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ARTICLE 1

PARTIES TO THE AGREEMENT

Section 1. This Agreement is made by and between the American Federation of Government employees, AFL-CIO (hereinafter referred to as the UNION) and the United States Environmental Protection Agency (hereinafter referred to as the EMPLOYER or the AGENCY), and collectively known as the PARTIES. The term "employee" (or its plural) refers solely to a civilian employee of the AGENCY within one of the bargaining units as defined in Section 3.

Section 2. The terms and conditions of the Agreement do not apply to employees or positions of the AGENCY not a part of the bargaining units, nor to any grievance, personnel policy, practice or general condition of employment outside the bargaining units.

Section 3. The terms and conditions of this Agreement apply to the following bargaining units: A consolidated, non-professional unit consisting of:

HEADQUARTERS

Included: All non-supervisory, non-professional general schedule and wage grade employees in the Environmental Protection Agency Headquarters.

Excluded: Management officials, supervisors, employees engaged in personnel work in other than a purely clerical capacity, guards, temporary employees of less than ninety (90) days, commissioned corps officers, audit office employees, Security and Inspection Division employees and all non-supervisory professional general schedule employees.

RADIATION LABORATORY

Included: All non-professional, non-supervisory general schedule and wage grade employees who are employed by the Eastern Environmental Radiation Laboratory, Montgomery, Alabama.

Excluded: Professional employees, management officials, Employees engaged in Federal personnel work in other than a purely clerical capacity, and Supervisors and guards as defined in the Order.

REGION I

Included: All non-professional employee's under the jurisdiction

of the Regional Administrator, Environmental Protection Agency in Region I.

Excluded: All professional, managerial officials, supervisors, employees, and employees engaged in Federal personnel work in other than a purely clerical capacity, and guards, as defined in Executive Order 11491.

REGION II

Included: All non-professional and non-supervisory employees who work at or out of the Environmental Protection Agency, Region II, located at Edison, New Jersey, including temporaries appointed not to exceed one year.

Excluded: All professionals, managers, supervisors, guards, personnel employees other than those engaged in purely clerical capacity and those alerted for transfer to the Regional Office located at 26 Federal Plaza, New York City, New York and cooperative students.

REGION II

Included: All non-professional employees of Region II, Environmental Protection Agency located at 25 Federal Plaza, New York, New York.

Excluded: All professional employees; management officials; supervisors; confidential employees; employees engaged in Federal personnel work in other than purely clerical capacity; employees engaged in administering the Statute; employees engaged in intelligence or security work directly affecting national security; and employees primarily engaged in investigation or audit functions related to the internal security or integrity of the agency as described in 5 USC 7112(b)(2), (3), (4), (6) and (7); consultants; experts appointed under 5 CFR 213.301; Commission Corps Officers; employees on IPA assignments; intermittent employees; and temporary employees of ninety (90) days or less.

REGION III

Included: All non-professional employees of the U.S. Environmental Protection Agency, Region III.

Excluded: All professional employees, management officials, supervisors, and employees engaged in Federal personnel work other than in a purely clerical capacity.

REGION V

Included: All non-professional employees of the Environmental Protection Agency, 1819 Pershing Road, Chicago, Illinois.

Excluded: All professional employees, management officials,

employees engaged in Federal personnel work in other than a purely clerical capacity, confidential employees, and supervisors as defined in Executive Order 11491, as amended.

REGION VIII

Included: All non-professional employees of the United States Environmental Protection Agency, Region VIII.

Excluded: All professional employees, confidential employees, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials and supervisors as defined in the order.

CINCINNATI, OHIO RESEARCH CENTER

Included: All non-supervisory wage grade employees of the U.S. Environmental Protection Agency in the Cincinnati, Ohio area who are serviced by the Cincinnati Personnel Office.

Excluded: All general schedule employees, management officials, supervisors, employees engaged in Federal personnel work in other than a purely clerical capacity, guards, consultant employees, commissioned officers of the U.S. Public Health Service, and temporary employees with appointments of ninety (90) days or less.

ROBERT S. KERR LABORATORY

Included: All non-supervisory, non-professional, temporary wage grade and class act employees employed at the Robert S. Kerr Water Research Laboratory, Ada, Oklahoma.

Excluded: Professionals, management officials, employees engaged in Federal personnel work in other than a purely clerical capacity and supervisors as defined in 11491, as amended.

ENVIRONMENTAL RESEARCH CENTER

Included: All non-supervisory non-professional employees in the Raleigh, Durham, Chapel Hill area of North Carolina.

Excluded: All supervisors, professionals, management officials, employees engaged in Federal personnel work in other than a purely clerical capacity, temporary employees with appointments of ninety (90) days or less and guards, consultant employees and commissioned officers of the U.S. Public Health Service.

ANN ARBOR

Included: All employees of the United States Environmental Protection Agency employed at the Motor Vehicle Emissions Laboratory, Ann Arbor, Michigan.

Excluded: All professional employees; management officials, supervisors, intermittent employees, temporary employees of ninety (90) days or less, consultants, experts appointed under 5 CFR 213.301, Commission Corps employees, employees on an IPA assignment, and confidential employees, employees engaged in intelligence or other security work directly affecting national security, and employees engaged in investigation or audit functions related to the internal security of integrity of the Agency.

A consolidated, professional unit consisting of:

Included: All professional employees of the U.S. Environmental Protection Agency at 1819 Pershing Road, Chicago, Illinois, and in Region VIII, and in the Raleigh, Durham, Chapel Hill area of the National Environmental Research Center, Triangle Park, North Carolina.

Excluded: All GS and WG non-professional employees engaged in Federal personnel work in other than a purely clerical capacity, temporary employees with appointments of ninety (90) days or less, and guards, consultant employees, and commissioned officers of the U.S. Public Health Service.

REGION II

Included: All professional employees of Region II, Environmental Protection Agency, located at 26 Federal Plaza, New York, New York.

Excluded: All non-professional employees, management officials, supervisors, confidential employees, employees engaged in Federal personnel work in other than a purely clerical capacity, employees engaged in administering the Statute, employees engaged in intelligence or other security work directly affecting national functions related to the internal security or integrity of the agency as described in 5 USC 7112(b)(2),(3),(4),(6) and (7), consultants, experts appointed under 5 CFR 213.301, commissioned corps officers, and temporary employees of ninety (90) days or less.

REGION III

Included: All professional employees as defined by 5 USC 7103 (a)(15) employed by Region III, United States Environmental Protection Agency, at 6th and Walnut Streets, Philadelphia, Pennsylvania; Wheeling, West Virginia; and Annapolis, Maryland.

Excluded: All non-professional employees, management officials, supervisors, intermittent employees, temporary employees of ninety (90) days or less, consultants, experts appointed under 5 CFR 213.301, Commission Corps employees, employees on an IPA assignment, and confidential employees, employees engaged in

personnel work in other than a purely clerical capacity, employees engaged in administering the Statute, employees engaged in intelligence or other security work directly affecting national security, and employees engaged in investigation or audit functions related to the internal security or integrity of the agency as described in 5 USC 7112(b)(2),(3),(4),(6) and (7).

EDISON, NEW JERSEY

Included: All professional employees of Region II, Environmental Protection Agency, located at Edison, New Jersey.

Excluded: All non-professional employees, management officials, supervisors, confidential employees, employees engaged in Federal personnel work in other than a purely clerical capacity, employees engaged in administering the Statute, employees engaged in intelligence or other Security work directly affecting national security, and employees primarily engaged in investigation or audit security, and employees primarily engaged in investigation or audit functions related to the internal security or integrity of Agency, as described in 5 USC 7112 (b)(2),(3),(4),(6) and (7), consultants, experts appointed under 5 CFR 213.301, Commission Corps Officers, employees on an IPA assignment, intermittent employees, and temporary employees of ninety (90) days or less.

Section 4. If a question arises during the life and term of this Agreement as to whether an employee or position is properly within one of the described bargaining units, it may not be resolved through the dispute mechanisms set forth in this Agreement except by the express mutual consent of the PARTIES.

ARTICLE 2

DEFINITIONS

Section 1. The following words and terms have the meanings given to them for the purposes of this Agreement:

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

Section 2. Other Words and Terms Used in this Agreement:

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

ARTICLE 3

GOVERNING LAWS AND REGULATIONS

Section 1. In the administration of all matters covered by this Agreement, the Union, Agency officials and Employees shall be governed by applicable Federal Statutes, as well as, published Agency and Government-wide regulations in existence at the time this Agreement was approved.

ARTICLE 4

RIGHTS OF THE EMPLOYER

Section 1. Nothing in this Agreement shall affect the authority of any management official of the employer: to determine the mission, budget, organization, and internal security practices.

In accordance with applicable laws to: hire, assign, direct, layoff, and retain employees or to justly suspend, remove, reduce in grade or pay, or take other disciplinary action against employees;

Assign work, make determinations with respect to contracting out, and to determine the personnel by which agency operations will be conducted;

With respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion; or any other appropriate source; and take whatever actions may be necessary to maintain agency operations in emergency situations.

Nothing in this section shall preclude the Agency and the Union from negotiating;

At the election of the Agency: on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project or tour of duty; or on the technology, methods, and means of performing work;

Procedures which management officials of the Agency will observe in exercising any authority under this Article; or, appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

Section 2. The provisions of this Agreement must be applied and interpreted in a manner consistent with the requirements of an effective and efficient Government.

ARTICLE 5

UNION RIGHTS AND DUTIES

Section 1. Employees shall be protected from restraint, interference coercion or discrimination in the legitimate exercise of their rights and responsibilities as designated representatives of the Union. Within the confines of laws, rules and this Agreement, the Union has the right to designate representatives of its own choosing.

Section 2. The parties agree to strive to improve communications between Employees and the Employer; to promote and improve Agency efficiency; and to improve the morale of the Employees.

Section 3. Bargaining Unit employees have the right to participate, through the Union, in the formulation and implementation of policies and practices affecting conditions of their employment.

Section 4. The Employer will provide the Union with one copy of all changes to EPA Orders, Directives, Manuals, and issuances relating to personnel policies, practices, procedures, and matters affecting working conditions of the Bargaining Units.

Section 5. The Employer will furnish to the Union, or its authorized representatives, upon request and to the extent not prohibited by law, data concerning the Bargaining Unit (s) which:

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

Information requested will be provided within a reasonable time.

Section 6. The Union is responsible for representing the interests of all Bargaining Unit (5) employees without discrimination and without regard to labor union membership.

Section 7. The Union shall have the right and responsibility to present its views to the Employer either orally or in writing.

Section 8. The Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the agency and one or more employees in the

unit of their representation concerning any grievance or any personnel policy or practices or other general conditions of employment.

Section 9. If prior to or during any examination of an employee in the unit by a representative of the Agency in connection with an investigation there is reasonable belief by the employee that the examination may result in disciplinary action against the employee, and the employee requests union representation, the employee has the right to union representation.

Section 10. The Union will be afforded the opportunity to participate in the orientation process for bargaining unit employees. Due to the differences in numbers of employees, size and physical locations at various facilities, the local parties are authorized to negotiate arrangements to implement this section.

Section 11. The Union shall have the right to communicate with Bargaining Unit (s) employees. Methods and vehicles used by the Union to communicate with Bargaining Units (s) employees is a proper subject for local negotiations.

Section 12. The Agency shall annually inform the employees of their right to Union representation.

Section 13. Nothing in this Agreement shall be interpreted in a manner that will waive any employee rights under 5 USC 7102 of the Statute.

ARTICLE 6

UNION ACTIVITIES

Section 1. Bargaining unit employees expressly designated by the Union shall be allowed official time as Union representatives in accordance with applicable Law, Rules and Regulations. All official time will be used when an employee would otherwise be in a duty status.

Section 2. The use of official time including attending union-sponsored training by bargaining unit employees who are Union representatives at the local level is an appropriate matter for local level bargaining.

Section 3. The National level representative of the Union will be granted necessary, reasonable amounts of official time for National level matters.

Section 4. When it is necessary for a union representative to leave his/her work station for representational purposes, the employee will inform his/her immediate supervisor when and where he/she needs to go, and provide the supervisor with a telephone number where he/she may be reached when practicable. In the event that a pressing job-related need precludes the immediate excusal of the union representative, the supervisor will inform the employee of the earliest time he/she will be permitted to leave the work site. The employee will report to the supervisor upon his/her return to the work site.

Section 5. At the end of each pay period, each union representative will submit a report of his/her use of official time to the official timekeeper. The report will include the amount of time used each workday with the time characterized by OPM reporting categories for use of official time. When a complete report is not possible at due time of submission, the union representative will submit one as soon as possible.

Section 6. Union representatives will not use official time for internal union business including solicitation for membership or collection of dues.

Section 7. Employees may request leave without pay to serve as an AFGE representative or officer or to participation in other union-related activities. Approved leave without pay is limited to one year and may be extended for only one additional year.

Section 8. Official time shall be granted in reasonable and necessary amount(s) to Union representatives for representational purposes, except for the following:

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

ARTICLE 7

LABOR-MANAGEMENT RELATIONS

Section 1. The parties agree to approach dealings with each other in an atmosphere of mutual respect and cooperation. Nothing in this agreement is intended to prevent or discourage the parties from communicating with each other through their duly appointed representatives at all levels. To the contrary, the parties expressly encourage a continuing dialogue by their representatives in the belief that communication prevents and resolves difficulties which may arise.

Section 2. Local levels may establish labor relations committees or provisions for periodic meeting between the parties. The procedures and processes for such activities are a matter for local level agreement.

Section 3. At the National and Local levels, the designated representatives will maintain open lines of communication in the day-to-day activities involving the parties' relationship. Where the parties believe face-to-face meetings would be appropriate, they may meet to discuss issues of mutual concern. The mechanics and procedures for such meetings will be decided by the representatives based on the circumstances at the time.

Section 4. Union participation on committees which are not management-decision-process oriented will be as described in the appropriate subject matter article.

ARTICLE 8

EMPLOYEE RIGHTS

Section 1.

- A. Each employee has the right, freely and without fear of penalty or reprisal, to form, join, and assist labor organizations or to refrain from any such activity, and each employee shall be protected in the exercise of this right.
- B. As provided by Public Law 95-454, the right to assist a labor organization extends to acting for the organization in the presenting of its views to officials of the Environmental Protection Agency, the Executive Branch, the Congress, or other appropriate authority. Employees temporarily assigned to a managerial or supervisory position may not serve as a Union representative.
- C All employees shall be treated fairly and equitably and with dignity in all aspects of conditions of employment.
- D. It is agreed that Management will endeavor to establish working conditions which will be conducive to enhancing and improving employee morale and efficiency.

Section 2. Subject to applicable law, rule, and regulation, employees shall have the right to direct and/or fully pursue their private lives, personal welfare and personal beliefs without interference, coercion or discrimination by the Employer so long as such activities do not conflict with job responsibilities. The standard of nexus shall apply.

Section 3. If the employee wishes to discuss a condition of employment or potential grievance with a Union representative, the employee shall have the right to contact and meet with the Union representative on duty time. Should a pressing operational exigency preclude the employee's immediate release, the supervisor will advise the employee of the time the employee will be released from duties to contact and meet with the Union representative when he/she requests to exercise this right. The employee will give the supervisor an estimated duration of his or her expected absence and will telephone the supervisor if more time is needed.

Section 4. Employees shall also have access to management officials in accordance with this Section. Employees are encouraged to present their problem at the lowest level of

authority that can effectively correct it. However, employees have the right to communicate with the following:

- A. Supervisor or management official of a higher rank than the employee's immediate supervisor;
- B. Human Resources Office;
- C. An Equal Employment Opportunity Specialist or Officer and/or an Equal Employment opportunity Counselor; and
- D. Financial Management Officer or designee on matters directly affecting the employee.

Employees will advise their Supervisor of the need to contact the aforementioned. Should a pressing operational exigency preclude the employee's immediate release, the Supervisor will advise the employee of the earliest time he/she may leave the work site. The employee will not be requested to discuss the substance of the issue with the Supervisor.

Section 5. The Parties understand and agree that nothing in this Agreement requires employees to become or remain members of a labor organization, or to pay dues to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions.

Section 6. Financial Obligations. It is recognized that all employees are expected to pay promptly all just financial obligations. Employee garnishments will be processed in accordance with the provisions of 5 C.F.R., Part 581 and Public Law 103.94, Section 9. The Employer agrees to hold in confidence any and all debt notices and in the event of a dispute between an employee and a private individual or a firm with respect to an alleged debt or financial obligation, where the debt is not acknowledged by the employee or reduced to a judgement, the Employer will neither act as an arbitrator nor will the Employer take any action against the employee which is not directly related to that debt. This provision does not apply to debts against the United States of America which are considered a just obligation upon presentation to the employee.

Section 7. The Employer agrees that employees are entitled to their proper pay check at the proper time in the proper amount.

Employees for whom receiving their pay at a designated offsite location (mail or electronic transfer) would impose a hardship; will be entitled to receive their pay check at the worksite. The Employer will explain to the affected employee the circumstances of any overpayment and will assist the employee in the completion of a Request for Waiver of Claim for Erroneous Payment. It is understood that employees should notify the Employer of overpayment immediately.

Section 8. Employees shall have the right to copies of materials placed in, and to examine, their Official Personnel Folder (OPF), and any other official system of records concerning them, except for such documents prohibited to be shown by law or government-wide regulation. Upon request, an employee shall receive Copies of materials and documents in their OPF and any other official system of records that are not automatically provided by the Employer. The copies will be provided at the earliest practicable time. Employees are free to place in their OPF and any other official system of records established concerning them, any statement they wish to ask with regard to information contained in the OPF and other system of record.

Section 9. Supervisory Notes:

- A. If supervisory notes are kept on employees, the notes will be maintained in a secure fashion and not be revealed to anyone other than those who have a need to know.
- B. Supervisory notes or the applicable portion thereof used to support a disciplinary or adverse action are to be made available to the employee upon request.

Section 10. Maintaining personnel records describing how employees exercise rights guaranteed by the U.S. Constitution in accordance with applicable laws and regulations are prohibited.

Section 11. Whistleblower Protection.

Employees shall be free from reprisal for lawfully disclosing information which the employee reasonably believes evidences;

- A. A violation of any law, rule or regulation, or
- B. Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

ARTICLE 9

PROFESSIONAL EMPLOYEES

Section 1. In addition to the rest of this Agreement, the following provisions in this article apply to professional employees.

Section 2. Employees required by the Employer to attend a professional convention or conference will be in a duty status while in attendance. Travel (if any) to and from such conventions or conferences will be administered in accordance with the agency's travel policies and procedures.

ARTICLE 10

DUES WITHHOLDING

SECTION 1. It is agreed that unit employees who are members in good standing may authorize the payment of their dues to the Union through payroll withholding by voluntarily completing a Standard Form 1187 or equivalent. The Employer agrees that the list of unit employees from whom dues are deducted is confidential and will be treated as such. It is further understood that any disputes is solely between the Union, its locals, or members concerning dues withholding unless the dispute resulted from an administrative error by the Employer.

Section 2. Eligible Employees. To be eligible to make a voluntary allotment for the payment of Union dues, an employee must:

- A. Be in a unit covered by this Agreement;
- B. Be a member in good standing with the Union;
- C. Have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues; and
- D. Request the allotment on the prescribed form (SF-1187) or equivalent which has been certified by an authorized Union official.

Section 3. Responsibilities of the Union. The Union shall:

- A. Inform and educate its members on the voluntary nature of the dues allotment program, including conditions governing institution of allotments;
- B. Provide the SF-1187 forms to employees;
- C. State on the SF-1187 form the amount of dues to be withheld each bi-weekly pay period;
- D. Promptly forward completed SF-1187 forms to the appropriate servicing human resources office;
- E. Furnish written notification to the servicing human resources office concerning names and titles of Local Union officials authorized to certify the SF-1187 form; and

- F. Provide the appropriate servicing human resources office with written notification concerning:
 - 1. changes in the amount of Union dues; and
 - 2. The name of any employee who has been expelled or ceased to be a member of good standing in the Union within 15 days after the date of final determination.

Section 4. The Employer agrees to:

- A. Withhold dues on a bi-weekly basis, at no charge to the Union.
- B. Withhold dues in accordance with a schedule that may contain a duly authorized multi-level dues structure. The dues structure will be certified by the Union/Local President. The dues allotment will be effective the next pay period after receipt of the completed SF-1187.
- C. Transmittal of dues withheld each payday to the Union.
- D. Send a copy of all revocation of dues notice to the Local President as soon as received.
- E. Transmittal of dues withheld will include:
 - 1. An alphabetical listing of employees identified by AFGE local number and social security number in duplicate;
 - 2. The amount of dues withheld from each employee; and
 - 3. The total amount and number of deductions.

Section 5.

- A. An allotment may not be revoked for at least one year after the first deduction.
- B. A revocation shall be effective as of the first full pay period after the anniversary of the first deduction. To revoke an allotment, the employee shall submit a SF-1188 ("Revocation of voluntary Authorization for Allotment of Compensation for Payment of Employee organization Due") or equivalent to the Labor Relations Officer during the twenty-one day period beginning thirty (30) calendar days before the anniversary date and closing nine (9) calendar days before that anniversary date.
- C. If the employee does not submit the SF-1188 during that twenty-one (21) day period, his/her withholding

allotment may not be revoked. A revocation will not be accepted until the next open period thirty (30) days prior to the employee's anniversary date.

Section 6. Dues withheld will be sent to:

AFGE
National Secretary-Treasurer
80 F Street, N.W.
Washington, D.C. 20001

Section 7. The amount(s) of dues withholdings may be changed no more than twice in a calendar year but no more than once in a six (6) month period.

Section 8. The parties will exercise caution in the retention and release of information concerning employee dues withholdings.

Section 9. Employees who have a current dues withholding agreement in effect on the date this Agreement is approved need not execute a new SF-1187 to come under the provisions of this Agreement.

ARTICLE 11

USE OF EMPLOYER FACILITIES

Section 1. The provisions of any Employer controlled facilities is a matter for local level negotiations, to the extent they are within the control of local management and not within a secured or restricted area. Such facilities include office space, fax machines, electronic mail boxes, telephones, bulletin boards, meeting rooms, office equipment, and access to review laws, rules, and regulations as the employer maintains.

Section 2. The national level Union representative may use the same facilities and space provided to the Local Union by agreement solely between the union representatives.

Section 3. Use of facilities as stated in Section 1 for national level representatives at their duty locations is a matter for local negotiations.

Section 4. When national level Union representatives visit, the employer agrees to furnish, when available, the use of employer facilities as described in Section 1.

Section 5. The Parties agree that office space for the union could be useful in facilitating effective representation of unit employees. In the event that office space cannot be provided, management may bargain with the Union over alternative arrangements, in lieu of office space. This is a matter for local negotiations.

Section 6. Facilities for membership drives during break and lunch periods is a matter for local negotiations.

Section 7. Official publications of the Union may not be distributed by designated Union representatives during duty time.

ARTICLE 12

CHILD CARE FACILITIES

Section 1. The parties agree that child care facilities are beneficial to the employees and the Agency.

Section 2. Provisions for child care facilities is a matter for local level negotiations subject to applicable law and regulations.

ARTICLE 13

EMPLOYEE COUNSELING AND ASSISTANCE PROGRAM

Section 1. The Employer and the Union recognize the importance of an Employee Assistance Program for employees whose job performance is affected by alcoholism, drug abuse, emotional illness or other personal problems. The success of such a program is dependent upon participation by both the Employer and the Union. Employee participation in the program shall be voluntary.

Section 2. It is understood that the employee has the responsibility to maintain acceptable performance while he or she is on the job.

Section 3. Employee counseling may include referral to outside professional treatment and assistance sources.

Section 4. The Union shall inform unit members of the existence and operation of the program and refer those seeking assistance to the Program coordinator.

Section 5. On a periodic basis, the Parties shall publicize the Program, including the name of the Program Coordinator, to employees. The Parties hereby give their assurances of confidentiality for employee participants.

ARTICLE 14

FITNESS AND WELLNESS CENTERS

Section 1. The parties agree that fitness centers are beneficial to the well being of employees and the performance of their duties.

Section 2. Provisions for fitness and wellness centers are a matter for local level negotiations subject to applicable law and regulations.

ARTICLE 15

WORKMEN' S COMPENSATION

Section 1. The parties agree that employee(s) or witness(s) thereof, should report all on-the-job injuries immediately or as soon as possible to management.

Section 2. The appropriate Human Resources Officer or designee will provide the proper form(s) and assistance to the employee or representative required for medical treatment and/or claim for benefits to be filed with the Office of Workmen Compensation.

Section 3. The employee will be allowed to review all documents concerning Workmen's Compensation Benefits available, as-well-as procedures for filing for benefits, if the employee is not able to do so; his/her representative shall be afforded this opportunity.

Section 4. When an on-the-job injury is reported the employer will provide emergency or appropriate medical treatment for any such injury or illness suffered by an employee while on the job.

Section 5. The employer will counsel an injured employee on options and compensation benefits or types of leave, when the injury or illness causes an absence of more than three (3) days.

Section 6. The employer will counsel, a disabled employee, on all aspects of disability retirement, if appropriate, whereas, compensation claim is pending.

ARTICLE 16

FITNESS FOR DUTY

Section 1. In directing employees to undergo a fitness-for-duty examination, the employer agrees to observe applicable laws, regulations and Agency policies.

Section 2. In fitness-for-duty examination or evaluation processes where regulations require the employee have a representative, the employee will be advised of the availability of Union representation. It is understood that the employer may request the Union provide representation in situations where the employee or his/her immediate family refuse to designate a representative.

ARTICLE 17

HEALTH BENEFITS

Section 1. Employees in a non-pay status may remain covered by the Federal Employees Health Benefits (FEHB) Program in accordance with applicable laws and regulations and Agency Policies.

Section 2. Prior to entering a non-pay status, the employee may seek counseling from his/her servicing human resources office.

ARTICLE 18

SMOKING POLICY

Section 1. The parties agree that medical evidence indicates potential adverse health effects to persons constantly exposed to second-hand or passive tobacco smoke. Because of the seriousness of the potential adverse health effects involved, subjecting non-smokers to second-hand smoke has been determined to be unacceptable.

Section 2. The parties agree that provisions of a smoking policy is a matter for local level negotiations.

Section 3. Disputes arising from smoking policies shall be processed in accordance with the negotiated grievance procedure.

ARTICLE 19

REST BREAK FACILITIES

Section 1. Employees who work in areas where eating, drinking, or smoking are prohibited may leave their work areas when they take rest breaks authorized by this Agreement or when they take their lunch period.

Section 2. The provisions for an area specifically for rest breaks and/or lunch periods is an appropriate subject for local bargaining.

ARTICLE 20

HEALTH AND SAFETY

Section 1.

- A. It is recognized that the health and safety of the employees is a mutual concern of the Employer and the Union, and that the Employer shall provide a safe, sound and healthful working environment and conditions consistent with appropriate health and safety standards and controlling laws.
- B. The Parties will also cooperate by encouraging employees to abide by correct safety practices.
- C. Protective equipment shall be provided, maintained, and replaced by the Employer whenever such equipment is determined to be required for compliance with OSHA, HHS, and NCR regulations for protection against occupational exposure to hazardous chemicals or biological or radiological irritants which could cause illness or injury, as defined under OSHA, HHS, and NCR Regulations. The employer shall provide training when appropriate in the use of all protective equipment, such as respirators, but not limited to.

Section 2. Employees:

- A. Shall comply with OSHA, EPA Occupational Health and Safety Standards, rules, regulations, and orders;
- B. Will use the safety equipment, personal protective equipment and other health and safety devices provided by the Agency;
- C. Shall follow the procedures, provided or as directed, necessary for their protection;
- D. Shall report all work-related property and personnel accidents, and illnesses to management; and
- E. May decline to perform assigned tasks because of a reasonable belief that under the circumstances the task poses an imminent risk of death or serious bodily harm, coupled with a reasonable belief that there is insufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures. Such imminent risk may be caused by failure of the employer to provide appropriate protective clothing or equipment.

Section 3. Employees may voluntarily participate in immunization programs when EPA can provide or offer such services to employees.

Section 4. On local level health and safety committees, the Union will be permitted to designate one (1) bargaining unit employee to serve on the committee. The Parties agree that all confidential information will be protected and treated accordingly. It is understood that such committees are advisory bodies to management on health and safety issues.

Section 5. The Union will designate a representative for all safety and health matters which are beyond local scope and impact. The Employer will contact that individual when it is planning changes or modifications in its national health and safety program which will have an impact on bargaining unit employees at more than one location.

Section 6. The Employer agrees to furnish the Union the name and location of the Safety and Health Program Coordinator, Director EHSD, and other officials having responsibilities in the Safety Program.

Section 7. Union representatives on safety committees shall receive the same safety training opportunities as other committee members as a result of their membership on the committee.

Section 8. The Employer agrees to grant the Union access to any Material Data Safety Sheets maintained or prepared by the Employer, manufacturer or distributor on chemicals to which bargaining unit employees may be exposed. The employer agrees to implement the Hazard Communication Standards.

Section 9. When a health and safety inspection is conducted on the Employer's premises, a Union representative will be notified in advance and permitted to accompany the inspection team.

Section 10. The Agency may grant administrative excusal to employees because of any environmental condition problems when unhealthy, or unsafe conditions are such as to actually prevent working in a safe environment.

Section 11. Where union representatives are selected for appointment to a Field Federal Safety Council, they will be in a duty status to attend and participate in Council meetings.

Section 12. It is understood that employees may be required to undergo a medical monitoring examination. When the Agency provides for additional examinations (available only after all mandatory examinations), the Employer will give employees an opportunity to volunteer for the examination. When there are insufficient examinations available for all volunteers, the Employer will decide those to be examined based on the duties of employees and their actual or potential exposure to hazardous conditions.

Section 13.

- A. The Employer shall notify an employee involved in a reported job-related accident, as soon as possible, of all the options, responsibilities, and benefits under the Federal Employee's Compensation Act.
- B. Consistent with applicable law, the Employer agrees to compile and maintain the appropriate records involving occupational injuries and illnesses and reported possible causes of potential injuries or illnesses.

Section 14. If indoor air quality testing is already being conducted which provides the information listed below, upon request of the local Union health and safety designee, the employer shall provide an annual report to the union of the quality of air in agency work spaces where bargaining unit employees are located. The report shall contain:

- A. Percent of outside ambient air as compared to the American Association of Heating, Refrigeration, and Air Conditioning Engineers (AAHRACE) standards;
- B. Radon, asbestos, volatile organic hydrocarbons, ozone, and carbon monoxide levels.

Section 15. Where available under existing public health programs, the agency will offer the opportunity for all employees not covered by the Medical Monitoring Program to participate in an annual general physical examination program which will include indications of job stress and management.

Section 16. Union-Management Safety & Health Committees.

- A. The Agency may agree to establish or continue a joint safety and health committee at the national and local levels, and funding as available, as provided for in Executive Order 12196, 1-3. These committees shall make recommendations to the appropriate authorities with regard to occupational safety and health, in accordance with 29 CFR Part 1960, Subpart F.
- B. National level will have a Safety and Health Committee with equal representatives appointed by the Union as appointed by the Agency.
- C. Each local Safety and Health Committee will have at least one (1) appointed by the Union.

Section 17. Upon request, the Agency agrees to provide the Union a copy of all reports of safety and health inspections, accidents, and occupational illnesses, subject to the Privacy Act. The parties agree that such information may be sanitized.

ARTICLE 21

VISUAL DISPLAY AND CRT TERMINALS

Section 1. Within the agency's current work structure there are many positions which require extended periods of time on office equipment which has Visual Display or CRT Terminals and the use of such equipment is increasing.

Section 2. Employees who suspect that an adverse health effect is caused by use of a Visual Display, CRT Terminal, or Microfiche reader may make a report of the condition to their supervisor. The agency agrees to review factors associated with the Visual Display, CRT Terminals, and Microfiche readers which are related to Health effects.

Section 3. Rest breaks for VDT operators are an appropriate matter for local negotiations.

Section 4. The agency further agrees to utilize corrective measures to reduce the effects of any possible adverse factors, such as but not limited to:

- A. Adjustable chairs to allow for adjustment of individual machines to suit each operator shall be available to provide optimum comfort for heights, back and tension, and the minimum amount of physical stress for each operator. Chairs with full length and half length arm rests as well as chairs without arm rests shall be provided.
- B. Providing a "hood" for the screen to avoid glare or snap on type screens.
- C. Dimmer switches will be installed so the VDT operator can adjust the illumination.
- D. All working surfaces and the paneling materials around the workstation shall be low reflecting.
- E. Workstations shall be adjustable so that while typing the angle of the forearms are proper.
- F. Printers used in the offices will be equipped with approved noise suppressor covers to keep the noise at a safe level.
- G. Ionizing radiation levels of the VDTs shall be checked for safety.
- H. Positioning VDTs proper angles to windows to avoid glare.

- I. Avoid placement of VDTs near an unshaded or uncovered window.
- J. Making every reasonable effort to reduce sources of glare surrounding the work station.
- K. Provide voluntary eye examinations.

All of the above actions are subject to the availability of funds.

Section 5. The agency will provide adequate and safe ventilation, humidity, air conditioning, and lighting in each office. When deficiencies are found to exist, the agency will make the correction of such deficiencies. Such action is contingent upon funds being available and subject to GSA standards and requirements.

Section 6. VDT operators, who become pregnant may request to temporarily perform non-VDT duties within the workplace. A requested reassignment to non-VDT duties will be conditioned upon supervisory approval and certification from the operator's physician. This certification will state that: because of physical, psychological, or emotional reasons, it is in the interest of the employee or her fetus that she refrain from any operation of a VDT for the duration of her pregnancy. (The physician may substitute comparable language).

Section 7. When there is a medical certification that an employee cannot operate a VDT because of job related optical problems and the operation of a VDT is required in the performance of his/her duties, the agency will take appropriate action to correct the problem where possible. Employee(s) are eligible for VDT-related eye exams and assistance based on supervisory certification that the employee frequently uses a VDT in the course of his/her official duties.

Section 8. If an employee requires eye protection to perform his/her duties the agency shall provide safety eyeglasses. In making its procurement, the Agency will ensure that health, safety, and quality are met.

Section 9. Employees directed by management to secure eye protection may do so on official time.

Section 10. An employee who reasonably believes that the VDT to which he/she is assigned is malfunctioning may request, through his/her supervisor, to have the VDT checked out.

Section 11. Should a larger question arise concerning the safety and health of VDTs, including physical discomfort, both physical and psychological stress, etc., the matter may be referred by the employee (through his/her supervisor) to the parties safety and health committee for investigation and resolution. The investigations shall include, as appropriate, an evaluation of

the ergonomic design, illumination, glare control, or other problems, findings shall be provided to Management and the union. Such actions are contingent upon funds being available.

ARTICLE 22

HOURS OF WORK

Section 1. The administrative workweek means a period of seven (7) consecutive calendar days designated in advance by the head of an Agency. For employees of EPA the seven (7) consecutive days begin on Sunday.

Except for employees on the compressed work schedules, the regularly scheduled workweek for a full-time employee means the forty (40) hour period within an administrative workweek an employee is regularly scheduled to work. For part-time employees, it means the officially prescribed days and hours within an administrative workweek during which the employee is regularly scheduled to work.

Section 2. The parties agree that compressed work schedules and flexitime plans are appropriate matters for bargaining at the local level.

Section 3. Employees who normally may not leave their assigned tasks for any personal reasons (e.g., to obtain coffee; to make telephone calls; to use the bathroom, etc.) will be permitted a 15 minute break in the morning after two (2) hours of work and a 15 minute break in the afternoon after two (2) hours of work. Other employees who are permitted to leave their assigned tasks as conditions permit may continue to do so. However, such unscheduled breaks may not exceed a total of 15 minutes during each four (4) hours of duty.

Section 4. Except in situations where the organization would be seriously handicapped in carrying out its functions or where costs would be substantially increased, efforts will be made to give an employee two (2) weeks notice of a change in tour of duty.

Section 5. The employee will consider an Employee's needs to change car pools, day care, and eldercare schedules or other work related commuting arrangements, when scheduling a change in tour of duty.

ARTICLE 23

OVERTIME

Section 1. When the Agency decides to assign overtime to employee(s) who possess the requisite skills and abilities for the assignment, in the same organizational unit performing the same type of duties, the assignment(s) will be fair and equitable among qualified employees.

Section 2. Overtime shall not be worked unless authorized by the Agency. The parties agree that assignment of overtime will neither be distributed or withheld as a penalty or reward.

Section 3. The Agency will consider its needs versus the needs of the employee(s) when requests are made to be excused from overtime and may seek qualified substitutes for the assignment(s).

Section 4. If practicable, the agency will provide at least forty-eight (48) hours advance notice to employees when a decision is made to assign overtime, or as much notice as the Supervisor is given, minus time to contact the employee.

Section 5. Qualified employees assigned to a particular task during regular working hours normally will be given the opportunity to complete the assignment.

Section 6. Compensation for overtime work will be made in accordance with applicable laws and regulations. When allowable under controlling laws, regulations, and agency policies employees may request compensatory time in lieu of overtime pay.

Section 7. Unless flexitime or compressed work schedules apply, the basic workday for full-time employees shall be eight (8) hours each day.

Section 8. Travel by bargaining unit employee(s) outside regularly scheduled duty hours is not compensable through overtime pay or compensatory time unless such travel has been officially ordered and approved and meets one of the criteria cited below:

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

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

Section 9. Overtime work performed by employees called back to work outside of and unconnected with their regular work hours is deemed at least two (2) hours in duration for the purpose of overtime compensation, regardless of what portion of the two (2) hours work is performed.

Section 10. Employees required to remain in a standby status will be paid in accordance with applicable law or regulations.

ARTICLE 24

LEAVE

Section 1. Annual leave as provided for by law is an employee's right and accrues automatically. Employees will be given the opportunity to use their annual leave during the year of accrual, subject to approval by management and based on exigencies of the Agency's work. In granting the use of all categories of leave, the Agency will consider its needs versus the needs of the employee.

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

Section 2. When requesting emergency annual leave, the employee will cause his/her supervisor to be notified of their request as soon as possible, but not later than two (2) hours after the start of their regularly-scheduled tour of duty, unless circumstances prevent the employee from making contact within this period of time. When a request cannot be made in the first two (2) hours, the employee will cause the request to be made as soon as practical. The Agency will make a good faith effort to grant emergency annual leave.

Section 3. When it is impracticable to grant all requests for annual leave for a given period, the supervisor shall give consideration to all the following factors:

- A. The needs of the employer to accomplish the Agency's mission;
- B. Whether the employee has sufficient annual leave on record;
- C. Possibility of the employee having to forfeit leave;
- D. Seniority (SCD);
- E. Mitigating circumstances.

Section 4. Jury duty or witness appearances shall be administered in accordance with applicable law, rules, and regulations.

Section 5. Upon request, and subject to supervisory approval, an employee may work compensatory overtime, for the purpose of taking time off without charge of annual leave when personal religious beliefs require that the employee abstain from work during certain periods of the workday or workweek. The parties

recognize that a religious observance is a bonafide reason for requesting annual leave or leave without pay.

Section 6. Advanced annual leave may be granted to the extent of applicable law and regulations that apply; however, an employee may not be advanced annual leave beyond the amount he/she will earn in the current leave year.

Section 7. Tardiness of less than one (1) hour may be excused at the discretion of the supervisor. However, if annual leave is charged, the employee will not be required to perform work until leave time charged has expired.

Section 8. When administrative excusal is granted in the case of inclement weather, or other conditions, the employer will make a reasonable effort to notify the Union, then the employees on duty as soon as possible. Employees in an approved leave status will not be affected. Essential employees may be required to remain on duty.

Section 9. An employee will be granted annual leave or leave without pay to attend the funeral of a member of his/her immediate family. An employee will be granted "funeral leave" to attend the funeral or memorial services of a relative who is a veteran as covered by 5 C.F.R. Chapter 1, Subpart H.

Section 10. Employees who volunteer to serve as blood donors without compensation may be excused for up to four (4) hours to recuperate. If the donor location is not the work site, the excused time for donation and recuperation will not include transit time. It is understood the excusal applies only to the day of donation.

Section 11. As a general rule, where the polls are not open at least three (3) hours either before or after an employee's regular hours of work, he/she may be granted an amount of excused leave which will permit him/her to report for work three (3) hours after the polls open or leave work three hours before the polls close, whichever requires the lesser amount of time off. Under exceptional circumstances where the general rule does not permit sufficient time, an employee may be excused for such additional time as may be needed to enable him/her to vote, depending upon the particular circumstances in his/her individual case, but not to exceed a full day.

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

Section 12. Leave related to pregnancy, childbirth, or care of

infants may consist of sick leave, annual leave, or leave without pay, as applicable. Female employees may use sick leave only when incapacitated for duty or when undergoing examination or treatment related to pregnancy or childbirth. A male employee may request only annual leave or leave without pay in order to provide care for his minor children or the mother of the newborn child. An employee may request only annual leave or leave without pay for adoption purposes.

Section 13. Leave without pay may be granted to employees, subject to management's approval, and in accordance with applicable law, policies, rules and regulations.

Section 14. Leave without pay may be granted to employees, subject to management's approval, and in accordance with applicable policies, rule, law and regulation in lieu of sick or annual leave for employees who has filed a claim for workers compensation or disability retirement.

Section 15. Accrued sick leave shall be granted to employees when they are incapacitated for the performance of their duties by sickness or injury; for medical, dental or optical examination or treatment; when a member of the immediate family of the employee is afflicted with a contagious disease (as prescribed by public health authorities having jurisdiction) that requires the care and attendance of the employee; or when in the opinion of the above public health authorities, the presence of the employee at his/her post of duty would unduly jeopardize the health of other employees.

- A. Employees requesting sick leave, will notify their supervisor as soon as possible but no later than two (2) hours after the beginning of their regularly scheduled tour of duty. When an employee's situation will require him/her to be absent longer than one (1) day, the employee will so indicate the expected return to duty date.
- B. For sick leave periods of not more than three (3) consecutive days, the employee shall not be required to submit a physician's statement of incapacitation or other acceptable evidence unless there is reasonable evidence of abuse.
- C. In the event of suspected sick leave abuse, a determination will be made based on the facts. If warranted, the employee will be counseled. The counseling will identify the problem to the employee and advise the employee of the wisdom of the prudent use of sick leave.
- D. An employee will be counseled prior to receiving a sick leave letter of requirement. If improvement does not occur within a reasonable period of time, and an employee who is found abusing leave may be issued a

"sick leave letter of requirement." The employer will review a "sick leave letter of requirement" not later than six (6) months after issuance. If sufficient improvement occurs, the letter will not extend beyond one (1) year; however, the letter may be withdrawn at any time.

Section 16. Subject to applicable law, rule and/or regulation, and management's approval, advance sick leave may be granted to an employee. Employees should be aware that sick leave cannot be advanced in excess of thirty (30) days or the amount of leave the employee would otherwise earn during the remaining term of his/her appointment, whichever is least.

ARTICLE 25

HUMAN RESOURCE DEVELOPMENT

Section 1. The purpose of training and career development is to enable employees to increase the knowledge, proficiency, ability, skill and qualification in the performance of their official duties. It is understood that the choice of subject matter, areas for training, selection, and assignment of training priorities is a function of management and the program will be administered in accordance with applicable laws, regulations and agency policies.

Section 2. Self development requires the dedication of an individual's personal time and resources. The parties jointly recognize that responsibility and encourage employees to make such personal commitments. The employer will not bear the cost of any self-development training if the training has not been approved in advance as required by EPA regulations.

Section 3. The Parties encourage employees to review their official personnel folder to assure that training is recorded and that the folder is otherwise up-to-date.

Section 4. When the Employer at a local level uses a committee process to formulate and recommend training policies and practices affecting employees in the unit, the Union will be given the opportunity to have at least one (1) bargaining unit employee at the location to participate as a committee member on matters affecting the bargaining unit(s) employees.

Section 5. The Agency will administer its Upward Mobility Program in accordance with applicable laws, rules and Agency policies. The Parties will encourage eligible employees to apply for participation in the Agency's Upward Mobility Program when such opportunities are available. The Employer agrees to periodically evaluate the Program's operation and make modifications where appropriate.

Section 6. When the employee so requests, the reason(s) for disapproval of a training request submitted in writing will be given to the employee in writing.

Section 7. Employees required to join and maintain membership in a professional organization as a condition of continuing employment will have their memberships in such situations paid by the Employer in accordance with applicable regulations and policies.

Section 8. The Employer will consider employee requests for variations in their normal work schedules for educational

purposes. The Employer's ability to carry out its activities in a timely fashion will be the primary determinant in the consideration of such requests.

ARTICLE 26

MERIT PROMOTION

Section 1. The Parties agree that the purpose and intent of the provisions contained herein are to insure that merit promotion principles are applied in a consistent manner with equity to all bargaining unit employees and without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex, sexual preference, national origin, non-disqualifying physical or mental handicap, or age and shall be based solely on job-related criteria.

- A. It is agreed that the Employer will use the skills and abilities of bargaining unit employees to the extent possible consistent with mission requirements, merit principles, and applicable laws and regulations.
- B. Applicants must meet time-in-grade and time-after competitive appointment requirements within thirty (30) days of the closing date of an announcement to be eligible for promotion consideration, however, applicant must meet all X-118 or X-118C qualification requirements and any selective placement factors by the closing date of the announcement.

Section 2. Definitions: The following definitions apply to the Merit Promotion Plan:

- A. Area of Consideration (Area of Publicity). The designated organizational and/or geographical area in which an intensive search is made for candidates in a specific promotion action. This is the area in which the announcement is publicized.
- B. Best qualified Candidates. Those eligible candidates who rank at the top when compared with the other candidates applying under the announcement and who are referred to the selecting official on a Merit Promotion Certificate.
- C. Eligible Candidates. Those who meet the minimum qualification standards and possess all appropriate selective placement factors for a particular position.
- D. Selective Placement Factors. Knowledge, skills, abilities, and other characteristics (KSAOs) are in addition to OPM qualification standards used to determine basic eligibility because they are necessary for satisfactory job performance.
- E. Quality Ranking Factors. Knowledge, skills, abilities, and characteristics that are issued to rank eligible candidates.

- F. Career Promotion. Promotion without current competition when at an earlier stage an employee was selected from a civil service register or under competitive promotion procedures for an assignment intended to prepare the employee for a higher grade level.
- G. Positions with Known Promotional Potential. Positions from which career promotions may be made because adequate competition was held at an earlier stage. These include among others: career-ladder Positions; apprentice Positions; trainee Positions; understudy Positions; Positions filled at grade levels within the established career ladder, and upward mobility positions.
- H. Promotion. The change of an employee to a Position at a higher pay or grade level.
- I. Selecting Official. The Supervisor/manager who has authority to select an employee for assignment to a Position. The selection process is a management prerogative involving the exercise of informed judgement. Each selecting official must be aware of and adhere to equal opportunity Principles.
- J. Concurrent Consideration. The consideration of employees who are entitled to automatic referral concurrently by the selecting official along with certified applicants. For example, referrals by special appointing authorities, candidates from outside registers, Priority considerations, non-competitive Promotion eligible, etc.
- K. Nepotism. Supervisors and public officials as defined in FPM 310, are Prohibited from Participating in any Portion of any selection process if a relative is under consideration. Neither supervisors nor public officials may advocate the selection of a relative. If a relative of the selecting official is among the candidates certified for selection, he/she must disqualify himself/herself and the selection authority exercised a higher level in the chain-of-command.

Section 3. Use of Competitive Procedures.

- A. Competitive Promotion Procedures. must be applied to the following actions:
 - 1. Temporary promotions for periods in excess of 120 days;
 - 2. Term promotions;
 - 3. Selection for details for more than 120 days to a

higher graded position or to a position with known promotion potential;

4. Selection for training required for promotion. (That is, an employee is not eligible for promotion unless he or she has completed training);
5. Reassignment or demotion to a position with more promotion potential than the position last held (except as required by reduction-in-force regulations or in lieu of disability retirement);
6. Transfer to a higher graded position;

B. Competitive. promotion procedures are not required for the following actions:

1. A promotion without current competition when at a stage an employee was selected from a civil service register or under competitive promotion procedures for an assignment intended to prepare the employee for the position being filled.
2. A promotion resulting from an employee's position being classified at a higher grade.
3. A career ladder promotion following non-competitive conversion of cooperative education student in accordance with the requirements of FPM Chapter 308 or appointment under a special authority, e.g. Federal Junior Fellowship Program, Former Action Volunteers, Peace Corps Personnel, or conversion of a Veteran Readjustment Act (VRA) appointee;
4. A reassignment or demotion from a position having known promotion potential to a position having no higher potential;
5. A transfer at the same grade level;
6. A temporary promotion of 120 days or less;
7. Selection of a candidate from the Reemployment Priority List for a position at a higher grade than the one last held in the competitive service;
8. Repromotion to a grade or position from which an employee was demoted without personal cause and not at his or her request;
9. Consideration of a candidate not given proper

- consideration in a competitive promotion action;
10. Conversion of presidential management intern to a career ladder position upon completion of the program;
 11. Details of 120 days or less to higher graded positions;
 12. An increase in rate of pay as a result of a mandatory reduction-in-force action.
 13. A promotion resulting from the upgrading of a position without significant change in duties and responsibilities due to the issuance of a new classification standard or the correction of an initial classification error;
 14. A position change permitted by reduction-in-force regulations (see Chapter 351 of the FPM).

Section 4. Area of Consideration Publicity.

- A. The minimum area of consideration will be an organizational unit, no less than a division or laboratory, which is considered sufficient to attract more than one qualified candidate for promotion consideration. The local appointing authority has the option of establishing an area of consideration larger than the minimum prescribed above, especially if experience shows that those minimum areas fail to provide enough qualified candidates.
- B. When the minimum area of consideration fails to provide at least two highly qualified candidates, the area of consideration may be broadened and the position reannounced, except as provided in Paragraph C below.
- C. When the area of consideration is commuting area-wide and fails to provide at least two qualified candidates, the selecting official, with the concurrence of the servicing Human Resources Officer or designee, may elect to fill the vacancy from the one qualified candidate without further recruitment and extension of the area of consideration, if:
 1. Further efforts to locate additional candidates would impose unnecessary delays in filling the position and continuity of occupancy is deemed of critical importance; or
 2. Personnel ceiling or budget constraints make extension of the area of consideration impracticable; or

3. The position is a hard-to-fill type (e.g., some scientific and professional positions, where only one qualified candidate may be available).

Section 5. Methods of Locating Candidates

- A. Announcement of Vacancies. Local human resources offices can develop their own Merit Promotion Announcement form that provides appropriate information. The information on the form will be provided for each vacancy announced and will be publicized so that all eligible candidates within the area of consideration have an opportunity to apply. Amendments, extensions, and cancellations of announcements must be publicized in the same area of consideration as the original announcement. All announcements shall be posted not later than the first day of the opening period.
 1. Individual Vacancies. Announcements for specific vacancies shall remain open for at least 10 workdays after posting. However, when the area of consideration is broader than the commuting area or is extended beyond the commuting area, vacancy announcements shall remain open for at least 15 workdays after posting. However, by mutual agreement of the local parties, different periods of time are appropriate matter for local negotiations.
 2. Open Continuous Vacancies. Open continuous announcements may be used to advertise recurring or hard-to-fill vacancies, provided they are periodically reissued or brought to the attention of employees at least annually so that they may have an opportunity to update their applications. All employees with status who file under such announcements will be automatically considered for all covered vacancies.
- B. Priority Consideration. Employee(s) with this status shall be referred to the selecting official before any candidates under a merit promotion action are considered. This is given after determination that a candidate was not properly considered in a previous promotion action which was allowed to stand (e.g., the candidate's name was not referred and should have been). Candidates will receive priority consideration for the next appropriate vacancy.
- C. Repromotion Consideration. This is the referral of a candidate to a selecting official for repromotion to a grade or position from which the employee was demoted or given grade/pay retention in the Agency without personal cause, that is, without unacceptable

performance or misconduct on the part of the employee and not at his or her request. This referral is made before the promotion action is processed. Acceptance of a lower grade position is lieu of reduction-in-force or in lieu of relocation in a transfer of function, or demotion due to classification error, is not a demotion at the employee's request for this purpose. Note that persons eligible for repromotion considerations have or will have actually lost something in terms of grade, whereas priority consideration eligible have failed to receive proper consideration for a given position. For positions where there are repromotion and priority consideration eligible, those entitled to repromotion consideration are referred before those entitled to priority consideration. Entitlement to repromotion will be granted to each affected employee for 2 years.

D. Concurrent Consideration. Applicants who meet the criteria for concurrent consideration will be referred on separate lists to the selecting official.

E. Automatic Consideration.

1. Employees absent in military service will receive automatic consideration for promotion for all positions for which they are eligible, under the jurisdiction of their appointing office, as long as they have reemployment rights.
2. Employees assigned to International Organizations; President's Executive Interchange, IPA, and similar programs can also receive automatic consideration for all or designated positions for which qualified, within the jurisdiction of their appointing office.
3. In all cases of automatic consideration, employees must submit the required forms (SF-171 and appraisals of performance) to be retained in an automatic consideration file by the responsible Servicing Human Resources Office.
4. Employees going on extended approved leave or official travel may obtain automatic consideration during this absence by submitting the required forms to the Servicing Human Resources Office before leaving.

Section 6. Ranking and Referral

A. Ranking of Candidates. Candidates will be ranked according to the scores assigned to them during the rating process. Candidates with the highest scores will be designated as best qualified for referral to the selecting official.

B. Referral of Candidates

1. Normally, the top ten (10) candidates will be designated as the best qualified and referred to the selecting official. However, candidates with tied scores will also be referred to the selecting official.
2. When the best qualified certificate is to be used for more than a single vacancy, additional candidates (if available) may be added for each additional vacancy.
3. Best qualified candidates will be certified to the selecting official on a Merit Promotion Certificate.
4. In all instances candidates will be certified alphabetically.

Section 7. Evaluating Small Numbers of Candidates. When there are ten (10) or fewer qualified candidates for a vacancy, management may evaluate them without using precise distinctions, ratings, subject matter experts (SMEs), and panels. The following procedures will apply when ten (10) or fewer candidates are to be evaluated for a position:

1. All candidates will be screened for basic qualifications and qualified candidates will be referred to the selecting official in alphabetical order, as best qualified candidates without further rating and ranking.
2. Human resources officials must be able to distinguish the quality level differences among candidates and/or the basis for the differentiation among candidates, if necessary.
3. Vacancy announcements will be advertised in the broadest practical area of consideration.

Section 8. Interviews.

1. When the selecting official receives a merit promotion certificate as a result of a competitive announcement, he or she may elect to interview the candidates referred. If any candidate is interviewed, all candidates must be interviewed.
2. Local agency employee candidates will normally be given a personal interview.
3. The selecting official is not required to interview any candidate previously interviewed by him/her within the past six months for a similar

vacancy. A similar vacancy is one with the same title, series, and grade. However, this must be documented in writing and sent to the servicing Human Resources Office.

4. The interview requirement stated above is separate for each Merit Promotion Certificate issued. Therefore, when several certificates are issued for one vacancy (e.g., multiple grade level), the selecting official can elect to interview and select from any one certificate.
5. For referrals which are not considered a part of the competitive merit staffing process (e.g., employee candidates eligible for non-competitive selection and referred on separate lists), the selecting official may elect to interview all, or none of the candidates referred.

Section 9. Action by Selecting Official.

- A. The selecting official will indicate the selection or other action on the Merit Promotion Certificate. The selecting official may elect to non-select all candidates. Final selection is subject to concurrence by the servicing Human Resources Officer or designee before the selection becomes official.
- B. The selecting official should complete the selection or other action by the deadline listed on the Merit Promotion Certificate and this Agreement. If there is good reason for a delay in the action, the servicing human resources office can approve an extension, if necessary. Local human resources offices can establish their own limits to ensure timeliness of merit promotion actions
- C. The servicing Human Resources Office will arrange for the release of the selectee from his or her current position. Normally, an employee will be released not later than one complete pay period after selection.

Section 10. Use of Existing Merit Promotion Certificate for Unanticipated Vacancies. When an additional vacancy occurs in the same position (same title, series, grade and duties) and organizational location as a previously announced position, the selecting official may use the same merit promotion certificate to select additional candidates, if he/she desires, provided no more than 150 days have elapsed from the date of the original merit promotion certificate.

Section 11. Notifying Candidates of Merit Promotion Results.

- A. Written Notice. Each servicing Human Resources Office is responsible for notifying all employee applicants of

the results of a Merit Promotion vacancy Announcement. Any form can be used for this purpose, provided it supplies the information shown below.

- B. Information to be Provided. All employee applicants under Merit Promotion will receive the following information when a vacancy is concluded:
1. Whether he or she was found eligible for the position;
 2. Whether he or she was included in the group referred to the selecting official from which the selection could be made;
 3. Who was selected; or
 4. The vacancy was canceled.
- C. Additional Information. In addition to the above written information, any employee applicant can request and receive information on:
1. Areas, if any, he or she should improve to increase the chances for future promotion; and
 2. The employee applicant's own rating assigned in the evaluation process.

Section 12. Maintaining Merit Promotion Records.

- A. Responsibility. Each servicing Human Resources Office is responsible for maintaining a complete record of each merit promotion case. These records must be kept for two (2) years after the closing of each case, or until sixty (60) days after an OPM evaluation, whichever occurs first.
- B. Contents of Records. Each record should contain sufficient information to allow reconstruction of the Promotion action, including documentation on how employee candidates were rated and ranked.
- C. Appropriate Regulations. These records are subject to the provisions of both the Freedom of Information Act and the Privacy Act.

Section 13. Information Request. Upon request, in connection with a formal grievance and consistent with 5 U.S.C. 7114(B)(4), the Union will be furnished procedural information on a specific promotion action. It is understood by both parties that in the interests of privacy, regulation or law; some information may be precluded from release. The Union will treat any information received with confidentiality.

ARTICLE 27

MERIT PROMOTION COMPLAINTS

Section 1. General

This article discusses some of the criteria and the preliminary steps concerning complaints involving promotion actions; including rating and ranking procedures, postings, non-selection, remedies, and all other matters relating to promotions. It is a supplement to the negotiated grievance procedure and is not intended to limit any employee from properly filing grievances in any way.

Section 2. Employee Complaints

Mere non-selection for promotion from a group of properly ranked and certified candidates is not grievable. Other merit promotion-related complaints must be resolved through the negotiated grievance procedures.

Section 3. Priority Consideration

Employees who were not afforded proper consideration in a previous promotion actions (e.g., the candidate was not referred and should have been, or a mistake in certification was made) must be given priority consideration for the next appropriate vacancy; i.e., the candidate's name shall be referred to the selecting official before any candidates under a merit promotion action are considered.

Section 4. Reconstruction of Improper Action

Where a promotion action is shown to have been flawed, before any corrective actions are implemented, i.e., displacing, demoting, etc., the promotion action will be audited and reconstructed to determine if the corrected action would have delivered a different result.

- A. Each servicing Human Resources Office is responsible for maintaining a complete record of each merit promotion case. These records must be kept for 2 years after the closing of each case or 60 days after an OPM evaluation, whichever occurs first.
- B. Contents of Records. Each record should contain sufficient information to allow reconstruction of the promotion action, including documentation on how employee candidates were rated and ranked.

If it can be determined that a grievant would have benefitted from the reconstructed action, the employee shall be made whole to the extent consistent with law, rule and

regulations.

ARTICLE 28

CAREER LADDER PROMOTIONS

Section 1. It is the policy of the Agency to provide appropriate opportunities for bargaining unit employees to develop and advance in their careers.

Section 2. Employees in career ladder positions will be given maximum opportunity to reach the full potential of their assigned career ladders. Upon placing an employee in a career ladder position, the Supervisor will discuss the job requirements and expectations for the employee to reach the next higher level. The Supervisor will hold these discussions at each level of the employee's progression within the career ladder.

Section 3. Career ladders are not automatic, an acceptable level of performance must be demonstrated for progression. Employees in career ladders will clearly demonstrate the ability to perform at the next higher grade level before being promoted to the next grade in the career ladder. Once the promotion has been made, supervisors will assign work at the new grade level.

Section 4. At the time an employee meets time-in-grade and any other legal promotion requirements, the Supervisor will make a decision to promote or not promote. This decision will be made in a timely manner.

Section 5. The Supervisor will periodically provide feedback to the employee about their performance in the career ladder position.

Section 6. Employees not meeting the criteria for promotion will be counseled by their Supervisor regarding areas needing improvement before the promotion can be effected in accordance with applicable law, rules, or regulation.

ARTICLE 29

EVALUATING CANDIDATES FOR PROMOTIONS

Section 1. It is agreed that the Employer shall use the skills and abilities of bargaining unit employees to the maximum extent feasible consistent with mission requirements, merit principles, and applicable laws and regulations.

Section 2. Qualification Standards

The minimum qualification standards for in service placement prescribed by the Office of Personnel Management and appropriate selective placement factors will be used to determine basic eligibility of candidates for promotion consideration. All qualification determinations shall be made by the servicing human resources office and documented in the record.

Section 3. Selective Placement Factors

Selective placement factors are knowledge, skills, or abilities essential for satisfactory performance in the job to be filled. They are considered to be part of the minimum qualification standards and are substantiated by the position description. Justification for use of selective placement factors will be recorded in the merit promotion file and announcements will identify the minimum qualification standards, including selective placement factors, which apply to the position being advertised.

Section 4. Legal and Regulatory Requirements

Applicants must meet time-in-grade and time-after competitive appointment requirements within thirty (30) days of the closing date of an announcement to be eligible for promotion consideration (including temporary promotion). The only exception is to allow for submitting a written request for a time-in-grade waiver to the Director, Office of Human Resources Management, EPA Headquarters or his/her designee, based on a hardship to the Agency. However, the applicant must meet all X-118 or X-118C qualification requirements and any selective placement factors by the closing date of the announcement.

Section 5. Evaluation of Candidates

Candidates eligible for non-competitive selection will not be rated along with promotional candidates but will be referred to the selecting official on a separate list without evaluation.

Section 6. Evaluating More than Ten (10) Candidates

When there are more than 10 basically eligible candidates for a vacancy, they will be evaluated as to the degree to which the candidates possess the knowledge, skills, and abilities (KSAs) identified as ranking factors on the vacancy announcement, in accordance with the following guidelines:

- A. The knowledge, skill and ability evaluation (quality ranking) factors are developed by a subject matter expert, with the assistance and review of the servicing Human Resources Office.
- B. The KSA evaluation (ranking) factors are determined through job analysis, which is the systematic process of collecting and analyzing information about the position to identify the most desirable job-related KSAs required to perform the duties of the position.
- C. Candidates are evaluated by a personnel specialist, subject matter expert (SME) or rating panel. The use of a rating panel in lieu of an SME is the discretion of the selecting official. Panels will be selected in accordance with the guidelines in Section 10 of this Article.
- D. The total background of the candidate is considered by the evaluator in rating candidates, including experience, training, performance, rating, outside activities, awards, etc.
- E. Approved rating criteria (often referred to as crediting plans) is used by the evaluator(s) in identifying the best qualified candidates. Any rating criteria used must be consistent with the instructions in Federal Personnel Manual Supplement 335-1, Evaluation of Employees for Promotion and Internal Placement.
- F. Rating criteria is uniformly applied to all candidates and provides for designation of a best qualified group based on point scores reflecting candidates' relative qualifications.
- G. The ratings of all candidates will be documented.

Section 7. Evaluating 10 or Fewer Candidates. When there are 10 or fewer qualified candidates for a vacancy, management may evaluate them without using precise distinctions, ratings, subject matter experts (SME's), and panels. All candidates will be referred on a certificate to the selecting official as best qualified.

Section 8. Candidate's Responsibility.

- A. It is the candidate's responsibility to include all relevant information regarding experience, education, training, self-development, awards, commendations, and outside activities in their application. In addition, the law allows that the performance appraisal be used as a factor in making personnel decisions.
- B. Applicants must submit a copy of their most recent performance appraisal with their applications. The qualifications demonstrated by experience, training, awards, performance ratings, and other information submitted will be assessed in terms of their bearing on the ranking factors.
- C. Credit may be given when there is enough information to indicate the job-relatedness and value of any experience, training, awards, etc.; length of service, length of experience, or level of formal education may be used as an evaluation factor when there is a clear and positive relationship with the requirements of the position to be filled.

Section 9. Methods of Evaluation

- A. A job analysis will be conducted by the office filling the position to determine the ranking factors; knowledge, skills, abilities, and other characteristics (KSAOs) required from successful performance in the position to be filled.
- B. Ranking factors may be weighted equally. The weight is based on the importance of the factor to the position to be filled. The servicing Human Resources Office has the responsibility to review the factors and weights for relevance to the position.
- C. For wage-grade jobs, the procedures contained in the Office of Personnel Management's Job Qualification Standard System for Trades and Labor Occupations (X--118C) will be used.
- D. Ranking of eligible candidates by the servicing Human Resources Office, subject matter expert or rating panel will be accomplished by comparing the candidate's qualifications (e.g., all relevant information regarding experience, training, awards, performance ratings, etc.) against the rating factors in order to determine their relative merit for promotion.

Section 10. Use of Rating Panel. When rating panels are used, they will consist of at least three members. At least one panel member must be a subject matter expert in the occupational field of the vacancy and at least one must be familiar with the work of the organization. Panel members must be at a grade equal to or above the grade level of the position being filled. The

selecting official will not serve on the rating panel for the position. The servicing human resources office shall make every effort to ensure that persons designated to serve on the panel include women and men, as well as representatives from minority groups and persons with disabilities to ensure cultural diversity.

ARTICLE 30

REASSIGNMENT

Section 1. The provisions of this Article apply solely to reassignments within the bargaining unit(s).

Section 2. An employee who is reassigned will be given a reasonable period of time to learn and satisfactorily perform the functions of his/her new position in accordance with the Agency's approved Performance Management System as incorporated into this Agreement.

Section 3. Employees desiring reassignment within the Agency may either apply for vacancies through the merit promotion process, directly to the organization which they are interested in, or to the appropriate Human Resources Office.

Section 4. Reassignments to positions with promotion potential higher than the employee's current position are processed under the provisions of the Merit Promotion Article of this Agreement.

ARTICLE 31

DETAILS

Section 1. The provisions of this article apply solely to the assignment of bargaining unit employees within the unit. A detail is the temporary assignment of an employee to a different position or set of duties for a specified period of time. There is no formal position change, officially, the employee continues to hold the position from which detailed and keeps the same status and pay; with the employee normally returning to his/her regular duties at the end of the detail.

Section 2. Details shall be rotated equitably among those employees who have been determined by management to have the capacity and requisite skills for assuming the responsibilities of the assignment unless competitive procedures are used.

Section 3. The Employer will provide a memorandum to the employee documenting official details to higher level classified positions of more than ten (10) consecutive workdays. Official details in excess of thirty (30) calendar days will be recorded on an SF-52 "Request for Personnel Action."

Section 4. An employee temporarily assigned to a classified position at a higher level for more than thirty (30) calendar days will receive a temporary promotion as soon as practicable, but no later than the 31st day of the assignment. The employee must meet any qualification and eligibility requirements to be promoted.

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

Section 5. Details to a lower classified position shall not affect the employee's classification or salary.

Section 6. Details to less physical, stressful or other demanding positions may be used for employees undergoing or completing medical treatment.

Section 7. Length of details will be in accordance with OPM Regulations.

Section 8. Management will keep details within the shortest practicable time so that they will not promote any compromise of the open-competitive principles of the Merit Promotion System.

ARTICLE 32

SELECTIVE PLACEMENT PROGRAMS

Section 1. The Parties hereby agree to support the Employer's Selective Placement Programs established under the provisions of the Rehabilitation Act of 1979 (P.L. 93-112), as amended by P.L. 93-516, and the Veterans' Readjustment Act of 1974 (P. L. 93-508) and in accordance with regulations and policies.

Section 2. The Parties will work together in an effort to find and make reasonable accommodations to known physical and mental limitations of qualified employees.

Section 3. The Employer will work with Employees Vocational Counselors in considering accommodations for known disabled employees such as: making facilities accessible; possible job restructuring; appropriate work equipment or devices; or obtaining the services of readers or sign language interpreters where appropriate.

ARTICLE 33

POSITION CLASSIFICATION

Section 1. The parties agree that bargaining unit employees shall be provided an adequate Position Description reflecting their principal duties, responsibilities, and supervisory relationships. When changes in the duties, responsibilities, or supervisory relationship so warrant, the Position Description will be amended or rewritten. The principal duties, responsibilities, and supervisory relationships will be adequately identified to permit proper classification and expectations.

Section 2. Bargaining unit employee(s) will be given reasonable advance notice of any position audit or review that may affect the classification of the employee's position. If the audit or review results in proposed changes to the Employee's Position Description, the employee will be notified prior to effecting the change. When a substantial change in duties requires relocation of the employee or affects conditions of employment, the union will be notified.

Section 3. An employee dissatisfied with the classification of his/her position should first discuss the classification with his/her Supervisor, if the Supervisor is unable to resolve the issue to the employee's satisfaction, the appropriate human resources official, will explain the basis for the classification/job grading. The employee may request an on-site job audit.

Section 4. A General Schedule employee, who still feels his/her position is improperly classified may:

- A. File an appeal at the agency level to the Director, Office of Human Resources Management, who is the Agency Appellate Authority; or
- B. If dissatisfied with the agency's decision, the employee may file a subsequent appeal with the Office of Personnel Management; or
- C. File an appeal with the Office of Personnel Management through the agency; or
- D. File an appeal directly with the Office of Personnel Management.

Section 5. A Federal Wage System employee who still feels his/her position is improperly classified may:

- A. File an appeal with the Director, Office of Human Resources Management who is the Agency Appellate Authority; and

- B. Provide the name, address, and business telephone number of the employee's representative, if a representative has been selected; and
- C. Provide information on other decided or pending appeals, complaints, or administrative decisions where the classification of the same position is or was an issue; and
- D. If dissatisfied with agency's decision the employee may file an appeal with OPM within fifteen (15) calendar days of the date of the receipt of the agency decision.

Section 6. The parties agree that at times an employee may be required to perform duties which are incidental to the principal duties and responsibilities of the position, as well as duties, which may required in situations of emergency and consistent with the agency's mission. When the phrase "other duties assigned" or similar phrases are included in a Position Description, the employer agrees that when assigning such duties to an employee which are unrelated to his/her principal duties, the employee's Position Description may be modified to reflect any continuous or long term changes in the employee's duties.

ARTICLE 34

EMPLOYEE PERFORMANCE EVALUATION

Section 1. INTRODUCTION. The Agency-wide performance management system is PERFORMS; the Performance Planning, Employee Rating, Feedback, Opportunity, and Recognition Management System. This employee performance evaluation program will emphasize:

- Continuous two-way communication between employees and supervisors
- Employee development
- Administrative simplicity
- Recognition of accomplishments
- Employees' input into improving organizational effectiveness

PERFORMS supersedes the current performance management system set forth in EPA Manual 3151 and the Master Agreement.

Section 2. COVERAGE. This performance management program will cover all EPA bargaining unit employees represented by AFGE.

Section 3. AUTHORITIES. In the administration of all matters covered by this Article, the Union, Agency officials and employees shall be governed by 5 USC Ch. 43; the Master Collective Bargaining Agreement; 5 CFR 430, 432, and 531; EPA Order 3151.1, Performance Management; and EPA Order 3110.16, Reduction in Grade and Removal Based on Unacceptable Performance.

Section 4. DEFINITIONS.

- a. Acceptable Level of Competence. The performance of an employee is at the "successful" level which warrants advancement of the employee's rate of basic pay to the next higher step of the grade in accordance with 5 CFR 531.403.
- b. Additional Performance Element. A dimension or aspect of individual, team, or organizational performance that is not a critical element. Such elements will not be used in assigning a summary level.
- c. Appraisal Period. The established period of time for which performance will be reviewed and for which a rating of record will be prepared.
- d. Assumptions. Known factors over which an employee has little, if any, control, but which might exert a significant impact on the employee's performance or ability to achieve an objective. It is understood that employees cannot be held accountable on critical elements for factors outside their control.
- e. Critical Element. A work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable.
- f. Within Grade Increase. A periodic increase in an employee's rate of basic pay from one step of the grade of his or her position to the next

higher step of that grade.

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

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

i. Performance Plan. All of the written, or otherwise recorded, performance elements that set forth expected performance. A plan must include all critical (and additional elements, if applicable) and their performance standards. This is commonly known as the performance agreement.

j. Performance Improvement Plan (PIP). A written document from the immediate supervisor to help an employee improve performance that is below the "successful" level.

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

l. Progress Review. A review with the employee about performance progress in critical or additional elements. The progress review is required, but not limited to, at least one per performance cycle. The review also includes assessing the need for adjusting the Performance Plan; developing a plan of action for improving performance, where appropriate; and to discuss individual development.

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

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

Section 5. TRAINING. All employees will receive training on the implementation of this performance evaluation program. Because the program as set forth in this article is intended to be innovative and evolutionary in nature, and because its effectiveness is critical to the Agency achieving its mission, the parties will examine opportunities for improving the program. The Union will be given written advance notice and afforded the opportunity to participate when the Agency decides to change the process.

Section 6. APPRAISAL PERIOD. The annual appraisal period begins on January 1 and ends on December 31.

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Section 7. MINIMUM PERIOD OF PERFORMANCE. Only those employees who have completed a minimum 90-day appraisal period under an approved performance plan will be evaluated at the end of the performance cycle. The appraisal period begins when the employee signs (or chooses not to sign) the performance plan. If the minimum 90-day period cannot be met before the end of the performance

cycle (calendar year), the appraisal period must be extended until the 90 days are met.

Section 8. SUMMARY-LEVEL PATTERN. There will be two (2) summary rating levels, "successful" or "unacceptable", no further distinctions will be documented or recorded.

Section 9. PERFORMANCE EVALUATION RESPONSIBILITIES. Supervisors, by position, are responsible for preparing and reviewing performance plans, performance ratings, award nominations, and performance related personnel actions. A supervisor is an individual employed by the agency having authority in the interest of agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term supervisor includes only those individuals who devote a preponderance of their employment time to exercising such authority.

Section 10. CONTENT OF THE PERFORMANCE PLAN. A performance plan must contain the following items:

- a. Title. "Performance Plan."
- b. Element. Name and/or description of the performance element.
- c. Element Type (Critical or Additional). A performance plan shall contain a minimum of one critical element and maximum of five critical elements. Additional elements are optional.
- d. Standard. The performance requirement(s) or expectation(s) for appraisal at a particular level of performance. A standard includes such factors as quality, quantity, timeliness, cost effectiveness, and manner of performance, as applicable. At a minimum, standards must be documented at the successful level for critical elements. Standards at the unacceptable level are optional; employees may request standards at this level. If additional elements are used, standards are described at the successful level only.
- e. Measurement Source(s). Identification of sources that may establish reliable and supportable basis for a rating and may be used to determine if standards are met or not met, such as but not limited to: personal observations, employee written products, or feedback from team leaders.
- f. Element Rating. There are one of two ratings possible for an element: the "successful" level or the "unacceptable" level.
- g. Successful Performance. Performance that meets an employee's

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performance requirement(s) or standard(s) at a level of performance above "unacceptable" in the critical elements(s) at issue.

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

i. Assumptions. Known factors over which an employee has little, if any,

control, but which might exert a significant impact on the employee's performance or ability to achieve an objective.

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

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

Section 11. FORMAT OF THE PERFORMANCE PLAN.

Performance Plan		
Name:	Office:	Year:
Element:		
Type Element:	Critical 9	Additional 9
Standard/Measurement Sources:		
Assumption (if applicable):		
Element Rating:	Successful 9	Unacceptable 9

Element:		
Type Element:	Critical 9	Additional 9
Standard/Measurement Sources:		
Assumption (if applicable):		
Element Rating:	Successful 9	Unacceptable 9
Employee's Signature/Date		
Supervisor(s)'s Signature/Date		

Section 12. THE PERFORMANCE PLAN. The performance plan is determined by the supervisor in collaboration with the employee. The steps to writing a performance plan include:

a. Identify one to five critical elements, taking into account the organizational strategic goals, functions, responsibilities, priorities, and the employee's Position Description. Additional elements are optional. Critical elements are for individual performance only and affect the employee's summary rating. Additional elements may be used for group performance and do not affect the employee's summary rating. All elements will be rated either "successful" or "unacceptable."

b. Describe one or more written standards for each element at the

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"successful" level. Standards can be based on manner and methods or on quality, quantity, timeliness or cost- effectiveness. Measurement sources may also be identified, if known.

c. The supervisor is responsible for using appropriate means to keep performance agreements current and accurate and to obtain the performance data required to accurately assess the employee's performance. Supervisors must ensure that feedback relates to the employee's elements and standards, and that it establishes a reliable and supportable basis for issuing a rating.

d. It is understood that employees cannot be held accountable on critical

elements for factors outside their control. Assumptions are known factors over which an employee has little, if any, control, but which might exert a significant impact on the employee's performance or ability to achieve an objective. These factors, which might legitimately and significantly influence the employee's ability to perform, should be considered by the supervisor in assessing performance.

Section 13. COMMUNICATING PERFORMANCE PLANS. It is the supervisor's responsibility to communicate the written performance expectations to employees within the first 30 days of the appraisal period or within 30 days of the employee's arrival in a new position. The individual employee and supervisor should agree on the plan by both signing and dating the plan. However, if the parties cannot agree, the plan is established. The date the employee signs the plan, or refuses to sign, is the beginning date of the minimum period of performance. If the employee refuses to sign the plan, then the supervisor annotates the disagreement and date in the employee signature block. If the employee disagrees with the plan, the employee may attach his or her statement of concern to the performance plan. The supervisor keeps the original plan and the employee receives a copy.

Section 14. PROGRESS REVIEWS. In addition to the annual performance appraisal, an employee is entitled to at least one formal feedback discussion (progress review) with the supervisor, usually by mid-year. However, frequent informal reviews of performance throughout the appraisal period are strongly encouraged and may be requested by either the employee or the supervisor. The Progress Review(s) should be open, candid, and aimed at improving work products, and will provide an opportunity for feedback regarding accomplishments and individual development.

Section 15. INTERIM RATINGS. Interim ratings must be prepared for employees who have been under a performance plan for the minimum period of performance when the employee completes a detail, is reassigned to another EPA organization, transfers to another agency, or when the employee's supervisor, having supervised the employee for the minimum period, departs from that supervisory position. In preparing the rating of record, interim ratings must be given consideration proportional to the amount of the appraisal period the employee and departing supervisor occupied each position. (If less than the minimum period of performance, only performance highlights will be provided.)

Section 16. TIMING OF THE APPRAISAL. Performance appraisals (ratings of record) are scheduled to be done annually within one month of the close of the appraisal period which will be January. Under special circumstances, appraisals may deviate from that schedule:

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a. If the employee has not completed the minimum period of performance by the end of the performance cycle, then the rating of record is given at the end of the minimum period.

b. Whenever the employee has a change of supervisor, either by the employee leaving the organization or by the supervisor's departure, the supervisor prepares an interim appraisal, which will be input to the employee's annual appraisal. (This would not occur if the employee has not completed the minimum period of performance or if the employee leaves EPA. For periods less than the 90 days, the supervisor should provide narrative performance highlights only).

c. Whenever the employee concludes a detail of 90 days or more to another position or a temporary promotion of 90 days or more, the supervisor for the

detail prepares an interim appraisal which the supervisor for the employee's permanent position factors into the employee's annual appraisal. (This would not occur if the employee has not completed the minimum period of performance. For periods less than the 90 days, the supervisor should provide narrative performance highlights only.)

Section 17. ASSESSING EMPLOYEE PERFORMANCE. The rating process requires the supervisor to assess the employee's actual performance accomplishments against the standards contained in the approved Performance Plan. The supervisor will review the standard(s) established for each performance element to determine whether or not the employee met the standard(s).

Section 18. APPRAISING DISABLED VETERANS. The performance rating of record or performance rating for a disabled veteran will not be lowered because the veteran has been absent from work to seek or receive medical treatment.

Section 19. PROTECTED UNION ACTIVITIES. Union activities by an employee will not be a factor in the evaluation or appraisal of an employee's performance.

Section 20. SOURCES OF APPRAISAL INPUT. The written performance standards and sources of appraisal input will be applied in a fair and understandable manner in determining the rating of each assigned element. The supervisor will ensure that feedback (input) used in the appraisal process is related to the employee's assigned elements and standards. The feedback used will be factual and relevant. If the information may adversely affect the employee's rating, the employee will be made aware of the information in order to facilitate his/her ability to respond and to correct inaccurate information. The sources of such information will be annotated in the performance agreement. Supervisors will not knowingly withhold pertinent information necessary to the appraisal of the employee's job.

Section 21. RATING AN ELEMENT. After assessing the employee's self-assessment and other appraisal input against the assigned standards, the supervisor will assign a rating to each performance element of either "successful" or "unacceptable."

Section 22. ASSIGNING THE SUMMARY LEVEL. Once all of the performance elements have been rated, the supervisor will assign the summary level (rating) as follows: if any critical element is rated unacceptable, the summary level is "unacceptable;" otherwise, the summary level is "successful." Additional elements do not affect the employee's summary level (rating).

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Section 23. APPROVING THE RATING OF RECORD. If the rating of record is "successful," the supervisor must sign and date to approve the rating of record. If the rating of record is "unacceptable," higher level approval will be required. If the rating of record is "unacceptable," the employee will be afforded the opportunity to demonstrate acceptable (successful) performance in accordance with law, regulation, and this agreement.

Section 24. DOCUMENTING THE RATING. Official documentation of the rating of record consists of the completed Performance Plan, which shows the rating of each assigned element, and the completed Appraisal Cover Sheet (below) that includes the rating of record ("successful" or "unacceptable"), signatures, any performance highlights, supervisor's comments, and employee comments. Additional pages may be used if needed. The Performance Plan and the Appraisal Cover Sheet are combined to form one annual appraisal document (package).

Appraisal Cover Sheet	Employee Name: SSN: Office: Year:
Formal Progress Review(s): (dated & initialed)	
To derive summary level:	Summary Level: Successful 9 Unacceptable 9
1) If the rating for any critical element is unacceptable, then the summary level is unacceptable;	My supervisor and I have discussed my performance for this period in relation to my performance measures and standards, and my supervisor has informed me of my rating of record. Employee Signature/Date:
2) Otherwise the summary level is successful. 3) Additional elements do not factor into summary level.	Supervisor(s)'s Signature/Date:
Supervisor's Comments: Employee's Comments:	

Section 25. COMMUNICATING THE RATING. Upon approval of the rating of record, the supervisor meets with the employee to conduct a formal appraisal interview. During the appraisal interview, he/she communicates to the employee:

- a. how each performance element was rated,
- b. the rating of record,
- c. if appropriate, areas that may need to be changed in the next year's performance plan,
- d. the supervisor and the employee will hold the appraisal interview in private.

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At the conclusion of the appraisal interview, the employee signs the Appraisal Cover Sheet signifying that the appraisal discussion was held, not necessarily that the employee agrees with the rating of record; however, the employee is entitled to attach his/her disagreement or concerns to the rating of record. The date the employee signs or refuses to sign the appraisal cover sheet will be considered the date the rating of record was communicated to the employee. The employee will receive his/her copy of the rating as soon as possible but no later than three (3) work days following the appraisal interview.

Section 26. RECORD KEEPING. The supervisor must submit the completed, original annual appraisal package to the appropriate Human Resources Office. The Human Resources Office will maintain it for four years in the Employee Performance File (EPF).

Section 27. EMPLOYEE DEVELOPMENT. The supervisor shall have at least one formal discussion concerning career goals and individual development needs with his/her employees per year and utilize opportunities for employee development. The Individual Development Plan (IDP) identifies developmental

needs and career objectives and is a useful tool for career development that benefits both the employee and the organization. The IDP is required if requested by the employee. The IDP process may include conducting a self-assessment; obtaining assessments from peers, superiors and customers; and identifying opportunities and other options for career growth. If a supervisor identifies required training, he or she will notify the employee and, if applicable, annotate the IDP.

Section 28. PERFORMANCE ASSISTANCE. Continuous, informal feedback between the supervisor and the employee is essential to ensure an atmosphere that maintains successful performance. However, if at any time during the appraisal year, the supervisor identifies a significant performance-related problem with an employee, he or she will meet with the employee in an informal meeting to work collaboratively to develop a plan to correct the problem. However, if the employee feels that additional assistance is needed, and if the supervisor concurs, then a union representative may be requested to participate in part or all of the collaborative process to develop a plan to correct the problem. This counseling session will be documented in writing and a copy provided to the employee.

a. The plan will afford the employee an opportunity of at least 45 days to resolve the identified performance-related problem. During this period, the employee will be deemed to be performing at a successful level for purposes of any performance-related personnel actions.

b. The plan will be tailored to the specific needs of the employee and may include formal training, on the job training, counseling, assignment of a journeyman mentor, or other assistance as appropriate.

c. The purpose of the period of assistance is to help the employee improve his/her performance.

d. At any time during the assistance period the supervisor may conclude that assistance is no longer necessary. The supervisor will notify the employee of this determination, which will be in writing.

e. Notwithstanding the above, if at any time during the assistance period

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the employee's performance is determined to be unacceptable in one or more critical elements, a formal opportunity to demonstrate successful performance (i.e., PIP) should be initiated in accordance with Section 29.

Section 29. PERFORMANCE IMPROVEMENT PLAN (PIP). If the supervisor determines under Section 28 that the employee is not successfully performing his or her assigned job duties, the supervisor shall develop in consultation with the employee and, if requested, his or her union representative, a written PIP. The goal of this PIP is to return the employee to successful performance as soon as possible.

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

b. Timing of a PIP. The employee's performance rating must be based on at least 90 days under the assigned critical element (CE) that is rated "unacceptable." A PIP must be presented to the employee within 15 working days

after the employee is formally informed of performance that is "unacceptable."

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

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

(1) The employee's name, position title, series, grade, and organization location;

(2) The basis for the PIP, e.g., unacceptable performance on one or more critical elements;

(3) Restatement of the assigned critical element(s) the employee is failing to perform at the successful level and a description of how performance was determined to be deficient in relation to performance standards;

(4) References to previous counseling sessions during the appraisal period;

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

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(6) A similar explanation of what will be considered an "unacceptable" level of work;

(7) Examples of ways the employee can improve performance and a description of the assistance the employee will receive from the supervisor;

(8) A schedule of periodic performance reviews that will be held during the performance improvement period;

(9) A list of assignments with due dates, or completion dates, if appropriate;

(10) A statement that the employee is expected to maintain "successful" performance on the remainder of the CEs;

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

e. Implementation of a PIP.

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

supervisor for approval.

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

(3) The supervisor sends a copy of the PIP to the servicing Human Resources Office along with the original performance agreement and rating package. The PIP will be filed in the Employee Performance File (EPF), and will be removed if the employee's performance improves to the successful level and remains at that level for one year from the beginning of an opportunity to demonstrate acceptable performance in accordance with 5 CFR 432.107(b), then destroyed (e.g., shredded).

f. Terminating or Extending a PIP. A PIP may be terminated or extended in situations such as those described below. In each case, the action will be documented by a memorandum to the employee and a copy sent to the servicing Human Resources Office for inclusion in the EPF. If the PIP is terminated because of demonstrated "successful" performance after the proposed advance notice period, the PIP and memorandum will be removed from the EPF and destroyed after the employee's performance has continued to be "successful" for one year.

(1) A PIP will be terminated if the employee is reassigned to a different position at the same or different grade. The PIP is not continued in effect in the new position.

(2) A PIP may be terminated if the employee's performance improves to the "successful" level prior to the expiration of the PIP.

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(3) A PIP will be removed from the Employee Performance File if the employee leaves the Agency.

(4) A PIP may be extended at any time with the approval of the higher level supervisor.

g. Expiration of a PIP. If a PIP is not extended or terminated by the designated expiration date, the supervisor must notify the employee in writing of the status of his or her performance. If the employee's performance has improved to the "successful" level, the supervisor must prepare a new rating of record if the opportunity period was triggered by an annual performance rating of "unacceptable." The new rating will be sent to the appropriate Human Resources Office. The supervisor and the employee each keep a copy. The servicing Human Resources Office will substitute the new appraisal for the previous rating of record.

Section 30. PERFORMANCE-BASED ACTIONS. Should remedial action fail and the employee's performance is determined to be "unacceptable" after the reasonable opportunity period (PIP), the supervisor will consider the following possible personnel actions:

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

b. When the employee is capable of performing in another position of the same grade, the supervisor may propose to reassign the employee to such a

position in accordance with 5 CFR 430;

c. When the employee is not capable of performing in a position at the same grade but is capable of performing in a position at a lower grade, the supervisor may propose a demotion to a position at a lower grade in accordance with 5 CFR 432;

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

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

a. A 30 day advance notice of the proposed action that identifies both the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical element(s) of the employee's position involved in each instance of unacceptable performance;

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

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

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

e. A written decision which specifies the instances of unacceptable

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performance on which the reduction in grade or removal is based. The decision shall be made within 30 days after expiration of the advance notice period. Unless proposed by the head of the Agency, such written decisions shall be concurred in by an employee who is in a higher position than the person who proposed the action. The written decision shall be issued to the employee at or before the time the action will be effective. The decision shall inform the employee of any applicable appeal and/or grievance rights.

Section 31. EMPLOYEE OBJECTIONS TO PERFORMANCE PLANS OR RECOGNITION DECISIONS. The final determination of an employee's critical elements and standards are not grievable under the negotiated grievance procedure. However, if an employee believes that a decision or other action taken or not taken under PERFORMS resulted from a prohibited personnel practice as defined in 5 U.S.C. 2302 or an act of discrimination, the employee may: (1) file a grievance under the negotiated grievance procedure or file a charge of discrimination with the Equal Employment Opportunity Commission and/or (2) file a complaint with the Office of Special Counsel.

Section 32. EMPLOYEE OBJECTION TO RATING OF RECORD. An employee who disagrees with his or her final rating of record may file a grievance under the provisions of the negotiated grievance process. A rating of record may not be appealed to the Merit Systems Protection Board. However, an employee may file an allegation with the Office of Special Counsel if the employee believes the rating decision, or other action taken or not taken based on the rating of record, constitutes a prohibited personnel practice as defined in 5 U.S.C. 2302 or file an equal employment opportunity complaint.

Section 33. 360 DEGREE FEEDBACK. Upon the joint agreement of the Agency and

the Union at the National level, multiple source methods and/or instruments may be developed (such as 360 Degree Feedback), at the local level of recognition. This will be a matter for local level bargaining, to obtain feedback for individual employees and as a means of fostering communication and employee development. Participation in such methods will be voluntary on the part of employees.

Section 34. RECOGNITION. A performance based award is a method for recognizing employees' accomplishments. Excellence in performance will be the basis for cash award determinations and quality step increase pay decisions. The parties recognize that the use of both monetary and non-monetary awards have a significant impact on employees' morale, motivation, and performance of assigned duties. Employees performing at the "successful" level are eligible to receive awards. It is agreed that recognition for employee contributions will be handled in accordance with Article 35, Awards.

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ARTICLE 35

Awards

Section 1. INTRODUCTION. The EPA Recognition Program reflects the Agency's commitment to promote continuous improvement in the Agency's performance. It is recognized that the use of both monetary and non-monetary awards has a significant effect on employee morale, motivation and performance. The EPA Recognition Program is an incentive program that provides recognition based on employee achievements that contribute to the Agency's mission of providing the highest service possible to the public. The EPA Recognition Program is intended to motivate and reward employees to continually strive for excellence. In addition, the program provides for monetary and non-monetary awards for suggestions, inventions, and special acts of service or heroism.

Section 2. AUTHORITIES. In administration of all matters covered by this Article, the Union, Agency officials and employees shall be governed by 5 USC Ch 45, 5 CFR 451 and 531; and 3130, Recognition Policy and Procedures Manual and the Master Collective Bargaining Agreement.

Section 3. ADDITIONAL PROVISIONS. Recognition will be granted in accordance with the Recognition Policy and Procedures Manual with the following provisions:

(a) EPA Awards Board. The EPA Awards Board shall include representation from the AFGE National Council of Locals.

(b) Local Awards Boards. It is agreed that the establishment of local awards boards is an appropriate matter for partnering/negotiating at the local level. The procedures and operations of such boards will be locally determined, within the following parameters: (1) boards may vary in function up to and including recommendation of awards; (2) local awards boards must include representation of all unions with recognition at that organization (i.e., there may not be separate awards boards for each union); and (3) board procedures may supplement but not conflict with the above authorities.

(c) Awards Budgets. At the beginning of each appraisal period or as soon as available, information concerning the amount and allocation of the awards budget will be provided to the union. At the local level, if there is a further reallocation of the awards budget, the union will be provided an opportunity for

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input/feedback during this process. The union will also be provided with periodic updates on the expenditure of awards budgets.

(d) Peer Awards. Peer award nominations will not be limited to \$250. The nominator will not specify a dollar amount. The monetary amount will be determined by the recommending/ approving official(s). The nominator and the nominee must have an established working relationship whether in or out of the same AA/RA-ship, or on the same team, workgroup, self-directed team, or variation thereof.

(e) Awards Information. Employee awards information, including names, award types and dollar amounts, will be provided to the National and local union on a quarterly basis, or as otherwise agreed to locally. This data will be treated by the union in a confidential manner. At least annually, each organization will publish the names of award recipients and the types of awards they received.

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ARTICLE 36

TRANSFER OF FUNCTION

Section 1. The employer shall provide a written notice to an employee whose position has been transferred outside the competitive area sixty (60) days in advance of the effective date.

Section 2. An employee will have the twenty-five days after issuance of the written notice to accept or reject the offer of transfer. Failure to respond within the twenty-five (25) day period will act as a declination of the offer. Reasonable extensions to the above time limits may be granted for good cause.

Section 3. At the employee's request, the employer will assist an employee who declines a transfer of function outside the competitive area in attempting to locate employment with other Federal agencies.

Section 4. Severance pay for those employees declining a transfer of function will be in accordance with applicable law and regulation.

ARTICLE 37

EQUAL EMPLOYMENT OPPORTUNITY

Section 1. No employee will be denied a benefit of employment by the Employer, or a benefit or right of Unit membership by the Union because of the employee's race, color, creed, national origin, sex, age, sexual preference, Union affiliation, lawful political affiliation, marital status, or qualifying handicapping condition. Both parties support the realization of a representative work force within the Unit at all levels.

Section 2. The parties hereby affirm their support of affirmative action.

Section 3. When the Employer at the local level utilizes an EEO committee or councils, the Union will be given the opportunity to have at least one bargaining unit employee at the location as its representative to participate as a committee member on matters affecting Unit employees.

Section 4. The Union will designate an authorized representative for the Employer to deal with on all EEO matters which are beyond local scope and impact.

Section 5. The Union may submit the names of bargaining unit employees who are interested in serving as EEO counselors to the appropriate management official. Employees who meet the criteria for an EEO Counselor and are selected by the Employer will receive appropriate training in accordance with the applicable policies and regulations. No Union representative who handles employee representation functions for the union may serve as an EEO Counselor nor may an EEO Counselor serve in a representative capacity for any employee.

Section 6. A bargaining unit employee may file an EEO complaint under the negotiated grievance procedure or the administrative procedure provided by statute and regulations but not both. An employee filing a formal EEO complaint under the Agency's procedure is entitled to a representative of personal choice subject to Agency policies and regulations. An employee filing a formal EEO complaint under the negotiated grievance procedure may be represented only by an authorized Union representative.

Section 7. Upon request in accordance with the provisions of 7114 (b) (4) and this Agreement, the employer will provide any prepared statistical EEO reports and EEO complaint summaries on the Unit to the Union.

Section 8. An employee shall be deemed to have exercised his or her option in filing an EEO complaint at such time as the

employee timely initiates a formal written EEO complaint/notice of appeal under the statutory procedures or timely initiates a grievance in writing above the first step (informal) in accordance with the Grievance Article.

Section 9. Employees are encouraged to discuss EEO allegations with an EEO counselor. Discussions between an employee and an EEO counselor do not preclude an employee from opting to select the negotiated procedure.

ARTICLE 38

CONTRACTING OUT

Section 1. When the Employer reaches a decision to study the possibility of contracting out work being performed by bargaining unit employees and notifies the Union prior to beginning the study, both parties will then maintain the confidentiality of all information concerning the study and contract process until a decision is reached either not to contract out or to award a contract.

Section 2. Both parties recognize the highly sensitive nature of contracting out and the impact of such a possibility on the morale and productivity of employees. To that end, they will maintain the confidentiality of the information concerning any part of the contracting process until a decision is reached. In the same vein, the parties understand that rumors, misinformation and undue concern are counterproductive. Therefore, the parties agree to attempt to prevent such situations from developing during the entire study and contract process.

Section 3. Upon request, the Employer will provide the Union with a copy of a completed study of contracting out work being performed by bargaining unit employees unless prohibited by law, rule or regulation.

Section 4. Upon request, the Employer will provide the Union with a copy of a Statement of Work which has been completed and deals with work being performed by bargaining unit employees unless prohibited by law, rule or regulation.

Section 5. In accordance with the provisions of the Agreement, the Union will be afforded an opportunity to bargain over the impact of a decision to contract out work being performed by bargaining unit employees.

ARTICLE 39

REDUCTION IN FORCE

Section 1. In the event of a reduction in force and/or transfer of function (RIF, TOF), the Agency shall notify the Union. When any decision is made to conduct a RIF or TOF, or when serious consideration is given to implementing them, written notification to the union shall be made at the earliest practicable date. The employer shall satisfy all bargaining obligations.

Section 2. Before the Employer reaches a final decision in the matter, a meeting will be held with the local Union representatives as soon as possible to explore alternatives to adverse affects contemplated as a result of Employer considerations.

Section 3. When the Employer reaches a final decision which involves a reduction in force, the Council President will be informed in writing. The notification, in accordance with Section 1, will include the reason for the RIF, approximate number and types of positions, and anticipated date of the planned action. The Agency shall provide the Union, upon request, with information in accordance with 5 USC 7114(B)(4). All further information from the Employer concerning the matter will be sent to the Union representatives(s) with copies of transmittals sent to the Council President.

Section 4. In the event of unforeseen unavailability of the Council President of periods longer than two (2) days, the Employer will then contact the Executive Vice President of the Council, or if also unavailable, the First Vice President of the Council. Communications will continue between the Employer and the Council official contacted until otherwise notified by the Council President.

Section 5. The Employer will meet with the Union representative to discuss the reduction in force at a mutually agreeable time as soon as possible but no later than one (1) week after notification.

Section 6. After notification of the Union, the Employer may hold general meetings with employees. General information concerning the RIF will be provided by an all-employee notice, individually disseminated, or by posting on official bulletin boards at the location(s). Except with the prior approval of Office of Personnel Management (OPM), the employer will give an information notice prior to a specific notice of at least thirty (30) days.

Section 7. Employees receiving a specific RIF notice will be advised of their entitlement to Union representation.

Section 8. In recognition of its access to information which is normally considered private and personal to employees, the Parties agree to maintain the confidentiality of the information.

Section 9. TIMING OF A SPECIFIC RIF NOTICE. The Employer shall issue specific RIF notices to employees affected by a reduction in force at least sixty (60) calendar days before the effective date of the notice.

Section 10. In emergency situations, in accordance with applicable Law and Regulations, the Employer will advise the Union in advance of specific situations requiring less than the normal notice period(s), set forth in sections 6 and 9 herein.

Section 11. Emergency situation in this context is defined as circumstances arising requiring an immediate reduction in force.

Section 12. Employees on detail will not be released during a reduction in force from the position to which they are detailed but, rather, from the affected employee's permanent position.

Section 13. CONTENTS OF SPECIFIC NOTICES. A specific RIF notice and any attachments must contain the following information:

A. What reduction in force action is being taken (e.g., separation, demotion, furlough for more than 30 days, etc.);

B. The reason for the reduction in force;

C. The effective date of the action;

D. The employee's competitive area, competitive level, retention subgroup, service date, and annual performance ratings of record received during the last 2 years;

E. The place where the employee may inspect the regulations and records pertinent to his/her case;

F. If applicable, the reasons for retaining a lower standing employee;

G. As applicable, the employee's right to appeal the reduction in force action to the Merit Systems Protection Board under the provisions of the Board's regulations, or to grieve the action under the negotiated grievance procedure; and

H. Information on the Reemployment Priority List and the Displaced Employee program, if the employee receives a notice of separation because of the reduction in force. Along with the RIF notice of separation, the agency must also give the employee information concerning how to apply for unemployment insurance through his/her appropriate State office.

Section 14. ADDITIONAL NOTICE REQUIREMENTS. Before separating any employee by RIF, an agency must notify OPM in order to

register the employees in the Displaced Employee Program to assist them in finding other positions. Also, when an agency separates 50 or more employees from a competitive area, the agency has additional notice requirements to OPM, and to other Federal and nonfederal organizations.

Section 15. When a competitive service employee in Group I or II is released from his/her competitive level, the employer offers him or her an available position in another competitive level if one exists; otherwise, the employee may be separated or furloughed. If an employee refuses an offer, he/she may be separated or furloughed. Group III employees have no assignment rights.

Group I - Career

Group II - Career Conditional

Group III - Temporary or Indefinite Appointments

Section 16. An available position has all of the following characteristics:

- A. It is in the competitive service;
- B. It is in the employee's present competitive area;
- C. It will last at least three (3) months;
- D. It is a position for which the employee being released qualifies, unless the agency at its discretion, chooses to waive qualifications.
- E. It is held by an employee (1) in a lower retention subgroup (who may be bumped) or (2) with lower retention standing in the same subgroup and is a position from which the competing employee was promoted or an essentially identical position (subject to Retreat Rights); and
- F. It requires no reduction, or the least possible reduction in the applicable representative rate. (The Representative Rate is a method of comparing the annual salary of employees under different pay systems.)

Section 17. When more than one position is available, the Agency will consider the employee's request for assignment to any one of the available positions for which they qualify as allowed under OPM regulations.

Section 18. Salary retention for affected employees will be in accordance with applicable law and regulations.

Section 19. FACTORS CONSIDERED IN ESTABLISHING COMPETITIVE LEVELS.

A competitive level consists of all the positions in the competitive area that are in the same grade or occupational level and that are so alike in qualification requirements, duties, responsibilities, pay schedule, and working conditions, that the Agency may readily assign an employee in one position to any of the other positions without changing the terms of the employee's appointment and without unduly interrupting the Agency's work program.

Section 20. UNDUE INTERRUPTION.

Undue interruption is a degree of interruption that would prevent the completion of required work within time and quality. Depending upon the deadlines and other demands, the ordinary work program probably would not be unduly interrupted if the optimum quality and quantity of work were not regained within ninety (90) days after a reduction in force. Lower priority programs might tolerate even longer interruption.

Section 21. QUALIFICATION CONSIDERATIONS.

When the Employer considers the effect of qualifications on the composition of a competitive level, the concern is not with the qualifications an employee possesses but with the ability to perform the duties and responsibilities of the position without undue interruption to the agency and without any loss of productivity beyond that normally expected of any new, but qualified employee. Among competitive positions with different examination requirements. Separate levels may be indicated because the knowledge, technique and know how acquired on the job may be distinctive enough from one job to another. The Agency may assign an employee without regard to OPM's standards and requirements for the position if, the employee meets any minimum education requirement for the position and the agency determines that the employee has the capacity, adaptability, and special skills needed to perform the duties and responsibilities of the position at an acceptable level.

Section 22. SEPARATE COMPETITIVE LEVELS.

The Employer may not assign a position to a separate competitive level based on:

- A. The employee's sex, except where OPM has established that restricting the certification of eligible by sex is justified;
- B. The fact that the employee is serving a probationary period required by 5 CFR 315 Subpart I upon initial assignment to a supervisory or managerial position; or
- C. Differences in work schedules among other-than-full-time employees who would otherwise be assigned to the same competitive level.

Section 23. In the event of a reduction-in-force action, retention registers shall be established with employees listed in

order of their tenure group, veteran preference, subgroup, length of service and performance ratings. The retention registers shall be restricted for review and shown only to those who have a need to review.

Section 24. Upon request, an employee who has received a specific notice, or representative, will be given the opportunity to review all necessary records pertaining to the action, including regulations or law pertaining to RIF.

Section 25. An employee or representative will be given the opportunity to review retention registers listing other employees who may be entitled to displace the affected employee, as well as specific employees who may be displaced by the affected employee under the RIF procedures.

Section 26. An employee's current approved performance appraisal on the date of issuance of a specific reduction-in-force notice is the appraisal that determines retention standing under this Agreement. Additional service credit is based on the last three annual performance ratings of record which were received by the employee during the three year period prior to the date of issuance of specific RIF notices. To be creditable for RIF purposes, rating must have been issued to the employee, including all appropriate signatures and reviews, and must be on record. Performance appraisals will not be given solely to improve an employee's retention standing for RIF purposes. Assumed ratings of fully successful will be used for RIF purposes, in the absence of actual annual rating of record.

Section 27. For the duration of a reduction-in-force process, the Employer will provide the Union with up-to-date information and keep them informed of significant action taken regarding RIF's, transfers of function, and reorganizations.

Section 28. When repromotion eligibles are not selected for repromotion, upon request, the selecting official shall furnish the reasons in writing for the nonselection.

Section 29. At the employee's request, the Employer will notify the affected employee released as a result of a RIF of their eligibility for outplacement training in accordance with applicable regulations and policies of higher authorities.

Section 30. The Employer will assist the employee in locating other employment within the Federal Government, in accordance with 5 U.S.C., 4103(b), the Employer may retrain employees for placement within the Federal Government, subject to OPM approval. Assistance will be given in locating the appropriate local state employment security agency (employment office) that should have the information to inform the employee of any benefits that may be available to the affected employee.

Section 31. Any career or career-conditional employee who is separated because of reduction in force will be placed in a

reemployment priority list and such employees will be considered for rehiring in accordance with applicable regulations.

Section 32. In accordance with applicable regulations, the Employer will grant an excused absence to an employee moving outside the competitive area as a result of RIF of transfer of function to find new housing.

Section 33. The Employer will pay relocation expenses for all employees affected by RIF and directed by the Employer to a position within the Agency but outside of the commuting area in accordance with applicable law and regulation.

Section 34. The Employer will provide information to the affected employee and keep the employee informed on the reduction in force as it affects the employee.

Section 35. The Employer agrees to assist and refer any Group I or II displaced employee to the Office of Personnel Management (OPM) for consideration for employment under OPM's Displaced Employee Program.

Section 36. The Employer agrees to cooperate with OPM by referring displaced employees to the Voluntary Interagency Placement Program under applicable law and regulations.

Section 37. The Employer will maintain all lists, records and information pertaining to the reduction-in-force for at least 1 year in accordance with applicable law, rules and regulations.

ARTICLE 40

RIF COMPETITIVE AREAS

Section 1. The competitive area for reduction in force shall be within the local commuting area. Within that area, competitive levels will be of positions that are interchangeable based on the qualifications and abilities necessary to perform the assigned duties and responsibilities of the position description.

Section 2. Exclusion of similar positions from a competitive level shall be only upon establishment that movement would create undue interruption to a degree that would prevent the completion of required work within deadlines or other demands, or cause impairment to the Agency's mission.

ARTICLE 41

REDUCTIONS IN FORCE INVOLVING EXCEPTED SERVICE EMPLOYEES

Section 1. Reductions in force involving Excepted Service employees will be in accordance with Law and Appropriate Regulations:

- A. Excepted Service employees do not compete with Competitive Service employees but;
- B. Only compete with other under the same appointing authority and in the same competitive area;
- C. Excepted Service employees have no assignment rights;
- D. Excepted Service employees may not be placed on reemployment priority lists; and
- E. Excepted Service employees may not participate in OPM's Displaced Employee Program unless the individual has competitive status and was released from Group I or II.

Section 2. All terms shall have the same meaning given in 5 CFR Part 351 and FPM Chapter 330 except as otherwise defined in this Agreement.

ARTICLE 42

DISCIPLINE

Section 1. The parties agree that the purpose of disciplinary action is to correct or improve employee behavior and to maintain discipline within the work force. Where applicable, the parties agree to the philosophy of progressive discipline.

Section 2. Disciplinary actions consist of letters of warning; letters of reprimand; suspensions; reductions in grade or pay for a furlough of 30 days or less, and removals. Performance-based actions and RIF actions are not disciplinary actions.

Section 3. All disciplinary actions will be taken only for just and sufficient cause.

Section 4. Suspension for more than fourteen (14) days, removals, reductions in grade or pay and furloughs of thirty (30) days or less will be taken for such cause as will promote the efficiency of the service.

Section 5. Employees may grieve and disciplinary action through the Negotiated Grievance Procedure (NOP). Actions described in Section 4 may be appealed through the (NOP) or to the MSPB, but not both.

Section 6. An employee has the right to request union representation during the course of an investigating interview conducted by Agency official(s) when the employee reasonably believes the examination may result in disciplinary action employee. The interview will be stopped until union representation can be provided unless the employee chooses not to request union representation or the management official clearly indicates that no disciplinary action will be taken against the employee.

Section 7. The employee shall be provided with an additional copy of all disciplinary actions which the he/she may give to the union.

Section 8. Employees shall be granted up to eight (8) hours of official time to prepare their appeal.

Section 9. The union has the right to be present at all formal meetings, grievance meetings, and grievance settlements.

Section 10. Supervisory Notes:

- A. If supervisory notes are kept on employees, the notes will be maintained in a secure fashion and not be revealed to anyone other than those who have a need to know.
- B. Supervisory notes or the applicable portion thereof used to support a disciplinary or adverse action are to be made available to the employee upon request:

Section 11. The parties recognize that the age of any evidence offered by any party may be a factor detracting from its credibility and that as such, such evidence may lose its probative value.

Section 12. Mitigation of Penalties

Where an employee appeals an adverse action through the negotiated grievance procedure and the union proceeds to arbitration, the arbitrator is bound by the same rules governing the burden of proof and standard of proof that govern adverse actions before the Merit Systems Protection Board.

The Douglas factors are:

- (1) The nature and the seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- (2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- (3) the employee's past disciplinary record;
- (4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- (5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties;
- (6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;

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- (7) consistency of the penalty with any applicable agency table of penalties;

(8) the notoriety of the offense or its impact upon the reputation of the agency;

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

(10) potential for rehabilitation;

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

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

Section 13. As appropriate, this Article will be administered as required by law and in accordance with MSPB regulations.

ARTICLE 43

GRIEVANCE PROCEDURE

Section 1. This Article constitutes the sole and exclusive procedure for the resolution of grievances by employees of the bargaining units and the Parties. This grievance procedure replaces any other grievance procedure in its entirety for employees in the bargaining units.

Section 2. A grievance shall mean any complaint:

- A. By any employee concerning any matter relating to the employment of any employee; or
- B. By the union concerning any matter relating to the employment of any employee; or
- C. By any employee, the union or the employer concerning:
 - 1. The effect or interpretation, or claim of breach of the collective bargaining agreement; or
 - 2. Any claimed violation, misinterpretation, or misapplication of any law, rule or regulation affecting conditions of employment.

Section 3. In addition to any other exclusions contained in this agreement, the grievance procedure will not apply to:

- A. Any claimed violation of subchapter III of chapter 73 of Title 5 (relating to prohibited political activities);
- B. Retirement, life insurance, or health insurance;
- C. A suspension or removal under 7532 of Title 5 (relating to national security matters);
- D. Any examination, certification, or appointment; or
- E. The classification of any position which does not result in the reduction in grade or pay of an employee;
- F. A management decision to (or refrain from making or terminating a temporary promotion, detail or reassignment) in accordance with this agreement;
- G. The adoption or non-adoption of a suggestion or the receipt or non-receipt of an honorary award;
- H. Separation of a probationary employee;

- I. Separation of a term, trial, or excepted service employee in accordance with applicable policy, regulation, law or this agreement; or
- J. The mere non-renewal or extension of a temporary employee, termination of a temporary appointment due to a reduction in force, and any other termination of the appointment of a temporary employee in accordance with applicable policy, regulation or law and this agreement.

Section 4. Employees filing a grievance under this procedure shall be represented only by the union's designated representative or by themselves.

Section 5. The union will be given the opportunity to be present during all grievance proceedings under this Article.

Section 6. Employees who have sought informal EEO complaint counseling may still file a grievance, provided that such grievance is initiated within 45 days of the event or non-event which caused the grievance to be filed, and no formal EEO complaint has been filed.

Section 7. An employee complaint will first be taken up by the concerned employee or the employee's union representative if any, with the employee's immediate supervisor or appropriate management official in an attempt to settle the matter in an informal manner. The supervisor or the appropriate management official will reply to the employee or representative, normally within three (3) working days, but not more than five (5) working days. If the matter is not resolved, the employee may file a grievance in accordance with the procedure described below.

Employee Grievance Procedure

Step 1

- A. Employees will present their grievance in writing to the immediate supervisor, unless the immediate supervisor does not have the authority over the matter grieved. In that case, the employee will present his/her grievance to the management official at the level having the necessary authority.
- B. The employee must state specifically that he/she is presenting a grievance; the personal relief sought; and the name, organizational unit and location of the aggrieved, a statement of the items, regulations or agreement alleged to have been violated, citing specific paragraphs or articles, the corrective actions desired, designation by name of the Union representative or statement of self-representation. The grievance must be signed and dated.
- C. An employee must present a grievance concerning a specific act or occurrence within thirty (30) calendar days of the

date of the event or non-event being grieved.

- D. Within fifteen (15) calendar days of initially receiving the grievance, the immediate supervisor or management official will answer the grievance.

Step 2

- A. If the matter is not satisfactorily settled following Step 1, the aggrieved employee and/or his/her representative, if any, may within seven (7) calendar days of the notification of denial present the matter in writing to the next level supervisor over the supervisor who heard Step 1. The grievance will contain the information submitted in Step 1 plus the disposition at Step 1. The grievance will be signed and dated.
- B. The supervisor shall send the employee and union representative, if any, or the union a written decision on the grievance within thirty (30) calendar days. 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.

Grievance of the Parties

- A. Should either Party have a grievance over any matter covered by this procedure, it shall inform the designated representative of the other Party of the specific nature of the complaint in writing within thirty (30) calendar days of the date of the act being grieved:
 - 1. A local matter will be filed with the designated local representative of the other Party.
 - 2. A national matter will be filed with the designated national level representative.
- B. Within thirty (30) calendar days after receipt of the written grievance, the receiving party will send a written response stating its position regarding the grievance. If the matter is not resolved, it may be referred to arbitration in accordance with the Arbitration Article.

Section 7. By mutual consent of the Parties, the time limits set forth in this Article may be extended.

ARTICLE 44

ARBITRATION

Section 1. If a grievance processed under this Agreement is not resolved, such grievance may be submitted to arbitration by either the EMPLOYER or the UNION within thirty (30) days after issuance of the final decision.

Section 2. The party desiring to submit the grievance to arbitration shall request the Federal Mediation and Conciliation Service to provide a list of seven (7) impartial persons qualified to act as arbitrators. The parties shall meet within five (5) days after receipt by both parties of the list of arbitrators. If they cannot mutually agree upon one of the listed arbitrators, the parties will each strike three (3) names, and the remaining person will be the duly selected arbitrator. The flipping of a coin or other mutual agreeable means will be used to determine which party will strike the first three (3) names.

Section 3. Issues and charges raised before the arbitrator shall only be those raised at the last stage of the applicable grievance procedure. The arbitrator shall have no authority to alter in any way the terms and conditions of this Agreement, any supplemental agreement or any other condition of employment not properly before him/her.

Section 4. The UNION and the EMPLOYER agrees to share equally the arbitrator's fee and expenses.

Section 5. Except in disciplinary and adverse action cases, the party requesting arbitration will make its presentation first in the arbitration proceeding. No later than five (5) work days prior to the arbitration, the parties will make available all evidence and proposed witnesses then within its knowledge to the other party. On the last work day prior to the arbitration, the parties will meet to exchange all evidence and proposed witnesses which they intend to enter into the proceeding. If evidence or information becomes available to a party prior to the start of the proceeding which has not been made available to the other party and it is intended to enter that evidence or information in the arbitration, the other party will be provided the evidence or information immediately. At its discretion, the other party may obtain a postponement of the arbitration for one (1) workday or until the arbitrator's next available date, whichever is less.

Prior to the arbitration 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 mutual consent forego a formal hearing and present the grievance directly to the arbitrator by individual written submission. The arbitrator is empowered to

make a finding and award based on those submissions.

Section 6. The arbitrator will be requested to render his/her decision as quickly as possible, but in any event not later than thirty (30) days after the conclusion of the hearing unless the PARTIES agree to extend the time limit.

Section 7. When the PARTIES mutually agree to an expedited arbitration, the arbitrator may render a decision at the close of the proceedings. Such "bench" decisions will have no precedential value with regard to future grievances or arbitrations.

Section 8. Local level arbitration decisions will have effect only at the location where the arbitration was held and may not apply to other parts of the Unit unless the parties to this agreement expressly agree in writing.

Section 9. The arbitrator's award shall be binding on the parties; however, either party may file an exception with the Federal Labor Relations Authority under regulations prescribed by the Authority. The filing of an exception to the Authority will serve to automatically stay the implementation of the award until the exception is disposed of under the terms of this section.

Section 10. If a party requesting arbitration should withdraw anytime prior to a decision being rendered by an arbitrator, it shall bear the full cost of any charges and expenses imposed by the selected arbitrator.

Section 11. The arbitration hearings will be held on the Employers's premises.

Section 12. The grievant(s), the representative (if a bargaining unit employee) and all bargaining unit employees who are called as witnesses will receive excused time when they would otherwise be in a duty status to the extent necessary to participate in the arbitration proceedings.

ARTICLE 45

SUPPLEMENTAL AGREEMENTS AND OTHER NEGOTIATIONS DURING THE LIFE AND TERM OF THIS AGREEMENT AND DESIGNATED REPRESENTATIVES OF THE PARTIES

Section 1. The parties agree that the circumstances under which negotiations are appropriate during the life and term of this agreement are included and described below:

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

Section 2. In situations (A) and (B) described in Section 1, the Employer will notify the authorized agent of the Union in advance in writing of the proposed change or management decision and its impact. (It is understood that the Agency is not required to negotiate on its decisions which do not adversely affect the bargaining unit.) Employer will notify the authorized agent of its decision and date of implementation. When negotiation is desired, the authorized agent will indicate his/her desire to enter into negotiations by advising the authorized Agency representative in writing within ten (10) days from receipt followed by written proposals within fourteen (14) days from receipt. Upon request, the Employer will explain the proposed change or the management decision and its impact to the designated union representative.

Section 3. In situations (C) and (D), the party desiring negotiations will so indicate by presenting written proposals to the authorized representative of the other party.

Section 4. In situation (E) the party desiring to negotiate will present its proposals in their entirety to the other party. Within fifteen (15) working days, the other party will present any proposals on subjects not covered by the initiating party's proposals. Within ten (10) working days after presentation of those proposals each party will indicate in writing whether it

desires to enter into negotiations. If both parties agree, a written signed document to that effect will be sent to the respective national level representatives and negotiations may proceed. Supplemental agreements must conform to the provisions of Section 5 of the Duration Article.

Section 5. The parties agree to recognize each other's duly authorized representatives. At each location, the parties shall designate an authorized agent. At the Agency and national levels, the parties shall designate an authorized representative. All dealings between the parties will take place between the appropriate authorized representatives unless an authorized representative designates another individual to act in his or her place. Understandings reached by unauthorized individuals will have no force and effect unless approved by the authorized representative of the parties. The parties will advise each other of their respective authorized representatives at the local levels at least annually. The parties will notify each other of their authorized Agency or national level representative in writing and such authorization will remain in effect until revoked.

Section 6. Nothing in this Agreement precludes the Employer, at its explicit election, from negotiating on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work.

Section 7. Where appropriate, the parties will negotiate ground rules for bargaining of issues arising from the operation of this Article which are at the national level. Where an employee/union representative's travel would be in the primary interest of the Government, the payment of those travel expenses may be negotiated by the parties in ground rules bargaining.

Section 8. In all preparations, negotiations and other activities arising under this Agreement, the parties will be aware of their obligation to the public to conduct such activities in the most efficient and cost effective manner.

Section 9. Existing conditions of employment not in conflict with law or provision of this agreement will remain in effect.

Section 10. An equal number of local union representatives as management representatives shall be authorized official time while engaged in local negotiations.

ARTICLE 46

DURATION

Section 1. This Agreement shall remain in full force and effect for three (3) years from the date of approval by the Agency Head or designee and may be extended in one (1) year increments thereafter.

Section 2. Either party may reopen this agreement after eighteen (18) months from approval by the Agency Head or designee. The parties desiring to reopen the Agreement will notify the other party in writing not less than sixty (60) days but not more than ninety (90) days in advance by presenting written proposals. The reopening will be limited to six (6) articles in this agreement by each party [a total of twelve (12) articles].

Section 3. If either party desires to renegotiate this agreement upon termination, it will notify the other party in writing not less than sixty (60) days but not more than ninety (90) days prior to the expiration date of the agreement (or anniversary date if the agreement has been extended). In the event neither party request negotiations, the agreement will be automatically extended for one (1) year.

Section 4. The Employer will provide a copy of this Agreement to all bargaining unit employees. Employees entering on duty after the initial distribution will be informed of the Union's exclusive recognition and provided a copy of this agreement.

Section 5. It is understood that any local level supplemental agreement, understanding, or condition of employment must comply to the terms and conditions of this agreement and may not conflict with this agreement except by the express, written consent of the parties to this agreement. Local level supplemental agreements, understanding or conditions of employment will have the same duration as this agreement and will expire on the expiration date of this agreement unless this agreement is extended under the provisions of this article.

Section 6. The Union will be provided copies of the Agreement as follows: ten (10) copies to the National Office; one hundred (100) copies to the National Level Representatives; and fifty (50) copies to each Local. The Union will provide the Employer with the names and mailing address of the individuals authorized to receive the copies.