes that can be resolved promptly and satisfactorily on an informal basis.
  - (2) At the election of the employee or the employee's representative, an employee dispute with the Agency may be brought to the employee's supervisor or to the appropriate Agency official with authority to resolve the matter informally. The supervisor or appropriate Agency official may provide a written response within five work days of the matter being brought to their attention under this Section. If a matter is not resolved in this manner, the employee or the employee's representative may file a grievance in accordance with the procedures set forth in this article. At the election of the employee or the employee's representative, this informal process may also be

bypassed. An election to pursue resolution informally does not toll the required time frames for filing a formal grievance; however, an extension may be granted under Section 6.B.

- (3) If the dispute cannot be resolved informally, or the employee or the employee's representative chooses to forego the informal meeting described above, the following formal process must be used.

#### B. Formal Step 1

- (1) Where to File a Grievance: An employee must file the grievance in writing to the employee's immediate supervisor, unless the immediate supervisor does not have the authority over the matter grieved. In the case that the employee's immediate supervisor does not have such authority, the employee must file the grievance with the authorized Agency official at the level having the necessary authority. The Agency has the sole authority to determine the proper Agency official to respond to any union grievance.
- (2) Content of the Grievance: The employee must state specifically that the employee is presenting a grievance. The grievance must include:
  - (a) Copies of any existing documentary evidence that supports the employee's grievance;
  - (b) The specific personal relief sought;
  - (c) The name, organizational unit and location of the aggrieved;
  - (d) The name, title, organizational unit and contact information of the Agency official that allegedly took the action that gave rise to the grievance;
  - (e) A statement of the law, regulation or agreement alleged to have been violated, citing specific sections, paragraphs and articles; and,
  - (f) Designation by name of the Union representative or a statement of self-representation.
- (3) The failure of the grievance to supply this information will render the grievance deficient, and the grievance will be returned. The return of a deficient grievance does not toll the required time frames for filing a formal grievance.
- (4) Consolidation of Grievances: The Agency may consolidate multiple grievances into one grievance for processing and decision making in the event that the grievances raise the same or similar issue alleging a violation of the same law, rule, or Agreement, Article, and Section.
- (5) Step 1 Decision: Within 15 calendar days after receipt of the grievance, the Step 1 deciding official will issue a written decision. If the grievance is denied, the response

will include the name of the Step 2 Agency official who has the authority to resolve the matter. The Agency's failure to respond to the grievance within the specified time frames, or as consented to by the parties, will automatically advance the grievance to the next step.

### C. Formal Step 2

- (1) Filing a Step 2 Grievance: If the matter is not satisfactorily resolved following Step 1, and the aggrieved employee and/or representative, if any, wish to continue the grievance process, they must file the matter in writing to the Step 2 Agency official identified in the Step 1 decision within 15 calendar days of notification of denial or the date that a response should have been received. The Step 2 grievance shall include, as attachments, both the Step 1 grievance and the Step 1 grievance response.
- (2) Failure to Raise an Issue: Failure to raise evidence or issues at the Step 1 or Step 2 grievance level shall result in an inability of the grieving party to include or raise the issue at arbitration.
- (3) Step 2 Decision: The Step 2 Agency official shall issue a written decision on the grievance within 30 calendar days of receipt of the grievance. If the grievance is not satisfactorily settled, the Union may refer the matter to arbitration in accordance with the procedures set forth in the Arbitration Article 7.
- (4) Settlement and Withdrawal: If at any time during the processing of a grievance, a settlement agreement is accepted by the employee or the employee's designated representative, the agreement shall be in writing. Execution of the settlement agreement automatically withdraws the grievance in its entirety.

## Section 9. Grievance of the Parties

- A. Content of an Institutional Grievance: Should either party have a grievance concerning institutional rights granted by law, regulation or this Agreement, the party shall inform the designated representative of the other party of the specific nature of the complaint in writing, including:
  - (1) The specific evidence, including providing copies of any existing documentary evidence, that supports the grievance;
  - (2) Any provision of law, rule or regulation allegedly violated, citing specific sections, paragraphs and articles;
  - (3) The name, title, organizational unit and contact information of the Agency official that allegedly took the action that gave rise to the grievance; and
  - (4) The specific relief sought.
- B. The failure of the grievance to supply this information will render the grievance deficient and the grievance will be returned to the other party for correction. The return of a

deficient grievance does not toll the required time frames for filing a formal grievance. The grievance must be signed and dated.

- C. Time Limits of an Institutional Grievance: A grievance of a party is one specific action which is described in Section 2. In order to avoid stale litigation, a grievance of a party must be filed within 30 calendar days of the date of the specific action. If the Union or Agency was prevented from filing the grievance during the 30 calendar day period because of an Agency or Union failure to perform a duty owed to the other party or because of any concealment by the Agency or Union that prevented discovery of the action during the 30 day period; the grievance must be filed within 30 calendar days of the Union's or Agency's discovery of the action.
- D. Failure to Raise an Issue: Failure to raise evidence or issues at the grievance of the parties stage shall result in an inability of the grieving party to include or raise the issue at arbitration.
- E. Where to File: The grieving party will file the grievance with the designated representative of the other party authorized to receive a party grievance:
  - (1) A local matter will be filed with the designated local representative of the other party; or,
  - (2) A national matter will be filed with the designated national-level representative.
- F. Decision: Within 30 calendar days after receipt of the written grievance, the receiving party will send a written decision on the grievance. If the matter is not resolved, the grieving party may refer it to arbitration in accordance with Article 7.

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

- A. Resolution of a Grievance: The parties, upon request, will explore resolution of all potential grievances before being filed, individual grievances at steps 1 and 2, and party grievances. Settlements will be in writing and execution of the settlement agreement automatically withdraws the grievance in its entirety. Settlement discussions will not toll the time limits for filing and processing a grievance in this Article; however, the parties may mutually agree to toll the time limits on a case-by-case basis.



## **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. Failure to provide a timely notice of an invocation will render the grievance not arbitrable.
- 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 the Union Council President 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 the Headquarters' Labor Relations Director 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 have a geographic area of 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. An exception to holding the hearing at the grievant's official duty station is, if the majority of witnesses are located outside of the local commuting area; in this circumstance, the site of the dispute is where the majority of witnesses are located. The site of the dispute for grievances designated as national, not an individual employee grievance, is Washington, D.C.
- 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, if otherwise in a duty status, 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 provision of the coin and securing a mutually agreeable time, date and location for the coin toss. 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. Arbitrators have the authority to dismiss grievances based on staleness.
- (1) 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.
- F. 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, including when an arbitration matter has settled. 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.
- B. 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.

### **Section 4. Arbitrator’s Limited Jurisdiction**

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.

## **Section 5. Bifurcation**

No later than 21 calendar days before a scheduled hearing or anytime before the hearing is scheduled, either party may move to bifurcate into separate jurisdictional and merits proceedings so that all jurisdictional issues shall be decided prior to a hearing on the merits of the grievance. Jurisdictional issues include, but are not limited to, questions of timeliness, compliance with the grievance procedures in Article 6, staleness, standing, election of remedies and arbitrator authority. The parties may submit documentation to the Arbitrator in support of their positions on jurisdictional matters. In the event no questions of fact exist regarding the jurisdictional issues, the parties may, with both parties' consent, forego a formal hearing on jurisdiction and present written submissions directly to the arbitrator. The arbitrator is empowered to make a decision based upon the 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. A hearing on the merits will only be scheduled after the arbitrator has rendered a decision on all jurisdictional issues. Bifurcation hearings will be held virtually, unless mutually agreed to by the parties.

## **Section 6. Pre-Hearing Procedures**

- A. Pre-Hearing Exchange: No later than 5:00 pm five (5) 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 three 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 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 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 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 will 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. 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 first, with the other party responding within a time period set by the arbitrator.

- B. Section 7114(b)(4) Information Requests: The alleged failure of the Agency to comply with section 7114(b) of the Statute will be decided by the Federal Labor Relations Authority (FLRA) by the filing of an unfair labor practice charge by the Union or the alleged failure can be raised in a new grievance filed under this Article.
- C. 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 arbitrator will render a decision as quickly as possible but in any event not later than 30 days after the conclusion of the hearing or closing of the hearing 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, once final under FLRA precedent, is binding on the parties as to the specific facts and circumstances of the grievance.
- C. Standards for an Arbitration Award: Arbitrators will ensure that their award, as required by Section 7121(a)(1) of the Statute, is consistent with law, Executive Orders, government-wide rules and regulations in effect at the time of the effective date of this Agreement, and Agency rules and regulations; and that the award, as required by Section 7121 of the Statute, is not contrary to grounds similar to those applied by federal courts in private sector labor-management relations.

## **Section 11. Exceptions**

- A. Filing Exceptions and Finality: 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.
- B. Post-Award Jurisdiction: Once an arbitration award is issued, the arbitrator is "functus officio" and no longer has jurisdiction. If either party claims that the other party has not complied with an arbitrator's award, the claiming party may file an unfair labor practice with the FLRA, Office of the General Counsel.

## **Article 8. Merit Promotion**

### **Section 1. Purpose**

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

### **Section 2. Definitions**

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

### **Section 3. Posting Vacancy Announcements**

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

### **Section 4. Ranking and Referral of Candidates**

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

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

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

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

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

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

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

## **Article 9. Leave**

### **Section 1. General Provisions**

This Article shall be administered in accordance with Title 5, United States Code (U.S.C.), Chapter 63; and Title 5 Code of Federal Regulations (C.F.R.) Part 630.

- A. Leave Approval: Except in emergency or unanticipated circumstances, all leave must be requested, approved and scheduled before the employee is absent from work. If not requested and approved in advance, the employee must notify the supervisor, or supervisor's designee, of the request by telephone/voicemail, email or text (in the manner designated by the supervisor) as soon as possible, but no later than the start of the employee's scheduled tour of duty unless the employee is totally incapacitated and unable to communicate with his/her supervisor (e.g., the employee is unconscious). If the employee is physically unable to make the request herself, the employee must take proactive steps when possible to ensure that the supervisor or designee is notified consistent with this Article. If an employee receives an "out-of-office" message from the supervisor via phone or email, or otherwise becomes aware that the supervisor is not available that day, the employee must notify the supervisor's designee (or higher level manager if there is no clear designee) of any request for leave that has not been preapproved. When an employee's situation will require the employee to be absent longer than one day, the employee must indicate the expected return to duty date. These telephone/voicemail/email/text communications are not substitutes for other time accounting or payroll systems which are still required to show schedules or certify time.
- B. Leave Increments: All leave may be requested and used in 15-minute increments.
- C. Electronic/Calendar Record of Leave: Employees must make their requests for leave, either in advance for planned leave or no later than the day of their return from leave that was not preapproved, in the designated Agency's electronic system, currently PeoplePlus, and/or where applicable through a designated electronic leave calendar.
- D. Office Scheduling Procedures: Employees using leave are required to comply with their office workforce scheduling procedures, including updating electronic and/or hard copy calendars with planned leave. If there are no specific procedures for an employee's office, at a minimum, for planned absences, the employee is expected to indicate leave on the Agency's calendar system (currently Outlook, but any successor system).
- E. Out-of-Office Procedures: Employees are required to comply with their office's out-of-office procedures, including modifying their outgoing voicemail, updating their out-of-office email messages and, if applicable, notifying their customers of their absence(s). If there are no specific procedures for an employee's office, at a minimum, for planned absences, the employee is expected to update outgoing voicemail and email messages with a brief and professional statement about the employee's absence and expected duration and, where appropriate, who should be contacted in their absence.

### **Section 2. Sick Leave and Medical Documentation**



- A. Government-Wide Regulations Control: Sick leave shall be administered pursuant to 5 C.F.R. Part 630, Subpart D.
- B. Administratively Acceptable Evidence is Required: Per 5 C.F.R. 630.405(a), the Agency will grant sick leave “only when the need for sick leave is supported by administratively acceptable evidence.”
- C. Medical Certificate - Per 5 CFR 630.201(b), a “medical certificate means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment.” A medical certificate constitutes one form of administratively acceptable evidence referred to in Section 2.B. Medical certificates, at a minimum, must contain a statement that the employee is under the care of a medical professional, the nature of the employee’s incapacitation, the impact of the incapacitation on the employee’s ability to perform his/her duties, and the expected duration of the incapacitation.
- D. Employee Self-Certification: Per 5 C.F.R. 630.405(a), “an employee’s self-certification as to the reason for his or her absence” constitutes another form of administratively acceptable evidence referred to in Section 2.B.
- E. When a Medical Certificate is Required: The supervisor will require a medical certificate for any absence four or more workdays. The supervisor will require a medical certificate for any absence three workdays or less when the supervisor makes the unreviewable management determination that based on any of the following circumstances, a medical certificate is required to support the reason for the absence:
  - (1) Previous leave usage;
  - (2) The length of the absence;
  - (3) A sick leave request made after the employee has been assigned an undesirable work assignment or unwanted overtime, or has been denied annual leave; or,
  - (4) Any other situation surrounding the employee’s leave request that raises reasonable questions about the reason for the leave.
- F. When requested by the supervisor (or other Agency official), an employee must provide a medical certificate within 15 calendar days of the date of the request. Per 5 C.F.R. 630.405(b), an employee who does not timely provide the medical certificate “is not entitled to sick leave.”

### **Section 3. Other Types of Leave**

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

Military Leave, Court Leave, Funeral Leave, Compensatory Time and Religious Compensatory Time.

## **Article 10. Performance**

### **Section 1. Overview**

The Agency will administer the performance management program in accordance with 5 United States Code (U.S.C.) Chapter 43 and 5 Code of Federal Regulations (C.F.R.) Part 430. The Agency will not prescribe a distribution of levels of ratings for employees covered by this master collective bargaining agreement (MCBA). Each employee's performance will be judged solely against their performance standards.

### **Section 2. Definitions**

Terms used in this article that relate to the performance management system, such as "appraisal," "critical element" or "performance rating" will have the same meaning as in 5 C.F.R. Part 430.

### **Section 3. Critical Elements and Performance Standards**

- A. Per 5 C.F.R. 430.203: "Critical element means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable.
- B. The Agency will comply with 5 C.F.R. Part 430 when making its reserved management right decision as to the number of levels of performance for each critical element and when determining whether a rating level will have a written performance standard.
- C. Application of all performance standards shall be fair, equitable and consistent with 5 C.F.R. Part 430.

### **Section 4. Communications**

- A. Within the first 30 calendar days of every rating period or within 30 calendar days of employment or reassignment, the supervisor will discuss the performance plan with each employee. The supervisor will present the employee a copy of the draft performance plan, which contains the critical elements and performance standards.
- B. As required by 5 C.F.R. 430.206(b)(1): "Agencies should encourage employee participation in establishing performance plans." However, the employee does not need to agree with the final plan. The supervisor will give the employee a copy of the final performance plan and ask the employee to sign and date to acknowledge receipt.
- C. During the rating period, the supervisor will discuss with the employee any changes in the employee's critical elements or performance standards and annotate them in the performance plan.
- D. Performance discussions:

- (1) A mid-year discussion, a closeout of current appraisal period and an establishment of standards for the new appraisal period discussion must take place each appraisal period.
- (2) Performance discussions should occur throughout the performance appraisal period. Discussions may be initiated by the supervisor or employee and may be held one-on-one or in a work group. Employees are encouraged to seek feedback from their supervisor about their performance throughout the performance appraisal period.
- (3) Performance discussions between the supervisor and the employee will be aimed at improving the work process or product and developing the employee. As appropriate, the discussion will provide the opportunity to assess accomplishments and resolve problems.

#### **Section 5. Procedures**

- A. Within 30 days of appointment, reassignment or change in supervision, the employee will be issued a new performance plan.
- B. Employees will receive an annual performance rating for the performance appraisal period. Performance ratings are issued in writing to the employees within 30 days following the end of the rating period.
- C. Employees must be working under a performance plan for a minimum of 90 days before a rating can be given.

#### **Section 6. Addressing Unacceptable Performance**

- A. At any time during the rating period, if the supervisor identifies that an employee's performance in one or more critical elements is at the unacceptable level, the supervisor may notify the employee of the critical elements for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance with the issuance of a Performance Improvement Plan (PIP).
- B. The PIP must inform the employee that unless their performance in the specified critical elements improves and is sustained at an acceptable level of performance, the employee may be demoted or removed from employment.
- C. The PIP will afford the employee 30 calendar days to demonstrate acceptable performance under the critical elements at issue, commensurate with the duties and responsibilities of the employee's position.
- D. During the PIP period, the supervisor will offer assistance to the employee to improving the employee's unacceptable performance.

- E. A supervisor can issue an unacceptable rating prior to issuing a PIP when a rating is required to be issued under the employee's performance plan; however, no performance-based action (5 C.F.R. Part 432) will be proposed until the completion of the PIP.
- F. Once the PIP has expired or the supervisor determines that assistance is no longer needed, the supervisor will provide the employee with a written notice of this determination.

## **Article 11. Discipline**

### **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. Disciplinary actions include reprimands, suspensions, reductions in grade or pay and removals. The specific penalty for an instance of misconduct shall be tailored to the facts and circumstances of the situation.

### **Section 2. Discipline**

- A. Definition: Discipline covered by this Article is a written reprimand, a suspension, a removal, a reduction in grade or pay, and a furlough of 30 days or less.
- B. Exclusions: Discipline covered by this Article does not include an oral reprimand, an oral admonishment, and does not include a letter or memorandum or letter of warning.

### **Section 3. Written Reprimand**

- A. Definition: 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 three years.

### **Section 4. Suspension for 14 Days or Less**

- A. Due Process: An employee against whom a suspension for 14 days or less is proposed is entitled to:
  - (1) Advance written notice stating the specific reasons for the proposed action;
  - (2) The right to review the material which is relied on to support the reason(s) for the proposed action;
  - (3) An opportunity to respond orally and in writing and to furnish affidavits and other documentary evidence in support of the response;
  - (4) Be represented by an attorney or other representative; and,
  - (5) A written decision and the specific reasons for the decision at the earliest practicable date.

### **Section 5. Removal, Suspension for More than 14 Days, Reduction in Grade or Pay, and Furlough of 30 Days or Less**

- A. Due Process: An employee against whom such an action is proposed is entitled to:

- (1) Advance written notice of 30 calendar days stating the specific reasons for the proposed action;
- (2) The right to review the material which is relied on to support the reason(s) for the proposed action;
- (3) An opportunity to respond orally and in writing and to furnish affidavits and other documentary evidence in support of the response;
- (4) Be represented by an attorney or other representative; and
- (5) A written decision and the specific reasons for the decision at the earliest practicable date.

### **Section 6. Exceptions**

- A. "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.
- B. Exclusions: The provisions of this Article do not apply to disciplinary actions of probationary, temporary or excepted service employees except where appeal rights to the Merit Systems Protection Board exist under Chapter 75 of Title 5 of the United States Code.

### **Section 7. Effect of Subsequent Law and Regulation**

The parties agree that they will adhere to any applicable law, governmentwide rule or regulation published after the effective date of this agreement, including, but not limited to, any revisions to Chapter 75 of Title 5 of the United States Code, and part 752 of title 5, Code of Federal Regulations.

## Article 12. Work Schedules

### Section 1. Definitions

A. For the purpose of this Article:

- (1) **Administrative workweek** means the period of seven consecutive calendar days beginning Sunday and ending Saturday. There are two administrative workweeks per pay period.
- (2) **Alternative Work Schedule** means a compressed work schedule or a flexible work schedule.
- (3) **Basic Work Requirement** means 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.
- (4) **Biweekly Pay Period** means the two-week period for which an employee is scheduled to perform work.
- (5) **Compressed work schedule** means:
  - (a) In the case of a full-time employee, an 80-hour biweekly basic work requirement that is scheduled by the Agency for less than 10 workdays.
  - (b) In the case of a part-time employee, a biweekly basic work requirement of less than 80 hours that is scheduled by the Agency for less than 10 workdays and that may allow the employee to work more than 8 hours in a day.
- (6) **Core hours** means 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 or on approved absence.
- (7) **Credit hours** means those hours that an employee working a flexible work schedule elects to work, after supervisory approval, that is more than the employee's basic work requirement to vary the length of a workweek or workday.
- (8) **Fixed work schedule** means a work schedule that is assigned or approved by the supervisor and that cannot be changed without prior supervisory approval. Standard/Regular and compressed work schedules are fixed work schedules.
- (9) **Flexible work schedule** means a work schedule established under 5 U.S.C. 6122, that:
  - (a) In the case of a full-time employee, has an 80-hour biweekly basic work requirement that allows an employee to determine the employee's own schedule consistent with this Article.



- (b) 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 the employee's schedule consistent with this Article.
- (10) **Maxiflex** means 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, upon supervisory approval, may vary the number of hours worked on a given workday or the number of hours each week consistent with this Article.
- (11) **Flexible hours** means the times during the workday, workweek, or pay period within the tour of duty during which an employee covered by a flexible work schedule, with supervisory approval, may choose to vary the employee's times of arrival and departure from the work site consistent with work-related needs.
- (12) **Overtime Hours** means
  - (a) **Standard/Regular (Straight-8) Work Schedule:** The hours of work officially ordered more than 8 hours in a day or more than 40 hours in an administrative workweek.
  - (b) **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.
  - (c) **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.
- (13) **Regularly Scheduled Administrative Workweek** means: 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.
- (14) **Tour of Duty** means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.
- (15) **Work Day** means the period, including the unpaid lunch break, during which an employee is normally scheduled to be at work.
- (16) **Basic Work Requirement** means 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.

(17) **Approved Work Schedule** means 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.

(18) **Work-Related Needs** means 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 2. Management Work Schedule Decisions**

A. Taking into account work-related needs, management has the unreviewable right to make all work schedule decisions, such as, but not limited to:

(1) Directing, approving, denying, modifying or suspending, temporarily or permanently, all requested or established work schedules, either for individuals or an entire work unit.

(2) Approving and denying an employee's request to earn and/or use credit hours.

(3) Terminating an approved alternative work schedule.

(4) Restricting participation in an alternative work schedule for positions the Agency determines are of a critical nature.

(5) Changing an employee's approved work schedule due to training or travel.

(6) Resolving conflicts in scheduling the regular day off for an employee working a 5-4/9 or 4-10 Compressed Work Schedule or Maxiflex.

(7) Approving and denying adjustments of more than 30 minutes (earlier or later) to the arrival and departure times of the approved Maxiflex proposed work schedule.

(8) Approving and denying credit hours consistent with Section 10 of this Article.

B. **Non-Grieveable:** The management decisions referenced in Section 2.A. are not subject to the Article 6 - Negotiated Grievance Procedure.

## **Section 3. Employee Responsibilities**

A. **Adhere to Schedules:** Employees must adhere to their individually assigned work schedule and must be present for duty during hours corresponding to assigned or approved work schedules.

B. **Time and Attendance:** Employees must ensure that their time and attendance submission is proper, coded for overall accuracy, and timely entered and attested to in the Agency Time and Attendance Recording System.

- C. **Work Schedule Requests:** Employees approved for Maxiflex must timely submit requests for specific Maxiflex work schedules.
- D. **Approved Leave:** Employees must request prior supervisory approval to be absent from their scheduled hours in accordance with Article 9 of this Agreement.
- E. **Work Schedule Requests:** All employees must timely request work schedules and changes to approved work schedules in accordance with this Article.

**Section 4. Types of Work Schedules and General Requirements**

- A. **Work Schedule Options:** The following work schedules are available at the Agency:
  - (1) Standard/Regular (Straight-8 or 5/8) Work Schedule (fixed)
  - (2) Compressed Work Schedules (a fixed alternative work schedule)
    - (a) 5-4/9 Work Schedule (a fixed alternative work schedule)
    - (b) 4-10 Work Schedule (a fixed alternative work schedule)
  - (3) Maxiflex Work Schedule (a flexible alternative work schedule)
- B. **Management Approves All Work Schedules:** Employees do not have an entitlement to participate in any particular alternative work schedule--i.e., compressed or Maxiflex. Approval to participate in an alternative work schedule is a management decision.
- C. **Management Makes Work Schedule Changes:** All employees may not have the same degree of personal choice in their work schedules because of different employee responsibilities and work situations. Supervisors will make work hour adjustments when needed to meet work-related needs.
- D. **Agency Priorities:** All work schedules must be consistent with work-related needs, including providing for adequate, continuous office coverage, and resulting in no diminution or reduction in the effectiveness of the work performed.
- E. **Work Schedule Approvals/Disapprovals:** All work schedules must be approved by the supervisor in advance. 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.
- F. **Termination:** The Agency may terminate an employee's alternative work schedule when there are documented misconduct or performance issues, when the employee does not comply with the provisions provided in this Article, or to meet work-related needs. In such event, an employee may request that the employee's alternative work schedule be reinstated upon resolution of the issue that prompted the termination.
- G. **Lunch Period:** All daily tours of duty greater than 6 hours must include a 30-minute unpaid lunch break each day. Fixed schedule daily tours of duty cannot contain an unpaid

lunch break greater than 60 minutes. The lunch break must be taken between 10:30 A.M. and 1:30 P.M. An employee cannot skip the lunch break and work during the lunch period to shorten the length of a workday or to earn credit hours. 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 and accounting for the lunch period.

- H. **Restriction for Critical Positions:** The Agency will restrict participation in an alternative work schedule for positions the Agency determines are of a critical nature.
- I. **Training Conflicts:** An employee's approved work schedule may be changed when the employee is attending training and the training hours conflict, or are inconsistent, with the approved work schedule. An employee will notify the employee's supervisor as soon as the employee becomes aware of the training conflict.
- J. **Travel Status:** An employee's work schedule may be changed when the employee is in a travel status and if the hours at the temporary duty station differ from the employee's approved work schedule. An employee will notify the employee's supervisor as soon as the employee becomes aware of the work schedule difference.
- K. **Temporary Changes:** The Agency will make temporary changes in an employee's work schedule due to work-related needs.
- L. **Requested Changes:** Other than returning to a 5/8 schedule, employees may change work schedule types no more than once per quarter to accommodate work-related needs or for personal reasons. For example, an employee cannot not work on a Maxiflex schedule one pay period and then the next pay period switch to the 5-4/9 compressed work schedule, and then the next pay period switch back to Maxiflex. Supervisors will only approve an employee's requested change in an approved fixed schedule if the requested change does not create an administrative burden and does not have a negative impact on work-related needs.
- M. **Maxiflex Withdrawal:** An employee who has withdrawn from a Maxiflex schedule cannot request to return to a Maxiflex schedule in the same quarter.
- N. **Telework and Alternative Work Schedules:** Employees who work an alternative work schedule may utilize telework opportunities consistent with Article 13 of this Agreement. Employees on a regular and recurring telework arrangement are required to report to the official worksite and duty station as needed, as determined by the Employer. Irrespective of telework schedule or alternative work schedule, employees (other than when on travel) are expected to report physically to the official worksite and duty station a minimum of four (4) days per week. Maxiflex scheduled days off, compressed days off and regular telework days will count as a day away from the official worksite for the purpose of this requirement.
- O. **Work Schedule Request Form:** Employees must request their work schedule on the Agency's Work Schedule Request Form or designated electronic system.

- P. **Work Schedules for New EPA Employees:** 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 request an alternative work schedule but are encouraged to get experience in their organization or work unit. While that amount of time will vary by employee, an “orientation” period of 90 days up to six months would be considered reasonable before allowing a new employee to work an alternative work schedule.

## **Section 5. Standard/Regular Work Schedules**

- 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 a supervisor orders the employee to perform overtime work beyond 8 hours in a day and forty 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 6. Compressed Work Schedules:**

- A. **5-4/9 Work Schedule:** This is a fixed schedule where employees complete the basic 80-hours requirement in 8 days of 9 hours of work each day and one day of 8 hours of work with one scheduled non-workday each pay period, totaling 80 hours of work per pay period. To be established, employees request, and supervisors must preapprove, fixed arrival and departure times and a fixed non-workday. Fixed arrival and departure times must be the same for each workday.
- B. **4-10 Work Schedule:** This is a fixed schedule that includes four days of 10 hours of work each day and one compressed day off each work week. To be established, employees request, and supervisors must preapprove, fixed arrival and departure times and two fixed

non-workdays, one day each week. The fixed non-workdays must be the same day of each administrative work week and must not be consecutive. Fixed arrival and departure times must be the same for each workday.

- C. **Fixed Tour of Duty:** Compressed schedule tours of duty times are fixed and must be between 6:00 A.M. and 6:00 P.M.
- D. **Change in Day Off:** Employees may request to change their compressed day off prior to the commencement of the pay period, subject to supervisory approval. A scheduled compressed day off, as part of the schedule, cannot be changed once a pay period begins.
- E. **Time and Attendance:** In addition to accurately and timely entering and certifying time in the Agency's Time and Attendance Reporting System, employees are also required to provide affirmative evidence that they have worked the proper number of hours and by signing in and out at their work place each work day.
- F. **Overtime Pay:** An employee is entitled to overtime pay when the employee is required to work beyond the number of regularly scheduled hours in a day for a compressed work schedule. For a full-time employee, overtime work consists of all hours of work outside of the established Compressed Work Schedule. For a part-time employee, overtime work consists of hours outside of the Compressed Work Schedule for the day (more than at least 8 hours a day) or for the week (more than at least 40 hours).
- G. **Night Pay:** Employees are entitled to night pay for regular hours and regular overtime hours ordered to be performed between 6:00 P.M. and 6:00 A.M.
- H. **Holidays:**
  - (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, and:
    - (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").
- I. **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:
  - (1) Work-related needs.

- (2) The order in which involved employees selected the schedule.
- (3) Employee seniority (based on service computation date for leave).

J. **Credit Hours:** Employees on compressed work schedules may not earn credit hours.

## **Section 7. 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 10 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 10 work hours do not include a scheduled unpaid lunch break for daily tours of duty greater than 6 hours.
- D. **Finality of Schedules:** Once a Maxiflex work schedule is approved by a supervisor, the work schedule is final for that particular pay period unless adjusted as allowed under this Article.
- E. **30-Minute Variations:** Once a biweekly Maxiflex work schedule is approved, an employee may adjust the arrival and/or departure times of the approved work schedule by a maximum of thirty minutes without prior supervisory notification or approval, provided the 30-minute change does not interfere with the established core hours and does not impact already scheduled meetings or work-related matters. Thus, the actual work schedule may vary from the approved work schedule. While the 30-minute adjustment does not need prior supervisory notification or approval, like all hours worked or used for approved leave or credit hour use, the adjusted hours must be accurately recorded by employees in the Agency's Time and Attendance Reporting System. Adjustments of more than 30-minutes to the arrival and departure times of the approved work schedule requires prior supervisory approval.
- F. **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. The core hours for employees on Maxiflex are 9:30 A.M to 3:00 P.M.

- G. **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 3:00 P.M. to 6:00 P.M.
- H. **Changes to Work Schedule:** Employees may alter their Maxiflex work schedule on a pay period to pay period basis.
- I. 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 8. 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.
- 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. The failure to meet this time goal has no impact on the approval process. Employees may request in writing an explanation for a disapproval of Maxiflex work schedule.

## **Section 9. Maxiflex Work Schedule Employee Requirements.**

- A. **Advance Scheduling Requirement:** All employees on Maxiflex are subject to an advanced scheduling requirement each pay period. Since Maxiflex allows employees to vary their work hours during flexible times for each pay period, employees must electronically submit a proposed work schedule on the *Maxiflex Pay Period Time Sheet* to their supervisors in advance of each pay period. The *Maxiflex Pay Period Time Sheet* is not a substitute for the electronic Agency's Time and Attendance Reporting System. Rather, the *Maxiflex Pay Period Time Sheet* is a tool for an employee to request specific work hours and it serves as a reference to be used when an employee completes the



Agency's Time and Attendance Reporting System. Part time and full-time employees follow the same advanced scheduling requirements. The Agency has the unilateral authority to include this process electronically in PeoplePlus or successor electronic time and attendance systems.

- 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 requests for scheduling of the pay period minimizes potential problems in determining an employee's entitlements to pay and leave and best allows for supervisors to be able to plan and assign work.
- C. **Failure to Timely Submit the *Maxiflex Pay Period Time Sheet*:** Employees who fail to submit the *Maxiflex Pay Period Time Sheet* in advance with sufficient time for the supervisor to approve or disapprove are required to work fixed 8-hour days (either from 8:00 A.M. to 4:30 P.M. or from 9:00 A.M. to 5:30 P.M.) for the affected pay period.
- 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 earned and 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 either by a method directed by the supervisor (e.g., contemporaneous email), or on the *Maxiflex Pay Period Time Sheet* and also in the Agency's Time and Attendance Reporting System.
- 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 30 to 60-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 10. Credit Hours and Maxiflex Work Schedule**

- A. **Maxiflex Credit Hours:** Credit hours are those hours within the Maxiflex work schedule that are more than an employee's basic biweekly 80-hour work requirement and that the employee, upon supervisory approval, elects to work to vary the length of a workday, workweek, or pay period. Credit hours may be earned outside of the normal tour of duty (6:00 A.M. – 6:00 P.M.), with supervisory approval.
- B. **Requesting Maxiflex Credit Hours:** 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.
- C. **Earning Maxiflex Credit Hours:** Working credit hours must be preapproved by the supervisor. For an example of credit hours, an employee is scheduled to work 8 hours on Monday. The employee requests and is approved to work 2 additional hours on that day. If the employee works at least 72 more hours during the pay period, the 2 additional hours are considered credit hours because they are more than the scheduled basic 80 hours that the employee is required to work in this particular pay period. However, if at the end of the pay period the employee has not accounted for 80 hours with a combination of approved leave and work, the 2 additional hours are counted towards the 80-hour biweekly work requirement and are not credit hours.
- D. **Maxiflex Credit Hour Limits:** Employees on Maxiflex can earn up to 2 credit hours per workday and up to 10 credit hours per pay period, subject to prior supervisory approval. Supervisors may grant standing approval to work credit hours for known or anticipated workload needs if the credit hours are within the 2 credit hours per workday and within the 10 credit hours per pay period limit. Standing approvals for known or anticipated workload needs must be requested in writing and approved in writing for a designated period with an end date.
- E. **Exceptions to the 2/10 Credit Hour Limit:** On rare occasions when necessary to meet the work-related needs, supervisors may grant more than 2 credit hours per workhour day or more than 10 credit hours per pay period, on a case-by-case basis. Standing approvals for more than 2 credit hours per workday or more than 10 credit hours per pay period are not permissible.
- F. **Weekend Maxiflex Credit Hours** Employees on Maxiflex 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. The flexible time bands for employees on Maxiflex who earn credit hours

on Saturday or Sunday are 6:00 A.M. to 6:00 P.M. Employees cannot earn credits hours outside of that timeframe on the weekend.

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

employee will be afforded the opportunity to elect to work the overtime. Supervisory approval to earn credit hours does not alter an employee's eligibility to earn overtime pay or compensatory time off.

## **Section 11. Compensation and a Maxiflex Work Schedule**

- A. **Overtime:** Overtime work consists of hours of work that are officially ordered in advance and constitute more than 8 hours a day or 40 hours in a week, but does not include worked credit hours.
- B. **Night pay:** When an employee elects to work approved credit hours or elects a time of arrival or departure at a time of day when night pay is otherwise authorized, night pay will not be paid. If an employee's daily tour of duty includes 8 or more hours available for work during daytime hours (i.e., between 6:00 a.m. and 6:00 p.m.), the employee is not entitled to night pay even though the employee elects to work hours for which night pay is normally authorized (i.e., between 6:00 p.m. and 6:00 a.m.).
- C. **Holidays:** On a holiday, employees under Maxiflex work schedules are credited with 8 hours towards their 80-hour basic work requirement for the pay period, even if they would otherwise work more hours on that day. When the employee is scheduled to work more than 8 hours on the holiday that the employee is relieved from duty, hours greater than 8 must be rescheduled on another day, or the employee must account for those hours by charge to a category of approved absence. Part time employees will be credited with the number of hours that they would have actually worked that day had it not been a 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. **Conversion of Credit Hours to Pay:** Full time employees receive pay for a maximum of 24 hours of unused approved credit hours when they separate by retirement, transfer to another Agency, or when no longer subject to a flexible work schedule with credit hours. Part time employees will be paid for credit hours up to one-quarter of their biweekly work requirement. Credit hours are paid at the employee's current rate of basic pay.

## Article 13. Telework

### Section 1. Eligibility

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

### Section 2. Definitions

For the purpose of this Article:

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

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

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

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

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

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

- A. **Management Decisions:** Taking into account work-related needs, supervisors have the unreviewable discretion to make all telework decisions, such as, but not limited to:
  - (1) Approving or disapproving new or revised requests to telework and in cases of disapproval, upon written request, provide the rationale to the requesting employee.
  - (2) Recertifying employee telework agreements every 12 months (or earlier if a particular organization's annual recertification time period is sooner, so that all employees can be recertified at the same time).
  - (3) Deciding what are work-related needs, including whether there is adequate office coverage based on work-related needs.
  - (4) Modifying individual telework agreements to meet work-related needs.
  - (5) Maintaining records and information necessary for evaluation of the telework program.
  - (6) Deciding whether teleworkers have complied with all existing security policies and procedures, including IT security, the protection of personally identifiable information and confidential business information.
  - (7) Deciding whether appropriate and accurate telework time reporting codes to document hours teleworked are being used.
  - (8) Deciding whether employee performance while teleworking meets work-related needs and performance standards.
  - (9) Deciding that appropriate management controls and reporting procedures are in place before employees begin telework assignments.

- B. **Non-Grieveable:** The management decisions referenced in Section 3.A. are not subject to the Article 6 - Negotiated Grievance Procedure.

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

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

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

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

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

- A. **Regular Telework:** Employees perform their duties at an alternative work location on a regular and recurring basis, on predetermined days each pay period.
  - (1) Regular telework cannot exceed one day per week. Irrespective of telework schedule or alternative work schedule, employees are expected to report physically to the official worksite and duty station a minimum of four (4) days per week. Maxiflex scheduled days off, compressed days off and regular telework days will count as a day away from the official worksite for the purpose of this requirement.
  - (2) Employees are not permitted to conduct regular telework from outside their local commuting area.
- B. **Situational Telework:** Employees perform their duties at an alternative work location on a non-routine, occasional, emergency, or ad hoc basis.
  - (1) Situational telework may be used to complete short-term special assignments or to accommodate special circumstances and must be for a defined, finite period.
  - (2) Situational telework cannot be used in a routine manner which appears to extend an employee's regular telework schedule.
  - (3) An employee must have an approved situational telework agreement in place.
  - (4) Management has the sole authority to approve/disapprove all situational telework requests.
  - (5) An employee must have explicit advanced approval before any telework is worked.
  - (6) An employee may be approved for both situational and regular telework, consistent with Section B.2. above.



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

- (1) Employees seeking to telework as a reasonable accommodation must contact their immediate supervisor and the National and Local Reasonable Accommodation Coordinator.
- (2) Employees who telework as a reasonable accommodation must follow the general requirements contained in this Article to the extent that such requirements are not inconsistent with the reasonable accommodation.
- (3) Employees who seek to telework as a reasonable accommodation must submit a signed telework application, completed safety checklist and a training certificate.
- (4) Employees approved to telework as a reasonable accommodation are required to have a valid, signed telework agreement.

F. **Agency Continuity of Operations Plan (COOP):** Telework during a COOP enables employees to work from alternative work locations during emergencies such as a natural disaster, a terrorist attack, disruption to facilities, or a pandemic health crisis.

- (1) Telework as part of a COOP allows the Agency to continue to perform the Agency's mission in the face of an emergency.
- (2) During a COOP, any employee, with or without a telework agreement, may be required to telework.
- (3) During any period that the Agency is operating under a COOP, the COOP shall supersede this Article.

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

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

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

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

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

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

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

- A. **Portable Work:** The employee must have sufficient portable work for the amount of telework requested.

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

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

Employees cannot telework if any of the following occur:

- A. The employee's current rating of record is less than fully successful or the employee is currently performing less than fully successful.
- B. The employee has been officially disciplined for being absent without permission for more than five days in any calendar year.
- C. The employee has any documented performance or conduct deficiencies within the preceding 12 months, including, but not limited to, letters of reprimand, written warnings, counseling, or leave restrictions.
- D. The employee, at the Agency or at another Federal Agency, has ever been disciplined for viewing, downloading, or exchanging pornography, including child pornography, on a federal government computer or while performing official federal government duties.
- E. The employee has been disciplined for misuse of a government computer.
- F. The employee has refused a visit by the supervisor or any other Agency official to the employee's alternative work site.

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

- A. **New Employees:** Employees who have worked at the Agency for less than six months, even if their position or some duties are telework approved, normally do not engage in regular telework.

- B. **Need for Experience:** New employees should obtain experience in their position, work unit and organization before being approved for regular telework.
- C. **Situational Basis:** Telework for new employees may be approved on a situational basis; e.g., for a management declared weather event, emergency, or other disruption.
- D. **Factors to Consider:** In addition to the eligibility requirements for Agency employees in Section 9 of this Article, and the disqualifications in Sections 9 and 11 of this Article, supervisors also must consider, at a minimum, the following factors before authorizing telework for new employees:
  - (1) Previous federal service, if any;
  - (2) Length and nature of previous work experience; and
  - (3) Any previous experience teleworking.

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

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

#### **A. Prior to Requesting Telework:**

- (1) The employee must complete the required employee telework training;
- (2) The employee must complete the *Telework/Application Agreement* and the *Employee Self-Certification Safety Checklist*” (which identifies the significant safety standards that must be met at the alternative work location) and must submit the Agreement and the Checklist to their supervisor for approval, along with the Training Certificate;
- (3) The employee must make all necessary dependent/elder care arrangements and certify that the arrangements will not interfere with the employee’s work performance while working at the alternative work station;
- (4) The employee must have equipment at the alternative work station that is available and working properly to ensure compliance with the Agency’s information technology policies and procedures;
- (5) The employee must agree to telework in case of an emergency; and,
- (6) The employee must agree to leave the alternative work station and return to the regular office/worksite if requested by the employee’s supervisor. Employees on a regular and recurring telework arrangement must agree to report to the official worksite and duty station as needed, as determined by the Agency.

#### **B. While Teleworking:**

- (1) The teleworking employee must comply with established pay and administration policies on work schedules, consistently use the appropriate telework time reporting codes to document time and attendance on a bi-weekly basis and give a copy of their telework schedule to the office timekeeper.
- (2) The teleworking employee must comply with Article 9 of this Agreement for requesting and using leave.
- (3) The teleworking employee must maintain a current performance level of at least fully successful.
- (4) The teleworking employee must ensure that working from the alternative work station causes no disruption in the efficiency, timelines, quantity and quality of the employee's work.
- (5) The teleworking employee must ensure availability (e.g., by telephone, email, Skype) to the employee's customers, co-workers and supervisors and other Agency officials.
- (6) The teleworking employee cannot be unavailable during regular teleworking hours for calls, meetings or virtual meetings.
- (7) The teleworking employee cannot during regular teleworking hours put "out of office" messages on e-mail, voice mail and electronic calendars indicating that they are unavailable.
- (8) The teleworking employee must utilize call forwarding technology, if available.
- (9) The teleworking employee must maintain organizational requirements regarding communication and accessibility and respond in a timely manner to the employee's team leaders, supervisors, managers, co-workers, Agency customers and the public.
- (10) The teleworking employee must be capable of joining and be available to join teleconference meetings or conference calls while working at the alternative work location.
- (11) The teleworking employee must safeguard Agency equipment (if provided) and use it only for official purposes in accordance with established Agency policies and practices.
- (12) The teleworking employee must participate in the annual recertification process as required by this Article and in any other telework program monitoring and/or evaluation processes required by the Agency or other authoritative entities (e.g., OPM, Government Accountability Office, Congress).

## **Section 12. Telework Training**

- A. **Training is Necessary:** An employee must successfully complete the Agency approved training and obtain a certificate of training before participating in telework.

- B. **Attachments to the Telework Agreement:** The employee's certificate of successful completion of the required training must be attached to the telework agreement.

### Section 13. Establishing the Telework Agreement

- A. **Regular and Situational Telework:** An employee must complete the following actions in order to be approved for a regular or situational telework agreement:
- (1) The employee must submit a completed application to the employee's immediate supervisor, including the completed safety checklist and the certification of the employee's telework training.
  - (2) The employee and supervisor must discuss the proposed telework agreement and the type of work to be completed by the employee at an alternative work location.
  - (3) Once all requirements are completed, the employee must sign and date the telework agreement.
  - (4) A separate agreement for each telework episode is not necessary if the employee has signed an agreement to telework on a situational basis.
  - (5) For each specific situational request, the employee must identify in writing, generally by email, to the supervisor, with sufficient time for the supervisor to approve or disapprove: the requested date, the portable work to be performed, the alternative work location, and the telephone number if there is no call-forwarding function available. Response to requests must be in writing. Telework may not be performed unless approved in advance.
  - (6) Employees must obtain information and implement all procedures for accessing the secured operations of the regular office/worksites.
  - (7) If the alternative work location is a telework center, arrangements must be made by the employee's organization to cover the cost and to reserve a workstation for the employee.
- B. **Medical Telework:** To be approved for a medical telework agreement, the employee must submit a physician-certified written statement that:
- (1) Provides a description of the diagnosis of the medical condition necessitating the telework arrangement.
  - (2) Summarizes the prognosis, including the expected return-to-work date, and, as appropriate, discusses medical management, including how the temporary medical condition might interrupt the employee's work schedule.
  - (3) Lists restrictions that should be placed on the work performed at the alternative work location, if applicable.

- (4) States that the employee is able to perform the duties of the position at an alternative work location; and,
- (5) Describes the benefit to the employee's medical condition from working at an alternative work location, or the reduction of health risks to other employees, if any, derived from this medical telework arrangement.

#### **Section 14. Telework Agreements**

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

- (1) The telework agreement covers the terms and conditions of the telework arrangement.
- (2) The telework agreement constitutes an agreement by the employee to adhere to the provisions of this Article and Agency policies and procedures that do not conflict with this Article.
- (3) The telework agreement includes items such as: the voluntary nature of the arrangement; duration of the telework agreement; hours and days of duty at each work location; responsibilities for timekeeping; leave approval and requests for overtime and compensatory time; performance requirements; and proper use and safeguards of government property and records.

**B. Changes to a Telework Agreement:** When any aspect of the telework agreement changes (e.g., position, work assignment, supervisor, alternate work location), the supervisor will reassess the employee's work to determine telework suitability and continued approval.

**C. Yearly Renewal:** Each individual telework agreement must be renewed every 12 months. Telework employees must be on the same 12-month renewal calendar, even though the first year of a telework agreement must be renewed before 12 months have expired.

**D. Essential Employees:** Employees who are designated essential for inclement weather or other emergencies and/or are emergency response employees for COOP purposes, must have signed telework agreements in place to facilitate continuity of operations in the event of emergencies.

**E. Copies of the Telework Agreement:** The supervisor must retain a copy of the signed telework agreement and a copy must be provided to the employee. A copy of the signed telework agreement must also be provided to the program/regional office telework coordinator who is responsible for maintaining telework records in the organization.

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

**A. Recording Telework Hours:** Employees must timely and accurately record all telework time (regular, situational, medical and unscheduled) in the Agency's Time and Attendance Reporting System.



**B. Telework Time Reporting Codes:** All teleworking employees must use the official Agency time reporting codes to document and certify their work hours. There are separate Time Reporting Codes (TRCs) for regular, situational, medical and unscheduled telework as well as for overtime telework and telework as a reasonable accommodation. The Agency's current official Time Reporting Codes are as follows (should TRCs change in the future, employees will be required to use the updated codes as designated by the Agency):

- (1) **TMREG:** Telework Medical Regular
- (2) **TOHRW:** Telework Overtime Hours
- (3) **TWRAC:** Telework for Reasonable Accommodation
- (4) **TREGW:** Telework Regular Hours
- (5) **TWCTU:** Telework Comp Time Used
- (6) **TWCTE:** Telework Comp Time Earned
- (7) **TWEHR:** Telework Episodic Hours (for Situational Telework)
- (8) **TWUSH:** Telework – Unscheduled.

**C. Hours of Duty and Work Schedules:**

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

**D. Overtime During Telework - Eligibility Requirements:**

- (1) All overtime must be approved in advance.

- (2) Any overtime work that is not ordered and approved in advance by the supervisor, in writing, will not be compensated. Employees cannot perform unauthorized overtime work while teleworking (i.e., overtime that is not ordered and approved by the supervisor in advance and in writing).
  - (3) When an employee working at the employee's alternative work location on a regular or situational telework day is directed by the employee's supervisor to perform work that would require more time than the employee's regularly scheduled number of hours for the day, the supervisor may order overtime for the employee.
- E. **Leave:** Procedures for requesting leave are the same for employees participating in telework and employees working at the regular office/worksite. Employees are responsible for obtaining leave approval in advance as required by Article 9 of this Agreement, and for reporting leave usage appropriately in the Agency's Time and Attendance Reporting System.
- F. **Workers' Compensation:**
- (1) Employees who telework are covered by the Federal Tort Claims Act or the Federal Employees Compensation Act and qualify for continuation of pay for workers' compensation for injuries sustained while performing their official duties.
  - (2) The Federal Tort Claims Act and the Federal Employees Compensation Act only apply to injuries sustained while performing official duties when the telework at the alternative work site was approved in advance and adhered to by the employee.
  - (3) The supervisor's signature on the request for compensation attests only to whether the event occurred at the regular office/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.
  - (4) Telework arrangements can result in employees who are currently receiving continuation of pay or worker's compensation returning to work, taking them off the workers' compensation rolls. Supervisors may be able to find work that such employees are able to perform at their home alternative work location, or restructure existing work so that some of the work may be completed at home.
- G. **Requirement to Return to the Regular Office/Worksite on a Scheduled Telework Day:**
- (1) Employees on telework will exercise professionalism and attend scheduled meetings in-person at their regular office/work site when appropriate without being instructed by their supervisors.

- (2) Employees on a regular and recurring telework arrangement are required to report to the official worksite and duty station as needed, as determined by the Agency. Employees participating in the telework program must be accessible and available for recall to their regular office/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 work-related needs. Under these circumstances, the following will occur:
  - (a) The supervisor will recall an employee to the regular office/worksite by notifying the employee as soon as practicable. Employee recalls are at the sole discretion of the supervisor.
  - (b) If an employee is unable to telework from the employee's alternative work location due to being required to be at the regular office/worksite on a regularly scheduled telework day, or being on approved leave or travel, the employee is not entitled to another telework day.
  - (c) If an employee is unable to telework from the employee's alternative work location due to being on approved leave or travel, the employee is not entitled to another telework day.

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

I. **Prohibited Uses of Telework:**

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

## **J. Monitoring Performance:**

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

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

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

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

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

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

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

- A. **Agency Must Approve Telework and the Continuation of Telework:** Telework is subject to Agency approval and not an employee entitlement. Employees who telework do not have an automatic right to continue teleworking.

**B. Agency Mission Comes First:** The operational and work-related needs of the Agency are paramount and take precedence over any employee concerns.

**C. Modification, Adjustments and Termination**

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

**Section 18. Facilities and Equipment**

**A. Alternative Work Location Office Space:**

- (1) Requirements will vary depending on the nature of the work and the equipment needed to perform the work. At a minimum, employees must be able to easily and reliably communicate by telephone and email with the supervisor, Agency officials, co-workers, clients and the public when working from their alternative work location.
- (2) Employees must ensure and verify that their work areas are always in compliance with health and safety requirements as set forth in the *Employee Self-Certification Safety Checklist*. Home work areas must be clean and free of obstructions, in compliance with all building codes, and free of hazardous materials. An employee's request to

telework will be disapproved or rescinded based on safety problems or the presence of hazardous materials.

- (3) A supervisor or other Agency official may inspect the home office or other alternative work location at any time for compliance with the contents of this article and/or compliance with health and safety requirements.

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

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

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

- (1) The Agency is under no obligation to provide government-furnished equipment to employees solely for the purpose of teleworking. Supervisors, at their unreviewable discretion, and if funding permits, may authorize certain items and services for the individual teleworker, such as computers, printers, and telecommunications equipment and services.
- (2) Employees who have an Agency-issued laptop or mobile phone assigned to them must use that assigned equipment while teleworking and must take reasonable safeguards against theft and damage when they use and transport the equipment while teleworking.
- (3) All Agency-issued equipment and supplies remain the property of the Agency. The Agency is responsible for the service and maintenance of Agency-issued equipment.
- (4) The Agency has no obligation to service or maintain equipment belonging to the employee, even if the employee uses the equipment for Agency work.
- (5) Employees whose office worksite phone lines have a call forwarding function must use this function to forward calls to the office to a phone available to the employee at the employee's alternative work location. Unless the call forwarding function is not available, callers should not be directed by an outgoing message to dial a different number to reach an employee at an alternative work station. An employee cannot be only accessible by phone by retrieving voicemail messages from the office site phone line.
- (6) If an employee furnishes the employee's own equipment at the alternative work location, the Agency will not reimburse the employee for the purchasing costs of the equipment. The employee is responsible for the maintenance, repair and replacement of privately-owned equipment. The Agency will not reimburse the employee for the maintenance, repair and replacement of privately-owned equipment, including broadband.

- (7) The Agency will not reimburse employees for the utility costs (e.g., heating, air conditioning, lighting and the operation of government-furnished computers) for alternative work locations. Utility costs include the monthly service charges for telephone or specific telephone charges. Teleworking employees making long distance calls to conduct official government business may use Agency issued mobile phones, if available. As with all Agency equipment, Agency issued mobile phones are subject to Agency monitoring to ensure that they are being utilized in connection with Agency business.
- (8) If an employee works at an alternative work location that is outside of the local commuting area, or is on full time medical telework or is on full time telework as a reasonable accommodation, the Agency is responsible for service and maintenance of government furnished equipment. If the government furnished equipment is in need of repair and upgrade, the Agency will make a reasonable effort to initiate repairs and upgrades remotely. However, if on-site assistance is required, employees must either return to their regular office/worksites or make other arrangements with their supervisor to ensure that repairs and upgrades can be made expeditiously. Supervisors will make unreviewable determinations over questions concerning the employee's duty status, appropriate work assignments and potential temporary equipment during the interim period between when repairs and upgrades are required and when they are completed.
- (9) Consistent with the Agency's Records Management Policy, official Agency business must only be accomplished on official Agency information systems. The Federal Records Act prohibits the creation or sending of a federal record using a non-Agency electronic messaging account unless the individual creating or sending the record either: (1) copies their Agency email account at the time of initial creation or transmission of the record, or (2) forwards a complete copy of the record to the individual's Agency email account within 20 days of the original creation or transmission of the record.

## **Section 19. Information Security**

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

## **Section 20. Records Management**



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

## **Article 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. Conditions of employment that are inconsistent with this Agreement or which are “covered by” the Agreement as that doctrine has been established and applied by the Federal Labor Relations Authority (FLRA) and the U.S. Court of Appeals for the District of Columbia are no longer in effect as of the effective date of the Agreement.
- C. Inconsistent Past Practices: If, after the effective date of this Agreement, a condition of employment is established through a past practice under FLRA case law which is inconsistent with this Agreement, either party may require the other party to follow this Agreement rather than the past practice, upon notice to the other Party.
- 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 seven years from the effective date of this Agreement.

### **Section 3. Notice to Renegotiate the Expired Agreement**

- A. 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, the Agreement shall be extended for one year or until a new agreement become effective, whichever is earlier. If there is no agreement at the end of the one-year extension, this Agreement terminates.

### **Section 4. 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 following procedures will apply:

- A. Carry Over Ground Rules: The parties will arrange to meet within 30 calendar days after notice to renegotiate is given; the ground rules that were agreed upon by the parties and

used for this Agreement will be used to negotiate the subsequent agreement to begin ground rules negotiations. If the parties agree, ground rules negotiations may be bypassed and the parties may move directly into substantive negotiations. In the event the parties elect to enter into ground rules negotiations, the parties will exchange ground rules proposals that must include a reasonable substantive negotiation schedule, no later than 10 workdays prior to the date negotiations are scheduled to begin. Ground rules negotiations will be scheduled for a total of four weeks (two - two weeks-bargaining sessions with one week break in between), beginning at 9:00 a.m. and concluding at 5:30 p.m. with a one-half hour lunch break. If an agreement is not reached by the end of the four weeks of bargaining, the parties will jointly request mediation within three workdays of the conclusion of the last bargaining session.

- B. Ground Rules Negotiations: Ground rules negotiations shall be conducted virtually unless the parties both consent that face-to-face negotiations are necessary.
- (1) Ground rules negotiations shall be accomplished through the exchange of written proposals, telephone calls and/or video conferencing technology.
  - (2) Each party shall be represented by up to three individuals, including the Chief Negotiator who will have collective bargaining authority.
  - (3) If travel is necessary, each party will be responsible for their own travel and per diem.
  - (4) If both parties consent to face-to-face negotiations, the Agency will make a room available for negotiations.